

General Terms and Conditions of Business of TUNAP GmbH & Co. KG

1. Scope

- 1.1 TUNAP GmbH & Co. KG (in the following TUNAP) renders all deliveries of articles and services solely as per the following General Terms and Conditions of Business. Conflicting, additional, or diverging terms and conditions of business of the customer are applicable only with the express written approval of TUNAP. These GTCBs shall also apply in the event that TUNAP renders deliveries of articles or services without reservation in awareness of conflicting or diverging terms and conditions of the customer.
- 1.2 The following terms and conditions are applicable for business with consumers and traders when the contract relates to the operation of trading business, legal persons under public law, or special assets under public law.
- 1.3 All information provided on websites, in brochures, advertising materials, and non-binding offers are an invitation for customers to place a binding order. The order is accepted by means of a written confirmation of the order or the delivery of items or performance of the services.
- 1.4 The execution of orders according to documents to be submitted by the customer is subject to the approval of TUNAP.
- 1.5 Concluded contracts oblige the customer to accept and render payment for the ordered deliveries and services.
- 1.6 All rights to which TUNAP is statutorily entitled beyond these GTCBs remain unaffected.
- 1.7 TUNAP branded products are intended for professional use. Many products do not comply with the legal requirements that must be observed in relation to private end users. For this reason, TUNAP reserves the right to sell to private end users. Should the customer nevertheless pass on TUNAP branded products to third parties, he must ensure under his own responsibility that he complies with the statutory requirements, in particular with regard to the passing on of the products to private end users.

2. Prices, Payment, Offsetting

- 2.1 The price agreed in each separate case is authoritative. Unless specified otherwise, the prices for consumers in the sense of § 13 BGB (German Civil Code) are gross (incl. statutory VAT) and for entrepreneurs in the sense of § 14 BGB net (plus statutory VAT). Costs for packaging, transport, and insurance and all other ancillary costs shall be charged separately. If the customer is a consumer, he shall bear such costs only when they do not exceed a reasonable amount relative to the value of the article of sale. For small orders with a net value of less than Euro 75,- a minimum quantity surcharge will be charged.
- 2.2 For deliveries of items or services that are not to be delivered or rendered within a period of four months after the conclusion of the contract, TUNAP shall be entitled to adjust the price to account for any increases in wages or material costs that have occurred in the meantime. This shall also apply – independent of the period of delivery or services – for deliveries and services rendered in the context of a continuing obligation. If TUNAP has agreed the prices with the customer in dependence of defined pricing factors, e.g. prices for raw materials, changes in the pricing factors may lead to price adjustments independent of the delivery and service period.



- 2.3 Unless agreed separately, payments shall be rendered net within 30 days of the invoice date. TUNAP shall, however, be entitled to execute or render outstanding deliveries and services against advance payment or collateral deposit in the case of a new business relationship, when articles are to be delivered to a foreign address, when the customer has a foreign business address, or in the case of any other reasons that give reasonable doubt regarding the proper payment of the invoice after delivery of the articles. Payment shall be deemed rendered on the date on which TUNAP can freely dispose of the due amount. When cheques are accepted, payment shall be deemed rendered when the cheque is cashed and credited to TUNAP within a reasonable period. Discount charges and other cheque costs shall be borne by the customer.
- 2.4 In the event of default of payment, TUNAP shall be entitled to demand default interest in the amount of 5% over the base interest rate for consumers and in the amount of 9% over the base interest rate for entrepreneurs. This shall not prejudice the right of TUNAP to assert further claims, in particular regarding higher interest rates for other legal reasons.
- 2.5 In the event of a substantial deterioration in the customer's financial circumstances after the conclusion of the contract or that such a deterioration in the financial circumstances becomes apparent after the contract has been concluded that jeopardizes the payment claims of TUNAP, TUNAP shall be entitled to refuse the further performance of the contract until the customer effects the payment or renders sufficient collateral deposit for the payment. In the event that the customer defaults on payment, all claims against him shall become due immediately, irrespective of whether they have already been invoiced or not.
- 2.6 TUNAP is entitled to allocate the customer's payments to the latter's oldest debts first. In the event that costs and interest have already accrued, TUNAP shall be entitled to first allocate the payments to the costs, then to the due interest, and finally to the main claim.
- 2.7 Counterclaims of the customer shall entitle him to offset payment and assert a right of retention only when these have been legally established or are otherwise indisputable. The customer may assert a right of retention only when his counterclaim is based on the same contractual relationship.
- 3. Delivery periods and deadlines**
- 3.1 Delivery periods and deadlines are committal for TUNAP only when they have been expressly declared or confirmed as committal by TUNAP. Unless agreed otherwise, deliveries rendered by TUNAP are obligations to deliver articles that are deemed rendered on time by TUNAP when the ordered articles are handed over to the transport agent at the business premises of TUNAP or a warehouse of TUNAP, or else when TUNAP has notified the readiness for dispatch, but due to the customer's refusal of acceptance the ordered articles have not been dispatched from the business premises or warehouse.
- 3.2 Delivery periods or completion deadlines or, respectively, the fulfilment of agreed deadlines shall start only after all necessary technical aspects have been clarified. This applies in particular regarding the customer's duties of cooperation. In the event that agreed deadlines are not met, the customer must set TUNAP a reasonable extension of time to render the agreed contractual service. Extensions must be defined in text form. The fulfilment of agreed delivery periods and deadlines shall be subject to the timely and orderly availability of materials at TUNAP.
- 3.3 Whenever TUNAP is prevented from fulfilling its contractual obligations – in particular the delivery of articles – by force majeure, TUNAP shall be relieved of its delivery obligation for the

duration of the hindrance and a reasonable recovery period without any obligation to compensate the customer for damages. This shall also apply in the case that TUNAP is unreasonably hindered in or temporarily prevented from fulfilling its obligations by unforeseen circumstances, for example by industrial action, official measures, import and/or export sanctions, power failures, obstacles to delivery by suppliers, earthquake, volcano eruptions, but also fire, epidemics, pandemics, traffic accidents, the taking of hostages, war, unrest, civil war, revolution, terrorism, sabotage, or major operational stoppages. In the event that such events last for more than three months, TUNAP shall be entitled to withdraw from the contract when the fulfilment of the contract is no longer in the interest of TUNAP as a result of the obstacle. At customer's request, TUNAP shall declare at the end of the period whether it wishes to assert its right to withdraw from the contract or else deliver the articles within a reasonable extension period. This shall not prejudice already effective statutory withdrawal rights. TUNAP shall not be liable for delivery delays due to events for which TUNAP is not responsible and shall not reimburse any expenses or damages arising from such delays.

- 3.4 Any requests made by the customer for subsequent changes or amendments agreed with TUNAP shall result in a reasonable extension of the agreed deadlines and periods for delivery. The preparation of the delivery including the notification of readiness for dispatch and the organization of other agreed measures for the fulfilment of the contract shall as a rule take place on normal working days within regular office hours.
- 3.5 TUNAP shall be entitled to make reasonable partial deliveries and partial services. Advance deliveries and services are permissible unless expressly agreed otherwise.
- 3.6 In the event that the customer is in default of acceptance, TUNAP shall be entitled to demand compensation for the normal storage costs and the reimbursement of any extra expenses for the storage and maintenance of the ordered articles. Furthermore, the risk of accidental loss or of accidental deterioration shall pass to the customer at the time that he falls in default of acceptance. In the case that the default of acceptance temporally coincides with a debtor's delay, or if the customer culpably violates any duties of cooperation, TUNAP shall be entitled to demand compensation for any resultant damages, without prejudice to any other statutory claims of TUNAP. After the expiry of a reasonable extension without results, TUNAP shall be entitled to dispose of the articles otherwise at its discretion and to make the delivery to the customer with a reasonable period of extension.
- 3.7 For debtor's default for which it is responsible, TUNAP shall be liable as per Sect. 7.

4. Retention of title, withdrawal

- 4.1 TUNAP retains all rights to the ownership of deliveries until the complete payment of all claims due to TUNAP from the business relationship with the customer. In the case that the delivery and service rendered by TUNAP also involves software, then solely a revocable license is granted for the use of this software until payment has been completely rendered. The claims include claims from checks and bills of exchange and current invoicing claims. The customer is obliged to handle articles subject to retention of title with care for the entire period of retention of title. In particular, he shall be obliged to take out adequate insurance on the articles against fire, water damage, and theft at replacement value. The customer herewith cedes to TUNAP all claims for damages arising from this insurance policy. TUNAP herewith accepts this cession. Wherever such a cession is not permissible, the customer shall irrevocably instruct his insurer



to direct any insurance claims solely to TUNAP. This shall have no prejudice on other claims of TUNAP. The customer shall provide evidence of the insurance policy to TUNAP at the latter's request.

- 4.2 Prior to the complete transfer of title, pledging, assignment as collateral, or any other disposal that jeopardizes the ownership rights of TUNAP shall not be permissible. The customer shall be obliged to notify TUNAP immediately in the event that a third party files a claim to the articles. In the event of attachments or other seizure measures by third parties, the customer shall immediately notify TUNAP in text form and provide all necessary statements, inform the third party of the ownership rights of TUNAP, and cooperate in the measures taken by TUNAP to protect the articles subject to retention of title. The customer shall bear all costs for which he is responsible for annulling the attachment and for the recovery of the articles wherever these costs cannot be reclaimed from the third party.
- 4.3 In the event of the violation of the contract on the part of the customer, in particular of default on payment, TUNAP shall, in accordance with the statutory provisions be entitled to withdraw from the contract, to demand the return of the articles subject to retention of title, and to dispose of the articles otherwise at its own discretion. In the case of withdrawal from the contract, TUNAP shall be entitled to withdraw the revocable license granted for the use of software as per Sect. 4.1. The customer shall grant TUNAP or a third party assigned by TUNAP immediate access to the articles subject to retention of title, to hand them over, and to provide information on their present location. After issuing a corresponding timely warning, TUNAP shall be entitled to dispose of the articles subject to retention of title otherwise at its own discretion to satisfy any due claims against the customer.
- 4.4 In the case that the customer is an entrepreneur in the sense of § 14 BGB, he shall be entitled to sell the articles to other parties in the proper course of business; in this case, however, he herewith cedes to TUNAP all claims in the amount of the final sum invoiced to him by TUNAP (including VAT) that he accrues from selling the articles to his own customers or third parties. TUNAP herewith accepts this cession. Wherever a cession proves not to be permissible, the customer herewith irrevocably instructs the third-party debtors to render any due payments solely to TUNAP. The customer shall continue to be entitled to recover claims even after such a cession. This shall have no prejudice on the entitlement of TUNAP to recover claims itself. In such a case, however, TUNAP shall not recover claims as long as the customer continues to fulfil his payment obligations from the proceeds collected, is not in default on payment, has not ceased to render payments, or else that his creditworthiness or financial circumstances have deteriorated, he in any other way ceases his business activities relevant for the fulfilment of the contract, or for any other reason is no longer capable of fulfilling his contractual obligations. In such cases, however, TUNAP shall be entitled to demand that the customer reports the ceded claims and the names of the respective debtors, transfers to TUNAP all information required for the recovery of the claims and the relevant documents, and notifies his debtors of the cession. Claims may be resold only with the prior approval of TUNAP. The customer's right to collect claims shall expire with his notification of the third-party debtors of the cession. In the event that the collection right is revoked, TUNAP shall be entitled to demand that the customer reports the ceded claims and the names of the respective debtors, provides the details necessary for their collection, hands over the relevant documents, and notifies the debtors of the cession.



- 4.5 Any processing or reworking of the articles subject to retention of title by the customer shall in all cases be performed on behalf of TUNAP. The customer's expectant right to the articles subject to retention of title shall continue to apply with respect to the processed or reworked article. In the event that the article is processed, connected, or mixed with other articles not belonging to TUNAP, TUNAP shall acquire co-ownership in the new article in proportion to the value of the supplied article to the other articles used at the time of processing. The customer shall safekeep the new articles on behalf of TUNAP. The article resulting from the processing or reworking shall, in addition, be subject to the same provisions as those applicable for the articles subject to retention of title.
- 4.6 TUNAP pledges to release, at the customer's request, the latter's collaterals to the extent that their realizable value exceeds the collateralized claims by more than 20%.
- 4.7 In the case of deliveries to regions with other legal systems in which the retention-right provisions as per Sects. 4.1 thru 4.6 above do not have the same collateralization effect as in the Federal Republic of Germany, the customer herewith assigns to TUNAP an equivalent collateralization right. Wherever this requires further declarations or actions, the customer shall make these declarations and take the necessary actions accordingly. The customer shall cooperate in all measures that are necessary and expedient regarding the efficacy and enforceability of such collateralization rights.
- 5. Cooperation duties of the customer**
- 5.1 Wherever the performance of agreed services requires cooperation on the part of the customer, he shall ensure that TUNAP promptly receives all necessary and appropriate information and data in the required quality.
- 5.2 In the event that the customer fails to fulfil his cooperation duties in part or in whole or in good time, the delivery period for TUNAP shall be extended accordingly until the customer fulfils his cooperation duties. Furthermore, the customer shall be liable towards TUNAP for all resultant financial expenses and losses unless the customer is demonstrably not responsible for the violations of these duties.
- 6. Defect-related rights**
- 6.1 TUNAP manufactures its products according to the current state of the art at the time of the conclusion of the contract. Purposes intended by the customer that go beyond the normal usage of the products or that require properties that deviate from the normal features, in particular for safety-technically relevant applications such as in the aerospace or automotive sectors, must be agreed in separate contracts.
- 6.2 Subject to the conditions specified in the following sections, all warranty claims for defects raised by the customer against TUNAP shall otherwise be governed by statutory provisions.
- 6.3 Normal wear as experienced in typical use shall not constitute a defect. The customer shall observe the recommendations and instructions for operation, storage, transport and/or maintenance supplied by TUNAP or the respective supplier (in particular based on product-specific data sheets). No direct or indirect warranty claims for defects shall be derived from violations of these obligations by the customer.
- 6.4 Defect-related rights of the customer, insofar the customer is an entrepreneur in the sense of § 14 BGB (German Civil Code), shall be subject to his fulfilment of his statutory duties to examine

and report defects, in particular regarding the inspection of the delivered articles on receipt and the immediate notification of TUNAP in text form about obvious defects apparent upon such an inspection immediately after receipt of the articles, specifying the details of the defect. The customer shall notify TUNAP in text form about any concealed defects immediately after their discovery. "Immediate" in this regard means the notification to TUNAP within 5 (five) working days of delivery regarding obvious defects and defects apparent on proper inspection, and within 5 (five) working days of the discovery of concealed defects. When the customer is an entrepreneur in the sense of § 14 BGB, his duty to examine and report defects defined in § 377 HGB (Handelsgesetzbuch, German Commercial Code) shall remain unaffected.

- 6.5 In the event of a defect, the customer shall set TUNAP in text form a reasonable deadline for its rectification. TUNAP reserves the right to rectify the defect by reworking the defective article or by making a replacement delivery at its discretion. In the event that rectification fails or is unreasonable for the customer, the customer shall be entitled to withdraw from the contract or to demand a reduction in the purchase price. Withdrawal from the contract shall be excluded when the breach of an obligation by TUNAP is merely minor in its nature.
- 6.6 For warranty claims, a period of limitation of 24 months from the transfer of risk shall apply for deliveries to consumers, and one of 12 months for deliveries to entrepreneurs. In the case of work performances, a period of 12 months from the date of acceptance shall apply for entrepreneurs and one of 24 months for consumers. These periods of limitation shall not apply for recourse claims acc. to §§ 478, 479 BGB, for fraudulently concealed defects, and for claims for damages acc. to Sects. 7.1 thru 7.3; here the statutory limitation period shall apply.
- 6.7 Ownership of parts replaced in the course of reworking or replacement delivery shall pass to TUNAP; such parts shall be returned by the customer at the request of TUNAP at the latter's expense.
- 6.8 The customer is obliged to first return the articles to TUNAP at his own expense for the inspection of defects. The expenses necessary for the inspection and rectification of the defect, in particular the costs for transport, travel, work, and materials in the sense of § 439 II BGB, shall be borne by TUNAP only if the inspection reveals that the article is indeed defective and to the extent that these expenses do not become higher as a result of the customer transporting the article to a place other than the delivery address. Personnel and material costs asserted by the customer in this context shall be calculated at cost price. Compensation for dismantling and assembly within the scope of "no-fault rectification" is excluded.
- 6.9 The right of the customer to withdraw from the contract shall be excluded in the case that he is unable to return the contractual article received and this is not based upon the fact that the nature of the article received makes this impossible, the impossibility is within the responsibility of TUNAP or the defect did not become apparent until the processing or reworking of the article. The right of withdrawal shall also be excluded wherever TUNAP is not responsible for the defect and when TUNAP is obliged to pay compensation instead of accepting the return of the article.
- 6.10 Claims of the customer for the reimbursement of expenses instead of damages in place of performance shall be excluded provided that the expenses would not also have been incurred by a reasonable third party.
- 6.11 Any statement made by TUNAP regarding a claim for defects asserted by the customer shall not be interpreted as the entry into the negotiations on the claim on the circumstances on which the claim is based, wherever the defect claim is rejected by TUNAP in its entirety.

- 6.12 §§445a, 445b BGB shall not apply. §478 II BGB remains unaffected.
- 6.13 The provisions in Sect. 7 below shall supplementarily apply regarding claims for damages made in accordance with the laws governing warranties.

7. Liability

- 7.1 TUNAP shall not be liable for damages beyond TUNAP's scope of responsibility, in particular not for damages due to the improper usage or handling of the products. The customer shall observe the recommendations and instructions for operation, storage, transport and/or maintenance supplied by TUNAP or the respective supplier (in particular based on product-specific data sheets), shall make only authorized changes, shall exchange replacement parts professionally, and shall use only consumables that conform to the required specifications. TUNAP accepts no liability for damages that arise from or else are due to the violation of these obligations by the customer.
- 7.2 TUNAP accepts unlimited liability for damages arising from the violation of a guarantee or from the injury to life, limb, or health. This also applies in the case of intent and gross negligence for the mandatory statutory liability for product defects (in particular according to the Produkthaftungsgesetz, i.e. the German Product Liability Act) and for liability due to the fraudulent concealment of defects. TUNAP shall be liable for slight negligence only to the extent that major obligations are violated that derive from the nature of the contract and are of major relevance for the achievement of the purpose of the contract. In the event of a violation of such obligations, default, or impossibility, the liability of TUNAP shall be limited to such damages whose emergence must be typically anticipated in the context of the contract.
- 7.3 In all other aspects the statutory periods of limitation shall apply.

8. Property rights, information and cooperation duties

- 8.1 All property rights, in particular copyrights or industrial property rights such as patents, trademarks, or registered designs, and rights to inventions and knowhow shall remain with TUNAP.
- 8.2 The customer undertakes to inform TUNAP without delay of any claims by third parties concerning the property rights of the products delivered by TUNAP. TUNAP is entitled but not obliged to assume the legal defense at its own expense and on its own responsibility.
- 8.3 The customer guarantees that provided goods and services, in particular drawings, which serve as a basis for customer-specific orders, are free of third-party industrial property rights. In the event of defects of title, the customer shall indemnify TUNAP against all corresponding claims of third parties unless the customer is not responsible for the defect of title.
- 8.4 TUNAP reserves the property rights and copyrights to all documents or aids provided to the customer such as in particular drawings, illustrations, graphics, drafts, calculations, descriptions, plans, models, samples or specimens, technical specifications, documentation, data carriers and software programs unless otherwise agreed in individual cases. Such documents and aids are to be used exclusively for the contractual performance and may not be made available to third parties without the express written consent of TUNAP. The customer must return the aforementioned objects in full to TUNAP on request and destroy any copies, which may have been made if they are no longer required in the ordinary course of business or if negotiations do not lead to the conclusion of a contract. This shall not apply to routinely made backup copies of

electronic data traffic or to information requiring secrecy and copies thereof which the other party to the contract must keep in accordance with the applicable law.

9. Product liability

- 9.1 The customer shall not change the articles, in particular he shall not change or remove any warning labels regarding the risks associated with improper usage of the articles. In the event of the violation of this obligation, the customer shall internally indemnify TUNAP against product-liability claims asserted by third parties in all cases in which the customer is responsible for the fault giving rise to liability.
- 9.2 In the event that TUNAP is obliged to issue a product recall or warning due to a product defect of the articles, the customer shall support TUNAP and enact all reasonable measures instructed by TUNAP. The customer shall be obliged to bear the costs of the product recall or warning wherever he is responsible for the product defect and the resultant damage. This shall not prejudice further claims of TUNAP.
- 9.3 The customer shall notify TUNAP immediately in text form of any risks that come to his attention in connection with the use of the articles and potential product defects.

10. Confidentiality

The contract parties herewith pledge to treat all business and technical details exchanged between each other and that come to their notice in the course of the performance of the contract as trade secrets wherever the respective other contract party has not previously made such details publicly accessible. The customer shall implement appropriate contractual measures with his employees and agents acting on his behalf to ensure that these persons without temporal restriction desist from exploiting, forwarding, or illegally recording such business and trade secrets.

11. Court of jurisdiction, place of performance, applicable law

- 11.1 When the customer is a businessperson, a legal entity, or a special fund under public law, the following applies: The court of jurisdiction for all legal disputes shall be the competent court at the registered business offices of TUNAP. Notwithstanding this, TUNAP shall be entitled to file for legal action against the customer at his general court of jurisdiction.
- 11.2 The place of performance for all services rendered by the customer and TUNAP shall be the registered business offices of TUNAP.
- 11.3 The legal system of the Federal Republic of Germany shall apply. The United Nations Convention on Contracts for the International Sale of Goods (CISG) of 11 April 1980 is herewith excluded.
- 11.4 The European Commission has established a platform for Online Dispute Resolution (ODR), accessible at <http://ec.europa.eu/consumers/odr/>. We are neither obliged nor as a matter of principle willing to participate in dispute-resolution proceedings before a consumer arbitration board.



12. Environmental statement

The person and the environment are the principle focus of our activities at TUNAP. We are committed to the sparing use of resources in our manufacturing operations and systematically record energy-saving potentials in our production processes and transport infrastructure. We make intensive endeavours to identify ecological alternatives in choosing our energy and raw-material sources and follow a consistent approach in the area of waste prevention and product recycling.

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