

TERMS AND CONDITIONS OF DELIVERY OF S::CAN GMBH

1. VALIDITY OF TERMS AND CONDITIONS
  - 1.1. The firm s::can GmbH in 1200 Vienna, Brigittagasse 22-24 (following "S::CAN"), renders its services exclusively on basis of these terms and conditions (following "AGB"). They are valid for all future services as long as no modifications have been agreed to. Contrary or differing terms and conditions will not become part of the contract, even without specific contradiction of S::CAN, even in the case of a service/delivery. Deviations from these terms and conditions must be made in writing for every transaction in order to be valid.
  - 1.2. These terms and conditions apply to every legal transaction with S::CAN. With the first order the client acknowledges the exclusive validity of our terms and conditions, even when the text of his own terms and conditions are to the contrary, unless a diverging contract basis has been agreed to and confirmed in writing.
2. CONCLUSION OF CONTRACT
  - 2.1. Offers made by S::CAN are not binding until a written order has been received. Information from S::CAN in price lists and catalogues which are directed to the public, are not binding offers. The client is bound by his order for two weeks. Orders must be confirmed by S::CAN in writing. After confirmation by S::CAN the contract is complete with the contents as specified in the order. Verbal collateral agreements, received offers, information, recommendations, advice and commitments of S::CAN must be confirmed expressly in writing by S::CAN in order to be valid. A confirmation in electronic form, such as a PDF document attachment, is the same as a written confirmation. In the absence of written confirmation to the contrary, the contract has been completed when the goods have been delivered or services rendered at the customer's place of business, without objection, and invoiced accordingly.
  - 2.2. Cost calculations for repairs are not binding unless otherwise expressly agreed.
3. AGREEMENT ON APPOINTMENTS
  - 3.1. Agreements on time-periods and appointments have to be fixed and confirmed in writing or electronic in the form of an E-mail.
4. PRICES, INVOICES AND TERMS OF PAYMENT
  - 4.1. Unless otherwise agreed, the stipulated prices are fixed prices. They are net prices plus freight, packing, additional costs and value added tax. Costs for shipping and packing are charged separately.
  - 4.2. The prices are based on the costs at the time of the first offer. Should taxes, or other expenses which are included in the agreed price, change or come into being after conclusion of the contract, S::CAN retains the right to adjust the price to the necessary extent. These taxes and other additional costs may be, for example, an union contract or other costs which are necessary for rendering services, such as material, energy, transportation, external work, financing, etc.
  - 4.3. Special services which are above and beyond the content of the contract will be charged separately.
  - 4.4. Unless otherwise agreed, our invoices are due for payment without discount within 30 days from the date of the invoice. The payment must be made so that the funds are at S::CAN's disposal on the due date. All costs for payment transactions, as well as national and international money transfer expenses, are born by the buyer.
  - 4.5. S::CAN has the right to make the delivery of goods dependent on payment in advance or cash on delivery, if it is the client's first order or a credit check has not been completed. These rights are also retained by S::CAN if the client's payments are in arrears or the clients credit limit is exceeded. Should the client refuse to pay in advance, S::CAN has the right to sell the goods elsewhere and to charge the difference between the purchase price and the price of the emergency sale to the clients account, without prejudice to other provisions of the contract.
  - 4.6. If the buyer is in default of payment, S::CAN has the right, without prejudice to other provisions of the contract, to postpone the performance of its contractual obligation and extend the delivery period and to call due all outstanding debts from this or other transactions. Interest for the default amount will be charged from the due date, as long as S::CAN does not prove additional costs. In every case S::CAN has the right pass on costs of collection to the client. In case of default of payment the client is obliged to pay for the costs of Dunning letters, as far as they are appropriate. In addition, the client has to pay for all damages which have been caused by the default of payment, especially for damages incurred through higher interest rates on a credit account.
5. EXECUTION OF DELIVERY, LEAD TIME AND DELIVERY DATE, PASSING OF RISK
  - 5.1. The lead time to delivery begins with the confirmation of order by S::CAN and is only valid on condition that all details of the order are clarified and the buyer has met his obligations in time. All lead times are maximum time limits, unless otherwise agreed, and express the period in which S::CAN is entitled to deliver.
  - 5.2. S::CAN's obligations to deliver are dependent upon the correct and timely delivery of goods to itself, except when S::CAN itself is responsible for the incorrect or late delivery.
  - 5.3. In case of unforeseen events S::CAN has the right to postpone the delivery for the period of the impediment and an initial starting period; this is also valid in case of default in payment. Unforeseen events include monetary, trade and other political measures, strikes and lock outs, as well as operational break downs which not have been caused by S::CAN, impediments to the traffic infrastructure, delays occurred by customs clearance and all other reasons which complicate or prevent the performance of the contract/delivery and which S::CAN has not caused. It is irrelevant if these circumstances occur at S::CAN's or at a suppliers place of business. If the specific performance of the contract becomes unreasonable for one party because of these circumstances, this party of contract has the right to declare the contract void.
  - 5.4. S::CAN has the right to partial or early delivery and to invoice this partial or early delivery.
  - 5.5. For drop shipments the lead time is considered adhered to when the goods leave the point of dispatch such that, with the customary transport time, the delivery arrives at the ultimate client at the agreed time.
  - 5.6. The place of performance for all deliveries, even freight paid, is the point of dispatch.
  - 5.7. Unless otherwise is agreed, S::CAN delivers under the terms of "Free Carrier" (FCA) from S::CAN headquarters. The risk passes with acceptance for loading into the means of transport; in case of self-collection with placing the goods at the disposal of the client for loading. Transport of goods by a forwarding agent is evidence of a faultless packing and loading.
  - 5.8. If the buyer delays delivery, S::CAN has the right to store the goods. In that case the buyer must to pay the amount of € 10 per day for storage. S::CAN has the right to insist on performance of the contract or to withdraw from the contract, after having granted an additional period of time of reasonable length, and sell the goods elsewhere. In that case a contractual penalty of 0,5 % of the invoiced amount per day is stipulated. The maximum contractual penalty is 25 % of the invoiced amount. The claim for a higher damage, for example costs for the transport for the frustrated delivery, is reserved.
6. RESERVATION OF TITLE AND SECURITIES
  - 6.1. S::CAN retains ownership of its goods until payment of the purchase price and all other future claims, resulting from the business obligations, including acknowledged outstanding balances of the current account and conditional claims, even if the buyer has made payments on an outstanding debt.
  - 6.2. The client has to protect the unpaid goods against common risks, to store them separately or mark them clearly. Insurance claims resulting from a case of damage are assigned to S::CAN in amount of the value of the unpaid goods.
  - 6.3. The client has the right to process the unpaid goods in the ordinary course of business, to connect them with other movable goods or to sell them, if he is not in default of payment and if he assigns the arising and arisen claims against third persons to S::CAN. If the client connects the unpaid goods with other movable goods such that S::CAN becomes the owner of the new object, he is, in case of default in payment, obliged to give the new object back to S::CAN. In case the connection is such that the object is buyer's main product, the buyer is obliged to give S::CAN co-ownership of the new object in the amount of the invoice for the unpaid goods. If the client sells the new object, he has to assign the resulting claims against a third party. He holds the co-ownership for S::CAN in his custody.
7. SPECIAL GROUNDS FOR CANCELLATION
  - 7.1. S::CAN has the right to withdraw from the contract if the client makes incorrect or incomplete statements about his credit worthiness, refuses payment or if a petition of bankruptcy has been filed, unless the client makes a prepayment immediately.
  - 7.2. S::CAN has the right to withdraw from the contract if the goods or services on a blanket order are not scheduled for delivery during the agreed term (maximum 8 weeks from the date of the confirmation of the order).
  - 7.3. In case of cancellation of the contract by S::CAN or the client, the goods can only be returned with prior consent of S::CAN. In all cases of returned goods the risk is transferred to S::CAN only with acceptance of the goods. Should delivered goods be returned, S::CAN has the right to claim for compensation for all costs resulting from the conclusion of the contract, such as costs for transportation and packing.
8. NOTICE OF DEFECTS AND WARRANTY
  - 8.1. For defects and the loss of warranted characteristics S::CAN guarantees as follows:
  - 8.2. The goods must be inspected immediately after delivery. Defects must be notified in writing immediately, at the latest within 14 days after delivery, with notification of the type and size of defect. Defects which cannot be discovered within the agreed term, even in case of careful inspection, must be notified in writing immediately after discovery. The processing of the goods must stop immediately. If a notice of defects is not made or not made in time, the goods are deemed to be accepted.
  - 8.3. In case of a defect the client or a third person has not the right to remedy the defect. S::CAN must be given the possibility to remedy the defect within an adequate period of time. If the defect can be remedied, the warranty can only be made through cost-free remedy within an adequate period of time. S::CAN has the right to choose if the remedy can be made by exchanging the defective goods. The claim for reduction in price is excluded in these cases.
  - 8.4. The place where the warranty-liability of S::CAN is performed is the company's premises in Vienna, unless otherwise agreed.
  - 8.5. In case that the client is delivered goods from third manufacturers the warranties of these manufacturers is also valid for the client, as far as he has been given notice of these.
  - 8.6. In case a defect cannot be remedied, the repair is unsuccessful or delayed, the client has the right to a price reduction or cancellation of the contract, depending on the type of defect.
  - 8.7. The client loses all warranty claims if he does not give S::CAN the possibility to convince itself of the existence of the defect and if he does not make available the defective goods, or samples thereof, on demand.
  - 8.8. The warranty claims which are valid for the original delivery and performance are also valid for repairs and replacements.
  - 8.9. The transferee has to prove that the defect existed at the time of delivery.
  - 8.10. The term of warranty for movable goods is 24 months; the warranty for immovable goods is 3 years.
  - 8.11. There is no warranty for irrelevant divergence from the agreed quality, irrelevant defects in usability and cases of natural wear and tear or non-reproducible software-defects.
  - 8.12. There is no warranty if the client has not performed his contractual obligation completely.
  - 8.13. The warranty is terminated immediately if the buyer, or a third person not authorised by S::CAN, makes changes or repairs to the delivered goods without the written permission of S::CAN, especially if the unit has been opened.
9. GUARANTEE
  - 9.1. S::CAN guarantees for a period of 12 months from delivery for the technical function of the delivered goods and the warranted characteristics of the instruments, unless longer terms of guarantee are stipulated.
  - 9.2. In the case of a guarantee claim the client has to prove that he has observed the manufacturer's conditions of use and that he has operated the equipment properly.
  - 9.3. There is no guarantee for the adherence to parameter characteristics or to parameter accuracy.
  - 9.4. There is no guarantee for defects resulting from improper installation, insufficient assembly, failure to observe the conditions of use, overstraining the parts beyond the performance level stipulated by S::CAN, careless use and use of unsuitable material. There is also no guarantee for the replacement of parts which have a natural wear and tear. The client is obliged to keep in mind the specification and the operating instructions of the manufacturer while using the goods. The client is obliged to obtain these operating instructions from S::CAN. There is no guarantee for used goods which have been sold.
10. RETURNED GOODS
  - 10.1. Returned goods, which were previously delivered from S::CAN to its clients, regardless if it is a return for credit, a repair or a warranty claim, must be shipped in proper form, declared and cleared for export with the required customs information. If this is not the case S::CAN has the right not to accept the goods.
  - 10.2. The risk of damage during transport is born by the client.
11. DAMAGES AND PRODUCT LIABILITY
  - 11.1. A client's claim for damages are excluded for cases of slight negligence. This does not apply to personal injury.
  - 11.2. All damage claims which a party of contract or a third party may have against "S::CAN", are excluded except when the person or party which has the right to damages proves that the defect was caused in the sphere of S::CAN and is the result of gross negligence.
12. EXCLUSION OF CONSUMER PROTECTION LAWS
  - 12.1. The applicability of the Consumer Protection Law 1979 in its relevant version is excluded.
13. OTHERS
  - 13.1. Place of performance for all contractual obligations is the head office of the firm in 1200 Vienna, Brigittagasse 22-24.
  - 13.2. Austrian law is applicable. The applicability of UN purchasing rights is excluded. The contract terminology is German.
  - 13.3. For all disputes arising out of the contract the court responsible for the head office of the firm has the exclusive jurisdiction in regard to the subject matter.
  - 13.4. If single points of these terms and conditions become ineffective, the remaining terms and the contracts based on these terms and conditions remain effective. The ineffective term is to be replaced by an effective one.
  - 13.5. All agreements, subsequent modifications, supplements, collateral agreements, etc. must be in writing with an original signature in order to be valid.