

General Terms and Conditions of Tomorrow's Motion GmbH (hereinafter called „TOMO“)

1. Scope of application

(1) The terms and conditions set out below shall form part of the agreement concluded with TOMO. TOMO's general terms and conditions shall apply in accordance with the most recent version and to all subsequent contracts without any need of express reference thereto or agreement thereon at the conclusion of such contract. TOMO hereby objects to any counter confirmation, counter offer or other reference by the Customer to its general terms and conditions, any dissenting terms and conditions of the Customer shall only apply if TOMO has confirmed the same in writing.

(2) The Customer may not assign any claims arising from transactions with TOMO without TOMO's written approval. For the purpose of clarification it is expressly stated that TOMO accepting orders and carrying out deliveries may not be interpreted as consent to exclusivity in any way.

2. Offers and Orders

(1) Offers by TOMO are always non-binding, in particular regarding amount, price and date of delivery. Orders by the Customer are considered accepted only after TOMO confirmed them in written form. If TOMO does not confirm a contract concluded verbally or by telephone, the invoice submitted by TOMO is to be considered as confirmation. Scheduled delivery dates and cost-estimations are non-binding. Travel expenses will be reimbursed at the amount incurred.

(2) All prices are quoted before VAT valid at the delivery date. If, as a result of a change of law between the agreement date and the delivery date, additional or increased charges arise – in particular customs duties, levy, currency adjustments – or if exchange rates concerning required supplier purchases are adversely modified, TOMO is entitled to increase the purchase price agreed on accordingly. The same holds for examination fees.

(3) TOMO reserves the right to (a) refuse orders without justification at any time, (b) accept orders only to the extent which is common for the size of orders placed by companies comparable to the size of the Customer and/or (c) to terminate any existing framework agreement without justification at any time. If the Customer cancels an order already placed, the Customer has to pay all expenses and costs already incurred, including costs for supply goods, (half-finished) products or costs for travel cancellation and similar to TOMO.

(4) TOMO reserves all rights of property and the copyrighted rights of use in cost estimates, drawings and other documents. These documents may only be made available to third parties after prior consent of TOMO and have to be given back immediately on request if the order is not placed.

3. Shipment; Delivery

(1) If the goods shall be shipped on the Customer's request, the shipment will be "ex works" and the shipment is not insured and at the Customer's risk in any case. This also holds for freight-paid delivery and independent of the choice of means of transport. If the Customer requires any Transport insurance, this will be provided at the expense of the Customer. Any costs arising have to be borne by the Customer. The place of dispatch and forwarding route as well as means of transport will be selected by TOMO to the best of its knowledge and without responsibility for the cheapest and fastest transport, unless there is a deviating written agreement.

(2) If the Customer provides the means of transport, he is responsible for the punctual provision of the same. TOMO shall be informed in time about any delays. Any costs arising have to be borne by the Customer.

(3) TOMO is entitled to appropriate partial deliveries and may bill them. TOMO's delivery obligation is subject to timely and proper self-supply. Stated delivery times are always non-binding, unless specifically agreed otherwise in writing.

(4) Delivery impediments due to force majeure or because of unforeseeable events that are out of TOMO's control, including, among others, operational disruptions, strike, lockout, Government ordinances, subsequently effected cessation of export or import possibilities as well as TOMO's reservation in relation to self-supply with goods pursuant to the section above, shall, for the duration and extent of their effects, exempt TOMO from the obligation to observe delivery times agreed upon. These aforesaid circumstances shall also justify a prolongation of a delivery period if they affect suppliers. They also entitle TOMO to withdraw from the contract without damage claims or any other claims arising for the Customer.

(5) If the agreed delivery time is exceeded without a delivery impediment occurring as described in the section above, the Customer has to concede TOMO an appropriate extension of at least two weeks. If TOMO shall culpably fail to meet such deadline, then the Customer shall have the right to withdraw from the contract but shall have no right to raise damage claims for non-fulfillment or delay unless in cases of willful misconduct or gross negligence on TOMO's part. Section 6 subsection 2 applies accordingly.

4. Engineering Services

(1) TOMO only owes success for engineering services (e.g. development of solutions, prototypes) ordered if this was explicitly agreed on in the offer.

(2) TOMO will base the provision of engineering services on execution and manufacturing quality of standards usual for scientific and technical performance and common in the experimental field and in a laboratory environment, especially for feasibility studies. TOMO does not accept warranty and does not assure that there are ways of application for goods or solutions developed by TOMO.

5. Duty to Inspection and Objection

(1) Upon delivery at the destination agreed on or in the case of collection by the Customer upon receipt, the Customer shall immediately check the goods regarding defects and inform TOMO about any objections.

(2) When noticing the defect, the Customer has to adhere to the requirements and deadlines as stated below: (a) the notice has to be made within seven days after the delivery of the goods at the agreed destination or its receipt. If the notice is made about a hidden defect which was not detected in a proper first inspection, the notice has to be made within seven days after the detections, latest by four weeks after the delivery or the receipt of the goods. (b) The detailed notice of defect has to be sent to TOMO within the deadline stated above in written or Email or via fax. A notice via telephone is not sufficient. (c) The notice has to clearly indicate the type and scope of the defect stated. The Customer is obliged to provide the objected goods at the place of delivery for inspection by TOMO, TOMO's suppliers or experts commissioned by TOMO.

(3) Any goods not objected to in due form and time will be considered as not objected to and accepted.

6. Warranty/Limitations of Liability

(1) If the Customer brings objectively justified objections forward in due form and time, he is entitled to demand a purchase price reduction, however, subject to TOMO's right to take the objected goods back instead. Defect rights expire within 12 months.

(2) Customer's claims for damages or for compensation of expenses are excluded, regardless of the legal reason, in particular claims due to violations of duties and tortious acts. This exclusion does not hold in the cases of mandatory liability e.g. under the Product Liability Act, in case of intent of gross negligence, damage to life, body or health or breach of fundamental contractual obligations. The claims for damages or compensation of expenses due to breach of fundamental contractual obligations are limited to the typical predictable damage, unless in cases of intent of gross negligence or liability in case of damage to life, body or health.

7. Payment

(1) Payment claims by TOMO are due for payment without deductions immediately after receipt of invoice, unless a different payment date has been agreed on in written form. TOMO is not obliged to accept checks and bills of exchange. These shall be accepted only for the sake of fulfilment with the amount of the actual possibility of disposal. Any costs arising from the acceptance of checks and bills of exchange, especially discount charges and interest will be borne by the Customer.

(2) If the invoice amount is not paid within 10 calendar days after the invoice date at the latest or at the different payment date, TOMO is entitled to raise delay interest in the amount incurred, at least, however, at an interest rate of 5% above the base interest rate of the European Central Bank without a special notice being required. If TOMO can prove that there is a higher damage caused by delay, TOMO is entitled to raise this claim.

(3) The Customer is only entitled to set-off, withholding or reduction if the raised counter-claims have been stated as legally binding or explicitly acknowledged by TOMO.

(4) TOMO reserves the right to payment conditions or to stop the fulfillment of any agreement with the Customer, if this is deemed necessary due to the financial situation or the financial record of the Customer.

8. Retention of Title

(1) TOMO shall retain full title of the goods that have been delivered until the Customer has discharged all claims arising from the business relationship. The Customer shall have the right to dispose of the goods delivered by TOMO in the ordinary course of business. If goods are disposed of that have not been paid yet, the Customer assigns the claims against any third party to TOMO. TOMO is entitled to make the assignment known in public. The Customer has to immediately provide TOMO with all information and documents which are required to pursue the claims and he has to adhere to any formal requirements for a valid assignment of the claims. The Customer is entitled to collect receivables by reselling the goods. TOMO reserves the right to cancel the authority stated above by written declaration at any time.

(2) The Customer may neither pawn nor assign by way of security unpaid goods of TOMO. He is obliged to inform third parties about the right of property by TOMO at his own expense and to immediately inform TOMO in written form about the fact that third parties raise claims to the goods and/or enforcement proceedings have been started.

(3) The Customer's right to process the goods is subject to the restrictions of section 1 above. By processing the goods, the Customer does not acquire ownership in the full or partially processed goods; the processing is made without charge for TOMO exclusively as the manufacturer in the sense of § 950 BGB German Civil Code. If the right to retention of title by TOMO should expire due to any other circumstances, the Customer and TOMO hereby agree that the ownership in the goods is assigned to TOMO, TOMO accepts the assignment and the Customer shall remain mere depositary of the goods and free of charge. If the goods being delivered under retention of title shall be inseparably assembled or mixed with other goods being under property of other parties, TOMO acquires title in the newly assembled or mixed goods. The proportion of title shall follow the proportion of the invoice value of the goods delivered under retention in ratio to the invoice value of the remaining goods.

(4) As long as claims by TOMO are covered with more than 125% without any doubt by the assignments and/or retentions, the surplus of the outstanding accounts and/or the goods under retention of title will be released on request of the customer according to TOMO's choice.

9. Data Protection, Data Storage, Advertising

TOMO saves and processes the personal data received in the context of business relationships with the Customer in accordance with the legal provisions. Subject to revocation at any time, the Customer agrees that his personal data may be used by TOMO for the purpose of advertising products and services by TOMO until the end of his contract.

10. Intellectual Property Rights and Copyrights

(1) To the extent that intellectual property of TOMO has become part of the goods, TOMO grants a single, non-exclusive, non-transferable user's license limited to the usage of the assigned goods. Other rights in the intellectual property of TOMO are not granted.

(2) The Customer is not entitled to copy or reproduce the goods without prior written consent by TOMO.

(3) TOMO does not accept warranties or assurance that the solution or the goods presented to the Customer are free from third-party rights, in particular regarding potential patent rights.

11. Confidentiality

The Customer shall maintain secrecy regarding technical, financial or business information or general information regarding TOMO. The Customer will protect this information from any improper, unauthorized or accidental disclosure to any third parties.

12. Miscellaneous

(1) This Agreement and the business relationship between the Customer and TOMO shall be governed by and construed in accordance with German law with exclusion of private international law. The UN Convention on the International Sale of Goods shall not apply. Place of fulfillment and sole court of jurisdiction for all disputes arising from this contract is TOMO's place of business. TOMO is, however, also entitled to bring legal action at the Customer's place of business.

(2) Any amendment of these contractual clauses may be made in written form only. A waiver of the written form also may only be made in written form.

(3) The possible invalidity of individual clauses in this contract shall have no effect on the legality of the remaining clauses. Invalid clauses shall be deemed replaced with clauses that continue to fulfill, as far as possible, the intended economic purpose of the agreement.