

# **Globo Handels GmbH**

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## **General Conditions of Sale and Delivery of GLOBO Handels GmbH**

### **1. General Provisions**

The following conditions shall apply without exception to all our deliveries and services, including all future deliveries and services. These conditions shall be recognised and agreed when an order is placed. Any other conditions of business that are contrary to these conditions of sale and delivery shall be deemed inapplicable in their entirety, irrespective of the manner in which these other conditions of business are brought to our attention. Other agreements to individual clauses or any amendments to these conditions shall require prior express confirmation in writing to be valid. Tacit acceptance of differing conditions of business and purchase shall not imply consent. Verbal agreements must be in writing to become valid or must receive our written confirmation. Any agreement to rescind the written form in the future must also be in writing. The contract shall take effect either after we have sent a written order confirmation or at the time of carrying out the delivery.

### **2. Price Offers**

Our offers shall be non-binding. The details contained in catalogues, brochures and other similar items shall apply only if they are expressly confirmed by us in the order confirmation. At our request, the contractual partner shall also be liable to reimburse us promptly for the relevant costs incurred by us in preparing or placing at the contractual partner's disposal any designs, sketches or samples relating to a proposed order which the contractual partner then fails to order. Price offers shall become binding once we have confirmed them in writing by providing details of the scope of services to be delivered. We may invoice additional deliveries or services separately. Unless otherwise agreed in writing, the prices shall be from the factory or from our warehouse and shall not include any packaging, shipping, insurance or VAT costs. If delivery has been agreed, prices shall not include unloading or carrying costs. Any discounts or rebates, etc., shall be calculated from the sales prices excluding VAT. Prices shall be based on the costs given at the time. We may adjust prices if the order differs from an overall offer or if there has been any change in costs at the time of the delivery. This shall apply most notably in cases where there have been increases in additional costs, including freight rates, insurance premiums, and customs, etc. Where prices remain open at the time of concluding the contract, the applicable price on the day of despatch shall be applied. Any prices given in a foreign currency shall be based on the average exchange rate on the day the order confirmation is issued. We may adjust the prices accordingly in the event of exchange rate fluctuations of more than 2% against us. Any objections to a difference in the order as indicated in the order confirmation must be lodged with us by the contractual partner within 2 days of receipt of the order confirmation, failing which the contents of the order confirmation shall be deemed agreed.

### **3. Delivery**

Our obligation to deliver shall be subject to an accurate and timely delivery of goods/items to ourselves. Delivery time details shall in principle be non-binding. Delivery periods shall commence on the date of our order confirmation and shall be applicable only on the condition that the contractual partner has verified all aspects of the order and fulfilled all his/her obligations in a timely manner. The time of despatch from the factory or warehouse is decisive in maintaining delivery times and dates. These times and dates shall be deemed upheld on notification of delivery readiness if, through no fault of our own, we are unable to despatch the goods on time. In the event of force majeure, we may delay despatch for the duration of the disruption and for a sufficient period of time to enable us to restart operations. Force majeure shall apply equally to all circumstances that significantly disrupt delivery or make

delivery impossible. Force majeure shall include industrial action, lockouts, operational disruption, transport disruption, bans on exiting, entering or passing through a specific country, and international payment restrictions. Such incidents of force majeure shall apply to circumstances regardless of whether they affect us, a supplier, or our contracted transport or freight operator. In these cases, we may adjust prices accordingly. Should despatch of goods ready for delivery be delayed, generally at the contractual partner's request, and should delivery not take place within three months of notification of delivery readiness, this shall constitute a breach of our service conditions and we may, at the contractual partner's own expense, place the goods into storage. The contractual partner shall reimburse us promptly for these storage costs. The agreed payment conditions in such cases shall not be altered. We may supply a reasonable number of part deliveries. Deliveries either above or below the contracted amount shall be permitted in accordance with usual industry amounts.

#### **4. Fulfilment, Delivery and Transfer of Risk**

The use and risk, including the seizure of goods, shall pass to the contractual partner, irrespective of the agreed payment conditions relating to delivery or service provision, when the goods are handed over to the transport or freight operator. The latest time at which the use and risk shall pass to the contractual partner shall be with the goods leaving our factory or warehouse, with their storage in accordance with paragraph 3, with the period of postponement as requested by the contractual partner for the despatch of goods ready for delivery, or in the event of any delay in the contractual partner's acceptance of the order. Separate agreements relating to the inspection of goods or to samples shall not affect the conditions regarding place of fulfilment and transfer of risk. All essential additional services not appearing in the order confirmation but which are required of us in order to fulfil the contract shall be at the contractual partner's own expense. Unless otherwise agreed in writing, the delivery type, shipping method and transport or freight operator shall be determined by us to the exclusion of any liability on our part and in which we shall be under no obligation to investigate the cheapest method of carriage. Transport insurance shall be taken out only if the contractual partner expressly wishes it and at the contractual partner's own expense. The contractual partner shall undertake to inform us in advance and in writing of his/her decision to take out transport insurance. If it is not possible for us to effect delivery according to the planned route or to the planned destination within the planned timescale and if we cannot be held responsible for this eventuality, we may deliver via another route or to another destination. Any additional costs shall be borne by the contractual partner. The contractual partner shall be given a prior opportunity to issue a statement. Based on our own experience, we shall provide packaging and protective materials and any other materials for transportation at the contractual partner's expense and to the exclusion of any liability on our part. Packaging shall be calculated at our own expense and shall not be taken back.

#### **5. Delivery at Call**

Provided a request for delivery for a make-and-hold-order is not made within 14 calendar days once the agreed delivery request period has expired or if no expiry date has been agreed and a year has elapsed since the order was placed, goods shall be deemed delivered in accordance with the contract and we are entitled either to despatch the goods after issuing a reminder to the contractual partner about costs and risk, or, at our own discretion, store the goods subject to a charge and issue an immediate invoice. In this case, we may also cancel the contract either in full or in part without providing any additional period of time. Contractual agreements for continuous deliveries on request must be submitted to us with approximately equal monthly amounts in terms of the number of requests and the distribution of goods, otherwise we shall be entitled to set our own conditions as equitably as possible. Should individual requests exceed the total contractual amount, we may deliver the additional quantity, but are under no obligation to do so. We may use the current price for the additional quantity at the time of request or delivery.

## **6. Payment**

Unless special payment conditions have been agreed in writing, the invoice amount (net price, including VAT) shall be payable within 14 days from date of invoice. In the case of partial billing, the respective partial amount shall be payable on receipt of the relevant invoice. This shall also apply to billing amounts for subsequent deliveries or any other agreements stemming from the original contractual amount, irrespective of the agreed payment conditions for the main delivery. In cases where any agreed credit limit is exceeded, it is agreed that the excess amount shall be payable with immediate effect. Payments shall be made by direct debit or to our payments office in the currency specified on the invoice without any deductions and within the agreed timeframe. The payment day shall be the day on which payment is received either by us or by our payments office. The contractual partner shall not withhold payments because of warranty claims or any other claims, nor shall he/she offset payments against any counter claims. Payments shall always be calculated firstly on a cost basis, then on interest and finally on the longest outstanding capital amount.

## **7. Late Payment and Termination**

We may request immediate payment in full (loss of payment term) for all our services, irrespective of any agreed payment term, if the contractual partner falls into arrears with one of his/her payments or any other obligations or should circumstances become known which lead us to believe that the contractual partner's level of credit worthiness should be lowered. We may also in such circumstances delay fulfilling our obligations until the outstanding payment or other obligations have been met. In particular, we may request payment in advance before delivery is carried out or we may also cancel the contract after a sufficient additional period of time has elapsed and request compensation for non-fulfilment of contract. In addition, we may forbid the resale of the delivered goods and request their retransfer at the contractual partner's own expense. Furthermore, we may terminate the contractual partner's right to collect receivables. In these instances, the contractual partner shall allow us access to his/her establishment to retrieve the delivered goods and in the above cases he/she shall have no right to cancel such an action. Retrieval of the goods shall not in itself constitute a termination of contract. In the case of late payment, the contractual partner shall incur a fee of €40.00 per reminder and interest at 12% as of the due payment date. In instances of late payment, any guaranteed price reductions shall no longer be valid. Furthermore, the contractual partner who falls into arrears shall undertake to reimburse any legal and non-legal costs to have occurred as a result of the contractual party's late payment and this shall particularly apply to reminder fees, collection charges and fees for legal representation. We may also terminate the contract either in full or in part if the contractual partner renders the delivery, start or continuation of a service impossible or causes further delay to the service despite being granted an additional period of time, or if we have concerns relating to credit worthiness and the contractual partner refuses our request for advance payment or adequate security prior to delivery or if the delivery period in cases of force majeure exceeds 3 months. We may also terminate the contract without providing any additional time in cases where the contractual partner lodges a petition for insolvency or if a file for bankruptcy owing to a lack of capital is rejected. If the contractual partner withdraws from the contract or if we declare our own cancellation of the contract because the contractual partner has failed to fulfil his/her obligations to us, we shall be entitled to a minimum level of compensation to the value of 20% of the cancelled order amount even if an invoice has not yet been prepared. We reserve the right to apply a higher claim for the damages actually incurred. The contractual partner may terminate the contract only if we have neglected to meet our delivery period despite an additional delivery time. This additional delivery time must be adapted to coincide with the order type and scale. Compensation for late delivery which can be provably shown to be result of our own negligence shall be set at ½% for every full week of delay and shall be restricted to a maximum of 5% of the invoice value for the affected delivery or service provided the contractual partner can prove to have suffered damages to this amount. Additional compensation claims on the part of the contractual partner shall be excluded.

## **8. Retention of Title**

The goods shall remain our property (reserved property) until payment has been made in full for all our current, future and conditional payment requests, including interest and charges and most notably payment balances resulting from any current account relationship. The contractual partner shall comply with labelling obligations and any other formalities to protect the retention of title. Provided the contractual partner is not in arrears, he/she may

resell the reserved property only in the usual course of his/her business and subject to his/her normal conditions of business in accordance with the following conditions: rights resulting from the resale of the reserved property shall now be transferred to us. These rights shall serve as our security to the same extent as the reserved property itself. The contractual partner shall undertake to place an advice note in the Open Items List. If the contractual partner resells the reserved property with goods not purchased from us, any receivables resulting from the resale shall be assigned to us as a ratio of the reserved property's invoice value against that of the invoice value of the other goods used. The contractual partner may collect any receivables resulting from the resale. The contractual partner's right to collect receivables shall expire in the event of our cancellation of this right, at the latest if the contractual partner defaults on payment or files for insolvency. We shall make use of our right of cancellation only if we become aware of circumstances in which a worsening of the contractual partner's finances may jeopardise payment to us. At our request, the contractual partner shall inform the purchaser of any goods whose title we retain and we may disclose the assignment to the said purchaser. In the case of attachment or any other claims, the contractual partner shall undertake to make known our ownership of the goods and to notify us without delay. The contractual partner shall be responsible for all costs involved in suspending seizure of and returning the reserved property, unless such costs are to be borne by a third party.

## **9. Warranty**

Warranty claims shall be made in writing within six months of receipt of the goods at their destination. The time at which goods are handed over to the transport or freight operator is decisive to ensure that goods are in a contractually compliant condition and the latest time shall be when the goods leave the warehouse. The warranty claim shall occur only if the contractual partner informs us immediately in writing with a detailed description of the defect within 8 days following receipt of the goods at their destination. We must be immediately notified in writing of any concealed defects as soon as they are discovered and before the warranty period expires. Damage to part of the delivery shall not give rise to complaints about the delivery as a whole. Provided we have received immediate notification of a legitimate defect, we shall either take the defective goods back and deliver replacement goods in perfect condition or we may choose either to compensate for the reduced value of the goods or undertake to repair the damage. We must be allowed sufficient time to inspect, eliminate or repair the damage or to arrange a replacement delivery. The contractual partner shall not cancel the contract, even if there are significant damages, until there has been an opportunity for repairs or a replacement delivery to take place. All warranty claims shall cease if the contractual partner does not allow us the immediate opportunity to inspect the damage or to provide us with the goods or samples in question, particularly when we make a request for them. The contractual partner shall be responsible for the forwarding and return delivery costs and risk if damaged goods are returned. Our warranty obligation shall cease if the contractual partner falls into arrears with his/her payment obligations. If we provide a service based on construction details, drawings, models or any other specifications supplied by the contractual partner, our liability shall apply only to those conditions affecting operational performance. Damage caused by overuse, negligent or incorrect handling, use of unsuitable operating equipment, additional equipment supplied by the contractual partner or a third party, instructions issued by the contractual partner and installation work carried out by a third party. We shall not be liable for any damage caused by a third party, nor for atmospheric discharge, over-voltage, nor for chemical and physical influences, including storms and natural influences. Component parts that are subject to normal wear and tear shall be excluded from the warranty. The warranty shall expire immediately if changes or maintenance/repair work are carried out on the delivery item without our consent. The term of the warranty shall not be extended as a result of the work and deliveries carried out in accordance with the warranty. The above conditions shall also apply to the delivery of goods which are not subject to contract. The claim for recourse in accordance with article 933, paragraph 1, of the Austrian Civil Code (ABGB) shall terminate when the warranty period expires.

## **10. Compensation**

Our liability shall extend exclusively to the agreements given in these conditions. Other claims on the part of the contractual partner, irrespective of their legal basis, and any compensation claims shall be excluded. This shall particularly apply to claims for compensation with regard to loss of earnings, other financial damages sustained by the contractual party, compensation for damages not caused by the goods themselves, and of particular note subsequent product defects and product liability claims. The above release of liability shall not apply where damages occur as a result of malicious intent or gross negligence, which shall be understood as knowingly failing to take all

necessary care. The contractual partner must prove cases of gross negligence. The claim for compensation shall terminate when the warranty period expires. The contractual partner shall undertake to impose the full contents of these liability restrictions on any possible purchasers who shall undertake to do likewise with their possible purchasers, failing which the contractual partner shall indemnify and hold us harmless.

## **11. Imposition and Recourse**

Should the contractual partner be subject to a warranty or compensation claim made by a third party in relation to goods delivered by us, he/she shall undertake to notify us about the dispute. In addition, the contractual partner shall undertake to contact us before each settlement and not to conclude a settlement against our wishes. Should the contractual partner breach this condition, he/she shall lose his/her right of recourse. If goods are resold, the contractual partner shall impose the full contents of limited warranty and liability, in accordance with the articles given above, on the purchaser who shall undertake to do likewise with his/her possible purchasers, failing which the contractual partner shall lose the right of recourse and shall indemnify and hold us harmless.

## **12. Name and Brand Name Imprint**

We may print the company or brand name on the delivered goods even without the express approval of the contractual partner.

## **13. Severability Clause**

Should any one of these provisions prove inapplicable, the remaining provisions shall remain fully applicable. The contractual parties shall undertake in good faith to replace the inapplicable provision with an applicable provision which approximates the economic effect of the inapplicable provision originally intended by the parties hereto.

## **14. Place of Fulfilment, Place of Jurisdiction, Applicable Law and Contract Language**

In every case, the place of fulfilment for deliveries and payments is A-9184 St. Peter/Austria. For all disputes arising either directly or indirectly from these conditions and/or contracts, upon which these conditions apply, the Area of jurisdiction is the court locally and in the case responsible for A-9184 St. Peter/Austria. This shall be the exclusive place of jurisdiction for the contractual partner. We may also bring an action at a place of jurisdiction where the contractual partner is located. Austrian substantive law shall apply without exception. UN law (CISG) shall be excluded. German shall be the contract language.