

1. Validity of the Conditions

- 1.1 The following conditions shall only apply in commercial business with companies in the meaning of § 14 BGB, statutory corporations or statutory special estates (in the following: buyer). They are valid for all offers and deliveries of SycoTec GmbH & Co. KG (in the following: SycoTec). General Conditions of the buyer shall only be valid in as far as SycoTec has agreed to them in writing.
- 1.2 The contents of the order shall be based on these General Conditions and the written agreements. Amendments and supplements shall only be made by the person(s) entered in the commercial register as executive directors or officers with procurement of the SycoTec. Oral agreements or statements by other persons who are not authorised to make them are only effective when they are confirmed in writing by the executive directors or an officer with procurement of the SycoTec.

2. Offers

- 2.1 Samples, prototypes, technical data and drawings as well as any further documentation referring to any design or development effort only serve to illustrate the offer from SycoTec and only then and insofar become a constituent part of the order as recorded expressly and in written form on the order confirmation. Details of weights, dimensions, body structure and function of the products of SycoTec are only approximate details. SycoTec has the right to carry out technical changes to its products, when as a result the technical function is not impaired.
- 2.2 SycoTec shall retain the ownership and copyright of cost estimates, technical drawings and other documentation handed over. It is not allowed to copy nor make available to third parties any documentation without the written approval of SycoTec; a breach against this constitutes a claim by SycoTec against the buyer for the payment of a contractual penalty amounting to 3 % of the net offer sum of the respective order enquiry. If there is no offer sum, the contractual penalty shall amount to € 500.00 per breach. If an order is not awarded, all documentation must be returned immediately. Further claims by SycoTec for contractual breach resulting from paragraph 2.2 remain reserved.

3. Software Use

SycoTec shall grant the buyer a non-exclusive right to the use of any software supplied by SycoTec with the agreed number of hardware apparatus. If the buyer changes the hardware, he must delete the software from the hardware previously used. The use of software in other hardware apparatus or in a network is only permitted with the previous agreement of SycoTec or when through this the agreed number of hardware apparatus with the software installed is not exceeded. The buyer shall be obligated to make two backup copies of the software received and to store them carefully; any other copying is only permissible with the previous written consent of SycoTec. The issuing of sub-licenses by the buyer is not permitted, even to companies with which the buyer has commercial relationships.

4. Prices

The prices in the SycoTec order confirmation shall be valid. Prices are quoted ex-works, excluding packing, transport and transport insurance as well as value added tax applicable at the time of invoicing.

If the shipment of the products is delayed for reasons due to the buyer by more than 60 days longer than the planned date, SycoTec can demand for the shipment the current price.

5. Shipment and Date of Delivery

- 5.1 The date of delivery shall be as stated in the order confirmation of SycoTec. If amendments to the scope or contents are agreed after conclusion of the order, the date of delivery begins from the new date for the total shipment. SycoTec shall be entitled to ship before the date of delivery.
- 5.2 The agreed date of delivery can be reasonably extended, if
- the documentation, information, specification or other material of the buyer that is necessary for the manufacture of the products ordered are not complete, or promptly and free of defects available at SycoTec or
 - SycoTec cannot meet the agreed date due to an Act of God (e.g. natural disasters, civil unrest), missing or no-fault deficient deliveries by our own suppliers or similar events (e.g. industrial disputes).
- SycoTec shall be entitled to withdraw from the order if the consequence of these events is a non-temporary impediment to performance. If the impediment lasts longer than two months, the buyer shall be entitled to withdraw from the non-performed part of the order; however, only from the performed part when the acceptance of part-performance is unreasonable for him.
- 5.3 The delivery date is met when the products ordered are shipped on the due date or the buyer has been informed of the readiness for shipment.
- 5.4 If shipment is delayed due to the buyer, SycoTec can invoice the costs of storing the goods. The charge will be at least 0.5% of the invoice value for each month, beginning one month after the notice of readiness for shipment; if the buyer cannot establish that no, or lower damages have arisen for SycoTec. SycoTec shall be entitled to dispose of the stored products at will after an acceptance deadline set to the buyer has passed. The buyer will be supplied in this case within a time period reasonably extended.
- 5.5 SycoTec shall be liable for delay in performance in cases of intent or gross negligence in accordance with the statutory provisions. The liability of SycoTec shall in cases of gross negligence be limited to damage typical for the order and foreseeable if none of the exceptional cases listed in sentence 5 of this provision exists. In other cases of delayed performance the liability of SycoTec for damages shall be limited to, besides performance, 5%, and for damages in lieu of performance, 15% of the value of the products ordered. Further claims by the buyer are debarred – also after a deadline set to SycoTec for performance has expired. The aforementioned limitations do not apply to liability for injury to life, body or health. A change to the burden of proof to the disadvantage of the buyer is not beholden to the aforementioned provisions.
- 5.6 For self-inflicted return deliveries up to a net value of goods of € 1,000.00 we charge an extra handling fee of € 100.00. As of a net value of goods of € 1,000.00 the handling fee is set to 10% of the net value. If returned products are not unused, SycoTec shall be entitled to furnish product and charge all involved cost.
- 5.7 **Damage in transit**
If upon delivery an external damage to the packaging is visible, the following procedure is to be followed: The recipient to record loss of damage in notice of delivery. Packaging and product have to be unchanged. Damage to be reported to forwarding company and to SycoTec including the signed notice of delivery. Damaged products cannot be returned before contacting with SycoTec. If the product is damaged without visible damage to the packaging upon delivery a report needs to be sent immediately or at least 7 days after delivery to the forwarding company as well as to SycoTec. Packaging and product have to be unchanged. Damaged products can not be returned before contacting with SycoTec.

6. Return of Packing

- 6.1 The buyer shall be obligated to accept the packing of the products delivered and to find a new use or recycle it without charging any costs to SycoTec.
- 6.2 If SycoTec accepts the packing of goods delivered by third parties in accordance with §§ 4 to 6 of the Packing Regulations dated 21.08.1998, as amended on 17.05.2002 (BGB I.1 2002, page 1572), the buyer shall be obligated to collect and undertake the actions named in paragraph 1 without charging any costs to SycoTec.

7. Payment

- 7.1 Invoices are to be paid net within 30 days after the date of the invoice (subject to numeral 8 however not before shipment of the products ordered) by transfer or debiting. With transfers the timeliness of the payment is in accordance with the value date of the invoice for SycoTec. Numeral 8 of these General Conditions remains unaffected.
- 7.2 Rebates such as early payment discount or other benefits are only granted with special agreements. An agreed early payment discount can only be deducted by the buyer if he is not in default with other SycoTec liabilities.
- 7.3 Cheques and bills of exchange shall be deemed to be accepted as payment only after encashment of the amount minus any expenses. SycoTec shall not be obligated to promptly present bills of exchange or cheques.
- 7.4 With late payment by the buyer SycoTec can charge interest in accordance with § 288 BGB (German Civil Code). The interest rate can be increased when SycoTec can prove a higher effective interest load.
- 7.5 SycoTec shall not be obligated to further deliveries during a delay of the buyer.
- 7.6 The buyer can only set-off uncontested or legally established claims or exercise a right of retention.
- 7.7 Further delay claims of SycoTec remain unaffected.

8. Risk to Claims

- 8.1 SycoTec shall be entitled to deliver only against prepayment, if circumstances become known to SycoTec after the order is concluded that appear to endanger any claims, in particular, as a result of an application for insolvency proceedings being made, a not immediately averted forced sale of collaterals against the buyer or bills of exchange or cheque protests affecting him or changes in the business relationship to the customer that cast doubt on his ability to pay.
- 8.2 If the buyer is in delay with a payment, all SycoTec claims against the buyer become due if the buyer does not provide security in the same amount. If payment by instalments has been agreed, the outstanding amount falls due if the buyer is at least two successive instalments partly or fully in delay.

9. Transfer of Risk

The risk shall transfer to the buyer at the latest with the despatch of the products ordered, even when SycoTec performs further services such as transport and setting-up or bears the transport costs. If shipment is delayed due to circumstances caused by the buyer, the risk transfers to the buyer with the agreed delivery date or if such a date is not agreed, with the informing of the buyer of readiness for shipment by SycoTec.

10. Part Shipments

Part shipments are permissible in as far as they are reasonable for the buyer. They can be invoiced separately.

11. Retention of Title

- 11.1 The ownership of the products delivered shall only pass to the buyer when all claims arising from the business relationship have been fully paid. This also applies in as far as the claims are already existing, but due in the future.
- 11.2 The following conditions apply until the retention of title expires:
The buyer shall be obligated to carefully handle and insure the products delivered. The buyer shall be entitled to resell these products in normal business transactions, as long as he is not in delay. The buyer shall likewise be entitled as manufacturer to process, mix and combine (in the following: process) the products for SycoTec, without any liability arising for SycoTec; the resulting objects are to be designated as "new goods". The buyer shall store the new goods without charge for SycoTec with the care of a diligent businessman.
- When the goods are processed with other goods that do not belong to SycoTec, SycoTec has a co-ownership in the new goods in the amount of the share value of the processed SycoTec product in relationship to the remaining processed goods at the time of processing. If the buyer acquires sole ownership of the new goods, the buyer and SycoTec are in agreement that the buyer acknowledges the SycoTec co-ownership in the new goods in relationship to the value of the processed goods at the time of processing.
- The buyer shall assign to SycoTec any claims arising from the resale of products or any other legal reason immediately as a precautionary measure. SycoTec shall accept this assignment. The selling of the products delivered is prohibited if the resulting claims cannot be assigned for any legal reason. The buyer shall be empowered to collect any claims resulting from the selling or any other legal reason, as long as he fulfils his obligations to SycoTec and does not become insolvent or the provisions of numeral 8 of these General Conditions arise.
- The buyer shall be obligated to pay the amounts received to SycoTec, as soon as the secured claims are due. The buyer shall be obligated at the request of SycoTec to disclose the assigns and to release the documentation and information for the assertion of the claims. With claims by third parties to goods subject to retention of title or a claim previously assigned the buyer shall be obligated to inform the third party of SycoTec's ownership and to inform SycoTec immediately and hand-over any documentation necessary for an intervention.
- If the behaviour of the buyer is improper and contrary to contract, in particular late payments, SycoTec shall be entitled to claim possession of the products delivered or to demand the assignment of the existing assigns of the buyer against third parties.
- The assertion of the retention of title or a lien on the products delivered shall not mean withdrawal from the order.
- If the value, which is to be determined by the obtainable revenue, exceeds the amount of the claims by more than 10%, SycoTec will release the retention goods at the request of the buyer.

12. Warranty

- 12.1 Claims by the buyer for defective products will not be considered if clearly perceptible defects are not notified in writing immediately, at the latest, however, one week after delivery. Defects that are not immediately perceptible must be notified in writing immediately, at the latest within one week after discovery.
- 12.2 The buyer can demand that defective products are reworked; whereby SycoTec shall be entitled to make a replacement delivery.
- 12.3 If two attempts at rework are unsuccessful or SycoTec allows a reasonable period to elapse without carrying out rework or a replacement delivery, the buyer can reduce the purchase price or withdraw from the order.
- 12.4 SycoTec shall pay the costs of the replacement delivery or rework, with the exception of the costs that arise because the buyer has transported the products delivered to a location outside Germany, which is not the same as the original delivery address.
- 12.5 Only the buyer shall be entitled to claims for defects, which are not assignable. The warranty period begins with the delivery of the products and ends one year later. If SycoTec is responsible for the transport and installation, the limitation of claims begins when installation is complete, with partial completion of the installation for the installed parts of the delivery, at the latest however one year after transfer of risk, in as far as the delay is not the responsibility of SycoTec. This does not apply if a legal statute (e.g. § 479 paragraph 1 BGB German Civil Code) prescribes a longer period.
- 12.6 SycoTec shall not be liable for defects and their consequences which result from natural usage, improper handling, cleaning or maintenance, non-compliance with the service-, operating- or connecting instructions, corrosion, contamination in the air supply or chemical or electrical influences, which are anomalous or not permissible according to the works regulations.
- 12.7 The buyer shall not be entitled to assert and claim rights for defects if he has not paid all due payments and the amount due is in a reasonable relationship to the value of the defective products.

13. Liability, Damages

- 13.1 SycoTec shall be liable in cases of intent or gross negligence in accordance with the statutory provisions. Apart from that, SycoTec is only liable according to the Product Liability Act for injury to life, body or health or for culpable infringement of an essential duty under a contract. Essential duties are those whose infringement endanger or exclude the purpose of the contract, which means the making available of SycoTec products at the buyer's in accordance with the order. Claims for damages for the infringement of essential duties are however limited to contract typical, foreseeable damage. The liability of SycoTec is also limited in cases of gross negligence to contract typical, foreseeable damage, when none of the exceptional cases listed in sentence 2 of paragraph 1 exist.
- 13.2 The liability for damages caused by SycoTec products to personal chattels of the buyer e.g. damages to other property is completely excluded. This does not apply in cases of intent or gross negligence or for injury to life, body or health.
- 13.3 The provisions of the above mentioned paragraphs 1 and 2 cover damages with performance and damages in lieu of performance, irrespective of the legal position, in particular due to defects, the infringement of duties arising from obligations or from actions in tort. They also apply to claims for the reimbursement of abortive expenditure. The liability for delay is governed in numeral 5.5 of these General Conditions.
- 13.4 A change to the burden of proof to the disadvantage of the buyer is not beholden with the above provisions.

14. Limitation

- 14.1 The limitation period for claims and rights of the buyer for defective SycoTec products – irrespective of the legal ground – is one year after delivery of the products to the buyer. This also applies to claims for damages by the buyer, irrespective of the legal basis for the claim and irrespective of, if the claim for damages is part of a claim for a hidden fault or not, as well as claims by the buyer for replacement of abortive expenditure due to impossibility. No. 5.5 of these General Conditions remains unaffected. The limitation periods according to this No. 14 paragraph 1 sentence 1 and 2 are not applicable in the case of intent, gross negligence, malicious concealment, of an –if necessary to be expressly agreed – acceptance of a guarantee for the quality structure of the goods, as well as claims for damages for injury to life, body or health of a person, with claims resulting from the Product Liability Act or the infringement of essential contractual duties as well as for a possible recourse action in accordance with §478 BGB (German Civil Code); the statutory periods of limitations apply to these claims.
- 14.2 In as far as nothing else is expressly agreed, the statutory provisions pursuant to the start of a period of limitations, the delay to the start of the time limit, the suspension and the resumption of time limits remain unaffected.
- 14.3 A change to the burden of proof to the disadvantage of the buyer is not beholden with the above provisions.

15. Place of Fulfilment, Jurisdiction, Applicable Law, Severability Clause

- 15.1 The place of fulfilment for both parts shall be Leutkirch.
- 15.2 The sole place of jurisdiction with regard to all disputes arising from the contractual relationship – also cheque and bill of exchange processes – shall be court having jurisdiction over Leutkirch. However, SycoTec can assert claims against the buyer at the court of the registered office of the buyer or any other court with jurisdiction.
- 15.3 The laws of the Federal Republic of Germany shall apply, to the exclusion of the UN Purchasing Convention (CISG).
- 15.4 If individual provisions should be partly or fully invalid, the validity of the remaining provisions shall not be affected. If need be the contractual partners are obliged to replace the invalid provision with a valid provision that comes as close as possible to the intended meaning of the invalid provision.

dated 2010-12-07