

# General Terms and Conditions of Business for AXBER Technische Produkte GmbH

## Section 1 General – Scope of application

1. The following General Terms and Conditions of Business shall apply for all business relationships between us (AXBER Technische Produkte GmbH) and the customer. The version that is valid at the time when the respective contract is concluded shall be authoritative.
2. Consumers within the meaning of these General Terms and Conditions of Business are customers who are consumers pursuant to Section 1 Konsumentenschutzgesetz, [German Consumer Protection Act] (KSchG). Businesses within the meaning of these General Terms and Conditions of Business are customers who are businesses pursuant to Section 1 KSchG.
3. Any general terms and conditions of business that differ from, contradict or supplement these General Terms and Conditions of Business – even if known – shall not form part of this contract unless their validity has been explicitly approved in writing.

## Section 2 Concluding contracts and agreeing to transfer of information and confirmation of contracts via e-mail

1. All of our quotations shall be non-binding and without obligation. Technical and any other amendments shall be permitted insofar as these are reasonable to the customer.
2. By submitting an order, the customer accepts the terms of the contract.
3. We reserve the right to accept the terms of the contract contained in the order within one week.
4. If we do not receive our goods on time from our supplier through no fault of our own (reservation of self-delivery) or our delivery is not possible or reasonable due to force majeure, strike, lockout or natural disasters where we are not at fault, we may withdraw from the contract. The reservation of self-delivery shall only apply to a consumer if we have concluded a congruent hedging transaction (a binding, timely and sufficient order) and there is no other reason for non-delivery of the goods. In this case we shall inform the customer immediately and immediately reimburse any payment already received.
5. The customer shall be notified immediately in the event of non-availability or only partial availability of the service. Payments shall be reimbursed immediately.
6. If the customer orders the goods electronically, the contract text shall be saved by us and this shall be sent to the customer via e-mail, together with the applicable General Terms and Conditions of Business after the contract has been concluded. The General Terms and Conditions of Business shall also be made accessible to the customer before concluding the contract.
7. In principle, invoices, credit notes, cancellations and reminders shall be sent via e-mail. The customer shall inform us immediately of any changes to the e-mail address and ensure that the e-mail address in our records is used.
8. The customer agrees that any information to be made available to it in accordance with the Fern- und Auswärtsgeschäfte-Gesetz [Austrian Remote and External Business Act] (FAGG) shall be communicated via e-mail.
9. We reserve the right to transfer our claims against the customer to a third party.

## Section 3 Retention of title

1. We reserve the right to the title to the goods until the purchase price has been paid in full.
2. The customer undertakes to handle the goods with care during the retention of title. The customer shall inform us immediately in writing of any access by a third party to the goods, in particular of enforcement measures, as well as any damage to or destruction of the goods. The customer shall report, without delay, a change of ownership of the goods and a change of its own registered address.  
  
The customer shall compensate all damages and costs that arise from violating these obligations and from necessary intervention measures against access by third parties.
3. In the event of customer behaviour that is contrary to the contract, we reserve the right, in particular in the event of default in payment, to withdraw from the contract and demand the return of the goods. In the event of a violation of an obligation according to Para. 2, we also reserve the right to withdraw from the contract and demand the return of the goods, if we cannot reasonably adhere to the contract.
4. The business shall be entitled to sell the goods within the ordinary course of business. It shall assign all claims in the amount of the invoice to us which arise against a third party through the sale and undertake to add a corresponding note in its books or on its invoices. We shall accept the assignment. The business shall be authorised to collect the debt after assignment. We reserve the right to collect the claim ourselves, if the business fails to comply with its payment obligations and falls into arrears.
5. The goods shall always be prepared and processed by the business in our name and on our account. If the goods are processed, we shall purchase the co-ownership of the new product in proportion to the value of the goods supplied by us. The same shall apply if the goods are processed or combined with other items not belonging to us.

## Section 4 Right of withdrawal (Right of cancellation) - Distance selling contract / Tele and online shopping contracts

### Cancellation policy

#### Right of cancellation

You have the right to cancel this contract within fourteen days without giving a reason.

The cancellation period is fourteen days from the day on which you or a third party named by you, who is not the promoter, took possession of the goods.

In order to exercise your right of cancellation, you must inform us (AXBER Technische Produkte GmbH, postal address: Am Stein 504, 6883 Au, Austria, Telephone number: +43 5515 30130, Fax number: +43 5515 30130 9, E-mail: [office@axber.at](mailto:office@axber.at)) of your decision to cancel this contract with a clear statement (e.g. with a letter sent by post, fax, or e-mail). You may use the attached cancellation form template, although this is not mandatory.

To meet the cancellation deadline, it is sufficient to notify us that you intend to exercise your right to cancel before the cancellation deadline.

#### **Consequences of cancellation**

If you cancel this contract, we must refund all payments that we have received from you, including delivery costs (except for the additional costs resulting from your having chosen a different type of delivery from the most reasonable standard delivery offered by us), without undue delay and at the latest within fourteen days from the date on which we received notification that you are cancelling this contract. For this repayment we shall use the same means of payment that you used for the original transaction, unless otherwise expressly agreed with you; on no account will you be charged fees due to this repayment. We can refuse the repayment until we have received the goods or you have provided evidence that you have returned the goods, whichever is earlier.

You shall send back or hand over the goods immediately, and at the latest within fourteen days from the day on which you informed us that you were cancelling this contract. You have complied with the time period if you send the goods before expiry of the fourteen day period.

You shall bear the direct costs of returning the goods. The costs are estimated to be EUR 500.00, at the most.

You shall only pay for any loss of value for the goods if this loss of value is attributable to your handling of the goods other than as necessary to ascertain their nature, qualities and functionality.

The existing right of withdrawal (right of cancellation) shall not apply to the following contracts, unless the parties have agreed otherwise:

1. Services, if the business – based on an explicit request from the consumer according to Section 10 FAGG, as well as a confirmation from the consumer of its knowledge of its loss of the right of withdrawal in the event of the contract being completely fulfilled – had begun to carry out the service before the expiry of the withdrawal period according to Section 11 FAGG and the service had then be fully provided,
2. Goods or services, the price of which depends on fluctuations in the financial market over which the business has no influence and may occur within the withdrawal period,
3. Goods that are produced according to the customer's specifications or are clearly tailored to personal requirements,
4. Goods which can perish quickly or would quickly exceed their expiry date,
5. Goods which are delivered sealed and due to health and safety or hygiene reasons, are not suitable for sending back if their seal has been removed after delivery,
6. Goods which due to their nature have been mixed inseparably with other products after delivery,

7. alcoholic drinks for which the price was agreed when the contract was concluded but cannot be delivered earlier than 30 days after the contract is concluded and for which the current value is dependent on market fluctuations over which the business has no influence,
8. Sound or video recordings or computer software which are delivered in a sealed package, if their seal was removed after delivery,
9. Newspapers, magazines or illustrated magazines with the exception of subscription contracts for the delivery of such publications,
10. Services in the accommodation areas other than residential use, transport of goods, hiring of vehicles, as well as delivery of meals and drinks and services which are provided in connection with recreational activities, if a certain time or time period is provided for in the contract for the business to fulfil the respective contract,
11. the delivery of digital content not saved on a physical data carrier, if the business – with the express consent of the consumer, together with its awareness of the loss of the right of withdrawal at the start of carrying out the contract, and after provisioning a copy or confirmation pursuant to Section 5(2) or Section 7(3) FAGG before the expiry of the cancellation period (withdrawal period) pursuant to Section 11 FAGG – has begun the delivery.

#### **Section 5 Remuneration and payment commitments**

1. The following conditions shall apply in the absence of conditions governed by individual contracts.
2. The prices offered are daily rates and shall apply until cancellation. Quotations are subject to alteration. All prices are shown to businesses as net prices plus statutory VAT.

When the purchase is shipped, the price is subject to additional transport insurance and shipping costs that may arise, if the amounts are identified before concluding the ordering process.

The payment methods available shall be provided before concluding the ordering process. We reserve the right to exclude individual payment methods. The customer shall be informed of this promptly before the ordering process is concluded.

3. If the payment method has not been agreed as delivery against cash before delivery/advance payment, the customer undertakes to pay the price within fourteen days of receiving the service. After this period has expired, the customer has defaulted on their payment. This period shall not apply to agreed payment via credit cards, direct transfer, Direct Debit or debit card payment (Maestro).

The consumer shall be subject to interest on the debt at a rate in the amount of 5 percentage points p.a. over the respective base interest rate for the default period.

The business shall be subject to interest on the debt at a rate in the amount of 9.2 percentage points p.a. over the respective base interest rate for the default period. We reserve the right to demonstrate and claim higher interest on arrears against the business.

The customer undertakes to bear the collection costs arising for the first reminder in the amount of EUR 5.00, for the second reminder in the amount of EUR 10.00, for a third reminder in the amount of EUR 15.00, as well as in particular, collection expenses or other costs necessary for appropriate prosecution.

The customer shall only be entitled to offset amounts if its counterclaims have been legally established or ready for decision or uncontested. To this extent, the customer is not entitled to hold back payments.

4. The consumer shall only be entitled to offset amounts in the event of our inability to pay or for its counterclaims which have been legally established or ready for decision or uncontested.
5. **Payments:** For transfers, the customer undertakes to provide the intended purpose provided in our respective invoice. If the intended purpose does not correspond to the one provided on our invoice, the customer undertakes at our request to transfer the related deposit slip or transfer forms via e-mail, fax or post and enables reliable payment assignment. **Until there is sufficient opportunity for the incoming payment to be assigned, a customer's payment shall not be fulfilled.**

#### **Section 6 Accepting delivery, right of withdrawal in the event of non-acceptance and transfer of risk**

1. The customer undertakes to accept the contractually-agreed delivery.
2. If the customer is not present at the address provided on the order at the first delivery attempt, it shall be notified of the unsuccessful delivery attempt by the delivery agent. The customer undertakes to agree a new delivery date with the delivery agent or to be present on the new delivery date indicated on the delivery note and to accept the contractually-agreed delivery.
3. If an acceptance does not appear by the second delivery attempt at the latest, we reserve the right to withdraw from the contract without an extension period.
4. At the customer's premises, the risk of sudden loss or deterioration in the condition of the goods shall be transferred by the haulier, carrier or to the other person or establishment designated for the execution of the despatch to the person or agency stipulated by the customer. This last point shall not apply to contracts with consumers.
5. The same shall apply to the handover if the customer is in default as regards acceptance.

#### **Section 7 Warranty**

1. In material defect warranty cases, the customer shall have the choice between rectification and a follow-up delivery. However, we reserve the right to refuse the chosen type of rectification if it is impossible or is associated with excessively high costs for us.

For businesses, we shall initially guarantee for defects of goods according to our choice of rectification or follow-up delivery.

2. If no adequate rectification occurs despite a deadline being set, the customer may choose to reduce the price or if it is not only a minor defect, withdraw from the contract. This shall not affect any potential claims for compensation.

3. Businesses must check the delivered goods for defects within an appropriate period and notify us of this within a week of receiving the goods in writing; otherwise the assertion of the warranty claim shall be excluded.
4. We must be notified in writing of concealed defects immediately after their discovery.

The business shall bear the full burden of proof with respect to all requirements for claims with respect to the defect itself, the time when the defect was identified, and the timeliness of notification of the defect.

5. The warranty period for consumers amounts to two years from handing over the goods.

The warranty period for businesses amounts to one year from delivery of the goods.

For used goods, the warranty period amounts to one year from handing over the goods.

We do not provide our customers with any warranties in the legal sense.

#### **Section 8 Limitations and exemption of liability**

1. We shall be liable, regardless of the legal reason, for compensation or reimbursement of needless expenditure in the full amount only for customer claims arising from deliberate or grossly negligent behaviour, fraudulent concealment of a defect, in the case of assuming explicit warranties, as well as guaranteed characteristics of the nature and/or shelf life, for claims arising from injury to life, persons or health, for product liability claims, as well as in the case of compulsory legal provisions.
2. In the event of purely negligent violation of fundamental contractual obligations, we shall be liable - irrespective of the cases stated in Paragraph 1 - limited only to the reasonably foreseeable damage that is typical of contracts of this type. Such obligations include obligations for which the fulfilment mainly facilitates the proper implementation of the contract, for which a violation would endanger the purpose of the contract and on the observation of which, the contracting Party may regularly depend.
3. Multiple cases of damage which have the same cause shall apply as a damage event (continued violation; concurrence of offences).
4. Our liability is otherwise excluded for material and financial damages. If applicable, mandatory statutory liability regulations shall remain unaffected.
5. If our liability against the customer is limited or excluded, this shall also apply for legal representatives, employees, freelancers and other vicarious agents.
6. We shall be liable only for our own content on the website of our online shop. If we enable access to other websites via links, we are not responsible for the external content contained there. We do not own the external content. If we become aware of illegal content on external websites, we shall immediately block access to these sites and delete the link.

#### **Section 9 Data protection**

1. Our 'data protection information' informs our customers about:
  - the type, scope, duration and purpose of the collection, processing and use of the personal data required for carrying out orders and issuing invoices;
  - their right to object to the preparation and use of their anonymised user profile for the purpose of advertising, market research and for the needs-based design of our products;
  - passing data on to companies commissioned by us and who observe the legal provisions for data protection for the purpose of and duration of credit checks and dispatching the goods;
  - the right to information of their personal data saved by us for no fee;
  - the right to rectify, delete and block their personal data saved by us;
  - in the case of a subrogation on the customer to a third party (assignee), the transfer of data required to carry out orders and invoices to the assignee.
2. All collecting, processing and use of personal data in addition to those in Para. 1, require the customer's consent. The customer shall have the opportunity to grant this consent before confirming its order. The customer reserve the right to revoke its consent with effect for the future (see 'data protection consent') as well as the right to look at the content of its consent at any time.

**Section 10 SPECIAL DATA PROTECTION PROVISIONS / CONSENT TO USE YOUR DATA:**

- a. When the payment method is purchase on account or purchase by Direct Debit, we check that your wish to pay by purchase on account or by Direct Debit can be fulfilled, taking into account potential payment failure risks. For this purpose, an identity and credit check shall be carried out on our behalf for the payment methods 'purchase on account' or 'purchase by Direct Debit'.
- b. Any data transfers shall occur in the context of what is legally permissible and shall not be passed on to a third party for marketing purposes.
- c. By agreeing to these data protection provisions, you consent to us saving, processing and using your data for identity and credit checks (forename, surname, street, house number, post code, city, date of birth, telephone number and in the case of a Direct Debit, the account details provided, respective personal information), as well as data in connection with your order (such as, shopping basket, order history, payment record, IP address, together with personal information and personal data) in the context of these data protection provisions.
- d. You also consent to us or partner companies commissioned by us to transfer your personal information to a third party for identity and credit checks and to receiving this information about you and, if necessary, credit information based on mathematical statistical processes. We refer you to your right of objection.
- e. With the consent from these data protection provisions, we and partner companies commissioned by us shall also reserve the right to save, process and to use data for any non-contractual processes (for example, uncontested open claims) and to pass it on to a third party. Third parties shall save and send the data to their contracting parties in the EU single market to provide this information for the assessment of the creditworthiness of natural persons. Third parties shall be given address data for debtors. When issuing information, third parties may also disclose the probability value calculated from their database for assessment of credit risk (scoring process).
- f. You also consent to us passing your personal data on to our respective merchandising partners about the goods that are the subject of this contract that you have requested from us. Through your consent, you allow the respective merchandising partner to use your personal data for statistical purposes, as well as to improve its products and for advertising or promotional purposes.
- g. Whilst observing the relevant data protection provisions, your personal data shall be used only for the purposes of identity and credit checks, processing payments on purchases on account or by Direct Debit (including dunning and debt collection), for providing customer service by agents connected to us, as well as disclosure in the event of legal or regulatory obligation (for example, fraud and money laundering prevention).
- h. We reserve the right to transfer personal data to agents, third parties or financial partners commissioned by us for the aforementioned purposes or to guarantee access to these if it is required for them to carry out their tasks.
- i. We explicitly note that your address data (name, address, date of birth) shall be transferred to registered companies commissioned by us for the purposes of credit checks and choice of payment methods by which we obtain information on your payment behaviour to date and credit information based on mathematical processes using the address data. Payment record data, in particular about uncontested and unpaid outstanding claims and address data, shall be transferred to the credit agency commissioned and authorised by us for legitimate purposes.
- j. At your request, you will be immediately notified of the company, address, telephone number and e-mail address of the credit agency commissioned by us.
- k. You may withdraw your consent for the collection, processing, use or transfer of your personal data at any time. In the event of a withdrawal, we shall retain the right to process, use or transfer your personal data if this is necessary or required by law for processing purchases on account or purchases by direct debit as per the contract or is demanded by a court or an authority.

**You also reserve the right to receive information about data saved by us for no fee and if necessary, have these data rectified, blocked or deleted.**

- I. Please direct questions in connection with the collection, use, processing or transfer of your personal data, as well as for information on these data and the rectification, blocking or deletion of these data in writing to the company data protection officer: AXBER Technische Produkte GmbH, Datenschutzbeauftragter, Am Stein 504, A-6883 Au.**

#### **Section 11 Final provisions**

1. Austrian law shall apply, with the exclusion of the conflict of laws.

The provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply.

This shall only apply to consumers as long as the protection granted by binding provisions in the law of the state in which the consumer has habitual residence is not revoked.

2. In the event that individual provisions of this agreement with the customer, including these General Terms and Conditions of Business are or become wholly or partially invalid, the validity of the remaining provisions shall not be affected. In this case, the parties agree to replace the wholly or partially invalid provision in contracts with businesses with a provision for which the economic purpose comes as close as possible to that of the invalid provision. The same shall apply if the contract contains a legal loophole.