

General Terms and Conditions (T&C)
Associates of Cape Cod Europe GmbH

1. Area of Application

- (a) These terms of sale and delivery are applicable to all business relations between the company Associates of Cape Cod Europe GmbH (hereafter ACC Europe) and its customers (hereafter Purchaser) for the sale and delivery of merchandise.
- (b) Provisions which are at variance with these terms and conditions are only valid if they are confirmed in writing by ACC Europe. This also applies if ACC Europe supplies services without reservation in the knowledge of the customer's conflicting or differing terms and conditions.
- (c) In case of uncertainty or dispute the German language version of these general terms and conditions prevails (see www.acciusa.de).

2. Use of Products

- (a) The delivered Products are to be kept and used in compliance with the Instructions for Use provided with each product.
- (b) ACC Europe Products are not provided for resale or transfer to any third party without the prior written consent of ACC Europe. In the absence of a valid distribution agreement from ACC Europe, no distribution, except for purposes of disposal, is allowed for any Products purchased from ACC Europe.

3. Prices, risk taking and Set-off

- (a) All our prices do not include the valid value added tax.
- (b) Our invoices are due to pay net without deduction within 30 days upon receipt of invoice.
- (c) Goods are assumed to be supplied "ex-works", unless the contract confirmation states different terms.
- (d) The customer is only entitled to set-off rights if his counter-claims are found to be legally valid, are undisputed or acknowledged by us. The customer is entitled to exert a right of retention if his counter-claim is based on the same contract relationship.

4. Liability for Defective Goods

- (a) Claims on the part of the customer in respect of defective goods require that the latter has properly fulfilled his obligation to examine and locate faults in accordance with § 377 HGB and complied with the information and direction of use concerning storage and usage.
- (b) If a defect is present in the purchased goods, ACC Europe is entitled to choose whether to correct the fault or supply a new, defect-free replacement. If ACC Europe opts to correct the fault, the company is obliged to bear all expenses required for the correction, especially transport, travel, work and material costs, unless such costs are increased by the fact that the purchased goods were transported to a different location than the original shipping location.
- (c) If the service fails, the customer is entitled at his own choice to demand withdrawal or diminution.
- (d) ACC Europe is liable in accordance with the statutory regulations if the customer makes valid claims for compensation due to deliberate or gross negligence, including deliberate or gross negligence on the part of our representatives or our assistants. If ACC Europe is not accused of deliberate infringement of contract, the liability to pay compensation is limited to the typical predictable damage.
- (e) ACC Europe is liable in accordance with the statutory regulations if a significant contract obligation is culpably infringed; in this case the liability to pay compensation is limited to the typical predictable damage.
- (f) The liability on account of culpable injury to life, limb or health is unaffected; this applies also to compulsory liability in accordance with product liability law.
- (g) Liability is excluded if the regulations are at variance with the foregoing.
- (h) The term of limitation for claims relating to defective goods is one year, commencing with the transfer of risk.
- (i) The term of limitation in the case of legal recourse in accordance with §§ 478, 479 BGB is unaffected; the period is five years, commencing on the date of delivery of the defective item.

5. Overall Liability

- (a) Liability to pay compensation in addition to that included under 4. is excluded regardless of the legal nature of the validated claim. This applies in particular to claims for reimbursement of debts at conclusion of contract, to other infringements of obligations, or to tort claims for compensation of property damage in accordance with § 823 BGB. Liability for wilful conduct is unaffected by this.
- (b) The limitation as described under (a) also applies if the customer demands reimbursement of needless expenses instead of making a claim for compensation.

6. Reservation of Title

- (a) ACC Europe reserves title to the purchased items until all payments relating to the contract have been received.
- (b) The customer is responsible for storing and handling the purchased items in compliance with the information and Instructions for Use; in particular he must take out adequate insurance for the purchased items to their new value at his own cost, covering damage caused by fire, water and theft. Where maintenance and inspection work is necessary, the customer must carry this out promptly at his own cost.
- (c) In the case of distraint or other intervention on the part of third parties, the customer must promptly inform ACC Europe of this circumstance, so that ACC Europe can petition the court in accordance with § 771 ZPO. If the third party is not in a position to refund the legal and extra-legal costs of a petition to ACC Europe in accordance with § 771 ZPO, the customer is liable for the shortfall.

7. Data Protection and Secrecy

- (a) You will find our detailed privacy policy on our homepage www.acciusa.de.

8. Jurisdiction and Domicile

- (a) If the customer is a "Kaufmann" in terms of HGB (German Commercial Code), then jurisdiction is the place of business of ACC Europe; however, ACC Europe is also entitled to make claims against the customer at the court of his place of residence.
- (b) The legal relationships of the parties shall be governed by German law with exclusion of the United Nations Convention of 11 April 1980 on Contracts for the International Sale of Goods.