

General Conditions of Sale and Supply of Fr. Sauter AG, 4058 Basel

1. General information

These General Conditions of Sale and Supply (GCSS) apply to all transactions between Fr. Sauter AG or its subsidiaries (hereinafter referred to as SAUTER) on the one hand and its domestic and foreign customers on the other, 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 or price lists are not binding and subject to change. All prices quoted by SAUTER in any order confirmations may be adjusted in accordance with Section 2.3 (Price adjustment) of these terms and conditions.

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 necessary special packaging (e.g. maritime containers), special packaging requested by the customer and shipping and insurance 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. SAUTER reserves the right to make claims for further damage.

2.3 Price adjustment

In the event of any Materially Adverse Effect before the completion of a transaction (dispatch of the goods), SAUTER reserves the right to adjust all prices, unless such prices are expressly confirmed as fixed prices by SAUTER. Materially Adverse Effect shall mean, in particular, and without limitation, the following events: (a) an increase in SAUTER's prime costs of more than 5%; (b) a change that results from conditions generally affecting the industry; (c) any global or national health concern, epidemic, disease outbreak or pandemic; (d) shortages in materials (including, but not limited to, semiconductors) due to increased demand; (e) delivery difficulties generally affecting the procurement market; (f) any matter related to increased energy prices; and (g) a change that results from currency exchange rate developments. Upon any price adjustment under this Section 2.3, the ordering party shall have an extraordinary right to cancel the transaction, unless such transaction includes goods individually tailored or customized for the ordering party.

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. SAUTER reserves the right to make claims for further damage.

In the event of default in acceptance, the ordering party shall pay a default interest rate of 5% p.a. of the invoice value of the omitted call. SAUTER reserves the right to make claims for further damage.

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 at any time, even after the order has been confirmed, should any doubt concerning the solvency of the ordering party subsequently arise or if it is in arrears with payments for supplies already in its 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. The delivery times indicated on any order confirmation are subject to change. A binding confirmation of the delivery times may be provided by SAUTER before the completion of a transaction (dispatch of the goods). In case of any delivery delays, the ordering party shall not be entitled to cancel the transaction or to make any claims for delay or otherwise.

Strikes, acts of nature or similar cases of force majeure may delay or interrupt the completion of orders and shall not entitle the ordering party to cancel a transaction or to claim any damages. This also applies to binding delivery times and to transactions for which contractual penalties have been stipulated.

The delivery time shall be reasonably extended if SAUTER has to interrupt or shorten its production processes due to a lack of or a reduced availability of energy sources (e.g. gas, electricity). SAUTER shall inform the customer immediately and in writing of such a situation. Any claim by the customer against SAUTER for compensation for delay or for compensation for direct and indirect damages due to such a delay shall be excluded.

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 products or software programs 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 on which 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 the 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 (cf. Article 2.1. of these GCSS).

6. Packaging

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

7. Ambient conditions for transport and storage

If no written agreement specifies 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 and reprimand duty

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 immediately 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. Should such deficiencies be discovered later that were not detectable during a careful inspection, the written complaint must be made immediately after their discovery, otherwise the delivery shall be deemed as accepted even with regard to such deficiencies.

9. Warranty (hardware)

For all delivered products and their components, SAUTER provides a one-year warranty starting from the manufacture date. If the delivered goods are utilised by the customer for personal or family use, the warranty is valid for two years from delivery. After the decisive period has elapsed, all warranty claims on SAUTER are time-barred.

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. If the delivered goods are utilised by the customer for personal or family use, the warranty is valid for two years from delivery.

With regard to deficiency claims raised after expiry of the period defined under Article 8 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.

Warranty claims are completely excluded for deficiencies of products and components due to:

- Incorrect handling, storage or fitting;
- Non-compliance with fitting, operation and maintenance instructions;
- Excessive use or natural wear; and
- Force majeure or external influences that are not contractually stipulated or use outside of the normally assumed use.

If products or components are deficient that were not manufactured by SAUTER, SAUTER can free itself from any warranty by transferring its own warranty claims on the supplier to the ordering party.

The warranty provided by SAUTER lapses if the agreed payment conditions are not fulfilled or if the ordering party made changes or repairs to delivered products, or had these made, without permission from SAUTER.

All warranties of any kind that go beyond the scope described above are excluded.

10. Programs (software)

10.1 Definition

In the context of these conditions, software programs are defined as specific computer programs consisting of a series of machine-readable instructions that SAUTER makes available to the customer to operate a product supplied by SAUTER or the contractually designated plant - such as a control centre - 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-specified software programs exclusively for the product supplied or for the designated plant (e.g. control centre).

In the context of these conditions, "use" means: To install and store the software programs in machine-readable form in a device to execute the instructions contained in the programs for the agreed purpose.

10.3 Copyright

The copyright on the software programs and the property rights on the data carriers provided shall rest with SAUTER. The ordering party is not entitled to sell, pledge or make available to third parties the programs, copies of the programs or any parts of the programs, or to decode, change or publish 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 1 year as of the date of invoice. In the event of faults occurring in a valid version of the program, SAUTER shall provide the ordering party either with information on how to rectify the fault, for instance in the form of a description on how to remedy the fault, or with a new version of the program (release). In the event that 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 ordering party by SAUTER and that the ordering party supplies SAUTER with all the documentation and information necessary for rectifying the fault within the one-year warranty period.

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 it, 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 installation, modification or use by the ordering party (including its helpers, sub-contractors or external service providers) or due to extrinsic causes.

All warranties of any kind that go beyond the scope described above are excluded.

11. Liability and claims

11.1 General

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 contractual and non-contractual liability on the part of SAUTER for damages suffered by the ordering party on account of deficiencies or the infringement of contractual or non-contractual duties is excluded to the extent permissible by law. SAUTER's 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 ordering party's contractual obligations towards its customer; third party claims etc.

SAUTER shall bear no responsibility whatsoever for damage caused by improper handling, storage, fitting or use of SAUTER products or software programs by the ordering party or third parties or by strikes, acts of nature or similar cases of 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.

11.2 Customer obligations and safety precautions

The customer undertakes to ensure reasonable technical and organisational measures in order to minimise the security risks associated with accessing SAUTER devices via the internet. This includes the following measures, in particular:

- The connection of automation stations to the internet must always be secured via firewalls.
- Software updates must be carried out promptly.
- SAUTER products must not be operated with factory-set passwords.
- The customer must select a suitable password at commissioning, keep this confidential and change it at regular intervals.

SAUTER may from time to time recommend to the customer additional measures to protect SAUTER devices from unauthorised access. The customer recognises, however, that it is beyond SAUTER's scope of influence and responsibility to implement security measures to this effect. Consequently, SAUTER excludes all liability whatsoever for unauthorised access to SAUTER devices connected to the internet by third parties and any data loss or damage to the customer's systems occurring as a direct or indirect result of this.

12. Returning products against credit

The ordering party generally has no right to return products which have been supplied by SAUTER in compliance with the order. In exceptional cases only, products can be returned after conclusion of a written agreement, quoting SAUTER's reference number for the original delivery.

It is not possible to return: special versions; third-party products (i.e. products not manufactured by SAUTER); technically outmoded products; products delivered more than 6 months previously; and products that have already been installed or used.

Only credit notes which may be offset against further orders placed by the ordering party will be issued for returned products 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

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

14. Cost of cancellation

The ordering party is not entitled to cancel ordered products or services. 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, 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 adjust or change 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 storage, fitting, use, operation and maintenance 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 invoiced separately at the rates applicable at the time.

17. Retention of title

Until the purchase price is paid in full, the delivered products remain, insofar as permitted by law, the property of SAUTER.

18. 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 11 April, 1980.

Basel, 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 responsible authority, whereby the preceding choice of law shall remain valid. The statutory places of jurisdiction of customers that utilise the products for personal or family use remain reserved.