

# General Terms and Conditions of part.solutions GmbH

## I. General

### 1. Definitions

- a. "Clients" are natural or legal persons who commission part.solutions GmbH to manufacture a product.
- b. "Suppliers" are natural or legal persons who manufacture and deliver products for part.solutions GmbH.

### 2. Scope

- a. These general terms and conditions are part of all contractual agreements between part.solutions GmbH and the client or the supplier, which deal with the ordering, delivery and manufacture of products.
- b. Mandatory legal regulations and express deviating agreements between part. solutions GmbH and the client or the supplier take precedence over these General Terms and Conditions.

### 3. Qualification of the contractual relationship

The contractual relationship between part.solutions GmbH and the client or the supplier represents a work contract within the meaning of Art. 363 ff. OR.

### 4. Jurisdiction and Choice of Law

Herisau (Switzerland) is the place of jurisdiction for all disputes. Swiss law is applicable.

## II. Order

### 1. Inquiry

- a. part.solutions GmbH accepts inquiries from clients that are transmitted via the website <https://part.solutions> or by other means.
- b. In the next step part.solutions GmbH offers the client the requested product at a certain price. The client then has the option of accepting or rejecting the offer. Unless expressly stated otherwise, the offer is valid for a maximum of 30 days. The client must accept the offer in writing. If the client accepts the offer of part.solutions GmbH, the contract shall be deemed concluded. If the client does not respond within this period, the contract shall not be deemed to have been concluded.
- c. part.solutions GmbH is entitled to revoke an offer without any consequences for part.solutions GmbH, provided that the revocation is received by the client before acceptance of the offer. This right of revocation applies despite the expressly noted period of validity in accordance with para. II 1 lit. b or another agreed period of validity of the offer.
- d. part.solutions GmbH does not check whether the requested product can be used for the planned purposes in the design intended by the client.
- e. If the manufacture of the requested product violates a legal prohibition, the contract between part. solutions GmbH and the client is partially void, so that the client has to reimburse the costs already incurred, but his claim to delivery of the already manufactured products lapses.

### 2. Production of the requested part or product

part.solutions GmbH is entitled to have the commissioned work carried out by another suitable company without having to inform the client in advance. This does not require the client's consent.

### 3. Withdrawal by client

If the client makes use of his right of withdrawal in accordance with Article 377 CO, he must fully compensate part.solutions GmbH for the work already carried out by it or its subcontractors or suppliers. In particular, the client must also compensate part.solutions GmbH for materials already ordered specifically for him and expenses not included in the price.

## III. Delivery to the client

### 1. General

- a. Information on delivery times and dates is based on estimates and is therefore not binding.
- b. The products to be delivered shall be deemed to have been delivered when they are handed over to the carrier properly packaged. The transport to the client takes place at the expense and risk of the client, even if the transport is carried out by part.solutions GmbH or its forwarding company.
- c. If delivery “ex works” is expressly agreed, the products to be delivered shall be deemed to have been delivered as soon as they are handed over to the client or his forwarding company on the premises of part.solutions GmbH or at another location determined by part.solutions GmbH. If a date for handover is agreed and the client does not take over the products to be delivered on time, they shall nevertheless be deemed to have been delivered.
- d. If the products to be delivered are delivered in partial deliveries, the respective partial deliveries shall be deemed to have been delivered if they have been handed over in accordance with points a and b.

### 2. Bearing the risks

- a. part.solutions GmbH does not bear the risk of loss before the product’s delivery if this was caused by force majeure, third-party fault or fault of the client. The client must fully remunerate part.solutions GmbH despite the loss of the products to be delivered due to the aforementioned circumstances. In this case, part.solutions GmbH is released from the obligation to perform.
- b. If the client is in default of acceptance, he bears the risk of destruction, regardless of who is responsible. The client must remunerate part.solutions GmbH in full. part.solutions GmbH is exempt from the obligation to perform.

### 3. Delays

- a. part.solutions GmbH is not responsible for delays in delivery due to force majeure and due to events which make delivery considerably more difficult or impossible for part.solutions GmbH or its suppliers and subcontractors (e.g. war and exceptional situations, strikes, lockouts, riots, official orders, lack of raw materials, illnesses, etc.). In these cases, it is not in default even with binding deadlines and dates and may postpone the delivery for the duration of the hindrance plus a reasonable start-up time. This also applies if such circumstances occur after part.solutions GmbH is in default. part.solutions GmbH also has the option of withdrawing from the contract in whole or in part. If part.solutions GmbH withdraws from the contract, it is only obliged to repay payments already made to the exclusion of other claims of the client.
- b. If delays in delivery are caused by a supplier of part.solutions GmbH, part.solutions GmbH shall inform the client of the delay. part.solutions GmbH may postpone the delivery for the duration of the delay plus a reasonable start-up time.

In such a case, part.solutions GmbH is not in default even with binding deadlines and dates.

c. If part.solutions GmbH is in default with the delivery, the client is obliged to set part.solutions GmbH a subsequent reasonable deadline for fulfilment. Article 108 of the Swiss Code of Obligations does not apply. If part.solutions GmbH is also in default after expiry of the grace period, the client is entitled to compensation for the damage caused by the delay. However, the client may not waive the delivery and withdraw from the contract, unless he reimburses part.solutions GmbH for the work and costs performed up to that point.

d. If part.solutions GmbH is in default, it is not liable for coincidence (see Article 103 paragraph 1 of the Swiss Code of Obligations).

## **IV. Payment**

### **1. Terms of payment**

a. part.solutions GmbH creates an invoice in which it lists the payment dates and conditions. The client is obliged to pay the invoice amount without deduction and free of charge for part.solutions GmbH.

b. The invoice amount must be paid by the date stated on the invoice. If there is no date on the invoice, the amount must be paid within 30 days of receipt of the invoice at the latest.

c. Complaints about items listed on the invoice must be made in writing and within 14 days of receipt of the invoice.

d. Payments shall only be deemed to have been made upon receipt by part.solutions GmbH.

### **2. Default of payment**

a. If the payment date is exceeded by the client, interest at 6% will be charged from the due date, subject to the assertion of further rights and without a written reminder.

b. This does not affect the claims of part.solutions GmbH in the event of default of payment in accordance with Art. 107 ff. BGB. OR. The claims also exist if there are other changes in the economic circumstances of the client that indicate his lack of ability to pay.

c. If the client does not pay the invoice within the deadline, part.solutions GmbH is entitled to charge the client a fee of CHF 40.00 per reminder.

### **3. Retention of title**

a. part.solutions GmbH retains title to the delivered products (reserved goods) until full payment of all claims to which it is entitled from the business relationship with the client.

b. If the retention of title exists, the client is obliged to adequately insure the reserved goods against loss, damage, and destruction. The client hereby authorizes part.solutions GmbH to assert claims arising from these insurances directly against the insurer.

## V. Defects

### 1. Inspection obligation

- a. The client must check the condition of the products after delivery (cf. Section III / 1.) immediately, but no later than within 5 working days after delivery. In the case of partial deliveries, each partial delivery must be checked immediately, but no later than 5 working days after delivery.
- b. If the client does not comply with his inspection obligation within the specified period, he loses his warranty claims and the products to be delivered shall be deemed approved.
- c. If the client expressly approves the delivered products, part.solutions GmbH is released from any material warranty, even if (open and secret) defects become known afterwards.

### 2. Notice of defects

- a. The client is obliged to notify part.solutions GmbH in writing or by e-mail of any defects immediately, but at the latest within 10 working days after delivery, and to give a detailed complaint. In the event of a possible notice of defects, the client must describe the claimed defects as precisely as possible.
- b. Rejected products are to be sent to part.solutions GmbH free of charge for assessment at its request.

### 3. Warranty rights

- a. If there is a defect, the client can only demand rectification. In this case, part.solutions GmbH can rectify the defect or make a replacement or new delivery. part.solutions GmbH shall be granted a reasonable period of time for this. part.solutions GmbH is entitled to three attempts at rectification or replacement / new delivery.
- b. part.solutions GmbH may, instead of exercising the right to rectification or replacement / new delivery, carry out the conversion or reduction.
- c. The costs caused by unjustified claims for defects shall be borne by the client.
- d. Claims of the client arising from material warranty (due to obvious and secret defects) shall become statute-barred one year after delivery of the products.

### 4. Exclusion of material warranty

- a. The client's claim to a material warranty shall lapse if the client has modified parts of the work affected by the defect or had them modified by third parties or has repaired them as a makeshift measure.
- b. The client's claim to a material warranty shall also lapse if he himself is responsible for the defects based on express instructions for execution or by delivery of defective material.

## VI. Liability

1. Subject to the exceptions listed below, all liability claims against part.solutions GmbH are excluded. The exclusion applies regardless of the type of legal basis on which the claim of the client or supplier is based. In particular, claims regarding consequential damages, avoidance of errors and non-contractual liability are excluded.

2. The exclusion of liability does not apply with regard to warranted or fraudulently concealed characteristics of the work. The exclusion of liability is also waived if a defect is completely outside what a buyer must reasonably expect and the defect significantly impairs the usability of the work.
3. Personal injury and claims under the Product Liability Act (PrHG) are also excluded from the exclusion of liability. If consumers within the meaning of Article 8 of the Federal Act on Unfair Competition (UWG) are affected, the exclusion of liability does not apply in the event of unlawful intent or gross negligence.
4. part.solutions GmbH is not liable for the fact that the product manufactured in accordance with the client's specifications can be used as intended by the client. Accordingly, part.solutions GmbH is also not liable for damages resulting from the fact that the product manufactured in accordance with the client's specifications is used as intended by the client and thereby causes damage.
5. part.solutions GmbH is not liable for damages resulting from the fact that a defective product is used within the scope of its intended purpose, unless the defect of the product was caused by part. solutions GmbH, its employees or suppliers through gross negligence or intent.
6. Information, advice and technical descriptions given in writing, orally or by telephone are provided by part.solutions GmbH and its employees to the best of their knowledge and belief, but are non-binding and do not constitute assurances. Liability on the part of part.solutions GmbH is excluded.

## **VII. Offsetting and retention**

### **1. Retention**

- a. part.solutions GmbH has the right to retain the products to be delivered to the client until outstanding and due claims against the client (regardless of which contractual relationship they originate) have not been settled by the client.
- b. The client and the supplier may not retain due services to part.solutions GmbH.

### **2. Offsetting**

- a. part.solutions GmbH has the right to offset claims against the client or the supplier (regardless of the contractual relationship from which they originate) with counterclaims.
- b. The client and the supplier may only offset such claims against part.solutions GmbH with counterclaims that have been expressly acknowledged by part.solutions GmbH or have been legally established.

## **VIII. Veröffentlichungspolitik**

part.solutions GmbH reserves the right to publish photographic recordings of products to be delivered on its websites and presences in the social networks without the prior consent of the client, if there are no copyright or trademark claims of third parties to these recordings and the trademarks on the product as well as its application or function are not clearly recognizable.

## **IX. Data protection**

The client or supplier accepts that the data collected in the context of the conclusion of the contract will be processed, used and, if necessary, passed on to commissioned service partners in Switzerland and abroad for the purpose of fulfilling the contract. In all other respects, the data protection declaration on the website of part.solutions GmbH (<https://part.solutions/>) applies.

## **X. Assignment of claims**

Claims of part.solutions GmbH arising from the contractual relationship may be assigned by part.solutions GmbH to a third party (assignment) without the consent of the client or the supplier being required. Claims of the client or the supplier against part.solutions GmbH may not be assigned.

## **XI. Confidentiality**

The clients and suppliers undertake to treat all information they receive from part.solutions GmbH before or during the execution of the contract confidentially, even beyond the end of the contract. Cost estimates, drawings, and similar documents as well as contents of these documents may not be made accessible or communicated to third parties. If the client or supplier violates the duty of confidentiality, he must pay part.solutions GmbH a contractual penalty of CHF 10,000.00.

## **XII. Special conditions for the contractual relationship with the suppliers of part.solutions GmbH**

### **1. Delivery**

- a. Before delivery the supplier shall bear the risk of the product's destruction, even if this was caused by force majeure or third-party fault. part.solutions GmbH does not have to remunerate the supplier in the event of loss of the products to be delivered. In this case, the supplier is not released from the obligation to perform.
- b. If part.solutions GmbH is in default of acceptance, it shall only bear the risk of destruction if it is responsible for this. The supplier is not released from the obligation to perform.
- c. If the supplier is in default with the delivery, part.solutions GmbH shall be entitled to the rights pursuant to Article 107 et seq. of the Swiss Code of Obligations, in particular it may also withdraw from the contract and demand compensation for the damage resulting from the non-performance. These rights are not limited to the right of rectification.
- d. If the supplier is in default, he is liable for coincidence (according to Article 103 para. 1 CO).

### **2. Defects**

If there is a defect, part.solutions GmbH is entitled to all warranty rights in accordance with Article 368 of the Swiss Code of Obligations (rectification, rescission, reduction).

### **3. Payment**

part.solutions GmbH has the right to withhold payments to the suppliers until open and due deliveries (regardless of which contractual relationship they originate) have been fulfilled by the supplier.

### **4. Liability**

a. The supplier is liable for damages resulting from the fact that a defective product was used within the scope of its intended purpose. He is liable for fault and negligence. The supplier is liable for actions of auxiliary persons as well as for his own actions.

b. A general exclusion of liability in the terms and conditions of the supplier is hereby not recognized.

### **XIII. Exclusive validity**

The above-mentioned General Terms and Conditions apply exclusively in the version valid at the time of conclusion of the contract. Deviating terms and conditions of the clients or suppliers are hereby not recognized in their entirety and therefore do not apply. A general non-recognition of these General Terms and Conditions shall also not apply.

### **XIV. Severability clause**

Should individual provisions of these General Terms and Conditions be invalid or unenforceable, the remaining provisions shall remain unchanged. In the event of the invalidity or unenforceability of a provision, the contractual relationship shall be based on a provision that comes closest to the original provision in its economic objective.

### **XV. Deviations from the General Terms and Conditions**

The above-mentioned General Terms and Conditions can only be deviated from by means of a written agreement.

part.solutions GmbH, Herisau, march 2020