

# **General terms and conditions of business by PLANATOL GmbH**

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## **1. General information**

- 1.1. The general terms and conditions of business ("**terms**") of PLANATOL GmbH (hereinafter called: "**PLANATOL**") apply for all current and future offers, contracts, and other legal relationships between the parties.
- 1.2. The general terms and conditions of business of the contracting partners become a part of the contract content only if and insofar as they agree with the terms of PLANATOL, or if PLANATOL has expressly recognized the general terms and conditions of business of the contracting partner in writing, which is, in paper, fax, or e-mail form.

## **2. Offers, conclusion of the contract, and contract content**

- 2.1. If an order of a contracting partner is to be qualified as an offer according to § 145 BGB (German Civil Code), PLANATOL may accept this offer within two weeks of receipt. The offers of PLANATOL are fundamentally non-binding and provisional, unless they have been designated as binding offers.
- 2.2. The acceptance of the offer on the part of PLANATOL through a declaration in writing (i.e., in paper, fax, or e-mail form) or through the rendering of the ordered service. PLANATOL reserves the right, not to accept orders without written explanation or justification. A non-reaction of PLANATOL at the end of the acceptance period should be considered to be a rejection in case of doubt.
- 2.3. If the contracting partner makes the order electronically, PLANATOL will attempt to confirm the receipt of the order immediately. The confirmation of receipt is not a binding acceptance of the order, but the confirmation of receipt on the part of PLANATOL can be combined with the declaration of acceptance.
- 2.4. In case of not written agreements, the scope of services of PLANATOL is determined by a written contractual confirmation on the part of PLANATOL.
- 2.5. If a contract comes into being based on a preliminary estimate of PLANATOL, § 650 BGB (German Civil Code) applies.

## **3. Delivery dates, delivery, packaging**

- 3.1. Partial services are permissible and oblige the contracting partner to pay the partial payment unless the contracting partner considers a partial service to be unacceptable.
- 3.2. As far as the contractual services of PLANATOL are to be rendered on the call of the contracting partner – subject to deviating agreements – the contracting partner is obliged to accept partial deliveries of approximately the same quantities. Besides that, the entire contractual service are considered to have been called by the contracting partner one calendar month after the deadline agreed upon for the call has expired or, in case no deadline has been agreed, three calendar months after the conclusion of the contract.
- 3.3. The service deadlines specified by PLANATOL are non-binding and provisional insofar as nothing else has been expressly agreed in writing. Events due to force majeure give PLANATOL the right to postpone the rendering of the contractual service by the duration of the hindrance. All circumstances for which PLANATOL is not responsible that make it impossible for PLANATOL to render the contractual service or that make the rendering of these services unacceptably difficult, such as lawful strikes or lockouts, war, import and export prohibitions, lack of power and raw materials, measures of authorities, and late self-delivery for which PLANATOL is not responsible, are considered to be on par with force majeure.

If the hindrance lasts longer than two months, the contracting partner has the right, after setting an appropriate grace period with a threat to reject the service, to terminate the contract if the contracting partner can prove that the full or partial fulfilment of the contract is no longer of interest to the contracting partner due to the delay. In case of subsequent contractual changes or supplements, the service periods and deadline restart even if they were previously already confirmed by PLANATOL or they are postponed accordingly insofar as no deviating agreement in this regard has been made in this individual case with the contracting partner.

- 3.4 PLANATOL does not take back non-returnable packaging.
- 3.5 If the delivery takes place in rental containers, the contracting partner must empty them completely after use and prepare them to be picked up by the container supplier of PLANATOL. It must be announced to the container supplier that the containers are ready for pick-up using the container control slip provided to the contracting partner. The contracting partner is liable for not preparing the containers for pick-up in a timely manner, as well as for any damage to or loss of the rental containers for which the contracting partner is responsible.
- 3.6 The prices of PLANATOL are net, ex works, including packaging. The costs of shipping and any insurance have to be paid by the contracting partner. Agreements that deviate from the above must be done in written form.
- 3.7 Changes in price are permissible, if there are more than six weeks between the conclusion of the contract and the agreed service deadline.

In case of a permissible change in price, the following applies: If the wages, material costs, or market cost prices (list prices) increase by the time of the rendering of the contractual service or if the exchange rates change, PLANATOL has the right to increase the prices appropriately according to the increase in cost.

#### **4. Transfer of risk**

For all deliveries, the risk of incidental destruction and incidental worsening of the contractual service transfers to the contracting partner at the point in time in which the contractual service is handed over to the carrier by PLANATOL.

#### **5. Contracting partner's duty to co-operate**

- 5.1. The contracting partner is obliged to provide PLANATOL with all documents required for rendering the contractual service free of cost and on time. Unless otherwise expressly agreed, PLANATOL is not obliged to check the content of the documents provided by the contracting contractor and the desired requirements (specifications, functions, and technical details) for possible faults or to violate the rights of third parties through the implementation of the described requirements.
- 5.2. As far as the contracting partner renders its own services or services are rendered by third parties (including the delivery of goods), the contracting partner is responsible for the co-ordination of the individual work processes, as well as for the observance of the pertinent safety regulations and accident prevention provisions.
- 5.3. If the contracting partner does not fulfil its duties to co-operate to the required extent or if PLANATOL is hindered in the rendering of the services for which PLANATOL is responsible due to circumstances that lie within the sphere of risk of the contracting partner, PLANATOL is freed of the service obligations for the duration of the hindrance and period in which it is in effect and may demand an appropriate compensation for the extra expenses caused by this circumstance. In such a case, PLANATOL will offset the expenses it could save or gain due to other orders. The risks of incidental destruction or incidental worsening of the contractual service, transfers to the contracting partner at the point in time in which it enters into default in acceptance.

#### **6. Warranty**

- 6.1. The assertion of the rights of the contracting partner in case of defects requires that the contracting partner has met its inspection and complaint obligations according to § 377 HGB (German Commercial Code).

- 6.2. The contracting partner is aware that the (gluing) properties of the contractual service can be influenced by a number of external circumstances (e.g., the composition of the materials being glued and various environmental factors) (for more information, cf. Section 8). As a result, the contracting partner is obliged to perform a test (test adhesion) of the gluing properties of the contractual service and to inform PLANATOL of any disadvantageous deviations in the gluing properties determined in this context before using the contractual service in the manner the contracting partner intends. In case of the notification of defects, the contracting partner must provide a sample of the contractual service and the test sample upon the request of PLANATOL.
- 6.3. As far as a defect exists in the contractual service, the contracting partner has a right to post-fulfilment in the form of elimination of the defect or the delivery of a new, defect-free service as chosen by PLANATOL. The contracting partner is entitled to this right of choice in opposition to Section 1 within the scope of entrepreneurial recourse according to § 478 BGB (in connection with § 651 BGB, if pertinent). In case of an elimination of defects, PLANATOL is obliged to bear all expenses incurred in the elimination of the defect, including transport, travel, work, and material costs, insofar as they are not increased due to the fact that the object of the contract is at a place other than the place or residence or branch of the contracting partner.
- 6.4. If post-fulfilment fails, the contracting partner has the right according to its own choice to terminate the contract or to demand a reduced price. The liability of PLANATOL to provide compensation for damages comply with Section 7 of these terms. Any liability of PLANATOL going beyond the provisions of Section 7 is excluded.
- 6.5. The statute of limitations for damage claims (including compensation claims) is 12 months, calculated from the transfer of risk according to Section 4 of these terms. In case of a delivery recourse according to §§ 478, 479 BGB (in connection with § 651 BGB, if pertinent), the legal statute of limitations applies.

## **7. Liability**

- 7.1. Compensation claims for any type of damage regardless of legal grounds, including damage as a result of the use of the contractual service, are excluded unless PLANATOL, its legal representative, or its agents have acted with premeditation or gross negligence or if the compensation claims result from a guarantee not having been accepted. In the last case, liability is limited to damage covered by the guarantee. The compensation for subsequent damage (e.g., damage due to the use of the contractual service, lost profits, and lost advantages of use) is – with the exception of premeditation on the part of PLANATOL – limited to the predictable damage and contract-typical damage risk.
- 7.2. In case of damage due to ordinary negligence, PLANATOL is liable only if essential obligations (so-called cardinal obligations) have been violated in the execution of the contract. In this case, the liability is limited to the typical and predictable damage. In addition, the amount of the damage compensation is limited to three times the remuneration owed to PLANATOL by the contracting partner. The compensation for subsequent damage (e.g., damage due to the use of the contractual service, lost profits, and lost advantages of use) is excluded.
- 7.3. The provisions named in this regulation are not applicable to claims according to the requirements of the German Product Liability Act (in German: Produkthaftungsgesetz). The same applies in case of injury to life, body, and health. Further, any mandatory legal liability is not affected by these provisions.

## **8. Application-technical notes**

- 8.1. Product descriptions in directions for use and other information or recommendations for the use or suitability of products for certain applications are only considered to be general guidelines from which the product composition of the contractual services can deviate in individual cases due to the variety of application possibilities and the respective special conditions (e.g., environmental influences). The contracting partner is obligated to perform own testing.
- 8.2. Even in case of the application-technical support of the contracting partner, PLANATOL does not assume the risk for the success of the contracting partner's work. A guarantee for the suitability of the contractual services for certain uses (fitness for use) is explicitly excluded.

## **9. Terms and conditions of payment**

- 9.1. The invoice amount must be paid within 30 days of the invoice date without deductions. Discounts are not granted. Deviating provisions require a separately written agreement.
- 9.2. PLANATOL reserves the right to demand partial payments.
- 9.3. If doubts arise in regard to the credit worthiness or ability of the contracting partner to pay after the conclusion of the contract with the consequence that the payment claims of PLANATOL seems to be at risk, PLANATOL has the right to render the service upon counter-performance or to demand security through a directly enforceable, irrevocable suretyship of a major German bank. If the contracting partner does not meet this demand despite the setting of a deadline with threat of termination, PLANATOL can terminate the contract without the contracting partner having any claims to compensation.
- 9.4. Especially in the case of defect complaints, the contracting partner may only offset its own claims against those of PLANATOL or assert a right of retention only if its own claim is undisputed or legally determined.

## **10. Reservation of proprietary rights**

- 10.1. The contractual service remains the property of PLANATOL until the complete payment of the owed remuneration.
- 10.2. The contracting partner has a right to process the contractual service, but the reservation of proprietary rights also extends to the finished goods resulting from the processing. As the supplier of the intermediate product, PLANATOL is considered to be the owner of the processed item under exclusion of § 950 BGB. The contracting partner or processor is only considered to be the custodian of the item.
- 10.3. If the contractual service is combined or processed with items that do not belong to PLANATOL, in return PLANATOL becomes co-owner of the new item, in relation to the value of the goods, under reservation to the other items.
- 10.4. The contractual service may be sold in usual and ordinary business of if the claims from further sales are not previously transferred to third parties. The claims due to the contracting party from further sales are already transferred now to PLANATOL in advance and, to be precise insofar as the contractual service is combined or processed with other items. In this case, the transferred claims act as a guarantee for PLANATOL only to the amount of the value of the contractual service. PLANATOL will not collect the transferred claims as long as the contracting partner meets its payment obligations.
- 10.5. The contracting partner is obliged, however, to name its third-party debtors to PLANATOL upon request and to inform the third-party debtors of the transfer. The contracting partner has the right to collect the claims itself if PLANATOL does not instruct the contracting partner otherwise. The amounts that the contracting partner collects must be passed on to PLANATOL insofar as the claims of PLANATOL are due.
- 10.6. PLANATOL is obliged to release the transferred claims as chosen by PLANATOL insofar as these claims exceed the claims to be secured for PLANATOL by more than 10% and insofar as they come from fully paid deliveries.
- 10.7. The reserved goods or transferred claims must not be mortgaged and the security for these goods or claims must not be transferred.
- 10.8. The contracting partner must inform PLANATOL immediately of any access of third parties to the goods delivered under reservation of proprietary rights or to the transferred claims.
- 10.9. If an agreement according to Section 10 is impermissible according to the law of the country of the contracting partner, PLANATOL is entitled to all other rights to the contractual service that PLANATOL can reserve according to the law of the country of the contracting partner.

**11. Intellectual property**

- 11.1. Offer documents, cost estimates, drafts, drawings, and calculations ("documents") created by PLANATOL remain the sole property of PLANATOL and must not be reproduced or made accessible to third parties without the written permission of PLANATOL. If an order does not come into being, the documents must be returned immediately and completely to PLANATOL and any copies must be destroyed.
- 11.2. If inventions are made within the scope of the business relationship, PLANATOL is entitled to the sole use of the derived rights, including patents.

**12. Place of fulfilment, jurisdiction, and applicable law**

- 12.1. The place of fulfilment for deliveries and other services is the location of the company headquarters of PLANATOL.
- 12.2. For all present and future claims from the business relationship with business persons, a corporate body under public law, or special public assets, the place of jurisdiction is the location of the PLANATOL headquarters. PLANATOL however, expressly reserves the right to sue in other reasonable jurisdictions, such as the location of the company headquarters of the contracting partner.
- 12.3. The contractual relationship, including all future contractions, is subject solely to the law of the Federal Republic of Germany under exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and standards that refer to other legal systems.

**13. Partial invalidity**

The invalidity of individual provisions does not affect the validity of the contract as a whole. A legally permissible provision that corresponds with or comes closest to the intended economic purpose will replace the invalid provision.

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