



# General Conditions of Sale and Delivery sotec GmbH

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## 1. GENERAL

**1.1** These General Conditions of Sales and Delivery exclusively shall be applicable to the entire business relationship between sotec GmbH and the purchaser, including all and any future purchase offers, contracts, supplies and other performances. They shall be applicable to all and any future business relationships, even if not expressly agreed again. These conditions shall be deemed accepted on the placement of the purchase order or on receiving the goods at the latest. Other purchase conditions or other general terms and conditions of our customers are hereby objected. sotec GmbH shall be entitled to amend its General Conditions of Sale and Delivery with effect on the entire future business relationship with the purchaser, upon respective notification.

**1.2** If a master agreement exists between the purchaser and sotec, then these General Conditions of Sale and Delivery shall be applicable both to this master agreement and to the individual purchase order.

## 2. CONCLUSION OF CONTRACT, DOCUMENTS, PROTECTIVE RIGHTS

**2.1** The purchase offers made by sotec GmbH are subject to confirmation and unbinding. The documents belonging to the purchase offer such as images, drawings, weights and measurements shall only be approximate values unless expressly declared as being binding. If sotec GmbH provides any estimates, drafts, drawings or technical documents on the technical article of sale to purchaser, then these shall remain the property of sotec GmbH.

**2.2** Purchase orders of purchaser shall be binding on the purchaser. If sotec GmbH does not confirm otherwise in writing, the delivery note or invoice shall be deemed the order confirmation.

**2.3** If the purchaser is a merchant, the written confirmation by sotec GmbH only shall exclusively be decisive for the contents of purchase orders and agreements, unless the purchaser promptly contradicts in writing. This shall notably be applicable to oral purchase orders or agreements, or purchase orders or agreements on the phone. In any case, a message to sotec GmbH shall be deemed not being prompt if it is not received within seven days.

**2.4** Any drawings and other documents provided by sotec GmbH together with the purchase offer shall be returned on request or in any case when and if the purchase order is not placed with us. The purchaser shall accept liability for no third-party protective rights being infringed after the delivery of drawings, models, samples or other documents, articles. If any third parties, by invoking protective rights, prohibit notably the manufacture and delivery of such articles, we, without being obligated to review the legal position, shall be entitled to discontinue any further activity and claim damages. The purchaser in addition undertakes to exempt us promptly from any third-party claims in connection with the documents provided by the purchaser.

## 3. BOUGHT-IN PARTS

The supply agreement shall be subject to correct and timely delivery of bought-in parts by our suppliers. We shall therefore be entitled to rescind the contract if our suppliers let us down in spite of a congruent hedging transaction concluded so that the supply is not available for a longer period of time or not at all. Any claims for damages or any other claims of the purchaser for this reason shall be excluded.

## 4. SPECIFICATION

**4.1** The properties and condition of the article of sale and the performance will finally be described by expressly agreed performance features (e.g. specifications, labeling, release, and other data). Warranty as to a certain purpose of use or certain suitability shall only be accepted if expressly agreed in writing. As for the rest, the risk of suitability and use shall remain exclusively with the customer. No other than the expressly agreed characteristics or other properties of the supplies and performances shall be owed.



**4.2** The data regarding the article of sale and the performance (e.g. catalogues, product information, electronic media or on labels) are based on our general experience and knowledge and only indicative values or identifications. These product data and the expressly agreed features / purposes of use do not release the customer from testing the suitability of the product for the intended use.

**4.3** If on the delivery of used articles, drawings, plans or instructions are delivered, this shall only be deemed a favor and absolutely not binding on sotec GmbH. We cannot accept any responsibility or other liability for such documents. Our data on weights and measurements, e.g. for the purpose of making foundations for machinery, shall be unbinding, too. It is alone the task of the purchaser to review the correctness of the data.

## **5. DELIVERY DATE, SCOPE OF DELIVERY, DELAYED DELIVERY**

**5.1** Delivery dates and deadlines shall only be deemed indicatively agreed unless sotec GmbH makes an expressly binding written promise. Delivery dates shall be extended accordingly if the details of the purchase order are not clarified by the purchaser on good time or if the input of the purchaser is not rendered on good time. Delivery dates shall be deemed complied with on notification of readiness for dispatch.

**5.2** sotec GmbH shall be entitled to make partial deliveries if these do not go below the reasonable minimum.

**5.3** Delivery dates shall be valid subject to correct and timely supply of bought-in parts.

**5.4** The delivery period shall be extended accordingly if performance details are not clarified and the purchaser's input is not rendered on good time.

**5.5** The delivery period shall be deemed complied with if by its end the delivery to the purchaser has started or the purchaser has been notified on the readiness for dispatch or collection if there is the option to dispatch or collect.

**5.6** Purchaser has to review and sign the delivery note. sotec GmbH shall be immediately notified in writing on any objections. Otherwise, the delivered quantity signed shall be deemed acknowledged.

**5.7** On any delays in delivery caused by disruptions in operations, interventions by authorities, non-delivery of bought-in parts to sotec GmbH or by force majeure, the delivery period shall be extended reasonably. Industrial conflicts including strike and legal lock-outs at the suppliers of sotec GmbH shall also be deemed force majeure. Any claims for damages of Purchaser in such cases shall be excluded within the limits of Par. 8 (General Limitation of Liability).

**5.8** The return of sold goods that are free from defects shall be excluded as a matter of principle.

**5.9** sotec GmbH may immediately stop the delivery and refuse the fulfillment of the current contract if an application to open insolvency proceedings is filed, oath of disclosure pursuant to Section 807 ZPO (Code on Civil Procedure) is made, payment problems occur or a significant worsening of the Purchaser's financial circumstances become known unless the customer has affected the consideration or given a reasonable security on our request.

**5.10** If a loss incurs for the purchaser by a delay in delivery caused by sotec GmbH, the purchaser, by exclusion of any further claims for damages, may demand 0.5 % for each week of the delay, but maximum 3 % of the value of the concerned part of the total delivery. In case of delay in delivery, the purchaser, upon setting a reasonable additional period (that has to be 4 weeks minimum) and with the express statement that the purchaser will refuse acceptance of the performance upon expiry of that period, shall be entitled to rescind the contract if the performance is not rendered within that additional period. Any further claims for delay of delivery, notably claims for damages, shall be excluded pursuant to the provisions of Par. X (General Limitation of Liability).

**5.11** If agreed, we shall send the article of sale to the place of destination agreed, with means and way of transportation remaining at our discretion. This shall not be deemed a change of the place of performance.

**5.12** The purchaser shall bear the cost of the transport.

**5.13** If the purchaser expressly requests, transport insurance cover will be taken out with cost to be borne by the purchaser.

## **6. SUPPLIER PROTECTION IN CONNECTION WITH USED MACHINES**

**6.1** Our statements on the whereabouts of the machines and those interested in selling are only for the recipient and must not be passed on to third parties without our written approval.

**6.2** If we identify an article for sale to the purchaser or prospective purchaser, the purchaser undertakes not to negotiate with the owner or those entitled to sell directly or indirectly on the objects to be sold, without our special written approval, neither the purchaser itself nor via third parties, but exclusively by us or with us.



**6.3** In each and any case of violation of the above obligation, we shall be entitled to demand from the purchaser the payment of a contractual penalty at 10 % of the value of the relevant article of sale, but maximum 50 %. The defense of continued coherence shall be excluded. We retain the right to claim further losses.

## **7. PRICES, PAYMENT CONDITIONS**

**7.1** Our prices are stated in EURO ex works. The prices do not include any Value Added Tax, freight, customs duty, postage fees, packing & packaging, insurance cover and other expenses. The prices valid on the date of delivery shall be applicable for the calculation of new and used machines.

**7.2** Unless otherwise agreed, our invoices shall fall due for payment immediately prior to the delivery of the article, fully, without deductions.

**7.3** We shall be entitled to adjust the prices accordingly on changed cost of raw materials, wages & salaries, energy and other cost. On partial deliveries, each and any delivery may be invoiced separately. If on conclusion of the contract no prices are agreed, then our prices valid on the date of delivery shall be applicable.

**7.4** The day on which the payment is received at ours or in our bank account shall be deemed the date of payment received. If the customer is in delay with payments, the seller shall be entitled to claim default interest at 10% points above the prime lending rate. Any claim for a concrete loss resulting from delayed payment shall remain reserved.

**7.5** We shall not be obligated to accept bills of exchange, checks of other promises to pay, but if we do so, this is subject to coverage.

**7.6** sotec GmbH will not pay interest on pre-payments and down-payments.

**7.7** Customer shall only be entitled to offset if the customer's counterclaims are res judicata, undisputed, or acknowledged by sotec GmbH.

## **8. TRANSFER OF RISK; ACCEPTANCE**

**8.1** The risk shall pass to the purchaser on the start of loading or dispatching the article of sale, even if partial deliveries are made or sotec GmbH takes on other performances as well, e.g. cost of dispatch or delivery and erection and/or commissioning. If the article of sale has to be accepted, acceptance shall be decisive for the transfer of risk. The acceptance shall be performed promptly on the date of acceptance, in the alternative upon notification of readiness for acceptance by the supplier, and the purchaser must not refuse acceptance if only an insignificant defect is present.

**8.2** If the dispatch or acceptance respectively is delayed for reasons sotec GmbH is not responsible for, then the risk shall pass to the purchaser on the date of the notification of readiness for dispatch or acceptance.

## **9. WARRANTY, COMPLAINT OF DEFECT**

**9.1** sotec GmbH shall be liable for defects in the supply as follows, by exclusion of any further claims:

**9.1.1** The warranty periods for new products for private use (Purchase of Consumer Goods, section 474 BGB (Civil Code), 24 months from the transfer of risk; 12 month with commercial and/or professional use.

**9.1.2** For used product, the warranty period from the transfer of risk with private use (Purchase of Consumer Goods, section 474 BGB (Civil Code) shall be 12 months; warranty shall be excluded with commercial and/or professional use. Used machines shall be delivered together with their accessories still existing and in the condition they are on conclusion of the contract. Any liability for open or hidden defects shall be excluded even if the machine had not been inspected by the purchaser unless sotec GmbH has not disclosed known defects to the purchaser in a willful or grossly negligent way.

**9.2** The provisions of par. 1 shall not be applicable to warranted features or culpable violation of duties significant for the contract. Such claims of Purchaser, as well as claims for damages other than damage to the article of sale itself shall be excluded pursuant to the provisions of par. VII (General Limitation of Liability), to the legally allowed extent. If in the scope of warranty rework or subsequent delivery is done, this shall not trigger off the warranty period to restart.

**9.3** Features shall only be deemed warranted if they are expressly stated to be such in the contract. Oral statements and statements in the documents of sotec GmbH do not contain any warranties. Specimen, samples, measures, DIN provisions, specification and other data on the properties of the article of sale shall serve the specification only and not be warranted features. To the extent to which the materials to be used by sotec GmbH are specified in the contract, this shall warrant compliance with the specification only und not the suitability of the materials for the contractual purpose. sotec GmbH shall only be obligated to inform if obviously unsuitable.



**9.4** Damage that incurred due to exterior influence, improper erection or treatment, defective handling or maintenance, corrosion or usual wear & tear shall be excluded from warranty. The warranty, in the latter case, shall notably not extend to wear & tear of wear parts. Any rotating parts, drive parts and tools shall be deemed wear parts. When selling a machine, these warranty provisions shall be based on the one-shift use.

**9.5** Purchaser shall be obligated to inspect the good supplied immediately on receipt, with cost to be borne by the purchaser, and notify sotec GmbH immediately in writing on any defects, wrong deliveries, obviously not acceptable wrong deliveries and short quantities. A preclusion period of seven days from receipt of the delivery shall be applicable for the notification. sotec GmbH shall be notified immediately upon discovery of any hidden defects. In addition, the sections 377, 378 HGB (Commercial Code) shall remain unaffected with business among merchants.

**9.6** Possible quality defects of a partial delivery shall not entitle to reject the rest of the contracted quantity unless the purchaser can prove that an acceptance of only a part of the delivery is unreasonable for the purchaser by considering the circumstances.

**9.7** If the purchaser identifies a defect, the purchaser shall not make any changes to the article of sale, process or pass it on to third parties, but shall grant sotec GmbH sufficient opportunity and time to convince itself of the defect and if applicable make the necessary subsequent performance (rework or substitute delivery), because the claims for defects would otherwise not be applicable any longer. Only in urgent cases of putting the operational safety at risk or to avoid unreasonable high damage, with sotec GmbH to be notified immediately, shall the purchaser be entitled to remove the defect or have the defect removed by third parties and claim compensation of the required expenditure from sotec GmbH. Independent of the presence of a defect, warranty claims shall also be forfeited if the purchaser or any third party perform changes or maintenance work without approval of sotec GmbH.

**9.8** The seller shall be notified on any transport damage immediately. The required formalities shall be arranged by the purchaser and the carrier, notably all and any required appraisals to safeguard the rights of recovery against third parties. To the extent to which usual breakage, loss or similar remain within a reasonable scope, then this cannot be complained of.

**9.9** On justified complaints, it shall be in the discretion of sotec GmbH to rework defective goods or to replace them. Multiple rework shall be allowed.

**9.10** In the case of a removal of defects, sotec GmbH shall be obligated to bear any expenses required for the removal of defects, notably transport, travel, labor, and materials costs as far as these are not increased by taking the good to another place than the place of performance.

**9.11** If sotec GmbH fails to meet the reasonable additional period for subsequent fulfillment in the sense of section 439 BGB (Civil Code) without having removed the defect or replaced the good, or if sotec GmbH is not able to rework or deliver a substitute part, rework or delivery of a substitute part fails, or if sotec GmbH refuses to perform for any other reason, then the purchaser, if the purchaser is not a consumer, by excluding any other claims regarding the article of sale, shall only be entitled to rescind the contract or reduce the purchase price.

**9.12** sotec GmbH shall not be obligated to examine the article of sale for defects.

## **10. GENERAL LIMITATION OF LIABILITY**

**10.1** If the article of sale, by fault of sotec GmbH, due to omitted or faulty advising, cannot be used by the purchaser as per contract, before or after the conclusion of the contract or due to violation of contractual secondary obligation (e.g. operating or service instructions), then the provisions of the paragraphs 7 and 8.2 shall apply accordingly, with any further claims of the purchaser being excluded.

**10.2** sotec GmbH, irrespective of which cause in law, shall only be liable for damage incurred to other than the article of sale  $\frac{3}{4}$  at intent,  $\frac{3}{4}$  at gross negligence by the owner / organs or executives,  $\frac{3}{4}$  at culpable injury to life, body and health,  $\frac{3}{4}$  at defects fraudulently concealed or warranted not to exist,  $\frac{3}{4}$  at defects of the article of sale to the extent to which liability is given pursuant to the Product Liability Law for bodily injury or damage to privately used objects. At culpable violation of significant contractual obligations, sotec GmbH shall also be liable at gross negligence of non-executive employees and at minor negligence, in the latter case limited to the reasonably predictable damage typical for the contract, with any other claims being excluded.

## **11. RETENTION OF TITLE, SECURITIES**

**11.1** sotec GmbH retains the title in the article of sale until having received all and any payments resulting from the supply contract. At behavior of the purchaser contrary to contract, notably delayed payment, as well as on application to open insolvency proceedings, sotec GmbH, upon warning, shall



be entitled to claim the article of sale back, and the purchaser shall be obligated to release it. The purchaser shall notify sotec GmbH immediately and in writing on any attachment or other third-party interventions.

**11.2** sotec GmbH shall be entitled to take out insurance cover for the article of sale, with cost to be borne by the purchaser, against theft, breakage, fire, water and other damage unless the purchaser has proven that the purchaser has taken out such insurance cover.

**11.3** Purchaser shall be entitled to resale the article of sale in the regular course of business. The purchaser, however, as early as now, assigns to sotec GmbH all and any claims resulting from the resale, against the buyer or third parties, irrespective of whether the retained article is resold without or after processing. The purchaser, even after the assignment, shall be entitled to collect such claims. The right of sotec GmbH to collect the claims itself shall remain unaffected thereby, but sotec GmbH undertakes not to collect the claims as long as Purchaser duly complies with Purchaser's obligations to pay. sotec GmbH may demand that the purchaser informs sotec GmbH about the assigned claims and their debtors, provides all and any data required for collection, delivers the pertinent documents and notifies the debtors on the assignment. If the article of sale is resold together with other goods not belonging to sotec GmbH, the claims of Purchaser against the buyer shall be deemed assigned to the amount of the price for the article of sale agreed between sotec GmbH and the purchaser.

**11.4** The processing or reformation of retained articles by the purchaser shall always be made for sotec GmbH. If the retained article is processed or inseparably mixed with objects not belonging to sotec GmbH, then sotec GmbH shall be the co-proprietor in the new article in the ratio of the value of the retained article and the other processed or mixed objects at the time of processing or mixing. If goods of sotec GmbH are connected with other chattels to become a unit or if they are inseparably mixed and the other good has to be regarded as the main good, then it shall be deemed agreed that the purchaser assigns pro-rata co-proprietorship if the main good belongs to the purchaser. The purchaser shall keep the possession or co-possession for sotec GmbH. As for the rest, the same as for the retained article shall be applicable to the objects coming into existence by processing, reformation or connection, as well as mixing.

**11.5** sotec GmbH, for the payment of the Purchaser's liabilities, shall be entitled to claim reasonable securities. sotec GmbH undertakes to release such securities when their value exceeds the claims to be secured, as far as not yet paid, by more than 20 %.

## **12. OBLIGATION TO COMPLY, IMPOSSIBILITY AND NON-COMPLIANCE**

**12.1** The obligation to deliver and the delivery period of sotec GmbH shall be subject to the due, complete and timely receipt of the bought-in parts to sotec GmbH.

**12.2** The purchaser may rescind the contract if the entire performance, prior to the transfer of risk, becomes impossible for sotec GmbH due to a reason sotec GmbH is responsible for. In the case of partial impossibility or partial inability, the above provision shall only be applicable to the relevant part. The purchaser, in such case, however, shall be entitled to rescind the entire contract if the purchaser is able to prove a justified interest in rejecting the partial delivery. Any further claims of the purchaser, notably claims for damages, shall be excluded pursuant to the provisions of Par. 7 and 8.

**12.3** If the impossibility incurs during the acceptance delay or by fault of Purchaser, Purchaser shall remain obligated to pay.

**12.4** Upon rescission of the contract by sotec GmbH or upon having notified about a deadline with warning of rescission, then sotec GmbH shall be entitled to dispose of the good taken back freely.

## **13. OFFENCE AGAINST VAT PROVISIONS**

Losses that incur to us due to the fact that the purchaser does not comply with the VAT provisions (e.g. stating a wrong VAT ID number), shall be compensated by the purchaser.

## **14. PLACE OF PERFORMANCE, PLACE OF JURISDICTION, APPLICABLE LAW**

**14.1** Customer may only assign Customer's claims resulting from the contract with our prior written approval.

**14.2** If not otherwise contractually agreed, the place of payment and supply of goods shall be the legal domicile of sotec GmbH in Kehl.



**14.3** If Purchaser is a merchant, a legal person or a special fund under public law, the legal domicile of sotec GmbH shall be the place of jurisdiction for all and any legal disputes, even in the scope of bill or check proceedings; lawsuits against sotec GmbH shall only be made pending there.

**14.4** The law of the Federal Republic of Germany shall exclusively be applicable, by exclusion of the conflict of laws, the uniform international law and by exclusion of the UN Convention of Contracts for the International Sale of Goods (C.I.S.G.) and any other bilateral and multilateral conventions serving the standardization of international sales and purchases.

## **15. LEGAL VALIDITY, DATA PROTECTION**

**15.1** Should any of the provisions of these General Conditions of Sale and Delivery be or become invalid, the validity of the rest of the contract shall not be affected. The legal provision shall be applicable in its lieu. In no case shall the relevant provision in these General Conditions of Sale and Delivery be replaced by the terms and conditions of Purchaser.

**15.2** Any amendments or supplements to the Contract shall require the confirmation by sotec GmbH to be valid; this shall also be applicable to any deviation of the contractual requirement of the written form.

**15.3** Any declarations of intent relevant to the issue, such as terminations, rescissions, demands to reduce the purchase price or claims for damages shall only be valid if made in writing.

**15.4** sotec GmbH shall be entitled to treat and store the data of Purchaser in connection with the business relationship, even if they come from third parties, in the sense of the Federal Code on Data Protection, or to have them treated and stored by third parties.