

ARE CON GmbH & Co.KG – General Terms and Conditions of Business

§ 1 Area of application

1. These Terms apply exclusively to entrepreneurs within the meaning of § 14 of the German Civil Code (BGB). Deviating, supplementary or conflicting terms of business, even if we are aware of them, shall not form part of the contract unless expressly agreed by us in writing at the time of entry into contract to be valid.
2. These Terms also apply to all future business transactions with Purchaser insofar as these are deemed to be related legal transactions.

§ 2 Offer and entry into contract

1. Insofar as an order may be deemed to be an offer pursuant to § 145 BGB, we have two weeks within which to accept this.
2. Our offers are without obligation unless expressly agreed otherwise.

§ 3 Documents made available

1. We reserve the right of ownership and copyright to all documents made available to Purchaser in association with the placement of orders including for example estimates, drawings, etc.. The aforementioned information, in particular estimates, must be treated as trade and business secrets. These documents must not be made available or accessible to third parties other than in cases in which express written consent is granted by us to Purchaser. Should a contract not be entered into within the time limit as per § 2, the documents must be returned to us forthwith.
2. When processing data supplied to us by Purchaser, we are under no obligation to check the accuracy of content, completeness or compliance with the provisions of the law. We reserve the right to exclude from treatment or processing any data that are in breach of a statutory or official restraint or which require special permits. This will in particular apply if the data include content which glorifies violence, or which is of a pornographic nature, or which is likely to incite hatred or unrest. In the event that such data is supplied by Purchaser, the latter shall indemnify us against any and all such claims by third parties. This includes third-party claims that result from using and/or processing the data.

§ 4 Prices and payment

1. Unless otherwise agreed in writing, our prices apply ex works, fundamentally exclusive of packaging and plus value added tax at the statutory rate as applicable. Packaging costs may be invoiced separately.
2. Unless otherwise agreed, the purchase price is payable immediately upon receipt of goods and invoice without deduction. Default interest will be charged at 9 percentage points per annum above the applicable base rate. We reserve the right to assert more extensive claims for damages arising from default.
3. Where no agreement has been reached in respect of fixed prices, for deliveries which take place 3 months or more after the contract was concluded, we reserve the right to make reasonable price adjustments due to changes in wage, material and/or sales costs.

§ 5 Rights of retention

Purchaser may only exercise rights of retention provided that the counterclaim is based on the same contractual relationship.

§ 6 Delivery times

1. Commencement of the delivery time specified by us is dependent on due and proper fulfilment of obligations on the part of Purchaser. We reserve the right to cite non-fulfilment of contract.
2. If Purchaser fails to supply the data or documents necessary for us to provide our service, or fails to supply the same in good time or in the formats specified by us, we shall not be liable for any claims on the part of Purchaser for incomplete or delayed performance. In the event that we are unable to perform our services without defect as a result of incorrect data materials supplied by Purchaser, we shall nonetheless remain entitled to payment.
3. Should Purchaser be in default of acceptance or negligently fail to comply with Purchaser's duties to cooperate, we shall be entitled to demand compensation for loss or damage incurred by us including additional expenses. We reserve the right to assert more extensive claims. Insofar as the aforementioned circumstances shall apply, the risk of accidental loss or impairment of the purchased items will transfer to Purchaser at the point in time at which the latter becomes in default of acceptance or payment.

§ 7 Transfer of risk, consignment

If goods are consigned to Purchaser at the latter's request, the risk of accidental loss or impairment of the goods shall transfer to Purchaser upon consignment, or at the latest upon leaving the works/warehouse. This shall apply irrespective of whether the goods are consigned from the place of fulfilment or by whom the freight costs are paid.

§ 8 Reservation of title

1. We reserve title to the subject of supply until such time as all claims arising from the supply contract are paid in full. This shall also apply to all future supplies, even if not at all times expressly invoked by us. We shall be entitled to take back the items if Purchaser is in breach of contract.

2. Until such time as title transfers to Purchaser, the latter is obliged to treat the items purchased with due care. Purchaser is in particular obliged at own expense to insure the items adequately at replacement value against theft, fire or water damage. Until such time as title is transferred in full, Purchaser is required to notify us immediately in writing if the goods supplied are distrained or otherwise exposed to third-party intervention. Insofar as the third party is not in a position to reimburse our judicial and extra-judicial costs pursuant to § 771 of the German Code of Civil Procedure (ZPO), Purchaser shall be liable for the loss incurred.

3. Purchaser is entitled to resell goods that are subject to the reservation of title by way of a normal business transaction. Purchaser here and now assigns the receivables deriving from the resale of the goods to us in the amount of the final invoice total agreed with us (including turnover tax). This assignment shall apply irrespective of whether the goods purchased are resold with or without further processing. Even after the said assignment, Purchaser remains entitled to collect these receivables. This shall not affect our authority to ourselves collect the receivables. We will not however collect the receivables provided that Purchaser uses the proceeds to make payment to us, and is not in default of payment, and in particular no application has been made to initiate insolvency proceedings and payments have not been suspended.

4. Purchased goods are at all times processed or transformed by Purchaser in our name and on our behalf. In this case the beneficial right of Purchaser vested in the goods purchased will be carried over to the transformed item. Insofar as the purchased goods are processed together with other items that do not belong to us, we shall acquire joint title to the new item in the ratio of the objective value of our goods to that of the other processed items at the time of processing. The same shall apply in the event that goods are mixed. Where goods are mixed in such a way that Purchaser's goods are considered to be the principal goods, it is deemed to be agreed that Purchaser will assign joint title to us on a pro rata basis and will hold the sole or joint title thus arising in safe custody for us. As security for our claims against Purchaser, the latter also assigns to us such claims against third parties as may accrue to Purchaser through the combination of the reserved goods with real estate; whereby we here and now accept said assignment.

5. We undertake at Purchaser's request to release the securities accruing to us insofar as the value thereof exceeds the claims to be secured by more than 10%.

§ 9 Packaging

Insofar as the recipient of the goods is an entrepreneur within the meaning of § 14 BGB, it is agreed that ARE CON GmbH & Co. KG shall be exempt from the duty imposed by § 7 of the Packaging Regulations (VerpackV). The recipient of the goods will handle the disposal of the packaging at own expense.

§ 10 Guarantee and defect claims, redress / recourse against the manufacturer

1. Purchaser must examine received goods immediately to confirm quantity and nature. Evident defects must be reported in writing within 14 days to ARE CON GmbH & Co.. In case of transactions between merchants, § 377 of the German Commercial Code (HGB) remains unaffected.

2. Defect claims will expire in 12 months following delivery of goods supplied by us. For compensation claims in case of wilful intent or gross negligence, as well as for loss of life, physical injury and impairment of health, on grounds of intentional or negligent breach of duty by the user, the statutory limitation period will apply.

3. If despite exercising all care, the supplied goods should exhibit a defect that already existed at the time of transfer of risk, subject to the defect being reported in due time, we will at our discretion carry out rectification or supply replacement goods. We must at all times be given the opportunity to make good within a reasonable period of time. Purchaser's claims for redress will remain entirely unaffected by the aforementioned provision.

4. Should efforts to make good fail on two occasions, Purchaser – without prejudice to claims for compensation – may withdraw from the contract or reduce the payment. Our consent must be obtained before the goods are returned.

5. Defect claims will not apply in case of insignificant deviation from the agreed condition, nor insignificant impairment of usability, natural wear and tear or damage incurred after the transfer of risk due to defective or negligent handling, excessive stress, or particular external factors not provided for by contract. Should Purchaser or a third party attempt to eliminate a defect by improper means, no claims shall apply either for the defect or for the resulting consequences.

6. Claims on the part of Purchaser for expenses incurred for the purpose of making good, in particular transport, travel, labour and material costs, are excluded insofar as said expenses are increased because goods supplied by us have subsequently been transferred to a location other than Purchaser's premises, unless said transfer accords with the intended use thereof.

7. Recourse claims on the part of Purchaser against us will apply only insofar as there are no agreements between Purchaser and customer in excess of the defect claims mandatorily stipulated by law. In respect of the scope of any recourse claim by Purchaser against the supplier, Section 6 will apply accordingly.

§ 11 Limited liability

In case of material or financial loss or damage occasioned due to negligence, ARE CON GmbH & Co. KG and its vicarious agents shall be liable only in the event that a material contractual duty has been breached, whereby the level of liability shall be limited to typical loss or damage foreseeable at the time of entry into contract.

§ 12 Additional conditions for the supply of plastic cards

1. The technical notes for the preparation of artwork as amended form part of the contract.
2. Cards are printed in accordance with the state of the art. Processing marks, colour differences and minor deviations from the litho proofs may occur, dependent on materials and processes used. These do not constitute defects that impair the value of the plastic cards or their fitness for purpose. Nor do they constitute justification to refuse acceptance or demand a reduction in price, nor constitute grounds for compensation claims.
3. Purchaser is responsible for the content and design of the card, in which respect Purchaser indemnifies ARE CON GmbH & Co. KG against any claims by third parties. This also applies to issues of copyright, competition law and naming rights.
4. The delivery period commences upon approval by Purchaser to proceed to print. Delays caused by failure to give approval in good time will be at Purchaser's expense.
5. ARE CON GmbH & Co. KG is entitled at own expense to prepare archive, sample and presentation copies and use these as such. Purchaser must ensure that where copyright is held by a third party, a free-of-charge right of use is granted.

§ 13 Miscellaneous

1. This contract and the entire legal relationship between the parties are subject to the law of the Federal Republic of Germany to the exclusion of the UN Sales Convention (CISG).
2. Where the order constitutes a transaction between merchants, the following shall apply: Insofar as it is not otherwise specified in the order confirmation, the place of fulfilment and exclusive place of jurisdiction for all disputes arising from this contract shall be our head office location.
3. All agreements reached between the parties for the purpose of executing this contract are recorded in writing in this contract.