

A. GENERAL PROVISIONS

§ 1 Application of GTC and hierarchy

1. The following General Terms and Conditions ("GTC") of Axel Semrau GmbH., Stefansbecke 42, 45549 Sprockhövel ("Axel Semrau") apply to all business between Axel Semrau and the Customer and especially to all supplies and services by Axel Semrau (hereinafter also referred to as "performance") and to all payments by the Customer. Axel Semrau does not acknowledge any of the Customer's general terms and conditions that supplement or deviate from these GTC unless Axel Semrau confirms same in writing. Unreserved performance or acceptance of payments by Axel Semrau does not signify acknowledgement of the Customer's supplementary or deviating terms and conditions even if no express objection is raised.
2. If provisions in an individual contract (e.g. in an offer or order confirmation) should conflict with these GTC the provisions in the individual contract shall have priority. If the General Terms and Conditions in Part A should conflict with the special provisions in Part B or Part C the special provisions shall have priority.

§ 2 Conclusion of a contract

Offers provided by Axel Semrau are essentially non-binding. A contract is concluded when the Customer's order is accepted by Axel Semrau. Acceptance may also be implied – by performance or acceptance of performance by Axel Semrau, for instance.

§ 3 Customer's duty of cooperation

1. The Customer may only make use of performance in accordance with the contract and with statute. The Customer must take appropriate measures to ensure that third parties do not make use of performance unlawfully or contrary to the contract.
2. The Customer is responsible for ensuring the faultless technical condition, working order and compatibility of its equipment with performance and for providing the necessary power supply, Internet access and other connections.
3. The Customer shall promptly inform Axel Semrau of any change in its data of relevance to the contract, especially of its name, legal form, seat of business, bank account details, the name of its contact person and fundamental changes in its financial situation (insolvency proceedings, compulsory enforcement measures etc.).

§ 4 Substance of performance

1. The substance of performance to be rendered by Axel Semrau shall be determined solely by the expressly agreed performance characteristics and specifications. Axel Semrau does not give any further warranty of quality (§§ 433 ff. BGB [German Civil Code]), especially for fitness for a particular purpose or applicability for a certain use of performance, for length of usage or durability, unless this is expressly agreed; the risk of fitness for use and application otherwise lies exclusively with the Customer.
2. Axel Semrau is generally not aware of the precise place of use or application of performance. The Customer itself is therefore obliged, in particular, to check whether there are any intellectual property infringements or other violations present at the place of use or application.

§ 5 Prices and price adjustments

1. The prices agreed cover only the scope of performance to be rendered and are generally quoted ex works. Generally speaking, statutory value added tax is not included in prices any more than additional costs such as transportation or packaging. Unloading and storage shall generally be undertaken by the Customer at its own expense. Unless agreed to the contrary, the cost of any stipulated transport insurance or similar cover shall also be borne by the Customer.
2. If no prices should have been agreed on the conclusion of a contract the prices applicable at Axel Semrau on the date of conclusion of the contract shall apply.
3. If, after conclusion of a contract, there should be a change of at least 5% in prices and costs on which calculations by Axel Semrau are based, especially the cost of labor, materials, raw materials, transport or energy – including as a result of exchange rate variations – Axel Semrau and the Customer shall each have the right to negotiate new prices. Axel Semrau shall promptly inform the Customer of the change in price and costs and give a comprehensible explanation for same.

The Parties' commitments shall remain in abeyance during the negotiations. Should the Parties fail to come to an agreement on new prices within 2 months of notification being given by Axel Semrau both contracting parties may rescind the contract without being liable in damages for rescission.

Axel Semrau shall not be obliged to take or seek to take any measures which would result in a drop in agreed prices.

§ 6 Invoicing, payment, payment for continuing contractual obligations, set-off

1. Invoices from Axel Semrau are due and payable in full upon receipt. No discount is

allowed unless expressly agreed. Any discount agreed will only take effect and remain in force provided that the Customer is not in arrears with any other payment.

2. Should the Customer not dispute an invoice in writing within one month of receipt, stating its reason, the invoice will be deemed approved with regard to its content (especially with regard to the performance ordered). Statutory rights on the part of the Customer, especially where defects are present, remain unaffected.
3. The Customer will be in default without warning if it fails to pay a presented invoice within 10 days of the invoice date unless the invoice presented has not been received by then, is erroneous, is not yet due and payable, or is unenforceable. Default may also arise by operation of law. Should the Customer be in default Axel Semrau may claim statutory default interest. The right to claim greater damages for default remains unaffected.
4. The setting-off by the Customer of any account receivable against payment claims on the part of Axel Semrau or the exercise of a right of retention will not be permitted unless the Customer's account receivable or counterclaim is undisputed, established by way of a final court order or at least ready for judgment. A set-off or the exercise of a right of retention will also be possible if the Customer's account receivable and Axel Semrau's account receivable are based in law on a relationship of mutuality.

§ 7 Charging of cost of unfounded complaints of defects

If a complaint of defects made by the Customer with regard to the functionality of performance should prove unfounded the Customer will not have any warranty rights or claims (§§ 433 ff. BGB [German Civil Code]). Axel Semrau may charge the Customer for performance rendered by Axel Semrau at the request or demand of the Customer as a result of such complaint in accordance with the prices applicable at Axel Semrau in just the same way as for expenditure thereby incurred (especially the cost of analyses, repairs, transportation and travel).

§ 8 Acceptance of delivery/performance, delivery dates and delivery periods, Transfer of risk

1. The Customer may not refuse to accept delivery or performance in the event of immaterial defects.
2. Agreed delivery dates and periods are to be construed as approximations unless expressly stated to be binding. As soon as an agreed date cannot be met for reasons for which the customer is responsible, Axel Semrau is authorized to invoice the service owed under the contract insofar as these have been provided.
3. In the event of delay in performance the liability in damages on the part of Axel Semrau will be governed exclusively by Part A, § 9 of these GTC.
4. Unless otherwise agreed, the risk shall pass to the Customer as soon as Axel Semrau makes the goods available as agreed. If the Customer is in default of acceptance, Axel Semrau shall be entitled to invoice the services ordered."

§ 9 Axel Semrau's limited liability in damages

1. If Axel Semrau or the legal representatives, staff or agents of Axel Semrau should deliberately or with gross negligence be in breach of duty, irrespective of the nature and legal basis thereof and especially under the contractual relationship or on the deliberate or grossly negligent commission of a tortious act, Axel Semrau will be liable for the Customer's resultant loss or damage in accordance with statutory provisions.
2. If Axel Semrau or the legal representatives, staff or agents of Axel Semrau should be in simply careless breach of duty, irrespective of the nature and legal basis thereof and especially under the contractual relationship or on the simply careless commission of a tortious act, any claim in damages on the part of the Customer against Axel Semrau will be excluded unless it should be a simply careless breach of an essential contractual obligation. In this eventuality Axel Semrau's liability will be limited to foreseeable damage typical of the contract concerned. An essential contractual obligation in the aforementioned sense is an obligation that makes the proper fulfillment of the contract possible at all, and adherence to which the contractual partner can and does regularly rely upon.
3. The above exclusions or limits on liability do not apply in the event of culpable injury to life or limb or to health, nor in the event of fraudulent concealment of a defect where a guarantee of quality is not satisfied, nor to liability under the Product Liability Act.
4. The statutory rules on burden of proof are not affected by the above provisions.

§ 10 Intellectual property rights

1. All copyright, design patents, trademarks, patents, registered designs and other industrial property rights over documentation, concepts, text, drawings and drafts developed by Axel Semrau and in relation to performance (hereinafter referred to as "intellectual property") shall remain within the exclusive ownership of Axel Semrau. The Customer undertakes not to assert any claim to registration of industrial property rights or any claim to prior use or licensing rights regarding the intellectual property, nor to assist third parties in doing so.
2. All intellectual property provided by Axel Semrau to the Customer shall continue to be owned by Axel Semrau unless Axel Semrau should have agreed to transfer title thereto to the Customer.

§ 11 Retention of title

All intellectual property provided to the Customer and intended under the contract to pass into the ownership of the Customer shall continue to be the property of Axel Semrau until such time as all accounts receivable under the business relationship have been settled. The Customer shall be obliged to treat such intellectual property with due care and to take out adequate insurance for it at reinstatement value against theft, fire and water damage at its own expense.

§ 12 Cessation of contractual performance on alleged violation of industrial property rights

Should Axel Semrau be prevented by a third party from performing the contract in whole or in part in reliance upon an industrial property right claimed by the latter Axel Semrau shall be permitted to cease performance of the contract to that extent until such time as the legal position has been clarified. If it should no longer be feasible for the Customer or Axel Semrau to continue the business relationship as a result of such delay the party concerned shall have the right to either rescind the contract or terminate it summarily on exceptional grounds.

§ 13 Place of performance, forum and proper law

1. The place of performance for all performance on the part of Axel Semrau and the Customer is the Axel Semrau seat of business.
2. The exclusive international forum for all disputes arising from the business relationship shall be the Federal Republic of Germany. The exclusive place of local jurisdiction shall be the Axel Semrau seat of business where the Customer is a trader, legal entity governed by public law or a special fund governed by public law. Axel Semrau may also sue the Customer in any other court having statutory local jurisdiction.
3. The law of the Federal Republic of Germany, to the exclusion of the CISG, shall have exclusive application to the business relationship between Axel Semrau and the Customer.

B. SPECIAL PROVISIONS FOR CONTRACTS OF SALE AND CONTRACTS FOR THE PROVISION OF WORK AND MATERIALS AND WORK CONTRACTS

§ 14 Liability for defects in quality and title in contracts of sale and contracts for work and materials (§§ 433 ff. BGB / § 651 BGB [German Civil Code])

1. The Customer must immediately inspect the item on delivery. If inspection should identify a defect the Customer must notify Axel Semrau thereof at once and in any event within 8 working days of receipt of the item, doing so in at least text form (email or fax will suffice). If a defect should be identified later on the Customer must notify Axel Semrau thereof at once and in any event within 3 working days of discovery, doing so in at least text form (email or fax will suffice). Otherwise the item will be deemed approved. The provision in § 377 HGB [German Commercial Code] shall otherwise apply.
2. Where there is a defect in the legal sense (§ 434 BGB [German Civil Code]) it will be a warranty issue. The following provisions will apply and have priority over statute.

There will be no defect in the legal sense in the following instances in particular: inappropriate or unskilled, improper or careless handling or usage or improper assembly by the Customer or a third party, normal wear and tear, excessive stress, use of unsuitable equipment, unskilled modifications to items carried out without the prior consent of Axel Semrau or repair work undertaken by the Customer or a third party.

3. In the event of a defect in an item in the legal sense Axel Semrau may choose whether to remedy the defect or supply a faultless item (subsequent performance, § 439 BGB [German Civil Code]) unless it should be an insignificant defect. If one or both of types of subsequent performance should prove either impossible or disproportionate Axel Semrau shall have the right to refuse same.

Axel Semrau may refuse to effect subsequent performance as long as the Customer fails to fulfil its payment obligations towards Axel Semrau for the non-defective element of performance unless the Customer should have no interest in the non-defective element of performance.

Axel Semrau shall bear the expenditure necessary for subsequent performance, especially the cost of transportation, travel, labor and materials. Liability for costs is excluded where additional costs are incurred as a result of taking an item to a location other than the place of performance.

Subsequent performance does not include dismantling and installation or liability for such costs.

4. If the subsequent performance stated in sub-clause 3 should prove unnecessary or impossible, if should fail, or if it should be wrongfully refused or delayed by Axel Semrau the Customer shall have the option to either reduce the purchase price accordingly or rescind the contract pursuant to statute. Any claims in damages shall be governed exclusively by Part A § 9 of these GTC.
5. Assurances and warranties are only validly given if expressly granted by Axel Semrau in writing.
6. Warranty claims have a limitation period of one year from delivery of the item.

In the case of an item intended for normal use in building work causing same to be defective when used the limitation period shall be five years. In case of fraudulent concealment of a defect the legal limitation period according to § 438 (3) BGB [German Civil Code] should apply.

Should Axel Semrau be liable in damages under a warranty (§ 437 no. 3 BGB [German Civil Code]) in Part A § 9 of these GTC the warranty period with regard to that claim in damages shall be governed by the statutory provisions.

§ 15 Liability for defects in quality and title in work contracts (§§ 631 ff. BGB [German Civil Code])

1. The provisions in Part B, § 14.2, 14.3, 14.4 and 14.5 of these GTC shall apply *mutatis mutandis* to defects in work contracts.
2. Warranty claims have a limitation period of one year from the date of acceptance.

This does not apply to building work and work the success of which lies in the rendering of planning or supervisory services for same; in such an eventuality the limitation period shall be five years. In case of fraudulent concealment of a defect the legal limitation period according to § 634 a (3) BGB [German Civil Code] should apply.

Should Axel Semrau be liable in damages under a warranty (§ 634 no. 4 BGB [German Civil Code]) in Part A § 9 of these GTC the warranty period with regard to that claim in damages shall be governed by the statutory provisions.

3. The Customer shall be obliged to promptly accept work. Should the Customer fail to fulfil its duty of acceptance then such acceptance shall be deemed effected two calendar weeks after performance has been rendered capable of acceptance.

C. SPECIAL PROVISIONS FOR SERVICES

§ 16 No warranty for services

Where Axel Semrau provides the Customer with other services (in addition to sales or the performance of work) – especially just software services, after-sales service, training etc. (together referred to as “**services**”) – there is no possibility of a warranty under the law.

§ 17 Temporary cessation of services

Axel Semrau shall have the right to immediately cease the provision of services if the Customer should be materially in breach of contractual or statutory duty, e.g. its payment commitments towards Axel Semrau.