

# Terms and Conditions Smart-Red GmbH

## 1. Scope

1. These Terms and Conditions of Sale apply exclusively to entrepreneurs and legal entities under public law, including ones with access to special public funds pursuant to Section 310(1) of the German Civil Code (Bürgerliches Gesetzbuch, BGB). We only recognise any Purchaser terms and conditions that contradict or differ from our Terms and Conditions of Sale if we explicitly agree to them in writing.
2. These Terms and Conditions of Sale also apply to all future transactions with the Purchaser where they are legal transactions of a related nature.

## 2. Offer and contract commencement

Where an order is to be considered an offer per BGB Section 145, we may accept it within two weeks.

## 3. Provided documents

We reserve ownership of and copyrights for all documents provided to the Purchaser in connection with the purchase order, such as calculations, drawings etc. These documents may not be made accessible to third parties unless we give the Purchaser our explicit, written permission. Should we not accept the offer made by the Purchaser by the time specified in Section 2, these documents must be returned to us immediately.

## 4. Prices and payment

1. Unless there is a written arrangement to the contrary, our prices are valid ex works and exclude packaging and additional value added tax at the applicable rate. Packaging costs will be invoiced separately.
2. The purchase price must be paid by bank transfer to the account specified overleaf. An early payment discount may only be deducted if provided for by a special, written agreement.
3. Unless otherwise agreed, the purchase price must be paid within 10 days of delivery. Missed payment will incur penalty interest at a rate 9 per cent p.a. above the relevant base annual percentage rate on top of a flat €40.00 fee. We reserve the right to assert claims resulting from more extensive losses on payment defaults.
4. If we have not made an agreement to fix prices, we reserve the right to change prices reasonably due to changes in labour, material and selling costs for deliveries taking place three or more months after the contract commences.

## 5. Right of retention

The Purchaser is only entitled to exercise a right of retention if and to the extent that its counterclaim is based on the same contract.

## 6. Delivery time

1. The delivery time specified by us will only begin being counted once the Purchaser has fulfilled its obligations on time and as specified. We reserve the right to withhold performance until these obligations are fulfilled.
2. If there is a delay in the purchaser's acceptance of the goods or if the Purchaser culpably breaches other cooperation obligations, we will be entitled to demand compensation for the resultant damages, including for any additional expenses. We reserve the right to exercise further claims. In the above circumstances, the risk of accidental loss or deterioration of the purchased object will be transferred to the Purchaser at the time it misses agreed acceptance or payment dates.
3. In cases where delivery is delayed for reasons not of our intention or gross negligence, we will be liable to compensate for the delay at a flat rate of 3 per cent of the delivery's value for each full week of delay, capped at 15 per cent of the delivery's value.
4. Other legal entitlements and rights enjoyed by the Purchaser in cases of delayed delivery will not be affected.

## 7. Passage of risk when transporting goods

If the goods are transported to the Purchaser at the latter's request, the risk of the goods' accidental loss or deterioration will pass to the Purchaser upon dispatch, and no later than when the goods leave our premises/storage. This applies irrespective of whether the goods are sent from the place of fulfilment or who is paying for freight.

## 8 Retention of title

1. Title to the supplied object will remain vested in us until full payment of all amounts receivable under the contract of supply. This also applies to all future deliveries even if we do not always explicitly refer to this provision. We are entitled to repossess the object purchased if the Purchaser breaches contract.
2. The Purchaser is required to handle the purchased object with care so long as title has not yet passed to the Purchaser. In particular, the Purchaser is required to insure the purchased object at its own expense to cover sufficiently against theft and fire and water damage at replacement value. If maintenance and inspections must be performed, the Purchaser must have this done at its own expense and in a timely manner. Until title passes, the Purchaser must immediately notify us in writing if the delivered object is seized or subject to any other attempted conversion. If the third party is unable to reimburse the judicial and other legal costs associated with a lawsuit under Section 771 of the German Code of Civil Procedure (Zivilprozessordnung, ZPO), we will hold the Purchaser liable for the loss incurred.
3. The Purchaser is entitled to resell the goods supplied under retention of title in its usual course of trade. The Purchaser hereby assigns to us the receivables that the Purchaser's customer owes it from the resale of the goods supplied under retention of title; the amount assigned to us is the final invoice amount (including VAT) agreed with us. This assignment is valid whether or not the object purchased is resold without or after further processing. The Purchaser remains empowered to collect the receivable even after assigning it. Our authority to collect the receivable ourselves will not be affected thereby. However, we will not collect the receivable as long as the Purchaser satisfies its payment obligations from the income received, the Purchaser does not miss payment and, in particular, there is no application for insolvency proceedings or indications of insolvency.
4. The Purchaser's further processing or transformation of the purchased object is always done in our name and on our behalf. In this case, the Purchaser's future interest in the object purchased will carry over to the transformed object. Where the purchased object is incorporated with other objects not belonging to us, we will acquire an interest in the new object corresponding to the proportion of the objective value of our purchased object to that of the other processed objects at the time of incorporation. The same applies when mixing objects. If the purchased object is mixed in such a way that the Purchaser's object is considered the main object, it is agreed that the Purchaser shall grant us co-ownership proportionally and safeguard the arising sole or co-ownership for us. To secure our receivables from the Purchaser, the Purchaser hereby also assigns to us the receivables that it is owed by third parties through the combination of the goods supplied under retention of title with real estate; we hereby accept this assignment.
5. We undertake to release the collateral to which we are entitled if the Purchaser requests this, provided the collateral's value exceeds our secured claims by more than 20 per cent.

## 9. Warranty, complaints and recourse against the manufacturer

1. The Purchaser's warranty rights require that the Purchaser satisfies the inspection and reporting obligations placed on it by Section 377 of the German Commercial Code (Handelsgesetzbuch, HGB) in accordance with the specifications of that Section.
2. Defect claims expire in 12 months after delivery to the Purchaser of the goods supplied by us. For compensation claims in cases of intent or gross negligence, or injury to life, limb or health resulting from an intentionally or negligently caused breach of obligation, the statutory period of prescription will apply. If legislation provides for longer, binding periods in accordance with BGB Section 438(1)(2) (buildings and things that have been used for a building), BGB Section 479(1) (claims to reimbursement) and BGB Section 634a(1)(defective work), these periods will apply. Our permission must be obtained before returning any goods.
3. Should the supplied goods be defective in spite of our best efforts, and this defect be present at the time risk passes, we will, subject to timely notification of the defect, decide either to repair the goods or supply a replacement. We must always be given the opportunity for such subsequent performance within a reasonable period of time. The Purchaser's recourse will be unaffected by the above provision, without limitation.
4. If our subsequent performance is unsuccessful, the Purchaser may withdraw from the contract or reduce payment without prejudice to any compensation claims.
5. claims are ruled out in cases of only minor variation from the agreed specifications, only minor impacts on usability, natural wear and tear and damage occurring after passage of risk as a result of improper or negligent handling, strain, inappropriate tools, defective construction or an inappropriate construction site or if there are exceptional external factors that were not provided for under contract. Should the Purchaser or third parties carry out repairs or changes improperly, defect claims will also be ruled out for such work and the consequences of such work.
6. Purchaser claims in respect of expenses required to improve the goods after delivery, including for transport, work or materials, are ruled out if such expenses increase because the goods supplied by us are subsequently taken to a location other than the Purchaser's place of business, unless such a move is in line with the goods' intended use.

7. The Purchaser will have recourse against us only so far as defect entitlements provided by law are not exceeded in agreements between the Purchaser and its customer. Section 9.6 further applies correspondingly to the extent of the Purchaser's recourse against the Supplier.

#### 10. Miscellaneous

1. This contract and all legal relations between the Parties are subject to the laws of the Federal Republic of Germany, excluding UN sales law (the CISG).
2. The place of fulfilment is our principal place of business, unless otherwise specified in the order confirmation; venue will be at the court of this location exclusively.
3. All arrangements between the Parties for the purpose of performing this contract have been set out in writing in this contract.

#### 11. Force majeure

1. „Force Majeure“ means the occurrence of an event or circumstance that prevents a party from performing one or more of its obligations under the contract if and to the extent that the party affected by the impediment proves that: (a) such impediment is beyond its reasonable control; and (b) it was not reasonably foreseeable at the time of entering into the contract; and (c) the effects of the impediment could not reasonably have been avoided or overcome by the affected party.
2. In the absence of proof to the contrary, the following events affecting a party shall be presumed to meet the requirements under subparagraphs (a) and (b) of paragraph 1 of this clause:
  - (i) War (declared or undeclared), hostilities, attack, acts of foreign enemies, extensive military mobilization;
  - (ii) Civil war, riot, rebellion and revolution, military or other seizure of power, insurrection, acts of terrorism, sabotage or piracy;
  - (iii) Monetary and trade restrictions, embargo, sanctions;
  - (iv) Lawful or unlawful official acts, compliance with laws or government orders, expropriation, seizure of works, requisition, nationalization;
  - (v) Plague, epidemic, natural disaster or extreme act of nature;
  - (vi) Explosion, fire, destruction of equipment, prolonged failure of transportation, telecommunications, information systems or power;
  - (vii) General labor unrest such as boycotts, strikes and lockouts, slowdowns, occupations of factories and buildings.
3. A party successfully invoking this clause shall be relieved of its obligation to perform its contractual obligations and of any liability for damages or any other contractual remedy for breach of contract from the time the impediment makes it impossible for it to perform; provided that such notice is given promptly. If the notice is not given without delay, the release shall take effect from the time the notice reaches the other party. If the effect of the asserted impediment or event is temporary, the consequences just set forth shall apply only for so long as the asserted impediment prevents performance of the contract by the affected party. If the duration of the asserted impediment has the effect of substantially depriving the parties of that which they had a right to expect by virtue of the contract, either party shall have the right to terminate the contract by giving notice to the other party within a reasonable period of time. Unless otherwise agreed, the parties expressly agree that the contract may be terminated by either party if the duration of the hindrance exceeds 120 days.