

International Terms & Conditions of SURTECO GmbH for the Purchase of Goods, Work Products and Services from Companies Located outside Germany

Status: August 2018

I. Application of International Terms & Conditions of Purchase

1. These "International Terms & Conditions of Purchase" will govern all current and future purchases of goods, work products, services or software by SURTECO GmbH from suppliers whose principal place of business is located outside Germany. Any obligations undertaken by SURTECO GmbH separately under any individual agreements will not affect the validity of these International Terms & Conditions of Purchase.
2. Terms and conditions of the Customer that differ from these International Terms & Conditions of Purchase of SURTECO GmbH will have no validity even if no objection is raised to any such terms and conditions of the Supplier or SURTECO GmbH makes delivery to the Customer unconditionally.
3. Business conducted between SURTECO GmbH and the Supplier will also be subject to the of the U.N. Convention on Contracts for the International Sale of Goods [CISG] and the Convention on the Limitation Period in the International Sale of Goods, each of which in the English-language version of 11 April 1980. The U.N. Conventions will apply beyond their scope of application and notwithstanding reservations of Member States to all purchases that are governed by and construed in accordance with the provisions contained in these International Terms & Conditions of Purchase. In the case of the use of commercial terms, the rules of the ICC for application of the DDP clauses of the Incoterms 2010 will apply, taking into account these International Terms & Conditions of Purchase.

II. Binding Contract

1. The Supplier will notify SURTECO GmbH in writing prior to acceptance of a purchase order if the goods to be supplied are not suitable or are suitable only with reservations for the use made known to the Supplier or assumed for the purposes of the purchase order or if the goods to be supplied are associated with any particular health, safety or environmental risks or their content and scope entail atypical risks that were or should have been known to the Supplier. The same will apply accordingly if the Supplier is or should have been aware that the goods to be supplied do not conform in every respect with claims made in advertising, in brochures or in other publications of the Supplier intended for the public in Germany and abroad.
2. Quotations of the controller must be made in writing. Any differences between a quotation of the Supplier and a query or purchase order of SURTECO GmbH must be clearly indicated. Quantities, dimensions and weights as well as visuals and drawings specified or provided in connection with a purchase order will be binding.
3. A binding contract based on the quotation of the Supplier will effectively come into being upon receipt of the purchase order from SURTECO GmbH. Neither the receipt of goods and/or the acceptance of goods or work products nor payment for such goods or work products or any other act or failure to respond on the part of SURTECO GmbH will suffice to establish a binding contract between the Parties. SURTECO GmbH may submit a written purchase order at any time in the course of the 14 calendar days following receipt of a quotation from the Supplier. The content and scope of the contract will be based exclusively on the written purchase order of SURTECO GmbH even if they differ otherwise – except in respect of the purchase price and quantity – from statements made by the Supplier, including in respect of exclusive application of these International Terms & Conditions of Purchase. No binding contract will

come into being only if the Supplier notifies SURTECO GmbH without delay, but within no later than 7 calendar days following receipt of the written purchase order, that the purchase order of SURTECO GmbH differs from the Supplier's quotation.

4. SURTECO GmbH may change contractually agreed specifications for goods and/or work products or cancel the contract in its entirety or in part. The Supplier will in any such case be entitled to reimbursement of documented expenses. In the case of cancellation, the Supplier will also be entitled to compensation for loss of profit.
5. Any limitation of the rights of SURTECO GmbH under the law or these International Terms & Conditions of Purchase, i.e., exclusion of legal warranties, guarantees or representations of the Supplier as regards goods and/or work products, must be agreed to in writing by SURTECO GmbH.
6. Employees or agents of SURTECO GmbH will not be authorized to make any representations or give any warranties that deviate from the written purchase order of SURTECO GmbH.
7. Any changes in an existing contract must be confirmed in writing by SURTECO GmbH.

III. Duties of the Supplier

1. The Supplier will deliver the goods and/or work products specified in the written purchase order of SURTECO GmbH and fulfill all obligations incumbent upon the Supplier under this Agreement. The same will apply in respect of any warranties and representations of the Supplier, which need not be confirmed in writing.
2. The Supplier may not use the services of any subcontractor to fulfill its obligations towards SURTECO without the written consent of SURTECO GmbH.
3. The Supplier will notify SURTECO GmbH of any impending shipment in writing on a timely basis. The Supplier will inspect the goods and/or work products to verify conformity with the contractual quantity, nature and packing of the goods and/or work products and the absence of any material and/or defects prior to shipment and SURTECO GmbH will do the same after delivery. A written record will be kept of the results of such inspection.
4. The Supplier will be exclusively responsible for shipment and storage of the goods and/or work products up to the time of delivery to SURTECO GmbH. The latter will also be responsible for providing suitable packing for shipment, for proper loading and for the choice of the means of transport for shipment. Any understanding pertaining to special delivery conditions will have no effect upon the above obligations of the Supplier and will be limited to allocation of costs.
5. The Supplier warrants and represents that the goods and/or work products will be merchantable in Germany. The Supplier will also notify SURTECO GmbH in writing on a timely basis of specifications of the goods and/or work products that could be of importance in respect of the sale of such goods and/or work products.
6. The Supplier will comply with all regulatory and legal requirements regarding customs, import and safety applicable at the time of delivery of the goods and/or work products and meet all requirements that must be observed to import and market the goods and/or work products in Germany. This will apply accordingly if SURTECO GmbH handles customs clearance. Any other understandings, the Incoterms or other provisions pertaining to shipment will be limited to shipping conditions and costs.

7. The Supplier will further obtain and provide SURTECO GmbH with all necessary licenses, permits, certificates of origin, movement and reference certificates, other certificates and other documents as are required for the free export, transit and import of the goods and/or work products and eligibility for preferential duties in the European Union. Suppliers from the European Union must also present a supplier's declaration.
8. The Supplier warrants and represents that the goods and/or work products delivered fulfill(s) not only the contractual understandings, these International Terms & Conditions of Purchase of SURTECO GmbH and the provisions of German law, but also the relevant provisions of law applicable in the European Union.
9. The Supplier agrees to make timely delivery to the address specified in the written purchase order. Only the employee of SURTECO GmbH expressly identified on the sign in the receiving area will be authorized to accept the goods and/or work products.
10. Subject to any special contractual representations, the Supplier will deliver new goods and/or work products as agreed in terms of type, quantity, quality and packing with proper labeling and markings to SURTECO GmbH that comply with the regulations and standards commonly found in German and are suitable for the contemplated use and/or application of SURTECO GmbH. In the event goods and/or work products require more detailed specification, the Supplier will notify SURTECO GmbH accordingly in writing on a timely basis and request that SURTECO GmbH exercise its prerogative right to provide such specifications. The Supplier may not deliver and/or invoice SURTECO GmbH for partial shipments and/or partial performance of services without the express consent of SURTECO GmbH.
11. The Supplier warrants and represents that the goods and/or work products will not be not encumbered by the rights of others at the time of delivery, including but not limited to commercial rights or other intellectual property rights that would interfere with the unrestricted use of the goods and/or work products by SURTECO GmbH in the European region.
12. The Supplier will provide SURTECO GmbH with a supplier declaration and – upon request – certificates of conformity upon delivery of the goods.
13. Each shipment must be accompanied by a bill of lading showing the number of SURTECO GmbH's purchase order. The content of invoices, bills of lading and shipping documents must be in agreement with that contained in SURTECO GmbH's purchase order, meet all legal requirements and be forwarded to SURTECO GmbH under separate cover. Invoices of the Supplier must contain mention of the number and date of the purchase order of SURTECO GmbH as well as the Supplier's tax number. Any partial or followup shipments agreed to must be identified as such in the corresponding invoices and bills of lading.
14. The Supplier will comply with agreed delivery dates and deadlines. In the event the Parties agree to delivery within a certain period, SURTECO GmbH may specify the time of delivery within such period. Notwithstanding any other claims of SURTECO GmbH, the Supplier will without delay notify SURTECO GmbH in writing of foreseeable delays and provide a new delivery date. The new date of delivery will be considered a fixed date within the meaning of § 376 of the German Commercial Code (Handelsgesetzbuch – HGB). In the event delivery is delayed, SURTECO GmbH's right to fulfillment will remain intact without separate notification by SURTECO GmbH. The performance of any services by the Supplier at times or during periods other than those agreed will require the express written consent of SURTECO GmbH.

15. Any contractual penalties and/or liquidated damages will not affect performance of the contract between the Parties and will not exclude the possibility of further claims for damages by SURTECO GmbH even in the case of unconditional acceptance of delivery.
16. The Supplier may not refuse or withhold performance or raise defenses or counter-claims except in the case of the existence of a due and undisputed or legally enforceable counterclaim against SURTECO GmbH.
17. The Supplier will use environmentally friendly packing materials and dispose of any such materials as well as goods and/or work products supplied that fall under legislation governing the disposal of waste and – unless provision is made otherwise for disposal – have such materials, goods and/or work products collected at the delivery address agreed in writing or disposed of by third parties at the Supplier's own expense.
18. The Supplier agrees to use exclusively environmentally friendly processes for the production of its goods and performance of its services and make environmentally responsible use of raw materials required for production. This obligation will apply to the entire production chain from the initial choice of raw materials and cover everything from energy-efficient and environmentally friendly production and application to packing, transport and disposal.
19. The Supplier will ensure that raw materials and products intended for SURTECO GmbH do not involve the use of child labor under intolerable conditions and are in compliance with the principles of the UN Convention on the Rights of the Child and the International Labour Organization (ILO).
20. The Supplier agrees to comply with relevant ISO standards.

IV. Duties of SURTECO GmbH

1. SURTECO GmbH will pay the price agreed with the Supplier. Payment will be transferred to a bank account of the Supplier subject to verification of the accuracy of the respective invoice.
2. The Supplier's right to receive payment first of all presupposes receipt of all goods and documents as agreed and/or acceptance of all work products by SURTECO GmbH. Payment will be due as follows, regardless of any other legal requirements, after receipt of a proper invoice by SURTECO GmbH:

by the end of the month in which the invoice is received if received between the first and fifteenth day of that month and by the end of the following month if received between the sixteenth day and the end of the month.
3. Payment of the contractual price will cover all services of the Supplier, including miscellaneous costs incurred as well as customs duties, taxes and fees due in connection with export or transit and any bank charges incurred outside Germany. Any increase in the contractual price – for whatever legal reason – is excluded. SURTECO GmbH will assume any import value-added tax incurred in Germany as well as any other import fees due.
4. Persons not party to the Agreement may not demand payment. The Supplier's right to accept payment from SURTECO GmbH will remain unaffected notwithstanding any assignment to third parties.
5. SURTECO GmbH's legal rights to reduce the purchase price, to offset, to retain possession and/or to raise defenses or counterclaims will not be affected by these International Terms & Conditions of Purchase.

V. Conformity and Third-Party Claims

1. Unless stipulated otherwise in the written purchase order of SURTECO GmbH, any nonconformity of the delivered goods in respect of quantity, nature or intended use from advertising claims or legal requirements pertaining to the products, descriptions or designation of the Suppliers will constitute a material defect within the meaning of § 434 of the German Civil Code (Bürgerliches Gesetzbuch – BGB) and/or of the § 633 of the Civil Code. A defect will also be deemed to exist if delivery of the goods and/or work products triggers legal claims of third parties under legislation pertaining to the products. A shipment will be deemed to have legal defects if the goods are encumbered by claims or rights of third parties as regards ownership, proprietary rights or other intellectual property at the time of passage of risk
2. If the Supplier represents to SURTECO GmbH in its written quotation that the goods will have a specific quality or be suitable for a specific application, comply with generally accepted standards or a specific mark of quality or makes any other statements towards, this will constitute a warranty.
3. SURTECO GmbH will inspect the goods and/or work products upon delivery only to detect obvious material defects. SURTECO GmbH will inspect the goods to detect the presence of any nonconformity in terms of their nature, quantity, quality and packaging on a sample basis only when the goods are first processed or used, but at the very latest six month after delivery. In the case of follow-up or partial shipments, inspection of individual shipments will suffice. In the case of the shipment of replacement goods due to a material defect, SURTECO GmbH will be under no obligation to inspect the goods prior to receipt of written notification to the effect that the defect has been remedied from the Supplier. In the case of work products that are not covered by provisions of the purchase order pursuant to § 651 of the Civil Code, no such inspection will be required.
4. Obvious material defects must be reported to SURTECO GmbH within 5 working days after delivery of the goods and material defects discovered upon inspection within 10 working days after inspection. Concealed material defects must be reported within 15 working days after discovery, no later, however, than upon expiration of the period of limitation.
5. In the case of delivery of defective goods and/or work products, SURTECO GmbH will enforce all rights against the Supplier provided under the law and these International Terms & Conditions of Purchase. SURTECO GmbH may also deduct and retain from the purchase price an amount equal to up to 3 times that of the cost of correction. Instead of correction, SURTECO GmbH may opt to exercise its rights to a reduction of the price, rescission and/or payment of damages. SURTECO GmbH may refuse to accept overshipments, in their entirety or in part, without notification of a defect. In the event SURTECO GmbH requires that the Supplier cure a defect, the Supplier will bear any expense incurred, including overheads, from the time of delivery up to the time the defect is cured as well as any expense incurred by SURTECO GmbH due to reimbursement of its customers or other third parties.
6. The periods of limitation for warranty claims pursuant to § 438 of the Civil Code and claims pursuant to § 634a of the Civil Code will commence upon receipt of the goods and/or work products by SURTECO GmbH at the agreed place of delivery. The period of limitation will be 3 years and in the case of infringement of the rights of third parties 10 years unless a longer period is prescribed by law.

VI. Cancellation and Damages

1. The rights of the Supplier to withdraw from the Agreement will be governed by the relevant provisions of law. SURTECO GmbH may, notwithstanding any provisions of law, withdraw from the contract, in its entirety or in part, in the event the Supplier contests the validity these International Terms & Conditions of Purchase, if the written purchase order of SURTECO GmbH is received by the Supplier more than 14 calendar days after the date of issuance, if insolvency proceedings are initiated in respect of the assets of the Supplier, if the Supplier breaches any of its material obligations towards SURTECO GmbH under this Agreement, if a defect or default is not cured within a grace period set by SURTECO GmbH for such purpose or if the conditions for cancellation pursuant to these International Terms & Conditions of Purchase are fulfilled.
2. SURTECO GmbH may also bring claims for damages – for whatever legal reason – against the Supplier as provided by law. In the case of failure to deliver the goods and/or work products or failure to make delivery on a timely basis, SURTECO GmbH may require payment of liquidated damages in the amount of 0.5% of the value of the respective shipment per week of delay or any fraction thereof without presentation of any proof of loss. Further claims for loss or damages will remain intact.

VII. Liability of Supplier

1. The Supplier will hold SURTECO GmbH harmless from any and all claims brought against SURTECO GmbH by third parties in connection with the delivery of any product under any provisions of legislation governing products or product liability or any other legislation. This hold harmless right will also cover reimbursement of expenses incurred by SURTECO GmbH as well as the cost of any field or recall action.
2. The Supplier will without prejudice to further claims of SURTECO GmbH obtain and maintain in force product liability insurance and product recall insurance with coverage of at least € 5 million per claim.
3. The Supplier will indemnify SURTECO GmbH for any loss or damage resulting from a regulatory order or fine arising from or in connection with the delivery of the Supplier's goods.

VIII. Miscellaneous

1. The Supplier will upon first demand and without reliance on any other conditions or objections provide SURTECO GmbH with all appropriate information and technical documentation on the goods delivered in written form.
2. All related materials and documents will become the undisputed property of SURTECO GmbH upon delivery of the goods and/or work products.
3. SURTECO GmbH consents to retention of title to delivered goods by the Supplier only in the form of simple retention of title. Notwithstanding any such retention of title, SURTECO GmbH will have the right to freely dispose of the goods at all times, namely, for the purposes of processing and/or sale, and transfer ownership of the goods to third parties even if processing or disposal results in extinction of the retention of title rights.
4. SURTECO GmbH will retain all rights of ownership, copyright and other commercial and intellectual property rights as well as rights arising from know-how, regardless of whether made available to the Supplier in physical or electronic

form by means of illustrations, drawings, calculations and other documents or as software. All documentation and software must be kept secret and not be disclosed to third parties and may be used only for the purposes of fulfillment of obligations arising from this Agreement.

5. The place of delivery will be that located at the delivery address agreed between the Parties. Replacements must also be delivered to and correction work performed at the place of delivery. The place of delivery will also be the place of payment and performance for all other obligations arising in connection with business conducted between SURTECO GmbH and the Supplier. These provisions will also apply for the purposes of the return of goods or other services performed or documents.
6. Neither a handwritten nor electronic signature will be required to satisfy any written form requirement under this Agreement. Communication by fax or e-mail will suffice to satisfy the written form requirement as will any other legible and reproducible form of communication. The end of the communication need not be explicitly identified.
7. All contractual and other matters involving the Parties will be governed exclusively by the law of the Federal Republic of Germany.
8. The courts of 86647 Buttenwiesen will have exclusive local and international jurisdiction over any contractual or other disputes, including any disputes as regards the validity of these International Terms & Conditions of Purchase. SURTECO GmbH may, however, bring action before the courts of the principal place of business of the Supplier or any other court of jurisdiction under domestic or foreign law.
9. SURTECO GmbH will process and store data on the Supplier in connection with business conducted between SURTECO GmbH and the Supplier to the extent required to conduct such business and retain such data as required by law. Personal data will be transferred to third parties only insofar as necessary and with the express consent of the Supplier. Personal data will be collected, transmitted and otherwise processed exclusively on the basis of the Federal Data Protection Act (Bundesdatenschutzgesetz – BDSG) and taking into account the provisions contained in Art. 13 and 14 of the General Data Protection Regulation (GDPR), which are appended to these International Terms & Conditions in the form of an information sheet.
10. In the event any provision of these International Conditions of Purchase should be invalid, in their entirety or in part, the remaining provisions will retain their validity. The Parties will then replace the invalid provision by a valid formulation that most closely approximates the economic intent and purpose of any such invalid provision.