

## **General Terms and Conditions Gercona e.K.**

### **§ 1 Scope**

1. These conditions of sales shall exclusively vis-à-vis companies as well as legal entities under public law and special funds under public law within the meaning of Sec. 310 para. 1 German Civil Code (Bürgerliches Gesetzbuch, BGB). Terms and conditions of the customer that are contrary to or deviate of our conditions of sales shall not be recognized, unless we explicitly gave consent in written form.
2. The following General Terms and Sales conditions apply to all current and future business relationships with the customer, insofar as it is legal transactions of a related nature.

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

1. Our offers shall not be binding. This shall apply also if we provided the customer with illustrations, drawings and other documents – also in electronic form. We reserve any and all rights of ownership and copyrights thereto.
2. The customer's order for goods shall be considered a binding offer of contract, which we may accept within two (2) weeks from receipt of such offer. A contract between us and the customer shall only take effect if we confirm the offer in writing. The submission of an invoice by us shall equal an order confirmation.

### **§ 3 Provided documents**

We reserve any and all rights of ownership and copyrights to all provided documents to the customer, such as calculations, drawings, etc., connected with placing of the order. These documents shall not be made accessible to third parties, unless we explicitly gave consent to customer in written form. If the offer of the customer is not accepted within the period of time mentioned in § 2, such documents shall be returned to us immediately.

### **§ 4 Product specifications, amendments**

1. The execution of the order, in particular the quality of the goods to be delivered by us, shall exclusively be determined by the product specifications. We may at any time make changes to the execution of the order or to the delivery items to the extent such changes:
  - a. are required to comply with any requirement imposed by law or any public authority, or
  - b. bring about no material impairment of quality or function and are reasonably acceptable to the customer.

### **§ 5 Compliance of Processing and Installation Guidelines**

The processing and installation guidelines for the delivered goods, which are available at [www.gercona.com](http://www.gercona.com) and can be looked up there at any time, necessarily must be observed and if necessary be forwarded to the manufacturing company.

### **§ 6 Prices and payment**

1. Unless otherwise agreed in written form, prices are quoted ex works of manufacturing plant or warehouse excluding the packaging and respectively applicable statutory VAT. Costs for packaging will be indicated separately in the invoice.
2. Payment of the purchasing price exclusively has to be effected to bank account mentioned in the invoice. Deduction of discount is only permitted with special written agreement.
3. Unless not indicated otherwise, the purchase prices must be paid within 8 days after delivery. We demand default interest in the amount of 8 % and those are calculated by the respective base rate per annum. The assertion of a higher damage caused by default remains reserved.
4. Unless a fixed price agreement has been made we reserve the right to make reasonable changes of prices due to changes of labor, material or distribution costs for deliveries carried out 6 weeks or later after conclusion of contract.

### **§ 7 Right of lien**

To exercise a lien the customer is only insofar authorized as the counterclaim is based on the same contractual relationship. In an ongoing business relationship each order is a separate contractual relationship.

#### **§ 8 Delivery period**

1. The beginning of the stated delivery period requires timely and proper fulfillment of the obligations of the customer. The exception of the unfulfilled contract remains reserved
2. If the customer is in default of acceptance or if it culpably violates other cooperation duties, we shall be entitled to request compensation for the damage occurred insofar, including any additional expenses. Any further rights shall remain unaffected. Provided that the case mentioned before occurs, the risk of accidental loss or accidental deterioration of the goods passes to the purchaser at the time, by being in default of acceptance or payment
3. In the event of force majeure shall be entitled - also within the period of delay - to extend the period of delivery or performance by the duration of the hindrance. Force majeure shall mean all circumstances for which we cannot be held responsible, and as a result of which it becomes temporarily impossible or unreasonably difficult for us to effect the delivery or performance, such as lawful strike action or lockout, war, import and export prohibitions, shortages of resources, measures taken by the authorities, late delivery to us for which we are not responsible. In the event such hindrance should exceed two (2) months, the customer shall be entitled to withdraw from the agreement after setting a reasonable grace period and if the customer proves that the complete or partial fulfilment of the contract that is still due is no longer of interest to the customer due to the delay. The customer shall stipulate in writing a deadline for the subsequent performance of at least two (2) weeks.
4. We shall be liable in the case of which we are not intentional or grossly negligent induced delay in delivery for each completed week of delay in the context of a lump-sum compensation in the amount of 3% of the contract value, but not more than a maximum of 15% of the contract value.
5. Further legal claims and rights of the customer due to a delay in delivery remain unaffected.

#### **§ 9 Passing of risk at shipment**

If the goods are dispatched the customer requested by him, the risk of accidental loss or accidental deterioration of the goods pass to the customer at dispatch to him, latest with leaving of the plant/warehouse. This applies regardless of whether the shipment of the goods is carried out from the place of performance or who bears the freight costs.

#### **§ 10 Retention of title**

1. We reserve the title to the delivered goods until full payment of all outstanding debits from the contract of delivery. This also applies to all future deliveries, even if we do not always refer to this explicitly. We are entitled to take back the goods if the buyer acts contrary to the contract.
2. The customer shall be obliged to treat all delivery items which are subject to retention of title with due care, as long as ownership has not been passed to him. In particular, the customer shall be obliged to insure such delivery items at its own cost against theft, loss, fire and water damage in the amount of their purchase price. As long as ownership has not been passed, the customer has to inform immediately if a third party arranges for the pledge of any delivery items subject of retention of title or otherwise impairs the title held by us. Where the third party is unable to refund the court cost and other costs relating a legal action to us, the customer shall be liable towards us for any loss occurred and not paid by the third party according sec. 771 of the German Code of Civil Procedure (Zivilprozessordnung, ZPO).
3. The customer shall be entitled to resell delivery items which are subject to retention of title in the ordinary course of business. The customer hereby assigns all receivables from reselling the products in height of the overall amount of the respective invoice (inclusive VAT) to us. The assignment is valid, regardless of whether the goods were sold without or after further processing. The customer shall remain authorized to collect these receivables even after the assignment. Our authority to collect the receivables itself shall remain unaffected hereby. We shall be obliged to waive collection of the receivables as long as the customer meets its payment obligations arising from the received proceeds, is not in arrears with payments and, in particular, has not applied for the opening of insolvency proceedings regarding its assets or has ceased payment.
4. The processing and installation of the goods as well as products created by any way of processing of the purchased items by the purchaser are always affected in our name or on our behalf. In this case, the expectant right of the purchaser continues to the goods at the reshaped item. If the purchased item is processed with other items not belonging to us, we acquire joint ownership of the new item in proportion of the objective value of our goods to the other processed items at the time of processing. The same applies in case of mixing. If the mixing is done in a way that the purchaser's item is to be regarded as the main item, is deemed agreed that the customer transfers proportional joint ownership and keep the sole ownership or co-ownership for us. To secure our outstanding debits against the purchaser, the purchaser also accedes such outstanding debits to us resulted by the connection of the reserved property goods with a plot against a third party; we accept this assignment already now.
5. We shall be obliged to release all securities it is entitled to regarding delivery items and claims upon request of the customer, provided that the realizable value of the securities exceeds the claims to be secured by more than 20 %.

#### **§ 11 Liability and notification of defects as well as recourse/manufacture recourse**

1. The customer's warranty rights are subject to the condition that the same has duly complied with its duty of examination and its duty to give notice of defects pursuant to Sec. 377 of the German Commercial Code (Handelsgesetzbuch, HGB). In case the delivered goods are to be installed into or attached to another object in accordance with their type and purpose of use, the customer is obligated to inspect the delivered item before installation/prior to attachment and, if a defect appears, to notify immediately. This applies in particular to such defects, their elimination makes it necessary to remove of the object and install a repaired or non-defective delivered item.
2. The limitation period for claims resulting from defects expires after twelve (12) months after delivery of the goods, supplied from us, to our customer. Claims for damage for intent and gross negligence as well as injury of life, body and health, which are based on an intentional or negligent breach of duty of the user, the statutory limitation period applies.  
The limitation period for § 438 Para. 1 no. 2 BGB (Buildings and objects for buildings), § 479 para. 1 BGB (recourse) and § 634a Para. 1 BGB (construction defects) prescribes longer limitation period, those periods remain unaffected. Before returning any goods our consent has to be obtained.
3. If, despite all due care the delivered goods should contain a defect which already existed at time of transfer of risk, we either are going to rework or replace goods according to our choice, subject to proper notice of defect. The opportunity to remedy within a reasonable period must always been given. Recourse claims remain unaffected of the above regulation without limitation.
4. If the subsequent performance fails, the customer - regardless of any compensation claims - shall be entitled at his option to withdraw from contract or request a price reduction.
5. Warranty claims are excluded in cases of insignificant deviations from the agreed quality, only if minor impairment of usability, natural wear and tear as well damage, which is result of faulty or negligent handling, excessive strain, unsuitable equipment, defective construction work, unsuitable building or due to particular external influences, after transfer of risk, which are not intended in contract. If the customer or third parties makes improperly repairs or modifications, no warranty claims exist for these and the resulting consequences.
6. Claims of the customer arising out of the expenses required for the purpose of subsequent performance, in particular, costs of transport, travel, work and material, shall not exist insofar as expenses increase by taking the goods to a place other than the place of use indicated to us at the time the contract was concluded unless the transfer corresponds the intended use.
7. Rights of recourse of the customer against us only exist insofar as the purchaser has not made agreements exceeding the mandatory statutory warranty claim agreements. Furthermore the paragraph 7 shall apply about the extent of the right of recourse against the supplier.

#### **§ 12 Miscellaneous**

1. If individual provisions or parts of these GTC are or become invalid, the validity of the remaining provisions shall remain unaffected thereby. The invalid provision shall be replaced by an agreement which comes closest to the purpose of the contract and the intent of the parties.
2. This contract and the entire legal relations of the parties subject to the law of the federal Republic of Germany under exclusion of the UN Sales Convention (CISG).
3. The place of performance is exclusively jurisdiction for all disputes arising from this contract are our place of business, unless it is clearly stated otherwise from order confirmation.

As of: 20.06.2018