

General Terms of Sale and Delivery of coneon GmbH, Herborn, Germany

§ 1 Scope

- (1) These Terms of Sale and Delivery shall apply to the sale and delivery of coneon products to end customers, unless deviating terms are agreed in writing. End clients are exclusively commercial enterprises, legal entities under public law or public-law special funds within the meaning of § 310 of the German Civil Code [*Bürgerliches Gesetzbuch*].
- (2) The Buyer's general terms of business will only apply if this has been expressly agreed in writing. Deviations from and additions to the applicable Terms of Sale and Delivery, including any variation of this term, will be valid only if agreed in writing.
- (3) These Terms of Sale will also apply to all future dealings with the Buyer.

§ 2 Orders

- (1) All of coneon's quotations, catalogues and price lists are non-binding. Any order of a coneon product is treated as an offer to buy such product on these Terms of Sale and Delivery in accordance with § 145 of the German Civil Code.
- (2) A contract for sale and delivery will come into existence only when coneon issues a written order confirmation. Orders are generally confirmed within two weeks. The order confirmation requires no signature and can be sent electronically. Any changes after the order confirmation has been sent are possible only if coneon consents to such changes in writing or by electronic means. coneon may in such cases make an additional charge of 10% of the sale price. The Buyer is permitted to furnish evidence that no loss or significantly less loss was suffered.

§ 3 Entrusted documents

- (1) We will retain ownership and the copyright of all documents entrusted to the Buyer in connection with the order (calculations, drawings and suchlike). Such documents may not be made accessible to third parties without our written consent.
- (2) If we do not accept the Buyer's offer within a period of two weeks, such documents must be returned to us at no cost.

§ 4 Prices and payment

- (1) All prices for coneon deliveries and services are based on the version of coneon's price list that is valid at the time of formation of the contract. The prices are quoted ex works. Unless otherwise stated in the price list or order confirmation, the prices do not include the costs of transportation, insurance, assembly, customs duties etc. Also excluded are the costs and expenses associated with special packaging requests.
- (2) Payment of the purchase price must always be made to our bank account specified in the invoice.
- (3) The application of discounts requires a written agreement, though such agreement can also be concluded by electronic means.

- (4) Unless otherwise agreed in writing, the purchase price is due for payment within 14 days of delivery.

§ 5 Other payment terms

- (1) Where payment by instalments and a discount have been agreed in writing, the discount will apply only if all instalments are paid on time. The discount is to be applied from the last payment only. Any warranty rights or minor shortfalls in a delivery do not entitle buyers who are acting in the course of business to withhold due payments.
- (2) Upon expiry of the payment period, the Buyer will, without warning, automatically be in default and will owe default interest at a rate of five percent (for consumers) or eight percent (for businesses) above the base interest rate per annum. We reserve the right to claim further loss resulting from the delay (including the costs of sending reminders and collecting the debt). Defaults on payment will render any allowed discounts or special conditions null and void.
- (3) If, between formation of the contract and delivery, the cost of raw materials, energy or labour, procurement costs, customs duties or other public levies concerning the goods are increased, we are entitled to raise our prices accordingly. In such cases, we will give the customer due notice of the reason and extent of the increase. The only instances where this would not apply are where the agreed handover of the purchase item is to take place less than four months after formation of the contract or where the seller has defaulted on delivery by the time of the price increase. Where the requested price increase exceeds 20% of the original purchase price, the customer can withdraw from the contract irrespective of other grounds for withdrawal.

§ 6 Delivery and assembly

- (1) Prompt delivery within the delivery period we set is subject to the prompt and proper availability of our own supplies and the fulfilment of all the Buyer's obligations. We reserve the right to raise any non-fulfilment of the contract as a defence.
- (2) Delays in delivery are not a legitimate ground for refusing acceptance or claiming compensation. A right to withdraw from the contract arises only if coneon is at fault for the delay in delivery. Our liability is limited to delays caused by our culpable conduct or gross negligence. Events of temporary force majeure (see sub-clause 3) will, for as long as such events persist, release us from the duty to deliver. In such cases, coneon is required to inform the Buyer of the unavailability without delay and return to the Buyer, without delay, any payments made as consideration for such delivery.
- (3) In the case of industrial action, exclusion, operational disruption, natural disasters, war, epidemics, accidents and other circumstances that affect the operations of coneon or its suppliers and, for a prolonged period, render performance of the delivery impossible or not reasonably practicable, coneon may withdraw from the contract without any liability to pay compensation.
- (4) If the Buyer defaults in accepting delivery or culpably breaches any other duties to cooperate, we are entitled to be compensated for the consequent loss including any additional expense. This is without prejudice to our other rights. Where the above circumstances apply, the risk of accidental destruction or accidental deterioration of the purchase item passes to the Buyer at the point the Buyer defaults in its duty to accept delivery or make payment.
- (5) Partial deliveries are permitted and are not a legitimate ground for refusing acceptance if the Buyer can reasonably be expected to accept such partial deliveries.
- (6) Delivery and assembly services provided by coneon will be remunerated at an hourly rate in addition to the purchase price. Any part of an hour will be treated as a full hour.

- (7) Where coneon is instructed to deliver and/or assemble coneon products, the Buyer must, in good time, provide sufficient access and parking space for a lorry of at least 7.5 tonnes on site at the place of delivery. Assembly by coneon also presupposes that the static, spatial and structural requirements for installation, transportation and assembly are met so that the coneon products can be delivered, inserted, installed, set up and/or assembled. This applies in particular to approach routes, stairs, lifts, floor coverings, load-bearing structures, floor structures, ceilings, supports and walls. The Buyer must, prior to delivery, check at its own cost that such requirements are met. coneon accepts no liability for loss resulting from failure to meet such requirements. If the requirements for delivery and assembly are not met, the Buyer must inform coneon accordingly at least one week prior to delivery.

§ 7 Transfer of benefit and risk

Benefit and risk pass to the Buyer upon handover of the goods to the carrier. Where the Buyer defaults in accepting delivery, the risk of accidental destruction or accidental deterioration of the goods passes to the Buyer at the time we make such goods available for handover at our plant to the carrier. The Buyer is responsible for insuring the goods.

8. § 8 Reservation of ownership

- (1) coneon reserves ownership of coneon products until all payments have been received. The Buyer undertakes to take good care of the purchased item. Where the purchased item has been ordered for commercial use, the Buyer is required, at its own cost, to insure such item adequately up to its replacement value against fire, water damage and theft and, where maintenance and inspections are required, these must be carried out promptly at the Buyer's own cost.
- (2) In the event of any seizure of assets or other interventions by third parties, the Buyer must notify coneon in writing without delay. If the third party is unable to reimburse coneon for the judicial and extra-judicial costs of a successful claim, the Buyer will be liable for the loss suffered by coneon.
- (3) A Buyer who has ordered the purchased item for commercial purposes is entitled to resell the purchased item in the ordinary course of business; however, in doing so, the Buyer assigns to coneon all debts due from the intermediate or end buyer up to the final value of the invoice (including value added tax) to secure the debt due to coneon; such assignment extends to all amounts due to the Buyer from its customers or third parties as a result of the resale, regardless of whether or not the purchased item was at all processed prior to resale. coneon accepts the assignment.
- (4) The Buyer will remain entitled to collect such debts after they have been assigned. This is without prejudice to coneon's entitlement to collect such debts itself. coneon is however required to refrain from collecting such debts for as long as the Buyer discharges its payment obligations from the proceeds it receives, does not default on its payments and, in particular, no application is made to commence insolvency proceedings and there is no suspension of payments. If this is the case, though, coneon can require the Buyer to give coneon details of the assigned debts and associated debtors, provide all information needed to collect such debts, issue the relevant documents and notify the debtors (or third parties) of the assignment.
- (5) Any processing or transformation of the purchased item by a Buyer who has ordered the purchased item for commercial purposes is always deemed to have been carried out for coneon's benefit. Where the purchased item is processed with other items not belonging to coneon,

coneon will acquire a co-ownership right in the new product in the proportion that the value of the purchased item (final invoice amount including VAT) bears to that of the other processed items at the time of processing. In all other respects, the same provisions apply to the product derived from the processing as to the purchased item that is subject to the reservation of ownership. If the purchased item ordered by a Buyer for commercial purposes is joined with other items not belonging to coneon in such a way that such other items become essential components of a single product, coneon will acquire a co-ownership right in the new product in the proportion that the objective value of the purchased item bears to that of the other joined items at the time of their joining. If the effect of such joining is that the Buyer's item is regarded as the main component, it is agreed that the Buyer will assign to coneon a proportionate share of co-ownership. The Buyer will safeguard the rights of sole ownership or co-ownership thus vested in coneon. A Buyer who has ordered the purchased item for commercial purposes also assigns to us, by way of security for the debts owed by the Buyer to coneon, any rights against third parties arising from the integration of the purchased item into a property. coneon is required, at the Buyer's request, to release its securities to the extent that the realisable value of such securities exceeds the secured debts by more than 10%; coneon can choose which of its securities are to be released.

§ 9 Warranty

- (1) The warranty period for material and manufacturing defects in coneon products is two years from delivery. coneon gives its warranty for such defects subject to the following conditions: coneon products must, at the time of delivery to the Buyer, be checked by the Buyer, without delay, for completeness and any defects. The provisions of § 377 of the German Commercial Code [*Handelsgesetzbuch*] apply.
- (2) Incorrect deliveries, incorrect quantities and defects must be reported in writing within eight days of delivery. Defects that cannot be identified through normal diligence and are discovered only at a later date must be reported within eight days of their discovery.
- (3) In contrast to the above provisions, a Buyer who is a consumer need only report obvious defects within a period of two weeks, whereby a notification that is sent within such time limit will suffice.
- (4) If no defects are reported within the time limit, the coneon products will be deemed to have been approved and no further warranty rights exist.
- (5) Where defects are reported on time and acknowledged by coneon, coneon may opt to repair the product or, subject to return of the defective parts, replace these with defect-free parts. If the remedial work is unsuccessful or coneon fails to deliver a replacement or remedy the defect within a reasonable grace period, the Buyer can reduce the purchase price or, in the case of a significant defect, withdraw from the contract. No warranty is given for
 - a. normal wear and tear;
 - b. defects caused by improper use, incorrect assembly, breaches of or failure to observe building regulations, overloading, alterations or remedial work by the Buyer or third parties engaged by the Buyer;
 - c. minor deviations in the design, construction, colour or materials used or from the quality standards published on the internet or elsewhere (particularly in respect of surfaces).
- (6) Defects do not release a Buyer, who is not a consumer, from its duty to make payment and accept the goods.

- (7) Further rights and claims against coneon in respect of defects in coneon products, including claims for compensation for consequential loss, loss of profit or other direct or indirect loss, are excluded. This exclusion of liability does not apply in respect of death, personal injury or damage to health caused by a negligent breach of duty on the part of coneon, or an intentional or negligent breach of duty on the part of a legal representative or agent of coneon, or in respect of any other loss caused by a grossly negligent breach of duty on the part of coneon, or an intentional or grossly negligent breach of duty on the part of a legal representative or agent of coneon. The exclusion of liability also does not apply in the case of a culpable breach of a major contractual obligation (“cardinal obligation”) or in respect of claims under product liability legislation.

§ 10 Data protection

- (1) coneon processes the Buyer’s information and personal data for the purposes of processing orders, delivering coneon products, offering and providing services and processing payments. The provisions of the General Data Protection Regulation (GDPR) apply. For further information on data processing and data protection, please see our privacy policy at <https://www.coneon.de/datenschutz/>.
- (2) The Buyer can object to the processing of its data for marketing purposes by sending a written notification to coneon GmbH, Rehbergkuppe 8, 35745 Herborn, Germany, represented by its Managing Directors Frederic Burk, James Burk, Jürgen Burk, Mike Burk, Patrick Burk and Tony Burk.

§ 11 Applicable law, place of jurisdiction and place of performance

These Terms of Sale and Delivery are governed by German law. The conflict-of-laws rules and the provisions of the UN Convention on Contracts for the International Sale of Goods (CISG) do not apply. If the Buyer is acting in the course of business, the place of performance and exclusive place of jurisdiction is Herborn, Germany.