

# General Terms and Conditions

superwind GmbH  
General terms and conditions for private customers  
(Version of May 2004)

## 1. Application

These General Terms and Conditions in their applicable version at the time of the respective conclusion of a contract shall apply to all claims of both parties arising from and in connection with the conclusion of a catalogue-based mail order business contract between the customer and superwind GmbH.

## 2. Contractual Parties

superwind GmbH shall enter into agreements with customers who

- a) are natural persons having the unlimited legal competence to contract and being at least 18 years old,
- b) are partnerships, solely consisting of natural persons having the unlimited legal competence to contract and being at least 18 years old as well as with
- c) legal entities

## 3. Subject Matter of the Contract

superwind GmbH shall deliver the goods ordered by the Customer or render the service after having accepted the offer. If superwind GmbH realizes belatedly that there is an error e.g. in the specifications of a product, a price or the availability, superwind GmbH shall immediately inform the Customer. The latter shall then be entitled to acknowledge the order again in accordance with the modified conditions. Otherwise, superwind GmbH is entitled to rescind the contract. Should the customer withdraw from the contract, superwind GmbH is obliged to credit any deposits and/or advance payments to the customer's account immediately, or to repay the amount by cheque or transfer if so requested.

## 4. Conclusion of the Contract/Right to Rescind the Contract

4.1 The contract shall come into existence when superwind GmbH accepts the customer's order. The customer waives the right to a declaration of acceptance in accordance with § 151, par. 1 BGB (German Civil Code). The customer shall be informed of the conclusion of the contract either by means of a confirmation from superwind GmbH, or at the latest when delivery of the goods ordered has been effected, the offer has been made or when the service required has been rendered. If the customer places an order via the Internet, superwind GmbH shall immediately confirm receipt of the order by electronic post.

4.2 Because of the customer's legal right of withdrawal, the placing of an order and the acceptance of the same by superwind GmbH shall initially cause a provisionally effective contractual relationship to come into being. The customer may revoke his contractual declaration within 14 days without giving a reason. This withdrawal may be made in writing (e.g. letter, fax, e-mail) or by returning the object purchased. This time limit begins when the customer receives the goods, however no earlier than the time at which this information is received. The timely dispatch of the withdrawal or of the goods is deemed to be sufficient evidence that the withdrawal deadline has been observed. The withdrawal shall be sent to:

superwind GmbH  
Bonnstr. 18  
D-50321 Brühl, Germany  
Fax: +49-2232-577357

### 4.3 Consequences of withdrawal

In the case of an effective withdrawal, the goods and services received by both parties must be returned or refunded. If the customer is unable to return some or all of the goods received, or if the condition of the goods has deteriorated, the customer shall indemnify the seller if and insofar as this is necessary. This does not apply if the deterioration of the goods is solely the result of examination, such as the customer would have been able to make in a shop. Otherwise, the customer can avoid entering into an obligation to indemnify the seller by abstaining from using the goods as an owner would and by refraining from any activity which may decrease the value of the goods.

#### 4.4 Exclusion of the right of withdrawal

a) The right of withdrawal does not apply to for the following categories of goods:

- Goods which were manufactured in accordance with customer specifications or which are clearly tailored to meet the customer's personal needs;

b) Should a customer place an order with superwind GmbH for the following goods or categories of goods, the right of withdrawal is likewise excluded, as the nature of these goods renders them unsuitable for return:

- Batteries, accumulators, cables, lighting, semiconductors, hygiene articles, insofar as the seal or packaging has been opened;
- Piece goods, expendables
- Special orders placed by the customer, e.g. spare parts ordered especially for the customer, etc.

## 5. Availability

If superwind GmbH realizes after conclusion of the contract that the goods or services ordered are no longer available or cannot be delivered for legal reasons, superwind GmbH may either offer goods or services of a similar quality and price or rescind the contract. Payments which have already been received will be refunded to the Customer by superwind GmbH immediately after either party has rescinded the contract.

## 6. Delivery

6.1 superwind GmbH shall bear all risk of loss or damage to the goods while they are being transported to the customer's premises. superwind GmbH shall charge 0.85% of the order value for this service. Should the consignment be delivered incomplete or be damaged in transit, superwind GmbH requests that they will be informed within 24 hours. The customer is obliged to provide all information necessary for clarification of fact to the seller.

6.2 In case the customer does not fulfill his obligations according to par. 6.1 and the seller's insurance company therefore denies coverage, the seller's acceptance of transportation risk will be inapplicable.

## 7. Price, terms of payment

7.1 The prices indicated in the catalogue are final prices including value added tax applicable on the day of the invoice. If VAT is increased by law after publication of the catalogue, superwind GmbH is entitled to invoice the increased VAT rate.

7.2 The invoice shall provide the net price of the goods and the prices for additional services: Packing, consignment, 24-hours-service, insurance, VAT applicable on the day of the invoice etc.

7.3 Catalogue prices do not apply to orders placed on superwind GmbH's websites for private customers. Those prices indicated on the website are valid in such cases.

7.4 In individual cases, superwind GmbH reserves the right to exclude certain terms of payment and to effect deliveries only against advance payment, COD or payment on delivery. This is to safeguard against credit risks.

## 8. Reservation of Ownership

superwind GmbH retains ownership of all goods delivered to a Customer until the delivered goods have been paid definitely and in full. If superwind GmbH exchanges a product under warranty, the parties agree already today that ownership of such exchanged goods shall pass back to superwind GmbH or to the Customer when either the Customer returns the goods to superwind GmbH or when the Customer receives the exchanged goods from superwind GmbH.

## **9. Warranty**

- 9.1** superwind GmbH warrants that at the time of delivery, the goods' nature is according to what has been agreed upon or free of material faults, i.e. that they suit their intended use or suit their usual use and provide a nature, which is customary for similar products and which the seller may expect from the product in general and/or the announcement of superwind GmbH or the manufacturer.
- 9.2** On receiving the consignment, the customer shall examine the goods in order to ensure that they are complete and that there are no defects. This examination shall be effected as soon as possible, however no later than within two weeks of receipt. Should a loss or defect be ascertained, the customer shall immediately serve a notice of defect. In the case of hidden defects, the notice shall be served immediately after the hidden defect has been ascertained, however before the date on which the warranty expires.
- 9.3** The warranty period shall be a period of two years after the goods are delivered to the Customer.
- 9.4** In the case of defective goods, the customer is entitled to claim at his discretion either the removal of the defective part or delivery of a product which is free of defects, according to § 439 German Civil Code. superwind GmbH is entitled to refuse the kind of replacement chosen by the customer according to § 439, if the kind of replacement requires unreasonable expense. If a defect can not be repaired after two attempts, the customer shall be entitled to claim the delivery of a product which is free of defects or a price reduction or to rescind the contract, according to § 439 German Civil Code. The customer shall not be entitled to rescind the contract, if the defect is minor and immaterial.
- 9.5** Claims for damages due to defective products are excluded, unless superwind GmbH committed malicious silence with regard to a defect or guaranteed the nature of the goods or culpably caused damage to life, health or body.
- 9.6** Warranty claims presuppose that the defect has not been caused by misuse or overstraining. If a defect appears only later than 6 months after delivery, the Customer must furnish proof that the product was defective upon passage of risk. Otherwise, superwind GmbH is entitled to furnish proof that the product was free of defects at the time of delivery.

## **10. Liability**

- 10.1** superwind GmbH, its management and its employees are liable in cases of positive breach of obligation, culpa in contrahendo, delayed performance, subsequent impossibility of performance, tortious act as well as due to other legal reasons in cases of intent and gross negligence. Moreover, superwind GmbH is liable in the event of injury to life, limb and health and in cases of slight negligence. In case of culpable breach of contractual cardinal obligations (main contractual obligations) or fraud as well as in cases of claims for compensation under § 437 clause 2 German Civil Code, superwind GmbH is liable within the framework of legislation. Only in cases of a breach of cardinal obligations, the liability of employees of superwind GmbH is limited to typical, foreseeable damage. Consequential damages are excluded to that extent. In cases of delayed performance, the customer is entitled either to compensation in damages or to rescind the contract.
- 10.2** The extent of liability of superwind GmbH under the Law governing Product Liability remains unaffected.
- 10.3** The above-mentioned provisions (9 and 10) represent the entire extent of liability of superwind GmbH, its management and its employees. Further liability is excluded.

## **11. Applicable Law**

- 11.1** This legal relation between superwind GmbH and Customers as well as the respective Terms and Conditions shall be governed by German Law. The application of the UN-Agreement on Contracts on the International Purchase of Goods of 11th April 1988 is excluded.
- 11.2** The provisions of clause 10.1 leave binding provisions of the state's right, in which the Customer is resident, unaffected, if and as far as the Customer has entered into a purchase contract, which cannot be assigned to the Customer's professional or commercial activity (consumer contract) and if the Customer has taken all legal action in the state of his usual residence which is necessary for the conclusion of a purchase contract.

## **12. Miscellaneous**

- 12.1** The Customer is not entitled to set off or withhold any amount due to superwind, unless such claim is undisputed or determined by legally binding jurisdiction.
- 12.2** superwind GmbH's premises shall be the place of performance of payment. Concerning deliveries, either superwind GmbH or the place of consignment of the first consignor who acts on behalf of superwind GmbH shall be the place of performance.
- 12.3** If parts or complete individual provisions of this contract are not valid or if they lose their legal validity later, then this shall not affect the validity of the remaining contract. In this case, both parties undertake to replace the invalid provision by a valid one, which, as far as legally possible, comes closest to the economic purposes of the invalid provision, taking into account the interests of both parties which have been expressed in this contract. The same applies, if the contract shows a gap which was not intended by the parties.
- 12.4** The exclusive place of jurisdiction shall be Brühl or another legal place of jurisdiction at superwind GmbH's discretion, if the Customer is a businessman in the sense of the German Commercial Code or a corporation under public law.

## **13. Data protection**

- 13.1** Your address has been stored in our EDP system for purposes of rapid and correct processing. The data thus stored shall be treated in compliance with the regulations laid down in the federal data protection act and in the teleservice data legislation.
- 13.2** For the purpose of credit checking and monitoring creditworthiness, we carry out an exchange of data with other credit information agencies such as Schufa (the German credit protection association).
- 13.4** superwind GmbH shall not assess or pass on customer data beyond the scope regulated in par. 13.1 to 13.3.