

General conditions TLS - Boca Asia Co. Ltd

Article 1 - Definitions

- User: TLS-Boca Asia Co. Ltd, whose registered office is in Shanghai, user of these general conditions.
- Buyer: the opposite contract party of the user (customer, client, or otherwise).
- Goods: all products supplied, sold, or developed by the user for the buyer, including any software.

Article 2 - General

These general conditions are applicable to all offers, agreements between the user and the buyer, and all supplies and/or work of the user, unless otherwise is agreed in writing. If one or more provisions of these conditions should become invalidated or nullified by law, the other conditions shall remain in force. The parties will then enter into consultations about new, valid provisions to replace the invalidated or nullified provisions, which shall approximate the purport of the original provisions as closely as possible.

Article 3 - Delivery times

Delivery times and dates in quotations or agreements are not final deadlines but approximate, and do not give the buyer any right of dissolution or compensation if such are exceeded. If the information necessary for the performance of the agreement is not provided by the buyer to the user in a timely fashion, the user can suspend the performance of the agreement, and it shall be entitled to payment of the extra costs resulting from the delay. The user is entitled to assume that the information provided by the buyer is correct. If the buyer refuses to accept the goods and/or fails to supply the information necessary for the delivery, the user is entitled to store the goods for the account and risk of the buyer. The user is entitled at all times to supply goods in part deliveries, and to invoice separately for part deliveries. Unless otherwise is agreed, any delivery costs are not included in the price, and the goods shall be for the account and risk of the buyer during the transport from the user to the customer (regardless of who carries out such).

Article 4 - Inspection, defects, and/or incompleteness

Any discernible defects or incompleteness must be notified to the user within 14 days after delivery, in default of which the buyer's right to repair, replacement, or supplement will expire. Defects that are not immediately discernible must be notified in writing within 14 days after discovery, or after the date on which the buyer should reasonably have discovered such defects, in default of which the buyer's right to repair, replacement, or supplement will expire. If defects and/or incompleteness are justifiably notified on time, the buyer will still be obligated to pay for the purchased goods, but the user will repair or replace the defective or incomplete goods (such at the discretion of the user).

Article 5 - Changes

The user may, despite any agreed price, charge on any reasonable increase in costs, if significant price changes occur between the date of the offer and the performance of the agreement with respect to currency exchange rates, wages, raw materials, semi-finished products, and/or packaging material. If during the execution of the agreement it becomes apparent that it is necessary to change and/or supplement the activities to be carried out to ensure proper execution, the parties shall amend the agreement and the conditions of such in mutual consultation.

Article 6 - Payment and delivery

Payment must take place within 14 days of the invoice date, unless otherwise is agreed, in the way designated by the user and in the currency on the invoice. Objections to invoices shall not suspend the payment obligation. All prices are ex. VAT. If the buyer does not pay on time, it shall be in default without any further notice of default being required. As of the date on which the buyer is in default, the buyer shall owe the user (i) default interest of 2% per month, calculated over the outstanding amount up until the date of payment in full, as well as (ii) payment of all judicial and extrajudicial costs actually incurred to obtain satisfaction, including debt collection costs. In the event of liquidation, bankruptcy, seizure, or suspension of payments of the buyer, all claims of the user against the buyer shall be payable immediately and in full.

Article 7 - Extended retention of title

All goods supplied by the user shall be supplied under an extended retention of title: they shall remain the property of the user until the buyer has fully satisfied all its obligations under all agreements concluded with the user. If the buyer fails in the fulfilment of its obligations, the user shall be entitled to take back all goods supplied without any notice of default being required. The buyer shall not establish any rights on the goods supplied under the retention of title, and keep such as identifiable property of the user until it has satisfied all its obligations in full. In the event of seizure, suspension of payments, or bankruptcy, the buyer will immediately inform the bailiff, administrator, or receiver about the extended retention of title.

Article 8 - Suspension, dissolution, and cancellation

The user is entitled to suspend the fulfilment of its obligations, or to dissolve the agreement, if (i) the buyer does not fully fulfil its obligations under the agreement, and/or (ii) after the agreement is concluded, the user becomes aware of circumstances that give good cause to believe the buyer will not, only partially, or improperly fulfil its obligations, and/or (iii) the buyer had been asked to provide security for the fulfilment of its obligations under the agreement when the agreement was concluded, and this security has not been provided or is inadequate. Cancellation by the buyer is only possible if the user consents to such. In such a case, the buyer shall pay to the user at least 20% of the agreed price as a form of fixed compensation. If the agreement between the parties concerns tailor-made activities, cancellation shall not be possible. Any amounts already paid by the buyer before cancellation shall not be refunded.

Article 9 - Liability

The user accepts no liability whatsoever for damages (such to include, but not limited to, consequential damages, loss of profits, loss of savings, and damages due to commercial stagnation) caused by its actions or failures, unless the damage is imputable to its gross negligence and/or wilful misconduct. The user's liability is at all times limited to the maximum of the amount that the insurer of the user will pay out in any relevant case. If for any reason whatsoever no payment is made under the insurance policy, the liability shall be limited to a maximum of EUR 10,000.00 in all cases.

Article 10 - Force Majeure

Force majeure shall be understood to include, in addition to that defined by statutory law and case law, all causes, foreseeable or unforeseeable, beyond the control of the user, and as a result of which the user is not able to fulfil its obligations. Such shall include labour strikes in the company of the user or its suppliers. In the event of force majeure, the user can suspend all its obligations under the agreement without being liable to pay compensation. Only after the user has not been able to fulfil its obligations due to force majeure for a period of one month will both the user and the buyer be entitled to dissolve the agreement without any obligation to pay compensation. Insofar as the user has partially fulfilled, or will be able to fulfil, its obligations when the circumstance of force majeure came into effect, and that fulfilled part, or to be fulfilled part, can be accorded an independent value, the user is entitled to invoice separately for that part that has already been fulfilled or can be fulfilled.

Article 11 - Indemnification, copyrights, and all other possible intellectual property rights (hereinafter collectively referred to as "IP rights")

The buyer shall indemnify the user against all claims from third parties in relation to IP rights on material or information supplied by the buyer. The buyer guarantees that by fulfilling the order in accordance with the specifications of the buyer, no rights of third parties, including, but not limited to, IP rights, will be infringed. Any designs, sketches, drawings, films, software, and other materials or files created by the user in connection with the agreement shall remain the property of the user regardless of whether or not they have been handed over to the buyer or third parties. All items issued by the user, such as designs, sketches, drawings, films, software, (digital) files etc., are exclusively intended to be used by the buyer, and may not be reproduced, published, or disclosed to third parties without the prior permission of the user.

Article 12 - Confidentiality and non-employment clause

1. The buyer is obligated to maintain confidentially about all confidential information that it has received in connection with any agreements with the user. Information shall be deemed to be confidential if such has been notified by the user or is apparent from the nature of the information. All prices shall be considered to be confidential information.
2. The buyer shall not employ employees of the user, or employees of companies that have been involved in execution of the agreement, or engage such to work for it, either directly or indirectly, in any other way, both during the term of the agreement and for a period of one year after the termination of such, except with the written permission of the user.
3. If the buyer violates the provisions of this article, it shall forfeit, without further notice of default being required, both an immediately payable fine of EUR 1,000.00 per violation and a fine of EUR 100,00 for each day that the violation continues despite a demand to cease such. The foregoing is without prejudice to the right of the user to claim compensation.

Article 13 - Competent court for disputes and applicable law

The District Court in Shanghai shall have exclusive competence to hear any disputes between the parties. All agreements between the user and the buyer shall be subject to Chinese law. The provisions of the Vienna Sales Convention are not applicable.