



## **allsky.de - General Terms Of Trade**

### **1 GENERAL CONDITIONS**

1.1 All supplies and services by the "allsky.de – Tom Kwasnitschka, Wilhelm Ermgassen und Ges. GbR", hereinafter called the Supplier, are governed by the following terms.

1.2 The representatives of the Supplier are only authorised to legal transactions, which do not justify any liability beyond the company's assets.

1.3 Any legal transactions shall be carried out exclusively in writing. Orders shall be made exclusively on the relevant order form of the Supplier.

1.4 Any amendments or supplements of the terms by the Purchaser as well as collateral agreements shall be binding only if confirmed in writing by the Supplier.

1.5 Consumer according to these terms is every natural person entering into a legal transaction with a purpose, which can neither be attributed to his commercial nor to his self-employed professional occupation (definition according to § 13 BGB).

### **2 OFFERS**

As far as no other time limit is set, offers expire 21 days after the date of the offer. In the case no date is stated, the date as postmark shall be used as reference.

### **3 RIGHT OF MEDIA USER**

3.1 As far as nothing else has been agreed explicitly the terms of this section shall apply to all supplies of media.

3.2 Exclusively the institution or person stated on the order form as delivery address shall be entitled to use the supplied media.

3.3 This right of user shall enclose exclusively the entitlement of presentation (§ 19 IV UrhG) as well as the entitlement of duplication for self-usage (according to § 16 UrhG). All other rights shall be excluded explicitly. In particular shall any editing or altering of the media only be allowed for self-usage. In particular interdicted shall be the utilisation or the public offering of edited or altered media, the spread of the media, the broadcasting of the media, to pass on or to allocate the media to a third party independent from occurring direct or indirect, against payment or free of charge, permanent or temporary.

3.4 Any violations against the terms of this section will lead to the immediate institution of legal proceedings according to criminal as well as civil law. As far as legally admissible we shall be authorised to claim a contractual penalty up to the hundredfold amount of the purchase price without prejudice to all other claims.

### **4 PRICES**

4.1 All price quotations shall be subject to confirmation in writing.

4.2 All prices are stated in Euro only.

4.3 They exclude any costs for packing, insurance and delivery.

### **5 TERMS OF PAYMENT**

5.1 All payments shall be made in Euro exclusively.

5.2 As far as no other time limit is set, all payments shall be due immediately after being charged by the invoice.

5.3 They shall be made without any deduction and free of charge to the address of payment notified by the Supplier.

5.4 Payment terms are considered as adhered to if the Supplier can dispose of the amounts within the term agreed.

5.5 In the event of delivery being delayed without fault of the Supplier, payments are to be made as if no delay had occurred.

5.6 Should the Purchaser come into default partly or wholly in respect of his financial liabilities he shall, without prejudice to all other rights of the Supplier, pay interest on arrears from that date in accordance to the legal requirements (§ 288 BGB). The Purchaser is additionally entitled to impose handling charges for every reminder.

5.7 Compliance with all obligations of the Supplier towards the Purchaser shall be subject to compliance with the terms of payment agreed upon and with all other obligations of the Purchaser towards the Supplier.

## **6 DELIVERY**

6.1 The supply obligation includes exclusively the supplies and services confirmed in writing by the Supplier.

6.2 Customs duties, consular fees and other taxes, dues or fees charged in accordance with any laws and regulations outside the jurisdiction of the Federal Republic of Germany, as well as any costs connected therewith, shall be borne by the Purchaser.

6.3 The Supplier has to comply with any foreign packing, weighing and customs regulations if precise information is given to him by the Purchaser in due time. Any additional expenses connected therewith shall be borne by the Purchaser.

6.4 The Supplier is obliged to arrange dispatching in such a way, its costs do not exceed the usual amounts therefore unreasonably.

6.5 Part deliveries and part performances shall be allowed, unless they are unreasonable to accept for the Purchaser.

6.6 Additionally he is obliged to package the goods appropriately for transport.

6.7 Upon request of the Purchaser, the Supplier shall insure the goods against usual risks of transport at the expense of the Purchaser, if he notifies the Supplier of this in due time.

6.8 The Supplier shall deliver the goods to the carrier in such a way, they are delivered within the period stipulated under usual conditions.

6.9 In the case the goods are delivered within the period stipulated in accordance with 6.8, the Purchaser is obliged to take delivery of the goods.

6.10 The Purchaser shall bear any additional costs resulting from interruption or delay caused by him in the work to be performed by the Supplier.

## **7 TIME OF DELIVERY**

7.1 Delivery times shall only be binding if they have been agreed to by the Supplier in writing.

7.2 Adherence to the delivery time shall be subject to order being completely clarified, all permits being granted and all documents, payments and securities to be furnished by the Purchaser being received by the Supplier in due time. The delivery time will be reasonably extended if any of the foregoing requirements have not been complied with in due time.

7.3 In the event of the Supplier being prevented from carrying out his supplies and services in due time by mobilisation, war, insurrection, strike, lock-out, interruptions of operations, fire, Acts of God, transport hindrances, alteration of the legal provisions, administrative measures or decrees or the occurrence of any other unforeseeable events which are beyond his control, the delivery time will be reasonably extended.

## **8 TRANSFER OF RISK**

8.1 The transfer of risk and liability for charges shall be prescribed by the legal requirements (§§ 446, 447 BGB): in case of dispatching of the goods these transfer to the Purchaser occurs when the goods have been delivered to the carrier, otherwise it occurs when the goods have been passed to the Purchaser. The provisions for the sale of consumer goods (§§ 474 ff BGB) shall remain unaffected.

8.2 In the case the goods are damaged by the carrier the Supplier shall lend the Purchaser his necessary support to make a claim for damages.

## **9 RIGHT OF REVOCATION**

9.1 In the event of the Purchaser being consumer he shall be entitled to terminate the contract within the bounds of this section. In all other cases there is no right of any claim for termination, revocation or return, unless the supply or service has not been performed as contractual agreed or something else is prescribed by binding law.

9.2 Revocation shall be declared to: allsky.de – T. Kwasnitschka, W. Ermgassen und Ges. GbR, Goethestr. 12, 24116 Kiel, Deutschland.

9.3 The revocation does not have to state any reasons and must be declared in textual form or by return of the supplies.

9.4 The exercise of the right of revocation is subject to a notice of 2 weeks. In the case of the delivery of goods the period begins with the delivery or the first part delivery having reached the recipient, in the case of services with the conclusion of the contract. Punctual dispatch suffices to comply with the time limit.

9.5 In the event that the Purchaser uses his right of revocation he is obliged to return the supplied goods. The costs of the return shall be borne by the Purchaser up to an amount of 40 Euro. The risk and further costs of the return shall be borne by the Supplier.

9.6 In case of any deterioration in the goods as a result of their proper use or any further reasons the Purchaser has to pay compensation for value.

9.7 The right of revocation is excluded without prejudice to further legal reasons: in the case of services having begun to be provided with the consent of the Purchaser; in the case of deliveries of goods made to the consumer's specifications or clearly personalised or which, by reason of their nature, cannot be returned; in the case of deliveries of audio or video recordings or of software which were unsealed by the recipient.

9.8 The Purchaser shall bear any costs incurred by unjustified returns or revocations.

## **10 RETENTION OF TITLE**

10.1 Items pertaining to the delivery (Retained Goods) shall remain the property of the Supplier until each and every claim the Supplier has against the Purchaser on account of the business connection has been fulfilled. In the case of the Purchaser being consumer this retention of title shall only remain in effect until the agreed purchase price has been paid completely.

10.2 For the duration of the retention of title, the Purchaser may not pledge the Retained Goods or use them as security, and resale shall be possible only for resellers in the ordinary course of their business and only on condition that the reseller receives payment from its customer or makes the transfer of property to the customer dependent upon the customer fulfilling its obligation to effect payment.

10.3 The Purchaser shall inform the Supplier forthwith of any seizure or other act of intervention by third parties.

10.4 Where the Purchaser fails to fulfil its duties, including failure to make payments due, the Supplier shall be entitled to cancel the contract and take back the Retained Goods in the case of continued failure following expiry of a reasonable time set by the Supplier; the statutory provisions that a time limit is not needed remain unaffected. The Purchaser shall be obliged to surrender the Retained Goods.

## **11 WARRANTY**

11.1 The Purchaser's claims based on defects in the products delivered shall be limited at the Supplier's option to the repair of the defect or the replacement with a product free of defects (supplementary performance).

11.2 To remedy the defects, the Purchaser shall allow the Supplier the time and opportunity required according to the reasonable estimation of the Supplier. Should the Purchaser refuse to allow such time and opportunity, the Supplier shall be released from the obligation to remedy defects.

11.3 In case the defects are not remedied within a reasonable time or if the repairs fail to remedy the defects, the Purchaser is entitled to claim the right of reduction of purchase price (in accordance to § 441 BGB) or rescission of the contract.

11.4 As far as binding law does not prescribe something else, claims based on defects shall be subject to the legal limitation of 2 years beginning upon delivery.

## **12 LIABILITY**

The liability of the Supplier as well as the Supplier's servants and vicarious agents shall be limited to the damages and defects, for which the Supplier is liable under binding law. Any kinds of liability claims going beyond shall be excluded.

## **13 PRIVACY OF DATA**

13.1 Any data needed for the transaction of business will be electronically stored and processed within the Supplier's business.

13.2 Any data will be treated with discretion.

13.3 In the event further work has to be processed by companies or persons not belonging to the Supplier's House, the Supplier shall pass the necessary data to these companies or persons.

13.4 In case of the Purchaser not being consumer, the name of his institution shall be published on the list of the Supplier's customers.

#### **14 PLACE OF PERFORMANCE, PLACE OF JURISDICTION**

14.1 The place of performance as well as the sole place of jurisdiction shall be the registered business place of the company (City of Kiel, Germany), as far as binding law does not prescribe something else.

14.2 The Supplier shall be entitled within his discretion to take legal action at the Purchaser's place as well.

#### **15 APPLICABLE LAW**

15.1 The privity of contract and all contractual relations hereunder shall be governed exclusively by the laws of the Federal Republic of Germany.

15.2 Especially neither the Hague Convention Relating to a Uniform Law on the International Sale of Goods of July 1, 1964, nor the United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980, shall apply.

#### **16 SEVERABILITY CLAUSE**

Even in the event of individual clauses of the contract being invalid, its remaining parts shall continue to be binding. Should any clause be invalid wholly or in part, the contracting parties will endeavour without delay to attain the economic result aimed at by the invalid clause in another legally admissible manner.

(as at August 20, 2009)

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