

General Conditions of Sale and Supply of Fr. Sauter AG, 4016 Basle

1. General

These General Conditions of Sale and Supply (GCSS) apply to commercial transactions between Fr. Sauter AG (hereinafter referred to as SAUTER) and its domestic and foreign customers to whom SAUTER delivers products or software programs or renders services.

All agreements and declarations of legal relevance must be made in writing in order to be valid. Declarations in the form of text conveyed by electronic media (such as e-mail, fax, etc.) are coequal to the written form.

1.1 Contract conclusion, divergent stipulations

A legally binding contract for a single transaction shall not come into being until SAUTER delivers a written order confirmation to the ordering party.

These terms and conditions apply to each individual business transaction. Divergent stipulations contained in the order confirmation sent by SAUTER or in agreements made in writing between the parties (e.g. blanket orders, distribution agreements) shall override the stipulations of these GCSS.

Purchasing terms or other conditions of the ordering party are not a component of the contract. Further regulations or divergent stipulations of the ordering party must be confirmed in writing by SAUTER in order to be valid.

1.2 Delivery and performance

The type and scope of delivery and performance are defined in the order confirmation and any annexes thereto issued by SAUTER.

2. Prices

All prices quoted by SAUTER in tenders and price lists are subject to change and are not binding.

2.1 Scope of application

Prices are quoted for deliveries ex works, regardless of any divergent stipulations on shipping, transport or insurance documents etc.

Any special packaging (e.g. maritime containers) special packaging requested by the customer and shipping costs will be charged to the ordering party.

2.2 Invoices, default

Invoices must be paid within 30 days of the invoice date. The invoiced amount is strictly net with no discount whatsoever.

The ordering party is responsible for all duties and taxes payable outside of Switzerland arising in connection with delivery and invoicing.

In the event of default of payment, the ordering party shall pay a default interest rate of 5% p.a. as of the day the payment period defined on the invoice expires. Further claims remain reserved.

2.3 Changes to prime costs

In the event that prime costs should change during the order processing period, SAUTER reserves the right to amend prices unless they are expressly confirmed in writing or by SAUTER as agreed fixed prices. This applies in particular to large-scale projects and blanket orders.

2.4 Blanket orders, default in acceptance

Blanket orders should be processed within the agreed duration by means of call orders. In the event of a delay of six weeks or more in taking up the orders, SAUTER reserves the right to dispose of the goods as it sees fit and to set a new delivery date or to withdraw from the contract.

In the event of default in acceptance, the ordering party shall pay a default interest rate of 5% p.a. of the value of the omitted call. Further claims remain reserved.

3. Obligation to supply and withdrawal

Deliveries will be made on condition that outstanding invoices have been paid in full. SAUTER reserves the right to withdraw from the contract, even after the order has been confirmed, should any doubt concerning the solvency of the ordering party subsequently arise or if he is in arrears with payments for supplies already in his possession.

4. Delivery time

SAUTER shall endeavour to adhere to the stated delivery times; however, they are not binding unless agreed expressly to the contrary in writing or otherwise confirmed in writing by SAUTER. In case of delivery delays, the buyer is not entitled to cancel the order or to claim any damages.

Strikes or incidents of force majeure may delay the completion of orders, but this does not give the buyer the right to withdraw from the contract or to claim damages of any kind. This also applies to deliveries for which stipulated fines have been agreed.

5. Property, usage and risk, transport, insurance, packaging

All technical documentation and software programs remain the intellectual property of SAUTER and shall not be copied or duplicated or made available to third parties in any form or be used to manufacture the product or its components.

The ordering party assures that the production and supply of goods or software by SAUTER on the basis of instructions, templates, drawings, samples, etc., provided by the ordering party will not infringe third party rights.

The delivered goods shall remain the property of SAUTER until full payment has been made.

Usage and risk shall pass to the ordering party on the date the consignment is shipped or on which SAUTER informs the customer beforehand and in writing that the goods are ready for shipping, but, at the latest, on dispatch of the goods. In the event of delivery delays for which the ordering party is responsible, usage and risk shall pass to the ordering party when delivery is made available by SAUTER.

SAUTER shall decide on the type of packaging. Shipment and insurance cover against damage of any kind is the responsibility of the ordering party. Even if SAUTER is charged with the responsibility of organising shipment and insurance cover by agreement or due to current practice, they are considered to be obtained on behalf of and at the expense of the ordering party (cp. Article 2.1. of these GCSS).

6. Packaging

Packaging items (boxes, crates etc.) are non-returnable.

7. Ambient conditions for transport and storage

If the data in the product data sheets (PDS) does not specify otherwise, the following ambient conditions apply for transport and storage:

- Storage and transport temperature: -25...70°C.
- Humidity: 10...85% rh, no condensation.

8. Inspection of delivery

The recipient shall raise any complaints with regard to damage, loss or delay during transport with the shipping company immediately on receipt of the goods.

The ordering party is obligated to inspect the delivered goods carefully and to raise any objections regarding deficiencies in a written complaint to SAUTER within 8 days of receipt. The delivery shall be deemed as accepted if the ordering party fails to do so.

9. Warranty (hardware)

SAUTER provides a warranty, valid for one year from the date of manufacture, for all SAUTER equipment and components under which SAUTER undertakes to remedy demonstrated deficiencies in material, design or manufacture - at the discretion of SAUTER - free of charge in SAUTER workshops or to replace the product or its defective components on condition that the items in question are sent to SAUTER free of all charges.

With regard to deficiency claims raised after expiry of the period defined under Article 7 of these GCSS, however, SAUTER shall be liable only if the deficiencies were undetectable at the time despite careful inspection and if they are made the specified subject of a written complaint to SAUTER within the one-year warranty period immediately after they are ascertained.

The warranty period for replaced or repaired components entitling the ordering party exclusively to the repair or replacement performance described above shall start afresh and last for a period of 6 months from delivery of the replacement parts or the conclusion of repairs.

SAUTER's warranty obligations shall be rendered invalid if the agreed terms of payment are not met or if the purchaser makes - or orders a third party to make - repairs or modifications to the goods supplied by SAUTER without SAUTER's approval.

Any liability beyond the scope described above is excluded.

10. Programs (software)

10.1 Definition

In the context of this document, software programs are defined as computer programs consisting of a series of machine-readable instructions that SAUTER makes available to the customer to operate a product - such as a control centre - supplied by SAUTER in exchange for a contractually-agreed fee.

10.2 Right of use

By paying the contractually-agreed fee the customer gains the non-exclusive and non-transferable right to use the contractually-defined software programs exclusively for the product supplied or for the designated plant (e.g. management system).

'Use' in the context of these stipulations means: to install and store the program in machine-readable form in a device to execute the instructions contained in the program for the agreed purpose.

10.3 Copyright

The copyright on the program and the property rights on the data carriers provided shall rest with SAUTER. The purchaser is not entitled to sell, pledge or make available to third parties the program itself, copies of the program or any parts of the program or to decode or change the program code.

10.4 Warranty

Subject to the stipulations of other written agreements SAUTER warrants in the meaning described below that the supplied software programs will meet the specifications described by SAUTER as long as the programs are used in accordance with the instructions defined in the SAUTER documentation.

The warranty period is for one year as of the date of invoice. In the event of faults occurring in a valid version of the program, SAUTER shall provide the customer either with information on how to rectify the fault, for instance in the form of a description on how to remedy the error, or with a new version of the program (release). In the event a new release is provided the warranty period shall not start afresh.

This is on condition that the fault can be reproduced and that it occurs in the latest release provided to the customer by SAUTER and that the customer furnishes SAUTER with all the documentation and information necessary for rectifying the fault.

SAUTER does not warrant that the software programs can be operated without interruption or error in every combination requested by the ordering party or in conjunction with all data, components and programs provided by him, nor that the correction of a program error excludes the occurrence of other errors.

The warranty shall become invalid if the ordering party fails to comply with dialogue instructions issued by SAUTER or if the occurrence of errors is due to improper or prohibited use by the ordering party or due to extrinsic causes.

Any liability beyond the scope described above is excluded.

11. Liability and claims

The claims that the ordering party can derive from delivery delays and deficiencies are fully laid down in these terms and conditions. Any further warranty and liability for damages suffered by the ordering party on account of deficiencies or non-performance is excluded to the extent permissible by law. Liability is excluded in particular for: the cost of installing and removing defective devices; the cost of shipping replacement parts; loss of profit; consequential damage; consequential damage caused by the defect; damage caused by delay; damage arising from poor or non-fulfilment of the purchaser's contractual obligations towards his customer; third party claims etc.

SAUTER shall bear no responsibility whatsoever for damage caused by improper handling or use of SAUTER products or software programs by the ordering party or third parties or by strikes or force majeure.

Furthermore, claims for damages arising in connection with advice and support provided by SAUTER during planning activities or the design, development and introduction of software programs are excluded. This does not include the services that form the subject of a contract drawn up individually with the customer, in which the extent of SAUTER's liability has been laid down exactly.

12. Returning goods against credit

The purchaser has no right to return goods which have been supplied by SAUTER in compliance with the order. In exceptional cases, goods can be returned after conclusion of a written agreement and quoting SAUTER's reference number for the original consignment.

It is not possible to return: special versions; non-Sauter equipment (i.e. products not manufactured by SAUTER); technically outmoded products; goods delivered more than six months previously; and equipment that has already been installed or used.

Only credit notes which may be offset against further orders placed by the ordering party will be issued for goods returned to SAUTER as follows:

- Max. 80% of the net invoice value if the products are still in their original condition, the packaging has not been opened and the delivery was made within the last 6 months.
- Max. 70% of the net invoice value if the products are still in their original condition but the packaging has been opened and the delivery was made within the last 6 months.

Credit notes cannot be paid out to the ordering party in cash or by bank transfer.

13. Disposal

Goods for which the warranty period has expired cannot be returned to SAUTER.

14. Cost of cancellation

The customer is not entitled to cancel ordered goods. Cancellations are possible only in exceptional cases after prior written agreement.

In such cases, the ordering party will be charged for the costs incurred in processing the order, and for the cost of any services already provided.

15. Documentation

All diagrams, such as dimension drawings and schemes and specifications contained in SAUTER catalogues, manuals and price lists, are not binding and serve only as a guide. SAUTER reserves the right to change and amend them at any time. The ordering party is obligated to observe the information and instructions contained in the documentation provided in conjunction with software programs and with the instructions for use provided for products.

16. Services

SAUTER's hardware and software prices do not include any costs for services such as engineering, commissioning and servicing. These services will be charged separately at the rates applicable at the time.

17. Applicable law and place of jurisdiction

All legal relations between SAUTER and the ordering party are subject to Swiss substantive law under the exclusion of state treaties, namely the United Nations convention on the international sale of goods dated 11th April 1980.

Basle, Switzerland, is the sole place of jurisdiction and fulfilment for the services and performance of both parties. However, SAUTER is entitled to assert its rights at the domicile of the ordering party or before any other competent authority, whereby the preceding choice of law shall remain valid.