

# Terms and Conditions of Sale, Delivery and Service (T&C) of CERTUSS GmbH

## § 1 The scope of application

- (1) Our T&C shall apply exclusively and without further formal notice to all future product deliveries and services that we perform for the customer. We shall not accept opposing or deviating terms and conditions of the customer, unless we have explicitly agreed their validity in writing. This also applies if we perform the delivery unconditionally in awareness of opposing or deviating conditions of the customer.
- (2) Our T&C shall only apply in relation to entrepreneurs, legal entities under public law or public-law special assets within the meaning of § 310 (1) BGB (Bürgerliches Gesetzbuch [German Civil Code])

## § 2 Offer and conclusion of contract

- (1) Our offers are subject to change, unless they are explicitly designated as "binding". The customer is bound to its order for four weeks. The contract shall be concluded either by our written acceptance of the order, confirmation of the order, delivery or the performance of service.
- (2) The customer declares its consent for us to obtain information about its creditworthiness and financial situation. In the case of negative information, we reserve the right to deliver products or provide services only against pre-payment. If financing by third parties is intended, we may also request verification of the financing prior to our performance.
- (3) Figures, descriptions, measurement and quantity specifications shall only be binding if this has been agreed in writing with the customer in advance. The agreed quality of the delivery and/or service to be performed by us is based solely on the written contractual documents. We reserve the right to make changes to the design and material provided these changes are not of fundamental nature and the purpose of the delivery and/or service to be provided to the customer according to the contract is not affected.
- (4) If the customer intends to change the contractually agreed scope of the delivery and/or service to be performed by us, the customer must express this change request to us in writing. We will then inform the customer whether we can comply with this change request. The costs of the outlay caused by the change (e. g. formulation of a change proposal, periods of standstill, higher material costs etc.) shall be borne by the customer if we agree with the request for change.

## § 3 Quantity and measurements specifications, obligation to cooperate

- (1) With the conclusion of this contract, the customer confirms that all quantities and measurements in its orders are based on the customer's specifications that have been verified by the customer. If deviations from the customer's specifications arise subsequently, additional costs incurred due to this shall be at the customer's expense.
- (2) The customer shall appoint a competent contact person who shall provide us with the required information and who can make or effect the necessary decisions for the implementation of the contract order without delay.
- (3) The customer shall create all the conditions to enable us to perform our deliveries and/or services in a proper manner. In particular, the customer shall ensure that all the necessary cooperation on its part or on part of its agents will be fulfilled on time to the required extent and free of charge for us.
- (4) The customer shall be liable for delays or errors in the contract order implementation if these result from incorrect or incomplete data or information submitted by to customer, or any other circumstances the customer is responsible for.

## § 4 Prices, conditions of payment

- (1) Unless otherwise agreed, our prices are EX Works (EXW) according to Incoterms 2020, excluding packaging; this shall be invoiced separately.
- (2) The statutory value added tax is not included in our prices; it will be shown separately in the statutory amount on the invoice on the day of invoicing.
- (3) Any deduction from account requires separate written consent.
- (4) Unless otherwise agreed, our invoices (without deduction) become payable within 14 days of the date of the invoice. The statutory provisions governing the consequences of a default on payment shall apply.

## § 5 Delivery Times and Scheduled Dates, Deadlines, Default

- (1) Binding delivery times and scheduled dates require our written confirmation, which may also be issued by fax or email. The start of the specified period presupposes the clarification of all technical questions, the timely fulfillment of the customer's obligations as well as the availability of the documents and approvals to be provided by the customer. Any changes to the implementation which are requested by the customer after the conclusion of the contract will prolong the delivery times and scheduled dates accordingly. We reserve the right to raise the objection of the unfulfilled contract.
- (2) Events that are not within our responsibility (in particular strike, force majeure and late supply to us) will prolong the agreed delivery periods and scheduled dates for the duration of the delay in addition to an appropriate start-up period. The customer will be informed of these circumstances immediately; should the delay persist for longer than three months, the customer will be entitled to withdraw from the contract after setting appropriate grace periods, provided the contract has not yet been fulfilled. This right is also granted to us, whereas the setting of a grace period is not required in this case.
- (3) If we are released from our obligation to performance according to the above paragraph, or if the delivery period or the agreed indemnification date is extended, the customer will not be entitled to claim compensation.

- (4) Unless otherwise agreed by contract, partial deliveries and services by us are permissible, as well as deliveries and services prior to the expiration of the agreed performance and delivery period.
- (5) Unless otherwise agreed, call orders agreed with the customer shall be placed by the customer by calls at the latest within twelve months from the start of the contract. If this does not take place, we shall be entitled to pass on price increases to the customer which have occurred in the meantime.
- (6) If the customer is in default of acceptance or negligently breaches its other cooperation duties, we will be entitled to demand compensation for the damages resulting from this, including any additional expenses. Further claims or rights remain reserved. The risk of accidental loss or accidental deterioration of the products will be transferred to the customer at the time when the customer starts to be in default in acceptance or payment.
- (7) We shall be liable pursuant to the statutory provisions provided the underlying contract is a fixed transaction within the definition of § 286 (2) No. 4 BGB or § 376 HGB (Handelsgesetzbuch [German Commercial Code]). We shall also be liable pursuant to the statutory provisions if the customer is entitled to claim frustration of its interest in the further contract fulfillment as a consequence of a delay in delivery for which we are responsible.
- (8) We shall furthermore be liable pursuant to the statutory provisions if the delay in delivery is caused by an intentional or gross negligent breach of contract for which we are responsible; negligence of our representatives or agents shall be attributed to us. If the delay in delivery is caused by a gross negligent breach of contract for which we are responsible, our damage compensation liability shall be limited to the foreseeable, typically arising damage.
- (9) We shall also be liable pursuant to the statutory provisions if the delay in delivery for which we are responsible is caused by the negligent breach of an essential contract duty; in that case however the damage compensation liability shall be limited to the foreseeable, typically arising damage. Essential contract duties are those resulting from the nature of the respective contract and which endanger the achievement of the contract's purpose if breached.
- (10) Furthermore, in case of a delay in delivery we shall be liable for each completed week of delay to pay a lump-sum delay compensation amounting to 0.5% of the delivery and/or performance value, but no more than 5% of the delivery and/or performance value.

## § 6 Transfer of risk

- (1) Unless otherwise agreed, delivery "ex works" is agreed. The risk, including the risk of confiscation, shall transfer to the customer in all cases, also if the delivery is free of freight charges, upon the handover of the delivery object to the shipping agent. This also applies if we carry out the shipping ourselves. If the shipping is delayed for reasons for which the customer's is responsible, the risk will transfer to the customer already at the time of the notification of the readiness for shipment.
- (2) In absence of opposing agreements, we shall determine the type and manner of the packaging and the shipment. If the customer makes a written request, we will insure the delivery by taking out shipping insurance at the customer's expense.
- (3) For service contracts, the risk shall be transferred to the customer upon acceptance.

## § 7 Reservation of the title

- (1) The products shall remain our property until all claims to which we are entitled under the business relationship with the customer are fulfilled. In the event of non-compliance with the contract by the customer, especially in case of default in payment, we shall be entitled to take back the products and this shall be considered as a withdrawal from the contract.
- (2) In case of attachments or other interference by third parties, the customer shall immediately notify us thereof in writing, so that we can file third-party proceedings according to § 771 ZPO (Zivilprozessordnung [Code of Civil Procedure]).
- (3) The customer may only resell the products subject to the reservation of title in the course of ordinary business and only provided the customer is not in default in relation to us; however the customer hereby assigns all claims to us in the amount of the final invoice (plus VAT) which arise for the customer against buyers or third parties on basis of the resale, regardless of whether the products subject to reservation of title have been resold without or after processing. The customer shall also remain entitled to recover this claim after the assignment. Our authority to recover this claim directly remains unaffected by this. However, we undertake to refrain from doing so provided the customer fulfils its payment obligations from the collected proceeds and does not enter payment default, and provided an application for the opening of insolvency proceedings has not been filed and no moratorium on payments is present. If this is the case however, we may demand that the customer discloses the assigned claims and debtors to us, provides all information necessary for collection, surrenders the related documents and notifies the debtors (third parties) of the assignment.
- (4) In order to secure our claims against the customer, the customer also assigns to us the claims against a third party which arise from the association with land of the products subject to the reservation of the title.
- (5) We undertake to release the securities due upon demand of the customer if the realisable value of our security exceeds the secured claims by more than 10%; the choice of the securities to be released is at our discretion.

## § 8 Liability for defects, damage compensation

- (1) Claims of defects of the customer presuppose that the customer has properly fulfilled its obligations of inspection and notification of defects are in accordance with § 377 HGB. For works services, § 377 HGB applies accordingly.

- (2) If a material defect is present, the customer shall be initially restricted to claim supplementary performance, whereas we reserve the right to choose supplementary performance. In case the supplementary performance fails, the customer has the right at its discretion to apply reductions or to withdraw from the contract.
- (3) We shall be entitled to refuse supplementary performance if it involves disproportionate costs for us. In that case, we shall be entitled to demand a reduction of the agreed price or the reversal of the contract instead of the supplementary performance.
- (4) We shall be liable pursuant to the statutory provisions if the customer raises damage compensation claims which are based on intent or gross negligence by us, our representatives or agents. If no intentional breach of contract is present, the damage compensation liability shall be limited to the foreseeable, typically arising damage.
- (5) We shall be liable pursuant to the statutory provisions if we, our representatives or agents commit a negligent breach of an essential contract duty; however, in that case the damage compensation liability shall also be limited to the foreseeable, typically arising damage. Essential contract duties are those resulting from the nature of the respective contract and which endanger the achievement of the contract's purpose if breached.
- (6) The liability for culpable injury to life, body or health remains unaffected; this also applies to the mandatory liability under the Product Liability Act.
- (7) Liability is excluded, unless otherwise agreed in the paragraph above.
- (8) The limitation period for claims of defects is 12 months calculated from the date of the transfer of risk. The statutory limitation period in the case of recourse for delivery pursuant to Sections 445a, 445b, 478 BGB [German Civil Code], and in the cases covered by Sections 438 Subsection (1) No. 2, 634a Subsection (1) No. 2 BGB, remains unaffected. This also applies in the cases of the above Subsections (4) to (6).
- (9) Any liability for damage compensation in excess of the provisions in the above paragraphs is excluded – regardless of the legal nature of the asserted claim. This applies in particular to damage compensation claims resulting from negligence upon the conclusion of the contract, due to other breaches of duty or for tortious compensation claims for property damages according to § 823 BGB. This limitation also applies in the event that the customer demands the compensation of wasted expenses instead of a claim for compensation in lieu performance. If liability for damages against us is excluded or limited, this shall also apply regarding the personal compensation liability of our employees, representatives and agents.
- (10) Default losses are not covered by the preceding paragraphs, these are covered by § 5 paragraphs (7) to (10).

## § 9 Software, liability for data loss

- (1) If we are liable for damage compensation pursuant to the above § 8, our liability for data loss shall be limited to the typical restoration costs which would have occurred during regular and complete creation of backup copies of the entire data, structures and software.
- (2) If the use of software products of third parties is included in our scope of service, the customer hereby acknowledges the terms of use/license of the holder of rights to this software. These use/license terms will be made available to the customer upon request. We are not responsible for failures of functions which are related or linked to operating system environments and operating system configurations installed at the customer's site. Our liability is also excluded in case of non-compatibility of the software program with the customer's hardware and/or software, unless we have performed the consulting services in this regard according to written agreement.

## § 10 Assignment, offsetting, retention

- (1) The customer shall not be entitled to assign or transfer claims against us or rights from the business relationship to third parties without our consent. The same applies to claims and rights arising against us directly by act of law.
- (2) The customer shall be entitled to rights to offsetting only if its counter-claims have been legally determined, are undisputed or acknowledged by us.
- (3) The customer shall only be authorised to exercise a right to retention if its counter-claim is based on the same contractual relationship.

## § 11 Contracting of third parties

- (1) We shall be entitled, even without prior consent of the customer, to pass on the contract or parts of it to third parties.
- (2) In these cases, we shall be liable for the third party as we are for an agent of our own.

## § 12 Place of performance, place of jurisdiction, applicable law

- (1) Place of performance and place of jurisdiction for disputes with merchants, legal entities under public law, or public-law special assets is the location of our head office in Krefeld. In addition, we are entitled to sue the customer also at the place of its head office.
- (2) The laws of the Federal Republic of Germany apply, the applicability of the UN Convention on Contracts for the International Sale of Goods is excluded.
- (3) Should one of the above provisions be or become invalid, the validity of the remaining provisions will remain unaffected by this.
- (4) The German version of the T&C shall take precedence. The English translation is for informative purposes only.