

General Terms & Conditions of Sale, Delivery and Supply of artemis control AG

I. Scope of Application

1. The following General Terms and Conditions of Sale, Delivery and Supply apply exclusively in relation to undertakings acting in pursuance of their commercial or freelance professional activities upon concluding the purchase contract, as well as in relation to legal entities under public law.
2. The present and future business relations of artemis control AG, hereinafter referred to as "Seller", shall be exclusively governed by the following General Terms and Conditions of Sale, Delivery and Supply, except where otherwise agreed upon in writing in the individual case. Therefore, these General Terms and Conditions of Sale and Delivery shall also apply in future, without requiring renewed reference to incorporation thereof.
3. Deviating declarations or terms and conditions of business from the Buyer shall not be binding upon the Seller, even if they are not objected to by the Seller upon conclusion of the contract. They shall only be binding, if they are explicitly recognised by the Seller. Counter-confirmations from the Buyer which contain deviating terms or conditions are hereby objected to.

II. Offer and Conclusion of the Contract

1. All offers from the Seller shall be subject to change without notice. An order shall only be deemed accepted upon the Seller's written confirmation of acceptance or upon delivery of the goods and/or upon supply of the services by the Seller, regardless of the form in which the order was sent to the Seller (telefax, telephone, email etc.). The clause "as already delivered" - or an analogous clause - shall invariably only relate to the quality of the goods delivered and/or the services supplied, but not to the price. All agreements, collateral agreements, promises and contract amendments must be in writing. Verbal or written agreements or commitments which deviate from the terms and conditions of the contract shall only be effective if consented to, in the number entitled to undertake representation, by the organs or duly authorised officers of the Seller.
2. **a)** Prices confirmed in writing shall apply exclusively. Rises in prices, costs or wages which occur during the period between the time of such confirmation and the time of delivery of goods and/or the time of supply of services shall, provided that this period exceeds twelve weeks, entitle the Seller to increase the price commensurately with the said rise. Except where otherwise explicitly agreed upon, the Seller may cancel the contract, if the prime cost and/or the currency relations change, not just insignificantly, to the disadvantage of the Seller, unless the Buyer agrees to pay the price then reasonable.
- b)** In the absence of any specific agreement, all prices shall be understood to apply without any cash discount and without any other price reductions and shall be subject to the addition of value-added tax at the respective rate applicable by law. Except where otherwise agreed upon, prices for goods shall apply ex works stated in offer pursuant INCOTERMS 2000 including standard packaging but shall not include freight charges, export/import levies or customs duties etc..
3. Neither illustrations, drawings, prospectuses, advertising literature, directories etc. relating to the Seller's products and/or services, nor details contained therein, shall be binding. They shall only become a binding part of the contract upon their explicit incorporation into the contract.

III. Delivery of goods / Supply of services

1. **a)** Fixed dates for delivery and fixed periods for delivery shall only be binding if and in so far as they are agreed upon in writing and are explicitly referred to as binding. All other specified fixed dates and fixed periods which are not binding shall be deemed non-binding and, if exceeded, shall not trigger default. Fixed periods for delivery and/or supply shall begin upon the conclusion of the contract.
- b)** If a binding fixed date for delivery and/or supply or a binding fixed period for delivery and/or supply is exceeded, the Seller shall enter into default upon exceeding the fixed date or period for delivery/supply. The Buyer's rights shall be determined as follows in the event of default on the part of the Seller: The Buyer shall not be entitled to compensation for default damages, nor to compensatory damages in lieu of performance, in cases of slight negligence on the part of the Seller. If the Buyer wishes to cancel the contract and/or claim compensatory damages in lieu of performance, it must set the Seller a reasonable period, at least two weeks, within which to make delivery and/or supply. The Seller shall not be liable in cases where damages would have occurred even if delivery and/or supply had been made in due time.
- c)** The fixed dates and fixed periods specified in section III. 1b) shall be extended by any period which the Buyer requires for, among other things, obtaining the documents, permits and clearances to be procured by it following acknowledgement of the order. Force majeure, operational disruptions occurring at the Seller or at the Seller's suppliers, for example due to fire or labour disputes, as well as official directives, such as provisions governing importation and/or exportation, which temporarily prevent the Seller from delivering the purchase item and/or from the supplying of services by the agreed fixed date or within the agreed fixed period through no fault of the Seller shall likewise extend the fixed dates and fixed periods specified in section III. 1b) by the duration of the disruptions in performance caused by such circumstances. This shall apply even if such circumstances occur whilst the Seller is already in default. The commencement and cessation of such impediments shall be notified to the Buyer as soon as possible. The fixed period for delivery shall be complied with, if, by the expiration thereof, the delivery item has left the works or notification of readiness for dispatch has been given. Part delivery and/or part supply shall be permissible, if and in so far as this is reasonable for the Buyer. If such disruptions cause performance to be deferred

for longer than four months, the Buyer may cancel the contract. Other rights of cancellation shall remain unaffected by this.

d) If force majeure, operational disruptions or official directives as set forth under section III. 1c) materially alter the commercial significance or the subject-matter of the performance to be rendered by the Seller or have a material impact upon the Seller's business, or if it subsequently becomes apparent that execution is impossible, the contract shall be appropriately adapted. If and in so far as this is not commercially viable, the Seller shall have the right to cancel the contract. The Buyer shall have no claim to compensatory damages on account of such cancellation. If the Seller wishes to exercise the right of cancellation, it shall notify the Buyer thereof without undue delay upon becoming aware of the consequences of the event, even if an extension of the fixed period for delivery of goods and/or for supply of services has initially been agreed upon.

e) Compliance with the fixed period for delivery and/or supply shall be conditional upon the Buyer performing its contractual duties.

2. a) Delivery shall be made to the address specified by the Buyer. Except where otherwise explicitly agreed upon, shipment of the goods shall be at the expense and risk of the Buyer, even if the goods are delivered from a third party's warehouse (direct sale). Return shipments of goods and empties shall likewise be at the expense and risk of the Buyer. In the event of transport damages, the Buyer shall immediately notify the forwarder thereof and obtain the forwarder's acknowledgement. Transport damages shall not entitle the Buyer to refuse to take delivery or to refuse to make payment. Delivery of goods shall be made - except where otherwise explicitly agreed or prescribed by the Seller's general terms and conditions - ex works stated in the offer pursuant INCOTERMS 2000.

b) In the case of non-binding fixed periods for delivery or fixed dates for delivery, the passage of risk shall occur 10 days after notification of readiness for dispatch has been given and the goods have been correspondingly made available ready for dispatch. Storage costs incurred after the passage of risk shall be borne by the Buyer.

c) If acceptance inspection of part deliveries is agreed upon, the Buyer shall, in the absence of an agreement to the contrary, call off and inspect the goods in quantities which are spread approximately evenly over the acceptance inspection period. If the Buyer defaults on calling off the performance or on accepting the performance, the Seller shall, after having set an extension period to no avail, be entitled to itself fix the quantity to be inspected and to deliver that quantity. Rights over and above the foregoing, particularly the right to compensatory damages in lieu of performance, shall not be affected by this.

IV. Payment

1. Invoices shall be payable, without any deduction, on no later than the 30th day after the invoice date. Furthermore the Seller has the right to demand prepayment or the provision of appropriate securities.

2. If a fixed date for payment is exceeded, interest specified by the Seller shall be charged at the interest rate charged by commercial banks for outstanding overdrafts. A lower rate of interest shall be set, if the Buyer proves a lower interest rate. The interest rate shall be at least eight percentage points above the base interest rate. The right to assert further claims for default damages shall remain reserved.

3. If the Buyer wholly or partly defaults on a payment, all receivables still outstanding against the Buyer shall become immediately due and payable. The same shall apply, if and in so far as unfavourable credit reports on the Buyer are received. In the aforementioned cases, the Seller may demand, for all deliveries and/or supplies still outstanding from all contracts concluded, cash payment before the delivery of goods or may, following a corresponding warning, cancel the contract. At the Seller's option, security may be provided instead of advance payment.

4. The Buyer waives the assertion of a right of retention arising from previous or other transactions under the current business relationship. Set-off of counter-claims shall only be permissible if and in so far as they are undisputed or have been upheld by a final and non-appeal able court judgement.

V. Retention of Title

1. The Seller's deliveries shall remain its property until full payment of all its receivables arising from the business relationship. In the case of a running account, the title retained shall be deemed security for the balance due to the Seller. If the value of the security items existing for the Seller exceeds the Seller's total receivables by more than 10 %, the Seller shall, to this extent, release security items of its choosing at the Buyer's request.

2. Processing of goods shall be effected on behalf of the Seller without acquisition of title and without placing the Seller under any obligation. The processed product shall serve as security for the Seller in the sum of the invoiced value of the goods under retention of title. If the Buyer processes goods under retention of title with other goods not belonging to the Seller, the Seller shall be entitled to co-title to the new item in the ratio of the value of the goods under retention of title to the value of the other processed products at the time of processing. The new item arising from processing shall be deemed goods under reservation of title within the meaning of these terms and conditions.

3. The Buyer may resell goods under retention of title only on condition that the receivable arising from reselling passes to the Seller. Such receivables are assigned to the Seller here and now. They shall serve as security for the Seller in the sum of the value of the respective sold goods under retention of title. The Seller revocably authorises the Buyer to collect, in its own name, the receivables assigned to the Seller. This authorisation to collect receivables may only be revoked if the Buyer fails to properly meet its payments.

4. a) If the Buyer acts in breach of the contract, particularly by defaulting on payment, the Seller shall, without being required to set an extension period, be entitled to cancel the contract and repossess the goods under retention of title.

b) It is agreed between the Seller and the Buyer that if, beyond the foregoing, the Seller is entitled to compensatory damages in lieu of performance and the Seller takes back the goods under retention of title, the Seller shall compensate for the usual sales value of the purchase item at the time of repossession. At the Buyer's request, which may only be expressed without undue delay after repossession of the purchase item, a publicly appointed and sworn appraiser shall ascertain a usual sales value. The Buyer shall bear all costs in connection with repossession and realisation of the purchase item. Realisation costs shall, without proof, amount to 5 % of the usual sales value. They shall be set higher, if the Seller proves higher costs, or lower, if the Buyer proves lower costs.

5. The Buyer shall, for the duration of retention of title, be obliged to insure the delivered product against theft, destruction, fire, transport damages and the like. The Buyer assigns to the Seller the rights arising from the insurance contract, the conclusion and continuation of which shall be proven at the request of the Seller. If the Buyer fails to furnish proof of insurance, the Seller shall be entitled to insure the delivered goods at the Buyer's expense. However, no such obligation/responsibility shall exist on the part of the Seller.

6. The Buyer must without undue delay give the Seller written notification of any levy of execution or any other impairment in respect of the goods under retention of title or in respect of the receivables assigned to the Seller. The Buyer shall be obliged to point out to third parties the Seller's retention of title without undue delay.

7. If the retention of title is ineffective under the law of a foreign country where the delivered items are situated, security commensurate with the retention of title in the said territory or most closely reflecting the retention of title in terms of its effects shall be deemed agreed upon. If the Buyer's co-operation is required for the existence of the respective right, the Buyer shall be obliged to take, at its expense, all measures necessary for establishing and preserving the said right.

VI. Warranty and Liability

1. Complaints in respect of defects or complaints in respect of missing quantities or incorrect deliveries and/or supplies of services must be lodged in writing without undue delay, precisely stating the reasons. Complaints in respect of obvious defects which are not received at the Seller's address within **eight** days from acceptance and/or delivery and/or supply, as well as defects in respect of hidden defects which are not received at the Seller's address within **eight** days from discovery of the defect shall be excluded and time-barred in any event.

2. In the event of a justified and timely complaint in respect of a defect, the Seller shall, at its option, initially render supplementary performance by rectifying the defect or delivering an item free of defects. The Buyer shall grant the Seller, for every individual defect, a reasonable period within which to render supplementary performance. Delivery items or parts replaced in the course of supplementary performance shall become the Seller's property. Supplementary performance shall be deemed failed upon the occurrence of a third attempt made in vain. If supplementary performance has failed, or the Seller wholly refuses to render supplementary performance, the Buyer may, at its option, claim a reduction in the purchase price (abatement) and/or the remuneration or declare cancellation of the contract.

3. The Buyer shall be obliged to make available to the Seller for inspection the goods complained about as being defective or faulty. If the Buyer does not give the Seller the opportunity to satisfy itself that a defect and/or fault exists, particularly if the Buyer fails to make available the goods complained about or samples thereof or if the Buyer fails to grant the required access to inspect the complained services, all claims in respect of defects and/or faults shall lapse after the expiration of a set period.

4. a) A defect and/or fault shall not exist in the event of design and/or execution changes which do not impair the operability or value of the delivery item and/or the supplied services, nor in the event of reasonably acceptable minor deviations in design.

b) Transport damages shall not constitute defects. They must be immediately noted on the delivery note and be immediately asserted in relation to the forwarder.

c) Furthermore, a warranty shall be excluded, if the defect complained about is due to improper treatment or handling or if the Buyer undertakes, itself or through a third party, repair work without the Seller's prior written approval.

5. These provisions definitively contain the warranty for our goods and/or services. The Buyer may claim compensation for expenses incurred in vain and/or compensatory damages on account of defectiveness of the goods and/or faultiness of the services or on account of any other breach of duty on the part of the Seller, regardless of the legal basis, whether on a contractual, quasi-contractual or extra-contractual basis, only in cases of damages due to an intentional or grossly negligent breach of duty or due to a slightly negligent breach of a cardinal duty on the part of the Seller, its statutory representatives or its agents in performance. If a cardinal duty is breached, the Seller's liability shall be limited to foreseeable damages. Liability shall be excluded, if and in so far as damages are covered by insurance taken out by the Buyer for the case of damages in question. If and in so far as the Seller's liability is excluded, this shall also apply to any personal liability on the part of its statutory agents and agents in performance. The exclusion of liability shall not apply to any guarantee of quality or durability given by the Seller. Claims arising from loss of life, bodily injury or impairment of health, as well as claims arising from product liability shall remain unaffected by this exclusion of liability.

6. The Buyer shall be solely responsible for deciding on the use of the product delivered. Except where the Seller has confirmed in writing specific features and/or suitability of the products for a purpose of use designated by the contract, any technical advice on applications shall, despite having been given according to best knowledge, not be binding in any event. The Seller's liability for any advice given, or omitted to have been given, which does not relate to the features or usability of the product delivered shall be limited, subject to the conditions set forth under section VI. 5. 5.

7. Except where otherwise stipulated herein, claims on the part of the Buyer which are based on defects or on breaches of duty on the part of the Seller shall become time-barred after one year, unless the Seller has fraudulently failed to disclose the defect.

VII. Final Provisions

1. The Buyer may transfer to third parties rights and duties arising from the contract only with the Seller's written consent.

2. All legal relations and legal acts in the relationship between the Seller and the Buyer shall be exclusively subject to the law of Switzerland, excluding the provisions of the UN Sales Law Convention (CISG) and the provisions of the Swiss Private International Law (IPRG).

3. The exclusive place of jurisdiction is Uster, Schweiz, also in legal proceedings relating to a bill of exchange or a cheque. The Seller shall however be entitled to also bring an action before the courts which have jurisdiction over the place where the Buyer's registered office is situated or at the Buyer's principal place of business.

4. If one or more provisions in this contract are or become ineffective in law, this shall not affect the validity of the other provisions. The Parties undertake to replace, as promptly as possible, legally ineffective provisions with legally valid provisions which reflect the intended meaning of the legally ineffective agreements.