

# General Terms and Conditions of SAERTEX multiCom GmbH

## § 1 Basis of the agreement

1. Sale and delivery are undertaken always subject to these General Terms and Conditions of SAERTEX multiCom GmbH, Brochterbecke Damm 52, 48369 Saerbeck – hereinafter "SAERTEX". These Terms and Conditions shall also apply to any future business, even if no reference is made to them in the specific case.
2. To become effective, amendments and additions to the Contract as well as collateral agreements shall be subject to written confirmation by SAERTEX. A waiver of this form requirement must also be in writing. General terms and conditions of the Customer shall not become subject matter of the Contract, even if SAERTEX does not expressly object thereto.

## § 2 Place of Performance

1. Unless otherwise stated in the order acknowledgement, the principal place of business of SAERTEX shall be the place of performance.
2. Place of performance for all payments from the business relationship with the customer is the place of business of SAERTEX.

## § 3 Legal venue and applicable law

1. The district court Amtsgericht Ibbenbüren or the regional court Landgericht Münster has exclusive jurisdiction for all disputes with merchants, legal persons as defined by public law and public separate estates, including legal actions on a cheque or bill of exchange. SAERTEX is, however, entitled to take legal action against the customer at the court of his domicile.
2. These Terms and Conditions and all legal relations between SAERTEX and the customer are subject exclusively to the law of the Federal Republic of Germany including UN Convention on Contracts for the International Sale of Goods (CISG), however always in accordance with the provisions of these Terms and Conditions.

## § 4 Tender, Conclusion of Contract and Subject Matter of Contract

1. If the purchase order is to be described as a tender pursuant to Section 145 BGB [German Civil Code], we may accept this tender within 4 weeks.
2. SAERTEX reserves ownership rights and copyrights in illustrations, drawings, calculations, data and other documents. They may not be made accessible to third parties. This particularly applies to information and written documents referred to as confidential. The Customer shall require the express written consent of SAERTEX prior to passing these on to a third party.
3. Drawings, illustrations, dimensions, weights, advertising statements or other performance data shall only be binding, if this is expressly agreed upon in writing. Such information shall not be considered guarantees of quality.
4. SAERTEX shall provide to the customer on request the relevant current version of the installation instructions for the "SAERTEX Liner" without acceptance of any legal obligation in this regard. The regulations under Article 5 below (Technical Advice on Applications) of these Terms and Conditions also apply accordingly to the installation instructions. The installation instructions are exclusively for use by the customer. They may not be duplicated or made available to any third party without the express permission of SAERTEX.
- 5.1 The customer is obliged in the sense of a main contractual obligation towards SAERTEX to provide to SAERTEX free of charge and completely all current information and data necessary for drawing up an offer, such as measurement values (wall thickness, pipe lengths, etc.), copies of the PV reports (maximum 1 year old) and other data and information necessary for processing the order transaction. SAERTEX shall be informed of any possible hindrances to the intended use.
- 5.2 The customer is obliged to fill out the SAERTEX order form completely and correctly. The customer is responsible for the accuracy and completeness of the data and any other information he enters and/or reports to SAERTEX. This relates specifically to information regarding liner type, length, diameter, wall strength, hardening media, building plans, etc. Any delivery date indicated by the customer in the order form represents a desired delivery date; this date shall be binding on SAERTEX – without prejudice to any more far-reaching regulations in these Terms and Conditions – only if it has been confirmed by SAERTEX in writing and/or individually agreed with SAERTEX.
- 5.3 The specifications in the SAERTEX installation instructions must be observed.
- 5.4 Any special requests by the customer, which must in each case be agreed with SAERTEX in advance, must be identified and communicated to SAERTEX clearly and unmistakably, if necessary with a drawing indicating the situation on site. The customer is specifically obliged to provide to SAERTEX duly and in good time any documents indicating a special situation on site, so that SAERTEX will be able to examine these and take them suitably into account when executing the order. Any drawings submitted by the customer are not to be seen as specifications of conditions to be covered by contractual warranty unless these have been expressly confirmed by SAERTEX. The series specifications of SAERTEX are accordingly applicable.
6. Offers issued by SAERTEX are based on information provided by the customer. SAERTEX is entitled to demand compensation from the customer for any extra costs, additional expenses and damage resulting from incorrect or incomplete information from the customer without prejudice to any further claims.

## § 5 Technical Advice on Applications

1. Technical advice on applications, for example in installation instructions, operating instructions etc., shall be given by SAERTEX to the best of its knowledge. All statements and information on the suitability and application of goods of SAERTEX shall not release the Customer from its duty to itself check and test the suitability of the products for the intended methods and purposes. Such information shall not be binding and shall in principle not establish a contractual legal relationship or additional obligations out of the Supply Contract, unless otherwise expressly agreed in writing. Subconditions 5.2 and 5.3 below are applicable to such exceptions.
2. SAERTEX shall only be liable for technical advice on applications in the event of intent or gross negligence. This applies without limitation to advice in connection with the application of new product developments. In other cases SAERTEX shall also be liable for ordinary negligence, but only in the event that a material contractual duty is breached, whereby liability for lost profit, damages arising from third-party claims against the Customer and for other consequential damages is excluded.
3. Unless SAERTEX is guilty of an intentional breach of Contract, liability for damages shall in all other respects be limited to foreseeable damages typically occurring.

## § 6 Duties to cooperate

- 1.1 One central contractual obligation of the customer is to provide the agreed cooperation in the required quality and at the times agreed and when it becomes necessary according to progress in executing the order. The customer is specifically obliged even when SAERTEX is executing an order for which no order form was submitted to compile accurate information regarding width and length and to provide this to SAERTEX in good time along with all other necessary data.
- 1.2 The customer is obliged to notify SAERTEX of the delivery address correctly and in good time.
2. The object of purchase must be unloaded immediately and professionally by personnel provided in sufficient numbers by the customer. The customer shall provide suitable unloading aids and means of transport at the designated location in good time.
3. The customer is obliged to inform SAERTEX comprehensively and in good time regarding any dangerous situations at the intended place of use of the object of purchase and/or regarding any transport or unloading restrictions.
- 4.1 If the customer is in breach of his obligations to cooperate either deliberately or through negligence or if he provides incorrect data to SAERTEX, SAERTEX shall be entitled to demand compensation for any damage or losses, including any additional expenses, thereby incurred, without prejudice to any further claims of SAERTEX.
- 4.2 The customer shall in the cases under clause 4.1 above also be obliged to release SAERTEX on first request from any third party claims for damages resulting from the customer's breach of obligations.

## § 7 Time of delivery and performance, delay

1. The delivery period indicated by SAERTEX shall commence only when all technical questions have been resolved.
2. The dates and periods indicated by SAERTEX are non-binding unless otherwise expressly agreed in writing. SAERTEX shall in general not be liable for any procurement risks.
3. Any delays in delivery and/or performance due to force majeure and due to events that significantly complicate or render impossible due delivery by SAERTEX (e.g. strike, lockouts, etc.) shall entitle SAERTEX to postpone delivery or rendering of its services for the period of the obstruction plus a suitable start-up period. The same shall apply if the aforementioned obstacles arise with SAERTEX's suppliers or their sub-suppliers.
4. Delivery shall be conditional on correct and punctual supply to SAERTEX.
5. If SAERTEX has not effected some performance due in accordance with the relevant agreement, the customer shall not be entitled to withdraw from the agreement or demand compensation instead of the entire performance nor indemnity for futile expenses incurred when the breach of obligations by SAERTEX is not significant.
6. SAERTEX shall be in default of performance only after a warning has been sent, unless otherwise regulated in law or according to the relevant agreement. Any warnings and notification of further periods of respite by the customer must be in writing.
7. Compliance by SAERTEX with its delivery obligations is conditional on the customer fulfilling its obligations punctually and correctly. SAERTEX reserves the right to cite defence of non-performance. SAERTEX is entitled to perform part deliveries and part performance at any time.
8. If SAERTEX fails to provide some performance as due, the customer shall be entitled to withdraw from the agreement and demand compensation instead of performance or indemnity for futile expenses incurred subject to the condition that SAERTEX is in wilful breach of an obligation under the agreement and without prejudice to the additional conditions set forth in the following sections. One further condition is that the customer had specified a suitable period for performance or correction of delivery and this period has elapsed without result.
9. The customer is obliged to combine its specification of the period for performance pursuant to clause 8 above with the unequivocal declaration that he intends to reject all subsequent deliveries after the specified period has elapsed without result and shall exercise his rights towards SAERTEX pursuant to clause 8 above.
10. If the delivery has already been effected in part, the customer shall be entitled to demand compensation instead of the complete performance only if and insofar as this is necessitated by his interest in the full performance. The customer shall be entitled to withdraw from the entire agreement in such a case only if and insofar as the customer is proven to have no interest in part delivery.
11. If SAERTEX is in default of performance for some reason for which SAERTEX is responsible, SAERTEX shall not be liable for damages in the case of simple negligence. The said limitation of liability shall not apply if the default is due to SAERTEX culpably being in breach of an important obligation under the agreement. In such cases, SAERTEX's liability shall be limited to compensation for damages foreseeable with regard to the agreement in question. If SAERTEX is guilty of wilful breach of the agreement for reasons for which SAERTEX is responsible, SAERTEX shall bear liability according to statutory provisions. The customer shall have no additional claims for compensation in all cases of delays in delivery, even when a subsequent period of performance set for SAERTEX has expired. This shall, however, not apply if and insofar as liability is mandatory in cases of malice aforethought, gross negligence and injury to persons; this does not entail a change in the onus of proof to the disadvantage of the customer.
12. If the customer refuses to accept delivery or is in breach of some other obligation to cooperate in the execution of the agreement, SAERTEX shall be entitled to assert all claims due to SAERTEX according to law. The danger of accidental loss and/or accidental deterioration of the object of purchase shall be transferred to the customer at the latest when the customer is in default of acceptance.

## § 8 Rights of withdrawal in the case of force majeure

If some hindrance resulting from war, civil disturbance, strike, lockouts, shortages in raw materials or energy, and in the case of other unforeseeable and unusual events and situations, such as administrative measures by public authorities, traffic hindrances, operational breakdowns without fault, etc., continues for longer than two months, both parties shall be entitled to withdraw from their execution of the agreement with a notice period of two weeks.

## § 9 Passage of Risk, Packaging, Installation

1. Unless otherwise stated in the order acknowledgement, delivery "ex works" is agreed. In the event that collection has been agreed, the risk of loss and accidental deterioration of delivery items shall pass to the Customer at the time of notification of readiness for collection. In all other respects the risk shall pass to the Customer at the time when SAERTEX hands over the goods to the carrier. This shall also be the case, if SAERTEX carries out the transportation itself. SAERTEX shall choose the method of dispatch and the route. Additional expenses due to deviating wishes of the Customer shall be chargeable to the Customer. At the Customer's request SAERTEX shall effect transport insurance for the delivery. The Customer shall bear expenses incurred in this connection.
2. Transportation packaging and all other packaging in accordance with the Verpackungsverordnung [Packaging Ordinance] shall not be taken back. Excluded from this are Europallets, transportation boxes and accessories (for example thermal recorders). The Customer shall be obliged to take care of disposing of non-returnable packaging and wrapping at its own expense.

3. Transportation boxes shall be immediately invoiced at the rate of 100% of the price of the box. If containers are returned carriage paid and in faultless condition within 4 weeks (domestically) or 3 months (abroad), 80% will be credited again.
4. Thermo recorders supplied as part of the delivery will be invoiced with 180,00 Euro per piece. If the recorders are returned to SAERTEX within the periods specified under clause 3, 100% will be credited again.
5. Specifications in SAERTEX's installation instructions shall be observed during installation. Installation records shall be properly drawn up and be automatically returned to SAERTEX for documentation purposes upon completion of the work.

## § 10 Prices and Payments

1. The invoiced amount shall be payable by the due date without any deduction. The invoice shall be issued on the day on which the goods are delivered or made available. Additional deliveries and services shall be billed separately.
2. Unless otherwise stated in the order acknowledgement, SAERTEX's prices shall be commensurate with SAERTEX's up-to-date price list, ex works excluding packaging. Packaging shall be invoiced separately.
3. Statutory value-added tax is not included in SAERTEX's prices. It shall be separately shown on the invoice at the statutory rate on the day of invoicing. The deduction of a cash discount shall be subject to special written agreement.
4. Unless otherwise stated in the order acknowledgement, the purchase price shall be due and payable net (without any deduction) within 30 days as from the invoice date.
5. If the Customer defaults in payments, SAERTEX shall be entitled to assert the rights arising from Section 288 BGB [German Civil Code].
6. The Customer shall only be entitled to offset, if its counterclaims have been declared legally valid, are undisputed or have been acknowledged by SAERTEX. Additionally the Customer shall only be authorised to exercise a right of retention, if its counterclaim is based on the same contractual relationship.
7. Cheques and bills of exchange, which SAERTEX reserves the right to accept, shall first be deemed a payment once they have been cashed / honoured. Any discount charges and bank charges shall be chargeable to the Customer.
8. The non-payment of due invoices from SAERTEX or other circumstances that indicate a material deterioration in the Customer's financial position after the conclusion of the Contract shall entitle SAERTEX to immediately render due all claims against the Customer based on the same legal relationship. Furthermore SAERTEX shall be entitled to make deliveries to the Customer dependent upon the prior settlement of any old outstanding liabilities of the Customer.
9. The goods shall be delivered under reservation of title in accordance with these Terms and Conditions. In so far as SAERTEX reaches an agreement with the Customer upon payment of the owed purchased price by cheque / bill of exchange, the reservation shall also extend to the honouring of the bill of exchange accepted by SAERTEX by the Customer and shall not lapse as a result of the received cheque having been credited at SAERTEX.

## § 11 Warranty

- 1.1 The customer's claim to warranty is subject to the condition that the customer has duly fulfilled his obligation to examine and, if necessary, file objection to the delivery in accordance with section 377 HGB (German Commercial Code) or, in the case of an agreement with international dimension, in accordance with Articles 38, 39 CISG.
- 1.2 The customer shall examine all SAERTEX products, specifically liners, packing materials, transport materials, etc. for damage immediately after these are delivered to the customer. Liners are to be protected against sunlight and temperatures of over 18 degrees Celsius. The customer is obliged to comply with instructions regarding handling, storage and fitting, as well as installation instructions. Products that have not been suitably stored and/or handled must not be processed by the customer. In case of doubt, the customer should consult the SAERTEX technical customer support service.
2. In the event of damage occurring, the customer must notify SAERTEX immediately by telephone and additionally in writing within a period of 2 days at the latest.
3. The customer is obliged to comply with all existing technical instructions regarding fitting and installation of SAERTEX products. These can be obtained from SAERTEX if necessary. Warranty is excluded in the case of faults that result from the customer's failure to comply with installation instructions, product information, damage, unprofessional handling or operation by the customer or from natural wear. The same shall apply if the purchased object is used for purposes other than that intended, is incorrect used and/or is fitted with parts not compatible with the system, such as media of unsuitable operating equipment or installation materials, faulty building work, unsuitable foundations, chemical, electrochemical or electrical influence, unless the customer can prove that these clearly did not affect the warranty case.
4. If the goods delivered by SAERTEX are combined, processed or used together with third-party components, SAERTEX shall be liable for warranty only if these components can be proven to have been suitable and free of faults.
5. SAERTEX shall in all cases be granted an opportunity to examine the damage – either itself or through an appraisal expert – before carrying out improvement and repair work. Any components causing and/or relevant to the damage are to be kept safely and provided to SAERTEX on request for examination purposes. The installation protocols and records to be maintained by the customer are to be submitted to SAERTEX, notwithstanding the obligation under Article 6 above, for examination purposes when a warranty claim is made.
6. The customer's rights of recourse against SAERTEX according to law shall apply only if and insofar as the customer has not concluded any agreement with its customers exceeding the statutory claims for defects.
7. If the object of purchase has some defect for which SAERTEX is responsible, SAERTEX shall first of all be granted an opportunity to provide supplementary performance within a suitable period. SAERTEX shall be entitled to remove the defect or provide replacement delivery at its own discretion.
8. If the supplementary performance also fails, the customer shall be entitled to – without prejudice to any claims for damages – withdraw from the agreement or reduce the purchase price. The customer shall have no claims for expenses incurred in relation to this supplementary performance, specifically transport and handling expenses, labour and material costs, in cases where expenses increase because the delivered object was subsequently moved to some location other than the place of performance, unless such moving of the object is within the scope of its intended purpose.
9. Claims based on defects shall not apply in the case of only insignificant deviations from the agreed characteristics, in the case of only insignificant reduction in usability and/or in the case of damage arising after transfer of risk as a result of incorrect and/or negligent treatment, if the object is subject to excessive strain or use, is used with unsuitable media or such that are not approved by SAERTEX, unsuitable operating materials and equipment and/or as a result of special external influences and/or in the case of conditions that were not assumed according to the agreement.
10. Claims for defects in quality are subject to a statute of limitations of 12 months; this period commences with the transfer of risk. The above provisions shall not apply if longer periods are stipulated under law in accordance with sections 438, paragraph 1 (2) (building and items for buildings), 479 (recourse claims) and 634a paragraph 1 (2) (work on a building and building-related planning and supervision work). The reduction of the period of limitations in accordance with sentence 1 shall not apply for liability for damage resulting from gross negligence and wilful conduct nor for damage relating to life, limb or health resulting from negligent treatment of obligations by SAERTEX. Breach of obligations to make aforesaid or negligence by a legal representative or vicarious agent of a party to the agreement shall be treated the same as if done by that party. The above shall not prejudice further claims in the case of malicious concealment of faults or acceptance of warranty for composition or characteristics.
11. Unless otherwise provided below, claims of the Customer over and above this (on any legal bases whatsoever) are excluded. Therefore SAERTEX shall not be liable for damages not occurring on the delivery item itself. In particular SAERTEX shall not be liable for lost profit or other financial losses of the Customer.
12. In so far as SAERTEX has negligently breached a cardinal duty or a material contractual duty, its duty to compensate shall be limited to the insured sum under its product liability insurance. If the insurance does not provide cover, SAERTEX shall be obliged to assume liability itself in this connection. SAERTEX agrees to allow the Customer to inspect this policy on request. SAERTEX undertakes to maintain the insurance up until the warranty under these conditions has expired.
13. The above releases from liability shall not apply, in so far as damages were caused by intent or gross negligence. Furthermore they shall not apply in cases of physical injury and/or damage to a person's health and in cases where the Customer asserts damage claims on account of a given guarantee for the existence of a quality, unless the purpose of the guarantee of quality merely extends to the conformity of the underlying delivery with the Contract, but not to the risk of consequential damages caused by defects. The above provisions do not entail a change in the burden of proof to the detriment of the Customer.

## § 12 Joint and Several Liability

1. Liability for damages over and above the liability provided in condition 11 is excluded regardless of the legal nature of the claim asserted, particularly claims on account of a breach of duties arising from the obligatory relationship and claims arising out of an unlawful act.
2. The exclusion of liability under subcondition 11.1 above does not apply to claims pursuant to the Produkthaftungsgesetz [Product Liability Act] and in cases of damage to a person's life, body or health.
3. In so far as SAERTEX's liability is excluded or limited, this also applies to the personal liability of employees, workers, staff members and representatives of SAERTEX as well as persons employed by SAERTEX to perform an obligation.

## § 13 Reservation of Title

1. SAERTEX retains ownership of the object of purchase until all payments from the business relation with the customer have been made. This reservation of title shall also continue if SAERTEX has included individual claims for payment in current accounts and the balance has been calculated and recognised.
2. The Customer shall be obliged to handle the purchase item with care. In particular the Customer shall be obliged to adequately insure the purchase item at its own expense against fire damage, water damage and theft at the replacement value. In so far as maintenance and inspection work is necessary, the Customer must carry this out in due time at its own expense.
3. The Customer shall without delay give SAERTEX written notification of levies of execution and any other seizure by third parties, so that SAERTEX can file suit pursuant to Section 771 ZPO [Code of Civil Procedure]. In so far as the third party is unable to reimburse SAERTEX for court costs and out-of-court costs in connection with a lawsuit pursuant to Section 771 ZPO [Code of Civil Procedure], the Customer shall be liable for the loss incurred by SAERTEX.
4. The customer is entitled to resell the object of purchase in the course of his normal business. The customer, however, here and now assigns to SAERTEX all its claims against his customers or a third party resulting from this resale to the amount of the total invoice sum (including VAT) of SAERTEX's claims against the customer, irrespective of whether the object of purchase was resold before or after the purchase item having been connected to a property.
5. At the request of the Customer SAERTEX shall be obliged to collect these claims even after they have been transferred to SAERTEX; this shall, however, not prejudice the right of SAERTEX to collect the claim itself. SAERTEX undertakes, however, not to collect the claim as long as the customer continues to meet its payment obligations from the resulting revenue, is not in default of payment and specifically no application has been made for commencement of insolvency proceedings or payments have not been suspended. If, however, one of the above situations obtains, SAERTEX shall be entitled to demand that the customer notify it of the assigned claims and the relevant debtors, provides all information necessary for collecting the relevant claims, forwards to SAERTEX the relevant documents and notifies the debtor (third party) of this assignment of claim.
5. Processing or transforming of the purchase item by the Customer shall always be undertaken for SAERTEX. If the purchase item is processed with other items not belonging to SAERTEX, SAERTEX shall acquire joint ownership of the new item in the proportion of the value of the purchase item (final invoiced amount including VAT) to the value of the other processed items at the time of processing. In all other respects the conditions applicable to the purchase item delivered under reservation of title shall be applicable to the items created by processing.
6. If the purchase item is inseparably mixed with other items belonging to SAERTEX, SAERTEX shall acquire joint ownership of the new item in the proportion of the value of the purchase item (final invoiced amount including VAT) to the value of the other mixed items at the time of mixing. If mixing is undertaken in such a manner that the Customer's item is to be regarded as the main item, it shall be deemed agreed that the Customer shall transfer to SAERTEX joint ownership rights pro rata. The Customer shall hold in safekeeping for SAERTEX the sole property or joint property created in this manner.
7. To secure SAERTEX's claims against the Customer, the Customer shall also assign to SAERTEX claims that accrue against a third party as a result of the purchase item having been connected to a property.
8. At the request of the Customer SAERTEX shall be obliged to release collateral security to which SAERTEX is entitled, in so far as the realizable value of SAERTEX's collateral security exceeds the claims to be secured by more than 10 %. SAERTEX shall be responsible for selecting the collateral security to be released.
9. If the reservation of title is not effective under the law of the country where the delivered goods are located, the Customer shall at the request of SAERTEX provide collateral security of equal value. If the Customer fails to comply with this request, SAERTEX may demand that all outstanding accounts be immediately paid, irrespective of agreed payment periods.

## § 14 Special conditions

If SAERTEX has provided to the customer installation aids on a rental basis, this shall also be subject to the General Terms of Rental of SAERTEX, the latest version of which can be obtained free of charge from SAERTEX