

## **I. General; scope**

1. These general conditions of supply and sale shall apply to all relationships subject to the law of obligations prior to the signing of the contract, and to all contracts and business relationships between AutoTissue Berlin GmbH (hereinafter referred to as 'AutoTissue') and its customers, in as much as the latter are entrepreneurs, legal entities under public law or separate bodies of public law (hereinafter referred to as 'customers'), the two sides together also being known as 'contractual partners'.

2. In the absence of any other agreement, these general conditions of supply and sale shall also apply to future contracts between the partners, without its being necessary to draw attention to them anew. This shall also apply if, at the time of the first transaction, these conditions do not come to the knowledge of the customer until after conclusion of the contract.

3. These general conditions of supply and sale shall apply exclusively. No conditions of the customer's which contradict or deviate from these conditions shall apply unless AutoTissue has agreed expressly to their applicability. Neither shall AutoTissue accept any conditions other than its own if it sells goods unconditionally to the customer while aware of contradictory or deviating conditions. It shall not be necessary for AutoTissue to object specifically to any other business and supply conditions.

## **II. Negotiation and content of contracts; written form; quotation documents**

1. Quotations issued by AutoTissue shall be non-binding and thus freely revocable until receipt of a declaration of acceptance from the customer. As regards the scope and terms of deliveries, it is the written confirmation of the order by AutoTissue which shall be binding, unless the customer objects within two weeks of receiving it. If the contract is concluded by acceptance of the order, the declaration of acceptance by AutoTissue shall require to be made in writing.

2. All product information (e.g. technical data, capacity, description of product characteristics etc.) issued by AutoTissue, as for example in catalogues, advertisements, illustrations and suchlike, shall be approximate and only binding on AutoTissue if this is expressly agreed in the written contract between the partners.

3. AutoTissue reserves all ownership rights and intellectual property rights to illustrations, drawings, calculations and other records. This shall also apply to such written records as are designated as 'confidential'. Before passing on any such records to third parties, the customer shall require the express written approval of AutoTissue.

4. Any legally relevant declarations shall require to be made in writing if they are to have any validity. Written form shall also be deemed to have been observed if such declarations are sent by fax or e-mail.

## **III. Prices and terms of payment; set-off**

1. In the absence of any other agreement, prices shall be 'EXW (Incoterms 2010) Berlin' exclusive of packaging. Statutory value added tax shall not be included therein, but shown separately in the invoice at the statutory rate applicable on the date of invoicing.

2. Unless the parties make any other provision in their written agreement, the purchase price shall fall due for payment in full within 14 days of the invoice date. The statutory consequences shall apply in cases of default in payment.

3. The customer shall only have the right to offset if his counter-claims have been established as legally binding, are undisputed, or have been recognised by AutoTissue. The customer shall only be

empowered to exercise a right of retention if his counter-claim has its origin in the same contractual relationship.

#### **IV. Delivery and delivery date; liability for default**

1. Unless indicated otherwise in the agreement between the parties, delivery shall be 'EXW (Incoterms 2010) Berlin'.
2. If the product is manufactured in accordance with the customer's specification, the agreed lead time shall only be deemed to have begun – or the agreed delivery date only deemed to have been fixed – when all technical and other issues have been resolved, and in particular when all information on the dimensions of the product has been clearly provided.
3. The agreed period in which delivery may be made or agreed delivery date shall be extended by a period appropriate to the circumstances if the customer requests alterations or additions after conclusion of the contract.
4. In the case of delay in delivery, AutoTissue shall be fully liable for damages if the delay has its origin in an intentional or grossly negligent breach of contract for which AutoTissue or its representatives or vicarious agents are responsible. In other cases the liability of AutoTissue for delay in delivery shall be limited to typical foreseeable loss or damage.

#### **V. Default of acceptance; breach of duties to cooperate**

1. If the customer fails to accept the products ordered on the agreed date or considers a delay in acceptance likely, he must inform AutoTissue of the fact without delay stating the cause of the delay and, as far as possible, indicating the point in time at which the products are likely to be accepted. Notwithstanding, the customer shall be under obligation to make payment for the delivery at the agreed point in time. If the due date for payment was connected to the time of delivery, the delivery shall be deemed to have been made.
2. In the case of default of acceptance, AutoTissue shall furthermore undertake to store the products ordered at the customer's expense and risk. The customer is aware of the fact that the products of AutoTissue are perishable. During the period of default of acceptance the liability of AutoTissue shall be limited to intent and gross negligence. The risk of accidental loss or other accidental deterioration of the products ordered shall moreover pass over to the customer. If the customer so requests, AutoTissue must also insure the products ordered at the customer's expense.
3. If the default of acceptance persists for longer than two months, AutoTissue shall have the right to sell or dispose of the products as it sees fit. If the yield from said sale is not sufficient to cover the amount due to AutoTissue (sales price, costs of storage and insurance etc.), the customer shall be under obligation to reimburse the difference. AutoTissue's right to enforce payment of the purchase price and any loss or damage and additional expenses against acceptance of the products shall remain unaffected by this.
4. If the customer is in culpable breach of any other duties to cooperate, AutoTissue shall also have the right to request reimbursement for any loss or damage thus incurred, including any additional expenses. AutoTissue's right to make further claims is nevertheless reserved.

#### **VI. Force majeure**

1. If a case of force majeure arises, the party affected by it shall inform the other party in writing without delay, if possible within 15 days of becoming aware of the event or circumstance himself. In doing so, he shall give a detailed description of the event or circumstance concerned and state which

of his contractual obligations he is unable to fulfil, or only able to fulfil with some delay, as a result of it. The party affected shall not be to blame for said inability or delay.

2. In the case of delays caused by force majeure, cause for exemption shall be deemed to exist for as long as the event or circumstance constitutes an obstruction to the performance of the contractual obligation. If the delay persists for a period of more than six months, each of the parties shall have the right to rescind the contract, without this giving rise to any entitlements in favour of the other party. Obligations to pay remuneration for part performance which has already been carried out shall remain unaffected.

3. Force majeure within the meaning of this contract shall cover all unforeseeable events or circumstances and such as are beyond the control of the contractual partners, and the effects of which on the partners' performance of their contractual obligations cannot be averted by reasonable efforts. These shall include state of war or similar, uprising, rebellion, military or civil coup d'état, revolt, disturbance, riot, blockade, embargo, government order, sabotage, strike, go-slow, lock-out, epidemic, fire, flooding, storm tide, typhoon, hurricane or other storm of disastrous proportions, earthquake, landslide, and lightning strike.

## **VII. Warranty**

1. As a company, AutoTissue processes only unflawed material and makes all efforts to ensure error-free workmanship. As such it guarantees that the products are free of manufacturing and material defects.

2. The customer's warranty rights presuppose that the customer has duly fulfilled the obligations to inspect the goods and notify the supplier of any defects to which he is bound by law.

3. If a defect is found to exist, AutoTissue shall first have the right to choose between repair and delivery of an object which is free of defects (supplementary performance). The decision as to whether a product is to be repaired or not shall be oriented toward AutoTissue's own technical guidelines. If an unsuccessful attempt is made to remedy the situation, the customer shall, at his discretion, have the right to rescind the contract or claim for damages. The sum of the damages to be paid in such a case shall be oriented toward Section VIII of these conditions.

4. Only the customer, as the direct purchaser, shall be entitled to make warranty claims against AutoTissue. Such entitlement is not assignable.

5. The period of limitation for warranty claims shall be one year and shall begin when the product is delivered.

## **VIII. Liability**

1. AutoTissue shall be unrestrictedly liable for intent and gross negligence and for cases of culpable injury to life, limb or health. If there is any culpable breach of material contractual obligations, the liability of AutoTissue shall be restricted to contractually typical foreseeable loss or damage. A material contractual obligation is an obligation without the performance of which the contract cannot properly be fulfilled, and in compliance with which the contractual partner may routinely trust.

2. The provisions of the German Product Liability Act (ProdHaftG) and §§ 444 and 639 of the German Civil Code (BGB) shall remain unaffected by the above provisions.

3. Unless Section VIII 1 or 2 of these general conditions of supply and sale is relevant, there shall be no liability of the kind which makes a distinction as to actual culpability for any cause in law (in particular no liability for ordinarily negligent breaches of non-material contractual obligations or breaches of obligation which occurred prior to the conclusion of the contract).

4. If the liability of AutoTissue is excluded, this shall also apply to the liability of its corporate agents, managerial staff and employees.
5. AutoTissue's contractual partner shall indemnify AutoTissue against third-party claims provided that AutoTissue is not liable to said partner on account of the abovementioned exclusion of liability.

#### **IX. Rescission or notice of termination**

1. AutoTissue shall have the right to rescind the contract or, if there is an ongoing purchase agreement, to give summary notice of termination if
  - a) the contractual partner fails to fulfil his financial obligations within the fixed period in spite of having been set a reasonable extension period, or
  - b) judicial insolvency or composition proceedings are instituted regarding the assets of the contractual partner, or
  - c) products which have been delivered to the customer but are still the property of AutoTissue are seized or claimed by a third party or parties.
2. If a purchase agreement has been concluded between the parties for an indefinite period of time, each of them shall have the right to give ordinary notice of termination of said agreement observing a period of three months to the end of a calendar month.

#### **X. Safeguarding reservation of ownership**

1. All products delivered shall remain the property of AutoTissue until such time as payment has been made in full, in particular also claims for outstanding amounts to which AutoTissue is entitled under the business relationship (hereinafter referred to as 'goods subject to retention of title'). This shall also apply if payments are made on specially designated claims. If the customer falls behind with his payments, AutoTissue shall have the right to demand that the goods supplied be returned. The costs thereof shall be borne by the customer.
2. The acceptance of returned products or, as the case may be, assertion of reservation of ownership shall only represent rescission of the contract if AutoTissue declares this expressly to be the case.
3. The customer may only sell the goods subject to retention of title in the ordinary course of business at his normal business terms and conditions, and provided that he is not in default, if the claims from said sale are transferred to AutoTissue in accordance with Section X 4 and 5 of these general conditions of supply and sale. The customer shall not have the right to dispose of the goods subject to retention of title in any other way.
4. The claims of the customer from the resale of the goods subject to retention of title are now assigned to AutoTissue. They shall serve as security to the same extent as the goods themselves.
5. If the goods subject to retention of title are sold by the customer together with other goods not supplied by AutoTissue, the assignment of the claim from the resale shall in each case only apply in the amount of the invoice value of the goods subject to retention of title sold by AutoTissue. The customer hereby declares that there has been no assignment of these claims in respect of other contractual partners.
6. The customer shall have the right to collect debts from the sale in accordance with Section X 4 of these sales conditions until such right is revoked by AutoTissue. AutoTissue shall have the right of revocation if the customer falls behind with his payments, if he has made an application for the institution of insolvency proceedings regarding his assets, if such application has been made by a third party, or if payment has ceased. In these cases the customer shall be under obligation to make known to AutoTissue without delay the assigned debts and the respective debtors, to provide all information required for their collection, to surrender the relevant documents and records and to inform the debtors of the assignment. The customer shall not under any circumstances be empowered to assign or collect the debts.
7. If the value of the existing securities exceeds that of the collateralised debts in total by more than 10%, AutoTissue shall be under obligation to release securities of its own choice. The customer must inform AutoTissue without delay of any attachment or other encroachment by third parties.

## **XI. Confidentiality, expertise**

1. The parties hereby undertake to maintain secrecy in respect of third parties on all records – this term shall also cover samples, models and data – and knowledge, reports and correspondence in the context of the contract as a whole which they gain, receive or obtain in the context of the business relationship, only to use them for the jointly pursued aims and to treat them with the same degree of diligence as corresponding records and knowledge of their own, if the other party designates them as confidential or has an obvious interest in their being treated confidentially. Furthermore, the customer shall be under obligation not to make use of or exploit business and trade secrets disclosed by AutoTissue, in particular expertise imparted for the purpose of fulfilling the orders, in the context of any work of its own or to bring them to the knowledge of third parties in any way. If the appropriate steps in terms of industrial relations law have not already been taken, the parties shall place under written obligation those of their employees who make a working contribution to this business relationship to maintain secrecy in accordance with this provision, and shall draw their attention to the fact that said obligation will also continue to apply after the termination of their employment relationship. The customer shall moreover also ensure that the customers to whom he delivers (customer's customers) are also placed under obligation to maintain secrecy within the meaning of this provision.

2. The above obligation shall not apply to records or knowledge such as are generally known or such as were already known to the receiving party at the time of receipt though said party was not under obligation to maintain secrecy on them at the time, or which were passed on after that by a third party which had the right to pass them on, or which were developed by the receiving party without recourse to confidential documents, records or knowledge belonging to the other party.

3. The obligations to maintain secrecy in accordance with this provision shall not be affected by the termination of the contract concerned but shall, on the contrary, remain in force.

4. For each culpable breach of the abovementioned obligations the party concerned shall pay a contractual penalty placed at the reasonable discretion of the other party. The party in breach shall be granted the opportunity to prove that the loss or damage did not occur, that it was not as great as it was claimed to be, or that it was not in fact to blame.

5. The contractual partners may only use their business relationship for advertising purposes with the prior written approval of the respective other party.

## **XII. Data storage**

The customer consents to the storage by AutoTissue of those of his data which are relevant to the performance of the contract.

## **XIII. Saving clause, written form**

1. If any of these provisions should be invalid or unenforceable or become so once drawn up, this shall not affect the validity of the remaining provisions. The invalid or unenforceable provision shall be replaced by the valid and enforceable provision whose effects most closely resemble its own in terms of its economic purpose. The above provisions shall apply correspondingly if these general conditions of supply and sale are found to contain an omission or omissions.

2. Any alterations or additions to these general conditions of supply and sale shall require to be agreed expressly and in writing. The same shall apply to any move made to deviate from this clause itself. Individual agreements shall not be affected by this.

## **XIV. Legal domicile and applicable law**

1. Exclusive legal domicile shall be Berlin.
2. The contractual relationship shall be subject to the law of the Federal Republic of Germany, there being expressly no recourse to the UN Convention on Contracts for the International Sale of Goods (CISG).