

General Terms and Conditions of Sale, Delivery and Payment of GERMOS NESS GmbH & Co. KG
(Current as of 01/2014)

1. Validity of the Terms and Conditions

- (1) The present General Terms and Conditions of Sale, Delivery and Payment (AVB) apply to all business relations with our customers (hereinafter: "Purchaser") insofar as the Purchaser is a contractor (Section 14 BGB¹), a corporate body under public law or a special fund under public law. They are an integral part of all contracts concluded with Purchasers on supplies and other services offered by us. These AVB apply also to all future supplies or other services to Purchasers even if they are not again separately agreed.
- (2) Different, conflicting or supplementary General Terms and Conditions of the Purchaser or third parties will become an integral part of the contract only and insofar as we have explicitly agreed to their validity in writing. This requirement of approval shall apply in any case, for example, even if we, being aware of the Purchaser's General Terms and Conditions, execute delivery to it without reservation.
- (3) Individual agreements made with the Purchaser on an individual case basis (incl. side agreements, additions and amendments) shall take priority over the present AVB in any case. For the content of such agreements a written contract and/or our written confirmation is authoritative.
- (4) Any references to the application of statutory provisions are for the purposes of clarification only. Therefore, the statutory provisions are applicable even without such a clarification unless they are directly modified or explicitly excluded in the present AVB.

2. Offers - Contract Conclusion

- (1) Our offers are subject to change and non-binding even if we have handed out to the Purchaser catalogues, brochures, circular letters, advertisements, price lists, cost estimates, technical documentation (e.g. drafts, sketches, calculations, illustrations, drawings, plans, references to DIN standards), other product descriptions or documents - also in electronic form. We reserve ownership rights and copyrights in these documents. Any exploitation, copying, reproduction, distribution and transfer to third parties, publication and presentation must only be made with our explicit written approval.
- (2) Ordering of the goods by the Purchaser shall be deemed to be a binding contract offer. Unless otherwise specified in the order, we shall be entitled to accept this contract offer within 14 days after its receipt.
- (3) Acceptance shall be made by us in writing, by fax or by e-mail.

3. Scope of Work - Guarantees - Changes in Work

- (1) The scope of work of our supplies and other services is specified in the details of our declaration of acceptance. Unless otherwise agreed, we are in particular not obligated to deliver exhaust pipes, fans and drain pipes or to perform installation work (laying of steam, water, compressed air, cooling, electric energy etc.) as well as excavation, masonry and mortising work. The same applies to work resulting from requirements by the authorities (e.g. chimneys, exhaust gas measurements etc.).
- (2) The acceptance of guarantees or a procurement risk require explicit written agreements of the parties in which the terms of guarantee or procurement risk are explicitly used.
- (3) In the interest of a continuous further development we reserve the right to make technical modifications on our products even after contract conclusion, if technical functions are not impaired as a result or this is customary in the trade and reasonable for the Purchaser.

4. Prices

- (1) The prices are valid for the scope of supply and work specified in the order confirmations. Additional or extra work is charged separately. The prices are quoted in Euro ex works including loading in the factory plus statutory V.A.T.
- (2) Additional cost for packaging, transport including unloading, customs duties, taxes or other public charges shall be borne by the Purchaser; they will be invoiced separately.
- (3) If the agreed upon prices are on the basis of our list prices, and delivery shall occur only more than four months after contract conclusion, our list prices valid at the time of delivery shall apply (in each case minus an agreed upon percentage or fixed discount).
- (4) If shipment is delayed upon Purchaser's request, the Purchaser shall bear the cost incurred as a result which likewise will be charged separately.

5. Payment - Provision of Security - Right to refuse Performance

- (1) The purchase price is due and payable within 10 days as from invoicing and delivery and/or acceptance of the goods. Authoritative for the date of the respective payment is receipt of payment by us.
- (2) Payment of our delivery and other services occurs by bank transfer or direct debit. We reserve the right to exclude certain payment methods or permit other payment methods.
- (3) In the event of outstanding invoices of the Purchaser, payments will always be used to settle the oldest outstanding debt.
- (4) We shall be entitled to perform or render still outstanding delivery or services only against advance payment or provision of security, if after contract conclusion we become aware of circumstances which are likely to substantially reduce the creditworthiness of the Purchaser, and by which payment of our outstanding invoices by the Purchaser from the respective contractual relationship is jeopardised.
- (5) If the Purchaser does not comply with its payment obligations, we are entitled to demand immediate payment of the full outstanding amount, even if we have accepted cheques or bills of exchange. In that case we are moreover entitled to refuse delivery and services still incumbent upon us until the Purchaser has effected the consideration or provided security in sufficient amount for the outstanding delivery and services.

¹ BGB - German Civil Code

- (6) Set-off against counterclaims of the Purchaser or withholding of payments for such claims is only admissible if and insofar as the counterclaims are undisputed or are final and absolute under a court judgement.

6. Term of Delivery - Delay in Delivery - Default of Acceptance

- (1) Delivery terms and delivery dates are agreed upon on an individual basis and/or are specified by us when accepting the order, otherwise the term of delivery is four weeks as of contract conclusion.
- (2) If shipment has been agreed upon, delivery terms and delivery dates refer to the time of transfer to carrier, forwarder or other third parties commissioned to transport the goods.
- (3) Delivery terms and delivery dates are observed, if the delivery item has left our works in time or readiness for shipment has been notified to the Purchaser, if they are to be collected by the Purchaser.
- (4) Occurrence of our delay in delivery is determined in accordance with legal regulations. But in any case a reminder by the Purchaser is required.
- (5) If binding terms of delivery cannot be observed by us for reasons for which we are not responsible (non-availability of service), we will promptly inform the Purchaser accordingly, and at the same time advise the probable new delivery term. If the service is not available within the new delivery term either, we are entitled to withdraw from contract wholly or in part; a consideration of the Purchaser already made will be promptly reimbursed by us. Non-availability of service within this meaning is in particular late delivery by our sub-supplier, when we have concluded a congruent hedging transaction, neither we nor our sub-supplier is at fault or we are under no obligation to procure on an individual case basis.
- (6) In the event of default of acceptance by the Purchaser, the Purchaser has to indemnify us for the damage caused as a result. This does not apply, if the Purchaser is not responsible for the breach of duty. In that case the assumption of cost by the Purchaser is limited to the cost incurred by us by storage of the delivery items. Moreover, where a reasonable deadline for acceptance fails to be complied with, we are entitled to make other arrangements for the use of the goods, and supply the Purchaser with an adequate prolonged deadline.

7. Delivery - Packaging - Erection - Authority to give Instructions

- (1) Deliveries are made ex works. Type of shipment and packaging are subject to our discretion. But we explicitly do not assume any guarantee for the cheapest type of shipment.
- (2) Goods supplied must be accepted by the Purchaser without prejudice to its guarantee rights even if they exhibit minor defects.
- (3) Transport and other packaging in accordance with the regulation on packaging is non-returnable, they become the property of the Purchaser, with the exception of pallets.
- (4) If we are obliged to carry out erection, the Purchaser must ensure that erection can be started within 14 days after delivery, and can be carried out without interruption. The Purchaser is obliged to make available free of charge the internal means of transportation required for erection, as well as current, water etc. All installation work (laying of steam, water, compressed air, cooling, electric energy etc.) as well as excavation, masonry and mortising work will be at the expense of the Purchaser, and must have been completed prior to start of erection, if technically possible.
- (5) The Purchaser has no authority to give instructions to our employees or vicarious agents. The authority to give instructions of the Purchaser within the scope of contracts of service or contracts for work and labour can only be exercised towards one of our legal representatives or an individual appointed as being an authorised representative.

8. Acceptance of Services

- (1) If an acceptance is required in accordance with contract or law, partial acceptance has to be made upon our request for separable parts of service, which can be used independently, or for parts of service on which other services are based, if the parts of service can be separately examined. If all parts of service have been accepted, the last partial acceptance is simultaneously the final acceptance.
- (2) A partial or final acceptance shall be deemed to have been made at the latest, if the Purchaser after delivery of service and adequate inspection period within another time period specified by us does not refuse acceptance in writing by giving its reasons (notional acceptance).

9. Subcontracts - Partial Performance - Assignment - Withdrawal

- (1) We are entitled to award subcontracts to carry out delivery and other services.
- (2) Partial deliveries and corresponding invoicing are admissible, if the partial delivery can be used by the Purchaser within the scope of the contractually intended purpose, the delivery of the remaining outstanding goods is guaranteed, and no significant additional work or additional cost are incurred by the Purchaser as a result.
- (3) Assignment of the claims put forward against us is excluded. This does not apply in the area of application of Section 354a HGB².
- (4) The Purchaser can only withdraw from contract because of a breach of duty, which is not based on a defect, if we are responsible for the breach of duty.

² HGB - German Commercial Code

10. Risk Taking - Insurance - Force Majeure

- (1) The risk of accidental loss and accidental deterioration of the goods passes over to the Purchaser at the latest when the goods are handed over or at the time when the Purchaser is in default of acceptance for the first time; in the event of sale by delivery to a place other than the place of performance, however, the risk passes over already with delivery of the goods to the carrier, the forwarder or another person or establishment designated to carry out the shipment. This applies even if partial deliveries take place or we have taken over still other services (e.g. erection).
- (2) If an acceptance has been agreed, it is authoritative for the passing of risk. For an agreed upon acceptance, the statutory provisions of the legislation on contracts for work and labour apply accordingly. If the Purchaser is in default of acceptance, this is equivalent to acceptance.
- (3) Deliveries are insured by us only upon explicit request of the Purchaser and at its expense against theft, breakage, transportation, fire and water damages or other insurable risks.
- (4) Severe incidents such as in particular force majeure, industrial disputes, unrest, acts of war or terrorism, for which we are not responsible, and make it difficult to carry out the service to a considerable degree or make it impossible, release us for the time of the disturbance and to the extent of their effect from our obligations to perform, even if we are in default. We are obliged to inform the Purchaser promptly of such an impediment. If the impediment is not only temporary in nature, both parties are entitled to withdraw from contract. In that case, services already made have to be promptly returned.

11. Retention of Title

- (1) Until all claims incurred from the purchase contract and a current business relationship (secured claims) have been paid in full, we reserve ownership of the goods delivered.
- (2) The goods under retention of title must not be sold or pledged to third parties prior to entire payment of the secured claims, nor assigned by way of security. The Purchaser must promptly inform us in writing, if and insofar as third parties attempt to seize the goods belonging to us.
- (3) If the Purchaser acts contrary to the contract, in particular if the due purchase price is not paid, we are entitled according to statutory provisions to withdraw from contract and/or to demand return of the goods due to the retention of title. The demand for return shall not be deemed to include a simultaneous declaration of withdrawal; rather are we entitled to merely demand return of the goods, and reserve withdrawal. If the Purchaser does not pay the due purchase price, we are only allowed to assert these rights, if previously we have set unsuccessfully a reasonable deadline for payment or such a deadline is unnecessary according to statutory provisions.
- (4) The retention of title also extends to the products occurring by processing, mixing or combining our goods at their full value and we shall be considered to be the manufacturer. If in the event of processing, mixing or combining with third party goods, their retention of title continues to exist, we acquire joint ownership in proportion of the invoice values of the processed, mixed or combined goods. Moreover, for the resulting product the same is valid as for the goods supplied under retention of title.
- (5) If the realisable value of the goods under retention of title exceeds our claims by more than 10%, we shall release securities at our discretion upon request by the Purchaser. The same applies, if the estimated value of the goods under retention of title exceeds our claims by at least 50%.

12. Warranty

- (1) For the rights of the Purchaser in the event of material defects and defects of title (including wrong delivery and short delivery as well as improper erection or defective instructions for erection) the statutory provisions shall apply unless otherwise specified hereinafter.
- (2) If the delivery items are used items, all warranty claims are excluded.
- (3) If goods are produced or modified by us due to the Purchaser's specifications, we are not obliged to verify these specifications unless this has been especially agreed upon. The Purchaser shall not be entitled to subsequent performance, price reduction or withdrawal from contract due to defects which are based on said specifications.
- (4) Claims for defects by the Purchaser require that the Purchaser has complied with its statutory duties of inspection and to give notice of defects (Sections 377, 381 HGB²). If a defect appears during inspection or at a later point in time, it must be promptly notified to us in writing. The notification is considered to have been made promptly, if it is made within two weeks. The time limit is deemed to have been observed, if the notification is sent in time. Independent of said duty of inspection and to give notice of defects, the Purchaser must notify in writing obvious defects (incl. wrong and short delivery) within two weeks as from delivery. The time limit is deemed to have been observed here as well, if the notification is sent in time. If the Purchaser fails to duly inspect the goods and/or notify any defects, our liability for the defect that has not been notified is excluded.
- (5) The basis of our liability for defects is primarily the agreement made concerning the quality of the goods. The agreement on the quality is exclusively the specification handed over to the Purchaser. In particular, also the information on properties included in public statements or presentations, e.g. on the Internet or in catalogues, brochures, circular letters, advertisements or other advertising materials belongs to the quality of our goods only if explicitly mentioned in the specification. This is valid also for public statements of a third party or its vicarious agent. Unless the quality has been agreed, it has to be judged pursuant to statutory provisions whether a defect exists or does not exist (Section 434 subsection 1 sentence 2 and 3 BGB¹).
- (6) The Purchaser has only proven a defect of title, if a final judgement has been issued against it in this matter. The Purchaser's right to issue a third party notice to us remains unaffected.
- (7) If a delivery or other service is defective, we can choose at first whether we shall provide subsequent performance by remedying the defect (subsequent improvement) or by delivery of a faultless item (substitute delivery). Our right to refuse subsequent performance under the statutory prerequisites remains unaffected.

- (8) We are entitled to make the owed subsequent performance dependent on the fact that the Buyer pays the due purchase price. But the Purchaser is entitled to retain an adequate proportion of the purchase price in relation to the defect.
- (9) The Purchaser must give us the time and occasion required for the subsequent performance owed, especially hand over the defective goods for inspection purposes. In the event of rework in place, we must be given full access to the defective goods; replaced parts will be returned to us. In the event of replacement delivery, the Purchaser must return the defective goods pursuant to statutory provisions.
- (10) Subsequent performance does not include disassembly of the defective item nor reinstallation, if we had been originally not under an obligation to install the item.
- (11) The expenses required for inspection and subsequent performance, in particular transport, travel, labour and material cost, shall be borne by us, if a defect actually exists. But if a request for removal of a defect by the Purchaser turns out to be unjustified, we can request reimbursement of the cost incurred from the Purchaser, unless the Purchaser is not responsible for our efforts.
- (12) In urgent cases, e.g. where there is a risk to operational safety or to avert disproportionate damages, the Purchaser shall be entitled to eliminate the defect itself, and to request reimbursement of the expenses objectively necessary for it from us. We have to be promptly informed, if possible in advance, when the Purchaser eliminates the defect itself. Such a right of the Purchaser to eliminate the defect itself does not exist, if we are entitled to refuse a corresponding subsequent performance pursuant to statutory provisions.
- (13) If subsequent performance has failed or an adequate time period to be fixed by the Purchaser has expired to no avail or is superfluous according to statutory regulations, the Purchaser can withdraw from contract or reduce the purchase price. But no right of withdrawal exists in the event of an insignificant defect.
- (14) Damage claims and/or reimbursement of expenses incurred in vain by the Purchaser exist only in accordance with clause 13 and shall otherwise be excluded.

13. Other Liability

- (1) Unless otherwise specified in the present AVB including the following provisions, we shall be liable for compensation in accordance with statutory provisions.
- (2) In any case, we shall be liable for compensation, for whatever legal reason, in the event of intent and gross negligence.
- (3) In the event of simple negligence, however, we shall be liable only
 - a) for damages from the injury to life, body or health;
 - b) for damages from violation of an essential contractual obligation (essential contractual obligations are obligations whose performance is necessary for attaining the purpose of the agreement); in that case, however, our liability is restricted to reimbursement of the foreseeable, typically occurring damage.
- (4) The above limitations of liability do not apply in the event of fraud and when a procurement risk or a guarantee of quality has been accepted.
- (5) Claims pursuant to the Product Liability Act or other overriding legal liability facts remain unaffected.
- (6) The above limitations of liability are valid to the same extent for our bodies, statutory representatives, employees and vicarious agents.

14. Statute of Limitations

- (1) The general statute of limitations for claims from material defects and defects of title is one year as from delivery. If an acceptance is agreed, the statute of limitations starts with acceptance.
- (2) But if the merchandise is a building or an object, which in accordance with its normal use has been used for a building, and has caused its defectiveness (building material), the statute of limitations is 5 years as from delivery pursuant to statutory provisions. Statutory special regulations for in rem claims of third parties to return and for fraud remain unaffected.
- (3) The above statutes of limitations are also valid for contractual and non-contractual damage claims by the Purchaser based on a defect of the merchandise, unless application of the regular statutory period of limitation (Sections 195, 199 BGB¹) results in a shorter period of limitation on an individual case basis. The periods of limitation of the Product Liability Act remain unaffected in any case. Otherwise, for Purchaser's damage claims pursuant to item 13 only the statutory periods of limitation are valid.

15. Business Secrets

- (1) The Purchaser is obligated to keep confidential and not to disclose to third parties all information, such as e.g. plans, drawings and technical documents which it has received from us (business secrets). Without our approval, the Purchaser shall not be allowed to use, copy, reproduce nor transmit, make accessible or disclose such information to third parties. This will also apply, if said information does not contain a note indicating its classified status.
- (2) This confidentiality obligation shall not apply to information, which must be disclosed to authorities or to other public bodies, or which are generally accessible anyway.
- (3) The Purchaser shall make sure that its employees, consultants, shareholders and others, who learn about these business secrets, will be obliged in writing to safeguard our business secrets to the extent described above.
- (4) These obligations will continue to be in force after termination of the contractual relations.

16. Place of Performance - Applicable Law - Contract Language

- (1) Place of performance for all obligations from the business relationship is 73630 Remshalden/Germany.
If we are also obliged to carry out erection or other services, which can only be carried out on site, the place of performance for these services is the place where the erection or other service shall be made.
- (2) The present General Terms and Conditions of Sale, Delivery and Payment (AVB) and all legal relationships between us and the Purchaser shall be governed by the laws of the Federal Republic of Germany to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- (3) The contract language shall be German.

17. Place of Jurisdiction - Written Form - Partial Invalidity

- (1) The competent court at 73630 Remshalden/Germany shall have exclusive jurisdiction for all disputes arising directly or indirectly from the contractual relationship. If we are a claimant or petitioner, we are also entitled but not obliged to apply to the court having jurisdiction at the registered office of the Purchaser instead.
- (2) Side agreements, reservations, modifications and amendments will be made in writing.
- (3) Legally relevant declarations and notifications, which have to be made by the Purchaser to us after contract conclusion (e.g. specifying deadlines, notifications of defects, declarations of withdrawal from contract or reduction of price) must likewise be made in writing in order to be valid.
- (4) If a provision of the present AVB is or becomes invalid, validity of the remaining provisions will not be affected. If other agreements within the scope of cooperation with the Purchaser are or become invalid, validity of the remaining agreements will not be affected. In such an event, the invalid provision shall be interpreted or amended such that the economic purpose intended with the invalid provision is achieved in a legally admissible way.

Current as of January 2014