

General Sales and Delivery Terms and Conditions of SurTec Deutschland GmbH



Section 1 Scope

- (1) The following General Terms and Conditions form the basis of all declarations by SurTec Deutschland GmbH (hereafter: SurTec) aimed at concluding a contract, particularly the offers, offer acceptances and deliveries and services. These General Terms and Conditions of SurTec shall exclusively apply. Contradictory general terms and conditions of the contracting party shall only apply, provided that SurTec has explicitly consented to this in writing.
- (2) The terms and conditions of SurTec shall also be valid if SurTec performs a delivery or service to the contracting party in awareness of the contradictory or deviating conditions of the contracting party. The mutual, written declarations shall exclusively be relevant for determining the scope of the ordered or offered deliveries or services (hereafter: goods).
- (3) Instructions issued by the contracting party during implementation of the order shall only become legally binding if they have been issued and confirmed by SurTec in writing.
- (4) If declarations by the parties require a written form pursuant to these terms and conditions, the declarations shall be duly signed by the issuer and sent to the respective other party.

Section 2 Prices – payment terms

- (1) Provided that the order confirmation does not specify otherwise, the prices of SurTec shall be valid "ex works", including packaging. Shipping costs shall be invoiced separately, according to the provisions of Section 3.
- (2) Statutory VAT is not included in the prices of SurTec; it is shown separately on the invoice in the valid statutory amount on the date of issuing the invoice.
- (3) If the order confirmation should not specify otherwise, or if different payment terms should not be explicitly agreed in writing, the payment shall fall due within 14 days of the invoice date with a 2% cash discount or within 30 days net (without deductions).
- (4) The contracting party shall remit payments, at his expense, to the SurTec account specified on the invoice. Fulfilment shall occur with a final credit to the account.
- (5) The contracting party shall only be entitled to setoff, if it involves legally established, undisputed counter-claims or those which have been acknowledged by SurTec. Rights of retention can only be asserted, inasmuch as his counterclaim is based on the same contractual relationship.

Section 3 Shipping and transfer of risk

- (1) SurTec shall be entitled to determine the shipping route and shipping type at its discretion, unless otherwise specified.
- (2) SurTec shall invoice the costs for the delivery of the goods as follows:
 - a. With a goods order value below € 500.00 for a delivery, the contracting party shall bear the shipping costs (EXW = EX Works).
 - b. With a goods order value of between € 500.00 and €1,500.00, SurTec shall charge an all-in shipping cost fee of € 100.00 per delivery;
 - c. With a goods order value of more than €1,500.00, the price shall be stated "Carriage Paid To (CPT)" place of agreed.
- (3) The risk for the goods shall transfer to the contracting party as soon as they are handed over to the freight forwarder, regardless of whether it involves a self-collector or a freight forwarder appointed by SurTec, unless the parties have agreed otherwise.
- (4) At the request of the contracting party, SurTec shall conclude transport insurance for the delivery; the relevant costs shall be borne by the contracting party.

Section 4 Delivery Period

- (1) The deadlines and period specified by SurTec shall be non-binding, if nothing has explicitly been agreed otherwise.
- (2) Partial deliveries shall be admissible, provided that they are reasonable for the contracting party.
- (3) If SurTec should enter into default with its performance, the loss caused by delay shall be limited to the typical, foreseeable loss. Compensation for this loss shall be limited to the amount of the payment claim toward the indemnity insurer of SurTec for the occurrence of an insured event.
- (4) Par. (3) shall not apply if SurTec has acted deliberately.
- (5) Force majeure of any type, unforeseeable traffic, operational or shipping disruptions, fire damage, floods, unforeseeable employee, energy, raw material or supply deficiencies, strikes, lockouts, official orders or other obstacles for which the party obligated to perform is not responsible, which reduce, delay or prevent production, shipping, acceptance or use, or make these unreasonable, shall provide exemption from the performance obligation for the duration and extent of the disruption.
- (6) The party obligated to perform shall immediately inform the other party about the occurrence of a circumstance specified in Section 4 Par. (5). In this case, the party obligated to perform can only be released from the contract, if the circumstance pursuant to Section 4 Par. (5) is not only of a temporary nature and the consideration already provided is returned upon withdrawal.

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Section 5 Packaging

- (1) Provided that the order confirmation does not specify otherwise, delivery shall be agreed "ex works".
- (2) Packaging shall only be taken back provided that separate written agreements have been concluded and compulsory legal provisions do not specify otherwise.
- (3) SurTec shall exclusively use new or as-new Euro-Pool pallets (800x1200) for the delivery. The receiving contracting party shall be obligated to immediately provide the same number of exchangeable, empty pallets upon delivery of the goods. Only faultless Euro-Pool pallets shall be eligible for exchange, in the same size and model and with the appropriate branding. If the contracting party should not return the pallets or in a damaged condition, SurTec shall be entitled to charge the contracting party with the replacement price.
- (4) The contracting party shall also be charged with the replacement value for pallets that are damaged on the shipping route, if he fails to notify the freight forwarder of the number of damaged pallets upon acceptance of the goods.

Section 6 Warranty

- (1) All quantity, dimension and weight details are understood to be within the standard commercial tolerances.
- (2) With chemicals and other consumable materials, SurTec shall only assume the guarantee for their composition, e.g. for compliance with the specified ISO standards, unless SurTec provides written commitments or written guarantees, in an individual case. Furthermore, SurTec shall only assume the warranty that the delivered goods are suitable for the use envisaged in the contract. The warranty for suitability of the products for the contractually envisaged use shall take place subject to the contracting party leaving one or several sample items and SurTec carrying out sampling, i.e. a series of tests in the laboratory and afterwards, instructions for the processing or use.
If the contracting party should not carefully comply with the instructions provided for the processing or use of SurTec products or uses a processing material, which deviates from the tested material and if the processing does not lead to the required result for this reason, warranty by SurTec shall be excluded. The contracting party shall be obligated to prepare and keep records of the processes and conditions underlying the processing.
- (3) Obvious defects on the delivered goods shall immediately be reported in writing to SurTec after receipt of the delivery and hidden defects, immediately after discovery of the defect.
- (4) If a defect exists, SurTec shall have the option to rectify the defect or produce a new item. In case of rectification of the defect, SurTec shall undertake to bear all necessary costs for the purpose of defect rectification, particularly shipping, travel, labour and material costs, provided that these are not increased due to the contractual object having been taken to a location other than the place of performance.

- (5) If the supplemental performance should fail, the contracting party shall have the option to demand withdrawal or reduction. The supplemental performance shall only be regarded as having failed after the second unsuccessful attempt at supplemental performance, provided that the contracting party has fulfilled his duties of cooperation.
- (6) SurTec shall be held liable pursuant to the statutory provisions, provided that the contracting party asserts compensation claims, which are based on deliberate acts or gross negligence by SurTec, including deliberate acts or gross negligence by its representatives or legal agents. Insofar as SurTec or its legal agents are not guilty of deliberate breach of contract, the compensation liability shall be limited to the foreseeable, typically occurring damages/loss. Compensation for this loss shall be limited to the amount of the payment claim toward the indemnity insurer of SurTec for the occurrence of an insured event. This shall also apply to compensation claims in place of performance.
- (7) SurTec shall be held liable pursuant to the statutory provisions, to the extent that it breaches a material contractual obligation; however, in this case, the compensation liability shall be limited to the foreseeable, typically occurring damages/loss. Compensation for this loss shall be limited to the amount of the payment claim toward the indemnity insurer of SurTec for the occurrence of an insured event.
- (8) The statutory liability due to culpable injury to life, limb or health shall not be affected by the above provisions; this shall also apply to compulsory liability under product liability law.
- (9) Provided that it is not otherwise regulated above, liability shall be excluded *ceteris paribus*.
- (10) The expiry period for defect claims shall amount to 12 months, calculated from transfer of risk.
- (11) The expiry period in the case of delivery recourse under Sections 478, 479 BGB [German Civil Code] shall remain unaffected; it amounts to five years, calculated from delivery of the defective item.

Section 7 Joint and several liability

- (1) Liability for compensation which exceeds the liability envisaged in Section 6 shall – notwithstanding the legal nature of the asserted claim – be excluded. This shall specifically apply to compensation claims arising from culpability upon conclusion of the contract, due to other breaches of duty or due to criminal claims for compensation of property damage pursuant to Section 823 BGB [German Civil Code].
- (2) This limitation shall also apply if the contracting party does not demand compensation in place of performance, but rather, refunding of useless costs. To the extent that the compensation liability vis-à-vis SurTec is excluded or limited, this shall also apply with regard to the personal compensation liability of its employees, representatives and legal agents.

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Section 8 Reservation of ownership

- (1) The delivery items (reserved goods) shall remain the property of SurTec until the contracting party has fulfilled all of its claims toward SurTec from the business relationship. Insofar as the value of all collateral rights to which it is entitled exceed the amount of all secured claims by more than 20%, at the request of the contracting party, SurTec shall release an appropriate portion of the collateral rights.
- (2) In case of liens or other intervention by third parties, the contracting party shall notify SurTec immediately in writing, so that legal action can be filed pursuant to Section 770 ZPO [German Code of Civil Procedure]. If the third party is not able to compensate SurTec for the legal and out-of-court costs of legal action pursuant to Section 771 ZPO [German Code of Civil Procedure], the contracting party shall indemnify SurTec for the resulting default loss.
- (3) If the contracting party should sell on reserved goods or goods, which have been processed using SurTec products, he shall now already assign to SurTec his future claims from the onward sale against his customers, with all ancillary rights – including any balance claims or overdraft account final balances - by way of collateral, without further declarations being required later, however, only up to an amount which exceeds all secured claims by a maximum of 20%. SurTec accepts this assignment.
- (4) The processing or reforming of the contract object by the contracting party shall always be carried out on behalf of SurTec. If the contract object is processed together with other items not belonging to SurTec, then SurTec shall acquire the co-ownership of the new item

- in the proportion of the value of the contract object (final invoice amount including VAT) to the other processed items, at the time of handover of the contract object to the contracting party. The same shall apply, *ceteri paribus*, for the item resulting from processing, as for the delivered contract object subject to reservation of ownership.
- (5) If the contract object is combined with other items not belonging to SurTec, then SurTec shall acquire the co-ownership of the new item in the proportion of the value of the contract object (final invoice amount including VAT) to the other processed items, at the time of handover of the contract object to the contracting party. If the combining should take place such that the item of the contracting party is regarded as a main item, it is regarded as agreed that the contracting party shall transfer the proportional co-ownership to SurTec. The contracting party shall keep the sole or co-ownership created in this manner on behalf of SurTec.

(6) Section 9 Legal venue – place of performance

- (1) The sole legal venue is the headquarters of SurTec, if the contractual opponent is a merchant within the meaning of Section 14 BGB [German Civil Code], for all disputes arising indirectly or directly from the contractual relationship. German law shall apply to the contractual relationships, excluding the UN Convention on Contracts for the International Sale of Goods (CISG).
- (2) Provided that the order confirmation does not specify otherwise, the headquarters of SurTec shall also be the place of performance.

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