

# General Terms & Conditions

General Terms & Conditions of Supply of ASTRO Strobel Kommunikationssysteme GmbH

## § 1 General / Scope of applicability

1. These General Terms & Conditions (hereinafter "Terms & Conditions") apply to all business relations between ASTRO Strobel Kommunikationssysteme GmbH (hereinafter "ASTRO") with its customers (hereinafter also referred to as "purchasers"). The Terms & Conditions apply only where the customer is an entrepreneur (§ 14 of the Civil Code [*Bürgerliches Gesetzbuch*, BGB]), a legal entity under public law or a government agency under public law. The Terms & Conditions apply in the version valid at the time the contract is made. They shall also apply in the event that subsequent orders or other contracts are made, even if no further explicit agreement is made in this regard.

2. ASTRO's Terms & Conditions shall apply exclusively. Any general terms & conditions of the purchaser that vary from, contradict or supplement these Terms & Conditions shall become an integral part of the contract only in so far as ASTRO has explicitly consented to their validity. This requirement for consent applies in all cases, even if ASTRO makes reference to a document that contains or refers to the terms and conditions of the purchaser or of a third party.

3. Any legal declarations and notices to be made by the purchaser to ASTRO after the making of the contract (e.g. setting of deadlines, notices of defects, declarations of rescission or price reduction) must be in text form in order to be valid. Transmission via telecommunications, including by e-mail, is sufficient.

4. However, individual agreements made with the purchaser in specific cases (including side agreements, supplementary agreements and amendments) take priority over these Terms & Conditions. The content of such agreements shall be determined by a written contract and/or written confirmation by ASTRO.

5. References to the applicability of statutory provisions shall be of clarificatory significance only. The statutory provisions shall therefore apply even in the absence of such clarification, unless directly varied or expressly excluded in these Terms & Conditions.

## § 2 Formation of contracts

1. All offers made by ASTRO are without obligation and non-binding, unless it is expressly indicated that they are binding or they contain a specific deadline for acceptance. This also applies to the presentation of our goods on the internet and where we have provided the purchaser with catalogues or technical documentation or other product descriptions or documents.

2. The ordering of the goods by the purchaser is deemed to be a binding offer of contract. ASTRO is entitled to accept this offer of contract up to one month after it reaches ASTRO.

3. Acceptance may be notified to the purchaser either in writing (e.g. through an order confirmation) or by shipment of the goods to the purchaser.

4. Details given by ASTRO as to the subject-matter of the delivery or supply (e.g. weights, dimensions, utility, load capacity, tolerances and technical data) and our representations thereof (e.g. drawings and illustrations) are only of approximate significance, unless usability for the purpose intended in the contract presupposes an exact correspondence. Such details are not guaranteed features, but descriptions or identifications of the delivery or supply. Discrepancies customary in the trade, discrepancies that result from legal requirements or technical improvements, and the replacement of components with parts of equal value are permitted in so far as they do not adversely affect usability for the purpose intended in the contract.

5. ASTRO expressly reserves title or copyright to all ASTRO catalogues, technical documentation (such as drawings, plans, computations, calculations, references to DIN standards), other product descriptions or documents, including those in electronic form. The purchaser may not make these items accessible to third parties, publish them, use them itself, cause them to be used by third parties or reproduce them, either as such or in a manner fully or predominantly identical in content, without ASTRO's express consent. If they are no longer required by the purchaser in the ordinary course of business or if negotiations fail to lead to the formation of a contract, the purchaser shall, upon ASTRO's request, return these items to ASTRO in their entirety and destroy any copies made.

### § 3 Delivery / delivery dates / default of delivery / place of fulfilment

1. Where the contract is made through supply after the order, the scope of delivery shall be based on ASTRO's written order confirmation once the contract comes into being through their despatch. Delivery is made ex store; the store is also the place of fulfilment. Upon the purchaser's request, the goods shall be sent to another point of destination ("sale involving carriage"). ASTRO is entitled to specify the type of carriage (in particular, the transport firm, mode of carriage, packaging) itself, unless expressly otherwise agreed.

2. ASTRO will make delivery in a single shipment where possible. Partial deliveries are possible, depending on availability. The additional carriage and packaging costs required shall be borne by ASTRO.

3. Delivery dates are individually agreed. Where this is not the case, the delivery date shall as a general rule be eight weeks from the making of the contract. ASTRO shall be permitted to make delivery earlier.

4. Where ASTRO is unable to honour binding delivery dates for reasons for which it cannot be held liable because the delay is caused by force majeure or other events not foreseeable at the time the contract was made (e.g. operational disruptions of all kinds, difficulties with obtaining material or energy, transport delays, strikes, lawful lockouts, shortages of staff, energy or raw materials, difficulties with obtaining necessary official authorisations or action taken by public authorities), ASTRO shall notify the purchaser promptly thereof and simultaneously inform the purchaser of the expected new delivery time. If, as a result of the events referred to above, it also proves impossible to supply within the new delivery time, ASTRO shall be entitled to rescind the contract fully or in part. In such event, any consideration already paid by the purchaser shall be promptly refunded.

5. Where ASTRO has entered into a back-to-back covering transaction, unavailability of the supply in the above sense (para. 4 sentence 1) is deemed in particular to exist where we ourselves do not receive a timely delivery from our supplier.

6. The foregoing provisions (paras. 4 and 5) have no effect on the statutory rights of rescission and termination, on the statutory provisions concerning the unwinding of the contract in the event that ASTRO is excused from the duty of performance, or on the purchaser's rights of rescission and termination under § 10 of these Terms & Conditions.

7. The time at which ASTRO is deemed to be in default of delivery shall be determined by the relevant statutory provisions. A reminder issued by the purchaser shall, however, be required in all cases.

#### § 4 Prices

1. Unless otherwise agreed in an individual case, the prices applicable are ASTRO's prices current at the time the particular contract is made. These are understood to be ex store and excluding any applicable VAT.

2. In the event of a sale with carriage (§ 3 para. 1), the purchaser bears the transport costs ex store unless the goods value of the order as per ASTRO's invoice is less than €500. In the latter case, a flat charge of €10 for processing, packaging and freight is deemed to be agreed. Where the goods value of the order as per ASTRO's invoice is €500 or more, ASTRO bears the packaging and shipping costs to the specified destination in Germany or, if the specified destination is abroad, to the German border. The foregoing assumption of shipping costs does not apply, however, to any extra costs caused by a request for express, urgent or time-definite shipping or to the costs of any requested transport insurance. These are charged to the purchaser, as are any extra packaging costs at variance from standard packaging.

3. Any excise duties, levies, taxes and other public dues are likewise borne by the purchaser.

#### § 5 Payment terms

1. The purchase price is due for payment within 30 days of the issue of the invoice, but not before delivery/formal acceptance of the goods. For first-time purchases, or where the purchaser has its registered office abroad, or where the order is for products modified in accordance with the purchaser's instructions, ASTRO is entitled to demand a down payment of 50% of the purchase price if the contract is for a delivery value in excess of €1000. This does not affect ASTRO's legal rights to make delivery conditional upon payment in advance. Down payments are due and payable within 14 days from issue of the invoice. ASTRO has no obligation to make delivery before receipt of a justly requested down payment.

2. Unless otherwise agreed, the purchaser is entitled to deduct a discount of 3% from the purchase price if it pays cash on delivery, pays in advance or pays within 14 days.

3. The purchaser is deemed to be in arrears upon expiry of the above payment periods. When the purchaser is in arrears, interest is levied on the purchase price at the current statutory interest rate for arrears. ASTRO reserves the right to claim damages for any further losses incurred as a result of arrears.

4. The purchaser only has the right to offset or withhold payment if its claim has been established with legal certainty or acknowledged by ASTRO. § 9 para. 4 applies notwithstanding any defects in the delivery.

5. Where it becomes apparent after a contract is made that ASTRO's claim to payment of the purchase price is imperilled by the purchaser's inability to pay (e.g. due to an application for insolvency), ASTRO is entitled to rescind the contract, where applicable after the expiry of a specified deadline, in accordance with the statutory provisions regarding non-performance. Where the contract is for the manufacture of unique items (custom products), ASTRO may rescind the contract immediately. This does not affect the statutory provisions about dispensing with the setting of a deadline.

#### § 6 Transfer of risks / Formal acceptance / Non-acceptance of performance

1. The risk of accidental destruction or accidental deterioration of the goods passes to the purchaser at the latest upon handover. In the event of a sale with carriage (§ 3 Abs. 1), however, the risk of accidental destruction or accidental deterioration of the goods and the risk of delay passes upon surrender of the goods to the carrier, forwarding agent or other person or body appointed to expedite the shipment. If it is agreed that there shall be a formal acceptance, said formal acceptance shall be decisive for the transfer of risk. In the event that formal acceptance is agreed, the relevant statutory provisions also apply accordingly. Where the purchaser declines to accept performance, this shall be regarded as equivalent to handover/formal acceptance.

2. Where the purchaser declines to accept performance or omits an act of cooperation, or where delivery by ASTRO is delayed for other reasons for which the purchaser is liable, ASTRO is entitled to demand compensation for the resulting loss, including any extra expenses incurred (e.g. storage costs). ASTRO shall charge a flat indemnity for such a loss of 0.5% of the order value per calendar day, starting from the delivery date or, in the absence of a delivery date, upon notification that the goods are ready for despatch. This shall not prevent ASTRO from proving a greater loss or from making any other claims under law, including the reimbursement of extra expenses incurred, reasonable compensation or termination. However, any further monetary claims shall be reduced by the amount of the flat charge. The buyer shall nevertheless be entitled to demonstrate that ASTRO has only suffered a materially smaller loss or no loss at all. The overall flat charge may not exceed the loss that is to be expected in the ordinary course of things.

#### § 7 Reservation of title

1. ASTRO reserves title to the sold goods until such time as all present and future receivables arising from the contract and from an ongoing business relationship ("secured receivables") are paid in full.

2. Goods subject to reservation of title may neither be pledged to third parties nor assigned as security until the secured receivables have been paid in full. The purchaser must inform ASTRO promptly in writing if and to what extent third parties have obtained access to goods belonging to ASTRO.

3. If the purchaser breaches the contract, for example by failing to pay the sale price when due, ASTRO is entitled to rescind the contract in accordance with the statutory provisions and/or demand the return of the goods on grounds of reservation of title. Demand by ASTRO for restitution of the goods shall not, however, imply a simultaneous declaration of rescission. Rather, ASTRO is entitled to reserve the right of rescission and merely demand the return of the goods. If the purchaser fails to pay the sale price when due, ASTRO may only exercise these rights if it has previously and without success set the purchaser a reasonable deadline for

payment, or if such setting of a deadline may be dispensed with under the statutory provisions.

4. The purchaser may in the ordinary course of business dispose of and/or process goods subject to reservation of title, in which case the provisions of subparagraphs (a) to (d) below shall also apply.

(a) Reservation of ownership shall also extend to the full value of products created through processing, mixing or combining ASTRO's goods, ASTRO being deemed to be the manufacturer. Where goods are processed, mixed or combined with goods of third parties whose rights of ownership remain intact, ASTRO shall acquire joint title in proportion to the invoice values of the processed, mixed or combined goods. In all other respects, the same shall apply to the product thus created as applies to goods delivered by us under reservation of title.

(b) The purchaser hereby assigns any receivables from third parties arising from the resale of the goods or product to ASTRO as security, in full or in the amount of its share of joint title within the meaning of § 7 para. 4 subpara. a; ASTRO accepts this assignment. The duties of the purchaser set out in § 7 para. 2 shall apply accordingly.

(c) The purchaser shall remain entitled, alongside ASTRO, to collect the receivable. ASTRO undertakes not to collect the receivable for as long as the purchaser complies with its payment obligations towards ASTRO and does not fall into arrears, provided that no application for insolvency is made and there is no other deficiency in the purchaser's ability to pay. Should any of these conditions not be met, however, ASTRO may immediately demand that the purchaser disclose the assigned receivables and their debtors (third parties), provide all details required for collection, hand over the associated documents and inform the debtors (third parties) of the assignment.

(d) Where the realisable value of the security exceeds ASTRO's receivables by more than 10%, ASTRO shall, upon demand by the purchaser, release security, proportionately where appropriate, in the amount of the excess.

#### § 8 Packaging / Regulation for the Prevention of Packaging Waste

In accordance with the Packaging Regulation [*Verpackungsordnung*, VO] applicable in Germany, ASTRO makes deliveries in environmentally friendly packaging bearing the RESY mark or Interseroh logo. ASTRO packaging may be returned in Germany provided that the returner delivers it palleted and pre-sorted into wood, plastic, polystyrene and cardboard. The costs of returning packaging are borne by the purchaser. ASTRO shall not reimburse costs if packaging is disposed of locally by the purchaser.

#### § 9 Warranty

1. Unless otherwise stipulated below, the statutory provisions apply with regard to the buyer's rights in the event of material or legal defects (including incorrect delivery, incomplete delivery, improper assembly or defective assembly instructions). The special statutory provisions governing the final supply of goods to a consumer (recourse to suppliers as per §§ 478, 479 Civil Code) remain unaffected in all cases.

2. Items supplied by ASTRO should be carefully inspected promptly after delivery to the purchaser or to the third party nominated by the purchaser. They shall be deemed to be approved if no written complaint of a defect reaches ASTRO in the manner stipulated in § 1 para. 4 within seven working days of delivery of the items in the case of obvious defects or other defects that would be identified via a prompt careful examination, or else within seven working days of discovery of a defect, or within seven working days of any earlier time at which the defect becomes apparent to the customer during normal use of the item without closer inspection. If the buyer fails to conduct a proper inspection and/or make a proper complaint of a defect, ASTRO shall be excused from liability for the non-notified defect.
3. If the item supplied is defective, ASTRO shall first be entitled to choose whether to render supplementary performance by remedying the defect (rectification) or by supplying a non-defective item (redelivery). This shall not affect ASTRO's right to refuse the chosen form of supplementary performance where the statutory conditions for so doing are met.
4. ASTRO shall be entitled to make any supplementary performance due dependent on payment by the purchaser of the sale price due. At the same time, however, the purchaser shall be entitled to withhold a portion of the sale price appropriate to the defect.
5. The purchaser shall grant ASTRO the necessary time and opportunity to render any supplementary performance due, and shall in particular release the rejected goods for testing purposes. In the event of redelivery, the purchaser shall return the defective item to ASTRO in accordance with the statutory provisions.
6. ASTRO shall bear any expenses required for the purpose of testing and supplementary performance, including transport, haulage, labour and materials costs, provided that there is in fact a defect. However, should a demand by the purchaser for the remediation of a defect prove unjustified, ASTRO may demand compensation from the purchaser for the resultant costs.
7. In urgent cases, e.g. where operational safety is at risk or to prevent disproportionate losses, the purchaser has the right to rectify the defect itself and demand compensation from ASTRO for the objectively necessary expense of so doing. ASTRO should be informed promptly, where possible in advance, of any such unilateral action. The right to unilateral action shall not exist if ASTRO would have been entitled under the statutory provisions to refuse corresponding supplementary performance.
8. In the event that supplementary performance fails or a reasonable deadline set by the buyer for supplementary performance has lapsed or is not required under the statutory provisions, the purchaser may rescind the sale contract or reduce the sale price. No right of rescission exists, however, in the case of insubstantial defects.
9. Warranty lapses if the purchaser alters or allows third parties to alter the item supplied without ASTRO's consent and remediation of the defect is thereby rendered impossible or made unreasonably difficult. Any additional costs of remedying a defect that arise due to the alteration shall be borne by the purchaser in all cases.
10. Claims on the part of the purchaser to compensation for losses and/or wasted expenditure shall exist in accordance with § 10 only and are otherwise excluded.

## § 10 Other liability

1. ASTRO shall be liable in the event of a breach of contractual and non-contractual duties under the relevant statutory provisions, unless otherwise stipulated in these Terms & Conditions, including the provisions below.

2. In cases of intent and gross negligence, ASTRO's liability for damages – irrespective of the legal grounds – in accordance with the statutory provisions shall be unlimited.

3. In cases of simple negligence, ASTRO shall only be liable

a) for losses caused by harm to life, body or health,

b) for losses caused by breach of a material contractual duty, that is, a duty whose fulfilment is essential to the proper performance of the contract and on compliance with which the other party to the contract may rely and regularly does rely. In such cases, ASTRO's liability shall, however, be limited to compensation for the typically occurring loss foreseeable at the time the contract was made.

4. The limitations on liability in paragraphs 2 and 3 above do not apply where ASTRO has fraudulently concealed a defect or given a guarantee for the quality of the goods. The same applies in respect of claims of the purchaser under the Product Liability Act [Produkthaftungsgesetz].

5. The purchaser may only rescind or terminate the contract on grounds of a breach of duty that does not consist in a defect if ASTRO can be held liable for the said breach of duty. An unrestricted right of termination on the part of the purchaser, including under §§ 651, 649 Civil Code, is hereby excluded. In all other cases, the statutory provisions and legal consequences apply.

#### § 11 Statute of limitations

1. Claims arising from material or legal defects shall lapse - notwithstanding § 438 para. 1 no. 3 Civil Code - one year after delivery of the goods. If formal acceptance of the goods is agreed upon, the limitation period commences upon formal acceptance.

2. However, if the goods are a building or an item which has been used for a building in accordance with its customary use and has caused the said building to be defective (building material), then the limitation period is five years from delivery, in accordance with the statutory rule (§ 438 para. 1 no. 2 Civil Code).

3. The limitation period set out in para. 1 above does not affect the special statutory rules for third-party claims for restitution of property (§ 438 para. 1 no. 1 Civil Code), fraud committed by the seller (§ 438 para. 3 Civil Code) and recourse claims against suppliers in cases of final supply to a consumer (§ 479 Civil Code).

4. The limitation periods under sales law also apply to contractual and non-contractual claims for damages on the part of the buyer that are founded on a defect in the goods, except where application of the regular statutory limitation period (§§ 195, 199 Civil Code) would lead to a shorter limitation period in the particular case. Limitation periods under the Product Liability Act remain unaffected in all cases. Except as stated in the foregoing, claims for damages on the part of the buyer in accordance with § 10 are governed exclusively by the statutory provisions for limitation periods.

## § 12 Assembly

1. The purchaser bears the costs of any assembly to be performed by ASTRO under the contract.
2. The purchaser is obliged to complete any preliminary work required for the assembly, in particular construction work or other work of a nature foreign to the industry, in advance of the assembly work that is to be performed by ASTRO. The purchaser shall also provide all labour, tools and materials required for the preliminary work, including water and power, at the assembly site.
3. The purchaser shall ensure that hygiene facilities are provided for ASTRO's assembly staff and take the requisite measures to ensure the safety of ASTRO's staff, tools and equipment. This obligation applies to the extent that the purchaser has taken such measures for its own staff, but not, however, to any lesser extent than it would be obliged to take measures in accordance with its legal obligations.
4. The purchaser shall pass details of the status of power or other supply lines required for proper and timely assembly, along with necessary locational details, to ASTRO a reasonable time in advance.
5. Where assembly or commissioning is delayed due to circumstances for which ASTRO cannot be held liable, the purchaser is obliged to reimburse any additional travel, labour and accommodation costs in relation to the staff deployed by ASTRO, whether they be ASTRO's own staff or third-party staff. ASTRO shall have an obligation to mitigate losses within the meaning of § 254 Civil Code.

## § 13 Applicable law and place of jurisdiction

1. These Terms & Conditions and all legal relations between ASTRO and the purchaser shall be governed by the law of the Federal Republic of Germany as it would apply between persons within the country, to the exclusion in particular of the United Nations Convention on the International Sale of Goods (CISG).
2. Where the purchaser is a merchant as per the Commercial Code [*Handelsgesetzbuch*], a legal entity under public law or a government agency under public law, or has no general place of jurisdiction within Germany, the Cologne Regional Court shall have exclusive competence for all and any disputes arising from the legal relationship between ASTRO and the purchaser. This does not apply where the law provides for other exclusive places of jurisdiction or the dispute concerns claims unrelated to the law of property that are assigned to the District Courts irrespective of the value in dispute. ASTRO shall also be entitled, at its own discretion, to bring suit against the purchaser at the purchaser's general place of jurisdiction.

## § 14 Miscellaneous

Exports of ASTRO's products are only permitted with our prior written consent. ASTRO supplies in accordance with a quality and safety system certified under DIN ISO 9001, corresponding to EN 29001.

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