

# General Terms & Conditions of Delivery of Suntrace GmbH

The following General Terms & Conditions (hereinafter: "GT&C") apply only to persons who, when concluding a contract, are acting in exercise of their trade, business or profession (entrepreneurs), to legal persons under public law and to special public funds.

## 1. General provisions

All the offers, deliveries and services (hereinafter: "Deliveries") of Suntrace shall be governed by these GT&C. The Purchaser's general terms and conditions shall not acquire contractual status by virtue of the acceptance of an order and shall apply only if Suntrace has given them its express written consent. If in an individual case special conditions, which differ from these GT&C, are agreed in writing for specific deliveries, these GT&C shall apply with secondary and supplementary effect.

## 2. Offer

Our offers are without obligation except where we expressly specify otherwise in writing. All rights to offer documents shall be held by Suntrace. If an order is not placed, all offer documents must, on request by Suntrace, be returned without delay. Business and trading secrets must be kept strictly confidential.

## 3. Content of contract

3.1 The scope of the delivery obligation shall be determined by the written confirmation of order or, in the event of a binding offer by Suntrace and its effective acceptance, by the offer, in cases where no order confirmation has been received in due time. Supplementary agreements and amendments shall require written confirmation.

3.2 The product information and other documents, such as illustrations, drawings, sketches and dimension specifications are not integral parts of the contract and shall only have approximate effect unless we have expressly designated them as binding. They do not constitute a guarantee of the quality of the items to be delivered or the services to be rendered by Suntrace.

3.3 If, after an offer has been submitted, there are modifications to the delivery items resulting from constant technological advance, we shall be permitted to deliver the technically modified version. In the process we shall be entitled to depart from the illustration, drawings, descriptions, colours, and dimension, weight, quality and other specifications, provided such departures can, having regard to the interests of both parties, reasonably be expected of the Purchaser. The Purchaser is obliged to inform Suntrace at the time of order placement if we are permitted in no circumstances to depart from specifications or stipulations.

3.4 The Purchaser shall be responsible for obtaining, at its own expense, the permits that are necessary for the production and operation of the delivery items. If the Purchaser, at its request, is assisted in this by Suntrace, the Purchaser shall meet any expenses thereby incurred by Suntrace.

3.5 If the delivery includes software, Suntrace will grant the Purchaser a non-exclusive right to use the software delivered, including the pertinent documentation. The software will be supplied for use on the delivery item for which it is intended. The use of the software on more than one system is prohibited. The Purchaser must not reproduce, process or translate the software, or convert it from the object code to the source code.

The Purchaser undertakes not to remove manufacturer notations – and in particular copyright notations – or alter same without express prior consent from Suntrace.

All other rights to the software and the documentations, including copies, shall continue to be held by Suntrace or the software supplier. The granting of sublicences shall not be permissible.

In the event of a breach hereof the Purchaser shall be obliged to compensate Suntrace for the damage or loss incurred.

## 4. Reservation re export permits

If Suntrace is to deliver to a country outside Germany, offers and order confirmations will be subject to the precedent condition that any export permits which may be necessary are in fact issued by the responsible authorities.

Suntrace does not, as a general rule, execute deliveries to Purchasers included in national or international sanctions lists.

## 5. Copyright, confidentiality

Suntrace reserves proprietary and copyrights to expert reports, samples, cost estimates, drawings, models and similar information in physical and non-physical form – including such in electronic form -, all of which may not be made accessible to third parties. Copies and other reproductions may only be made for the agreed purpose. Neither copies nor reproductions may be supplied to third parties or made accessible in any other manner.

We undertake to make information and documentary materials which the Purchaser designates as confidential accessible to third parties only with the Purchaser's consent.

Information about Suntrace and its business operations, which Suntrace supplies to third parties in the context of offers, may not be handed over or otherwise made accessible to third parties.

## 6. Prices

In default of special agreement thereon, prices are quoted ex works, including loading in the Suntrace works and packaging and other costs, but not including currently applicable statutory VAT.

In the case of Deliveries effected more than 3 months after conclusion of contract, we are entitled to invoice, by way of a surcharge for overheads, for any increases in wage or material costs which may have occurred after submission of our offer.

## 7. Payments, default on payment, withholding payment, withdrawal from contract

7.1 Except when specially agreed otherwise, payment must be made net, without any deduction or charges, to our accounts department immediately after receipt of invoice.

7.2 In case of default on payment, Suntrace may charge interest on default at 9 percentage points above the base rate, but at least 8%. Suntrace reserves the right to provide evidence of greater damage or loss.

7.3 The Purchaser is not entitled to withhold payment or offset payment amounts on grounds of counter-claims disputed by Suntrace.

7.4 If it becomes apparent, after conclusion of a contract, that our claim for payment is jeopardised by the Purchaser's deficient credit status, Suntrace may refuse contract performance and set the Purchaser a reasonable period within which it must make payments concurrently with delivery or provide security. Suntrace shall also be entitled to demand immediate payment of any possible residual debt.

Doubts about credit status arise if the Purchaser ceases to make payment, if insolvency proceedings are opened on the

Purchaser's assets, or if application is made for the opening of insolvency proceedings or such application refused for lack of assets.

If the Purchaser refuses to make payment or a deadline expires to no avail, Suntrace will be entitled to withdraw from the contract and demand payment of damages.

## **8. Delivery dates or times, default on delivery**

8.1 Delivery dates or times are only binding if Suntrace specifically designates them as such in the order confirmation .

8.2 The delivery period commences as of dispatch of the order confirmation at the earliest, but not before receipt of the information necessary for the execution of the order, the settlement of all commercial and technical questions between the contracting parties and the fulfilment of all the Purchaser's obligations, e.g. making an agreed down payment or effecting payments due from previous Deliveries.

8.3 If the failure to adhere to the delivery time is due to force majeure, industrial disputes or other events outside Suntrace's control, the delivery period will be extended appropriately. This shall also apply if such circumstances originate with sub-suppliers. Suntrace will inform the Purchaser as soon as possible about the beginning and ending of such circumstances.

The above-mentioned circumstances shall also not be Suntrace's responsibility if they arise during an already preceding period of delay.

8.4 The delivery date or time is deemed adhered to if the delivery item left the works, or notice was given of readiness for dispatch, before expiry thereof. If formal acceptance of delivery is required, the punctuality of delivery is decided – except in case of justified refusal of acceptance – by the date of acceptance, or alternatively the notification of readiness for acceptance.

8.5 Adherence to the delivery date is conditional on Suntrace itself having been supplied correctly and in due time.

8.6 The Purchaser may withdraw from the contract without notice if and when it becomes totally impossible, before the transfer of risk, for Suntrace to execute the contract in full. The Purchaser may also withdraw from the contract if the execution of part of the delivery under an order becomes impossible and the Purchaser has a legitimate interest in refusing the part delivery. If this is not the case, the Purchaser must pay the contracted price due on the part delivery. The same shall apply in the case of Suntrace's incapacity. In other respects, clause 12.2 shall apply.

8.7 If Suntrace is in default and this results in damage or loss for the Purchaser, the latter will be entitled to demand a lump-sum compensation for the delay. The amount will be 0.5% of the value of that part of the complete delivery which cannot, owing to the delay, be used in due time or in accordance with the contract, and will be due for each full week of the delay, but the total amount shall not be more than 5% of the said value.

If Suntrace is in default and the Purchaser allows Suntrace a reasonable period to effect delivery, and Suntrace fails to meet this deadline, the Purchaser will be entitled to withdraw from the contract subject to the relevant statutory provisions.

Further claims on grounds of default on delivery shall be decided exclusively in accordance with clause 12.2.

8.8 If dispatch or the acceptance of a delivery item is delayed for reasons for which the Purchaser is responsible, Suntrace may charge the Purchaser, starting one month after notification of readiness for dispatch or acceptance, for the costs incurred through the delay, but at least 5% of the invoice amount for

every month. At the same time all the deliveries and services effected by Suntrace up to that time shall be due for payment. Suntrace will however be entitled, after a reasonable deadline has been set and has expired to no avail, to dispose otherwise of the delivery item and to supply the Purchaser on the basis of a reasonable and extended delivery period.

8.9 Part-deliveries will be possible if the Purchaser finds such to be reasonable.

## **9. Taking delivery, acceptance, transfer of risk, delay in acceptance**

9.1 The risk of the delivery item passes to the Purchaser no later than when it leaves the Suntrace works, including the case when part-deliveries are made or Suntrace has assumed other costs or services, e.g transport costs or delivery and installation. If acceptance is required, this process will determine the time of transfer of risk. The acceptance must take place without delay at the time of acceptance, or alternatively after notification of readiness for acceptance. The Purchaser may not use the presence of a minor defect as grounds for refusing acceptance. Suntrace is entitled to insure all Deliveries against damage or loss in transit at the Purchaser's expense.

If the delivery shows signs of damage in transit at the time it reaches the Purchaser, or if such damage becomes apparent later, the Purchaser must immediately require the carrier to make a written report on the facts of the matter.

9.2 If dispatch or acceptance is delayed or prevented by circumstances for which Suntrace is not responsible, the risk of the goods passes to the Purchaser as of the date of the notification of readiness for dispatch or acceptance.

## **10. Reservation of title**

10.1 Suntrace reserves title to, and the right to dispose of, the delivery items until all payments under the delivery contract and previously concluded contracts have been received.

The Purchaser may continue to use the delivered products in the course of correct business operations until such time as the aforesaid claims have been settled in full, unless a prohibition of claim assignment has been or will be agreed with third parties for the claims assigned in advance to Suntrace. Prior to that, pledging and assigning as security are also prohibited. [and the resale is permitted only to resellers in ordinary business activities on condition that the reseller receives payment from its customers and immediately passes the amount on to Suntrace. Any intervention costs that may arise are met by the Purchaser.]

10.2 The Purchaser must advise Suntrace without delay of any attachments, confiscations or other disposals and interventions by third parties.

10.3 In cases of breach of contract by the Purchaser, in particular default on payment, Suntrace is entitled to recover the goods after a warning notice, and the Purchaser is obliged to surrender same.

10.4 The Purchaser now assigns to Suntrace all claims in the pro rata amount of the invoice, including VAT, which accrue to it (the Purchaser) from resale to buyers or third parties. This also applies to the case that the Purchaser allocates the purchase price claim due to it through the resale to a current account arranged with a buyer or a third party. Suntrace accepts the said assignment.

10.5 In the event of a connection with real estate or movable property of third parties and processing or reworking under a contract to produce a work, the Purchaser now assigns to Suntrace the claim to payment of the contract wages and/or the share of ownership in the pro rata amount of the invoice,

including VAT, for the processed goods which are subject to reservation of title. Suntrace accepts this assignment.

10.6 The Purchaser is herewith authorised to collect the above-stated assigned claims itself in the course of normal business activities, provided that it forwards the amounts received to Suntrace without delay.

The authorisation to collect the assigned claims shall lapse in the event of default on payment, an application for judicial or extrajudicial insolvency proceedings or the protesting of a cheque or bill of exchange.

10.7 In cases where the delivery items have become essential components of a piece of real estate, the Purchaser undertakes, in the event of failure to observe the agreed payment deadlines, to permit Suntrace to disassemble the items which can be removed without serious damage to the structure. The Purchaser is obliged to pay damages to Suntrace if it is in breach of the above-stated rights of Suntrace. The disassembly and other costs shall be at the Purchaser's expense.

10.8 If the realisable value of the securities available to Suntrace, resulting solely from this regulation of the reservation of title or together with other securities, exceeds Suntrace's secured claims by more than 10%, Suntrace will be obliged to release securities, at its free discretion, if such release is required by the Purchaser.

10.9 Suntrace is entitled to insure the delivery item against theft, fire flooding and other damage at the Purchaser's expense, unless the Purchaser has verifiably taken out the insurance itself.

## 11. Liability for delivery defects (warranty)

Suntrace assumes liability for defects of quality and title in the delivery as follows, further claims being excluded – subject to the provisions of clause 12:

### Quality defects

11.1 All parts which prove to be defective as the result of circumstances occurring before the transfer of risk will be, at Suntrace's option, rectified or replaced free of charge. Suntrace must be advised in writing immediately after such defects are detected.

11.2 The Purchaser must, after notification of defect, allow Suntrace the necessary time and opportunity to carry out the rectification and replacement deliveries which appear to Suntrace to be requisite. Otherwise Suntrace will be released from liability for the resultant consequences. Only in urgent cases of hazard to operational safety and in order to avert disproportionately serious damage or loss – of which Suntrace must be notified immediately – does the Purchaser have the right to rectify the defect itself or have it rectified by a third party, and to require Suntrace to reimburse it for the necessary expenditure.

11.3 With regard to the costs arising directly from the rectification or replacement delivery, Suntrace will – provided that the complaint proves to be justified – bear the costs of the replacement part, including shipping costs free at frontier, and reasonable costs of installation and de-installation; furthermore, inside the Federal Republic of Germany, if this can reasonably be demanded in the circumstances of the individual case, Suntrace will bear the costs of any necessary provision of service technicians and assistant personnel. Other costs shall be borne by the Purchaser.

11.4 Subject to the relevant provisions of statute law, the Purchaser has the right to withdraw from the contract if Suntrace – having regard to the exception in the statutory provisions – fails to meet a reasonable deadline set for

rectification or replacement on grounds of a quality defect. If the defect is only minor in character, the Purchaser shall only be entitled to reduce the contractually agreed price. The right to reduce the said price shall in all other cases be excluded.

11.5 No warranty is assumed in the following cases in particular: Unsuitable or unprofessional use, faulty assembly/installation or operational start-up by the Purchaser or a third party, wear and tear, incorrect or negligent handling, faulty maintenance, unsuitable operational equipment, unsuitable soil condition, chemical, electro-chemical or electrical influences, except when Suntrace is responsible therefor.

11.6 If the Purchaser or a third party carries out incorrect rectification, there is no warranty for the resultant consequences. The same applies to modifications to the delivery item effected without the prior consent of Suntrace.

11.7 If the Purchaser provides parts or material for processing or as aids for the execution of an order, then, except when expressly agreed otherwise, no suitability inspection to check for non-obvious defects will be carried out.

11.8 If software is included in the scope of supply and services, the following applies in addition:

- a) Suntrace warrants that the software it supplies does not contain any reproducible errors. This warranty is however conditional on use in conformity with contract.
- b) The Purchaser must notify Suntrace of program errors without delay.
- c) Notified errors must be corrected by Suntrace. If an error proves to be impossible to correct, a fallback solution must be developed.
- d) If Suntrace does not succeed in fulfilling the obligations set forth in subsection c), the Purchaser may, at its option, reduce the agreed fee by a reasonable amount (this also applies to devices whose use is only slightly impaired by the program error) or require the dissolution of the contract.

### Defects of title

11.9 If the use of the delivery item results in infringement of industrial property rights or copyrights, Suntrace will, at its own expense, ensure that the Purchaser acquires the right in principle to continue to use the said item, or will modify the delivery item in a manner acceptable to the Purchaser, such that there is no longer any infringement of proprietary rights. If this is not possible on economically acceptable terms or within a reasonable period of time, the Purchaser will be entitled to withdraw from the contract. On the conditions stated above, Suntrace too will have the right to withdraw from the contract.

11.10 Our obligations stated in subsection 11.9 are conclusive, subject to the provisions of clause 12, for the case of infringement of proprietary rights and copyright.

These obligations exist only if

- the Purchaser notifies Suntrace immediately of claims asserted on grounds of infringement of proprietary rights or copyright,
- the Purchaser supports Suntrace on an appropriate scale in defending against the claims asserted, or alternatively enables Suntrace to carry out the measures of modification referred to in subsection 11.9,
- Suntrace retains the right to take all measures of defence, including extrajudicial arrangements,
- the defect of title does not result from an instruction by the Purchaser, and
- the infringement of rights was not caused by the Purchaser having of its own accord modified the delivery item or used it in a manner constituting a breach of contract.

## 12. Liability

Claims by the Purchaser for damages or reimbursement of expenses, on whatever legal grounds, in particular on grounds of breach of obligations under the contractual relationship or an unlawful act are excluded. This also applies to claims based on breach of precontractual obligations.

This does not apply to claims under the product liability act, in cases of wilful intent or gross negligence by Suntrace or its vicarious agents, on grounds of injury to life, the person or health or on grounds of fraudulent concealment of a defect or the breach of material contractual obligations. The damages amount for breach of material contractual obligations is however limited to foreseeable damage or loss under standard contract conditions, except in the case of wilful intent or gross negligence being present, or liability on grounds of injury to life, the person or health. Material contractual obligations are obligations whose fulfilment makes the correct execution of the contract possible and on whose fulfilment the other contracting party can rely.

The above-stated exclusions and limitations of liability apply in the same degree in respect of the corporate bodies, legal representatives, employees and other vicarious agents of Suntrace.

These provisions do not involve or imply an alteration of the burden of proof to the detriment of the Purchaser.

## 13. Installation/assembly, putting in operation

If the delivery includes installation and/or commissioning, the following conditions apply with supplementary effect:

### 13.1 Price

Except where otherwise agreed, the installation service is charged by time worked, applying the current relevant rates. Material costs are charged in addition, as are travel expenses, customs duty, transport insurance for baggage and tools, costs for obtaining identity documents or passports, and also other cash expenses, such as telephone expenses, etc.

### 13.2 Invoicing

The Purchaser certifies for the installation personnel the time worked, the travelling and the waiting time, plus the work performance, on the installation certificate forms presented by the installation personnel. If the Purchaser refuses this certification or if it is not possible, for other reasons, for the said personnel to obtain the certificates, invoicing will be done on the basis of the installation timesheets completed by the said personnel.

### 13.3 Assistance rendered by the Purchaser

The Purchaser is obliged to assist in the performance of the installation service at its own expense. It must in particular

- a) provide the requisite qualified assistance personnel in the number necessary for the installation and for the necessary time;
- b) perform all the excavation, construction and foundation work in due time;
- c) provide suitable approach ways for the delivery of assembly parts and crane trucks;
- d) before the start of assembly and installation provide, on its own initiative, the necessary information on the power, gas and water supply lines running below the site or similar installations, plus the necessary structural load data;
- e) provide lighting, energy and water, including the necessary connections;
- g) protect the installation site against harmful influences of every kind;

j) if the installation personnel fall ill or suffer an accident, ensure there is immediate medical attention and notify Suntrace without delay;

k) If the installation site is outside the Federal Republic of Germany, obtain the necessary entry permits for the installation personnel and any work permits that may be necessary, obtain in due time the official and other permits prescribed for the construction and installation of equipment and installations, inform the installation team about all their obligations vis-à-vis the local authorities (registration etc.) and about the pertinent safety rules, support the said team in their dealings with the relevant authorities and help them to obtain all the certificates that will guarantee them freedom of movement in the country and a return home, with their belongings, at any time.

### 13.4 Acceptance

The Purchaser is obliged to formally accept the installation as soon as it is notified of completion of the work. The installation will be deemed to have been accepted after a successful commissioning test run, even if the Purchaser, despite being requested, was not involved therein.

In particular, acceptance of self-contained parts of the work performance is, on request, necessary. If the plant has been put in operation, completely or part thereof, or if there is a delay in acceptance for which Suntrace is not to blame, the acceptance will be deemed effected after expiry of two weeks after notification of completion.

The plant may only be used before acceptance with the express consent of Suntrace; the parts of the plant already installed are deemed accepted as of their first use.

## 14. Statute of limitation

All claims by the Purchaser – on whatever legal grounds – shall become time-barred after 12 months. The statutory limitation periods apply in the case of premeditated or malicious acts, and to claims under the product liability act. They also apply to defects in a building or to delivery items which were used for a building for the customary purpose and which caused the defects in the building.

## 15. Binding character of contract

The remaining parts of the contract shall continue to have binding effect even if individual provisions are or become legally invalid. This shall not apply if adherence to the contract constitutes unreasonable hardship for either of the contracting parties.

Should a provision be partly or wholly invalid, the contracting parties shall immediately endeavour to achieve the commercial effect striven for with the invalid provision by other, legally permissible means.

## 16. Data protection

Suntrace stores its customers' data, acquired in the context of their mutual business relationship, in accordance with the German Data Protection Act.

## 17. Court with jurisdiction, applicable law

The courts in Hamburg have jurisdiction for all disputes arising in connection with the contractual relationship. Suntrace is however also entitled to start suit at the domicile of the Purchaser.

All the legal relations between Suntrace and the Purchaser in connection with this contractual relationship shall be governed by the law of the Federal Republic of Germany. The United Nations CISG Convention shall not be applicable.