

AUCOTEAM GmbH Berlin General Terms and Conditions, Delivery Terms and Conditions of Sale

1. Contractual basis and conclusion of contract

1.1. All offers, transactions and deliveries shall only take place under the following conditions, even if they are not specifically referred to. Even if there is no explicit objection to them, the client's conditions of purchase or other general terms and conditions shall only then be a contractual component if AUCOTEAM GmbH has agreed to their applicability in writing. Deviating agreements require the written form; this also applies to the waiver of the written form.

1.2. A contract only comes into effect via a written order confirmation or an invoice from AUCOTEAM GmbH. Only this order confirmation or invoice determines the scope of deliveries and services.

1.3. AUCOTEAM GmbH offers are arranged on the basis of documents provided by the client. Offers and cost estimates are non-binding and are prepared to the best of our knowledge.

1.4. Offer documents, for example illustrations, drawings, information relating to dimensions, functions, program sequences, DIN standards and any brochure documents and information in other print are only approximate, unless explicitly referred to as binding. As such, specific features are only guaranteed if a corresponding declaration has been explicitly made.

1.5. AUCOTEAM GmbH reserves the unrestricted rights of ownership and rights of use under copyright law of offer documents, drawings, plans and other documents; they may only be made available to third parties with AUCOTEAM GmbH's prior consent. Drawings and other documents that are part of offers must be returned on request without undue delay if an order is not placed with AUCOTEAM GmbH. Sentences 1 and 2 apply accordingly with respect to the client's documents; these may only be made available to third parties, to whom AUCOTEAM GmbH has permissibly transferred deliveries or services.

1.6. Changes that do not compromise the functionality of AUCOTEAM GmbH's delivery items may be made at any time without this otherwise affecting the content of the contract as a whole.

2. Prices and payment terms

2.1. Prices are in EUROS ex Berlin without transportation, packaging, insurance and excluding the respectively applicable statutory VAT.

2.2. If, between the order confirmation date and the date of delivery, the economic value ratio significantly changes between performance and consideration (e.g. due to price increases or collective agreements), AUCOTEAM GmbH has the right to apply the changed conditions as at the date of delivery when calculating the price.

2.3. Invoices are issued on the date of delivery; in the event of a delay in delivery caused by the client, the invoice shall be issued on the date on which the goods were ready to be delivered. The invoice amount is payable immediately in full, unless otherwise explicitly agreed. If the payment deadline is not met, the client must pay interest in the amount of 4% above the respective discount rate of the German Central Bank (Deutsche Bundesbank), however at least in the amount of 8%, without any prior reminders, and regardless of any other claims.

2.4. If the client defaults on acceptance or payment obligations, or his obligations under point 5 (retention of title) either in part or in full, ceases to make payment or applies for bankruptcy or insolvency proceedings to commence against his assets, any other AUCOTEAM GmbH receivables from the ongoing business relationship become payable, even if bills of exchange or cheques have a later due date.

2.5. AUCOTEAM GmbH is entitled to issue separate invoices for partial deliveries from a complete order.

2.6. The client may only offset against receivables that are undisputed or legally binding. A client that is a registered trader within the meaning of the German Commercial Code (HGB) is not entitled to any rights of retention or any offset rights.

2.7. AUCOTEAM GmbH is entitled to use incoming payments to settle the oldest liability item plus interest, even if the client has deviating provisions. The client shall dispense with the objection of statutory limitation.

3. Delivery, delivery time and delivery obligation

3.1. Delivery deadlines shall only become binding if explicit written confirmation has been given. The prerequisite for this is the timely receipt of all documents to be provided by the client.

3.2. If AUCOTEAM GmbH delays in providing goods or services, the client is only entitled to rescission if he has previously set a reasonable grace period of at least 2 weeks and has specified this in writing, accompanied by the pronouncement that he will withdraw from the contract if this deadline is not met. Any other claims by the client are excluded, regardless of the legal grounds.

3.3. Operational disruptions - both in AUCOTEAM GmbH's business operations and in those of the supplier - with particular reference to strikes, lockouts, war, riots and any other cases of force majeure, do not entitle the parties to terminate the contractual relationship. In such a case, delivery deadlines are extended by the period of the operational disruption.

3.4. If shipment or delivery is delayed for reasons that fall within the client's scope of risk, AUCOTEAM GmbH is entitled to otherwise dispose of the delivery item after a grace period of one week, and supply the client with a reasonably extended deadline, withdraw from the contract or request compensation for non-performance.

4. Transfer of risk

Deliveries are made without insurance. Risk transfers to the client upon delivery of the consignment to the carrier, freight forwarder or other person or establishment responsible for shipment, regardless of who bears the costs of shipment. If delivery is delayed at the request of the client or for reasons for which the client is responsible, risk transfers to the client when the delay arises.

5. Retention of title

5.1. AUCOTEAM GmbH deliveries are made exclusively under retention of title. Ownership shall only then be transferred to the client when he has met all of his obligations owed on the basis of AUCOTEAM GmbH's services. This also applies if the purchase price for particular services specified by the client has been paid. For a running invoice, retention of title shall be regarded as security for AUCOTEAM GmbH's outstanding balance claims.

5.2. The client is entitled to sell delivered goods in the ordinary course of business. The client is not permitted to engage in pledging and transfer of goods or services by way of security. The client must notify AUCOTEAM GmbH of pledges or any other curtailment of the rights of AUCOTEAM GmbH by third parties without undue delay. If the client sells goods supplied by AUCOTEAM GmbH, he shall hereby assign receivables from his customers arising from the sale, together with any subsidiary agreements, to AUCOTEAM GmbH until all receivables owed to AUCOTEAM GmbH on the basis of services are repaid in full. At AUCOTEAM GmbH's request, the client is obligated to disclose such an assignment to third-party buyers and to provide AUCOTEAM GmbH with the information required to assert its rights, as well as to hand over the relevant documents.

6. Warranty

6.1. Material and manufacturing defects are resolved by AUCOTEAM GmbH either by carrying out repair or replacing the affected parts.

6.2. The limitation period for warranty claims (warranty period) is 6 months.

6.3. The client is not permitted to assign any warranty claims.

6.4. If repairs fail within a reasonable grace period set in writing, the client may at his discretion request a reduction in price, or withdraw from the contract.

6.5. Other warranty claims, with particular reference to compensation claims, are excluded.

6.6. The warranty shall be deemed to be void if the delivery item is improperly used or modified or its original technical markings are changed or removed, without the written consent of AUCOTEAM GmbH. The warranty shall also be deemed void if the client does not have the item installed by AUCOTEAM GmbH, unless the client is able to prove that the defect was not caused by improper installation.

7. Liability

If AUCOTEAM GmbH's liability for damages comes into question - whether by law, on the basis of a contract or for other reasons - the following shall apply:

7.1. AUCOTEAM GmbH shall only be liable to the client for damages caused through wilful intent or gross negligence on the part of AUCOTEAM GmbH, its legal representatives or agents. Any personal liability of the organs and employees of AUCOTEAM GmbH working as agents is excluded.

7.2. Liability is excluded both for direct damage and for loss of data and programs.

7.3. Any liability for damages that are a result of using AUCOTEAM GmbH products in aircraft, spacecraft or vessels, is excluded.

7.4. Liability is capped at EUR 250,000 per incident.

7.5. Compensation claims asserted against AUCOTEAM GmbH have a limitation period of 12 months from the date on which the client became aware of the damage and the person liable to pay compensation.

8. Other conditions

8.1. The client may only assign rights from contracts concluded with AUCOTEAM GmbH with AUCOTEAM GmbH's consent. In order to fulfil its obligations, AUCOTEAM GmbH is entitled to use suppliers whose product constitutes the contractual object.

8.2. The law of the Federal Republic of Germany applies, with the exclusion of the Uniform Law on the International Sale of Goods and the Uniform Law on the Formation of Contracts for the International Sale of Goods.

8.3. The place of performance is Berlin.

8.4. The place of jurisdiction for any disputes, including disputes regarding cheques and bills of exchange, is Berlin, provided the client is a registered trader or does not have a general place of jurisdiction in the Federal Republic of Germany, or if his place of residence or place of business was shifted abroad after conclusion of the contract. However, AUCOTEAM GmbH is entitled to also file lawsuits against the client at his general place of jurisdiction.

8.5. The ineffectiveness of individual provisions shall not affect the remaining provisions. Ineffective provisions shall be replaced with effective regulations that correspond as best as possible to the provisions to be replaced in terms of spirit and economic purpose.

8.6. If a party does not use his rights implicitly, this shall not constitute a waiver of those legal rights.

8.7. The client's data shall be stored by AUCOTEAM GmbH within the scope of the purpose of the contractual relationship.