

**General Terms and Conditions  
of MODUS Consult AG**

**Section A**

**Art. 1 Application of Terms and Conditions**

1. We conclude agreements exclusively under the following Terms and Conditions. Deviations from these Terms and Conditions are only effective if we confirm them in writing. The Customer's Terms and Conditions, which are not formally recognised by us in writing, are without obligation for us, even if we do not expressly object to them.
2. These Terms and Conditions shall also apply to future orders, even if they are not expressly agreed upon again.
3. Under these Terms and Conditions, any submission made by e-mail and fax shall be deemed to fulfil the written form requirement.

**Art. 2 Offers; Quotations; Scope of Delivery**

1. Our offers are subject to change. Agreements made verbally or by telephone become valid only after they have been confirmed by us in writing. Our offer is deemed to have been accepted without written confirmation from the Customer upon receipt of the delivery or service.
2. The documents accompanying our offers, such as images and drawings as well as weights and measurements and information in brochures shall be merely approximate unless they are expressly designated as binding. Characteristics and other properties shall only be binding if this has been expressly agreed.  
We reserve the ownership rights and copyrights to quotations, drawings, and other documents. These documents must not be made accessible to third parties without our consent.
3. The Customer must provide remuneration for quotations.

**Art. 3 Delivery Time**

1. The relevant delivery times are those specified in our order confirmation or otherwise agreed with the Customer. Compliance with these delivery times requires that all of the documents to be supplied by the Customer are provided in due time, and that the terms of payment and other obligations are fulfilled. If these prerequisites are not fulfilled in due time, the delivery deadline shall be extended by the duration of the delay.
2. The delivery deadline shall be considered met if the ready shipment is dispatched or collected by the deadline. If delivery is delayed due to reasons for which the Customer is responsible, the deadline shall be considered met if notification of completion or readiness for dispatch is provided within the agreed period.
3. Partial deliveries are permissible to an extent reasonable for the Customer.
4. If we are prevented from fulfilling our obligations due to the occurrence of unforeseeable, extraordinary circumstances, which we are unable to avoid despite reasonable effort in the specific instance, regardless of whether they occur on our or our suppliers' premises – e.g. operational interruptions, official intervention, delays in the delivery of essential raw materials, or power supply problems – the delivery deadline shall be extended by the duration of such disruption, provided that it is still possible to provide the supplies or services. If delivery or performance is made impossible by one of the aforementioned circumstances, we shall be relieved of any obligation to deliver.
5. In the event of a strike or lockout, the delivery deadline shall be reasonably extended. If delivery or performance becomes impossible, we shall be relieved of any obligation to deliver.  
In this case, if the delivery time is extended by more than a month, the Customer shall be entitled to rescind the contract. All claims for damages are excluded.  
If the Customer encounters any of the aforementioned circumstances, the same conditions shall apply to their acceptance obligation. We can, however, only invoke the circumstances given here if we have informed the Customer without delay.

**Art. 4 Prices and Terms of Payment**

1. Unless otherwise agreed, our prices are for delivery ex works from our head office in Gütersloh. Material prices and wage changes occurring four months after the contract is concluded entitle us to make appropriate price changes.
2. Payment must be made in cash on delivery, without any deductions.
3. In the event of deliveries outside Germany, all levies, fees, taxes, technical examination costs, etc., that occur outside of Germany must be borne by the Customer. This also applies to costs of any necessary legalisation of certificates of origin, consular fees, etc.
4. Payment with bills of exchange and cheques shall be accepted on account of performance. In accepting bills of exchange whose payment shall be transacted outside Germany or in out-of-town places, we do not accept any liability for the punctual presentation and drawing up of a deed of protest. Discount charges are calculated from the due date of the invoice. If the Customer culpably fails to meet their payment obligations, in particular if they do not honour a cheque or bill of exchange or do not make a payment, we reserve the right to claim the total remaining amount due, even if we have accepted cheques and bills of exchange. Moreover, we shall have the right to demand advance payments.
5. Setting off against counterclaims or asserting any rights of retention shall only be admissible where the Customer's claims are undisputed or legally valid.
6. If, after conclusion of the contract, it becomes apparent that our claim to payment is jeopardised by the Customer's lacking ability to pay, we may refuse to perform our contractual obligations and set the Customer a deadline for concurrent payment for performance or by way of security. In the event the deadline expires without successful payment, we shall be entitled to rescind the contract and demand compensation for damages. No deadline is required if the Customer seriously and definitively refuses to pay or if special circumstances exist which, under consideration of mutual interests, justify our immediate withdrawal from the contract.

**Art. 5 Shipping and Transfer of Risk**

The risk shall pass to our forwarding agency when goods are handed to them. If shipment is delayed for reasons that the Customer or their vicarious agents are responsible for, the risk shall be transferred to the Customer from the date of notice of readiness for shipment.

**Art. 6 Retention of Title**

1. The delivered goods shall remain our property until the agreed price has been paid in full, including all claims arising from the business relationship and future claims and until any and all cheques and bills of exchange due to us have been honoured.
2. If the Customer pays by cheque and we issue the Customer a refinancing bill, retention of title shall only cease when it is no longer possible for any claims arising from this bill to be asserted against us.
3. The Customer may resell the goods in the ordinary course of business. The Customer hereby assigns to us their claims arising from the resale of the reserved goods, in particular the claim against the buyer for payment. We hereby accept this assignment. The Customer must inform their debtors of the assignment on our request. We must be notified of all requests and the names of the Customer's debtors.
4. The Customer is entitled to collect receivables from the resale. We are entitled to withdraw this right in the event of default of payment or if we become aware of circumstances which, according to accepted business practices, would reduce the Customer's creditworthiness.
5. The reserved goods are processed and manufactured on our behalf as the manufacturer within the meaning of Art. 950 BGB (German Civil Code). If the reserved goods are processed or combined with other objects that do not belong to us, we shall receive part ownership of the new item, based on the ratio of the net invoice value of the reserved goods to the net invoice value of the other goods used as of the date of the processing or combination.
6. Any goods that are our property may not be assigned as security. If reserved goods are seized by a third party, in particular in the case of garnishments, the Customer shall inform them that we are the owner of the goods and notify us without delay, as well as transferring the garnishment or seizure record.

If the Customer acts in breach of contract, we shall be entitled to withdraw from the contract and demand the return of the goods we have delivered.

7. If the value of the securities granted by us exceeds our claims by more than 20%, we shall be obliged – at the Customer's request – to return or release securities at our discretion.

**Art. 7 Customer's Rights in the event of Defects**

1. We herewith transfer any claim against the suppliers of significant sub-contracted parts to the Customer. The Customer may only hold us liable for these defects if any prior judicial action against the third-party suppliers was unsuccessful. If the third-party supplier is based outside Germany, previous out-of-court action shall be sufficient.  
The Customer is obliged to inform us of any attempt to have recourse to our supplier and shall, at our request, keep us updated about negotiations on an ongoing basis.
2. The Customer must immediately notify us in writing of any defects without delay; however, this must be within one week of receipt of the goods at the latest. Defects which cannot be discovered by this deadline, even after careful checking, must be notified to us without delay once they are discovered.
3. In the event of justified claims relating to defects, we are entitled to remedy defects or to deliver a replacement, at our discretion, within a reasonable period of at least 14 days. If the subsequent improvement fails, the Customer may rescind the contract provided that the breach of contract is not merely minor. In addition, the Customer shall be entitled, if necessary, to demand compensation for damage or reimbursement of expenses.  
The Customer's right to self-remedy the defects in accordance with Art. 637 BGB remains unaffected.  
Any claim for rectification of defects must be submitted separately for each defect.  
The Customer is not entitled to a reduction in the event of minor defects.
4. If the Customer withdraws from the contract, they must return to us the delivered object and – regardless of other claims – pay a fee that is appropriate for the period of usage of at least 20% of the net purchase price plus any value added tax.
5. Customer claims due to defects shall become time-barred after 12 months. This shall not apply if longer periods are required by law in Art. 438 Para. 1 No. 2, 479 Para. 1 and 634a Para. 1 No. 2 BGB, namely for structures and items used for structures, recourse claims and construction defects.
6. In the case of an unjustified return, the cost must be borne by the Customer.

**Art. 8 Limitations of Liability; Compensation for Damages**

1. We shall not be liable for the breach of immaterial contractual duties caused by slight negligence.
2. Our liability for consequential damages is excluded except in cases of intent, gross negligence or breach of material contractual duties. If we are liable for consequential damages, the liability shall be limited to foreseeable damages not attributable to extraordinary circumstances.
3. Customer claims arising from product liability, or claims due to personal injury or damage to health that are attributable to us, as well as the loss of life of the Customer or its vicarious agents shall remain unaffected.
4. Claims against us for compensation of damages and compensation of wasted expenses for contractual and non-contractual liability shall become time-barred after 12 months. This does not apply if we are liable for intent, gross negligence, personal damages or liability according to the product liability act. The period of limitation for claims against defects in Section A, Art. 7 Para. 5 remains unaffected.
5. We shall bear the burden of proof for circumstances that justify a limitation or exclusion of liability.

**Art. 9 Place of Performance, Jurisdiction and Applicable Law**

1. The place of performance for all obligations arising from the contractual relationship is Gütersloh.
2. Gütersloh is the place of jurisdiction for all disputes arising from the contractual relationship if the Customer is a trader, legal entity under public law or a special fund under public law.  
However, at our discretion we may select a court that has jurisdiction in the Customer's place of business.
3. This contract shall be governed exclusively by German law. Application of CISG, 11 April 1980, is excluded.

**Art. 10 Data Protection**

We are entitled to store, transfer, modify and delete the Customer's personal data. The Customer is hereby informed of this in accordance with Art. 26 BDSG (German Data Protection Act).

**Section B**

**Art. 1 Software, General**

1. Please note that the current state of technology dictates that it is impossible to manufacture software in such a way that it works flawlessly in all applications and combinations. We therefore only owe software that is generally usable in the sense of the program description and instruction manual.
2. Unless otherwise agreed in writing, we are not liable for ensuring that the standard software meets the Customer's operational requirements.
3. Furthermore, we are not liable for the computation time for individual program sequences. This is because the capacity of the Customer's data processing system and its degree of utilisation are decisive factors in this regard.
4. If we provide programs from other manufacturers, our liability shall be limited to culpability in selecting the suppliers of programs.

**Art. 2 Software for Individual Use**

1. The scope of the software order shall be determined by the jointly prepared requirement specifications or according to our order confirmation.
2. We make every effort to serve the Customer as quickly as possible. Any stated dates for completion are approximate. The Customer is obliged to work with a usable part of the software indicated in the order.
3. The Customer is obliged to test individual programs within five working days of handover.
4. The program is considered accepted at the latest four weeks after delivery, following use of the whole program or a substantial part by the Customer.
5. The Customer must notify us, in a defect report, of any defects occurring. The time and context in which the defects occurred must also be stated. We shall have a reasonable deadline by which to troubleshoot the problem. Having identified the defect, we shall resolve it within a reasonable period of time. Where troubleshooting and resolution of defects require a longer period of time, we shall be entitled to provide the Customer with a usable interim solution.
6. Software manufactured by us shall be deemed by the contractual parties as worthy of protection and eligible for protection. The programs are intended exclusively for use on the Customer's premises. Making copies for other purposes or transferring the program to third parties for this or any other purpose is prohibited and shall lead to the Customer being liable to pay compensation.  
In the event of the program being transferred, the price agreed between ourselves and the Customer shall become due as a contractual penalty. The penalty shall not count against any damage claims.
7. The Customer undertakes to backup data on a daily basis, using at least five storage carriers, the use of which is frequently rotated. We are able to provide additional information relating data backup on request. We are not liable for damages that could have been prevented by ensuring adequate data backup.
8. Section A of our General Terms and Conditions shall also apply.