

General Terms and Conditions

1. General

- 1.1. PLANATOL System GmbH's General Terms and Conditions ("**General Terms**") shall apply to all current and future offers, agreements, and other legal relationship between the parties.
- 1.2. The contract party's General Terms and Conditions will become part of a contract only if and insofar they conform to PLANATOL System GmbH's General Terms or if PLANATOL System GmbH has acknowledged the contract party's General Terms expressly and in text, i.e. in written form, via fax or email.
- 1.3. Those General Terms are a translation of the German original version. The German version is applicable to all offers, agreements, and other relationships, and shall always prevail.

2. Offers, Closing of a Contract, and Content of a Contract

- 2.1. In case a contract party's order qualifies as an offer under § 145 BGB (Bürgerliches Gesetzbuch, German Civil Code, "**BGB**") PLANATOL System GmbH is entitled to accept this offer within two weeks, starting from its receipt. PLANATOL System GmbH's offers generally are non-binding and subject to change unless expressly indicated to be binding.
- 2.2. PLANATOL System GmbH may accept an offer in writing (i.e. via telefax or email) or by performance/delivery of the contractually agreed services or goods. PLANATOL System GmbH reserves the right not to accept offers also without rendering a written declaration or further justification. If a period set for acceptance of the order has elapsed, PLANATOL System GmbH's silence shall be deemed to be a rejection of the offer in cases of doubt.
- 2.3. In case the contract party places the order electronically PLANATOL System GmbH will endeavor to confirm the receipt of the order immediately. An order confirmation shall not be deemed a binding acceptance of the order; however the confirmation of receipt of the order may be combined with the declaration of the acceptance of the order by PLANATOL System GmbH.
- 2.4. In case the agreement is made orally the scope of PLANATOL System GmbH's services will be defined by PLANATOL System GmbH's written order confirmation.
- 2.5. In case a contract is made on the basis of an estimation of costs by PLANATOL System GmbH § 650 BGB shall apply.
- 2.6. As far as the contractual relationship between PLANATOL System GmbH and the contract partner is related to the sale of an item or the delivery of movable items to be made or to be produced, the §§ 433 ff BGB if applicable in conjunction with § 651 BGB apply - conditionally diverging regulations in these general terms. As far as the contractual relationship between PLANATOL System GmbH and the contract partner is related to a contract of work the §§ 631 ff BGB apply - conditionally diverging regulations in these general terms. All deliveries and services of PLANATOL System GmbH, irrespective of the legal nature of the contract they are based on, are termed hereinafter as "**contractual services**".

3. Dates of Delivery, Delivery

- 3.1. Partial performance is permissible and will oblige the contract party to make a pro-rata payment unless partial performance would be unreasonable for the contract party.
- 3.2. In case PLANATOL System GmbH's performance as agreed in the contract is to be rendered upon request, full performance as agreed shall be deemed requested by the contract party one month after the agreed period for request has elapsed or if there is no such agreement, three calendar months after closing of the contract.
- 3.3. Performance periods designated by PLANATOL System GmbH are non-binding and subject to change unless otherwise agreed expressly and in written form. Events of force majeure shall entitle PLANATOL System GmbH to delay performance for the duration of the obstruction. All circumstances that PLANATOL System GmbH is not responsible for or prevent PLANATOL System

GmbH from delivery of the agreed works or makes performance unreasonable for PLANATOL System GmbH, such as legal strike or legal lock-out, war, import or export prohibitions, shortage of energy or commodities, authorities' measures, or late self-delivery which PLANATOL System GmbH is not responsible for, shall be deemed equivalent to a force majeure event. If the duration of the obstruction exceeds two months the contract party is entitled to cancel the contract after setting a reasonable period for subsequent performance including the declaration to deny acceptance in case of late performance and in case he proves that the full or partially outstanding performance is of no interest to him due to the delay. In cases of subsequent modifications or additions to the contract, performance dates and periods shall begin to run anew or shall be delayed accordingly, irrespective of their prior confirmation by PLANATOL System GmbH, insofar as no differing agreement with the contract party was met in the respective case.

4. Prices, Packing and Shipment

- 4.1. PLANATOL System GmbH's prices are quoted ex works, excluding packaging, and net of additional applicable Value Added Tax, which is invoiced separately. Costs for packing, shipping and eventual insurances will be borne by the contracting partner.
- 4.2. Price changes are permissible if the period between closing of the contract and the agreed time of performance exceeds six weeks. In case a price change is permissible, the following applies: In case wages, costs for material, or market cost prices (catalogue prices) increase or exchange prices change prior to performance, PLANATOL System GmbH may reasonably adjust the prices according to the increase in costs.

5. Acceptance of the contractual services

- 5.1. Should PLANATOL System GmbH demand this, the contract partner is obliged to formally accept the result of the contractual services ("acceptance of the contractual services") after notice of completeness and readiness for delivery. PLANATOL System GmbH and the contract partner in this case agree on an acceptance date and create a hand over and acceptance protocol which will be signed by both parties.
- 5.2. In case of failure to agree on a joint acceptance of the contractual services and hand over date, PLANATOL System GmbH may set a reasonable deadline to the contractual partner for said acceptance protocol. After that deadline has elapsed, the product is effectively declared accepted automatically.

6. Contract Party's Co-operation Duties

- 6.1. The contract partner must make available to PLANATOL System GmbH all documents required for the performance (plans, drawings, technical manuals etc.) of the agreed services free of cost and in time. PLANATOL System GmbH is not obliged to check the content of the documents made available by the contract party as well as such designated requirements (specifications, functions, and technical details) for eventual flaws or infringements of third party rights following the implementation of the specified requirements, unless otherwise agreed expressly and in written form.
- 6.2. Insofar as the contract party renders own services or services are rendered by third parties (including the delivery of goods) the contract party is responsible for the co-ordination of the individual work processes as well as the compliance with applicable safety regulations and provisions for prevention of accidents. The contract party shall be obliged to grant PLANATOL System GmbH access to all facilities which are necessary in the course of rendering the contractual services and shall supply access for energy and water. The contract party is obliged to dispose all waste emerging in conjunction with the supply of contractual services at his own cost.
- 6.3. In case the contract party does not render his co-operation duties to the required extent or PLANATOL System GmbH is inhibited in rendering the agreed performances due to circumstances within the contracting partner's risk, PLANATOL System GmbH is exempted from the performance obligations for the duration of the impediment and to the extent of its impact and may ask for reasonable compensation for any additional costs incurred hereby. PLANATOL will in that case set off any expenses saved or amounts received from other orders. The risk of accidental loss or accidental deterioration of the contractual services is transferred to the contract party at the time he is in default with accepting delivery.

7. Warranties

- 7.1. In cases of defects the contract party may claim remedies only when he has fully performed his duties of examination and to give notice of defects under § 377 Commercial Code (Handelsgesetzbuch, „HGB“).
- 7.2. Any warranty is void for failures which are caused by non-contractual use of the contractual services by the partner or third parties consulted by the contract partner. The warranty is further voided by any changes to the contractually agreed product which have not been agreed upon in advance, in written form with PLANATOL System GmbH as well as circumstances which are based on the contract partner not following PLANATOL System GmbH's operating instructions.
- 7.3. If there is defective contractual performance the contracting partner has the right to subsequent performance by elimination of the defect or to new non-defective performance, whichever remedy PLANATOL chooses. The contracting partner shall have the right to opt, contrary to the stipulations of § 478 BGB (in connection with § 651 BGB, if applicable) within the scope of the contractor's recourse (“Unternehmerrückgriff”). In cases of elimination of defects PLANATOL System GmbH must bear all costs necessary for elimination, specifically for transport, infrastructure, labor, and material, insofar as those are not increased due to the shipping of the agreed works to a location different from the contract party's place of residence or registered seat.
- 7.4. If subsequent performance fails the contract party shall be entitled to ask for rescission of the contract or a reduction of the purchase price, at his choice. PLANATOL System GmbH's liability for damages is defined in clause 7 of these General Terms. Any exceeding liability by PLANATOL System GmbH is excluded.
- 7.5. The period of limitation for claiming remedies for defects (including damages) is 12 months from transfer of risk according to Clause 4 of these General Terms. In cases of delivery recourse according to §§ 478, 479 BGB (in connection with § 651 BGB, if applicable) the statutory period of limitation applies.

8. Liability

- 8.1. Claims for damages of any sort, irrespective of legal grounds, including damages resulting from the use of the agreed services/works are excluded, unless PLANATOL System GmbH or its legal representatives or persons employed in performing an obligation for whom the principal is vicariously liable (“Erfüllungsgehilfe”) acted willingly or with gross negligence or the claims result from the lack of an assumed warranty. If the latter applies, liability is limited to the damages the warranty comprises. Furthermore the liability for any damage to life, body or health shall remain unaffected.
- 8.2. PLANATOL System GmbH assumes liability for damages based on slight negligence only if material obligations (“cardinal obligations”) were breached in the course of performance of the contract. In that case liability is limited to the typical and foreseeable loss. Furthermore any claim for damages is capped at three times the fee owed by the customer to PLANATOL System GmbH. Compensation for consequential loss (e.g. damages resulting from the use of the agreed goods, lost profit, and lost use and enjoyment) is excluded.
- 8.3. The stipulations set forth under this provision shall not apply to the provisions of the German Product Liability Act (“Produkthaftungsgesetz”). The same applies to any damage to life, body, or health. Furthermore any mandatory statutory liability shall remain unaffected.

9. Terms of Payment

- 9.1. Payment must be made within 30 days from the date of the invoice without deduction. A discount of 2 % is granted by PLANATOL System GmbH for special product groups in cases of payment within 8 days from date of invoice and only based on a given assurance in written text. Diverging provisions shall at all times require express written approval by PLANATOL System GmbH. Discounts are not granted in any cases in the event that at the moment of payment of an invoice an outstanding account of another invoice is due for payment for more than 30 days.
- 9.2. PLANATOL reserves the right to ask for partial payments, PLANATOL System GmbH is in particular entitled to demand for partial payments according to § 632 BGB.

- 9.3. In cases where after the closing of the contract doubts arise regarding the contract partner's ability to pay PLANATOL System GmbH's claims or his creditworthiness PLANATOL System GmbH is entitled to render performance only after the contract party's performance or versus collateral in the form of a directly enforceable, irrevocable guarantee from a German major bank. In case the contractual partner does not comply with this request even after the fixing of a time period for performance including a notice of the intention to rescind the contract after the set period of time, PLANATOL System GmbH may rescind the contract, excluding any rights for compensation of the contract party.
- 9.4. The contract party may, especially in cases of notification of defects, settle against claims of PLANATOL System GmbH or exercise his right to retention only if his claim has not been disputed or if it has become res judicata.

10. Reservation of Title

- 10.1. PLANATOL System GmbH reserves full title to the agreed goods until full payment of the agreed payment has been made.
- 10.2. The contract party is entitled to convert the goods under retention of title, however title will extend to the converted goods. PLANATOL System GmbH as contractor of the intermediate product will be the proprietor of the converted goods under the exclusion of § 950 BGB. The contract party or converting party, as applicable, will be custodian only.
- 10.3. If the goods under retention of title are combined with other goods or converted to other works to which PLANATOL System GmbH does not have title, PLANATOL System GmbH will become a joint owner to the new works, proportional to the value of the goods under retention of title to the other goods.
- 10.4. The goods under retention of title may only be sold within the regular and orderly course of business and only if claims from re-sales have not been ceded to third parties prior to the sale. The contract party hereby assigns his future claims in connection with the resale to PLANATOL System GmbH in advance, this includes cases when PLANATOL System GmbH's goods are combined with others or are converted. In these instances the assigned claims will serve as collateral for PLANATOL System GmbH only to the extent they equal the value of the agreed goods. PLANATOL System GmbH will not collect the assigned claims as long as the contract party honors his payment obligations.
- 10.5. The contract party however is obliged to disclose the third party debtors to PLANATOL System GmbH and make notice of the assignment to those. He is entitled to collect the claims himself as long as PLANATOL System GmbH has not advised him to proceed otherwise. He must transfer the moneys collected to PLANATOL System GmbH immediately insofar as PLANATOL System GmbH's claims are due.
- 10.6. PLANATOL System GmbH agrees to release the assigned claims at PLANATOL System GmbH's option insofar as they exceed the claims to be secured for PLANATOL System GmbH by more than 10% and stem from fully paid deliveries.
- 10.7. Any pledging and transfer of ownership in relation to the goods under retention of title by way of security is not permissible.
- 10.8. The contract party must inform PLANATOL System GmbH of any third party access to the goods delivered under retention of title or to any claims immediately.
- 10.9. In case an agreement according to this Clause 10 is impermissible under the laws of the contract party's state, PLANATOL System GmbH will retain all other rights to the agreed goods that PLANATOL System GmbH is permitted to retain under the laws of the contract party's state.

11. Intellectual Property

- 11.1. Offering material, cost estimates, drafts, drawings, and calculations ("**Documents**") shall remain the sole property of PLANATOL System GmbH and may not be copied or made available to third parties without PLANATOL System GmbH's written consent. If a contract is not closed, PLANATOL System GmbH's Documents must be returned immediately and complete and eventual copies made must be destroyed.

- 11.2. In case inventions are made by PLANATOL System GmbH within the scope of the business relationship, PLANATOL System GmbH shall solely be entitled to make use of the rights deriving therefrom, especially of patents.

12. Place of Performance, Jurisdiction, and Applicable Law

- 12.1. Place of Performance for deliveries and other performance is the place of PLANATOL System GmbH's registered seat.
- 12.2. It is agreed that performance is to be discharged at the domicile of the debtor ("Holschuld"), requiring the works to be collected at PLANATOL System GmbH's registered seat. The risk of accidental loss and deterioration will be carried by the contract party as soon as PLANATOL System GmbH has informed him in oral and written form, via fax or email, that the works are ready to be collected. Insofar as the contract party wishes the agreed works to be delivered to a location different from PLANATOL System GmbH's registered seat, PLANATOL System GmbH is hereby authorized to conclude a respective contract for shipping in the name of and at the cost of the contract party with a contractor to be chosen by PLANATOL System GmbH (see also Clause 4.1).
- 12.3. For all current and future claims from the business relationship with merchants, a corporate body organized under public law, or separate assets under public law the exclusive place of jurisdiction shall be with the registered seat of PLANATOL System GmbH. PLANATOL System GmbH however shall be entitled to file a complaint against the contract party at the contract party's registered seat.
- 12.4. The contractual relationship including all future agreements is submitted to the Laws of the Federal Republic of Germany, exclusive of the United Nations Convention on Contracts for the Sale of Goods (CISG) and laws referring to other legal systems.

13. Severability

If an individual provision is invalid, the rest of the contract shall remain unaffected. The invalid provision shall be substituted by the legally permissible provision that equals the intended commercial purpose or comes closest to it.

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