

General Terms of Delivery and Payment

1. General

- (1) These general terms of delivery and payment (**General Terms**) of SÄKAPHEN (Säkaphen GmbH, Bottroper Straße 275, 45964 Gladbeck, Germany) shall exclusively apply to all our business relations with our customers; any deviating, conflicting or supplementary general terms and conditions of customers shall become an integral part of the contract only if and to the extent we have expressly consented to their applicability. This requirement of consent shall apply in any event, also for instance where we carry out the delivery to the customer without reservation when we are familiar with the general terms and conditions of the customer.
- (2) These General Terms shall only apply if the customer is an entrepreneur (*Unternehmer*) pursuant to Section 14 of the German Civil Code (*Bürgerliches Gesetzbuch*) or a public-law entity or special fund under public law (*öffentlich-rechtliches Sondervermögen*).
- (3) Any individual contracts with the customer (including ancillary contracts, supplements and amendments) shall in any event prevail over these General Terms. The content of such agreements must be stipulated in a written contract or must be confirmed by us in writing in order to be effective.
- (4) Any legally relevant declarations and notifications to be given to us by the customer after the contract has been concluded (e.g. setting of periods, notices of defects, declarations of rescission or reduction) must be made in writing in order to be effective.
- (5) These General Terms shall also apply to any future transactions with the customer.

2. Delivery – Delivery Time

- (1) Any delivery times stated are non-binding unless otherwise agreed in writing and by contract.
- (2) If contractually agreed delivery times are delayed for reasons for which we are responsible, the customer shall be entitled to demand lump-sum compensation for the damage caused by the delay in the amount of 0.5% of the value of the service or

* This is a translation of a document into English. We have taken reasonable care to ensure that it is accurate. However, you should be aware that words and legal concepts used in one language may not have exact equivalents in another. We therefore cannot guarantee that the translation will have exactly the same meaning as the original.

delivery for each completed week of delay, but in any event no more than 5% of such value. We reserve the right to furnish proof to the customer that no damage or a considerably lower damage has occurred as a result of the delayed delivery.

- (3) All *force majeure* events occurring after conclusion of the contract such as sabotage, strike, lock-out, delayed receipt of the goods by us in spite of having concluded a substitute transaction (*Deckungsgeschäft*) as well as any other unforeseeable events for which we are not responsible shall release us from our duty to observe agreed deadlines as long as these events are continuing; if such events continue for more than two months, we and the customer shall be entitled to rescind the contract under exclusion of any claims for damages.
- (4) If delivery is made in reusable containers or packaging, they must be returned to us completely empty and free of transportation charges within 90 days of receipt of delivery. The customer shall be liable for the loss of and/or damage to the reusable containers/packaging unless the customer is not responsible for such loss and/or damage. Reusable containers/packaging may not be used for any other purpose or for the storage of other products. They are only intended for the transport of the supplied goods. Labels may not be removed.
- (5) We shall not accept return of disposable packages. We shall instead refer the customer to a third party which will recycle such packaging pursuant to the German Packaging Ordinance (*Verpackungsordnung*) if the customer so requests.

3. Prices – Payment Terms

- (1) Unless a fixed price has expressly been agreed, the prices stated are based on our cost of production or acquisition at the time the order is confirmed. If these costs are subject to change between the time the order confirmation was sent and the time of delivery and if we are not responsible for such change, we shall be entitled to change the price accordingly.
- (2) Unless agreed otherwise, invoices shall be due for credit to our bank account without charges and without deduction within 10 days of the date of the respective invoice and of delivery.
- (3) Upon expiry of the above payment period, the customer shall be deemed to be in arrears. The invoice amount due from the customer shall bear interest during the period of default at the statutory default interest rate prevailing at that time. We reserve the right to demand any further compensation for the damage caused by the delay (*Verzugsschaden*). This does not affect our right to claim regular interest payable from

the due date (*kaufmännischer Fälligkeitszins*) (Section 353 of the German Commercial Code (*Handelsgesetzbuch*)) from business persons (*Kaufleute*).

- (4) Bills of exchange and cheques shall only be accepted *in lieu* of payment (*erfüllungshalber*); repayment by payment of the bill of exchange or cheque shall only be effected when the respective amount has irrevocably been credited to our bank account. All expenses arising from bills of exchange, cheques and discount credits as well as any other costs shall exclusively be borne by the customer. Any transfer and other expenses shall be calculated such that the original invoice amount is credited to our bank account in Gladbeck without charges.
- (5) Any taxes and other charges incurred in the customer's country shall be borne by the customer.
- (6) The customer shall only be entitled to rights of set-off or retention to the extent the customer's claim has been recognised by final and absolute judgment or is undisputed. Defects of delivery shall not affect Clause 5 para. (1) e.
- (7) If, after conclusion of a contract, we become aware of any circumstances giving rise to reasonable doubts regarding the customer's creditworthiness, we shall have the option to either refuse performance of the contract until appropriate security has been provided to us or to require prepayment of the agreed price to the extent the subject of the contract are services to be rendered especially for that customer. This shall not apply if the customer furnishes proof that we would have been able to realise, at the time of conclusion of the contract, that there are reasonable doubts regarding the customer's creditworthiness if we had exercised due care and attention.

If the customer does not comply with our request within two weeks, we shall be entitled to rescind the contract without the customer being entitled to claims for damages.

4. Transfer of Risk

- (1) Delivery shall be *ex works* both for delivery of SÄKAPHEN materials and for the rendering of services (particularly services, work or assemblies). The risk of accidental loss and accidental deterioration shall pass to the customer *ex works* or upon acceptance to the extent such acceptance is intended or required.
- (2) In the case of sales shipment, the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay shall pass to the forwarding agent, the carrier or to any other person or entity designated to carry out the shipment upon delivery of the goods; we shall choose the manner and way of shipment that we consider most cost-efficient. To the extent acceptance has been agreed, such acceptance shall be decisive for the transfer of risk.

- (3) Handover or acceptance shall be deemed to have occurred even if the customer is in default in accepting delivery.
- (4) If the customer defaults in accepting delivery or if the customer fails to cooperate as required or if our delivery or services are delayed for other reasons for which the customer is responsible, we shall be entitled to assert claims for a lump-sum damage caused by such delay amounting to 1% (up to a maximum of 15%) of the respective value of the delivery/service for each week of delay that has been completed starting at the beginning of the delivery period or (in the absence of a delivery period) on notification of readiness of the goods for dispatch . Any further statutory claims or rights (particularly with regard to rescission or to the claim of damages in lieu of performance) shall be reserved. The customer shall have the right to furnish proof to us that no damage or a considerably lower damage has occurred.
- (5) If the customer defaults in accepting delivery or if the customer fails to cooperate as required or if our delivery or services are delayed for other reasons for which the customer is responsible, the risk of accidental loss or accidental deterioration shall pass to the customer upon such default in accepting delivery or at the time failure by the customer to cooperate as required has occurred or at the time the customer has gained knowledge of the other reasons for which the customer is responsible; in the event of para. (1), acceptance *ex works* shall be deemed to have occurred if the customer has not accepted the goods within 14 days of receipt of a corresponding written demand.

5. Warranty

- (1) In the event of an error or defect with regard to supplies of materials, we shall be liable as follows:
 - (a) The warranty period for defects of quality shall be one year from the transfer of risk. This shall not affect the provision of Clause 6.
 - (b) The customer must notify us in writing without delay (and no later than 14 days after delivery) of any obvious defects of quality, incorrect deliveries and deviations in quantity of the delivered goods. We must be notified in writing of any hidden defects within seven days of their detection (and by the end of the warranty period at the latest).
 - (c) The customer must examine whether the goods supplied are suitable for their intended use, by carrying out appropriate tests where necessary. This shall apply in particular where thinners, hardening agents, additional coatings or other components are added which were not procured from us.

- (d) In the event of justified complaints, warranty shall be limited to the subsequent delivery of shortfalls or the supply of replacement goods. If we are unable to make such subsequent deliveries or to supply the necessary replacements, in particular if such subsequent delivery or supply of replacements is subject to a longer than reasonable delay for reasons for which we are responsible, the customer shall have the option to rescind the contract or to demand an appropriate reduction of the purchase price.
 - (e) We shall be entitled to make the subsequent delivery owed dependent on payment of the invoice amount due by the customer. However, the customer shall be entitled to retain a reasonable portion of the invoice amount relating to the defect.
- (2) In the event of a fault or defect with regard to the rendering of services (including services, work or assemblies), we shall be liable as follows:
- (a) The warranty period shall be 8,000 operating hours of coated parts, but no more than one year from the transfer of risk. This shall not affect the provision of Clause 6.
 - (b) A defect in services rendered by us shall only exist if and to the extent that more than 10% of the processed area is proven to be defective.
 - (c) Liability for defects requires that the devices to be processed are prepared in accordance with applicable technical standards so that a coating with our materials with a constant dry film thickness is possible (taking into consideration technical fluctuations); the parts to be processed must in particular be resistant to temperatures of more than 300°C; they must not be soft-soldered or tin-coated, and particularly measuring instruments, seals etc. as well as all inflammable parts must be removed by the customer prior to processing; the processing carried out by us relates to the kind of allowable chemical, thermal and mechanical stress requested in writing by the customer.
 - (d) In order for us to be able to remedy the defects, the parts to be processed must be freely accessible without obstructions; the customer shall be obliged, to the extent that this is not the case, to provide us with free access, e.g. by providing a crane or scaffolding, at the customer's own cost.
 - (e) In order for us to remedy the defects it is further required that the customer has given notice of any defects in writing without delay and that we have received such notice by the end of the warranty period at the latest.
 - (f) Our duty to remedy any defects covers remedial work; we shall bear any expenses required to remedy the defects, in particular costs of transport, works

and material, to the extent such costs are not increased by the fact that the item to be processed has been transferred to a place other than the place of performance.

- (g) If the remedial work has not succeeded, the customer shall have the option to either rescind the contract or to demand a reduction of the purchase price; this shall also apply if we negligently or intentionally breach our duty to remedy the defects.
- (3) If thinners, hardening agents, additional coatings or other components which were not procured from us are added to or used together with the product supplied, we shall only give a warranty if such components were free of defects and suitable and were approved by us.

6. Other Liability

- (1) SÄKAPHEN shall be liable for damages in the event of wilful intent or gross negligence, regardless of the legal grounds. In the event of ordinary negligence, SÄKAPHEN shall only be liable
 - (a) to the extent that the damage was caused by a culpable breach of a material contractual duty in a manner that jeopardises the achievement of the purpose of the contract (breach of material duties), or
 - (b) in the event of any damages claimed as a result of a loss of life, physical injury or impairment of health.

With the exception of damage caused as a result of wilful intent or gross negligence, liability shall be limited to damage that SÄKAPHEN could usually have foreseen at the time the contract was concluded based on the circumstances known at this point in time.

- (2) This does not affect SÄKAPHEN's liability for any claims based on the German Product Liability Act (*Produkthaftungsgesetz*), for death or physical injury and resulting from guarantees given by it.

7. Retention of Title

- (1) We retain title to any goods supplied until all claims that already have arisen by the time the respective contract was concluded and/or all future claims arising from the contract and from an existing business relationship (the **Secured Claims**) have been paid in full.

- (2) The customer shall not be entitled to pledge or transfer title to the goods being subject to retention of title as security until all Secured Claims have been paid in full. The customer shall be obliged to inform us without delay in writing or in text form if and to the extent third parties access any goods owned by us, and the customer shall in particular be obliged to notify us without delay of any execution measures of whatever kind. The customer shall further be obliged to give us the opportunity to bring an action in opposition to execution of a judgment brought by a third party which claims title to the attached property (*Drittwiderspruchsklage*) pursuant to Section 771 of the German Code of Civil Procedure (*Zivilprozessordnung*); any costs incurred in this respect must be borne by the customer.
- (3) The customer shall be entitled to resale and/or to continue processing the goods supplied by us in the ordinary course of business. In this case, the following additional provisions shall apply:
- (a) The retention of title shall extend to the full value of the products produced by processing, mixing or combining our goods, with us being deemed manufacturer of such products. If title to any goods remains with third parties as a result of the processing, mixture or combination with goods of such third parties, we shall acquire co-ownership of such products in proportion to the invoice amounts of the processed, mixed or combined goods. In all other respects, the same shall apply to the new product as applies to the goods supplied subject to retention of title.
 - (b) The customer hereby assigns by way of security in our favour all claims against third parties arising from the resale of the goods or the product in their full amount or in the proportion to our co-ownership interest therein, if any, in accordance with the above paragraph. We accept this assignment. The customer's duties set out in para. (2) shall also apply with regard to the assigned claims.
 - (c) In addition to us, the customer shall also be entitled to collect the receivables. We undertake not to collect the receivables as long as the customer fulfils the customer's payment obligations towards us and is not in default with any payments, if no application for the opening of insolvency proceedings has been filed and if the customer's performance is not impaired in any other way. However, if this is the case, we shall be entitled to demand that the customer discloses the receivables assigned and their debtors, provides us with all information required for collection, hands over the respective documentation and notifies the debtors (and/or third parties) of the assignment.
 - (d) The customer also assigns in our favour the claims used as a security for our claims against the customer which arise against third parties from the connection of the goods subject to retention of title with a property.

- (e) If the realisable value of the security exceeds our claims by more than 10% we shall release any security at our option upon the customer's request.

8. Assignment by Way of Security

If a retention of title pursuant to Clause 7 of these General Terms is impossible due to the legal nature of our services, for example due to a work to be provided on one of the customer's devices, the following shall apply:

- (1) In order to secure our claims against the customer and our remuneration claims from services rendered in particular, the customer hereby assigns in our favour all receivables in the amount of the total invoice amount (including VAT) of our claims which arise against the customer's customer or a third party from the resale or reuse of the device in regard to which we have rendered such services, irrespective of whether such device has been resold before or after it has been processed. The customer shall remain entitled to collect these receivables even after assignment.

This shall not affect our authorisation to collect these receivables ourselves. We undertake, however, not to collect these receivables as long as the customer fulfils the customer's payment obligations, is not in default with any payment and, in particular, no application for the opening of insolvency proceedings has been filed or the customer has not ceased payment of its debts. If this is the case, we shall be entitled to demand that the customer discloses the receivables assigned and their debtors, provides us with all information required for the collection, hands over the respective documentation and notifies the debtors (third parties) of the assignment. The customer shall also assign to us the claims used as security for our claims against the customer which arise against third parties from the connection of the device with a property.

- (2) The assignment shall be cancelled in proportion to the amount of our claims against the customer which are fulfilled by the customer or third parties. To the extent we are entitled to any further security, we undertake to release such security at the customer's request to the extent that the value of our security exceeds the claims to be secured by more than 10%; we shall be entitled to select the security to be released.

9. Customer's Services

- (1) Where we have undertaken to render services on devices or parts thereof furnished by the customer or a third party, any deadlines for completion shall only be binding if the device or its parts are furnished in due time by the agreed delivery date. The customer shall be obliged to deliver the devices or their parts in time by the agreed delivery date free of charge from the site of use, unless otherwise agreed in writing.

- (2) If the customer only delivers the devices or their parts after the agreed delivery date and we are not responsible for such delay, the deadline for completion shall be postponed by an appropriate period but at least by the period of the delayed delivery.

If we are unable to complete the services and works within the period prolonged by the period of delayed delivery, we shall inform the customer thereof and of an expected deadline for completion.

- (3) If the customer demands that the deadline for completion initially agreed is met in spite of the delayed delivery pursuant to para. (2), the customer must notify us thereof in writing. In this case, we shall not be obliged to meet the initial deadline for completion without having agreed to do so in writing. The customer shall be obliged to reimburse us for any additional expenses and costs incurred by the customer's request to meet the initial deadline for completion.

10. Rights of Use, etc.

- (1) Any plans, documents, electronic data carriers, drawings, models, etc. provided to the customer or any third parties working for the customer shall remain the property of SÄKAPHEN and must be returned at SÄKAPHEN's written request once work has been completed. The same shall apply to copies, data copies and other reproductions made by the customer with SÄKAPHEN's consent.
- (2) Reproductions are made for SÄKAPHEN. SÄKAPHEN therefore is the maker and becomes the owner of such reproductions. To the extent SÄKAPHEN is not the owner of such reproductions by law, the customer and SÄKAPHEN hereby agree on the transfer of title.
- (3) The supplier must not use, reproduce or disclose to third parties any execution documents provided to the customer in the course of the contractual relationship for any purposes outside the contract. SÄKAPHEN reserves all rights thereto and to any reproductions. The supplier must return the documents provided to the customer upon request without delay and must make a written declaration to SÄKAPHEN that the customer has returned all documents and destroyed any copies the customer may have made.

11. Place of Performance, Place of Jurisdiction

- (1) The place of performance for all obligations arising directly or indirectly from this contract, including payment obligations, shall be the registered office of our company.

- (2) The exclusive place of jurisdiction for all disputes arising out of or in connection with this contract shall be Gladbeck, Germany, if the customer is a qualified merchant (*Vollkaufmann*). We shall, however, be entitled to file a claim against the customer before a competent court at the place of the customer's registered office.
- (3) The present contract shall exclusively be governed by German law; application of the UN Convention on Contracts for the International Sale of Goods (UNCITRAL) shall be excluded.