

# GENERAL TERMS AND CONDITIONS OF DELIVERY OF AKKU VISION GMBH



Akku Vision GmbH  
Industriestraße-West 6  
D-63808 Haibach

+49 (0)6021 3289288  
info@akkuvision.de  
www.akkuvision.de

## § 1 Scope of application

1. All the deliveries, services and offers of Akku Vision GmbH (hereinafter also referred to as "Contractor") are made exclusively on the basis of these General Delivery Conditions. These are part of all contracts that we conclude with our contractual partners (hereinafter also referred to as "Client") for the deliveries or services offered by us. They also apply to all future deliveries, services or offers to the Client, even if they are not separately agreed again.
2. Terms and conditions of the Client or third parties do not apply, even if the Contractor does not separately object to or even confirm their validity in individual cases. Even if the Contractor refers to a letter that contains or refers to the terms and conditions of the Client or a third party, this does not constitute consent to the validity of those terms and conditions.

## § 2 Offer and conclusion of contract

1. All offers of the Contractor are subject to change and non-binding, unless they are expressly marked as binding or contain a specific acceptance period. The Contractor can accept orders or commissions within fourteen days of receipt. At the end of this notice period all orders and commissions are automatically considered rejected.
2. The legal relationship between the Contractor and the Client shall be governed solely by the contract concluded in writing, including these General Delivery Conditions. This shall fully reflect all agreements between the contracting parties on the subject matter of the contract. Changes and additions as well as oral agreements are only effective with the written confirmation of an authorised employee of the Contractor.
3. Information provided by the Contractor on the subject of the delivery and service may be subject to deviations customary in the trade, which are made on the basis of legal regulations or represent technical improvements. This, as well as the replacement of components with equivalent parts, is permissible insofar as the usability for the contractually intended purpose is not impaired.

## § 3 Prices and payment

1. The prices apply to the scope of services and deliveries listed in the order confirmations. Additional or special services shall be charged separately. The prices are quoted in EURO ex works plus shipping, the statutory value added tax, customs duty for export deliveries as well as fees and other public charges.
2. If the agreed prices are based on the Contractor's list prices and the delivery is to take place more than three months after conclusion of the contract, the Contractor's list prices valid at the time of delivery shall apply.
3. Invoice amounts are payable within eight days without any deduction, unless otherwise agreed in writing. The date of the invoice shall be decisive for the date of payment. If the Client does not pay by the due date, then interest will be charged on the outstanding amounts from the due date with reminder fees; the enforcement of higher costs and further damages in the event of default shall remain unaffected. From the 3rd reminder, we reserve the right to use a collection agency. This will incur additional costs.
4. Offsetting against counterclaims by the Client or withholding payments due to such claims is only permitted if the counterclaims are undisputed or have been legally established.
5. The Contractor shall be entitled to perform or render outstanding deliveries or services only against advance payment or the provision of security if, after the conclusion of the contract, it becomes aware of circumstances that are likely to substantially reduce the Client's creditworthiness and as a result of which payment of the Contractor's outstanding claims by the Client arising from the respective contractual relationship (including from other individual orders to which the same contract applies) is jeopardised.

## § 4 Delivery and delivery time

1. Deliveries shall be made ex works in accordance with Incoterms 2020; any amendments must be made in writing.
2. Deadlines and dates for deliveries and services announced by the Contractor are always approximate, unless a fixed period or date has been expressly promised or agreed. Insofar as shipping has been agreed, delivery times and delivery dates refer to the time of handover to the forwarder, carrier or other third party commissioned with the transport.
3. The Contractor can, without prejudice to his rights arising from default by the Client, demand from the Client an extension of delivery and service deadlines or a postponement of delivery and service dates by the period in which the Client does not meet his contractual obligations towards the Contractor.
4. The Contractor shall not be liable for impossibility of delivery or for delays in delivery insofar as these are caused by force majeure or other events unforeseeable at the time of conclusion of the contract (e.g. operational disruptions of any kind, difficulties in the procurement of materials or energy, transport delays, strikes, lawful lockouts, shortages of labour, energy or raw materials, difficulties in obtaining necessary

official permits, official measures or the failure of suppliers to deliver or to deliver correctly or on time) for which the Contractor is not responsible. Insofar as such events make it significantly more difficult or impossible to deliver or perform and the hindrance is not only of a temporary nature, the Contractor shall be entitled to withdraw from the contract. In the event of temporary impediments, the delivery or service deadlines shall be extended or the delivery or service dates shall be postponed by the period of the hindrance plus a reasonable start-up period.

5. The Contractor is entitled to make partial deliveries if
  - the partial delivery is usable for the Client within the scope of the contractual intended purpose and
  - the delivery of the remaining ordered goods is ensured.
6. If the Contractor is in default with a delivery or service or if a delivery or service becomes impossible for him, for whatever reason, the Contractor's liability for damages shall be limited in accordance with § 8 of these General Delivery Conditions.

#### **§ 5 Place of performance, shipping, packaging, transfer of risk, acceptance**

1. The place of performance for all obligations arising from the contractual relationship is Haibach.
2. Packaging and shipping are carried out in accordance with the current requirements of dangerous goods legislation depending on the respective mode of transport.
3. The transfer of risk is regulated in Incoterms § 4 paragraph 1. The Client shall bear the storage costs after the transfer of risk. In the case of storage by the Contractor, the storage costs amount to 3% of the invoice amount of the delivery items to be stored for each week or part thereof. The right to assert and prove further or lower storage costs is reserved.
4. The shipment will only be insured by the Contractor against theft, breakage, transport, fire and water damage or other insurable risks at the express request of the Client and at the Client's expense.
5. If an acceptance has to take place, the purchased item is considered to have been accepted if
  - the delivery was transferred to the forwarder,
  - the Contractor has notified the Client of this with reference to implied acceptance according to this § 5 and the Contractor has requested acceptance from the Client,
  - twelve working days have passed since delivery or the Client has started to use the purchased item (e.g. commissioned the delivered system or continued its installation) and in this case six working days have passed since delivery and
  - the Client has refrained from accepting the goods within this period for any other reason than due to a defect reported to the seller, which makes the use of the purchased item impossible or significantly impairs it.

#### **§ 6 Warranty, material defects**

1. The warranty period is one year. This period does not apply to claims for damages by the Client from injury to life, limb or health or from intentional or grossly negligent breaches of duty by the Contractor or his vicarious agents, which are statute-barred in accordance with the statutory provisions. This period also does not apply to the voluntarily granted 24-month warranty on rechargeable batteries and on chargers. The Contractor's warranty conditions, which can be viewed separately, apply here.
2. The delivered items must be carefully examined immediately after delivery to the Client or to the third party determined by it. With regard to obvious defects or other defects that would have been recognisable in the course of an immediate, careful inspection, they shall be deemed to have been approved by the Client if the Contractor does not receive a written notification of defects within seven working days of delivery. With regard to other defects, the delivery items shall be deemed to have been approved by the Client if the notice of defect is not received by the Contractor within seven working days after the time at which the defect became apparent; however, if the defect was already apparent to the Client at an earlier time during normal use, this earlier time shall be decisive for the commencement of the period for giving notice of defect.
3. In the event of material defects in the delivered items, the Contractor shall first be obliged and entitled to rectify the defect or to make a replacement delivery at its discretion within a reasonable period of time.
4. In the event of defects in components from other manufacturers which the Contractor cannot remedy for licensing or factual reasons, the Contractor shall, at its discretion, assert its warranty claims against the manufacturer and supplier for the account of the Client or assign this to the Client. Warranty claims against the Contractor shall only exist in the event of such defects under the other conditions and in accordance with these General Delivery Conditions if the legal enforcement of the aforementioned claims against the manufacturer and supplier was unsuccessful or is futile, for example due to insolvency. For the duration of the legal dispute, the limitation period for the relevant warranty claims of the Client against the Contractor shall be suspended.
5. The warranty shall not apply if the Client modifies the delivery item or has it modified by a third party without the Contractor's consent and this makes it impossible or unreasonably difficult to remedy the defect. In any case, the Client has to bear the additional costs of remedying the defect resulting from the change.

#### **§ 7 Protective rights**

In the event of legal infringements by products from other manufacturers supplied by the Contractor, the Contractor will, at his option, assert his claims against the manufacturer and sub-suppliers for the account of the Client or assign them to the Client. Claims against the Contractor shall only exist in these cases in accordance with this § 7 if the judicial enforcement of the aforementioned claim against the manufacturers and sub-suppliers was unsuccessful or is futile, for example due to insolvency. If the Client is responsible for an infringement of property rights, all claims of the Client against the Contractor shall be excluded.

#### **§ 8 Liability for damages due to fault**

1. The Contractor's liability for damages, irrespective of the legal grounds, in particular for impossibility, delay, defective or incorrect delivery,

breach of contract, breach of obligations during contractual negotiations and tort, shall be limited in accordance with the provisions of this § 8, insofar as fault is relevant in each case.

2. The Contractor shall not be liable in the event of simple negligence on the part of its organs, legal representatives, employees or other vicarious agents, insofar as this does not involve a breach of material contractual obligations. Essential to the contract are the obligation to timely delivery and installation of the delivery item, its freedom from defects and such material defects that impair its functionality or usability more than just insignificantly, as well as advice, protection and custody obligations that are intended to enable the Client to use the delivery item in accordance with the contract or to protect the life and limb of the Client's staff or to protect his property from significant damage.
3. Insofar as the Contractor is fundamentally liable for damages in accordance with § 8 (2), this liability is limited to damage that the Contractor foresaw as a possible consequence of a breach of contract when the contract was concluded or that he should have foreseen if he had exercised due diligence. Indirect damage and consequential damage resulting from defects in the delivery item are also only eligible for compensation insofar as such damage is typically to be expected when the delivery item is used as intended.
4. In the event of liability for simple negligence, the Contractor's liability to pay compensation for damage to property and further financial losses resulting therefrom shall be limited to an amount per claim corresponding to the current coverage sum of its product liability insurance or liability insurance, even if this involves a breach of material contractual obligations.
5. Insofar as the Contractor provides technical information or acts in an advisory capacity and this information or advice does not belong to the contractually agreed scope of services owed by him, this is done free of charge and with the exclusion of any liability.
6. The limitations of this § 8 shall not apply to the Contractor's liability for intentional conduct, for guaranteed characteristics, for injury to life, limb or health or under the Product Liability Act.

### **§ 9 Retention of title**

1. The objects of the deliveries (goods subject to retention of title) shall remain the property of the Contractor until the fulfilment of all claims to which it is entitled against the Client arising from the business relationship. The cover limit is 110% of the secured receivables. If this is exceeded, there is a right to release.
2. The Client is entitled to sell on the goods that are subject to a retention of title during the course of ordinary business. The Client hereby assigns to the Contractor the claims of the Client arising from the resale of the reserved goods in the amount of the final invoice amount agreed with the Contractor (including VAT). Such transfer shall apply regardless of whether the object of purchase was sold without or after processing. The Client remains authorised to collect the claim even after the assignment. The Contractor's authority to collect the claim itself shall remain unaffected. However, the Contractor shall not collect the claim as long as the Client meets its payment obligations from the proceeds collected, is not in default of payment and, in particular, no application for the opening of insolvency proceedings has been filed or there is no cessation of payments.
3. In the event of seizures, confiscations or other dispositions or interventions by third parties, the Client shall notify the Contractor without delay.
4. In the event of breaches of duty by the Client, in particular in the event of default in payment, the Contractor shall be entitled to withdraw from the contract in addition to repossession after the unsuccessful expiry of a reasonable deadline for performance set for the Client; the statutory provisions on the dispensability of setting a deadline shall remain unaffected. The Client is obliged to return. The taking back or assertion of the reservation of title or the seizure of the reserved goods by the Contractor does not constitute a withdrawal from the contract unless the Contractor has expressly declared this.

### **Section 10 Final provisions**

1. If the Client is a merchant, a legal entity under public law or a special fund under public law or if it has no general place of jurisdiction in the Federal Republic of Germany, the place of jurisdiction for any disputes arising from the business relationship between the Contractor and the Client shall be at the Contractor's discretion. However, in these cases Frankfurt am Main shall be the exclusive place of jurisdiction for actions against the Contractor. Mandatory statutory provisions on exclusive places of jurisdiction shall remain unaffected by this provision.
2. The relations between the Contractor and the Client shall be governed by the laws of the Federal Republic of Germany with the exception of the UN Convention on Contracts for the International Sale of Goods and private international law.