

Terms and Conditions of Sale of GDG Gerätebau GmbH

for use in business relations with business enterprises, legal entities established under public law and separate trust funds created under public law

1. Scope of Application

- a) Our General Terms and Conditions of Sale ("Terms and Conditions") shall apply exclusively. General terms and conditions of business which conflict with or deviate from our Terms and Conditions shall only apply if and insofar as we have expressly consented to them in writing.
- b) Our Terms and Conditions shall also apply to all future business dealings with the Customer insofar as such dealings are of a related kind to the present.
- c) The content of contracts shall be governed by the written agreements. No other agreements have been made. Amendments or additions to contracts shall only be valid if confirmed by us in writing.

2. Offers, Offer Documents, Orders, Conclusion of Contracts

- a) Our offers are without engagement. The Customer's offers shall be deemed accepted if we have confirmed them in writing or effected delivery or performance.
- b) We retain title and copyright to all documents and such like, e.g. calculations, drawings, samples, documentations etc., furnished to the Customer in connection with an order. Such documents may not be used for any purposes other than those intended by the contract and may not be made accessible to any third party except with our express consent. They must be returned to us without delay, free house, if or when the contract is terminated or when their intended purpose under the contract has been fulfilled.
- c) Information and illustrations contained in brochures and catalogues are, as customary in the trade, approximate only except where they have been expressly designated by us as authoritative and binding.

3. Prices and Terms of Payment

- a) Unless agreed otherwise in writing, our prices are quoted ex works, exclusive of value added tax at the statutory rate and exclusive of packing, transport and insurance costs, all of which will be billed as separate items.
- b) Payment of the purchase price must be made to our account only. Cash discount may be taken only if a special written agreement has been made to that effect.
- c) Unless agreed otherwise, the purchase price is due and payable 30 days after billing. Interest will be charged on arrears at a rate of 8% p.a. above the base interest at the rate in force from time to time. We also reserve the right to claim for higher loss or damage caused by delay.
- d) Bills or cheques given by the Customer in payment will only be deemed payment when full value for the bill or cheque has been received by us. We shall have the right to demand security for deliveries made. In the event of any failure by the Customer to pay in accordance with the agreed terms, we shall have the right to refuse to make any further deliveries under contracts already concluded unless the Customer effects payment in advance.
- e) Except where fixed priced have been agreed, we reserve the right to make reasonable price changes reflecting changes in wage, material or delivery costs for deliveries scheduled to be made three months or more after conclusion of the contract.

4. Nature and Quality of the Goods

- a) Information on characteristics of the goods contained in our public utterances, e.g. catalogues, brochures, circular letters etc., shall only be deemed declarations of nature or quality if they have been made part of the contract. Public utterances of a third manufacturer or of his employees or agents shall only be deemed declarations on the nature or quality of the goods if they have been agreed in the contract or if we have adopted them as our own expressly and in writing in our public utterances.
- b) Until delivery is effected, we reserve the right to make technical modifications, and in particular improvements, within the scope customary in the trade, provided such modifications result in only immaterial changes to the nature or quality of the goods and are not unreasonably detrimental for the Customer.
- c) Information on the nature or quality and durability of the goods or service shall not be deemed as constituting any guarantee within the meaning of § 276 (1) BGB [German Civil Code] or warranty of properties or durability within the meaning of § 443 BGB unless we have expressly given such warranty in writing.

5. Delivery and Transfer of Risk

- a) Agreed dates, periods of time and deadlines must always be met. A delivery period shall begin as soon as a firm order has been placed and the complete technical documentation, including samples, as well as any contractually agreed down-payment have been received by us. The delivery period refers to completion or readiness for collection of the goods in our plant. It shall be reasonably extended in the case of occurrence of any unforeseeable, unusual events - including also in cases where it is not we ourselves but our supplier who is affected by such event - insofar as such event has significant influence on the completion or delivery of the item of sale. In the case of ex works sales, delivery periods and delivery dates shall be deemed met on timely notification of readiness for dispatch if the goods cannot be dispatched in good time through no fault of our own or of our supplier.
- b) The products are packed in the manner customary in the trade. Packing is billed as an additional item. Unless agreed otherwise, delivery is effected ex works, with no warranty for the cheapest mode of carriage. Otherwise, the goods are placed ready, with allowance for the usual times for loading and dispatch. Goods advised as being ready for dispatch must be collected without delay. Otherwise they will be placed in interim storage for the Customer's account and, after the setting of a final deadline by us, may be shipped by us in the manner of our choice.
- c) Should the Customer fall into delay with acceptance or culpably breach any other of his duties to assist, we shall have the right to claim compensation for any loss or damage sustained by us as a result, together with any additional costs incurred by us. This shall be without prejudice to our right to make further claims. If the foregoing preconditions are fulfilled, the risk of accidental loss or destruction or deterioration of the item of sale shall pass to the Customer at the time at which the latter falls into delay with acceptance or other duties.
- d) The risk shall pass to the Customer on delivery of the goods into the custody of the party commissioned with collection or carriage, or at the latest on the goods leaving the plant or warehouse or on receipt by the Customer of the advice of readiness for dispatch. This shall apply whether or not the goods are shipped from the place of performance and regardless of who bears the freight costs.
- e) In the case of initial delay in delivery by us, we shall be allowed a reasonable additional period of time. On expiry of the said period without delivery having been effected, the Customer shall have the right to repudiate the contract in respect of that part of it not yet fulfilled, provided we are not responsible for the failure to deliver on time. The assertion of claims for loss or damage for delay is barred.
- f) In the case of inability to delivery on our part for reasons occurring after conclusion of the contract, the Customer shall have no claim to compensation provided we have informed the Customer of the impossibility to provide performance.

6. Reservation of Title

- a) We reserve title to a delivered item until payment in full of all our claims arising under the contract of delivery. This also applies to all future deliveries, even if we do not each time make explicit reference hereto. We shall have the right to take back the item of delivery if the Customer commits any breach of the contract.

- b) For as long as title has not yet passed to him, the Customer has a duty to treat the item of delivery with care. For as long as title has not yet passed to him, the Customer must inform us without delay in writing if a delivered item is attached by a third party or becomes the subject of other interventions by third parties. If and insofar as the third party is not able to compensate us for the court and out-of-court costs of legal action pursuant to § 771 ZPO [Code of Civil Procedure], the Customer shall be liable to us for the loss.
- c) The Customer is entitled to resell the goods to which we reserve title ("reserved goods") in the ordinary course of business. The Customer hereby already assigns his claims arising from resale of the reserved goods in an amount equivalent to the invoice end amount agreed with us (VAT included). This assignment shall apply regardless of whether the item of sale is resold with our without any further processing. Despite the assignment, the Customer shall still be entitled to collect the claim himself. This shall, however, be without prejudice to our right to collect the claim ourselves. However, we will not collect the claim ourselves for as long as the Customer meets his payment obligations out of the sale proceeds received by him and for as long as the Customer is not in arrears with payment and, in particular, no petition has been filed for the opening of insolvency proceedings and the Customer has not ceased payments.
- d) Any processing or transformation of the delivered item by the Customer shall in all cases be deemed done in our name and on our behalf. In this case, the Customer's expectant right to title to the delivered item shall apply instead to the processed or transformed item. If the delivered item is processed together with other items not belonging to us, we shall have co-title to the new item in the same proportion as that between the objective value of the item delivered by us and the other items with which it is processed at the time of processing. The same shall also apply in the event of mixing. If mixing is done in such wise that the Customer's item must be seen as the main item, it is deemed agreed that the Customer shall assign co-title in proportionate amount to us and shall preserve the sole title or co-title so arising on our behalf.
- e) We undertake to release security to which we are entitled on the Customer's request as soon as and insofar as the value of the security exceeds the value of the secured claims by more than 20%.

7. Warranty and Notices of Defects, Rights of Recourse

- a) Warranty rights of the Customer shall be dependent on the Customer having duly fulfilled his duties to examine and notify as set forth in § 377 HGB [German Commercial Code].
- b) Claims for defects shall lapse 12 months after delivery to the Customer of the goods supplied by us. The foregoing provisions shall not apply where longer periods are mandatorily specified by law. Our consent must always be obtained before goods are returned to us.
- c) If, despite all care, the delivered goods should have a defect which already existed at the time of passing of risk, we will, at our option and provided notice of defect has been made in good time, effect either repair or replacement. We must in all cases be allowed the opportunity and a reasonable period of time to effect remedy. Claims under rights of recourse shall not be affected in any way by the foregoing provision.
- d) Should an attempt at remedy fail, the Customer may, without prejudice to any claims for compensation, repudiate the contract or reduce the payment owed.
- e) The Customer shall have no claim for defect in the case of only minor deviation from the agreed nature or quality, only minor impairment of serviceability, natural wear and tear or damage occurring after the passage of risk due to faulty or negligent handling, excessive strain or unsuitable operating power or other operating materials and resources or as a result of special external influences which were not provided for in the contract. Nor shall the Customer have any claim for defects on account of repairs performed improperly by the Customer or third parties or for the consequences thereof.
- f) Claims of the Customer for expenses necessarily incurred in connection with remedy, in particular transport, travel, labour and material costs, are excluded insofar as the expenses are higher than they would otherwise have been due to the goods delivered by us having been taken after delivery to a place other than the Customer's place of business, except where such change of location accords with the intended purpose of the goods.
- g) The Customer shall only have rights of recourse to us insofar as he has agreed nothing with his own customer beyond the mandatory statutory claims for defects.

8. Liability

- a) Regardless of the nature of a breach of duty, including tort, all claims for compensation or damages are excluded except on grounds of wilful intent or gross negligence.
- b) In the case of breach of any material contractual duties (“cardinal duties”) on our part, we may be held liable for all negligence, though only up to the amount of the foreseeable loss or damage. The Customer may not make any claim for loss of profit, saved expenditures, claims of third parties for compensation or damages or any other indirect or consequential loss or damage, except where a property warranty given by us had precisely the purpose of safeguarding the Customer against such loss or damage.
- c) The restrictions and exclusions of liability set forth in Arts. 8a and 8b hereof shall not apply to claims arising on grounds of fraudulent behaviour on our part or on grounds of liability for warranted properties, for claims under the Product Liability Act or claims for damage or injury to life, limb and health.
- d) The foregoing paragraphs shall also apply to claims for compensation or damages of the Customer on grounds of obligations incurred by the Customer through the commencement of contract negotiations, the initiation of a contract or other such like business contacts.
- e) The foregoing provisions shall also apply to claims of the Customer on grounds of transferred or assigned rights.
- f) Insofar as our liability is excluded or limited, such exclusion or limitation shall also apply to the personal liability of our senior executives, employees, co-workers, representatives or other vicarious agents.

9. Final Provisions

- a) This contract and the entire legal relationship between the parties shall be governed by the law of the Federal Republic of Germany; with application of the UN Convention on Contracts for the International Sale of Goods (CISG) is barred.
- b) Unless indicated to the contrary in our order confirmation, the place of performance and exclusive legal venue for all disputes arising from or in connection with this contract shall be our business domicile in Sasbach/Baden.
- c) Force majeure, labour disputes, civil unrest, acts of official bodies, non-receipt of deliveries from our suppliers and other unforeseeable, unavoidable and serious events shall cause the parties to the contract to be released from their performance obligations for the duration of the disruption and within the scope of its effects. This shall apply even if the event in question occurs at a time when the party concerned is already in delay or arrears. The parties have a duty, to the extent reasonably possible, to provide the necessary information and to adjust their obligations in line with the changes in circumstances.
- d) Should any of the provisions of this contract be or become invalid or be found to contain a gap or omission, this shall have no effect on the validity of the other provisions. The parties undertake to agree in place of the invalid provision one which is in compliance with the law and which most nearly fulfils the economic purpose intended by the invalid provision or which fills the gap or omission.