

# General terms and conditions of sale and delivery

## S. Siedle & Söhne

### Telefon- und Telegrafentelewerke OHG

# SSS SIEDLE

#### 1. Exclusive application, conclusion of contract

**1.1** Our offers, order confirmations, commercial letters of confirmation, deliveries and services are subject exclusively to these General Terms of Service and Delivery (hereinafter Terms of Business). The purchaser's general terms and conditions do not apply.

**1.2** Even when we provide deliveries and services unconditionally and are aware of the purchaser's own general terms and conditions, our Terms of Business shall apply exclusively.

**1.3** These Terms of Business only apply to entrepreneurs as defined in Section 14 BGB (German Civil Code), public corporations and special funds under public law.

**1.4** We are entitled to revoke our offers without giving any reason up until the time we receive the purchaser's declaration of acceptance (all offers are non-binding). If we do not send a separate confirmation of order, our acceptance of the purchaser's order is implied by our delivery of the goods or services.

We accept orders on offers made (orders on offers made as defined in sections 14 et seq. BGB) for standard products within a period of two weeks, we accept orders on offers made for custom-made items within a period of three weeks.

#### 2. Prices, cancellation fees

**2.1** Our prices are net prices ex works.

**2.2** We charge for the cost of commissioning and installation based on the time and labour required at standard rates for highly skilled electrical fitters. We also charge for labour and travel times outside Furtwangen at appropriate hourly rates which are below those cited in Sentence 1 above and at standard kilometre rates (rate per kilometre driven). Currently applicable rates and kilometre rates are supplied on request.

**2.3** All prices do not include value-added tax.

**2.4** If we accept cancellations to accommodate the purchaser, we will invoice the purchaser the costs incurred and any additional costs incurred. The same applies to changes to the contract caused by the purchaser if we have agreed to these changes to accommodate the purchaser.

#### 3. Payment

**3.1** Payments shall be made for deliveries cash in advance and free of charges for Siedle.

**3.2** Should we grant any reductions in payment, any reductions in payment will be granted subject to compliance with our terms of payment. We are entitled to offset reductions in payment against claims arising from future orders.

**3.3** The purchaser is not entitled to retain payment or offset payments against counterclaims unless the counterclaim has become res judicata, is admitted or undisputed or a claim for defects has been raised which is clearly justified. This limitation of the purchaser's rights does not apply to claims for damages to which the purchaser is entitled, insofar as these claims arise in the context of the contractual relationship for which we are demanding payment.

**3.4** If the purchaser authorizes a SEPA Direct Debit or grants us a SEPA Direct Debit Mandate for his company and thereby authorizes us to collect payments from his account by direct debit, pre-notification (i.e., notification of the purchaser of the upcoming payment to be collected by us by direct debit) will be one day before the invoice falls due. Costs which arise from non-payment or from the assertion of a claim for reimbursement must be borne by the purchaser, unless we are the cause of the non-payment or reimbursement.

#### 4. Partial delivery, technical modifications, Incoterms

**4.1** Partial deliveries are permissible insofar as these partial deliveries are reasonable for the purchaser. This also applies to technical modifications as long as they do not result in an increase in price and do not lead to any deterioration.

**4.2** Deliveries are DAP to the specified place of delivery (Incoterms 2010).

#### 5. Specialized trade channels for hardware

As we supply high-quality, sophisticated goods which require technical explanations, the purchaser must either only resell these goods to specialist retailers/fitters or fit them himself.

#### 6. Delivery time and time of performance, delay, force majeure

**6.1** Delivery times for our standard products are up to six weeks. For custom-made products we will give a delivery date when we confirm the order. The period within which the goods should be commissioned or installed must be agreed separately.

**6.2** An agreed delivery time or time of performance will start when the purchaser receives the confirmation of order/letter of confirmation, however not before the purchaser has provided all documents, permits, approvals and free-issue parts where necessary and not before we have received an agreed down payment or advance payment.

**6.3** We are entitled to withhold deliveries or services until we receive payment for deliveries or services for which the purchaser is in default. The defence of uncertainty under section 321 BGB is not affected by this nor are other legal rights to refuse performance or an agreed advance payment.

**6.4** In cases of force majeure, the agreed delivery period will be extended as appropriate. Should the event of force majeure continue for longer than eight weeks, then both contracting parties will be entitled, after first agreeing on a deadline of a further two weeks, to withdraw from the contract. Force majeure are external events caused from outside by elemental forces of nature or by the actions of third persons which could not have been foreseen based on judgement or experience, which could not have been prevented or rendered harmless by economically acceptable means or by the most careful diligence to be reasonably expected in the circumstances and which do not need to be accepted because of their frequency of occurrence. Force majeure also includes interruptions to operations without any fault on our part such as, for example, strikes, lock-outs or delayed deliveries to us by suppliers for which we cannot be held responsible.

**6.5** Upon our request, the purchaser is obligated to state within a reasonable period of time whether he wishes to withdraw from the contract because of delays in delivery or performance or whether he insists on delivery.

#### 7. Electrical planning

Electrical planning is, in principle, the purchaser's responsibility. Insofar as we do electrical planning for the purchaser, we do this to accommodate the purchaser, i.e. without the intention of entering into a legal relationship and free of charge. The purchaser will ensure that any electrical planning we have carried out to accommodate him is checked by professionals. This also applies to any electrical planning we carry out to accommodate end-customers.

#### 8. Software

As regards the extent of rights and restrictions of use, in particular with regard to the necessity of carrying out backups of programs and data, please refer to the separate license terms which are available for download at [www.siedle.de/impressum](http://www.siedle.de/impressum) or, alternatively, are available from us in print form on request.

#### 9. Warranty

**9.1** Purchaser's duty to examine and give notice of defects and obligation to take precautions

**9.1.1** The purchaser must examine the delivered goods without delay and must immediately notify us of any obvious defects or deviations in quantity (hereinafter jointly: defects), at the latest within seven days of receiving the goods. We must also be immediately notified of any concealed defects after they have been detected, at the latest within seven days after their detection. The period for examination and notification of defects applies equally to any goods delivered directly to a third party nominated by the purchaser; in these cases the purchaser is also obliged to ensure that we are promptly notified of any defects.

**9.1.2** Should customers of the purchaser notify the purchaser of defects, the purchaser must immediately pass on the notifications of defects to us. The purchaser undertakes to only remedy or rectify defects of which he was notified by his customers or by legitimate customers along his supply chain after he has first consulted with us and coordinated the technical and economic measures.

**9.1.3** If the purchaser intends to install, mount or process the supplied goods, then he must examine the goods to ensure they are free from defects before installing, mounting or processing the goods. Should he fail to do so, then he is grossly negligent under section 439 para. 3 and section 442 para. 1 sentence 2 BGB. In this case, the purchaser will only be entitled to make warranty claims if the said defect was caused deliberately or maliciously concealed by us or we assumed a guarantee of quality.

**9.1.4** Should the purchaser find defects in the supplied goods, then he undertakes not to sell on the goods or to process, install or mount them until we have come to an agreement about how to deal with the warranty claims or evidence has been secured judicially or extrajudicially. The purchaser must provide us with

the faulty goods so that we can investigate whether the defects fall under warranty. If he culpably refuses to do so, then the warranty claims are void.

#### 9.2 Warranty

**9.2.1** If the defects are negligible, then the purchaser cannot claim for damages instead of rectification of the defect and has no right to revoke the contract.

**9.2.2** If the last customer in the supply chain is not the user, then the purchaser must give us a reasonable period of time in derogation from section 445 a para. 2 BGB if his customer wishes to assert defect-related rights, before the purchaser asserts the other rights referred to in section 437 BGB in lieu of supplementary performance (right of second delivery). The purchaser must retain the right of second delivery to his customer if the customer is not the final user. In cases where we have the right to second delivery, we are entitled and obliged to rectify the defect or resupply the goods up to three times free of charge (supplementary performance) at our discretion within a reasonable period of time, if the defect occurs within the warranty period and we were immediately notified after the defect was detected and provided the cause of the defect already existed at the time of passing of risk. The burden of proof for this lies with the purchaser. If the supplementary performance fails, then the purchaser will be entitled to withdraw from the contract or reduce the agreed remuneration, without this affecting the purchaser's potential claims for compensation for damages under Item 10.

**9.2.3** If the purchaser has installed defective goods in the correct manner and in accordance with their intended purpose or affixed them to something else, then: a) The purchaser must give us the opportunity to remove the defective goods and install or affix the repaired or resupplied goods. This does not apply if the purchaser's customer rejects this, in which case the purchaser must prove to us that his customer has rejected it, or if the purchaser's customer is the user. b) Insofar as we are obliged to bear the costs of dismantling and reinstalling the rectified defective goods under section 439 para. 3 BGB, we will only have to bear the costs of dismantling and installing or affixing the goods which are customary in the market and for which the purchaser provides proof by submitting supporting documentation or invoices. The purchaser is not entitled to receive advance payment for the costs of dismantling and installing or affixing identical goods, unless his customer is the final user and his customer demands advance payment from him.

**9.2.4** Warranty rights become time-barred after one year, calculated from the date of delivery as defined in Item 4.2. This does not apply in cases where the law stipulates longer periods of warranty, as in section 438 para. 1 no. 2 BGB (buildings and things used for buildings), section 438 para. 3 BGB (fraudulent concealment), section 445b para. 1 BGB (claim for recourse), section 476 para. 2 BGB (shortened statute of limitations in cases when the end-customer is the user) and section 634a para. 1 no. 2 BGB (construction defects). The statutory regulations on the suspension of the statute of limitations and on interruptions and recommencing of the statutory period are not affected.

**9.2.5** Item 10 applies to claims for damages arising from defects. The purchaser has no claims for warranty which go beyond the claims described in Items 9.1 and 9.2 in conjunction with Item 10.

**9.2.6** Should the purchaser culpably and wrongly notify us of defects, we will be entitled to demand restitution from him for costs we incur and for other damages.

#### 10. Compensation for damages

**10.1** Purchaser's claims for damages, irrespective of their legal basis, in particular for breach of duties arising from the contractual relationship or from tort, are excluded, with the exception of the circumstances described in the provisions below.

**10.2** The exclusion of liability as outlined in Item 10.1 does not apply to deliberate or grossly negligent breaches of duty on our part or grossly negligent breaches of duty and deliberate or grossly negligent breaches of duty by our representatives or vicarious agents, to violations of material contractual obligations, whereby contractual obligations are considered material insofar as fulfilment of obligations is only possible if the obligations of the contract are performed properly and the purchaser can expect to rely on the proper performance of the contractual obligations,

• in the case of the violation of other obligations under section 241 para. 2 BGB (obligation to take account of the party's rights and legal or other interests) when the purchaser can no longer be reasonably expected to accept performance of our obligations,

• if there has been an injury to life, limb or health,

• under the German Product Liability Act or

• following other actions which have made us legally liable.

**10.3** In the event of liability for violations of material contractual obligations and the impossibility of performance for which we are responsible and in cases of mandatory liability for defects of title, we will only be liable for foreseeable average damages typical for this type of contract and insofar as we were slightly negligent. This does not apply to cases which also involved injury to life, limb or health or cases of product liability.

**10.4** Our liability is – with the exception of injury to life, limb or health, intent, gross negligence or product liability and other mandatory regulations on liability – limited overall to the extent of coverage provided by our business liability insurance, provided the extent of our liability coverage amounts to what is customary in the industry.

**10.5** We will only be liable for defects of any electrical planning services we provided to accommodate the purchaser or his customers in cases of intent or gross negligence.

**10.6** The above disclaimers and limitations of liability apply equally to managerial and non-managerial employees as well as, in the event of liability, to our vicarious agents.

**10.7** If we implement software as part of our commissioning or installation work, we first back up the data for protection. If the purchaser carries out changes to our systems, irrespective of the type of changes involved, then he is responsible for backing up the data and programs himself before implementing changes. If we are liable under Item 10.6 sentence 1 in conjunction with Items 10.1 to 10.6, then in cases of minor negligence our liability for loss of data is limited to the costs of data recovery when backup data are available.

**10.8** The purchaser can only assert a claim for damages for a period of one year from the start of the statutory period of limitation. The limitation period for claims for damages arising from material defects (Item 9.1) is given in Item 9.2.4. The above limitation period and the reduction of the period of limitation do not apply in the event that we are liable for intent or gross negligence or for injury to life, limb or health, or we are liable under the German Product Liability Act or following other actions which have made us legally liable.

**10.9** If the purchaser exports our goods and the goods are processed, installed, mounted or otherwise used abroad, we are not liable for ensuring they are exportable, in particular we are not liable for obstacles such as export controls, embargos, or ensuring the goods do not require state approval and can be freely imported into the purchaser's export countries. The purchaser is responsible for monitoring and ensuring compliance with the national regulations of the respective export country.

**10.10** The above disclaimers and limitations of liability apply equally to violations of data protection regulations, in particular violations of the General Data Protection Regulation (GDPR) with the exception of violations of the prohibition of processing personal data as defined in Art. 9 GDPR, particularly biometric data.

**10.11** The provisions of this Item 10 do not change the burden of proof to the detriment of the purchaser.

#### 11. Cancellation, changes to custom-made products

**11.1** If we take back goods to accommodate the purchaser, then the purchaser must bear the costs and risk of the return shipment of the goods.

**11.2** In some cases where we took back goods to accommodate the purchaser, we may issue a credit note and deduct 20% of the net invoice value for administrative costs, examination and repackaging; these cases are decided on a case-by-case basis. Custom-made products and products from the BGA, BG/KSF, BG/SR, KS, KSA, KSF, RGA, RG/KSF, RGT, RG/SR, Siedle Classic and Siedle Steel series are not returnable.

**11.3** If the purchaser terminates existing contracts for work and materials for custom-made products, commissioning and installation without good cause (free right of cancellation under section 648 BGB), then the purchaser must pay us for goods and services rendered up until the time of cancellation and in addition pay a

lump sum amounting to 10% of that part of the agreed total price which corresponds to the goods or services which we had not yet rendered at the time of cancellation. This does not affect the purchaser's right to furnish proof that the incurred costs were lower.

**12. Industrial property rights, copyright**

**12.1** Should a third party make a justified claim for infringement of industrial property rights, copyright or supplementary rights related to copyright under competition law (summarized hereinafter as: property rights) against the purchaser based on the contractual use of products supplied by us, then we will be liable within the period of warranty (Item 9.2.4) as follows: we shall either undertake, at our own discretion, to obtain a right of use for the respective products within a reasonable period of time at our own expense or we will amend the product in such a manner that it does not infringe any property rights and we will undertake to exchange it at the purchaser's premises at our own expense.

**12.2** The obligations listed under Item 12.1 only exist insofar as the purchaser informs us without delay, at the latest within eight working days after becoming aware of the claims asserted by the third party, the purchaser does not acknowledge any infringement; and we retain the right to undertake all defensive measures against the claims. If the purchaser stops using or selling the goods on hearing about the asserted claim of infringement of property rights, then the purchaser must undertake to inform the third party that the purchaser's suspension of use does not imply any acknowledgement of any infringement of property rights. The purchaser has no claims against us if the purchaser himself is responsible for the infringement of property rights.

**12.3** In the event of an infringement of property rights, the provisions of Items 9 and 10 apply correspondingly to the purchaser's claims. Other claims of the purchaser are excluded.

**13. Retention of title**

**13.1** The supplied goods remain our property until all our claims arising from our business relationship with the purchaser have been satisfied. The purchaser must undertake all measures necessary to ensure that any retention of title required under foreign law is registered.

**13.2** The purchaser is authorized to sell on, process, affix, install or remove the goods (goods subject to retention of title) in the ordinary course of business but not to pledge or assign them to a third party by way of security.

**13.3** The resale of the goods is only permissible on condition that the purchaser will only transfer ownership of the goods to his customer when the customer has met his payment obligations with respect to the goods subject to retention of title in full. The purchaser already hereby assigns to us all accounts receivable arising from the resale or the affixing or installation of the goods up to the value of our claims against the purchaser.

**13.4** The purchaser is authorized to collect the assigned receivables. The purchaser's authorization to collect the receivables ceases if the purchaser is in default of payment. In this case we are entitled to inform the purchaser's customer that the purchaser has assigned the accounts receivable to us and we will be entitled to collect the accounts receivable ourselves. To enable us to assert our right to collect the assigned receivables, the purchaser must provide us with the necessary information and allow us to verify this information. In particular, the purchaser must on request provide us with a detailed statement of the receivables due to him including the name and address of the customer, the value of the individual receivables, the date of invoice, etc., and must grant us access to his business premises for the purposes of verification.

**13.5** If the purchaser processes the goods to which we retain title and connects or combines them with a new product, then this is done on our behalf without us incurring any obligations therefrom. The purchaser does not acquire ownership of the new product under section 947 et seq. BGB by the connection, combination or processing. When the goods to which we retain title are connected, combined or processed with products which are not our property, we acquire co-ownership of the newly created item according to the proportion of the invoice value of our reserved goods to the overall value.

**13.6** The purchaser undertakes to notify us immediately if he suspends payment or if there is a significant deterioration in his financial circumstances or if an attachment of the goods has occurred. The purchaser must make the

name and address of the attaching creditor known to us. The purchaser will bear all expenses incurred with the aim of annulling the attachment and reacquiring the goods.

**14. Place of jurisdiction, applicable law**

**14.1** The place of jurisdiction for all disputes arising in connection with the contractual relationship is Furtwangen. We are also entitled to bring an action against the purchaser at his place of business.

**14.2** The contractual relationship is subject to German substantive law and German procedural law to the exclusion of any conflict of laws. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.

Effective 05/2018