

# Terms and Conditions of Sale

## Section 1 Application

1.1 These General Terms and Conditions of Sale (hereinafter: GTC) apply to all deliveries of goods as well as performances of the CeoTronics AG (hereinafter: CT), including any ancillary services, consultations and information. These GTC apply exclusively and in the most recent version on the date of the respective conclusion of contract.

1.2 Once an order is placed by the buyer/contractee (hereinafter: client) these GTC are at the same time considered as accepted and as integral part of the contract. Any conflicting or deviating terms and conditions of the client are hereby opposed. They will only become part of the contract if the CT expressly agrees to them in individual cases in writing.

1.3 These GTC also apply if the CT executes the delivery to the client without reservation or provides services to the client despite having knowledge of conflicting client conditions or client conditions deviating from these GTC.

1.4 These GTC only apply to entrepreneurs (Section 14 of the German Civil Code (BGB)), to legal persons under the public law or to a special fund under public law according to Section 310 Subsection 1 Sentence 1 of the German Civil Code (BGB).

1.5 These GTC also apply to all future contracts with the client, in the most recent version on the date of conclusion of contract.

1.6 Any agreements between the CT and the client as well as amendments and changes to these agreements have to be made in writing. This also applies to a waiver to the requirement of a written form.

1.7 Sales Representatives and Sales Agents of the CT are not authorized to conclude agreements or to give approvals which deviate from these GTC. Only authorized employees of the CT can conclude legally effective individual agreements.

## Section 2 Offers, contract conclusion, offer documents, information and consultation

2.1 Offers are always non-binding. No contract shall have been made until CT's written confirmation of order has been given. The scope of CT's performance shall be set down exclusively by CT's written confirmation of order, including the written appendices thereto. Offers will only be binding exceptionally and in individual cases if they have been given in the written form and have been expressly declared as binding.

2.2 The CT is only bound to binding offers without an explicitly specified binding period until two weeks after the client has received the offer.

2.3 Samples and patterns are non-binding. Designs may be changed by the CT insofar as this is consistent with the client specifications or if the deviation is only minor.

2.4 All data regarding suitability and applicability of goods/services will be made in good faith. However, they only represent empirical values which are not considered as guaranteed; they do not substantiate any claims against the CT. The client is not exempt from convincing himself of the suitability and applicability of the goods/services for the intended use.

2.5 The client agrees to the further use and reproduction by the CT of drawings, plans, models, templates, samples, tools, manufacturing means, measures, weights and other performance data which the CT received from the client and - insofar as required for the order - also agrees to their transfer to third parties. In case of a change of values specified by the client, the client must immediately inform the CT.

## Section 3 Place of delivery, transfer of risk, shipping charges, packaging

3.1 All deliveries will be carried out Free Carrier (FCA) manufacturing site unless otherwise agreed in writing. Incoterms® 2020 shall be deemed to have been agreed.

3.2 The shipping will be carried out at the client's own risk even if the CT pay for the shipping charges in exceptional cases. The transfer of risk is determined according to the Incoterms® clause stipulated in Section 3.1. In the case of work performance, the risk shall transfer to the client upon the acceptance of such work performance.

3.3 Unless otherwise agreed in writing, all costs for transport, packaging, insurance, customs clearance, customs duties etc. that go beyond the scope of an FCA delivery (Incoterms® 2020) shall be borne by the client.

3.4 The shipping will be carried out in reasonably priced packaging required for the delivery.

3.5 Any packaging provided will only be taken back by the CT within the scope of its legal obligations; for deliveries abroad, the packaging will not be taken back. Taking back the packaging does not include the return delivery and the costs thereof. If the client is not a private end user according to the packaging regulations, the client will be charged for the disposal of the packaging at cost price. Insofar as the packaging has not been returned, a participation in and the taking over of the disposal costs by the CT is excluded.

3.6 The client is obliged to inspect delivered goods/services immediately after their handover for obvious losses, defects or damage due to transport, to determine complaints according to the conditions of the carrier in the presence of the driver, to document these in writing and to indicate them to the CT on the day of receipt of the goods/services. Hidden losses, defects or damage due to transport must be indicated within at least three calendar days after handover

of CT's goods/services. Should the client fail to report these in due time, then the goods/services will be considered as approved with respect to any losses, defects or damage due to transport. The client must always carry out the required formalities with respect to the carrier. In all remaining cases, Section 438 of the German Commercial Code (HGB) applies.

3.7 The obligations arising from Section 3.6 also apply to the client if the delivery/service is made to a third party at the client's request.

## Section 4 Delivery

4.1 Unless otherwise agreed in writing, delivery or service dates (hereinafter: delivery date) are non-binding and are subject to the condition that deliveries to CT are correct and on time and will only commence after clarification of all the fulfillment details, in particular by the client, at the earliest, however, on the date of CT's order confirmation and client's payment of all partial and advance payments due.

4.2 Insofar as delivery dates shall exceptionally be agreed to be binding, the following shall apply: If there is a delay by the client regarding the fulfillment of its contractual obligations, all delivery dates will be extended by the duration of the delay plus an appropriate recovery period. In case of circumstances beyond the control of the CT and in cases of force majeure (e.g. in cases of unforeseeable disruptions regarding operation, traffic or shipment, fire damage, floods, unforeseeable shortage of personnel, energy, raw materials or auxiliary materials, a subsequent shortage of materials, import and export restrictions, strikes, lockouts, official decrees and similar unforeseeable events, which subsequently make the service more difficult or impossible for CT or CT's sub-suppliers), dates will be suitably extended by the period of the hindrance plus an appropriate recovery period, at most, however, by a period of three months in total. CT will immediately notify the client about the start and end of such hindrances.

If the previously mentioned circumstances occur during a delay, CT is also not responsible for. If the delivery hindrance should last longer than three months, both contractual parties are entitled to withdraw from the contract. In case of failure to comply with the scheduled delivery date, designated as binding by the CT, the client is entitled to set an appropriate period of grace for the CT in writing - periodically - of at least one month. If the delivery has not been carried out by the end of the period of grace, the client is entitled to withdraw from the contract. The delivery is considered punctual as soon as the goods/service have left the factory or warehouse of the CT or the sub-supplier/sub-contractor before expiry of the deadline. Damage due to delay will only be compensated by the CT in accordance with the provisions under Section 8.

4.3 The delivery obligation of the CT will be cancelled without compensation if the CT is constantly hindered in the fulfilling of its obligation by state measures in the country of origin of the goods or by supranational organizations, wartime events or natural disasters.

4.4 If the contract is changed at a later stage and this could influence the agreed delivery date, the delivery date will be extended appropriately, unless otherwise agreed.

4.5 If the client does not cooperate/assist (e.g. with respect to technical matters) in due time, the delivery date will also be extended accordingly.

4.6 The CT is entitled to partial services and partial deliveries and to charge separately for them if the CT takes the client's interests into account.

4.7 Insofar as safety measures are required regarding installation services to be carried out by the CT at client's site, the client is responsible for ensuring that they are complied with and has to bear the costs. If surveys have to be carried out, the client must arrange this and bear the costs.

4.8 If the client fails to collect the goods at the agreed time, but at the latest within one week of receipt of any notification of provision/invoice or if he refuses to accept the goods/service, the client will be in default of acceptance. If the client is in default of acceptance, the CT is entitled to set the client a period of grace for collecting or accepting the goods/service. A period of grace of one week is considered appropriate. After fruitless expiry of the period of grace, the CT is - notwithstanding further claims - entitled to withdraw from the contract and/or to claim compensation for damages. In the latter case, the CT is entitled, without having to provide evidence of specific damages, to claim 5% of the agreed net purchase price as general compensation for damages, unless the client can prove that there are no damages or lesser damages to the CT. The CT is entitled to demand the compensation of the actual incurred damages instead of the general compensation for damages. In case of default of acceptance, the risk of incidental decay or incidental deterioration of the goods is transferred to the client.

## Section 5 Price, payment and default

5.1 The purchase price is the amount stated in CT's order confirmation.

5.2 Offer prices are based on USD/EUR, GBP/EUR and CHF/EUR exchange rates of the day the offer is submitted. CT reserves the right to adjust the prices in accordance with the change of the exchange rates that may occur until the day of invoicing.

5.3 Unless otherwise agreed in writing, the prices apply EX Works (EXW) manufacturing site according to Incoterms® 2020 exclusive loading and exclusive packaging. The CT is entitled, but not obliged, to take out transport insurance at the cost of the client.

5.4 The statutory value added tax is not included in the price. It will be payable in the respective statutory amount and will be separately accounted for on the invoice.

In the case of delivery within the European Union, client must provide in good time prior to the contractually agreed delivery date with his VAT identification number and the related address, applicable for the corresponding contract, as proof of his exemption from VAT. In the event that such notification is not given or not given in good time, CT reserve the right to charge the appropriate VAT.

In the case of delivery outside of the European Union the CT is entitled to charge VAT in the statutory amount after delivery if client does not send a proof of exportation to CT within one month after shipment.

5.5 The invoiced purchase price is immediately due without deduction upon handover, unless otherwise agreed in writing. In order for the payment to be considered as timely, the receipt of the amount by the CT to be at its unconditional disposal is essential.

5.6 Insofar as staggered deliveries are agreed or partial deliveries are made, the purchase price is due with every partial delivery. Moreover, the CT is entitled to demand appropriate partial payments.

5.7 In case of a late payment, the client agrees to pay the respective interest in the amount of 8% above the base interest rate of the European Central Bank. The CT is entitled to exert its due right of retention also in the case of a late payment of the client with respect to previous deliveries.

5.8 If the client is in default of payment or if there are reasonable doubts about his solvency, the CT is entitled to make all demands to the client payable immediately and/or to demand provision of security even prior to delivery/service, to withhold any outstanding deliveries/services from all contracts with the client in whole or in part or to withdraw from the existing contracts in whole or in part.

5.9 The client will only be entitled to the rights of set-off, retention and refusal of performance if its counterclaims have been determined, are undisputed or recognized in a legally valid manner. Furthermore, the client is only entitled to exert a right of retention insofar as its counterclaim is based on the same contractual relationship.

5.10 The CT reserves the right to use payments in order to settle the oldest demand for payment due plus the default interest accrued on it and costs in the following order: costs, interest, demand for payment.

## Section 6 Traceability of goods

The client is obliged to keep a record when goods delivered by the CT are passed on to third parties so that at any time the client can give information on the further whereabouts of the goods. If, for example, in the case of a recall initiated by the CT, the client cannot give any information on the further whereabouts of the delivered goods, the liability for resulting damage to persons or goods will be transferred to the client.

## Section 7 Defects

7.1 The quality and state of the delivered goods will follow the specifications and description of the contractual item provided by the CT in the offer or the order confirmation. The contractual parties agree that the goods are free from defects if they correspond to the state indicated in the specifications at the time of transfer of risk.

7.2 Claims for defects expire in one year upon transfer of risk according to Section 3.

7.3 The client is obliged to accept work performances or installation services immediately, at the latest within two days following the notification of completion or following delivery. The delivery is considered as a request for acceptance. A record of acceptance must be issued at CT's request.

7.4 Obvious defects, wrong deliveries or quantity deviations must be notified by the client to the CT immediately in writing - notwithstanding the provisions in Section 7 and Section 640 Subsection 2 of the German Civil Code (BGB) - at the latest within seven calendar days following the delivery of the goods or the acceptance of the works performances. Once the client has initiated the further processing, the right to make a complaint will elapse. Claims in respect of hidden defects are to be made immediately, at the latest within seven calendar days following the detection of the same. If the client fails to provide a notification in time, the goods/service will be considered as approved being free from defects and accepted. For clients who are traders according to the German Commercial Code, Section 377 of the German Commercial Code will apply supplementarily.

7.5 Defects have to be notified in writing.

7.6 Following the receipt of the notification of defects, the goods have to be transferred to the CT for inspection at its request, insofar as this is possible without disproportionate effort. Another different procedure must be agreed in writing with the CT. In case of an unsubstantiated notification of defects, the client will bear the costs for the time and effort spent by the CT on the inspection.

7.7 In case of a substantiated complaint, the client, according to the CT's choice, is entitled to a rectification of a defect done twice free of charge or to a substitute delivery. Deficiencies will be subsequently delivered. If the rectification of a defect done twice or substitute delivery is not successful within a reasonable period of time, the client is entitled to statutory rights.

7.8 The CT can deny the remedy of defects or the substitute delivery as long as the client does not fulfil its due obligations with respect to the CT. The enforcement of the plea for defects and the client's corresponding rights of refusal of performance and retention due to defects remain unaffected by this.

7.9 The warranty is excluded if the goods/service are not being used

appropriately by the client or if it is connected with unsuitable parts (e.g. parts that are not from the CT or do not correspond to the manuals) or are mounted into such parts. Moreover, the warranty is also excluded in the case of normal wear and tear, chemical, electrochemical or electrical influences, hazardous ambient conditions unknown to CT as well as changes to the subject of delivery made without CT's consent and in case of non-conformance due to inappropriate action, maloperation and careless treatment, in particular if the client fails to follow the operational and maintenance instructions.

**7.10** The previously mentioned restrictions of the warranty do not apply to damage from injury to life, body or health resulting from an intentional or negligent violation of duty by the CT or one of its legal representatives or agents. The previously mentioned restrictions of the warranty also do not apply to other damage resulting from an intentional or grossly negligent violation of duty by the CT or one of its legal representatives or agents or if the other damage has occurred due to the absence of a guaranteed condition or due to fraudulent concealment of a defect. The time restriction of the claims to one year according to the above Section 7.2 does also not apply to the damage and the corresponding claims described in this paragraph.

**7.11** The assignment or pledge of warranty claims without transferring the goods to a third party is excluded. The client undertakes to inform the CT immediately and fully if warranty claims should be made against the client by its own customers.

**7.12** The CT's liability for consequential damage caused by a defect is excluded unless such damage is due to an intentional or grossly negligent breach of duty by the CT. In this respect, the client undertakes to indemnify the CT against any claims of its customers resulting from consequential damage caused by a defect, unless the CT intentionally or grossly negligently breaches its obligations.

## Section 8 Liability

**8.1** Any claims for compensation of damages of the client, irrespective of the legal basis, directly or indirectly in connection with the order, with the delivery or the use of goods/services of the CT or with the recourse to work performances are excluded. This liability exclusion does not apply in the case of violation of an essential contractual obligation (cardinal duty). Cardinal duties are duties whose fulfillment enable the proper execution of this contract in the first place and on the adherence to which the contractual partner periodically relies and is allowed to rely on, hence rights and obligations which the contract should indeed grant according to its content and purpose.

**8.2** The liability of the CT is in any case restricted to the compensation of the foreseeable damage typical to the given type of contract. Claims for compensation (of damages) of the client to the CT which go back to contractual penalty claims of the client's customers, are by no means foreseeable for the CT and are not typical for the contract in the above-mentioned sense. The CT is entitled to furnish proof of a lesser damage.

**8.3** Insofar as the damage is covered by insurance taken out by the client for the respective damage situation, the CT is only liable for possible disadvantages of the client in connection therewith, e.g. higher insurance premiums or interest disadvantages, until the insurance company settles the claim.

**8.4** The previously mentioned liability exclusions and limitations do not apply to damage from injury to life, body or health resulting from an intentional or negligent violation of duty by the CT or one of its legal representatives or agents. Nor do the previously mentioned liability exclusions and limitations apply to other damage resulting from an intentional or grossly negligent violation of a duty by the CT or one of its legal representatives or agents or if the other damage has occurred due to the absence of a guaranteed condition or due to fraudulent concealment of a defect.

## Section 9 No-fault liability/product liability

If a third party should make claims on the CT due to no-fault liability, in particular due to product liability, the client will take over the liability to the extent that he would also be directly liable. The liability of the CT is - insofar as legally possible - excluded for measures of the client regarding damage prevention, such as product recalls.

## Section 10 Reservation of ownership, reservation of copyright, secrecy

**10.1** The CT reserves the ownership of all its goods/services (reserved goods) until all claims arising from the business relationship with the client have been settled. This also applies to items which are installed or handed over within the scope of work performances. The reservation of ownership with respect to the client also remains in place if the claims of the CT are included in a current invoice (current account) and the balance has been drawn and accepted (reservation of current account). The transfer of risks according to Section 3 remains unaffected.

**10.2** The client shall treat the reserved goods with care. The client is obliged to sufficiently insure the reserved goods at its own cost at the gross invoice value against damages caused by fire, water and theft and already assigns its claim for compensation from these insurance contracts in the amount of the gross invoice value to the CT. The assignment is hereby accepted.

**10.3** The client is entitled to resell the delivered goods exclusively in the correct course of business, provided that it fulfills its contractual obligations with respect to the CT and that the resale results in a compensation claim at least equal to the amount of the purchase costs. In case of a resale of the reserved goods by the client, the client in turn shall until full payment only deliver these under effectively agreed reservation of ownership to its customers (transferred reservation of ownership), in which case the reservation of current account according to Section 10.1 does not apply to the transferred

reservation of ownership. The client assigns all its claims against its customers or third parties arising from the resale of the reserved goods and also any possible claims due to the client in future to the CT in advance according to the gross invoice value of the deliveries or the co-ownership portion of the CT. The CT hereby accepts the assignment. In case of processing, combining, amalgamation and/or mixing of the goods/services of the CT with external goods, the assignment of claims will only apply in the ratio of the gross invoice value of the reserved goods to the value of the external goods sold at the same time. The client is still entitled to collect claims even after the assignment. The entitlement of the CT to collect the claims itself remains unaffected. However, the CT is obliged not to collect the claim as long as the client duly performs its payment and other obligations. Should the client, however, be in default of payment, the CT is entitled to notify the client's customers of the assignment of the claim or the reservation of ownership and to collect the claims itself. The client shall transfer the earnings from the resale of the reserved goods in each case to the CT without delay insofar as claims are or become due.

In case of suspension of payments, insolvency application for the assets of the client or non-fulfilment of its obligations with respect to the CT, the authorizations for the resale of the reserved goods and for collection of claims with respect to the client's customers will automatically expire and are transferred to the CT. The client is obliged to disclose the assigned claims and their debtors to the CT's request, to provide the CT with all data required for the collection and to surrender the appropriate documents, in particular accounting records.

**10.4** A processing, combining, amalgamation and/or mixing of the reserved goods by the client will always take place on behalf of the CT, without the CT being bound thereby. In the case of processing, combining, amalgamation and/or mixing together with items not belonging to the CT, the CT becomes co-owner of the new item in the ratio of the value of the reserved goods item to the other items at the time of processing, combining, amalgamation and/or mixing. If the client acquires the sole ownership of the new item it will be agreed that the client will assign a co-ownership to the CT according to the proportional gross invoice value. The client will keep the thus generated sole or co-ownership safe for the CT. With respect to the goods arising from processing, combining, amalgamation and/or mixing the same incidentally applies as for reserved goods delivered under reservation of ownership.

**10.5** In the case of violation of the contract by the client, in particular in case of default payment, the CT is entitled to take back reserved goods which have not yet been paid for. In this respect, the client does not have a right to ownership. After taking back the goods the CT is authorized to make use of them. The proceeds from utilization will be credited against the client's debts minus the costs of utilization. The client has the option of proving that the utilization has caused inappropriately high costs, in which case the corresponding difference will not have to be borne by the client.

**10.6** The client is not entitled to pledge or to transfer the reserved goods by way of security. The goods delivered by the CT are expressly excluded from a transfer of entire warehouses by way of security. In case of debt enforcements or attachments, the client must point out the existing reservation of ownership and notify the CT in writing without delay so that the required countermeasures can be taken. The client is liable for the judicial and extrajudicial costs incurred by the CT through this if compensation cannot be achieved by other means.

**10.7** The CT is obliged to release any securities possibly conceded to it at the request of the client if the realizable value of the securities exceeds the claims to be secured by more than 20%; the selection of the securities to be released rests with the CT.

**10.8** If the reserved goods are delivered to a place outside of the Federal Republic of Germany or are brought to such a place by the client, then the following shall apply and shall override the Sections 10.1 to 10.7: The client will ensure that the reservation of ownership of the CT is effectively protected in the country where the goods are or into which they will be brought. If certain actions (e.g. a particular labelling or an entry into the local register) are required for this purpose, the client will carry these out on behalf of the CT at the client's own cost. Should the co-operation of the CT be required, the client will notify the CT of this without delay. Also, beyond that the client will inform the CT about all essential circumstances which are important in the scope of protection of the ownership of the CT to the furthest possible extent. The client will in particular provide all documentation and information required for enforcement of the rights arising from ownership. The provisions of Section 10.8 herein shall apply respectively, if according to the legal system of the place where the goods are located a reservation of ownership cannot be effectively agreed, in order to create a legal position for the CT which effectively protects the interests and claims of the CT in an immediately effective or otherwise suitable manner insofar as this is legally possible.

**10.9** The CT reserves the right to its ownership and all copyrighted rights of use and utilization of drawings, plans, models, templates, patterns, tools, production means and similar items and of confidential specifications/ideas provided to the client or paid for by the CT. These items and specifications/ideas must not be ceded or otherwise made accessible to third parties without prior written consent. The reproduction of such items and specifications/ideas is only admissible within the scope of the requirements of the contractual relationship and taking the copyright provisions into consideration. Third parties which come into contact with the items and specifications/ideas according to the terms of the contract must be correspondingly bound by the client.

**10.10** The client is obliged to always - even in case of doubt - treat any (unobvious) technical, economic and personal activities and relationships with the CT, of which it gains knowledge in the context of contractual relationships with the CT or in the context of the CT's offers, additional services, consultations and information, as business or corporate secrets, to keep them secret and to ensure that third parties (including family members and employees not concern-

ned with the subject) do not gain knowledge of them in an unauthorized manner. The obligation to secrecy continues even after the contractual relationship has been terminated. If the client culpably violates the obligation to secrecy, he is obliged to pay a contractual penalty of 5% of the net order value to the CT for each individual case of violation. The CT reserves the right to assert any additional compensation claims.

## Section 11 Indemnity in case of violation of third-party property rights

By means of the independent guarantee, the client vouches for the client being the unrestricted holder of rights with respect to the required copyrights and industrial property rights if the CT produces based on designs and specifications or using goods/materials from the client. If nevertheless copyrights or industrial property rights should be asserted against the CT in this respect by third parties, the client must keep the CT indemnified against all costs and demands in this respect.

## Section 12 Export control clause

**12.1** The fulfillment of the contract with respect to parts subject to governmental export regulations shall be subject to the condition that there are no obstacles based on German, American, or other applicable national, EU or international provisions concerning foreign trade law or any embargos or other sanctions. The client must observe the applicable regulations and obtain any necessary permits when exporting or shipping the goods supplied by CT. The client acknowledges that it is his sole responsibility to comply with and abide by those laws and regulations.

**12.2** The client undertakes to provide all information and documents required for export or shipment. In particular, the client will, upon request, immediately provide the CT with all information concerning the final recipient, final destination and intended use of the goods to be delivered by the CT as well as any relevant export control restrictions. Delays due to export inspections or approval procedures invalidate deadlines or delivery times.

**12.3** The CT is entitled to terminate the contract in whole or in part without prior notice if the termination by the CT is necessary to comply with national or international legal provisions.

**12.4** In the event of termination in accordance with Section 12.3, the assertion of a claim for damages or the assertion of other rights by the client due to termination is excluded.

**12.5** In the event of a breach of export control obligations by the client, the client shall immediately indemnify CT from all claims asserted by authorities and/or other third parties against the CT and shall compensate all damages asserted by authorities and/or third parties against the CT. This does not apply if the client is not responsible for the breach. This does not imply a reversal of the burden of proof.

**12.6** If approvals are not granted or other delivery restrictions exist, the CT's relevant offer shall become invalid and a contract relating thereto shall be deemed not concluded with regard to these goods. Any claim for damages in connection with the refusal of or delay in the granting of authorizations or other export restrictions is excluded, unless this is based on intent or gross negligence on the part of the CT.

## Section 13 Applicable law, jurisdiction, miscellaneous

**13.1** The contractual relationship is governed by the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods (CISG) will not be applied.

**13.2** The registered office of the CT is agreed as the place of fulfillment for all obligations from this contractual relationship. The court of jurisdiction for all disputes arising from this contractual relationship will be the court having jurisdiction at the registered office of the CT and according to the discretion of the CT will also be the court of jurisdiction of the client.

**13.3** Personal data shall be stored by CT in compliance with the statutory regulations.

**13.4** Should any individual provisions of these GTC be or become invalid in whole or in part, this shall not affect the remaining provisions.

© February 2020 CeoTronics AG