

# adelmo general terms and conditions of sale and delivery



## 1. The adelmo system / general provisions:

1.1. adelmo is an online platform for the distribution of individually configurable stand-up pouches for commercial use. As a franchiser, adelmo operates the online platform for the purpose of initiating contracts based on the terms and conditions described and the scope of performance offered on it. The local adelmo partner selected via the platform (hereinafter referred to as the "partner") rather than adelmo itself becomes the customer's contracting partner. These general terms and conditions of sale and delivery apply exclusively for offers, order confirmations, deliveries and services between the customer and the partner, including those relating to future business transactions. Any differing terms and conditions are hereby explicitly not recognised, without any further objection being required in an individual case. Terms and conditions of the customer require our explicit written consent.

1.2. The following terminology applies in these general terms and conditions of sale and delivery: Terms and conditions, terms and conditions of delivery = these general terms and conditions of sale and delivery; customer = entrepreneurs in the meaning of Section 14 of the German Civil Code (*Bürgerliches Gesetzbuch – BGB*) which initiate or conclude a legal transaction with the partner via the adelmo platform; "we", "us", "our", "ours" = we as the user of the terms and conditions, including in favour of the partner; goods = goods, work or services to be provided on the basis of a contract initiated via the platform.

## 2. Offer/purchase orders:

2.1. Purchase orders of the customer only become binding once the partner has confirmed them in writing after the order in question has been entered. Offers placed via the platform are subject to confirmation and should be understood according to the terms and conditions stated in the confirmation of receipt of a purchase order. All specified prices should be understood as being subject to the addition of statutory VAT as of the time of the delivery / service. Order confirmations are issued subject to correct and timely delivery by the partner's own suppliers, unless the partner is responsible for the late delivery by the suppliers or their failure to make delivery.

2.2. The customer may not make changes to purchase orders once an order confirmation has been issued. Otherwise, all arrangements and additional agreements with the partner other than a purchase order require a written agreement.

2.3. We reserve the ownership title and copyrights to images, drawings, calculations, technical data sheets, formulations and other documents. Any disclosure to third parties requires our explicit written consent.

## 3. Delivery/service:

3.1. The delivery/service will be carried out in accordance with the confirmation of receipt of a purchase order. The fulfilment of the obligation to make delivery presupposes timely and correct fulfilment of the customer's obligations; in particular, the customer must provide via the platform, in good time, correctly and completely, the information and files necessary for the performance of the contract.

3.2. If the partner is to deliver the goods, it may choose the type of transportation and route according to its reasonable discretion. Shipping will be carried out in a manner which it deems economical, though without any guarantee of the most secure, lowest cost or fastest transportation. The transfer of risk ends upon handover to the customer, a person commissioned by it for that purpose or a specified storage location.

3.3. All deliveries shall be provided in packaging typically used in commercial trading, which will not be taken back unless provisions of law are opposed to this.

## 4. Time of the delivery/service:

4.1. Delivery periods shall begin upon receipt of the partner's order confirmation by the customer, but not before all details of the implementation of the order have been clarified and the customer has fulfilled all relevant requirements and provided all the required information.

4.2. Partial deliveries shall only be possible by arrangement with the partner.

4.3. The delivery/service period shall be extended appropriately in the event of unforeseeable delays due to events for which the partner is not responsible, particularly in the event of strikes, energy failures, traffic jams, pandemics, raw materials shortages or transport or logistics delays. The same applies if such events occur at sub-suppliers of the partner. In the event of delivery/service periods established with binding effect, the customer may only rescind the contract with respect to the partner, taking into account the above-mentioned reasonable extension, if the delivery/service period has been exceeded and the delivery/service has not been provided by the partner despite a reasonable additional time limit having been set. In such a situation, the customer shall only have the right to claim compensation for provable losses due to delay, and only if the partner is responsible for the delay due to gross negligence or willful misconduct.

4.4. In the event of a refusal of acceptance by the customer, after the ineffective lapse of an additional time limit of four business days the partner shall have the right to rescind the contract and demand compensation for losses, including any additional expenses. According to its choice, the partner shall have the right to otherwise dispose of the subject of the delivery or to make delivery to the buyer within a reasonable, extended, additional time limit, in which case the partner's entitlement to compensation for delay shall continue to exist.

4.5. The partner shall be liable in accordance with the provisions of law for any delay in making delivery that results from an intentional or grossly negligent breach of contract for which the partner is responsible. Any culpability of its representatives or vicarious agents shall be attributed to the partner. Insofar as the delay in making delivery does not result from an intentional breach of contract for which it is responsible, the partner's liability for compensation for losses shall be limited to the foreseeable, typically occurring direct losses and, as a maximum, to the amount of the net order value. It shall also be liable in accordance with the provisions of law insofar as the delay in making delivery for which it is responsible results from a culpable violation of a key contractual obligation, in which case the liability for compensation for losses shall also be limited to the foreseeable, typically occurring direct losses and, as a maximum, to the amount of the net order value.

## 5. Quality/inspection and notification obligations:

5.1. Quality descriptions, specifications, data sheets or other written information on the usability or quality/characteristics of the goods and/or services are non-binding. The customer is responsible for the fitness for purpose and use of the goods in conjunction with the products to be contained in them. Public statements, claims or advertisements by adelmo and the partner do not constitute information concerning quality/characteristics and/or information on the intended use. Immediately after the receipt of the goods/service the customer shall, through appropriate measures, for example incoming goods inspections based on representative samples/test runs, check that the delivered goods are correct with respect to quantity, completeness, quality/characteristics, lack of defects and other properties, in the meaning of Section 377 of the German Commercial Code (*Handelsgesetzbuch – HGB*), and are suitable for their intended use.

5.2. Any damage in transit must be recorded through a written factual report on the waybill/delivery note and reported to partner immediately after the receipt of the goods.

5.3. The manufacture of adelmo stand-up pouches, including printing, is carried out within reference values and tolerances being customary in the industry, about which the adelmo partner shall inform the customer at its request. Quantity deviations of up to 10% per order may not be the subject of a complaint.

## 6. Acceptance / complaints:

6.1. If a defect is identified, the customer must notify the partner to that effect promptly, and no later than within five business days. The same applies in the event of product or quantity discrepancies, as well as in the event of hidden defects, counting from the moment the defect is discovered within the warranty period.

## 7. Export control:

With regard to exports, the customer is responsible for compliance with German and European import/export control laws and customs laws and those applicable in the country of destination. Before exporting, the customer must obtain the necessary permits or other certificates and information (e.g. customs value, customs procedure, tariff numbers) at its own expense and – if necessary – provide them to the partner. Refusal to issue an export permit and/or certificate by the competent authorities shall not entitle the customer to return the goods or claim compensation for losses. They shall not lead to frustration of contract.

## 8. Events of force majeure:

Serious events such as events of force majeure, pandemics (such as the current COVID-19 pandemic), industrial disputes, civil unrest, military or terrorist conflicts (also outside the Federal Republic of Germany if they have indirect effects within Germany) or unforeseen supply shortages, which lead to unforeseeable consequences for the rendering of the performance shall release the parties from their performance obligations for the duration of the disruption and to the extent of its effects. They shall not result in automatic termination of the contract. The parties must notify each other about such an impediment and in good faith adjust their obligations according to the changed circumstances.

## 9. Warranty and liability:

9.1. Warranty rights of the customer presuppose that it has promptly fulfilled its inspection (section 5) and notification obligations (section 6). The warranty only covers defects that negatively deviate from our quality descriptions, specifications and data sheets in connection with the qualification carried out by the user under original conditions within the limits of the intended use.

9.2. The elimination of defects that have arisen due to normal wear and tear, external influences or operating errors is excluded from the warranty, unless mandatory statutory claims exist, for example based on product liability or an independent guarantee commitment. The same applies in the event of defects attributable to components or goods parted out by a party other than the partner. We provide no guarantee that the delivered products are fit for the specific intended uses of the customer or can be deployed and used, without malfunctions or impairments, with other products of the customer produced by the same manufacturer or other manufacturers.

9.3. Unless otherwise agreed, the warranty period amounts to one year from the handover of the goods/provision of the service.

9.4. In the event of defects in the goods, the partner shall first fulfill the warranty through repairs or replacement delivery (supplementary performance), according to its choice.

9.5. If the supplementary performance fails, in principle the customer may demand a price reduction or rescission, according to its choice. In the event of merely minor breaches of contract, particularly in the event of minor defects, the customer shall not be entitled to a rescission right. If the customer justifiably rescinds the contract following a failed supplementary performance, it shall not be additionally entitled to compensation for losses due to the defect. If the customer asserts a claim for compensation for losses following a failed supplementary performance, the goods shall remain at the customer, provided that this is reasonable for it. The compensation for losses shall be limited to the difference between the purchase price and the value of the defective item. This shall not apply if a breach of contract has been declared or intentionally. The right under Section 445a BGB does not apply to items which are unused but not new or to new items which the customer has modified, processed or otherwise altered.

## 10. Exclusion and limitation of liability:

10.1. Claims of the customer due to a defect shall expire by time limitation one year from the transfer of risk. This does not apply if at least gross culpability can be ascribed to the partner or in the event of injury to the body or health for which it is responsible or in the event of loss of life of the customer, its vicarious agents or third parties – in these cases the statutory time limitation periods apply.

10.2. If the partner, its vicarious agents or third parties commissioned by it breach insignificant contractual obligations due to minor negligence, they shall not be held liable for this.

10.3. Liability, irrespective of the legal basis, shall be excluded in the event of defects that occur due to external influences such as voltage fluctuations or improper installation, operation or use / maintenance, changes made to the product by the customer or third parties commissioned by it. The same applies for defects that occur due to normal wear and tear.

10.4. If the customer is entitled to a claim to compensation for losses in lieu of the performance, the partner's liability, including in connection with the supplementary performance, shall be limited to compensation for foreseeable, typically occurring losses. Any liability for consequential losses, particularly indirect losses such as lost profits or production downtime at the customer, is excluded. This also applies to claims for compensation for losses arising from culpability upon the conclusion of the contract, due to other breaches of obligation or due to a tortious claim to compensation for property damage in accordance with Section 823 BGB.

10.5. The above limitations of liability do not apply to claims of the customer based on product liability. Furthermore, the limitations of liability do not apply to physical injuries or damage to health attributable to the partner or in the event of loss of life of its vicarious agents or other third parties. The same applies in the event of breaches of key contractual obligations (cardinal obligations) due to gross negligence or willful misconduct. Any further liability than that described in Sections 9.1. to 9.4. is excluded, irrespective of the legal status of the asserted claim.

## 11. Payment terms

11.1. Exclusively the payment methods and terms offered via the adelmo platform and selected by the buyer upon placing an order are provided.

11.2. Discount deductions shall require that the partner grants its consent in writing.

11.3. After the lapse of the payment deadline, the customer shall automatically be deemed to be in default in payment of the amount due. The partner shall have to pay a penalty in the amount of 9% over the base interest rate; the partner reserves the right to claim further compensation for losses. Payments made by the customer shall first be credited to costs and interest and otherwise in accordance with Section 366 par. 2 BGB.

11.4. If the partner learns of circumstances which, based on commercial judgement, give rise to doubts with regard to the customer's creditworthiness, the partner will be able to declare all receivables stemming from the business relationship, including deferred receivables, to be due for immediate payment. In such a situation, the partner shall only have to carry out outstanding deliveries or services against prepayment or the provision of appropriate security.

## 12. Set off, right of retention, assignment:

The customer shall only have the right to set off counterclaims if they are undisputed, have been acknowledged by the partner or have been established with legally binding effect. The same applies for rights of retention. The partner shall have the right to assign all receivables arising from the business relationship with the customer to third parties.

## 13. Retention of ownership:

13.1. All goods delivered by the partner shall remain its property until all current, contingent or future receivables arising from the current business relationship with the customer have been settled. This shall also apply in the case that one or all accounts receivable from it are included in one account outstanding (current account) and any payments/offset against it.

13.2. The customer shall have the right to resell goods which have been delivered to it in the course of ordinary business operations or to further process them, as long as it does not default on payment with respect to the partner. In the event of resale, unless the goods are immediately paid for by the third-party buyer, goods which have been delivered to it shall remain subject to retention of ownership may only be sold by the customer subject to its own retention of ownership. Any other disposals, particularly pledging or assignment as security, are impermissible.

13.3. In the event of action of the customer in breach of contract, particularly in the event of a delay in making payment or a breach of an obligation referred to Section 11, the partner shall have the right to demand the surrender of the goods without this constituting a declaration of rescission of the contract, the right to which remains reserved.

13.4. The customer already now assigns all receivables, including security and ancillary rights, that arise for it with respect to the end customer or third parties due to or in connection with the resale of the goods. The customer is prohibited from concluding agreements with its customers which may in any way exclude or impair the partner's rights. In particular, it may not conclude any agreements which nullify the advance assignment of the receivables to the partner. The customer shall remain authorised to collect the receivables assigned to the partner until that authorisation is revoked. The partner shall refrain from advancing that collection authorisation as long as the customer properly fulfils its payment obligations. The partner has the right to request that the customer submit to it in writing the content and scope of the assigned receivables as well as the name and address of the debtors.

13.5. If the goods delivered by the partner are resold along with other items, particularly other goods subject to retention of title, where in an individual case the amounts attributable to the individual goods cannot be determined based on the invoice, the claim against the third party in the amount of the delivery price agreed between the partner and the customer shall be deemed assigned. If the goods are further processed by the customer or combined with other, third-party or own goods, this shall always be done for the partner as the manufacturer in the meaning of Section 950 BGB, without giving rising to any obligation for it. If the goods are processed or inseparably combined with other items that do not belong to the partner, the partner shall acquire a co-ownership title to the new item in the ratio of the value of our goods to the other processed or combined items at the time of the processing or combining. The customer shall safekeep the partner's property or jointly owned property free of charge.

13.6. The partner undertakes to release the security to which it is entitled at the customer's request insofar as the value of the security exceeds the receivables to be secured by more than 10%; the partner shall be responsible for selecting the security to be released. In the event of attachments or other interventions by third parties, the customer shall inform the third party of the partner's security rights, mark the goods being its property as such and also promptly notify the partner.

## 14. Intellectual property rights and copyrights:

14.1. If, due to infringement of intellectual property rights or copyrights (hereinafter referred to as protective rights) by goods delivered by the partner, a third party asserts legitimate claims against the customer with regard to their contractual use, the partner shall be liable with respect to the customer exclusively on the basis of the following terms and conditions:

14.2. The partner shall, according to its choice and at its expense, either acquire a usage right for the goods, alter the goods such that the protective right is not

infringed or replace the goods. If this not possible on reasonable terms, the partner shall take back the goods against repayment of the purchase price.

14.3. The above obligations shall only exist if the customer promptly informs the partner in writing of the claims asserted by the third party, does not acknowledge an infringement of the protective rights and reserves all defence measures and settlement negotiations for it. If the customer ceases to use the product in order to reduce losses or for other reasons, it must inform the third party that the cessation of use does not constitute an acknowledgement of an infringement of protective rights.

14.4. Claims of the customer due to infringements of protective rights are excluded insofar as it is responsible for the infringement thereof. The same applies insofar as the infringements of protective rights are caused by special requirements of the customer (e.g. text or image requirements) or an application being unforeseeable for the partner or as a result of the goods being altered by the customer or used by it together with products which were not delivered by the partner.

14.5. Any further claims against the partner are excluded. This exclusion of liability shall not apply in the event of mandatory liability, for example under the German Product Liability Act (*Produkthaftungsgesetz*) or in cases of willful misconduct, gross negligence or a breach of key contractual obligations. Furthermore, the customer's right to rescind the contract subject to the above-mentioned conditions shall continue to exist.

## 15. Governing law / place of performance / place of jurisdiction / additional arrangements

15.1. All legal relationships between the customer and the partner, including future ones, are exclusively subject to the laws of the Federal Republic of Germany, to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

15.2. The place of performance is the partner's registered office.

15.3. Insofar as the customer is a trader, a legal person under public law or a public law special fund, the exclusive place of jurisdiction for all disputes is the partner's registered office. However, the partner shall have the right to take legal action against the customer at its general place of jurisdiction.

15.4. In the event that individual provisions hereof are ineffective, the other provisions shall remain fully effective. Any ineffective provisions shall be replaced by provisions which, within the limits of what is legally possible, come closest to what was intended in economic terms based on the meaning and purpose of the ineffective clause.

15.5. The contractual relationship is subject to written form. Any amendments or additions to the contractual arrangements or these terms and conditions of sale and delivery must be in writing in order to be effective. The same applies for deviations from the requirement of written form.

As at 02/2023