

General Terms and Conditions of CONRAC GmbH – Status: November 2009

1. Scope of applicability

- 1.1 These General Terms and Conditions of sales (hereafter referred to as "GTC") of CONRAC shall apply to all contracts for deliveries and services by CONRAC.
- 1.2 Only these GTCs shall apply. Conditions of the customer that differ from, are differently worded to, which supplement these GTCs or which contradict these GTCs shall not form any constituent part of any contract. The same shall apply in the event that CONRAC performs deliveries and/or services in the knowledge of such conditions of the customer, unless CONRAC has explicitly approved their applicability in writing.
- 1.3 These GTCs shall also apply to all future business transactions and contracts for deliveries or services between CONRAC and the customer.
- 1.4 All agreements relating to deliveries and services made between CONRAC and the customer must be recorded in writing in the relevant contract and possible additional agreements.
- 1.5 These GTCs shall only apply with respect to companies, juristic persons and assets subject to public law as defined by § 310 Para. 1 BGB.

2. Conclusion of contract

- 2.1 If an order placed by the customer is qualified as an offer pursuant to § 145 BGB, CONRAC may accept this offer within a period of four weeks after receipt.
- 2.2 Offers of CONRAC are not binding.
- 2.3 A contract between CONRAC and the customer shall be formed only with written confirmation of the order by CONRAC. The sending of an invoice and the performance of the delivery and/or service by CONRAC shall be expressly considered as order confirmation.
- 2.4 CONRAC reserves rights of ownership and copyright in illustrations, drawings, calculations, films, templates, slides, reproductions, photocopies and other documents; they may not be made accessible to third parties or utilised by the customer for itself or for third parties without the written consent of CONRAC. Otherwise CONRAC shall be entitled to demand compensation in damages regardless of further rights.

3. Payment, due date, default in payment, offset, right of retention

- 3.1 The prices of CONRAC are ex works.
Packaging costs and the costs of taking back the packaging shall, as reported in the relevant contract, be calculated separately. The same applies to dispatch costs provided the customer requires dispatch.
Unless otherwise agreed, the choice of dispatch method and dispatch route shall be within CONRAC's discretion.
- 3.2 If the subject matter of the contract relates to imported goods, the € price stated in the order confirmation shall be based on the foreign-currency exchange rate applicable from the day on which order confirmation is issued.
- 3.3 CONRAC reserves the right to alter the prices accordingly if, after conclusion of the contract until delivery of the goods or provision of the service, cost increases come into effect, in particular wage and salary increases, increases in freight charges including customs duties, import and export charges and the prices of CONRAC's suppliers as well as cost increases resulting from exchange rate fluctuations.
- 3.4 Statutory value-added tax is not included in CONRAC's prices. This will be listed separately in the invoice at the legally applicable level.
- 3.5 In each case payment shall be due immediately after the delivery has been received or the service has provided.
- 3.6 The customer shall be considered to be in arrears after a period of 14 calendar days after payment is due and the invoice has been received, however no later than 14 calendar days after payment is due and the services/delivery has been completed. This shall not be subject to a reminder.
- 3.7 If the customer defaults on his obligation of payment, CONRAC shall be entitled to demand penalty interest on arrears in the amount of 12% p.a. provided this involves consideration claims. If this does not involve consideration claims, CONRAC shall be entitled to demand penalty interest on arrears in the amount of 9% p.a.
- 3.8 CONRAC shall be entitled on a case-by-case to claim for higher default damages.
- 3.9 If cheques and bills of exchange are accepted by CONRAC, this shall only be undertaken on account of performance. Taxes on drafts and bills of exchange shall be borne by the customer.
- 3.10 The customer shall have a right of offset or retention only if its counterclaim is recognised by declaratory judgement, uncontested or recognised by CONRAC.

4. Time of delivery and performance, delay in performance

- 4.1 CONRAC shall be entitled to deliveries and performance by instalments provided they are not unreasonable to the customer.
- 4.2 Delivery schedules and deadlines shall only be considered binding if they have been expressly agreed in writing. Delivery deadlines are deemed to be kept when up to the moment at which the deadlines expire the subject matter of the contract has left the factory or readiness for dispatch has been communicated.
- 4.3 If dispatch is delayed at the customer's request, the goods shall be stored at CONRAC at the customer's expense and risk.
- 4.4 Events of force majeure shall entitle both/all parties – even within the delay in performance – to postpone delivery or performance for the duration of the hindrance. For CONRAC, force majeure shall cover all circumstances for which CONRAC is not responsible and which render impossible or unreasonably difficult CONRAC's ability to execute delivery or perform the service, in particular lawful strike action or lockout, war, import and export embargoes, power and raw-material shortages, measures taken by official bodies and late self-delivery for which CONRAC is not responsible. If the hindrance lasts for a period in excess of two months, then the customer shall be entitled after granting a reasonable period of grace to withdraw from the contract if it can prove that the complete or partial performance of the contract still outstanding is no longer of interest to the customer on account of the delay. Termination of the contract for any other reason shall remain unaffected by this provision.
- 4.5 If the customer grants CONRAC in writing a reasonable period of grace within which to make performance, if the latter has already fallen into default, and at the same time declares that it shall decline performance after the period of grace has expired, then it shall be entitled to withdraw from the contract after the expiry of this period of grace without results. The period of notice given must be at least four weeks.
- 4.6 Claims for damages against CONRAC as a result of delay in performance are governed by the provisions in § 8.
- 4.7 CONRAC's adherence to its delivery and performance commitments presupposes that the customer fulfils its contractual obligations correctly and on time.
- 4.8 If the customer defaults on acceptance or violates other duties to cooperate, then CONRAC shall be entitled to proceed in accordance with §§ 280 ff. BGB. In this event, the risk of accidental perishing or accidental deterioration of the subject matter of the contract shall also pass to the customer at the point at which the latter defaults on acceptance.

5. Transfer of risk, transport insurance

- 5.1 Unless otherwise stated in the order confirmation, delivery ex works shall be considered to be agreed.
The risk passes to the customer when the subject matter of the contract is handed over to the person performing transportation. This shall also apply to transportation by CONRAC.
- 5.2 In the event of dispatch, CONRAC shall at the customer's request and expense take out transportation insurance. CONRAC and the forwarder making delivery must immediately be notified in writing of any transportation damage, at the latest within a period of five days.

6. Third-party industrial property rights

- 6.1 The customer shall notify CONRAC immediately if third parties claim infringement of patents or other industrial property rights.
- 6.2 Whenever such a contractual obligation is agreed, CONRAC shall hold the customer harmless against any claims by third parties, providing that the customer transfers to CONRAC unrestricted authority to conduct any defence.

7. Warranty for defects

- 7.1 The following defect-warranty rights of the customer presuppose that the latter has properly fulfilled its examination and complaint-lodging duties pursuant to § 377 HGB (German Commercial Code). In the course of the examination the goods must be checked in accordance with the specification agreed in writing with CONRAC. If no such specification exists, then the specification drawn up by the manufacturer of the delivered goods shall serve as the yardstick. Written complaints of apparent defects must be lodged with CONRAC immediately but no later than within eight calendar days of receipt of the goods.
- 7.2 Advertising statements or any other public statements and declarations made by third parties shall not be considered grounds for claiming a defect. In this respect, warranty by CONRAC shall be excluded.

- 7.3 Goods that are shown to have been defective at the time of the transfer of risk shall be replaced or repaired at CONRAC's sole discretion (retrospective performance). CONRAC shall be entitled to refuse the selected method of retrospective performance, or the complete retrospective performance, if this is only possible with unreasonable costs. Retrospective performance shall be considered to have failed if three attempts by CONRAC to complete retrospective performance have failed, or if CONRAC refuses to perform retrospective performance pursuant to § 7.3, sentence 2 above.
- 7.4 Returns of defective goods to CONRAC for the purpose of subsequent performance may only be made with the written approval of CONRAC. The transportation costs incurred for this purpose shall be borne by the customer. The risk of accidental perishing and accidental deterioration of the returned goods shall only pass to CONRAC on their handover to CONRAC at its place of business. If CONRAC supplies a defect-free object for the purpose of subsequent performance, then the customer must return the delivered object.
- 7.5 If CONRAC is not prepared or is not in a position to correct the defects or make substitute delivery, in particular if such action is delayed beyond appropriate time limits for reasons for which CONRAC is responsible, or if in some other way the correction of defects or substitute delivery pursuant to § 7.3 fails, then the customer shall be entitled at its own discretion to demand rescission or reduction of purchase price and damages within the framework of legal requirements. Correction of defects/substitute delivery shall be deemed to have failed only after three unsuccessful attempts.
- 7.6 The limitation period for claims based on defects including claims for damages shall be one year from the commencement of the statutory limitation period. This shall not apply in the event of intent and gross negligence. Claims for damages are also covered by §§ 8.1 to 8.4.
- 7.7 In the event of changes to the subject matter of the contract which the customer makes itself or has made by third parties without the previous consent of CONRAC, the warranty shall be invalidated unless the customer can prove that there is no causation between the change carried out and the defect encountered.

8. Aggregate liability

- 8.1 CONRAC shall be fully liable for intent and gross negligence. CONRAC shall only be liable for simple neglect, and such liability shall be limited to predictable damage typical for such a contract, if it has violated obligations whose observance are of special significance for the realisation of the objective of the contract, and whose observance the customer should be able to rely on on a regular basis.
- 8.2 In the event simple negligence, CONRAC's liability shall be limited to damage that can typically be predicted for such a contract at the time when the contract is concluded.
- 8.3 In cases of initial impossibility, CONRAC shall only be liable if it knew of the obstacle to performance or its ignorance thereof is founded on gross negligence.
- 8.4 The limitations and exclusions of liability state above shall not apply to claims in accordance with product-liability legislation and in the event of damage arising from injury to life, limb or health.
- 8.5 Where CONRAC's liability is excluded or limited, this shall also apply to the personal liability of its employees, workers, representatives and vicarious agents.
- 8.6 With the exception of claims arising out of tortious/unlawful acts, claims for damages by the customer for which liability is limited in accordance with this paragraph shall be time-barred in one year, counted from the commencement of the statutory limitation period.

9. Reservation of ownership

- 9.1 CONRAC shall retain ownership of the delivered goods until all claims have been settled which at the time of contract formation exist against the customer on the basis of business relations. This shall also apply to future claims which CONRAC acquires from the current business relationship with the customer.
- 9.2 In the event of conduct on the part of the customer which is culpably in violation of the contract, in particular in the event of default in payment, CONRAC shall be entitled to take back the subject matter of the contract. This taking back of the subject matter of the contract shall not involve withdrawal from the contract unless CONRAC has expressly stated as such in writing.
- 9.3 The customer shall be entitled to resell the subject of the contract in the course of ordinary business transactions as long as it is not in default of payment. It shall already assign to CONRAC at this point all claims in the amount of the final invoice amount by CONRAC (including value-added tax) which accrue to it from the resale to its buyer or third parties, and regardless of whether the subject of the contract has been resold with or without subsequent processing. CONRAC accepts this assignment. The customer shall remain authorised to book the claim even after assignment. CONRAC's power to call in the claim itself shall remain unaffected thereby. CONRAC undertakes not to book the claim as long as the customer meets its payment obligations arising from the relevant contractual relationship, does not default on payment and in particular does not file for bankruptcy or suspend payments. If this is the case, however, CONRAC shall be entitled to demand that the customer publicise the assigned claims and its debtors, give all the necessary details relating to booking, issue the associated documents and notify the debtors (third parties) of the assignment.
- 9.4 Any processing or transformation of the goods by the customer shall always be carried out for CONRAC. If the goods are processed with other objects which do not belong to CONRAC, then CONRAC shall acquire joint ownership of the new thing in the ratio of the value of the goods to the other processed objects at the time of processing. Furthermore, the thing created by processing shall be governed by the same provisions as for the goods supplied with reservations. If the goods are inseparably mixed with other objects which do not belong to CONRAC, then CONRAC shall acquire joint ownership of the new object in the ratio of the value of the goods to the other mixed objects at the time of mixing. If mixing is such that the customer's thing is to be viewed as the principal thing, then the customer shall transfer joint ownership to CONRAC proportionately. The customer shall keep the sole or joint ownership thus created for CONRAC.
- 9.5 In the case of attachments or other access by third parties to the sold goods, the customer shall refer to CONRAC's ownership and notify the latter immediately in order to give CONRAC the opportunity to bring an action of third-party opposition in accordance with § 771 ZPO (German Code of Civil Procedure). If the third party is not in a position to reimburse CONRAC's court and out-of-court costs incurred in asserting its rights of ownership, then the customer shall be liable for these costs.
- 9.6 CONRAC shall undertake to release the collateral to which it is entitled at the customer's request insofar as the realisable value of the collateral exceeds the claims to be secured by more than 20%. It shall be incumbent on CONRAC to choose the collateral to be released.

10. Export

The customer shall undertake to export the goods and technical information supplied by CONRAC only in compliance with the appropriate export regulations and to impose this same obligation on its buyers.

11. Marking of origin, disposal

- 11.1 Any change to the delivery or performance of CONRAC, in particular to its identification marking, which contains an origin reference of the customer or a third party or which gives the impression that the product is a product of the customer or a third party, shall not be permitted unless CONRAC has in advance given its written consent thereto.
- 11.2 Pursuant to the German Electronic Equipment Act § 10 Para. 2 (mandatory return by manufacturer), CONRAC GmbH agrees the following with its customers (users other than private households). The customer undertakes to dispose of equipment procured from Conrac GmbH in accordance with applicable legal stipulations, and to bear all costs associated with this.

12. Sale on approval

- 12.1 If the delivery of specimen or test equipment is agreed, then the customer shall be entitled to withdraw from the contract within the agreed period by declaring its disapproval.
- 12.2 Sale on approval is governed by these General Terms and Conditions. In particular, risk shall pass to the customer in accordance with § 5.1.
- 12.3 If disapproval is declared within the agreed period, then §§ 346 ff BGB shall apply.
- 12.4 The customer shall bear the costs of returning the subject of the contract. CONRAC must be notified in writing in advance of all returns. The risk of accidental perishing and accidental deterioration of the returned goods shall only pass to CONRAC on their handover to CONRAC at its place of business.

13. Place of performance, jurisdiction, applicable law

- 13.1 The place of performance shall be CONRAC's place of business in Weikersheim, Germany.
- 13.2 Ellwangen, Germany, shall be agreed as the place of jurisdiction for all disputes arising from the business relationship.
- 13.3 The laws of the Federal Republic of Germany shall apply. The provisions of the Convention Relating to a Uniform Law on the International Sale of Goods shall be excluded.