

General Terms and Conditions of Sale and Delivery of S+S Regeltechnik GmbH

valid as of January 2021

1. **Scope**
 - (1) Any and all quotations, services and agreements are solely made or performed on the basis of these General Terms and Conditions of Sale and Delivery of S+S Regeltechnik GmbH (S+S) in their respective valid version. These General Terms and Conditions of Sale and Delivery apply solely to companies as defined by the BGB (German Civil Code).
 - (2) Customers' terms and conditions conflicting with or deviating from these General Terms and Conditions of Sale and Delivery will be acknowledged by S+S only if S+S has expressly consented to the validity of such terms in writing. The General Terms and Conditions of Sale and Delivery of S+S shall also apply if services have been provided to the customer without reservation in the knowledge of conflicting or deviating terms of that customer.
 - (3) These General Terms and Conditions of Sale and Delivery of S+S shall be acknowledged by the customer's order placement or acceptance of services provided for the duration of the entire business relationship, even if these terms are not explicitly restated.
 2. **Quotation / contract conclusion / termination of contract**
 - (1) The quotations made by S+S are non-binding. A contract is concluded by the written order confirmation or the delivery of goods ordered insofar as S+S does not indicate via other circumstances that the order has been accepted. Insofar as the customer communicates change requests following receipt of the order confirmation, S+S is entitled to charge the additional costs resulting from this if it accepts such changes.
 - (2) Illustrations, drawings and other specifications are only binding if agreed upon in writing. The same applies to advisory or informative discussions between S+S and the customer, in particular regarding the possible uses of goods ordered.
 - (3) Insofar as the customer cancels the contract for any reason whatsoever for which S+S is not responsible, S+S is entitled to claim fixed compensation amounting to 10% of the agreed total price at the time of order cancellation, unless S+S or the customer provides other evidence in the individual case.
 3. **Services / dates**
 - (1) Delivery deadlines are only binding (fixed date transaction), if S+S has expressly confirmed this in writing.
 - (2) The adherence to binding delivery deadlines presupposes the clarification of all technical and other issues as well as the timely and proper performance of any obligations by the customer.
 - (3) S+S shall not be held responsible for delays in delivery for reasons beyond the control of S+S, specifically unforeseeable events that prevent or impede timely delivery. In such cases, the delivery deadline shall be extended accordingly. In the event of a delay of performance, the customer is entitled to withdraw from the non-performed part of the contract insofar as such impediment to performance continues for more than 6 weeks and a reasonable grace period for delivery has been granted. The customer's claims for damages due to the extension of the delivery deadline or if S+S is exempted from its duty to perform are excluded, insofar as the customer was notified without delay of such impediment to performance.
 - (4) Insofar as S+S is responsible for the non-compliance with binding delivery dates, the liability of S+S shall be limited to 0.5% of the order value for each full week of delay, but up to a maximum of 5% of the order value of the delivery affected. The customer can only assert further claims for damages insofar as the customer has granted S+S a reasonable grace period in writing and such delay in delivery is attributable to gross negligence or intent on part of S+S.
 - (5) S+S is exempt from its delivery obligation if circumstances come to light during the contractual relationship that give just cause to doubt the solvency of the customer. In this case, S+S will perform the delivery insofar as the customer makes an advance payment in respect of the purchase price, or provides appropriate sureties.
 - (6) Insofar as the customer orders goods on call (in particular, pre-order), the full acceptance of the purchase or the full release order respectively shall be completed within 12 months of the date of contract conclusion or order respectively. Otherwise, the customer is obligated to accept the goods within 10 working days insofar as S+S requests this in writing.
 - (7) The failure to comply with the time limit mentioned in number (6) will trigger the legal consequences of default of acceptance as defined in the BGB.
 - (8) There is no general right to return goods no longer required by the purchaser or for the purpose of stock reduction.
 4. **Delivery**
 - (1) Shipment of goods is effected ex principal office of S+S at the customer's risk and expense (Incoterms 2010: EXW). S+S shall only take out transport, breakage, theft, or other insurance at the written request of the customer. The resulting costs shall be charged to the customer's account.
 - (2) Insofar as delivery of the goods is to be carried out at a later date than the possible date of shipment at the customer's request, S+S is entitled to charge the costs of storage to the customer's account, starting one month after the notification of readiness for delivery at a flat rate at 0.5% of the order value for each month, subject to the provision of other evidence. One month after notification of readiness for delivery, S+S is alternatively entitled to request the customer to accept the goods and, in case of non-acceptance, to dispose of the goods in another manner. The customer is then to be supplied within a reasonably extended deadline.
 - (3) Partial performances are permissible insofar as this is not unreasonable to the customer.
 5. **Prices / payment terms**
 - (1) The prices of S+S are subject to the statutory value added tax at the respective rate in effect, ex principal office of S+S and plus transport/shipping and packaging costs to be separately charged. For orders of less than EUR 75.00 in value, we reserve the right to charge a low-quantity surcharge in the amount of EUR 15.00. For custom-made items, we charge setup expenditure at cost. Existing customers whose previous payment was received more than 12 months ago as well as new customers from Germany are supplied two times subject to prepayment and then, after a positive creditworthiness check by our Euler Hermes trade credit default insurance, by payment on account. Deliveries to customers outside Germany are subject to prepayment.
 - (2) S+S is entitled to issue partial invoices in accordance with the progress of the order.
 - (3) The invoice amount is due for payment on receipt of the invoice. Insofar as payment is not effected within 14 working days of the date of performance of goods and receipt of the invoice, the customer shall be deemed to be in default. All payments must be made in EUR. Notwithstanding evidence of further damages, the customer in the case of payment default shall pay interest on arrears at a rate of 8 percentage points above the respective base rate.
 - (4) Bills of exchange and checks are only accepted as conditional payment and take fulfilling effect only after being unconditionally credited. Possible ancillary costs arising due to payment by bills of exchange or check shall be charged to the customer.
 6. **Warranty entitlements of the purchaser**
 - (1) The rights of the purchaser regarding material defects and defects of title (including incorrect and under-delivery as well as improper assembly or incorrect assembly instructions) shall be based on the statutory provisions, unless otherwise agreed below. The special statutory provisions for final delivery of the unprocessed goods to a consumer, even if this consumer has further processed these goods, shall remain unaffected in all cases (supplier regress according to §§ 478 BGB). Claims arising from the supplier regress are excluded if the defective goods were subject to further processing, e.g. by installation in another product, by the customer or another company.
 - (2) Our liability for defects is based primarily on the agreement reached concerning the quality of the goods. All product descriptions and manufacturer's specifications that form part of an individual contract or that were published by us (specifically in catalogues or on our website) at the time of contract conclusion are deemed to be agreements concerning the quality of the goods.
 - (3) Insofar as the quality was not agreed, the existence of a defect shall be evaluated according to the statutory provision (§ 434 par. 1 p. 2 and 3 BGB). However, we accept no liability for public statements by third parties (e.g., advertising statements) to which the customer has not drawn our attention as having influenced his/her purchasing decision.
 - (4) In principle, we accept no liability for defects that the customer is aware of, or unaware of due to gross negligence, at the time of conclusion of the contract (§ 442 BGB). Furthermore, the customer's claims for defects require that the customer has fulfilled his/her statutory examination and reporting obligations (§§ 377, 381 German Commercial Code (HGB)). In the case of goods intended for installation or other further processing, an investigation must be carried out in all cases immediately prior to processing. If a defect is discovered during the delivery, the investigation or at any subsequent time, we must be notified of this in writing immediately. In all cases, obvious defects must be reported in writing within 5 working days of delivery and non-visible defects undiscovered during the investigation must be reported in writing within the same period following discovery. If the customer fails to carry out a proper investigation and/or report defects, our liability for defects that are not reported, not reported in time or not reported properly shall be excluded in accordance with the statutory provisions.
 - (5) If the item delivered is defective, we can initially choose whether to provide subsequent performance by eliminating the defect (rectification) or by delivering a defect-free item (replacement delivery). This does not affect our right to refuse subsequent performance in accordance with statutory requirements.
 - (6) S+S is entitled to refuse subsequent performance if this is only possible at disproportionate costs. Disproportionate costs are deemed to apply if the costs of subsequent performance, including the cost of removing the defective item and installing a defect-free item, exceed the value of the goods in their defect-free condition by 200%.
 - (7) S+S is entitled to make the subsequent performance owed dependent on the purchaser paying the purchase price due. However, the purchaser is entitled to withhold a portion of the purchase price that is commensurate with the defect.
 - (8) The purchaser must provide us with the necessary time and opportunity to carry out the subsequent performance owed and, in particular, must hand over the rejected goods to us. In the event of a replacement delivery, the purchaser must return the defective item to us in accordance with the statutory provisions.
 - (9) In the case of subsequent performance, S+S itself shall remove the defective item and install the defect-free item. The customer is only entitled to remove the defective item and to install a defect-free item with the prior consent of S+S or following the expiry of an appropriate deadline set by the customer. Insofar as a defect actually exists, we will bear or reimburse in accordance with statutory provisions the expenditure incurred for the purpose of inspection and subsequent performance, in particular, transport, travel, labour and material costs as well as any applicable removal and installation costs. Otherwise, we are entitled to demand reimbursement from the customer for the costs incurred due to the unwarranted request for defect rectification (in particular, inspection and transport costs), unless the purchaser was unable to ascertain the freedom from defects.
 - (10) If the subsequent performance has failed or if an appropriate deadline to be set by the customer for the subsequent performance has expired without success or is dispensable in accordance with the statutory provisions, the purchaser is entitled to withdraw from the contract or reduce the purchase price. However, the right of withdrawal does not apply for insignificant defects.
 - (11) Claims by the purchaser for damages or compensation for wasted expenditure apply even for defects only in accordance with § 8 and are excluded in all other cases.
 7. **Warranty**
 - (1) S+S grants a warranty for products that the customer has purchased on or after 1 January 2021 subject to the following provisions. This warranty is provided to customers in addition to and independently of their statutory entitlements in the event of defects.
 - (2) S+S will rectify any faults in the design, material or workmanship by repair or replacement delivery within 5 years of delivery. The usual signs of wear, especially due to corrosion, ageing as well as ambient and environmental influences, are excluded from the warranty.
 - (3) The warranty only covers the repair or replacement delivery at the discretion of S+S. The warranty does not cover the removal of the defective item and installation of the new defect-free item.
 - (4) The assertion of warranty claims requires that the product be purchased on or after 1 January 2021 and was installed and maintained by a qualified technician in compliance with the mounting and operation handouts of S+S.
 - (5) The warranty shall expire if the fault is caused by improper installation, operating, usage or handling, or if the product was subject to structural modifications after it was purchased or was repaired or modified using third-party components.
 - (6) When a warranty claim is submitted, the product must be sent, securely packaged, accompanied by a complaint number that must be requested from S+S by telephone or by e-mail to "S+S Regeltechnik GmbH, Reklamationsabteilung, Thurn-und-Taxis-Str. 22, D-90411 Nürnberg, Germany". The customer bears all shipping costs. The copy of the invoice with purchase date and the completed "Form for Returns", which can be downloaded at <https://splus.de/en/downloads/>, must be enclosed with the shipment.
 8. **Liability**
 - (1) Unless otherwise specified in these General Terms and Conditions of Sale and Delivery including the following provisions, S+S shall be liable for breaches of contractual and non-contractual obligations in accordance with the statutory provisions.
 - (2) S+S is liable for damages – irrespective of the legal grounds – in the case of fault-based liability arising from intent and gross negligence. In the case of simple negligence, S+S shall be liable based on a more lenient liability standard in accordance with statutory provisions (e.g., for care and attention regarding internal matters) only
 - a) for damage arising from the injuries to life and limb or to health;
 - b) for damage arising from the violation of a material contractual obligation, the fulfilment of which enables the proper execution of the contract in the first place and on whose fulfilment the customer can normally rely on and is entitled to rely on; in this case, however, liability is limited to compensation of the typically foreseeable level of damage.
 - (3) The liability limitations arising from number 8 (2) also apply for breaches of duty by or in favour of persons for whose fault S+S is responsible in accordance with statutory provisions. They shall not apply insofar as S+S has maliciously concealed a defect or has assumed a warranty for the quality of the goods and for claims by the customer in accordance with the German Product Liability Act.
 - (4) S+S can only be held liable for deliberate breach of duty and not for any consequential damage caused by further processing of unsuitable or defective goods.
 9. **Limitation period**
 - (1) Contrary to § 438 par. 1 no. 3 BGB, the general limitation period for claims arising from material defects and defects of title is one year after delivery.
 - (2) However, if the good in question is a building or an item that has been used in accordance with its customary purpose for a building and has caused it to be defective (building material), the limitation period according to the statutory provision is 5 years of delivery (§ 438 par. 1 no. 2 BGB). Additional statutory special regulations regarding the limitation period, especially in accordance with § 438 par. 1 no. 1 BGB, also remain unaffected if S+S has maliciously concealed the defect or assumed a warranty for the quality of the goods (§ 438 par. 3, § 444 BGB) or in the case of supplier regress in the sale of consumer goods in accordance with §§ 478, 479 BGB.
 - (3) The above limitation periods specified in legislation covering the sale of goods also apply for contractual and non-contractual claims for compensation by the customer that are based on a defect of the goods, unless application of the normal statutory limitation period (§§ 195, 199 BGB) would in this particular case result in a shorter limitation period. Claims for compensation by the customer in accordance with number 8 (2) clause 1 and clause 2 (a) and in accordance with the product liability law shall come under the statute of limitations exclusively in accordance with the statutory limitation periods.
 10. **Retention of title**
 - (1) The goods delivered shall remain the property of S+S until the complete settlement of any and all claims by the customer. If the customer sells reserved goods without receiving the purchase price from its buyers on a payment-on-delivery basis or in advance, the customer shall agree the reservation of title with its buyers in accordance with these provisions.
 - (2) The customer is not entitled to pledge the reserved goods or to transfer them as collateral. In the event of seizures or other interventions by third parties, the customer shall notify S+S in writing without delay.
 - (3) The customer is entitled to resell reserved goods during the course of its regular business operations. The customer now already assigns to S+S all receivables in the amount of the total invoice amount (including VAT) of the claim that are accruing to the customer from its buyers from the resale, irrespective of whether such goods are sold either without or after processing. The customer is also still entitled to collect the receivable after assignment, although this does not affect the entitlement of S+S to collect the outstanding amount itself. However, S+S undertakes to the customer not to collect the outstanding amount as long as the customer does not fall behind with payments, or an application to initiate a judicial settlement or insolvency proceedings has not been filed. If this is the case, the customer is obligated at the request of S+S to disclose the assigned receivables and their debtors, to provide the necessary records, and to notify the debtors of the assignment.
 11. **Operating and mounting instructions**

The customer undertakes to adhere to any operating and mounting instructions delivered with goods, and to make any third-party buyers aware of same. The complete or partial non-observance of such instructions may result in a complete loss of buyers' rights. This does not apply to possible claims for damages according to § 7.
 12. **Copyright**

The customer is not entitled to reproduce or copy any of the content of S+S catalogues, specifically technical drawings and photographs, for his/her own advertising or other purposes without the express written approval of S+S. The customer is not permitted to make quotations or other commercial documents available to third parties.
 13. **Miscellaneous**
 - (1) For any disputes arising from or in connection with the contractual relationship, Nuremberg/Germany is agreed as the place of jurisdiction. The place of performance is Nuremberg.
 - (2) The customer can only offset against claims that are undisputed or have been legally established as final and absolute. The customer is entitled to a right of retention only if his counter-claims originate from the very same contractual relationship, or if such claims are undisputed or have been legally established as final and absolute.
 - (3) Modifications of the contract must be made in writing. This also applies to the alteration of this written-form requirement clause.
 - (4) Should one or several provisions of these General Terms and Conditions of Sale and Delivery be ineffective or not have been properly incorporated into the contract, the remaining provisions of these General Terms and Conditions of Sale and Delivery shall remain effective.
 - (5) Solely the laws of the Federal Republic of Germany shall apply to the exclusion of the law regarding the United Nations Convention on Contracts for the International Sale of Goods (CISG) – also if the customer has its registered office outside Germany.
- These General Terms and Conditions of Sale and Delivery are protected by copyright. Copyright infringements will be legally prosecuted.