

## General Terms and Conditions of Sale

### **1. General**

(a) The General Terms and Conditions of Sales set forth herein shall exclusively apply to all supplies and services for our customers subject to any express individual agreement. The customer's terms and conditions or acknowledgements are hereby expressly repudiated without raising any further objection in the case concerned. All deviations, changes or supplements shall be subject to our express approval.

(b) These Terms and Conditions shall also apply to any future supplies and services in the version as applicable on the date of purchase order without the need of repeated sending of or reference to the same.

### **2. Conclusion of contract**

(a) Our offers are subject to confirmation. Brochures, advertising messages or any other information shall be considered non-binding.

(b) The incoming purchase order by customer shall be deemed the binding offer for the conclusion of a contract.

(c) The contract is accepted by our order confirmation.

(d) Any oral or side agreement requires our express confirmation.

### **3. Prices, terms of payment, default**

(a) Our prices are to be understood ex works including packaging plus value added tax at the rate applicable at the time of delivery and service. For deliveries and services rendered longer than four months after contract conclusion we shall be entitled to apportion to the affected products price increases caused by third parties, in particular upstream suppliers that relate to material costs, currency fluctuations, energy costs etc.

(b) A postal delivery of the invoice is waived since all invoices are sent by us electronically as an email. The customer as recipient shall make sure that all electronic invoices can be properly forwarded to the email addresses indicated by customer. Any change of the email address shall be notified forthwith in text form (email, telefax).

(c) Unless agreed otherwise, the goods supplied by us shall be paid not later than fourteen (14) days from the date of invoice.

(d) Discount deductions shall be subject to our express consent.

(e) If the customer defaults payment of the purchase price, interest amounting to 9 percentage points above the base rate shall be paid for the period of such default. In addition a flat rate of € 40.00 shall be paid pursuant to Sect. 288 BGB (*German Civil Code*).

(f) If it turns out after contract conclusion that our entitlement to the purchase price is jeopardized due the customer's lack of solvency (e.g. application for opening insolvency proceedings), we shall be entitled to refuse performance and – after granting a respite if applicable – withdraw from contract (Sect. 321 BGB). For contracts involving the manufacture of non-substitutable goods (manufacture based on customer specification) we shall be entitled to declare withdrawal forthwith. The legal provision on the dispensability of setting a deadline shall remain unaffected.

### **4. Delivery, transfer of risk, acceptance and default in acceptance**

(a) The delivery dates or periods shall be determined manner as part of our order confirmation. The delivery dates indicated shall be understood as expected date of delivery ex works. Delivery periods shall commence on the date of receipt of our order confirmation by the customer but not before all details of order execution have been clarified and possible customers duties to cooperate, as may be defined in the order confirmation, have been fulfilled. The same shall apply to the observance of delivery

dates. Delivery and the transfer of risk shall be ex works. Unless agreed otherwise, the dispatch will be freight collect (EXW ex works Gera according to Incoterms 2010) with the dispatch routes and shipping means as well as forwarders and freight carriers being selected at our discretion. A transport insurance at customer's expense will be taken out for the goods to be dispatched unless customer expressly objects to it.

Returns shall be made at the risk and on the account of the customer unless there is a justified claim. If an acceptance has been agreed, it shall be decisive for the transfer of risk. As for the rest the provisions of the law on contracts for work and services shall apply accordingly to agreed acceptances. The handover or acceptance shall be deemed to have taken place if the customer delays in acceptance, fails to fulfil a duty to cooperate or our delivery delays for other reasons to be attributed to the customer. In such case we shall be entitled to claim compensation of damage arising from it including any extra cost (e.g. storage, expense allowances).

(b) We shall be entitled to make part deliveries if

- such part delivery is usable by the customer within the scope of the contractual purpose,

- the delivery of the residual delivery item is ensured, and

- no substantial extra effort and expense are incurred by the customer.

(c) We shall be entitled to render deliveries and services early and in part and invoice the same.

(d) Events of force majeure and other events not to be attributed to us, such as strikes, lockouts, business disruptions, actions by state authorities as well as lack of raw material and goods, shall entitle us to reasonably extend the delivery time or, if performance is challenged or becomes impossible due to said events, withdraw from contract in whole or in part. The same shall apply if our suppliers are affected by such events.

### **5. Dimensions, weights, quantities**

No complaint can be made about deviations in terms of dimensions, weights and quality that remain within the customary tolerances and are in line with the applicable DIN, CE and VDE regulations. Quantity deviations of up to 5% shall be tolerable.

### **6. Change of delivery items**

We reserve the right to change delivery items where necessary and appropriate in the course of further development provided such change is reasonable and the contractual usability of the delivery items is not affected. Provisions on related necessary price adjustments can be gathered from paragraph 3(a).

### **7. Export controls**

If a customer wishes to export the delivery item, it shall make sure that the German, European import, export control and customs legislation and those applicable in the country of destination are adhered to. Prior to export the customer shall obtain all necessary permits and other certificates at its own expense. The denial of a permit and/or certificate by the competent authorities shall not entitle the customer to return the delivery item to the GERA-IDENT GmbH or claim damages.

### **8. Retention of title**

(a) All items supplied by us shall remain our property until all current, conditional or future receivables from ongoing business relations with the customer have been settled. The same shall also apply if individual or all receivables were included by us in one running account (account current) and balanced. If payment is made by a bill of exchange retention of title shall last until the bill has been unconditionally honoured in full.

(b) The customer shall be entitled to resell and process the items delivered in the ordinary course of business as long as the customer does not default in payment towards us. In case of resale the items received by the customer under retention of title shall also be resold under retention of title if the delivery items are not paid forthwith by the third party purchaser. Other disposals, in particular any pledging or transfer by way of security shall be prohibited.

(c) In case customer's conduct is in breach of contract, in particular default in payment, we shall be entitled to withdraw from contract or request the surrender of the delivery items as security. The collection of the delivery items shall only be deemed a withdrawal if the same is explicitly declared by us.

(d) The customer shall immediately assign all claims including securities and collateral rights arising to him out of resale towards the end user or third parties irrespective of whether the items delivered by us under retention of title are resold unprocessed or after processing. The customer shall have no right to enter into agreements with its buyer that may exclude or affect our rights in any way. In particular no agreement shall be entered into that renders the advance assignment of claim void for us. The customer may collect the receivables assigned to us for its own account and in its own name as long as the authorization to do so is not revoked by us. Our right to do the collection of outstanding accounts ourselves shall not be affected by the aforementioned sentence. We will not assert claims ourselves and revoke the authorization to collect, however, as long as the customer fulfils its obligation to pay in a proper manner.

e) If the items delivered by us are resold together with other items, in particular together with other retained goods, the claim against the third party in the amount of the delivery price agreed between us and the customer shall be deemed assigned provided the amounts going on the individual delivery items cannot be determined from the invoice in a given case. If the delivery items are processed or mixed with other, foreign or own goods, it shall always be done for GERA-IDENT GmbH as manufacturer as defined by Sect. § 950 BGB without imposing an obligation on us. If our delivery items are processed or inseparably combined with items not owned by us, we shall be entitled to co-ownership of the new item at a value being in due proportion of our delivery item to the other processed or combined items at the time of processing or combining. The customer shall hold the property or co-owned property in safe custody for us. GERA-IDENT GmbH shall obtain co-ownership in the new items at a value being in due proportion to the other items combined, mixed or reshaped with the delivery items.

(f) If damages are due to us pursuant to Sect. 326 for example, as a result of non-performance, we shall be entitled to sell the collected retained goods on the open market or have them auctioned. All costs incurred by return and sale shall be borne by the customer.

(g) If the value of all securities available to us demonstrably exceeds the total amount of our receivables by more than 10% we shall be duty bound to release securities of our own choice at the customer's request. In case of attachment or any other interventions by third parties the customer shall inform the third party on our security interests, identify the delivery items owned by us accordingly and notify us without delay.

#### **9. Set-off/Assignment/Retention**

Any set-off of counterclaims shall only be permitted if the same have been recognized by declaratory judgment or have not been

contested. The raising of rights of retention shall be excluded. Any assignment of contractual rights by the customer shall be subject to our express consent.

#### **10. Non-disclosure**

The customer undertakes to keep confidential all information (e.g. technical, commercial documents, software programmes, samples) marked as confidential or similar that become known to the customer in the course of the business relationship with us. Such information shall be used for the intended purpose only and shall be treated and held in safe custody with the same care as is applied to own business secrets. The duty of secrecy shall survive the contractual relationship for a period of 36 months.

#### **11. Industrial property rights and copyright**

(a) In the event of justified claims against the customer for breach of an industrial property right or copyright through items delivered by us and used in conformity with the contract, we shall be liable towards the customer based on the conditions set out below:

i. At our option we will obtain at our expense a right of use for the delivery item, modify the delivery item so that the property right is no longer violated or exchange the delivery item. If this turns out to be impossible at reasonable conditions, we will take back the item and refund the purchase price.

ii. The duties cited above shall only apply if the customer gives immediate written notice of claims asserted by a third party, does not recognize such breach of property rights and reserves us all measures of defence and settlement negotiations. If the customer ceases using the product for mitigation or other reasons, it shall inform the third party that a cessation of use does not constitute the recognition of the breach of property rights.

(b) Claims by the customer for breach of property rights shall be excluded to the extent such breach is to be attributed to the customer. Claims shall also be excluded insofar as the breach of property rights was caused by special requirements of the customer, an application not foreseeable by us or because the delivery item was modified by the customer or used together with other than our products. Any further claims towards us shall be excluded. It shall not apply in cases of mandatory liability pursuant to the product liability law or deliberate action and coarse negligence, lack of guaranteed features or breach of any material contractual provisions.

#### **12. Warranty/Liability for defects**

(a) Prior to any use/processing/transfer the customer shall check by suitable measures, such as incoming inspections, for completeness and correctness. If a defect is found, the customer shall notify the same in written form within a period of maximum 10 working days. Thereafter the delivery item shall be considered approved. Defects that cannot be detected within said period despite careful examination shall be notified in written form immediately after detection.

(b) The warranty period shall be 12 months after delivery. No warranty will be granted by GERA-IDENT GmbH for other than new, free and discounted delivery items.

(c) A warranty for normal wear shall be excluded. It also does not apply to damage caused by the customer or any third party after the risk transfer due to faulty or negligent treatment, excessive load, unsuitable equipment, chemical, electrochemical or electrical influences.

(e) No liability will be accepted for damage due to modification or processing of the delivery items or use of the items other than as intended for.

(f) We assume no responsibility whatsoever that the delivered items are fit for the intended purpose of the buyer or can be used or processed accordingly. It is instead the buyer's responsibility to test it prior to use or processing. Any defects of parts of the delivered items shall not entitle the buyer to reject the entire delivery.

(g) Warranty claims shall be due to our direct customers only and are not transferrable. Warranty shall only be granted for items delivered by us.

(h) In case of supplementary performance we may opt for rework or replacement. If supplementary performance fails after a reasonable period of time for reasons to be attributed to us, the customer may basically request at his own choice a reduction of the remuneration or the rescission of the contract (withdrawal). If a minor lack of conformity is concerned only, minor defects in particular, the customer shall have no right to withdraw. If the customer withdraws from contract after failed supplementary performance, he shall not be entitled to clean further compensation. Goods replaced by us shall become our property.

### **13. Liability**

(a) Unless appearing otherwise in these GTC including the following provisions, we shall be liable for any breach of contractual and non-contractual duties in conformity with the applicable statutory provisions.

(b) We shall be liable for damage caused by deliberate action or coarse negligence on whatever legal grounds. In the event of ordinary negligence we shall only be liable

- 1) for damage due to injury to life, body or health;
- 2) for damage due to breach of a material contractual obligation (obligation rendering possible the proper performance of the contract as such and the fulfilment of the same the contractual partner normally relies and may rely upon). In such case our liability shall be limited, however, to the compensation of foreseeable, typical damage.

(c) The limitation of liability resulting from (b) shall not apply if and when we fraudulently concealed a defect or gave a guarantee for the quality of the delivery items. The same shall apply to claims of the customer according to the product liability act.

### **14. Choice of law/Jurisdiction/Miscellaneous**

(a) German law shall apply to all business relations including any future business between the customer and GERA-IDENT GmbH excluding the UN Sales Convention and the Hague Convention relating to a Uniform Law on the International Sale of Goods.

(b) If and when the customer is a merchant as defined by the German Commercial Code, legal person under public law or special fund under public law, Gera shall be the sole place of jurisdiction for all disputes. GERA-IDENT GmbH shall be entitled, however, to file an action against the customer at its general place of jurisdiction.

(c) Should a provision of these Terms and Conditions be or become invalid or unenforceable, the validity of the other provisions shall not be affected by it.

(d) The contractual relationship shall be subject to written form. Changes and supplements of the contract and these Terms and Conditions of Sale have to be confirmed by us in written form.