

# General Terms and Conditions of Business of planistar Lichttechnik GmbH

Applicable to business transactions with companies, legal persons under public law and special funds under public law. Version: from 1 May 2018

## SECTION 1 PARTIES TO THE CONTRACT, SCOPE

- (1) For the purpose of the following General Terms and Conditions of Business, the parties to the contract are planistar Lichttechnik GmbH, Wiesenweg 4, 97267 Himmelstadt, Germany (hereinafter referred to as "planistar"), legally represented by its managing director, and the Client.
- (2) All goods and services provided to the Client by planistar shall only be provided on the basis of the following General Terms and Conditions in the version valid at the time of the order.
- (3) Any different provisions shall be objected to. Provisions other than those contained herein shall only apply with the express agreement of an authorised representative of planistar and an authorised representative of the Client. All communication relating to the contract shall be in German.
- (4) The General Terms and Conditions of Business in the version valid at the time of the order shall also apply to future orders, even if they are not expressly agreed to again.

## SECTION 2 CONCLUSION OF THE CONTRACT

- (1) planistar shall reserve, without restriction, any proprietary rights and copyrights pertaining to the use of its cost estimates, drawings, other documents and samples.
- (2) Cost estimates made by planistar on its website, sent by email, fax or post or given over the phone are subject to change, unless they are expressly designated as binding.
- (3) By ordering goods over the phone or by email, fax or post, the Client makes a binding offer to conclude a purchase agreement.
- (4) planistar is entitled to accept this offer within seven calendar days of receiving the order, either by sending an order confirmation or sending the ordered goods. The order confirmation shall be sent by email, fax or post. If the offer is not accepted within this period of time, the offer shall be deemed to have been rejected.
- (5) Descriptions of goods in brochures, drawings, images, technical information sheets and similar documents do not constitute guarantees of quality or durability. This information is only binding if it is expressly agreed as such in writing.
- (6) If, during the fulfilment of the contract, it is found that planistar is unable to fulfil the contract due to technical problems at its end, planistar may withdraw from the contract free of charge.
- (7) The parties agree to treat all commercial and technical information belonging to the respective other party which is not public knowledge and which becomes known to them during their business relationship as strictly confidential trade secrets. The works may only be made accessible to third parties with the prior written consent of planistar and must be immediately returned to planistar on request if the contract is not concluded.

## SECTION 3 PRICES

- (1) All prices specified are ex works (Incoterms 2010) and exclude all supplementary services, in particular packaging, freight, insurance and warehousing costs. planistar shall add the statutory amount of value-added tax to the invoice.
- (2) The packaging, delivery, insurance (shipping costs) and warehousing costs shall be calculated separately. Costs differ depending on the delivery address and the type of goods.
- (3) All specified prices, including shipping costs, are only valid when planistar makes its offer. If planistar updates its website and/or catalogues or price lists, all previous prices and other information concerning the goods shall no longer be valid. The version valid on the date on which the order is placed shall be authoritative.
- (4) The Client may request changes to the design and finish of the contractual products, provided that it would be reasonable to expect planistar to make these changes. The effects of such changes, in particular with regard to cost increases and decreases and delivery dates, must be reasonable and arranged by mutual consent.

## SECTION 4 TERMS AND CONDITIONS OF PAYMENT

- (1) Unless agreed otherwise on a case-by-case basis, invoices shall be paid less a 2% cash discount for early payment within 8 calendar days of the invoice date or shall be paid in full within 30 calendar days of the invoice date. Payments to the supplier must be free of transaction charges. Payments must be made by bank transfer to an account specified by planistar held with a German bank.
- (2) New clients or clients requesting delivery to a country outside of the Federal Republic of Germany must pay the purchase price in advance after the invoice is issued.

## SECTION 5 TERMS AND CONDITIONS OF DELIVERY/DELAY IN ACCEPTING DELIVERY

- (1) Unless agreed otherwise on a case-by-case basis, deliveries shall be made ex works (Incoterms 2010).
- (2) Information concerning delivery times shall be non-binding, unless a specific delivery date is expressly promised or agreed on in writing. Partial deliveries are permissible, provided that this is acceptable to the buyer. Every delivery shall be subject to planistar receiving prompt and proper deliveries from its own suppliers.
- (3) If, despite timely arrangements being made, a product ordered by the Client is unexpectedly unavailable for reasons beyond planistar's control, planistar shall immediately inform the Client of this lack of availability and, if the Client decides to withdraw from the contract, shall immediately refund any payments already made by the Client.
- (4) Force majeure, industrial action, riots, government measures and other unforeseeable, unavoidable and serious incidents shall exempt the parties to the contract from their obligations to perform for the duration of the incident and to the extent of its effect. This shall also apply if such incidents occur at a point in time when the party to the contract concerned is in default. The parties to the contract are obliged, within reasonable bounds, to provide the required information immediately and to adapt their obligations to the changed circumstances in good faith.

## SECTION 6 RETENTION OF TITLE

- (1) The ordered goods shall remain the property of planistar until they have been paid for in full.
- (2) Before the transfer of ownership, the goods may not be resold, leased, pledged, used as security, processed, disposed of in any other way or remodelled without planistar's express consent.

## SECTION 7 WARRANTY

- (1) Warranty claims are subject to a limitation period of 12 months following the transfer of risk.
- (2) No claims may be made against planistar for damages caused by the Client acting improperly or in breach of the contract during installation, connection, operation or storage of the goods. In particular, information provided by the manufacturer or planistar shall be used to determine what constitutes improper behaviour or behaviour in breach of the contract.
- (3) In the event of obvious damage caused during transit, the Client must report this to the transport company as soon as the goods are received or must refuse to accept the delivery. Failure to do so will mean that it is not possible to make an insurance claim against the transport company for this damage. The damage must be documented (photos) on receipt of the goods and this documentary evidence must be forwarded to planistar. Otherwise, the Client shall be made liable for the resulting damage.

## SECTION 8 INTELLECTUAL PROPERTY RIGHTS

- (1) If planistar has to deliver goods which are based on drawings, models or samples provided by the Client or which use parts supplied by the Client, the Client shall be responsible for ensuring that the intellectual property rights of third parties are not breached as a result. The Client must release planistar from claims made by third parties and provide compensation for any resulting damages. If the manufacture or delivery of a product is prohibited by a third party claiming to have intellectual property rights, planistar is entitled to suspend work – without examining the legal situation – until the legal situation has been clarified by the Client and third party. If such delays mean that it is no longer reasonable for planistar to continue to fulfil the order, planistar may withdraw from the contract. In such instances, the Client shall assume the costs incurred up until this point.
- (2) Unless agreed otherwise, planistar is required to render the contents of the delivery free of any intellectual property rights and copyrights of third parties (hereinafter referred to as intellectual property rights) solely in the country of the place of delivery. If a third party makes legitimate claims against the Client due to intellectual property rights being breached by a delivery made by planistar and used in accordance with the contract, planistar shall be liable to the Customer as follows during the time period specified in Section 7 (1):
  - a) At its own expense, planistar shall choose to either obtain a right of use for the contents of the deliveries concerned, modify them such that the intellectual property right is not infringed or exchange them. If planistar is unable to do this under reasonable conditions, the Client shall have the statutory right to withdraw from the contract or to obtain a reduction in price.
  - b) planistar's obligation to pay damages is governed by Section 9.
  - c) The obligations placed on planistar above shall only apply if the Client immediately informs planistar in writing of the claims made against it by third parties, if the client does not acknowledge the existence of an infringement and if all defensive measures and settlement negotiations are left to the discretion of planistar. If the Client decides to stop using the contents of the delivery in order to minimise damage or for other important reasons, the Client is obliged to inform the third party that this discontinuation of use does not constitute the acknowledgement of a breach of intellectual property rights.

## SECTION 9 LIABILITY

- (1) The Client shall not be entitled to make claims for damages, regardless of the legal grounds and in particular due to a breach of duties arising from the contractual obligations or tort. This shall not apply in cases of mandatory liability, e.g. in accordance with the German Product Liability Act (Produkthaftungsgesetz), in cases of intent or gross negligence, in the event of loss of life, bodily injury or damage to health, or in the event of breaches to essential contractual obligations. Claims for damages for the breach of essential contractual obligations is, however, limited to foreseeable damage which is typical for this type of contract, unless the breach was caused by intent or gross negligence or the liability relates to loss of life, bodily injury or damage to health. The above provisions shall not result in an amendment to the burden of proof to the detriment of the Client.
- (2) If the Client is entitled to make claims for damages, these shall expire at the same time as the right to make warranty claims pursuant to Section 7 (1). The same shall apply to claims made by the Client in connection with measures to prevent damage (e.g. product recalls). The statutory provisions on limitation periods shall apply to claims for damages made in accordance with the German Product Liability Act (Produkthaftungsgesetz).
- (3) The delivered goods may only be used in transport systems or outside of the EU with planistar's consent.

## SECTION 10 EXCLUSION OF SET-OFF

- (1) The Client is not entitled to offset its claims against claims for payment made by planistar, unless the Client's claims are indisputable or have been legally established as final and absolute.
- (2) The Client is not entitled to oppose claims for payment made by planistar by asserting rights of retention – even if these rights result from claims based on defects – unless they arise from the same contractual relationship.

## SECTION 11 INEFFECTIVE CLAUSES, PLACE OF JURISDICTION, APPLICABLE LAW

- (1) If one or more of the provisions in these T&C is or are ineffective, this shall not render the entire contract ineffective. If the contract or these Terms and Conditions of Business contain(s) regulatory gaps, it is hereby agreed that these gaps shall be filled with the legally effective provisions which the parties to the contract would have agreed on, in consideration of the economic objectives of the contract and the purpose of these terms and conditions of sale, had the parties to the contract been aware of the regulatory gaps.
- (2) If the Client is a merchant, a legal person under public law, or a special fund under public law, Würzburg shall be the exclusive place of jurisdiction for any disputes arising directly or indirectly from the contractual relationship.
- (3) The conclusion and execution of all contracts shall be subject to German law. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.

## SECTION 12 TRANSLATIONS

- (1) The translation process may result in differences between the German version of documents (T&C, Privacy Policy, catalogues, etc.) or other texts (websites, etc.) and versions available in languages other than German. For this reason, the German version is generally authoritative.

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