

GENERAL TERMS AND CONDITIONS FOR ENTREPRENEURS (VERSION DECEMBER 2012)

Section 1. Applicability

1. The commercial relationship between STRAX GmbH (hereinafter referred to as STRAX) and the customer shall be governed exclusively by the following General Terms and Conditions in the version valid at the time of ordering.
2. We herewith reject in full the applicability of any other Terms and Conditions. STRAX does not accept deviating terms and conditions of the customer unless STRAX has expressly agreed to their applicability.
3. Where these Terms and Conditions do not contain a provision, the statutory provisions shall apply, unless an individual agreement has been concluded which takes priority.

Section 2. Data Protection

1. The personal data collected by STRAX in the context of implementing the contract shall be used exclusively for the purposes of contract performance and customer care.
2. The data will not be disclosed to third parties.

Section 3. Storage and access to the text of the contract

1. The text of the contract is stored in the STRAX systems.
2. The customer can view the General Terms and Conditions at any time on this page.

Section 4. Prices/minimum order value

1. All prices are in euros, exclude the currently applicable value-added tax and exclude delivery costs.
2. The prices of additional services will be shown on the invoice in addition to the price for the goods: Packaging, dispatch and the value-added tax applicable at the time the invoice was produced etc.
3. The minimum order value for overseas deliveries is: EUR 10.000,00.

Information for international customers who have a VAT number:

The VAT number must be provided at the latest with the order! After checking the VAT number the customer will receive an appropriately modified order confirmation. Reissuing or modifying the invoice later and thus reimbursing the VAT is therefore not possible.

Section 5. Conclusion of the contract

The purchase contract comes into force if STRAX accepts the customer's order via an order confirmation by email immediately after receiving the order, at the latest however on confirmation of the delivery by email. For international orders requiring a check on the VAT number, the order confirmation is sent as long as the VAT number is valid.

If the order confirmation contains spelling, printing or calculation errors, STRAX is entitled to withdraw.

Section 6. Payment

All purchases are made exclusively for payment in advance due immediately. Alternative agreements must be confirmed in writing by STRAX.

In order to assess the creditworthiness STRAX is permitted to undertake a creditworthiness check via Coface or by other means.

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WEEE-Reg.-Nr DE38803957
Steuernummer 22057620988
ILN 40 29948 00000 8
Erfüllungsort und Gerichtsstand: Siegburg

Section 7. Delivery / delivery dates / availability of supplies

1. STRAX shall supply the goods in accordance with the agreements made.
2. STRAX shall be entitled to perform part-deliveries to an acceptable extent.
3. Unless agreed otherwise, delivery shall be EX WORKS INCOTERMS 2010.
4. If a delivery deadline is agreed with the customer we will undertake our best efforts to comply with this deadline.
5. If a delivery deadline is not agreed the delivery period (dispatch time) is approx. 8 (working days) after receipt of payment. The customer may request in writing 3 working days after exceeding the non-binding delivery date that STRAX delivers within an appropriate period of time; on receipt of the request STRAX is in default unless STRAX is not responsible for the delay to the delivery periods.
6. STRAX shall be entitled to rescind the contract if, despite prior conclusion of an appropriate contract of purchase on its part, the required supplies are not received; STRAX's liability for intent or negligence shall be unaffected in accordance with No. 11 of these Terms and Conditions. STRAX shall immediately inform the customer of the unavailability of the article within the specified time and, should STRAX wish to rescind, shall immediately exercise the right of rescission; in this case STRAX shall return any consideration already rendered to the customer without delay.
7. The customer must note the obligation imposed in Section 377 of the German Commercial Code (HGB) and complain about faults to the delivered goods without delay.

Section 8. Warranty for defects

1. Defects

The parties define a fault that reduces the technical functioning when used properly to an extent that is not simply insignificant as a defect. Optical defects, damage etc. are not considered to be defects. The customer must include the sale receipt as evidence of sale to the final customer and in addition describe the defect in detail in a written notice.

2. Subsequent performance

The customer shall have the statutory right to subsequent performance for all defects occurring during the warranty term (cf. also Section 12 below). Where subsequent performance is rendered by way of advance replacement, the customer shall be obliged to return the goods supplied in the first instance within 14 (fourteen) days of receipt of the advance replacement. Timely dispatch is sufficient in order to comply with the time limit. Should the goods fail to be received by STRAX within the time limit, STRAX shall be entitled to claim compensation for the goods supplied in the first instance and to claim this compensation through the payment method chosen for payment, unless the customer is not at fault with regard to the failed or late return shipment.

3. Revocation, reduction, compensation of damages and expenses

In addition, the customer shall be entitled to the statutory rights of revocation and reduction in price in all cases of defects occurring during the term of the warranty (cf. also Section 11 below), provided the statutory conditions apply. The statutory rights to damages or compensation for expenses shall be limited in accordance with the limitations of liability in Section 11 of these Terms and Conditions.

Where the customer wishes to claim damages in lieu of performance for a defect and the goods are capable of being repaired, a repair shall only be deemed failed after the second unsuccessful attempt. The statutory regulations concerning the dispensability of the fixing of a time-limit shall remain unaffected (see Art. 440 sentence 1 BGB).

Section 9. Limitation of liability

1. STRAX shall be liable for intent or gross negligence on the part of STRAX, a representative or a vicarious agent of STRAX, and for injury to life, body or health caused by negligence, in accordance with the statutory provisions. In all other respects, STRAX shall only be liable in accordance with the Product Liability Act and for culpable breach of essential contractual duties, or where STRAX has maliciously concealed a defect or assumed a guarantee with regard to the quality of a supplied article. However, the claim for damages for the breach of essential contractual duties shall be limited to foreseeable damage typical of the kind of contract, unless another of the exceptions listed in sentence 1 or 2 simultaneously applies.
2. STRAX shall not be liable for damages and defects incurred through improper use, operation and storage, negligent or incorrect care and maintenance, overuse or improper repair by a non-authorised service partner. Furthermore, STRAX shall not be liable for damages to appliances which are incurred due to incorrect installation or incorrect fitting of accessories.

1. Where STRAX's liability has been excluded or limited this shall also apply to the personal liability of employees, their representatives and/or vicarious agents.
2. The above provisions do not entail a change in the burden of proof.

Section 10. Retention of title

1. Retention of title with regards to consumers and entrepreneurs

STRAX reserves title to the supplied product until all payments due from the contract of supply have been received. Where the customer is an entrepreneur and fails to observe his contractual duties, in particular in case of payment default, STRAX shall be entitled, without setting a period of grace, to claim back the supplied goods and/or – where necessary after setting a period of grace – to rescind the contract; the customer shall be obliged to surrender the goods. The reclaiming of the goods shall in this case not constitute rescission of the contract unless STRAX has expressly declared rescission in writing. Sentences 2 and 3 shall not apply where the customer is a consumer in terms of Art. 13 BGB.

2. Extended reservation of title if the customer is an entrepreneur.

Where the customer is an entrepreneur, the following shall apply in addition to No. 1 of this paragraph:

- a) Processing, mixing, combining

The customer is permitted to process or refashion the supplied goods (“processing”). Processing shall be performed on behalf of STRAX.

Where STRAX in this case does not obtain ownership of the new product created through the processing, STRAX and the customer agree at this point that the customer shall grant STRAX co-ownership of the new product commensurate with the value (gross invoice value) of the goods supplied by STRAX in proportion to the value of the other processed goods at the time of processing.

The preceding sentence shall apply accordingly in cases of inseparable mixing or combining of the supplied goods with goods which do not belong to STRAX. Where STRAX obtains ownership or co-ownership pursuant to this paragraph of the General Terms and Conditions the customer shall store the new product for STRAX with the care of a prudent businessman.

- b) Reselling within the ordinary course of business

The customer shall be entitled to resell the supplied goods to a third party (“buyer”) within the ordinary course of business. Reselling of the goods supplied is only permitted if the customer receives payment equivalent to the value of the goods supplied. The customer shall agree with the buyer that ownership shall only be transferred to the buyer upon this payment being made. In the event of resale and for the purposes of security, the customer herewith assigns to STRAX all claims to which he may be entitled from the resale to a third party. However, the assignment shall be limited to an amount equivalent to the price of the supplied goods as invoiced by STRAX. STRAX herewith accepts the assignment.

- c) Authorisation to collect, revocation of authorisation to collect

Until revoked, the customer shall have authority to collect all claims assigned to STRAX pursuant to this paragraph of the General Terms and Conditions. The customer shall immediately forward all payments made in settlement of the assigned claims, up to the amount of the secured claim.

Where there are justified interests, in particular in cases of payment default, suspension of payments, commencement of insolvency proceedings, bill protest or reasonable suspicion of over-indebtedness or impending insolvency of the customer, STRAX shall be entitled to revoke the authority to collect. In addition, following prior warning and observance of a reasonable time period, STRAX may disclose the assignment for security, realise the assigned claims and demand that the customer disclose the assignment for security to his clients.

d) Customer's duty to provide information

Where prima facie evidence for the existence of a justified interest is furnished, the customer shall provide STRAX with the information necessary to assert STRAX's rights against the clients and shall hand over the required documents.

e) Pledging or security transfer of security collateral

While the retention of title applies, pledging or transfer by way of security by the customer shall not be permitted. The customer must immediately inform STRAX of any pledging, confiscation or other orders or interventions of third parties.

f) Release clause

Where the realisable value of all security interests to which STRAX is entitled exceeds the amount of all secured claims by over 10%, STRAX shall, at the customer's request, release the appropriate proportion of the security interests. It will be assumed that the conditions of the preceding sentence are fulfilled where the estimated value of the securities to which STRAX is entitled reaches or exceeds 150% of the value of the secured claims. The customer shall have the choice between the release of different security interests.

g) Rescission upon customer's breach of duty

Where the customer breaches a duty pursuant to this paragraph, STRAX shall – in particular in cases of payment default – be entitled, even without setting a period of grace, to demand the surrender of the supplied goods and/or the new product and/or – where necessary after setting a period of grace – rescind the contract; the customer shall be obliged to surrender the goods. The request to return the goods/the new product shall not constitute a declaration of rescission on the part of STRAX, unless STRAX expressly declares rescission in writing.

Section 11. Limited period of limitation

The following provisions under numbers 1 to 3, limiting the period of limitation, shall apply subject to number 4:

1. Where the supplied good is a used product the limitation period for claims for damages due to defects – regardless of legal grounds – shall be six months, for all other claims and rights due to defects it shall be one year.
2. The limitation periods for claims for damages according to paragraph 1 shall also apply to all other claims for damages against the seller, regardless of legal grounds. They shall also apply where the claims are not related to a defect.
3. The limitation periods for claims for damages shall also apply to compensation for fruitless efforts.
4. The above-mentioned limitation periods shall apply subject to the following:

a) The limitation periods shall generally not apply in cases of intent or malicious concealment of a defect, or where STRAX has undertaken a guarantee with regard to the quality of the supplied goods.

b) Furthermore, the limitation periods shall not apply where the purchased object is a building or a good which is used for a building in accordance with its customary use and which causes the building to be defective, or where the in rem right of a third party is concerned, on the basis of which the surrender of the purchased object may be demanded.

c) Moreover, the limitation periods for claims for damages shall not apply to grossly negligent breaches of duty, to cases of culpable breach of essential contractual duties not constituted by delivery of a defective good, to cases of culpable injury to life, body or health or to claims pursuant to the Product Liability Act.

5. The above provisions do not entail a change to the burden of proof to the customer's disadvantage.

Section 12. Legal consequences of non-incorporation and ineffectiveness (Art. 306 BGB)

1. If the General Terms and Conditions in whole or in part have not become part of the contract or are ineffective, the remainder of the contract shall remain in effect.
2. To the extent that the terms have not become part of the contract or are ineffective, the contents of the contract shall be determined by the statutory provisions, unless the parties have concluded an individual agreement.
3. The contract shall be ineffective if upholding it, even taking into account the alteration provided in paragraph 2 above, would represent an unreasonable hardship for one party.

Section 13. Place of performance / place of jurisdiction / choice of law

1. Place of performance

Where the customer is an entrepreneur, a special fund under public law or a corporate body under public law, the exclusive place of performance shall be the place of registration at the Registrar of Companies of STRAX GmbH in Siegburg (Art. 29 (2) of the German Code of Civil Procedure (ZPO)).

2. Place of jurisdiction

Where the customer is an entrepreneur, a special fund under public law or a corporate body under public law, the exclusive place of jurisdiction shall be the place of registration of STRAX GmbH in Siegburg.

3. Choice of law

All legal transaction concluded by STRAX GmbH with its customers are governed by the law of the Federal Republic of Germany without application of the provisions of International Commercial Law on conflicts of law.

Section 14. Information on trademarks, copyrights and other property rights

All brands, designations and logos used are registered trademarks of their proprietors, even when not explicitly designated as such. Original accessories are especially designated as such.

Subject to printing, setting and typological errors and technical amendments.

We would again like to draw your attention to the fact that the goods delivered may vary slightly from the images shown, depending on mobile phone manufacturer and model.

Physical address:

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Place of performance and place of jurisdiction: Siegburg, VAT No: DE 812 585 036.