

# Cumdente GmbH

## General terms

**General terms and conditions, terms of delivery and payment of Cumdente GmbH**  
Paul-Ehrlich-Straße 11 · D-72076 Tübingen · [www.cumdente.com](http://www.cumdente.com)

### General provisions

All our services and deliveries shall be subject solely to the following provisions. These provisions shall come into force with our written confirmation of the order and apply to the entire business relationship with our customers.

Any differing or conflicting terms or conditions are expressly rejected; this shall apply even if the purchaser is not advised of the terms and conditions again before performance.

### Application

The terms and conditions set up below shall apply also to all transactions in the future again, provided that we have communicated them to the respective supplier in the course of a previously confirmed order.

### Offer and delivery

**Offer:** Our offers are always without engagement. Reasonable deviations in terms of technology and design from the presentation given in prospectus and written documents by Cumdente and modifications of model, design and material in the course of ongoing technological development are reserved. Orders placed shall be deemed accepted if we do not object within 4 weeks after receipt of the order.

**Delivery time:** Agreed delivery dates shall be deemed met if the goods to be delivered have been delivered to the carrier on the agreed date of delivery. The delivery period shall be extended appropriately if circumstances beyond our control should arise (force majeure). Partial deliveries shall be permissible.

**Supply problems:** If our timely performance of the contract should be hampered by problems in procurement, production or delivery affecting us or any of our suppliers, e.g. energy shortages, transport problems, strikes, lockouts, then the delivery period will be extended accordingly. The customer may rescind the contract only after having set, in writing, a reasonable grace period. The rescission must be in writing, if we should fail to fulfil the contract within the grace period. If any supply problems should render performance of the contract partly or completely impossible, we will be released from our obligation to deliver. In case of supply problems and inability to deliver, we will notify the customer immediately.

**Damages:** Any indemnity claims arising from delay or non-performance shall be excluded unless we should be found guilty of intention or gross negligence.

**Right of retention:** If the customer is in arrears for payment of an earlier delivery, we shall be entitled to withhold deliveries without being obliged to compensate for any damage whatsoever incurred thereby.

**Transport / Transfer of risk:** All deliveries shall be ex works at the cost and risk of the client, unless other arrangements have been made. Insurance of the items against transport damage or other risks will be taken out only upon the explicit request and at the expense of the customer. The risk shall pass to the purchaser as soon as the goods leave our warehouse. All shipments, including any returns, shall travel at the customer's risk. Packaging will be done according to professional and commercial usage.

### Retention of title

**Conditional retention of title:** The goods shall remain our property until all claims from our business relationship with the customer, including future claims, have been settled. This shall include conditional claims as well. Processing: In the case of processing of the retained goods or their combination with other goods which do not belong to us, as defined in §§ 947 and 950 BGB, we shall be entitled to an ownership share in the new goods commensurate to the sales price billed to the purchaser, including VAT.

**Extended retention of title:** The purchaser shall keep the goods for us free of charge. The purchaser may sell any goods subject to retention of title in the ordinary course of business, but only against immediate payment or with continued retention of the property rights; he shall not be entitled to any other acts of disposal, in particular not to security assignment and pledging.

**Assignment:** The Supplier hereby assigns, of his receivables from the resale of the goods which are subject to right of retention, the amount and all rights pertaining thereto which correspond to our invoice price including VAT.

**Collection of outstanding debts:** The purchaser shall be entitled, until revocation, to collect the receivables assigned to us. Any assignment or pledge of these receivables shall be permissible only with our written consent. In the event that on the side of the purchaser there should arise any circumstances which do not justify the further granting of terms of payment, the

purchaser shall notify, upon our request, the debtors of the assignment in writing, and provide us with all relevant information and documents. To this end, the purchaser shall grant us access to his relevant documents, if required.

**Information:** In case of any of the circumstances mentioned in the preceding paragraph, the purchaser shall grant us access to the goods which are subject to the right of retention and still in his possession, send us a detailed list of the goods, separate the goods and return them to us. The purchaser shall be obliged to notify us if any third party should seize the goods which are subject to the right of retention or receivables assigned to us, and support us in every way in the intervention.

**Release:** If the value of this security exceeds the amount of our claim by more than 20 %, we will insofar release the security at our discretion and the purchaser's request.

**Costs:** The cost of meeting the aforesaid obligation to cooperate in the prosecution of all rights arising from retention of title and for all expenses made for the maintenance and storage of the goods shall be borne by the purchaser.

### Rights in case of defects

Requirement to make a complaint in respect of a defect immediately on receipt of the goods: The purchaser must examine the delivery for obvious defects immediately upon receipt, and notify us without delay if there should be any. Measurement and / or test records provided by us shall not exempt the purchaser from the obligation to control the goods upon receipt and to complain in due time either. Non-obvious defects must be reported in writing within 5 days of their discovery.

**Subsequent delivery:** In case of any defective shipment which we are responsible for, we will effect subsequent delivery free of fee. If an attempt at subsequent delivery has failed twice, the customer may rescind the contract.

**Liability:** If any defects found do not fall within our scope of responsibility, any liability for defects shall be excluded. Liability for defects shall expire in any event if the purchaser or a third party modifies or damages any of the components, especially if he removes or defaces serial numbers, type designations or similar identifications, and in case of a breach of the warranty conditions. Our liability for damages shall be limited to the order volume. Apart from that, any claims exceeding replacement of the rejected shipment, such as claims for consequential damages and the like, shall be excluded unless we should be found guilty of intention or gross negligence. These disclaimers of liability shall not apply to claims based on the German product liability law (Produkthaftungsgesetz). If during the examination for defects no case of liability for defects should be found, we shall be entitled to demand compensation for all expenses made.

**Term:** The term of liability for defects shall be one year from the transfer of risk. Any liability for defects in second-hand goods shall be excluded.

### Warranty (defects of the purchased item)

In case of any reasonably demonstrated defect we will effect supplementary performance, at our own discretion, either by professional removal of the defect (repair) or by replacement to be effected as quickly as possible. In case of insignificant reduction of the value or usefulness, this right shall not apply. We reserve the right to have the supplementary performance effected by a third party. If supplementary performance should fail, the holder shall be entitled to rescind the contract according to § 323 of the German Civil Code or to reduce the purchase price in accordance with § 441 of the German Civil Code. If we opt for removing the defect, the repair shall not be deemed failed until after the second unsuccessful attempt, unless the nature of the case or the defect should imply otherwise. The warranty period shall be one year after delivery of the product. This term shall not apply in case of fraudulent misrepresentation or if and insofar as any particular quality should have been guaranteed.

As far as any materials supplied by us have, due to their natural quality or composition, an expiry date which is earlier than one year after delivery, all claims based on defects in any of these materials shall also lapse on the date of expiry, unless the materials were processed before the date of expiry. We shall be held liable for damages only under the aforementioned conditions and to the above-mentioned amount. Defects due to faulty materials and accessories provided by the purchaser shall not be at our expense. Any working documents handed over to us that appear defective may therefore be returned, after consultation and coordination with the purchaser, prior to processing. For the storage of any materials or accessories provided by the purchaser, we shall be liable with the same diligence that we devote to our own affairs. Our recommendations concerning applications, regardless of whether they are given orally, in writing or by way of practical instruction, are based on our own experience and experiments and can therefore be regarded only as guidelines and not as guarantees or assurances. Our products are subject to continuously ongoing development. Therefore we reserve the right to make changes in structure, composition and properties without previous notice.

#### **Right of Revocation:**

The customer may revoke the contract in writing (e.g. by letter, fax, e-mail) or by returning the goods within two weeks without giving reasons. The term begins upon receipt of the goods. The deadline for revocation shall be deemed kept if the revocation or the goods are sent in good time. The revocation shall be addressed to Cumdente GmbH, Paul-Ehrlich-Str. 11, D-72076 Tübingen, or by email to [info@Cumdente.de](mailto:info@Cumdente.de). This right to revocation shall not apply to contracts for the supply of goods which Cumdente has made on the basis of customer specifications; or which were clearly tailored to the personal needs of the individual customer; or whose quality renders them unsuitable for returning. The aforesaid right to revocation shall not apply either if the goods ordered by the customer are to be used for his own commercial or independent professional activity.

#### **Consequences of revocation**

In case of an effective revocation, the performances mutually received and emoluments taken (e.g. interest) shall be returned. The purchase contract shall be voided after the return of the goods, and Cumdente will refund any payments already received within 14 days by bank transfer to the customer's account. Any obligations to refund payments must be met by the customer within 30 days after sending his revocation. If the customer cannot return the received performance in whole or in part or can return it only in deteriorated condition, he must provide appropriate compensation for the value. In the examination of goods this shall not apply if the deterioration of the goods is due exclusively to the examination, as it would have been possible to the customer e.g. in a retail store. Apart from that, the customer can avoid the obligation to compensation by not using the goods as if they were his property and avoiding anything which might impair their value.

When sending back a shipment whose order value amounts to a total of up to € 40.-, the customer shall bear the costs of the return if the delivered goods correspond to the order. Otherwise, the return shall be free of cost for the customer. The right to revocation of the contract shall exist independently of any warranty claims if the goods are defective. In case of a defect covered by warranty, the customer shall have the right, in accordance with the legal provisions, to demand supplementary performance, to rescind the contract or to reduce the purchase price.

#### **Prices**

Invoicing shall be based on the delivery prices valid on the day of delivery, unless any special agreement has been concluded. Any additional work and materials required will be charged at cost unless agreed otherwise. If in case of call or standard orders only a part of the agreed amount is bought during the stipulated period, we shall be entitled, at our discretion, either to bill for the portion delivered the price valid for this batch size, or to ship and bill the uncalled amount. All prices are ex works plus VAT excluding packaging, transport, insurance and other incidental expenses.

#### **IP rights**

Any intellectual property rights (including copyrights and ancillary and related rights, trademark rights, design and patent rights and supplementary protection) shall exclusively remain with Cumdente. Regarding the execution of orders according to the customer's instructions, Cumdente shall assume no responsibility that the work and delivery performed under the contract do not infringe any proprietary rights of third parties. In this context Cumdente shall not be under any obligation to check, prior to performance, for possible infringement of any proprietary rights of third parties. In the event of any infringement of proprietary rights of third parties, the customer shall indemnify and hold harmless Cumdente from and against any compensation claims or lawsuits.

#### **Payments**

The client may set off or exercise a right of retention only with an undisputed or legally established claim. Invoices shall be due for immediate payment without any deduction upon receipt. Acceptance of cheques shall be at our discretion and only on account of payment. They shall be credited only with the usual reservations. The purchaser may set off or exercise the right of retention only if the counter-claim has been established judicially or is undisputed.

#### **Arrears**

If the customer fails to pay within 14 days of delivery of the goods and receipt of the invoice, he shall be in arrears even without reminder. The following dunning fees will be charged: Second reminder € 4.-, third reminder € 8.-. In case of arrears, default interest at a rate of 8 % above the base rate of the European Central Bank shall be paid. This shall not exclude any further claims to damages for arrears.

#### **Privacy Policy**

We point out that personal data collected in the context of the business relationship may be processed as defined in the Data Protection Act / Regulation (DSGVO).

#### **Miscellaneous**

Any changes and modifications of these conditions as well as any ancillary agreements must be in writing. This also applies to this clause demanding writing. The place of performance for our services, particularly for our deliveries, as well as the place of delivery as defined in the German Packaging Ordinance (Verpackungsverordnung) shall be Tübingen. The entire legal relationship between the customer and Cumdente shall be governed by the law of the Federal Republic of Germany. Tübingen shall be the exclusive venue for any disputes arising from the contractual relationship. If any of the contractual provisions should be found to be or become invalid or unenforceable, the remaining provisions shall remain unaffected. The Parties undertake to replace the invalid provision with one that comes as closely to the intended economic purpose of the invalid provision as possible.

#### **Copyright**

The copyright in all documents which are left to our customers in connection with the business relationship belongs solely to Cumdente GmbH. The customer is not permitted to reproduce the documents in whole or in part without the written consent of Cumdente GmbH and/or to make them accessible to third parties.

The information is provided as of Mai 2018.

You find the latest version under [www.cumdente.de](http://www.cumdente.de).