

General Terms and Conditions of COS Distribution AG, Germany, as of 28.10.2010

1. General

General The deliveries, services and offers of COS Distribution AG are carried out exclusively on the basis of these Terms and Conditions. These therefore also apply to all future business relationships, even if they are not explicitly agreed again. At the latest on acceptance of the goods or the services, these Terms and Conditions are deemed to be accepted. General terms and conditions of the purchaser, in particular terms of purchase, are explicitly rejected herewith, i.e. they will also not be recognised if we do not explicitly reject them again on our receipt of them. Deviations from these Terms and Conditions are only effective if we confirm them in writing. The General Terms and Conditions apply exclusively in their latest version, as published at www.cosag.de/ogb.

2. Deliveries and Services

- 2.1. The offers of COS Distribution AG are subject to change and non-binding and are understood to be subject to delivery by our suppliers. A contract comes into being on written confirmation of the order by COS Distribution AG or on acceptance of the delivery/service by the customer. The customer is bound to his contract application for three weeks.
- 2.2. COS Distribution AG is entitled to withdraw from contracts insofar as facts emerge that demonstrate that the customer is not creditworthy. The customer accepts that COS Distribution AG will check his creditworthiness, using SCHUFA among other sources.
- 2.3. Goods and services remain subject to reasonable technical and creative deviations from manufacturers' descriptions in brochures, catalogues and written documents, as well as to changes in models, designs and materials as part of technical advance and further development, without claims against COS Distribution AG resulting from them.
- 2.4. Unless otherwise agreed, prices are understood to be plus packaging, transport, shipping insurance and - with the exception of export business - VAT.
- 2.5. Unless otherwise stated, COS Distribution AG reserves the right to increase the price appropriately if increases in costs occur after conclusion of the contract, in particular as a result of price increases on the part of suppliers or through fluctuations in exchange rates. COS Distribution AG will provide evidence of these to the customer on request.
- 2.6. COS Distribution AG explicitly reserves the right to make reasonable part deliveries and to invoice for them.
- 2.7. With every invoice document, COS Distribution AG charges a packaging fee to the amount of EUR 1.45 and an ecology fee to the amount of EUR 1.23.
- 2.8. Agreed delivery dates are deemed to have been met if the contract product was released to the carrier on the agreed delivery date, insofar as no other explicit written agreement has been made. If the dispatch of goods that are ready to be dispatched is delayed for reasons that are not the responsibility of COS Distribution AG, the contract products can be stored at the cost and risk of the customer.
- 2.9. Delivery dates specified by COS Distribution AG are non-binding and are understood to be subject to punctual delivery to ourselves and to unforeseen circumstances and obstacles, irrespective of whether these occur at COS Distribution AG or at the manufacturer's, in particular, force majeure, government measures, the failure to receive official approval, industrial action of any sort, sabotage, or shortage of raw materials, delayed supply of materials that is not our responsibility. Events of this sort will extend the delivery date accordingly and will also do so if they come about during a delay that has already occurred. Any period of grace set by the customer will also be extended in this case by the duration of the unforeseen event. Should COS Distribution AG be in default of delivery by more than four weeks, the customer can, after a period of grace given in writing, withdraw from the contract, with the exclusion of any other claims pursuant to §§ 280 ff. of the German Civil Code (BGB). Any claim by the customer for compensation on the grounds of delayed delivery is excluded. COS Distribution AG reserves the right to withdraw from the contract if the delay in delivery caused by an event as described above lasts longer than 6 weeks and this is not the responsibility of COS Distribution AG.
- 2.10. An obligation to accept return of packaging on the part of COS Distribution AG in relation to transport packaging, outer packaging or sales packaging as defined by the German Packaging Ordinance (Verpackungsverordnung) is explicitly excluded.

3. Inspection and Transfer of Risk

- 3.1. The customer must inspect the goods immediately on receipt for completeness and correspondence with the invoice. If no written complaint is received within 3 days, the goods are deemed to have been delivered properly and completely, unless there is a fault that was not identifiable on inspection.
- 3.2. Insignificant faults that do not affect the proper functioning of the delivery item do not entitle the customer to refuse to accept it.
- 3.3. As a matter of principle the risk is transferred to the customer on release of the contract product to the carrier, forwarder, their agent or other persons named by COS Distribution AG. This also applies if carriage free has been agreed. Incoterms in their latest applicable version must be agreed separately to become valid. Insofar as dispatch is delayed or becomes impossible through no fault of COS Distribution AG, the risk is transferred to the customer on notification of readiness for dispatch. If the goods are being collected by the customer, the risk is transferred to the customer on notification of readiness for collection. The provisions under 3.3 also apply to returns to the customer following correction of faults or services against payment.

4. Retention of Title

- 4.1. The goods remain the property of COS Distribution AG (goods subject to retention of title) until complete payment has been made. Any adaptation or processing always takes place on behalf of COS Distribution AG as the manufacturer, as defined under § 950 BGB, without placing COS Distribution AG under any obligation. If the goods subject to retention of title are processed or combined with other goods, as a matter of principle COS Distribution AG will have a co-ownership share in the new item; for processing, this share will be in the proportion of the value of the goods subject to retention of title to the value of the new item, for combinations, it will be in the proportion of the value to the value of the other goods. Should the customer become the sole owner, he grants us co-ownership with immediate effect in the proportion of the values given and will keep the item safe for us without charge. If the goods arising from processing or combination are sold on, the following agreed assignment in advance only applies in the amount of the value of the goods subject to retention of title.
- 4.2. The purchaser is entitled to process and dispose of the goods subject to retention of title in the regular course of business, provided that he is not in default. Pledges and assignments of security are not permitted. With immediate effect the purchaser assigns to us as security all claims relating to the goods subject to retention of title (including all claims to current account balances) which arise from resale or on the basis of any other legal cause (insurance, unlawful action, etc.). Subject to revocation, we authorise him to collect in his own name the claims for his account assigned to us. An authorisation pursuant to § 185 para. 1 BGB is in no way connected with this authorisation to make collections, in particular there is no consent to dispose of the claim by means of any other assignment. As a matter of principle, assignment is not permitted unless it is an assignment by means of genuine factoring, which is reported to us and in which the revenue from factoring exceeds the value of our secured claim. When the revenue from factoring is paid, our claim becomes due immediately. The authorisation to make collections can only be revoked if the purchaser does not properly fulfil his payment obligations to COS Distribution AG.
- 4.3. In the event of access of third parties to the goods subject to retention of title, the purchaser shall indicate the title of COS Distribution AG and notify the latter immediately.
- 4.4. Should the purchaser default on payment or culpably fail to fulfil any other fundamental contractual obligations, COS Distribution AG shall withdraw from the contract in question, having provided a period of grace to no avail, and is entitled to take back the goods subject to retention of title or, if necessary, to demand assignment of the purchaser's claims for restitution against third parties. As a matter of principle, goods are taken back at the current price, but as a maximum at the amount of the original purchase invoice. Taking back and distraining the goods subject to retention of title by us does not constitute withdrawal from the contract, unless the German Instalment Purchase Act (Abzahlungsgesetz) applies.

5. Set-off Clause

COS Distribution AG is entitled to set off with and against due, undue and future claims to which COS Distribution AG, Pöhlheim or a company in which it has a direct or indirect holding of at least 50 % is entitled against the customer/supplier or which the customer/supplier has against one of the companies described. If necessary, the customer/supplier can obtain information about the status of these holdings on request. The customer/supplier accepts that all securities provided to COS Distribution AG also serve as securities for those claims to which the companies listed in the preceding paragraph 1 are entitled against the customer/supplier. Vice versa, all securities that the customer/supplier has provided to these companies also serve as security for the claims of COS Distribution AG against the customer/supplier - irrespective of the legal basis on which they have arisen.

6. Payment

- 6.1. Invoices are payable as agreed in advance, cash on delivery, cheque on delivery or on collection, unless otherwise agreed. Delivery is strictly made carriage forward, i.e. at the cost of the purchaser by parcel service, carrier or using the purchaser's own vehicle, unless otherwise explicitly agreed.
- 6.2. COS Distribution AG is entitled, notwithstanding any provisions on the part of the purchaser to the contrary, to set off payments by means of current account against the purchaser's older debts. Should costs and interest already have been incurred, we are entitled to set off payment first against the costs, then against the interest and finally against the main claim. The purchaser is to be notified of this.
- 6.3. A payment is only considered complete when the amount is available to us. Cheques are only accepted on account of performance and are only considered as payment when they have been cashed.
- 6.4. Should the purchaser default on payment, we are entitled to charge interest from the relevant point in time on the basis of § 247 para. 1 BGB. COS Distribution AG may prove that higher damages caused by interest have been incurred.
- 6.5. COS Distribution AG is entitled to charge a processing and cost reimbursement fee of a maximum of EUR 34.77 per case, in the event that the customer is responsible for payments being returned, in particular if there are insufficient funds in his account.
- 6.6. All claims become due immediately if the customer defaults on the fulfilment of one or more liabilities, culpably fails to comply with other fundamental contractual obligations or if circumstances become known to us that are likely to reduce the creditworthiness of the customer, in particular including suspension of payment, pendency of arrangement in bankruptcy or insolvency. In these cases we are entitled to withhold outstanding deliveries or only to complete them in return for payment in advance or securities.
- 6.7. The purchaser is only entitled to set-off or exercise a right of retention if the counterclaims have been legally established or are uncontested.

7. Return of New Goods

For new goods ordered in a legally effective way, COS Distribution AG has the right to require acceptance on the part of the customer. As a matter of principle, the customer therefore only has the right to return the goods where there is an appropriate legal basis. In the event of the return of new goods, COS Distribution AG reserves the right to refund the current market price, instead of the original purchase price. COS Distribution AG is further entitled to charge a storage fee according to the costs incurred and to deduct this from the sum returned. Returns of goods without a prior RMA enquiry will incur a cost.

8. Warranty

- 8.1. If the item is faulty as defined under § 434 BGB, the purchaser can demand supplementary performance under the conditions of § 437 section 1 BGB. The item is faulty if it deviates from the contractually agreed properties and condition. If the properties and condition have not been contractually agreed, the item is free of faults if it is suitable for the use set out in the contract or is of a condition that is usual for items of the same sort and that the purchaser can expect from items of this sort. However, the parties are aware that the current state of technology does not make it possible to exclude faults in the products under all conditions of use.

- 8.2. Excluded from the warranty in particular are faults or damage caused by: operational use and normal wear, improper use, operational errors and negligence on the part of the customer, operation with the incorrect type of power or voltage and connection to unsuitable power supplies, fire, lightning, explosion or network surges, damp or any sort, incorrect or faulty programming, software and/or processing data and any consumables, unless the customer proves that these circumstances were not originally the cause of the fault about which complaint has been made. Furthermore, the warranty is void if the serial number, type designation or similar labels have been removed or made illegible and if the terms of the manufacturer's warranty are breached, unless notification has already been made.
- 8.3. The legal EU warranty periods for new goods apply, unless shorter warranty periods have been agreed in individual contracts. This warranty period begins with the transfer of risk as defined under 3.3. The warranty for used products, so-called B Grade items, is a maximum of 6 months.
- 8.4. Obvious faults must be raised by the purchaser in writing immediately, i.e. without culpable delay, but at the latest within 3 days. The legal provisions apply to concealed faults. If the purchased product was demonstrably already faulty when it was purchased, COS Distribution AG has a choice between repair or replacement delivery. COS Distribution AG can refuse supplementary performance if it is actually impossible or unreasonable or associated with disproportionate costs. COS Distribution AG reserves a period of grace of 4 weeks from delivery of the faulty product to fulfil supplementary performance. The purchaser may demand cancellation of the purchase contract only after the second failure to fulfil supplementary performance. The withdrawal of the purchaser is not permitted if the fault is only minor, however. In the event of withdrawal or rescission, the customer will be credited with the amount resulting from the purchase price minus the corresponding value of the benefits of use arising from the relation of the use of the item by the customer to the probable period of its use.
- 8.5. In the event of an incorrect delivery that is the responsibility of COS Distribution AG, the customer must provide notification of this using the appropriate form and obtain an authorisation number. The goods must be returned within 5 days (except customers within 10 days) to COS Distribution AG. On expiry of this period, COS Distribution AG reserves the right to buy back the goods only at the relevant current price minus shipping costs and a processing fee of up to EUR 25.00.
- 8.6. The purchaser is obliged to give COS Distribution AG the opportunity to inspect and check the faulty purchase item. In the case of a claim under the warranty, the defective part or equipment must therefore be sent for repair, together with a completed service dispatch note, to First Flash GmbH, Tor 1, Koecherstr. 2, 38120 Braunschweig. The equipment must arrive free of charge. If a fee is charged for the returned equipment, First Flash GmbH will refuse to accept it. When returning the equipment for repair, the purchaser must ensure that any data stored on it that are important to him are secured by making copies, as they may be lost during the repair. COS Distribution AG accepts no liability for databases that are lost, nor for the consequential damage that results from this. COS Distribution AG will meet the costs for the transportation of replacement equipment.
- 8.7. Replaced parts become the property of COS Distribution AG.
- 8.8. Should the inspection of a reported fault show that a case for a claim under the warranty does not exist, COS Distribution is entitled to claim reimbursement for all expenses. Costs for inspection and repair are charged at the service prices of COS Distribution AG currently in force. In addition, the current Terms and Conditions of Service of COS Distribution AG apply.
- 8.9. In order to verify your claim under the warranty, a copy of the details of the purchase invoice/delivery note is required. Should these documents not be enclosed with the goods returned for repair, we will return them unrepaired at a fee of EUR 16.00 plus shipping costs and VAT at the current rate.

9. Exclusion and Limitation of Liability

- 9.1. COS Distribution AG will not provide compensation for faults as defined under section 8 of these General Terms and Conditions.
- 9.2. COS Distribution AG does not carry over any guarantees of properties made by the manufacturers or pre-suppliers. The same applies to advertising statements in manufacturers' and suppliers' brochures. In this respect, compensation claims by the purchaser are excluded, irrespective of the legal basis, in particular on the grounds of culpa in contrahendo and breach of secondary obligations.
- 9.3. COS Distribution AG does not accept liability for loss of profits or other financial damages suffered by the purchaser. COS Distribution AG merely passes on manufacturers' statements of guarantee without, however, accepting responsibility for them itself in any legally binding way.
- 9.4. This exemption of liability does not apply if the cause of the damage results from intention or gross negligence.
- 9.5. The above exemptions and limitations to liability do not apply to claims pursuant to the German Product Liability Act (Produkthaftungsgesetz). Insofar as our liability is excluded or limited, this also applies to the personal liability of our employees, staff, co-workers, representatives and vicarious agents.

10. Industrial Property Rights and Copyright

- 10.1. The customer is not authorised to alter software, to adapt it for use on incompatible hardware or to process it in any other way. The customer is not permitted to remove, alter, cover or make unrecognisable in any other way information about copyright, trademark rights or other property rights.
- 10.2. All software is registered with the manufacturer and is subject to the relevant manufacturer's conditions with regard to its use. The customer is obliged to inform his buyers of the prohibition on the multiple use of software and the prohibition on transferring the rights of use.
- 10.3. COS Distribution AG accepts no liability for ensuring that the contract products do not breach the industrial property rights or copyright of third parties.
- 10.4. Insofar as the products supplied have been manufactured according to the customer's designs or specifications, the customer shall release COS Distribution AG from all claims that are pursued by third parties on the basis of the breach of their industrial property rights and copyright.

11. Export Licences

- 11.1. Products supplied by COS Distribution AG are intended for use in and to remain in the country of delivery agreed with the customer. The re-export of contract products is subject to authorization for the customer and to the foreign trade regulations of the Federal Republic of Germany, for products imported from the USA, to the export control regulations of the United States of America. The customer must himself obtain information about the German regulations from the German Federal Export Office (Bundesausfuhramt), 65760 Eschborn/Trausnau and about the US regulations from the US Department of Commerce, Office of Export Administration, Washington DC 20330.
- 11.2. Any onward delivery of contract products by the purchaser to third parties, with or without the knowledge of COS Distribution AG, simultaneously requires transfer of the export licensing conditions. The customer accepts liability for proper compliance with these conditions in respect of COS Distribution AG.
- 11.3. The purchaser is obliged to compensate COS Distribution AG for any damage arising from incorrect or deliberately false information. In particular, any liability on the part of COS Distribution AG arising from the consequences of false statements by the purchaser about exemption from sales tax or the relevant information relating to this is excluded.

12. Prohibition of Assignment

The contracting partner is not entitled to assign his claims, for example those resulting from RMA returns or deliveries by suppliers, without prior written consent from COS Distribution AG.

13. Applicable Law

- 13.1. The law of the Federal Republic of Germany applies to the Terms and Conditions and the entire legal relationship between COS Distribution AG and the contracting party. German law is to be applied exclusively to the contractual relationships between the contracting parties. Insofar as the contracting party is a merchant as defined by the German Commercial Code (HGB) or a corporate body under public law, Gießen is the exclusive place of jurisdiction for all disputes resulting directly or indirectly from the contractual relationship. COS Distribution AG is, however, entitled to take action against the customer in any other legal jurisdiction. Furthermore, Pöhlheim is the place of performance and place of transfer as defined by the German Packaging Ordinance.
- 13.2. Should individual or several provisions of these General Terms and Conditions be or become invalid or contain a loophole, the contracting parties undertake to enter into negotiations with the aim of replacing or extending the invalid or incomplete provision in such a way that the commercial purpose of the intended regulation is met as fully as possible. The validity of the remaining provisions is not affected by this.
- 13.3. Orders are completed within COS Distribution AG with the aid of automatic data processing. The customer hereby gives his explicit consent to the processing of the data that have become known to COS Distribution AG in the context of the contractual relationships and are necessary for completion of the order. The customer also accepts that COS Distribution AG may use the data obtained from the business relationship with him as defined by the German Data Protection Act (Datenschutzgesetz) for the business purposes of COS Distribution AG.

14. Special COStade Terms and Conditions

- 14.1. The offers in the online shop are non-binding. By clicking the order button, the user confirms to the vendor his binding intention to purchase the contents of the shopping basket. The contract comes into being with the vendor's confirmation after the order has been sent. With this, the contract comes into being.
- 14.2. The user is obliged to provide accurate information when registering. Insofar as customer details change, in particular name, address, e-mail address, telephone number and bank information, the user is obliged to notify the vendor of these changes immediately by changing the details in the COStade shop. If the user fails to provide this information or gives false details from the outset, the vendor may, insofar as any contract has come into being, withdraw from the contract. The withdrawal will be confirmed in writing. The obligation to provide written form is also met by sending an e-mail. The details will be considered to be incorrect if an e-mail sent to the user is returned three consecutive times, or the service cannot be performed because of an incorrect address.
- 14.3. The customer has the right to cancel the contract in accordance with the legal provisions. In the event of his exercising the right to cancel, the customer bears the costs of return, unless the goods delivered do not correspond to the goods ordered.
- 14.4. To order goods, the user must provide his details as necessary for completion of the order. He will be given a password and username. The username and password are required to place an order. Once the username and password have been given, no further registration is required for subsequent purchases. (The username and password also allow the user to view or alter his details or to withdraw or extend his consent to the processing of his details. The user can, in addition, view the orders that he has placed up to that point with the username and password.) The user undertakes to keep his username and password safely and to ensure that they cannot be lost and that third parties cannot gain knowledge of them. If the password is lost, the user is obliged to notify the vendor immediately. This can also be done by e-mail. The vendor will block the user's access to the password-protected area as soon as notification is received. The block can only be lifted on written application by the user to the vendor. The possibility of the user re-registering is not affected by this. Should a third party gain knowledge of the username and/or password as a result of negligent handling of the password, the user accepts liability for the full amount of the orders placed under this username and password up to the point of the vendor's receipt of notification of the loss. If the user is not responsible for a third party's knowledge of the username and password, liability is limited to 255.00 Euros.
- 14.5. The vendor provides the user with password-protected access to a secure area, which allows him to view his details and to place orders. The vendor undertakes all commercially and technically reasonable and possible precautions to prevent access by third parties to this secure area.