

Terms of Service

I. Scope

The customer agrees that the following listed sales, delivery and payment conditions apply to all sales and deliveries and in turn – to the provision of services by the company Symphonic Trading GmbH (hereinafter referred to as 'Symphonic' for short).

All - including future - deliveries and services from Symphonic, including proposals, consultations and other ancillary services, occur exclusively based on the following conditions, no matter whether these are referred to or not.

These general terms and conditions (hereinafter: "conditions" for short) apply in the version valid at the time of the contract conclusion to all business relationships, between Symphonic Trading GmbH (hereinafter "Symphonic") and its customers (hereinafter "customer"; Symphonic and buyer together "the contractual partners").

"Business relationships" in the sense of these conditions in particular include the commissioning of Symphonic by the buyer to deliver goods and/or to provide services, as well as the rental/provision of items (hereinafter "contractual object").

Contradictory general business conditions of the customer, even if these are designated as only valid in the order, are expressly refuted. These are also not considered as recognised even if they are not expressly objected to again after receipt. At the latest upon receipt of our goods and services, our sales, delivery and payment conditions are considered as accepted.

II. Contract conclusion

Offers from Symphonic are made exclusively in written form and based on these conditions. Verbal offers from Symphonic are not valid without a subsequent final written confirmation from Symphonic. All offers from Symphonic are always subject to change without notice and are non-binding.

After the customer receives the offer, the customer declares acceptance of Symphonic's offer ("contract") upon placing its order. This also applies to the case of an invitation to Symphonic by the customer to place an order. After contract conclusion, Symphonic sends the customer an order confirmation, that is only declarative in nature.

Changes, supplements or ancillary agreements to this agreement require the written confirmation by the authorised representatives of the company Symphonic to be valid and only apply to the individual case. Other employees are not authorised to agree to changes or ancillary agreements.

III. Prices and methods of payment

All prices apply ex works unless other agreements were made in writing. The specified prices do not include taxes, customs and insurance. The prices do not include the assembly and setup of the goods.

The invoice amounts from the invoice are considered as recognised in the given amount if they are not objected to within seven days, calculated from the receipt of the invoice.

Offsetting with counter claims by the customer is ruled out, unless these are undisputed or are legally determined. In the case of notices of defect, the customer is entitled to withhold payments only to the extent that is in a reasonable ratio to the identified defects and the resulting remediation costs.

Unless agreed otherwise and confirmed in writing by Symphonic, all invoices are due immediately and without any delay.

If the payment deadlines are exceeded, Symphonic is entitled to charge default interest to the customer starting from the first day of default of payment in the amount of 9.2 (nine point two) percentage points above the base interest rate of the Austrian national bank p.a., plus VAT and along with collection costs amounting to € 40 per collection. If the customer goes into default with its payment obligations, the customer is also obligated to reimburse ADA® for all reminder and collection expenses, costs for expedient prosecution, attorneys' fees and legal enforcement. The assertion of claims beyond this, such as compound interest, is not affected by this.

IV. Delivery and transfer of risk

In general, all deliveries occur ex works Incoterms 2020. If delivery of the goods was agreed in deviation from this, these delivery occurs "free kerbside", i.e. the kerbside of the delivery address specified by the customer is considered the delivery location and place of transfer of risk. In this case, the delivery is done by the freight carrier from the edge of the loading sill/platform gate. The customer must perform further transfer as well as the unpacking, setup and assembly.

In the event of deliveries with a goods value of less than EUR 1,000.00 (in words: one thousand euros), shipping costs in the amount of EUR 70.00 (in words: seventy euros), excluding a possible incurred VAT, are due – unless this was expressly agreed differently in writing.

According to the contract, a delivery delay occurs only if a binding delivery date was agreed and this has been exceeded by more than two weeks, despite a written deadline extension. No compensation for damages are granted for disadvantages from deadlines being missed, provided Symphonic did not contribute to this through intentional or grossly negligent behavior.

In case of subsequent changes and supplements, the delivery deadline is delayed accordingly. The customer is not entitled to any claims from such delays.

Except in cases where a delivery is agreed "free kerbside" by Symphonic itself, the shipping occurs at the recipient or buyer's risk. For damage and losses during transport, no liability is assumed in these cases.

If the acceptance of properly ordered goods does not occur, does not occur on time or incompletely, Symphonic is entitled to send the goods without acceptance or to store the goods at the buyer's expense and risk. The goods are considered as contractually delivered in every respect upon shipment or storage. Symphonic is also entitled - but not obligated - to withdraw from the contract after setting a grace period of 14 days and to resell the goods. In this case, the customer – regardless of the assertion of other claims – must pay a contractual penalty not subject to the judicial mitigation for the increased expense and possible reduced revenue, which amounts to 20% of the purchase price.

Symphonic's performance deadline is delayed by the duration of force majeure in the case of force majeure (see section VIII here).

V. Warranty and notice of defect

Symphonic guarantees that the subject matter of the contract complies with the conditions agreed to in the contract. All parts delivered by Symphonic are subject to the warranty, provided the defect is proven to date back to a circumstance that is proven to have occurred prior to acceptance or in the case of pure deliveries before the delivery. The customer must provide this proof. The presumption of defectiveness at the time of transfer is expressly ruled out.

The warranty period is 6 months. The duration of the warranty period starts with the start of acceptance of the contractual object (see IV.) or, in the case of pure deliveries, with the time of the transfer of risk (see IV.).

The customer's warranty claim is limited, under the exclusion of other claims - but subject to the regulations of section VII. - to the rectification of defects, namely to improve or replace faulty parts, including freight, disassembly and assembly. It does not extend to disadvantages incurred by the customer on the occasion of the rectification of defects. Symphonic is entitled at their own discretion to either improve the faulty part or to deliver a new one. In the latter case, Symphonic will take back the replaced part.

A warranty claim can only be made if the customer complies with the contractual conditions - especially the terms of payment.

The warranty does not relate to defects from faulty or negligent treatment of the contractual object by the customer, as well as interventions or any improper use of said object.

The customer must inspect the contractual object immediately upon receipt and, upon discovering a defect that is not minor, must immediately notify Symphonic of this in writing, specifying the defect. All customer claims from the defectiveness of the contractual object shall lapse if the customer does not provide this notification, if the customer performs the rectification of defects himself or attempts to perform the rectification of defects, or does not give Symphonic the opportunity and reasonable time for the seemingly necessary improvements and replacement deliveries.

Other customer claims from defects on the contractual object, in particular a claim to reimbursement of damage, that did not occur to the contractual object itself, are excluded, subject to the regulations of section VII.

The assertion of claims from mistakes, *laesio enormis* or due to the discontinuation of the basis of the transaction by the customer are excluded.

VI. Retention of title

Symphonic retains ownership of the delivered products, regardless of the earlier transfer of risk, until the entire purchase price, including costs and interest, is fully satisfied. If the delivered goods are combined or processed with another object and this voids the reservation of title, then the new item takes its place. The customer may resell the delivered goods and the objects resulting from their processing in the course of ordinary business. In this case, the customer's claims opposite third parties resulting from the resell shall be assigned to Symphonic now in the amount of the still unpaid invoice amounts by way of security, without this requiring a special assignment agreement in the individual case. However, the customer is required to provide the necessary files to secure disclosure upon request (book note, third party debtor notification, written declaration of assignment, etc.) and prove this to Symphonic within 3 days.

VII. Liability

Symphonic's liability for damage is restricted to intent and gross negligence in the context of the legal regulations. The liability for minor negligence is excluded. This restriction of liability does not apply to personal injury attributable to Symphonic.

All claims for damages by the customer shall lapse, if legally permissible, within 12 months from knowledge of the damage and damaging party. In this case, a reimbursement of consequential damage and mere financial losses, lost profit, savings that did not occur, lost interest and damage from third party claims against the customer is excluded.

Symphonic is not liable for changes or repair work improperly made to the contractual object by the customer or third party without the prior written approval by Symphonic.

Furthermore, Symphonic is not liable for damage to the contractual object, which occurred due to the following reasons:

Improper storage after the transfer of risk, faulty assembly by the customer or third party, faulty maintenance, natural wear, improper stress, etc., provided this is not the fault of Symphonic.

Any liability of Symphonic, regardless of the legal reason, is restricted to the amount of 75% of the net order value of the individual delivery causing the damage.

VIII. Cases of force majeure

“Force majeure” means when an event or circumstance occurs that prevents a party from fulfilling one or more of its contractual obligations from the contract, if and to the extent that the party affected by the hindrance proves that: (a) this hindrance is outside of their reasonable control; and (b) it was not reasonably foreseeable at the time of the contract conclusion; and (c) the effects of the hindrance could not have been reasonably avoided by the affected party or overcome.

Force majeure indemnifies the parties for the duration of its effect and to the extent of its effects from those obligations whose fulfilment was made impossible or unreasonable due to force majeure, especially compliance with delivery times. Force majeure exclusively refers to external events that were not foreseeable, unusual, that were not caused by the affected party and could not have been avoided with reasonable means. Cases of force majeure are in particular war, riots, natural disasters (e.g. earthquakes, landslides, floods), explosions, fire, dispossession, sabotage, epidemics, pandemics, plagues, trade restrictions, raw material shortages, illegal blockades, and official and judicial interventions that are not the fault of Symphonic.

If force majeure impedes the fulfilment of contractual obligations by Symphonic or the customer, then Symphonic is entitled to withdraw from the contract in part or in full, if the end of the previously indicated condition cannot be foreseen, but at least exists longer than a period of more than 30 (thirty) consecutive days without the customer being able to derive any legal claims, especially claims for damages.

IX. Property rights

All copyrights and industrial property rights to protectable inventions in the context of the legal relationship between Symphonic and the customer, in particular in the case of development services by Symphonic, are attributable to Symphonic. All copyrights and industrial property rights to offer documents, agreed services as well as execution documents, such as plans, sketches, other technical documents and samples, catalogues, brochures, figures and the like are also attributable to Symphonic. The customer is not permitted to modify, change or reproduce the agreed services or execution documents without Symphonic’s express prior consent.

X. Secrecy, data protection

Symphonic and the customer mutually agree, for an unlimited period of time (i.e. also beyond the time of contract termination) to keep strictly secret all information made accessible to them or otherwise made known to them as part of the contractual relationship (including the fact that a business relationship exists). Excepted from this is information (i) that is already publicly known, and (ii) information that must be disclosed to fulfil legal obligations (such as legal obligations to provide information, for example to financial authorities).

In the context of the contractual relationship, information about the object and content of the business of the other contractual partner (especially internal matters, such as personal data, any form of business and sales figures, other business and trade secrets, regardless of what type, and regardless of the type and manner the information is obtained), which this contractual partner transfers to the other contractual partner as part of the execution of this contract and that was not known publicly beforehand is considered to be "confidential information".

Symphonic and the customer mutually bear responsibility for protecting and keeping confidential the confidential information of the other contractual partner by using the same means that they use to protect their own confidential information. If the execution of the contract requires a disclosure of confidential information of the other contractual partner to employees, affiliated companies or advisers, the contractual partners shall mutually ensure that these persons are bound in advance by a duty to maintain confidentiality comparable to the duty to maintain confidentiality for their own company. If subcontractors or other third parties are used for contract fulfilment, the duty of confidentiality is to be transferred to the subcontractor or the other third parties.

The contractual partners mutually agree to comply with the applicable data protection laws (especially the GDPR) as well as all obligations resulting from them. The details of the processing of personal data at Symphonic can be found in the processing on Symphonic's homepage. Upon contract conclusion based on these conditions, the customer's express consent with respect to communicating data to companies affiliated with Symphonic or to third parties that are involved in processing the business and/or for group reporting is considered granted.

XI. Non-solicitation clause

The customer is prohibited from soliciting or hiring employees of Symphonic or an affiliated company of Symphonic. The non-solicitation clause applies without spatial and temporal restriction. The hiring prohibition applies spatially to Europe and temporally for one year after the complete fulfilment of the respective contract. In the case of a violation of this provision, the customer must pay Symphonic a conventional penalty that is independent of the proof of fault and damage, which amounts to one gross annual salary of the employee concerned as a minimum compensation. Claiming payment of the contractual penalty does not affect claims for damages from any other damage.

XII. Choice of law, place of jurisdiction and final provisions

All declarations, including a waiver of the written form requirement, require the written form to be effective, whereby declarations given by email or fax are fully legally valid.

Symphonic is entitled, without the customer's consent, to offset its claims against the customer, even if these are not legally established, or to pledge them and to pass on, cede or otherwise transfer other rights or obligations from this contract to third parties without the prior written consent of the customer. Austrian law exclusively applies to the exclusion of conflict rules and the UN Convention on Contracts for the International Sale of Goods. The competent court in Graz is agreed as the place of jurisdiction. If these conditions do not contain any regulation, the legal provisions at the time of the condition shall be unaffected. A contract concluded based on these conditions also remains binding in its other parts if individual provisions are ineffective. If a provision of these conditions or a contract concluded based on this is or becomes invalid, unenforceable or ineffective, this shall not affect the validity, enforceability and effectiveness of the other provisions and the ineffective provision is to be replaced by a provision that comes closest to the ineffective provision in its economic content. If the customer is a consumer in the sense of the provisions of the Consumer Protection Act and individual provisions of these general terms and conditions of business violate mandatory regulations of the Consumer Protection Act, the latter takes precedence. However, this does not affect the validity of the remaining provisions of these general terms and conditions of business.

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