

GENERAL TERMS AND CONDITIONS

TIM Storage Solutions AG

(Version 22 April 2022)

1. Scope

- 1.1 The deliveries and services of TIM Storage Solutions AG are provided exclusively at the following business conditions and the provisions in the applicable specialist trade price list insofar as nothing is agreed to the contrary. Supplementary reference is made to the manufacturer's licence conditions appended to the contractual products.
- 1.2 TIM Storage Solutions AG does not recognise any contradictory customer conditions, or conditions in variance from the General Terms and Conditions of TIM Storage Solutions AG, unless TIM Storage Solutions AG had explicitly agreed to the applicability of these. The General Terms and Conditions of TIM Storage Solutions AG also apply if TIM Storage Solutions AG executes deliveries to customers without reservations while aware of the varying conditions of the customer. Any commitments and ancillary agreements require the written confirmation of TIM Storage Solutions AG.

2. Deliveries and services

- 2.1 The offers of TIM Storage Solutions AG are non-binding and subject to alteration and are only an invitation to submit bids. An agreement shall only come into force with a written order confirmation of TIM Storage Solutions AG, however, through the acceptance of the delivery by the customer at the latest.
- 2.2 TIM Storage Solutions AG reserves the right to make reasonable technical and design deviations from the disclosures made to the customer in brochures, catalogues and written documents, as well as changes to models, designs and material in the course of technical progress and further development, without the customer deriving any rights against TIM Storage Solutions AG from these circumstances.
- 2.3 TIM Storage Solutions AG explicitly reserves the right to carry out and invoice reasonable part-deliveries, unless the customer has no interest in the part-delivery.

- 2.4 Agreed delivery dates shall be deemed to be met if the contractual product was handed over to the freight driver on the agreed delivery date, if no explicit, written agreement to the contrary was made.
- 2.5 Delivery dates will be agreed in accordance with the probable capacities of TIM Storage Solutions AG, are non-binding subject to the reservation that TIM Storage Solutions AG is supplied punctually, and of unforeseen circumstances and impediments, regardless of whether these occur at TIM Storage Solutions AG or at the manufacturer, in particular force majeure, state actions, the non-issue of official permits, industrial action of all kinds, sabotage, war, terrorism, commodity shortages, and unforeseeable delayed material deliveries for which TIM Storage Solutions AG is not culpable. Such incidents shall extend the delivery date accordingly, and also if an incident occurs during a delay that has already occurred. In these cases, any period of grace set by the customer shall extend by the duration of the unforeseen incident. If TIM Storage Solutions AG falls into arrears of more than four weeks with a delivery, the customer may, after setting an appropriate period of grace in writing, withdraw from the agreement under the exclusion of any further claims. Any claim of the customer to compensation due to arrears in delivery is excluded in the case of minor negligence. In the event of gross negligence of TIM Storage Solutions AG liability shall be limited to the losses foreseeable on the conclusion of the agreement and typical for the agreement for the injured party. TIM Storage Solutions AG reserves the right to withdraw from the agreement if any delay in delivery caused by one of the incidents detailed above lasts for longer than six weeks and TIM Storage Solutions AG is not responsible for this. In this case TIM Storage Solutions AG will inform the customer without delay and return any consideration already rendered.

3. Inspection and transfer of risks

- 3.1 The customer must inspect the merchandise without delay after receipt for completeness, correspondence with the delivery paperwork, and for any defects. If a complaint is not made without delay, the merchandise shall be deemed to have been delivered properly and in full, unless a defect is involved that was not recognisable during an inspection.
- 3.2 In the event of transport damage, the orderer must have the circumstances recorded by the competent position (carrier/parcel service) without delay, because otherwise any claims against the transport agent as well as against any insurance policy may lapse.
- 3.3 Minor defects that do not impair the functionality of the delivery item shall not entitle the customer to refuse acceptance.

- 3.4 Benefits and risks shall transfer to the customer as soon as these are handed over to a freight driver or their agent in the manufacturing plant. In the case of the consignment of software on physical data-storage media the benefits and risks shall also transfer to the customer at the point in time these are handed over to a freight driver or their agent.
- 3.5 The risk of accidental loss and accidental deterioration of the contractual product passes to the customer on handover to the freight driver or their agent.

4. Prices and terms of payment

- 4.1 The prices from the applicable specialist trade price list ex the delivery warehouse of TIM Storage Solutions AG apply. Value added tax and other statutory deductions in the country of delivery, as well as packaging, transport costs, transport insurance, environmental and settlement lump sums, shall be invoiced to the customer accordingly.
- 4.2 TIM Storage Solutions AG reserves the right to raise the prices appropriately, if after the conclusion of the agreement TIM Storage Solutions AG experiences cost increases – in particular due to price rises imposed by suppliers or fluctuations in exchange rates. TIM Storage Solutions AG shall prove these rises to the customer on request.
- 4.3 The purchase price is due for payment with the delivery or service rendered, insofar as nothing is agreed to the contrary. Cheques will only be accepted on account of performance.
- 4.4 Despite any provisions of the customer to the contrary, TIM Storage Solutions AG is entitled initially to credit payments to its older debts. If costs have already been incurred as a result of arrears, TIM Storage Solutions AG is entitled to credit the payment initially to costs, then to interest, and finally to the main performance.
- 4.5 Any offsetting or exercising of a right of retention due to counterclaims that are disputed by TIM Storage Solutions AG or are not legally enforceable is excluded. In particular, the assertion of any offsetting claims is excluded.
- 4.6 If the preceding payment conditions are diverged from without any justifiable reasons, TIM Storage Solutions AG may at any time optionally demand delivery concurrently in return for cash payment, advance payment or the provision of security. All outstanding receivables, including those for which TIM Storage Solutions AG has accepted bills of exchange or for which payment by instalments has been agreed, shall become due for payment immediately.

- 4.7 The payment conditions granted exist with regard to the credit limits set by TIM Storage Solutions AG for each individual assignment. If the current credit limit is exceeded, TIM Storage Solutions AG reserves the right to demand the remainder of the value of the assignment as an advance payment. If creditworthiness subsequently changes, TIM Storage Solutions AG is entitled to demand payment concurrently on delivery or appropriate provision of security, and to withdraw from the agreement in the event of non-fulfilment.

5. Retention of title

- 5.1 Ownership to deliveries shall only pass to the customer on payment of the full purchase price, including any interest that may be due. On the conclusion of an agreement the customer empowers TIM Storage Solutions AG to enter the retention of title in the public register directly and at the cost of the customer.

6. Warranty

- 6.1 The Parties are aware that in accordance with the state of technology it is not possible to rule out faults in software under all application conditions. Consequently, TIM Storage Solutions AG shall not accept any guarantee for minor defects. Defects are only significant if the merchandise does not meet the applicable manufacturer specifications, or in the event the merchandise adapted by TIM Storage Solutions AG for the customer does not meet the customer specifications, or if TIM Storage Solutions AG provides services that do not meet the average quality of the market.
- 6.2 TIM Storage Solutions AG guarantees that the Contractual Products are generally described accurately in the product information and within this scope are fundamentally usable. The technical data and descriptions in the product information alone do not represent any guarantee commitments of certain properties. A guarantee commitment of properties in the legal sense shall only be provided if the relevant disclosures of TIM Storage Solutions AG are confirmed in writing.
- 6.3 The warranty shall lapse if serial numbers, type designations or similar labels are removed or made illegible.
- 6.4 Claims for defects shall be time-barred within two years. This deadline also applies to reimbursement for consequential losses, insofar as no claims are asserted as a result of liability in tort. Defect claims are non-transferable. Regardless of this TIM Storage Solutions AG will pass on any further guarantee or warranty commitments made by the manufacturer in full to the customer, without taking any responsibility for these itself.

- 6.5 In the case of a warranty claim, rectification or redelivery will be carried out at the choice of TIM Storage Solutions AG. Replaced parts shall become the property of TIM Storage Solutions AG. If TIM Storage Solutions AG does not rectify defects subject to complaint within an appropriate period of grace set in writing, or if two attempts at rectification fail, the customer shall be entitled either to withdraw from the agreement or to demand an appropriate reduction in the purchase price.
- 6.6 In the event of rectification TIM Storage Solutions AG shall assume the work costs. All other costs of rectification, as well as the ancillary costs associated with a replacement delivery, in particular the transport costs for the replacement part, shall be borne by the customer, if these costs are not disproportionate to the order value.
- 6.7 If the result of a review of a defect report is that there is no warranty claim, TIM Storage Solutions AG shall be entitled to charge all the expenses to the customer. The costs for the review and repair shall be invoiced at the relevant and applicable service prices of TIM Storage Solutions AG.
- 6.8 Return consignments to claim the warranty / or for repairs, as well as return of all kinds, will only be accepted if an agreement for this purpose is concluded in advance and an RMA number has been assigned. In this case the customer must bear the transport costs. The returned merchandise will be credited after deducting the costs incurred by TIM Storage Solutions AG. Return consignments that arrive without the agreement of TIM Storage Solutions AG shall be returned to the customer at the costs of the same.

7. Commercial property rights and third-party copyright

- 7.1 Insofar as software is part of the scope of supply this will be provided to the commercial purchaser solely for one-off resale and to the end customer for sole use, i.e. they may neither copy nor amend nor provide the software to others for use. A multiple right of use requires a separate written agreement. The software will be delivered as per the licence agreements of the suppliers, compliance with which the customer warrants at this point.

8. Liability

- 8.1 All cases of breach of contract and their legal consequences, as well as all claims made by the customer, regardless of the legal basis upon which these are made, are conclusively regulated in these conditions. All claims to compensation, reduction or cancellation of the agreement that are not explicitly stated are excluded. This exclusion of liability does not apply to any illegal intent or gross negligence of TIM Storage Solutions AG. Further, any liability for assistants or third parties is excluded.

- 8.2 The preceding limitation of liability also applies to claims resulting from culpability when commencing contractual negotiations. Furthermore, this also applies to claims resulting from liability in tort.

9. Export and Import Licenses

- 9.1 The re-export of deliveries is only permitted with the approval of the department for import and export of the Swiss Federal Department of Economic Affairs, Education and Research (Eidgenössischen Volkswirtschaftsdepartement). This requirement hereby passes to the customer and must in turn be transferred in the event of any forwarding of the delivery.
- 9.2 If TIM Storage Solutions AG provides services across borders, these services are provided subject to the issue of export licenses, in particular in accordance with German Federal foreign trade legislation. For this reason, the Customer declares and must ensure that they are not (i) based in a country or region that is subject to comprehensive US trade sanctions or other significant trade restrictions (including but not restricted to the Crimea, Cuba, Iran, North Korea and Syria) (these together the “Sanctioned Countries”); or (ii) on a list of restricted persons issued by the US government (including but not restricted to the *Specially Designated Nationals and Blocked Persons List*, *Foreign Sanctions Evaders List* and *Sectoral Sanctions Identification List*, as well as the *Denied Party List*, *Entity List* and *Unverified List*) (these together the “Restricted Party Lists”). Further, the Customer confirms that they neither directly nor indirectly export, re-export, transfer or otherwise use the goods and/or services in breach of export legislation or with a purpose prohibited by this export legislation to a Sanctioned Country, to a person or organisation on the blocked list or for usages in connection with nuclear, chemical, rocket or biological weapons. Compliance with export control regulations is a material contractual obligation, the breach of which shall provide grounds for immediate termination with good cause. The Customer is obliged to find out about any relevant export restrictions and/or other licencing obligations and to ensure the legal pre-conditions of permissible export or shipment to third countries are met and to prove this on a request by TIM Storage Solutions AG.

10. Compliance

- 10.1 The customer is obliged to comply with all applicable national anti-corruption legislation, if applicable, in particular the Foreign Corrupt Practices Act of the United States (the “FCPA”) and the UK Bribery Act 2010, as well as to take all necessary actions to avoid commercially-damaging actions (such as corruption, payments, the provision of items of value or gifts in order to influence the decisions of office holders, employees or officers of a company). Furthermore, the customer is obliged to conduct regular audits and reporting in order to guarantee compliance.

11. General Provisions

- 11.1 The customer is not entitled to assign their entitlements from the agreement.
- 11.2 This Agreement is subject to Swiss law. The Parties agree the registered office of TIM Storage Solutions AG as the exclusive court of jurisdiction.
- 11.3 Order settlement shall be carried out at TIM Storage Solutions AG with the help of automatic data processing. The customer hereby explicitly gives their agreement to processing of data that becomes known and is necessary for order settlement within the scope of the contractual relationships with TIM Storage Solutions AG. The customer also agrees that TIM Storage Solutions AG may use data it receives from the business relationship with the customer in accordance with the Swiss Data Protection Act (Datenschutzgesetz) for the business purposes of TIM Storage Solutions AG.
- 11.4 If one or more of the provisions of these General Terms and Conditions are or become ineffective, or if this contractual text contains an omission, the Contracting Parties shall replace or supplement the ineffective or incomplete provision with appropriate regulations that correspond to the commercial purpose of the desired regulation as far as possible. The validity of the remaining provisions remains unaffected.

12. Advertising

- 12.1 The customer explicitly agrees to the receipt of advertising from TIM Storage Solutions AG by fax or email without any prior request.