



## **CEFEG GmbH, Chemnitz, Germany** **GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY**

As at June 2016

### **1. Scope of application**

- 1.1. Our deliveries are governed solely by these terms and conditions of sale and delivery. Provisions set by the customer that conflict with or deviate from these are not valid unless expressly agreed by us in writing. Our terms and conditions of sale and delivery also apply in cases where we provide the product or service subject to no reservation, in the knowledge that the customer's terms and conditions are contrary to or deviate from our terms and conditions. The absence of communication on our part shall always constitute rejection of customer conditions.
- 1.2. These terms and conditions of sale and delivery also apply to future deliveries and services, even if they are not expressly agreed for the specific case in question.

### **2. Offers and conclusion of contract**

- 2.1 Orders and contracts, and any amendments to the same, are only binding if they are issued or confirmed in writing (Section 126b German Civil Code (BGB)).
- 2.2 Where a validity period is not expressly stated, quotes are subject to change and are non-binding. Customer orders constitute binding offers which is open to us to accept within one week by sending an order confirmation or delivering the goods.
- 2.3 Documents pertaining to offers, such as illustrations, drawings, weight specifications, are only approximate indications unless they are expressly designated as binding.
- 2.4 We reserve all proprietary rights and copyright to cost estimates, drawings, illustrations, calculations and other documents. This also applies to documents that are designated "confidential". Customers are required to obtain our express written consent before passing such documents on to third parties.

### **3. Prices and terms of payment**

- 3.1 Prices stated in orders are binding. Unless otherwise agreed, they are to be considered ex works Chemnitz and do not include packaging and shipping costs. Our prices do not include value added tax (VAT); this is shown separately on invoices and is charged at the applicable statutory rate for the invoice date.
- 3.2 Our prices are based on standard industry shipping arrangements and normal, unimpeded transport conditions. Additional costs arising from any impediment to shipping and/or transport conditions will be borne by the buyer, even where such costs derive from the nature of the goods.
- 3.3 In the event that more than four months elapse between the conclusion of the contract and the provision of the service in question and where the market price or our production costs have increased by the time such service is provided, we shall be entitled to increase the price as appropriate. Where the increased price is 20% or more above the price agreed, the customer shall have the right to withdraw from the contract. This right must be asserted immediately upon notification of the increased price.
- 3.4 All invoiced amounts shall be paid upon receipt of invoice at the latest within 30 days of delivery, and in the case of delivery ex works within 30 days of the goods being made available on our premises or their readiness for dispatch being notified. For non-cash payments, payment shall be deemed to have been made when we receive the amount in question.
- 3.5 Where customers default on payments, we shall be permitted to charge interest on arrears at a rate of 9 percentage points above the relevant base interest rate, without issuing any further reminder. This provision shall not prevent our right to claim further damages. Furthermore, we may, after notifying the customer in writing, suspend the fulfilment of our obligations until payment has been received.



- 3.6 In the event of circumstances subsequently arising or becoming known to us that may jeopardise our claim, we reserve the right to issue a written declaration requiring payment in advance or security in the amount of the invoice value of the delivery. If the customer does not provide advance payment or security within a reasonable period following the written request, we shall be entitled to withdraw from the contract without further notice.
- 3.7 The customer must check the correctness and completeness of statements of account, in particular balance confirmations, and all other settlements and notifications. Objections to statements of account should be raised in writing within one month of the invoice date; all other objections must be raised immediately. The absence of timely objections shall be taken as approval.
- 3.8 The customer may only offset undisputed or legally established claims against our payment claims, and shall not be entitled to exercise rights of retention against claims for payment by us - including in respect of notices of defects - unless these result from the same contractual relationship.

#### 4. Delivery and assumption of risk

- 4.1 Goods will be packaged as is customary for the sector and charged for at cost price. Cardboard packaging is not returnable. Pallets and containers will be treated as on loan and exchanged on delivery for pallets and containers that are equally serviceable.
- 4.2 All deliveries will be at the expense and risk of the customer. In the absence of any specific instructions, we will ship to the designated address at our best discretion, without assuming any liability for the use of the cheapest means of transportation. In selecting the forwarding agent or carrier, we are only liable for intent or gross negligence.
- 4.3 Risk transfers to the customer at the latest upon dispatch of the items purchased, and in the case of delivery ex works upon the goods being made available on our premises or their readiness for dispatch being notified; this also applies to partial deliveries or where we have taken charge of other services, e.g. shipping costs or delivery and installation. At the request of the customer and at the customer's expense, we will insure the shipment against theft, breakage, transport, fire and water damage and other insurable risks.

#### 5. Delivery times and dates

- 5.1 Where orders are placed on the basis of deadlines for delivery, delivery periods begin with the dispatch of the order confirmation, but not before the customer has provided the necessary documents, approvals, and releases or before an agreed down payment has been received. In the case of delivery ex works, the delivery deadline shall be deemed to have been met if we have made the goods available on our premises or provided notification of their readiness for dispatch before the expiry of the deadline.
- 5.2 Even where a reminder is sufficient or is not required by law, we will only be in default after the expiry of a reasonable grace period specified in writing. In the event of labour disputes, in particular strikes and lockouts, or unforeseen impediments beyond our sphere of influence, agreed delivery times will be extended by the duration of the delay. This will also apply in the event of such circumstances arising at subcontractors or suppliers. Furthermore, we will not be responsible for the above-mentioned circumstances where they arise during a pre-existing delay. We will inform the customer of the start and finish of such impediments as early as possible.
- 5.3 If dispatch is delayed at the customer's request, the customer will be charged for any storage costs incurred, beginning one month after notification of their readiness for dispatch; where goods are stored at our works, the cost will be at least 0.5% of the invoice amount for each month. Notwithstanding this, however, we are entitled, after expiry without effect of a reasonable period, to dispose otherwise of the item and to deliver it to the customer within a reasonably extended period.
- 5.4 Partial deliveries are permitted, unless the customer declines them or they are manifestly not reasonable.



- 5.5 Production-related larger or smaller deliveries within a margin of up to 10% of the quantity ordered are permitted, in respect both of total and of partial quantities. The total price will change in accordance with the size of the delivery.

## 6. Retention of title

- 6.1 We retain title to the delivered goods until all claims arising from the delivery contract have been paid in full. The retention of title also applies to the claims we have against the customer resulting from our ongoing business relationship (extended retention of title).
- 6.2 The processing, modification and remodelling of goods by the customer is always undertaken in our name and on our behalf. In this case, the customer's contingent right to the goods extends to the remodelled item. If the goods are processed with other items that do not belong to us, we acquire co-ownership of the new item in proportion to the objective value of our goods compared with the other items processed. The same shall apply to intermixtures. To the extent that intermixture is undertaken such that the customer's item is considered the main item, it shall be taken as agreed that the customer shall transfer co-ownership on a pro rata basis and shall safeguard the resulting sole or joint ownership on our behalf. In order to secure our claims against the customer, the customer shall also assign to us such claims as accrue to them against third parties through the connection of the conditional goods with a property; we hereby accept such assignment.
- 6.3 The customer is entitled to resell conditional goods in the course of normal business transactions and hereby assigns to us all outstanding payments arising from the resale of conditional goods. Assignment shall apply irrespective of whether the goods have been resold without or after processing. The customer shall continue to be authorised to collect amounts due after assignment. Our authority to collect amounts due ourselves shall remain unaffected. However, we will not collect payments as long as the customer meets their payment obligations, is not in default of payment and in particular has filed no application to open insolvency proceedings and has not ceased payment.
- 6.4 We undertake to release the securities to which we are entitled at the request of the customer if their value exceeds the amounts to be secured by more than 20%.
- 6.5 In the event that the customer's actions are breaches the contract, in particular in respect of default on payment despite an extended grace period, we shall be entitled to recover the goods and the customer shall be obligated to return them. The statutory provisions on waiving deadlines shall remain unaffected. The assertion of retention of title and our recovery of goods shall not be deemed to constitute withdrawal from the contract.
- 6.6 The customer may neither pledge goods subject to retention of title nor assign them as security. In the event of any seizure, confiscation or other dispositions by a third party, the customer must inform us immediately, handing over the documents necessary for an intervention, and notifying the third party of the retention of title. If the third party is not in a position to reimburse us for the judicial and extrajudicial costs of an intervention, the customer shall be liable for any loss incurred by us.

## 7. Warranty

- 7.1 The customer's warranty rights presuppose that the customer has properly fulfilled their obligations to inspect the goods and give notice of defects in accordance with Section 377 of the German Commercial Code (HGB). Without prejudice to any prior statutory duty of notification, complaints relating to quantity, weight or quality must be reported to us in writing immediately as they arise, and no later than one week after receipt of the consignment.
- 7.2 If, in spite of the exercise of all due care, the delivered goods are found to be defective at the time of the transfer of risk and defects are notified in a timely manner, we will either repair or replace the goods at our discretion. We should always be given the opportunity to fulfil our obligations within a reasonable period. Rejected goods must be returned to us immediately upon request; where complaints are justified, the cost of transport will be borne by us. The customer shall only have the right to remedy a defect themselves, or have it remedied by a third party, in urgent cases relating to operational safety, in order to prevent disproportionately extensive damage or if we are in default in remedying the defect; in this event we must be notified immediately.



- 7.3 In the event that we fail to remedy the situation, the customer may - without prejudice to any claims for damages - withdraw from the contract or reduce the remuneration. Rectification or replacement delivery shall be deemed to have failed after three unsuccessful attempts to correct the defect.
- 7.4 Customer claims for expenses incurred as a result of the need to provide remedy, in particular transport, travel, labour and materials costs, shall be excluded to the extent that such expenses increase because the item delivered by us has subsequently been transferred to a location other than the customer's place of business. Where our expenses increase for this reason, the customer shall be obligated to reimburse us.
- 7.5 We do not grant guarantees in the legal sense of the term, nor should any assurances given by us be considered guarantees.
- 7.6 Warranty claims shall lapse after 12 months. This shall not apply where longer periods are prescribed by law, in particular in respect of defects in buildings or goods that have been used in their customary manner in a building and have then caused a defect. This provision shall also not apply to damages resulting from harm to life, body or health, or in the event of intent or gross negligence, or any other breach of material contractual obligations (namely obligations whose fulfilment is a prerequisite for the proper execution of the contract and on the fulfilment of which the customer regularly relies and may reasonably rely) caused by our legal representatives or executive employees.

## 8. Manufacturing equipment

- 8.1 Unless otherwise agreed, tools, moulds, devices and machines produced by us for the purpose of manufacturing the goods ordered by the customer remain our property, even where the customer has provided remuneration for them. Under no circumstances will ownership of manufacturing equipment be transferred to the customer prior to full payment. Even where ownership is transferred to the customer, we shall always retain the associated specialist expertise.
- 8.2 The costs of maintenance and appropriate storage will be borne by us until the manufacturing equipment reaches the end of its practical life. The costs of any modifications required, repairs relating to wear or usage and of the replacement of worn parts shall be borne by the customer.
- 8.3 We only use contract-related manufacturing equipment owned by the customer for orders placed by the customer. We keep such equipment for up to five years after the final delivery to the customer and do not use it in the service of third parties during this period. If the customer wishes to extend this period, they must reimburse storage costs.

## 9. Liability for damages

- 9.1 Unless otherwise stated below, all other and further claims against us on the part of the customer are excluded. This applies in particular to claims for damages arising from breaches of duties under the contract, and from unlawful acts. We are not liable for damage to anything other than the delivered goods themselves. In particular, we are not liable for loss of profit or other financial losses incurred by the customer.
- 9.2 The foregoing limitations on liability do not apply in the event of intent, gross negligence on the part of our legal representatives or executive staff or culpable breach of material contractual obligations, namely obligations whose fulfilment is a prerequisite for the proper execution of the contract and on the fulfilment of which the customer regularly relies and may reasonably rely. In the event of culpable breach of material contractual obligations, we shall only be liable - with the exception of cases of intent or gross negligence on the part of our legal representatives or executives - for damage that is reasonably foreseeable in connection with contracts of this type.
- 9.3 Furthermore, the limitation of liability does not apply to defects in the delivered goods where liability for personal injury or damage to property in private use is covered by the Product Liability Act. It also does not apply in the event of harm to life, body or health or in the absence of guaranteed characteristics, if and to the extent that the guarantee had the specific purpose of protecting the customer against damage to items or persons other than the delivered goods themselves.
- 9.4 Insofar as our liability for damages is excluded or limited, this also applies with regard to the personal liability for damages of our employees, workers, staff, representatives and vicarious agents.



## 10. Final provisions

- 10.1 Unless otherwise agreed, the place of performance and payment is our place of business.
- 10.2 The sole place of jurisdiction shall be the competent court for our place of business. However, we shall also be entitled to bring action against the customer before courts with jurisdiction over the customer's place of business.
- 10.3 The law of the Federal Republic of Germany shall apply.
- 10.4 Should any provision of these terms and conditions of sale and delivery be or become invalid or unenforceable, this shall not affect the validity of the remaining provisions. The same shall apply if any other contractual agreement is or becomes invalid or unenforceable. A provision that comes as close as possible to the economic and legal intent of the invalid or unenforceable provision shall be deemed to have been agreed to replace any other invalid or unenforceable contractual agreement.