

Delivery and Payment Terms and Conditions for poe GmbH & Co. KG

1.) General

poe GmbH & Co. KG sells and delivers goods exclusively according to the following terms and conditions, which apply to all current and future purchase agreements. Any conflicting purchasing conditions or other customer terms and conditions shall not apply even if the customer has established these as a basis. Any deviations and side agreements require a separate written agreement before the customer can place an order with *poe GmbH & Co. KG*. Should individual provisions of this contract be or become invalid or contain a loophole, the remaining provisions shall remain unaffected. A legally valid regulation that as closely as possible approximates the economic effect of the invalid provision shall be considered established in place of the invalid provision.

2.) Offers

Our offers are subject to change unless otherwise established in an individual written offer.

3.) Orders

Customer orders shall be binding for the customer for a period of 4 weeks. They can be canceled by the customer if *poe GmbH & Co. KG* does not confirm the order within 4 weeks. Any premature cancellation must be approved by us. The order shall only be binding for us if we have confirmed it in writing. The order confirmation or refusal to accept the order shall take place within 4 weeks after the order is received by *poe GmbH & Co. KG*. In the event of immediate delivery, the invoice shall simultaneously serve as order confirmation.

3.1.) Call-off orders

If all delivery dates have not been defined as of the time of the order confirmation for call-off orders, it is hereby agreed that the entire order volume shall be accepted by the customer at the latest within one year after the date of the order confirmation. Any agreements that deviate from this “call-off order provision” shall be confirmed by us in writing at the time of the order confirmation.

4.) Delivery period

The delivery period shall begin as of the 1st business day on which all commercial and technical requirements for executing the order have been fulfilled, any necessary permits have been granted, and we are in possession of the agreed installment or advance payment. If timely delivery is prevented due to operational or manufacturing disruptions, problems with material procurement, shortage of workers, strikes, riots, lockouts or cases of force majeure for us or a supplier, we cannot assume any liability for this. Such incidents shall entitle us to withdraw from the contract in whole or in part; damage compensation claims by the customer shall be excluded in this case. Changes requested by the customer may result in an extension of the delivery period. The delivery period is considered to be met if the delivery item has left our facility by the end of this period or readiness for delivery has been announced.

5.) Change in technical specifications

We reserve the right to make changes for the sake of technical progress without the need for separate notice.

6.) Prices, shipping, packaging and insurance

Unless otherwise agreed, our prices are net ex one of our warehouses in the Federal Republic of Germany, excluding packaging, shipping, fees, transport insurance and value added tax. Prices and invoicing shall be in €. In the event of any cost changes or if the term of a call-off order is exceeded due to reasons that are the customer’s responsibility, we reserve the right to adjust prices accordingly. The minimum net order value is €500.00. For small deliveries of orders under the minimum order value, pro-rated processing fees of €25.00 (plus VAT) shall be invoiced in addition to the packaging and shipping costs. The shipping method shall be chosen at the seller’s discretion and without guarantee of the cheapest shipping. Risk shall be transferred to the customer upon delivery. Partial deliveries are permissible. For special production runs, a quantity deviation of 3%, or at least 2 pieces, is permissible. If no written order is provided and for first-time customer deliveries, the delivery shall fundamentally be provided for cash on delivery. At the customer’s expense, we can obtain transport insurance. Packaging can be returned to us at the customer’s expense unless it is preferable to return cardboard marked with the RESY symbol to local material suppliers. The freight forwarder is not a distributor and shall therefore not be involved in return transports.

7.) Payment

We shall fundamentally provide deliveries upon prepayment or cash on delivery. Upon approval by our commercial credit insurance, we can at our discretion provide delivery on account. Our outstanding invoices are payable net cash in the full amount of the invoice, without any deductions, free of postage and charges, within 10 days of the invoice date. A discount shall be granted if this is explicitly mentioned when the invoice is issued. In the event of billing and payments in a foreign currency, we are entitled to request in place of the invoice amount the amount required to achieve a € amount based on the exchange rate on the date of the order confirmation. Payments are considered fulfilled when we have the full amount at our disposal. In the event that the payment deadline is missed, we will assess default interest at 8% over the respective base interest rate. The option of offsetting against claims and exercising a retention right is hereby excluded. We are entitled to review customers' creditworthiness using the generally available means. If any doubts about the customer's creditworthiness arise as a result or if there is any other significant deterioration in the business partner's asset situation, we are entitled to cancel the granted payment targets and provide any further deliveries only upon prepayment or cash on delivery. Furthermore, the granted payment targets shall lapse and all of our claims shall become payable immediately if the business partner is in default with a performance, fails to redeem checks or other rights, revokes any collection authorizations we have granted, or announces bankruptcy or settlement proceedings. In such cases, we are entitled to collect previously delivered goods at the customer's expense by way of security, even without exercising our cancellation right or setting a grace period.

8.) Reservation of title

The goods shall remain our property until the purchase price is paid in full. If payment is made by checks or bills of exchange that we have not explicitly accepted "in place of fulfillment," the reservation of title shall continue to apply until these are redeemed. If the goods subject to reservation of title are processed or reworked, we are considered the manufacturer in the sense of § 950 BGB [German Civil Code]. The customer is entitled to resell the goods subject to reservation of title in the course of ordinary business operations. Receivables from the resale shall be transferred to us, up to the amount of our total receivables from the business relationship. We can request at any time that the customer disclose the name of the buyer to us; we are entitled to inform the buyer of the transfer of receivables, and to collect the receivable directly from the buyer in the event of payment default. As long as the reservation of title applies, the customer is not entitled to pledge the items or transfer them by way of security.

8.1.) Documents

We reserve ownership rights and copyrights for software developments, cost proposals, drawings and other documents. Such documents may not be used for other purposes, reproduced or made accessible to third parties, and do not entitle the customer to reverse engineer individual components. The documents and samples that are part of our offers must be returned without further request.

8.2.) Settlement of costs for modifications, tools and developments

The costs charged to us by the customer for product modifications, tools, or developments of any kind shall not establish an ownership claim for the customer regarding the design of products, tools, or the intellectual property of the developments. Any deviating agreements must be made by us in writing at the time of the order confirmation.

9.) Inspection and complaint obligation

The customer must immediately inspect the goods and submit any complaints relating to material defects, incorrect deliveries and/or deviations in quantity to us (not to our sales agents / traveling salespeople) in writing immediately, but at the latest 3 days after receipt at the destination. In order to comply with this complaint period, it is sufficient to have sent a written complaint in a timely manner, including a precise description of the reported defect and the order number and/or delivery slip number. In the event that complaints or notifications of defects are not submitted in a timely manner, the delivery is considered to be approved in business dealings with merchants. In order for us to review the complaint, the customer must immediately send us the goods subject to the complaint and/or their components at our request, free of charge. Hidden defects must be reported as soon as they are discovered.

10.) Warranty, liability limitation and repairs

Liability for defects is only assumed to the extent that a replacement is provided by the supplier. Deviations from the warranty shall only apply if these are agreed in writing. An agreed warranty shall be limited to our choice of repair, replacement or replacement-part delivery, assigning our claims against the sub-supplier, or issuing a credit. In the event that two rectification attempts are unsuccessful, the customer is explicitly granted the right to reduce the price or terminate the agreement. Liability is excluded if the customer does not immediately report a defect in writing. The agreed warranty excludes defects in the case of interference in delivered components/devices by persons who were not authorized by us. In particular, we shall not be liable for damage resulting from faulty installation, operating errors, or external influences. An agreed warranty also shall not apply if the serial number of a delivered component/device is illegible or if corresponding security markings have been removed or destroyed. Parts that are subject to rapid wear due to their material characteristics or the type of use, e.g. indicator lamps, fuses, switches and push buttons, are excluded from the warranty, along with all damage caused by unusual stresses, such as electric arcs, radiation, electrostatic and electromagnetic interference, environmental influences and operating conditions, etc.

We are only obligated to fulfill the agreed warranty if the customer has fulfilled its own obligations, particularly by paying the purchase price. Damage compensation claims, particularly regarding compensation for consequential damage due to defects, regardless of their legal basis, are hereby excluded. In the event of a delay in delivery, the customer's only resulting right shall be to withdraw from the agreement, following an appropriate grace period. Further claims, particularly regarding compensation for consequential damage, are hereby excluded.

If a cost estimate is desired before repairs are performed, this must be explicitly stated. The costs of the estimate shall be reimbursed. Shipping and packaging costs shall be borne by the buyer. Reference is hereby made to Point 6 of the Terms and Conditions.

Returns of all kinds can only be accepted if the previously assigned return number is clearly indicated on the packaging. No unfree shipments of any kind will be accepted without our prior written consent.

11.) Data notice

We save personal and company-related data in the context of our business relationships, and process it within our company.

12.) Choice of law, place of fulfillment, place of jurisdiction

All contractual agreements are subject to German law.

The place of fulfillment and place of jurisdiction are the registered offices of *poe GmbH & Co. KG*.

Büren (Germany - NRW), August, 2018