

Terms and Conditions of Delivery and Payment ACUWA Technology GmbH

§ 1 Scope of application

- (1) These Terms and Conditions shall apply to all merchandise supplied, services rendered, and offers made by ACUWA Technology GmbH to business customers or prospects.
- (2) These Terms and Conditions shall not apply to consumers as defined by Section 13 of the German Civil Code.
- (3) These Terms and Conditions of Delivery and Payment shall be the only Terms and Conditions applicable. Customer's Terms and Conditions shall apply only inasmuch as ACUWA Technology GmbH shall have expressly agreed to them in writing.

§ 2 Scope of services

- (1) ACUWA Technology GmbH shall deliver the merchandise ordered by the customer from ACUWA Technology GmbH, acting as an intermediate, pursuant to the specifications and descriptions known to the customer. All quotes and proposals by ACUWA Technology GmbH shall be indicative only. Any proposals and the specifications contained therein shall not be deemed binding unless specifically described as such within the proposal itself.
- (2) Deadlines for delivery or production shall not be construed as binding unless expressly confirmed as binding by ACUWA Technology GmbH. Contractual deadlines shall be counted from the date the order confirmation is sent out, but not before all the requisite documents, letters of credit, official permits, etc. have been provided by the customer. Deadlines shall be extended automatically in the event of industrial disputes (such as strikes and lockouts) and force majeure, by the time these conditions persist, including but not limited to interruptions of operation at suppliers, manufacturers, etc., where neither these nor ACUWA Technology GmbH can be deemed culpable.
- (3) All deliveries shall be made to the delivery address given by the customer and at the customer's risk. This provision shall apply even in the event that the delivery originates from a different address than ACUWA Technology GmbH's business address.
- (4) All orders shall be binding on the customer. ACUWA Technology GmbH shall accept purchase orders in writing within a period of twenty-one (21) days, failing which, no agreement shall be deemed to exist.

§ 3 Liability/Exclusion of intermediary liability

- (1) ACUWA Technology GmbH shall not be responsible for any defects of items sourced from third parties and delivered to the customer in an unchanged state, responsibility in case of intention or gross negligence notwithstanding. ACUWA Technology GmbH shall cede to the customer its rights and claims against third parties.

- (2) ACUWA Technology GmbH shall assume statutory liability in cases of intention or gross negligence, whether of ACUWA Technology GmbH or someone for whose acts ACUWA Technology GmbH is responsible. Liability shall otherwise be governed by the Product Liability Act (*Produkthaftungsgesetz*), in cases of death or injury to body or health or culpable violation of fundamental contractual duties. The claim to damages for culpable violation of fundamental contractual duties shall be limited to damages for loss and damage typical of the contract.
- (3) Any liability for damage inflicted on the customer's interests by the merchandise delivered, such as physical damage to other items, shall be excluded completely. The exclusions of the provisions in Paragraph 2 of this section not apply if there has been intention or gross negligence, or death or injury to body or health.

§ 4 Exclusion of offset

Payments may only be offset against claims that are either undisputed or have been finally settled by court or arbitrator decision.

§ 5 Reservation of right of ownership

- (1) ACUWA Technology GmbH reserves the right of ownership of all merchandise until all amounts due ACUWA Technology GmbH from the business relationship with the customer have been received.
- (2) While the reservation of right of ownership is in effect, the customer shall not have the right to assign the reserved merchandise as security or to transfer it by way of security. In the case that the reserved merchandise is resold in the ordinary course of business, the customer hereby transfers to the seller, by way of security, all claims against the buyer arising from the resale or for another legal cause in relation to the reserved merchandise.
- (3) If the customer loses ownership of the reserve merchandise due to processing, combination, or confusion on the part of the customer, any claims that arise in connection with processing, combination, or confusion are automatically considered assigned to ACUWA Technology GmbH up to the amount corresponding to the fair value of the reserve merchandise relative to the other processed, combined or confused merchandise at the time of processing, combination, or confusion.
- (4) The customer shall inform ACUWA Technology GmbH immediately of any attachment, seizure or other third-party action targeting the reserved merchandise.
- (5) If the realizable value of all securities assigned to ACUWA Technology GmbH exceeds the value of ACUWA Technology GmbH's claims by more than 10%, ACUWA Technology GmbH shall release a corresponding portion of the excess security if requested by the customer. ACUWA Technology GmbH shall have the right to choose among securities at its own discretion.

§ 6 Concluding provisions

- (1) The contractual relationship between ACUWA Technology GmbH and the customer shall be governed exclusively by German law. The United Nations Convention on Contracts for the International Sale of Goods shall not be applied
- (2) The place of jurisdiction shall be the place of business of ACUWA Technology GmbH. ACUWA Technology GmbH shall have the right to inaugurate legal proceedings against the customer at the customer's place of business.
- (3) Should one or more of the provisions of these Terms and Conditions and/or of any supplementary contractual be ore become void, contestable, or unenforceable, this shall not affect the validity of the remaining conditions. In this event, ACUWA Technology GmbH and the customer shall agree on a provision or provisions that most closely reflect the intended effect of the provision that is void, contestable, or unenforceable.