

# General Terms of Sale

of Sortimo International Ltd

## 1. Application

- 1.1 These General Terms of Sale apply to all offers and contracts of Sortimo International Ltd, including all the subsidiary services, consultation services and information which we may provide as sellers/contractors.
- 1.2 Exclusively these General Terms of Sale shall apply to our offers and to all contracts that we enter into as sellers/contractors. These General Terms of Sale are deemed recognised and simultaneously become part of the contract when the buyer/principal (Customer) places an order. Any contradicting or deviating terms of the Customer are hereby rejected. They will only become part of the contract if we expressly approve them in a particular case.
- 1.3 These General Terms of Sale shall also apply even if we perform delivery to the Customer without reservations or render services for the Customer although we have knowledge of terms of the Customer which contradict or deviate from these General Terms of Sale.
- 1.4 These General Terms of Sale only apply to entrepreneurs (Section 14 of the German Civil Code), legal bodies under public law or special public assets as defined in Section 310 para. 1 sentence 1 of the German Civil Code.
- 1.5 These General Terms of Sale also apply to all future contracts with the Customer which we may enter into as sellers/contractors.
- 1.6 All agreements made between the Customer and ourselves and any additions and amendments to such agreements must be recorded in writing. This also applies to any waiver of the written-form requirement.
- 1.7 Our (field service) employees and commercial agents are not authorised to enter into agreements or make undertakings that differ from our General Terms of Sale. This can only be done by legally effective individual agreements made with employees holding powers of representation.

## 2. Offers, Offer Material, Information and Consultation

- 2.1 Our offers are always made without commitment. Our offers are only binding by way of exception and in individual cases in which we make them in writing and expressly state them to be binding.
- 2.2 We are only bound by binding offers if the contract is made by the time stated in the offer and no later than after the elapse of two weeks after receipt of the offer by the Customer.
- 2.3 Samples and specimens are not binding. We can alter designs if the alterations are compatible with Customer specifications or if the difference is only minor.
- 2.4 All data on the suitability and applications of our products/services is provided to the best of our knowledge. However, it constitutes no more than our empirical values which are not deemed guaranteed and cannot form the basis of claims made against us. The Customer is not exempted from himself testing whether the products/services are suitable for the scheduled application.

- 2.5 The Customer agrees to our further use and reproduction of the drawings, plans, models, templates, samples, tools, production aids, measurements, weights and similar performance data that the Customer has supplied to us. He also agrees to provision of the same to third parties if necessary for the order. If there any changes in the data supplied by the Customer, the latter must notify us immediately.

## 3. Prices

- 3.1 Our Sortimo list price/catalogue price valid at the time when the contract is made is the applicable sales price.
- 3.2 If a delivery at the Sortimo list price/catalogue price is performed more than four months after the contract was made for reasons for which we are not responsible and if the list price/catalogue price has fallen or risen, the new list price/catalogue price shall be deemed agreed. If the change amounts to more than 5 % of the agreed net price, both contracting parties have the right to rescind the relevant part of the contract.
- 3.3 If work is performed more than four months after the contract was made for reasons for which we are not responsible and if our wage and/or material costs have fallen or risen by more than 5 %, the agreed price will be adjusted accordingly; calculation of the new price will be based on a wage and material share of 45 % each and a fixed-price share of 10 %. If the change in the price amounts to a rise or fall of more than 15 %, both contracting parties have the right to rescind the relevant part of the contract.
- 3.4 If no special terms have been agreed, our prices will be applicable ex works or warehouse, excluding loading at works/warehouse and excluding packaging. The Customer will pay the costs of packaging, loading, transportation, import or export duties and insurance. We have no obligation to take out transportation insurance.
- 3.5 Statutory value-added tax is not included in the price. It is payable at the statutory rate applicable at the time and will be entered separately in the invoice.

## 4. Shipment, Packaging and Passage of Risk

- 4.1 Shipment will be made at the Customer's risk, even if we pay the costs of transportation in exceptional cases. The risk shall pass to the Customer – even for FOB, CIF or prepaid transportation – when products/services are surrendered to the transportation company and no later than when they leave our works or warehouse or, in the event of direct shipment, when they leave the works or warehouse of our sub-supplier.
- 4.2 We will only accept return of supplied packaging within the limits of our statutory obligations; return of packaging for shipments abroad will not be accepted. Acceptance of return does not include return shipment and the costs incurred thereby. If the Customer is not a private end consumer as defined in the Packaging Ordinance, disposal of the packaging will be charged to the Customer at our cost price. If the packaging is not returned to us, we cannot pay all of the costs of disposal or a share in the same.

4.3 Immediately after delivery of our products/services, the Customer must inspect them for obvious transportation losses, transportation defects or transportation damage. Said Customer must ascertain any complaints in the presence of the driver and in compliance with the carrier's conditions, must record them in writing and notify us on the day of receipt of the products/services. We must be notified of any concealed transportation losses, transportation defects or transportation damage no more than three calendar days after delivery of our products/services. If the Customer fails to notify us in due time, the products/services will be deemed approved as regards any transportation losses, transportation defects or transportation damage. The Customer must always perform the necessary formalities for the carrier. Section 438 of the German Commercial Code shall also apply.

4.4 The obligations under Section 4.3 shall also apply to the Customer even if the shipment/service is delivered or, respectively, rendered to a third party or on the premises of a third party at the Customer's request.

## 5. Dates, Delivery/Service

5.1 Our dates or periods for delivery or performance of a service are not binding, unless an agreement has been made to the contrary. They are subject to the reservation of due and on-time supply to us and do not begin until all details of performance have been settled – by the Customer in particular – and not before the date of our confirmation of order and receipt of any due advance and part payments.

5.2 If dates of delivery or performance of services have been agreed to be binding in exceptional cases, the following shall apply: If the Customer is in default on fulfilment of his contractual obligations, all dates shall be extended for the duration of such default plus a reasonable restart period.

In the event of circumstances for which we are not responsible and in the event of force majeure (e.g. in the event of unforeseeable disruptions of operations, traffic or shipment, fire damage, flooding, an unforeseeable shortage of power, energy, raw materials or auxiliary materials, a subsequent scarcity of material, import and export restrictions, strikes, lock-outs, public-authority decrees and similar unforeseeable events, which subsequently make it impossible or very difficult for us or our sub-suppliers or the carriers to render performance), dates shall be extended reasonably by the period of hindrance plus a reasonable restart period but by no more than three months. We will notify the Customer immediately of the beginning and end of such hindrances. We are not deemed responsible for the circumstances listed above even if they occur during default. If the supply hindrance lasts for more than three months, both parties are entitled to rescind the contract.

If we fail to observe delivery dates which we have confirmed as binding, the Customer has the right to set us in writing a reasonable period of grace of – usually – at least one month. If supply is not made by the end of this period of grace, the Customer has the right to rescind the contract. Delivery is deemed to have been made in due time if the product/service has left our works or warehouse or that of our sub-supplier/sub-contractor before expiry of the delivery period. We will only compensate default damages subject to the rulings in Section 9.

5.3 With due consideration of the interests of the Customer, we have the right at any time to render partial services and make partial deliveries and to invoice them separately.

5.4 If the Customer fails to collect the products within a week of receipt of our notice of readiness for collection/invoice or if said Customer refuses acceptance of our products/services, he shall be deemed in default on acceptance. If the Customer is in default on acceptance, we have the right to set the Customer a period of grace for collection or acceptance of the products/services. A period of grace of one week is considered reasonable.

If the period of grace elapses without result, we have the right – without prejudice to further claims – to rescind the contract and/or claim damages. In the latter case, we are entitled to require 10 % of the agreed net purchase price as flat-rate damages without providing evidence of a specific loss, unless the Customer is able to provide evidence that we have suffered no loss or a smaller loss. We are always entitled to require compensation for the loss actually suffered instead of flat-rate damages. In the event of default on acceptance, the risk of accidental loss or deterioration of the products will pass to the Customer.

## 6. Payment

6.1 All our claims are payable immediately on receipt of the invoice. The criterion for on-time payment is receipt of the money for our unreserved use.

6.2 We are entitled to require reasonable part payments.

6.3 If the Customer is in default on payment or we have justified doubts about his solvency, we have the right to make all claims against him payable immediately and/or to require security even before delivery/performance or to withhold, either in whole or in part, outstanding deliveries/performance under all contracts with the Customer or to rescind existing contracts, either in whole or in part.

6.4 The Customer shall only hold rights of offsetting, retention or refusal to pay if his counter-claims have been finally established by a court of law or are undisputed or recognised. In addition, the Customer is only authorised to exercise a right of retention to the extent that his counter-claim is based on the same contractual relationship.

6.5 We reserve the right to use payments to settle the oldest due claim plus the accrued default interest and costs, this being in the order: costs, interest, claim.

## 7. Retention of Title, Reservation of Copyright, Confidentiality

7.1 We reserve the title to all our products/services (Reserved Items) until all claims resulting from the business relationship with the Customer have been settled. This also applies to items which we install or hand over as part of performance of work. The retention of title shall also continue to apply if we have incorporated the claims into a current account and the balance has been drawn and recognised (Current Account Reservation). The passage of risk under Section 4 is not prejudiced hereby.

7.2 The Customer must treat our Reserved Items with due care. He must take out adequate insurance for our Reserved Items at his own expense against damage by fire, water and theft, this to be for the gross invoice value, and hereby assigns to us his compensation claims under these insurance policies to the amount of the gross invoice value. This assignment is hereby accepted.

7.3 The Customer has the right to resell products supplied by us during the course of due business only, provided and for as long as said Customer meets his contractual obligations to us and a payment claim to the value of at least the purchase costs results from such resale. If the Customer resells the Reserved Items, he shall, for his part, only supply the products to his customers subject to an effectively agreed retention of title until full payment (transferred retention of title). The Current Account Reservation agreed in Section 7 does not apply to the extended retention of title.

The Customer assigns to us in advance all his claims against his customers or third parties resulting from the resale of our Reserved Items, including any claims which he may acquire in the future, this being to the amount of the gross invoice value of our deliveries or our co-ownership share. We hereby accept this assignment. If our products are processed, combined, mixed and/or intermingled with outside products, the assignment of claims shall only apply in the ratio of the gross invoice value of our Reserved Items to the value of the outside products sold with them.

Even after such assignment, the Customer shall still be authorised to collect the claims. Our authority to collect the claims ourselves is not prejudiced thereby. However, we have an obligation not to collect the claims ourselves for as long as the Customer duly meets his payment obligations and other obligations to us. However, if the Customer is in default on payment, we are entitled to notify the Customer's buyers of the assignment of claims or retention of title and to collect the claims ourselves. The Customer must forward the proceeds of resale of our Reserved Items to us immediately in each case to the extent that our claims are or become payable. If the Customer suspends payment or if an insolvency application is made relating to the assets of the Customer or if he fails to meet his obligations to us, the authorisations to resell the Reserved Items and to collect the claims from the Customer's buyers shall automatically cease to apply immediately and shall pass to us. On request, the Customer must notify us of the assigned claims and the appropriate debtors, provide all the data required for collection and give us the associated business records, in particular the accounting records.

- 7.4 Any processing, combining, mixing and/or intermingling of the Reserved Items by the Customer shall always be performed for us without our incurring any obligations thereby. If our products are processed, combined, mixed and/or intermingled with items not belonging to us, we will become the co-owner of the new product in the ratio of the value of the Reserved Items to the other items at the time of processing, combining, mixing and/or intermingling. If the Customer obtains the sole title to the new product, it is deemed agreed that said Customer will assign us a co-title in accordance with the proportionate gross invoice value. The Customer will keep the sole title or co-title created in this way on our behalf. Moreover, the same shall apply to the products created by processing, combining, mixing and/or intermingling as applies to the Reserved Items supplied subject to retention of title.
- 7.5 If the Customer breaches the contract, in particular by default on payment, we have the right to repossess our Reserved Items that have not been paid for. To this extent, the Customer has no right to possession. After repossessing the products, we are authorised to sell them and the proceeds of sale are to be credited to the liabilities of the Customer, after deduction of the costs of sale. The Customer is free to provide evidence that such sale caused unreasonably high costs and in such a case, any difference need not be paid by the Customer.
- 7.6 The Customer is not permitted to pledge our Reserved Items or assign them in security. If complete warehouses are assigned in security, the products we have supplied must be expressly excluded. In the event of compulsory enforcement or attachment, the Customer must give notification of retention of title and inform us immediately in writing, so that the necessary counter-action can be taken. The Customer is liable for any court or out-of-court costs that we may incur in this connection, provided that no compensation can be obtained elsewhere.
- 7.7 At the request of the Customer, we must release the securities to which we are entitled insofar as the realisable value of the securities exceeds the claims being secured by more than 20 %; selection of the securities for release is at our discretion.
- 7.8 If the Reserved Items are supplied to a location outside the Federal Republic of Germany or taken to such a location by the Customer, the following shall take priority over Sections 7.1 to 7.7: The Customer will ensure that our retention of title is effectively protected in the country in which the products are located or to which they are to be taken. If certain action is necessary to this end (e.g. special marking or local registration), the Customer shall take such action in our favour at his expense. The Customer will notify us immediately if any co-operation on our part is required. The Customer will also notify us of all other major circumstances which are of significance for protection of our title in a way that is as wide-reaching as possible. In particular, said

Customer will provide us with all the written material and information necessary to enforce our rights resulting from our title. If no retention of title can be effectively agreed under the legal system of the place at which the products are located, the terms of this Section 7.8 apply accordingly to the creation of a legal position for us that protects our interests and claims in a similarly effective manner or effectively protects them in some other suitable way as far as legally possible.

- 7.9 We reserve our title and all copyrighted rights of use and disposal to drawings, plans, models, templates, samples, tools, production aids and similar items and to confidential data/concepts which are provided to the Customer or have been paid by us. These items and data/concepts must not be supplied to third parties or made available to them in any other way without our prior consent. The reproduction of such items and data/concepts is only permitted as required under the contract and subject to compliance with copyright regulations. Any third parties who normally come into contact with the items and data/concepts must be placed under a corresponding obligation by the Customer.
- 7.10 The Customer must always treat as business and operating secrets – even in the event of doubt – all our (not obvious) technical, economic and personal procedures and circumstances of which he learns in association with contractual relationships with us or our offers, subsidiary services, consultation and information. He must maintain confidentiality relating to the same and ensure that no third parties (including family members and employees not working on the project) learn of them without authorisation. This obligation to maintain confidentiality continues to apply after the contractual relationship has ended. If the Customer culpably commits a breach of this obligation to maintain confidentiality, he shall pay to us a contractual penalty amounting to 5% of net order value for each individual breach. We reserve the right to assert further damages claims in excess thereof.
- 8. Defects, Warranty**
- 8.1 Defect claims are subject to a time limitation of one year, calculated from delivery of the products/services. For works, the criterion is acceptance instead of delivery.
- 8.2 The Customer must accept our works and installation services immediately – together with us if we request it –, no later than within two days after notification of completion or after delivery. Delivery is deemed to be a request for acceptance. At our request, a record of acceptance shall be made.
- 8.3 Without prejudice to the ruling under Section 4 or Section 640 para. 2 of the German Civil Code, we must be notified in writing of obvious defects, incorrect deliveries or discrepancies in quantity immediately, no later than seven calendar days after delivery of the products/services or acceptance of the works. The Customer no longer has a right of complaint about defects after further processing has begun. Notification of concealed defects must be given immediately, no later than within seven days of discovery of the same. If the Customer fails to give due notification, the products/services shall be deemed to be approved as being without defects and accepted. For Customers who are merchants as defined in the German Commercial Code, Section 377 of the German Commercial Code shall apply additionally. Sections 478, 479 of the German Civil Code shall take priority in relation to recourse claims based on purchase of consumer goods.
- 8.4 Written notification must be given of defects. If we accept a verbal notification at our discretion in individual cases, we will issue written confirmation of its receipt.
- 8.5 After receipt of the notification of defects, we must, at our request, be forwarded the products/services for inspection, insofar as this is possible without unreasonable outlay and providing that we do not agree in writing to another method of procedure. If the notification of defects is not justified, the Customer

shall pay the costs of the work we have done for inspection of the same.

- 8.6 For justified complaints, the Customer has the right, at our discretion, to two attempts at reworking free of charge or substitute delivery. Any shortfall quantities will be supplied. If the two attempts at reworking or substitute delivery do not prove successful within a reasonable period, the Customer shall hold statutory rights.
- 8.7 We can refuse to remedy defects or to perform substitute delivery for as long as the Customer fails to meet his due obligations to us. The Customer's right to a claim based on the warranty for defects and the corresponding right to refuse/withhold payment due to defects are not prejudiced hereby.
- 8.8 No warranty is given if our products/services are used improperly by the Customer or combined with or installed in unsuitable items (e.g. which were not supplied by us or which do not comply with operating instructions). Furthermore, a warranty is excluded for normal wear and tear and faults due to improper impact, incorrect operation and negligent treatment, in particular if the Customer fails to comply with our operating and servicing instructions.
- 8.9 The above warranty restrictions do not apply to losses resulting from injury to life, body or health due to an intentional or negligent breach of duty by us or one of our legal representatives or vicarious agents. Neither do the above warranty restrictions apply to other losses due to an intentional or grossly negligent breach of duty by us or one of our legal representatives or vicarious agents or if the other loss has been caused by the lack of a warranted quality or by malicious concealment of a defect.

## **9. Damages**

- 9.1 All damages claims made by the Customer either directly or indirectly in association with the ordering, delivery or use of our products/services or performance of our works are excluded, irrespective of their legal basis. This exclusion of liability does not apply to a breach of a major contractual obligation (cardinal obligation). Cardinal obligations are obligations without the fulfilment of which due performance of the contract would not be possible and upon the fulfilment of which the contracting partner usually relies and can rely, i.e. rights and obligations which the contract must guarantee in view of its content and purpose.
- 9.2 In all cases, our liability is limited to compensation for foreseeable damages typical of the contract. Any damages claims against us by the Customer due to contractual penalty claims by the Customer's buyers can never be foreseeable and typical of the contract as defined above. We always have the right to provide evidence of lesser damages.
- 9.3 If the damages are covered by an insurance policy taken out by the Customer for the relevant risk, we shall only be liable for any loss suffered by the Customer in association therewith, e.g. higher insurance premiums or interest payable until settlement by the insurance company.
- 9.4 The above liability exclusions and restrictions do not apply to losses resulting from injury to life, body or health due to an intentional or negligent breach of duty by us or one of our legal representatives or vicarious agents. Neither do the above liability exclusions and restrictions apply to other losses due to an intentional or grossly negligent breach of duty by us or one of our legal representatives or vicarious agents or if the other loss has been caused by the lack of a warranted quality or by malicious concealment of a defect.

## **10. Strict Liability/Product Liability**

If claims are made against us by third parties on the basis of strict liability, in particular product liability, the Customer shall assume liability to the extent that he would also be directly liable. We will assume no liability – as far as legally possible – for action taken by the Customer to avoid losses, e.g. recall programmes.

## **11. Applicable Law, Place of Fulfilment, Legal Venue**

- 11.1 Business relations between the Customer and ourselves resulting from and in association with the contract shall be governed solely by the law of the Federal Republic of Germany with exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).
- 11.2 The place of fulfilment for all obligations resulting from the contractual relationship is Zusmarshausen or, respectively, the location of the branch with which the Customer entered into the contract.
- 11.3 The sole legal venue for all disputes resulting directly or indirectly from the contractual relationship is Augsburg, insofar as the Customer is a merchant as defined in the German Commercial Code. Irrespective of whether the Customer is a merchant, this shall also apply if the Customer moves his residence or customary abode to a foreign country, if his residence or customary abode is not known at the time when legal action is filed or if our claims are asserted through legal proceedings. We also have the right to file legal action at the Customer's general legal venue.

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