

Conditions applicable for all types of delivery and services

1 Scope

1.1 Unless agreed otherwise in writing goods and services are provided by Arcerion GmbH (hereinafter referred to as "Arcerion") solely on the basis of the following General Terms and Conditions („GTC”).

1.2 The validity of any customer general terms and conditions is herewith expressly refuted no matter whether endorsed upon, delivered with or contained in the customer's acceptance or acknowledgement of this agreement, purchase order(s), specifications or similar documents and the customer waives any right it might otherwise have to rely on such terms and conditions.

1.3 This document together with any other document agreed by Arcerion and the customer constitute the whole and only agreement between the parties relating to the supply of goods and/or services by Arcerion to the customer and supersedes any previous form of GTC supplied by Arcerion to the customer.

2 Offer/conclusion of agreement

Offers made by Arcerion are not binding. Only the written order confirmation by Arcerion confirms the scope of delivery and performance obligations on the part of Arcerion.

3 Prices

Unless agreed otherwise in writing all prices and charges are based on the Arcerion Price List in force at the time of supply and exclude VAT and any other statutory taxes and duties.

4 Terms of payment

4.1 Payments must be made by the due date shown on the invoice unless the purchase is a cash transaction and the date of receipt of payment by Arcerion shall be decisive in determining whether the payment has been made on time.

4.2 In the event of late payment and irrespective of any further claims Arcerion is entitled to stop further deliveries to the customer until all outstanding payments have been received and to charge default interest at the level laid down by law on any amount owing for the period that payment is overdue. If the customer continues not to pay for goods or services supplied after the provision of suitable reminders Arcerion reserves the right to terminate the agreement forthwith at which point any sums due to Arcerion will become immediately payable along with any accrued interest payments and any costs incurred by Arcerion in terminating the agreement and recovering any of its containers and equipment

4.3 The customer may only offset payments against any money owing from Arcerion if its claims are undisputed or legally valid. This last sentence does not apply if the customer is a natural person under the law who concludes the agreement for a purpose which cannot be assigned to its commercial or independent professional activity („Consumer”).

4.4 Arcerion's only method of receiving payment is a bank transfer to its bank account as stated in the invoice

5 Warranty rights

5.1 Arcerion shall provide goods of standard commercial quality. Any warranty claims shall lapse 12 months from the transfer of risk except in the case where the customer is the Consumer in which case claims shall lapse after 24 months.

5.2 If the above provisions of this section 5 restrict the statutory warranty rights they shall not be applied if Arcerion has maliciously concealed the defect or has given a guarantee for the properties of the item.

5.3 The customer shall only have a right of recourse against Arcerion under Clause 478 of the German Civil Code if the customer has not admitted contractually to his buyer any warranty rights above and beyond the statutory warranty rights.

5.4 The customer's right to make claims for compensation resulting from defects in the purchased items is subject to the restrictions in section 6.

6 Claims for compensation

6.1 Arcerion's liability – irrespective of the legal reason – is limited to damage caused by Arcerion intentionally, by gross negligence or carelessly by the violation of obligations important for the fulfilment of the purpose of the contract.

6.2 In cases of careless violation of obligations important for the fulfilment of the purpose of the contract, the level of Arcerion's liability is limited to the damages typical for comparable transactions of this type which were foreseeable on conclusion of the contract or, at the latest, when the obligations were violated.

6.3 A further liability to compensation as in 6.1 and 6.2 mentioned is excluded, irrespective of legal basis.

6.4 Claims for compensation under the Product Liability Act, due to the lack of a guaranteed characteristic and arising from death, physical injury, damage to health or based on other compulsory legal requirements.

6.5 Arcerion shall not be liable in respect of any act of default for loss of profits, loss of goodwill, and any type of special indirect or consequential loss (including loss or damage suffered by the customer as a result of an action brought by a third party) even if such loss was reasonably foreseeable of Arcerion had been advised of the possibility of the customer incurring the same.

6.6 The above provision does not imply any change in the burden of proof to the detriment of Arcerion.

7 Force Majeure

7.1 All events attributable to force Majeure for example but not limited to war, civil unrest, natural disasters, orders from higher authority, strikes, lockouts, terrorism, civil commotion, omissions or accidents beyond the reasonable control of the party, for which no blame can be ascribed to Arcerion shall release Arcerion from its contractual obligations for as long as such events last and for the scope of their effect.

7.2 The provisions of clause 7.1 also apply if the above circumstances occur at the premises of subcontractors.

7.3 Where one or more force Majeure events have occurred during the term of the agreement Arcerion shall be entitled to extend the term of the agreement for a period equal to the cumulative number of days during which force Majeure occurred during the original term of the agreement.

8 Retention of ownership

8.1 The delivered goods and services shall remain the property of Arcerion until full payment of all liabilities arising from the business relationship irrespective of the legal reason for this has been received. If the customer violates the agreement and especially if he defaults on payment Arcerion is entitled to set an appropriate deadline and to take back the goods or withdraw the services if this expires without result. If Arcerion takes back the goods or withdraws the services this is not regarded as withdrawal from the agreement unless the customer is the Consumer.

8.2 The customer is not allowed to pledge the goods in which ownership is retained or to offer them as security. to reimburse Arcerion for the court and out-of-court costs of an action under Clause 771 ZPO, the customer shall be liable for the loss suffered by Arcerion.

8.3 Arcerion retains all intellectual property rights in its drawings, specifications, data and all other information and documents prepared by Arcerion for the Customer in whatever medium.

8.4 In the event of any attachment, confiscation or any other impairment by third parties of goods supplied by Arcerion with retention of ownership or any systems or objects provided by Arcerion to the customer on a rental basis Arcerion must be informed immediately so that it can take action under Clause 771 of the Civil Process Order (ZPO).

9 Data protection

9.1 Data protection legislation places obligations on users of personal data and lays down principles for its use. One principle states that personal data has to be processed fairly and lawfully. This means that the customer is entitled to know how Arcerion intends to use any personal data that he provides. Personal data is any information that relates to a living individual who can be identified from that information.

9.2 Arcerion will use the personal data that the customer provides in the following ways:

(i) to provide the agreed goods and services and for invoicing, account maintenance, record-keeping, statistical analysis and internal reporting and research purposes.

(ii) to obtain credit reference checks and for debt collection and fraud prevention purposes. This may involve disclosing personal data to licensed credit reference agencies, debt collection agencies and lawyers. The credit reference agencies will maintain a record of the personal data supplied by Arcerion. This may be used by lenders to make decisions on future applications for credit; and

(iii) occasionally, to inform the customer about other goods and services which Arcerion thinks that the customer may be interested in.

9.3 Arcerion will also provide personal data to any Government Department, public body or other third party where it believes in good faith that the law requires this or in the interests of public health and safety or in the event of an emergency. In addition, Arcerion will provide personal data to third parties if authorised by the customer to do so.

9.4 Arcerion may monitor and/or record telephone conversations to or from the customer in order to offer the customer additional security, resolve complaints, improve Arcerion's service standards and for staff training purposes.

10 Confidentiality

The contractual parties shall be obliged to maintain silence as regards the content of this agreement and all commercial and technical details related thereto and to refrain from disclosing information of this nature to third parties. By offence against this confidentiality obligation a contract punishment at the rate of

11 Prohibition of transfer/legal successor

11.1 The customer is not entitled to transfer or assign to third parties any rights or liabilities arising from the contractual relationship.

11.2 The rights and obligations arising from the contractual relationship shall pass to the legal successors of the contract parties in each case. The customer is obliged to inform Arcerion voluntarily of any changes, especially changes in the legal form or name of the company.

12 Invalidity

If any provision of this agreement or any provision included in it later is or becomes null or invalid in whole or in part or if there is any omission in this agreement this shall not affect the validity of the other provisions and the parties will meet to agree a valid replacement provision that is similar in meaning and effect.

13 Legal venue/applicable law

13.1 The legal venue shall be Munich, Germany.

13.2 The law of the Federal Republic of Germany shall apply, excluding the United Nations agreement on agreements covering the international sale of goods (UN Purchase Law).

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