

General Terms and Conditions of REPASACK GmbH

Section 1: General information and application

1. The following general terms and conditions of business ("terms and conditions") of REPASACK GmbH ("REPASACK") shall apply exclusively. REPASACK does not recognise any of the contracting party's conditions that contradict or deviate from these terms and conditions unless REPASACK has explicitly approved the validity of such deviating terms in writing. These terms and conditions shall also apply if REPASACK performs delivery or service to the contracting party with knowledge of conditions of the supplier that contradict or deviate from these terms and conditions.
2. All agreements made between REPASACK and the contracting party in connection with a quotation and/or contract shall be recorded in the quotation or contract, as the case may be, in writing.
3. Individual agreements with the contracting party in a specific case (including side agreements, supplements and amendments) shall always take precedence over these terms and conditions. The contents of any such agreement shall be subject to a written contract or written confirmation by REPASACK.
4. These terms and conditions shall only apply to enterprises within the meaning of section 14 of the German Civil Code and public law entities.
5. These terms and conditions shall apply for the entire future business relationship with the contracting party and shall supersede other, earlier terms of REPASACK if applicable.
6. Amendments to these terms and conditions will be made known to the supplier in writing or by email and are considered as approved if the supplier does not object to the amended terms and conditions within six weeks after announcement in writing or by email. The supplier will be made aware of this separately during the announcement of these changes. In case of a timely objection, the validity of the originally included terms and conditions shall continue.

Section 2: Quotation and conclusion of contract

1. Any quotations made by REPASACK shall be non-binding and without obligation.
2. Statements of acceptance and all orders shall require express confirmation by letter or fax to become legally valid. The same shall apply to any supplements, amendments or side agreements.

Section 3: Delivery and service period, default in delivery, default in acceptance

1. Delivery and service dates or periods shall only be binding following written confirmation from REPASACK.
2. REPASACK cannot be held responsible for delays in delivery and rendering of service caused by force majeure and events that considerably complicate or prevent REPASACK from making delivery, including strikes, lock-outs, official rulings in particular, even if they occur at suppliers or sub-suppliers of REPASACK and even in the event of binding agreed periods and dates. Such circumstances shall entitle REPASACK, at its own discretion, to postpone the delivery or service for the duration of the impediment plus an appropriate start-up period or to withdraw from the contract as a whole or in part on account of the part not yet fulfilled. REPASACK can only invoke the aforementioned circumstances if it has notified the contracting party of these circumstances without delay.
3. Where an impediment within the meaning of paragraph 2 lasts longer than three months, the contracting party shall be entitled to withdraw from the contract with regards to the part not yet fulfilled after granting a reasonable extension. In the event that the delivery or service time is extended or if REPASACK is released from its delivery or service obligation, the contracting party cannot derive any claims to damages in this respect.
4. REPASACK shall be entitled at any time to partial deliveries and partial services to a reasonable extent.
5. Notwithstanding its right to withdrawal in accordance with section 437, point 2 of the German Commercial Code, the contracting party shall only be entitled to withdraw from the contract in the event of a delivery on account of nonperformance, unpunctual performance or performance breaching the contract in any other manner by REPASACK if REPASACK is responsible for the default and a reasonable extension fixed by the contracting party has expired without fulfilment.
6. In the event that the contracting party is in default of acceptance or breaches other duties of cooperation, REPASACK can demand reimbursement for any damages incurred as a result, including any possible additional expenses. The risk of accidental loss and accidental deterioration shall transfer to the contracting party effective from the time of default of acceptance.

Section 4: Prices and payment terms

1. REPASACK's prices shall apply "ex warehouse" plus any applicable VAT.

2. Discounts shall only be deducted with express written consent.
3. Amounts invoiced by REPASACK shall be payable in full within 30 days of the invoice date. In case of a payment default of the customer in respect of more than one obligation, all obligations shall automatically become due and payable. In the event that the contracting party is a merchant and falls into arrears for all or part of the sum owed, REPASACK shall be entitled to charge interest in the statutory amount from the time of due date or the arrears, as the case may be. REPASACK expressly reserves the right to assert further damages.
4. In case of invoices from goods and services being paid via SEPA Core Direct Debit or SEPA Business to Business Direct Debit, the customer will receive a pre-notification regarding the direct debit at the latest one day before the due date. Such pre-notification may be made on the invoice to be debited.
5. REPASACK shall be entitled to securities of the normal type and extent for claims, even if they are conditional or temporary.

Section 5: Data protection

REPASACK gathers the contracting party's data for the purpose of this contract if necessary. REPASACK shall hereby comply with the provisions of the German Federal Data Protection Act. REPASACK will only gather, process or use the contracting party's inventory and user data without the consent of the contracting party insofar this is necessary for the contractual relationship.

Section 6: Transfer of risk

1. Subject to any express agreements in writing to the contrary, the risk of destruction, deterioration and/or reduction shall transfer to the contracting party upon delivery of the object of purchase to the warehouse.
2. At the contracting party's request, REPASACK shall procure transport insurance or other suitable insurance at the contracting party's expense to secure contractual performance as far as possible.

Section 7: Warranty and consequences of defective delivery

1. In the event of defective delivery or service, REPASACK shall be entitled, at its own discretion, to remedy the defect or make replacement delivery. If remedying the defect or the replacement delivery is delayed for reasons for which REPASACK is liable or if remedying the defect or the replacement delivery ultimately fails for other reasons, the contracting party shall be entitled to other statutory warranty rights. The contracting party shall only be entitled to claim damages or compensation for expenses pursuant to the provisions of section 8.
2. Any claims by the contracting party pursuant to paragraph 1 shall only exist if the contracting party notifies REPASACK of a defect in writing without delay. REPASACK shall be notified immediately upon discovery of any defects that cannot be discovered even upon careful examination immediately after delivery or service, but no later than one month after delivery at the latest. In the event of intentional defects, the statutory warranty period shall apply. The aforementioned rules shall apply accordingly to the assertion of the contracting party's rights on account of incorrect, excess or short delivery or service.

Section 8: Liability

1. Unless otherwise provided for in these terms and conditions, REPASACK is fully liable:
 - a) for any intentional or grossly negligent damage caused by REPASACK,
 - b) in the event of intentional or negligent injury to life, body or health by REPASACK; and
 - c) for claims under the German Product Liability Law or insofar as REPASACK fraudulently concealed a defect or had provided an explicit warranty for the quality of the goods.
2. Otherwise, REPASACK is only liable in the case of simple negligence when core contract obligations are violated, limited to the amount of typical foreseeable damages. Core contract obligations for the purposes of this section 8 are contract obligations that enable the orderly implementation of the contract in the first place and on the due observance of which the other contracting party regularly trusts and may regularly trust. The parties agree that typical foreseeable to property shall stand at a maximum of €5,000,000.00 and a maximum of €250,000.00 for other pecuniary losses.
3. Any additional liability on the part of REPASACK to damages beyond the preceding paragraphs is hereby excluded without consideration of the legal nature of the claim lodged.
4. The aforementioned liability rules shall also apply to the personal liability of REPASACK's employees, workers, representatives and vicarious agents.
5. The contracting party shall release REPASACK from any claims made by third parties in connection with the condition or quality of the delivery or service rendered by the contracting party.

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Section 9: Title retention

1. REPASACK shall retain ownership of delivered goods until the unreserved and full fulfilment of all claims accruing to REPASACK against the contracting party and its affiliates and subsidiaries now or in the future on any legal grounds. In the event of breach of contract by the contracting party, especially payment default, REPASACK shall be entitled to take back the object of purchase. To the extent that the law does not mandate otherwise, the act of taking back the goods by REPASACK shall not be construed as a withdrawal from the contract unless REPASACK states this in writing or REPASACK has seized the goods. Even after taking back the object of purchase, REPASACK shall be entitled to utilise them. The proceeds from their utilisation shall be credited towards the customer's liabilities to REPASACK minus appropriate utilization costs.
2. Goods subject to retention of title may not be pledged to third parties or used as collateral security before payment in full of the secured claims. The contracting party shall notify REPASACK immediately in writing in the event of seizure or other interventions by third parties involving the object of purchase. Insofar as the third party is not in a position to reimburse REPASACK for the judicial and extra-judicial costs of proceedings to be reimbursed under section 771 of the German Code of Civil Proceedings or section 805 of the German Code of Civil Proceedings, the contracting party shall be liable for the damages incurred by REPASACK in this respect.
3. The contracting party shall be entitled to resell the object of purchase in the ordinary course of business. However, the contracting party now assigns to REPASACK all claims equal to the amount of the final invoice including value added tax that the onward sale entitles it to against its buyers or third parties regardless of whether the object of purchase has been resold without or after processing. For the purposes of this paragraph, the term "onward sale" shall also be considered to encompass the use of the object of purchase for the performance of works contracts. The contracting party shall remain entitled to collect payment of this claim even after assignment. REPASACK's authority to collect payment of this claim itself shall remain unaffected. However, REPASACK undertakes to refrain from collecting payment of this claim as long as the contracting party duly fulfils its payment obligations to REPASACK, in particular as no long as no application for the opening of insolvency proceedings has been filed against the contracting party's assets and payments have not been stopped. In the event that one of the circumstances mentioned in sentence 4 arises, REPASACK can demand that the contracting party immediately notifies REPASACK of the assigned claims and their debtors, provides all of the information necessary for collection, hands over the associated documents and notifies the contracting party's debtors of the assignment.
4. Processing or reorganisation of objects of purchase by the contracting party shall always be undertaken for REPASACK as the manufacturer without any liabilities arising for REPASACK. Where the object of purchase is processed together with other objects not belonging to REPASACK, REPASACK shall acquire joint ownership of the new object(s) in the same proportion as the ratio of the value of the object of purchase to those of the other processed objects at the time of processing. The rules outlined in paragraphs 1 to 3 shall apply accordingly to object(s) originating during processing.
5. In the event that the object of purchase is mixed inseparably with other objects not belonging to REPASACK, REPASACK shall acquire joint ownership of the new object(s) in the same proportion as the ratio of the value of the object of purchase to the other processed objects at the time of mixing. Where the objects are mixed in a way that the contracting party's object of purchase is to be regarded as the main object, it shall be deemed agreed that the contracting party assigns joint ownership pro rata to REPASACK. The contracting party shall thus retain sole or joint ownership acquired on REPASACK's behalf.
6. The contracting party shall also assign as a security the claims accruing to it against a third party, for instance, from the combination of the object of purchase with a property.
7. REPASACK undertakes to release the securities to which it is entitled at the contracting party's request insofar as the value that can be realised with the securities exceeds the claims being secured by more than 10%. The choice of the securities to be released shall rest with REPASACK.

Section 10: Rights of refusal to perform, retention, offset

The contracting party cannot reject its services and delivery on account of any possible counterclaims, retain its services or delivery or declare offset unless REPASACK has explicitly acknowledged these counterclaims in writing or they are legally effective.

Section 11: Intra-group netting

1. The contracting party shall agree to claims that REPASACK and other ALBA Group companies (see point 5 below) acquire against it accruing to all ALBA Group companies as joint and several creditors. These claims can thus be offset against liabilities of each ALBA Group company against the contracting party.

2. Any claims against ALBA Group companies by the contracting party beyond point 1 can be offset against claims by ALBA Group companies against other companies in the group to which the contracting party belongs.
3. The aforementioned provisions shall also apply if cash payments on the one hand or payment by bill of exchange on the other has been agreed and if the mutual claims have different payment dates, settlement being undertaken in each case as per the value date.
4. The contracting party shall waive contention of our provision of the claims to be charged in the event of a majority of claims (German Civil Code section 396, paragraph 1, sentence 2).
5. The ALBA Group companies are all companies affiliated to ALBA Group plc & Co. KG in terms of § 15 of the German Stock Corporation Act (AktG), a list of which may be requested from REPASACK.

Section 12: Legal succession / Subcontractors

1. REPASACK is also entitled to assign its claims arising from the business relationship to a third party.
2. REPASACK is entitled to have its services rendered entirely or in part by suitable subcontractors. References to REPASACK in this general terms and conditions likewise refer to these third parties correspondingly.

Section 13: Confidentiality

1. The contracting party is obliged to treat as confidential all commercial and technical information that is not otherwise known and may become known to them during the business relationship between REPASACK and the contracting party.
2. The contracting party shall only advertise the joint business relationship after having gained prior written consent from REPASACK.

Section 14: Place of jurisdiction, place of performance, applicable law and language

1. Wiesbaden shall be the place of jurisdiction and performance for all rights and duties arising from and/or in connection with this contract as well as for any future disputes between the parties. Notwithstanding the provisions of sentence 1, REPASACK shall be entitled to make claims against the contracting party before the contracting party's courts of the general and specific place of jurisdiction.
2. The law of the Federal Republic of Germany shall apply exclusively. The United Nations Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods (CISG) shall not apply.
3. The contract and business language shall be German.

Section 15: Severance clause

The validity of these terms and conditions shall not otherwise be affected if one or several provisions of these terms and conditions are or become void, unenforceable or unworkable. The parties shall undertake to replace unenforceable or unworkable provisions in these terms and conditions with provisions that correspond as closely as possible to the commercial objective pursued by this contract from the time at which the provision becomes unenforceable. The provisions pursuant to sections 1 and 2 shall apply accordingly if these terms and conditions contain a loophole or if a loophole in these terms and conditions should arise at a later date.

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