

# Standard Terms and Conditions of GAPTEC Electronic GmbH & Co. KG

## 1. General considerations

1.1. Insofar as not otherwise expressly agreed in writing, all contracts, deliveries, and quotes, as well as any other deliverable ("Deliverable") shall be governed solely by the terms and conditions hereof ("Standard Terms").

1.2. Our Standard Terms shall apply in conjunction with the specific conditions entailed by any Deliverable; any recognition on our part of any customer terms and conditions that differ from the Standard Terms shall be excluded without our express written consent. The Standard Terms shall also apply insofar as, in knowledge of any terms and conditions that contravene or differ from the Standard Terms, we unconditionally supply the customer with deliverables. In order to be valid and take effect, any condition that differs from the Standard Terms, and in particular any oral or ancillary agreement, must be confirmed in writing by both parties.

## 2. Conclusion of contracts

2.1. Insofar as not otherwise stipulated in writing, our quotes shall be non-binding. Any contract shall come into force (a) only insofar as we have confirmed the relevant order and/or contract in writing; and (b) no later than as at the date delivery is effected.

2.2. Any addition, modification, revocation, or ancillary oral agreement having regard to this contract shall only become effective on issuance of our written confirmation.

## 3. Prices

Insofar as no price has been expressly covenanted for any product, such product shall be billed in accordance with the generally applicable price list on the date of dispatch, for the delivered quantity or for the quantity for which delivery was accepted. All prices shall be deemed to be net prices in euros, ex works, plus packaging, shipping, insurance, customs duties, and any other tax or fee prescribed by law, and in particular sales tax (VAT).

## 4. Payment

4.1. Insofar as not otherwise agreed, all deliveries shall be effected on a COD basis. For any delivery that is effected on an open account basis, payment of the relevant invoice shall be effected 30 days following the invoice date, without any discount. We shall be entitled to at any time rescind (a) any payment due date that has been set or (b) any open-ended payment period, while reasonable advance notice shall be provided in either such case. Checks shall be deemed to constitute conditional payment only, and any acceptance by us of any bank draft as a payment instrument shall be excluded.

4.2. Payment shall be deemed to be in arrears insofar as payment is not effected on or before the due date stipulated in the relevant payment reminder, but no more than 30 days following the relevant due date and receipt of the relevant invoice, without the need for a payment reminder. Any payment that is in arrears shall be governed by the applicable statutes and regulations concerning delinquent payments. In the event that any payment is in arrears, payment of all amounts owed to us shall be due with immediate effect.

4.3. Any customer complaint or any difference of opinion between us and the customer for any reason whatsoever shall not constitute grounds for any customer right to suspend payment. Any customer deduction from any amount due shall be allowed solely for any receivable that is undisputed or that has been enforceably upheld in a court of law. Any customer assertion of any lien shall be excluded.

4.4. In the interest of ensuring that our receivables are paid, we shall be entitled at any time, including after the contract takes effect, to require that the customer provide an adequate financial guarantee, and to make our provisioning of any services contingent upon the customer providing such guarantee. This shall apply in particular in the event that any doubt concerning the customer's creditworthiness or liquidity or the like arises, or insofar as the original credit amount is increased.

## 5. Terms of delivery

5.1. Our written order confirmation and the information contained therein shall be deemed to define the scope of delivery.

5.2. Any brochure, catalogue, price list or the like, or any figure contained in any non-binding quote, drawing, graphic, technical data, and/or service description shall be deemed to be valid solely as an approximation, except insofar as such element is expressly designated as binding. Any minor deviation from any previously indicated dimensions, weight, and/or quantity shall be admissible in all cases, insofar as such deviation is attributable to manufacturing or technical factors. This shall apply in particular to any change or optimization that serves to implement technical advances.

5.3. All deliveries shall be effected from stock at the customer's cost and risk. We shall be entitled at any time to (a) ship directly from another location such as the manufacturer's plant and/or (b) effect partial deliveries or provide partial services. The shipping route and method shall be determined in our own discretion; any liability on our part for having used the least expensive shipping method/route shall be excluded.

5.4. Any delivery date that we may indicate shall be deemed to be an approximate and non-binding date, except insofar as we expressly stipulate a specific delivery date. Insofar as any contract modification is covenanted, particularly as regards any change in the scope of delivery, the covenanted delivery period shall be reasonably extended, except insofar as otherwise stipulated in writing. Our fulfillment of any delivery deadline shall be contingent upon the customer fulfilling the customer's contractual duties.

A delivery date shall be deemed to have been adhered to insofar as the relevant goods are dispatched from our plant on or before the delivery date, or insofar as we have notified the customer that the goods are ready to be shipped. The delivery period shall begin as from the date of transmission of our order confirmation, subject to (a) provisioning by the customer of all necessary documents, permits, or approvals and/or any declarations or other document that the customer needs to issue; and (b) receipt of any advance payment that has been covenanted between us and the customer.

5.5. Any delivery deadline shall be reasonably extended insofar as we are unable to meet such deadline for any of the following reasons: an Act of God; civil unrest; any epidemic; any mobilization of military forces; war; labor strikes; labor lockouts; or any other severe impediment to our operations over which we have no control, and in particular any lack of skilled personnel, any non-effected delivery, or any official measures ("Force Majeure"). Force Majeure shall also be deemed to apply in the event that any of the aforementioned circumstances occur in connection with any of our suppliers. Force Majeure shall likewise be deemed beyond our control insofar as it occurs during a current period of delay. We shall notify any delivery delay to the customer insofar as such notice is possible and reasonable. Any unforeseen impediment to performance shall entitle us to rescind our delivery obligations in whole or in part. Any indemnification of the customer for loss or damage in the event of Force Majeure shall be excluded, except insofar as we were, or must necessarily have been, aware of the relevant impediment to performance at the time the contract was concluded.

5.6. We shall be liable for any default on any expressly covenanted delivery date only insofar as such default is attributable to any intentional conduct or gross negligence on our part. Any indemnification for loss or damage shall be limited to the foreseeable and characteristic loss or injury for the particular instance in question, and in the case of any default on delivery, to 3 percent of the delivery value per full week of delay in the guise of a lump sum delivery delay indemnification, subject to a maximum of 15 percent of the entire delivery value. In any such case, it shall fall to the customer to prove that the customer incurred loss or damage.

5.7. Insofar as any item is not available for delivery, we shall be entitled to send the customer a substitute item of comparable quality ("Substitute Item"). Insofar as an ordered item or Substitute Item is unavailable for delivery, we shall be entitled to place the relevant item on back order or to be exempted from the contractual duty to deliver for the item in question. In the event that any item is placed on back order, we will notify you accordingly.

5.8. Any item ordered on call must be accepted within the covenanted call-off period. On expiration of such period, the balance due shall be invoiced and payment therefor shall be due; the relevant item or items shall, in the customer's discretion, either be shipped to the customer or stored at the customer's expense.

## **6. Passage of risk; shipping**

6.1. Risk shall pass to the customer at the latest on handover of the shipment to the shipper, or on shipment of the relevant items from our warehouse. The foregoing shall apply regardless of whether we assume the shipping costs or effect delivery using our own vehicle.

6.2. Insofar as shipment is delayed owing to circumstances beyond our control, risk shall pass to the customer with effect from the day of notification of readiness to effect shipment. Insofar as any shipment is delayed for reasons attributable to the customer, on expiration of a reasonable deadline set by us that the customer has failed to meet we shall be entitled to use the goods in question for other purposes and effect delivery to the customer in accordance with a reasonably extended delivery date.

6.3. The customer shall assume responsibility for insuring the customer's shipment against loss or damage of any kind whatsoever. The customer shall lodge with the last shipper any shipping related complaint or claim, which shall be lodged promptly on receipt of the shipment or shipping documents.

## **7. German Packaging Regulation (Verpackungsverordnung)**

Pursuant to the German Packaging Regulation (Verpackungsverordnung), we shall take back all shipping and inner packaging so as to allow for proper disposal or recycling thereof. Any returned packaging shall be sent to us without any shipping charge. Insofar as we have not authorized the return of any such packaging, we shall be entitled to refuse acceptance thereof.

## **8. Retention of title**

8.1. We shall retain title to all deliverables until all payment arising from the contract have been effected in full. In the event of any breach of contract on the part of the customer, and in particular if the customer defaults on payment, we shall be entitled to take the deliverables back. Any request on our part to take back any deliverables, or any instance of our taking back any deliverables, shall be deemed to terminate the contract. We shall be entitled to sell any deliverables that we have taken back. The proceeds from the sale of such deliverables shall be deducted from the amount owed by the customer, minus a reasonable realization fee.

8.2. The customer shall handle and use all deliverables in a careful and diligent manner, and shall obtain insurance for the deliverables that covers their replacement value. The customer shall report to us promptly in writing any seizure or attachment of the deliverables, as well as any other third party action in respect to the deliverables. If such third party is unable to reimburse us for the court costs arising from a lawsuit pursuant to Article 771 of the German Code of Civil Procedure (ZPO), the customer shall indemnify us for such costs.

8.3. The customer shall be entitled to resell the deliverables via a duly executed transaction. However, in such a case the customer hereby assigns to us the amount (including sales tax/VAT) of our definitively invoiced receivable and arising from the proceeds of such sale to the customer's customer or any third party, regardless of whether the deliverable in question was sold after having been processed or without having been processed. Until the date of cancellation, the customer shall be entitled to collect any such assigned receivable in the customer's capacity as our trustee. Insofar as payment of any such receivable is due, the customer shall pay us the amount collected. The foregoing shall be without prejudice to our right to collect any such receivable ourselves. However, we shall refrain from collecting any such receivable insofar as the customer (a) meets the customer's payment

obligations as regards the relevant earned proceeds; (b) is not in arrears on payment; and (c) in particular does not file for bankruptcy or suspend payment of amounts due. But if this is the case, we shall be entitled to require the customer to do the following: (a) disclose the amounts of all assigned receivables and the beneficiaries thereof to us; (b) provide us with all information necessary to effect collection and all documentation related to any such collection; and (c) notify the assignment to any beneficiary (third party).

8.4. The customer shall process or reconfigure any deliverable solely on our behalf. If any deliverable is processed in conjunction with items that do not originate with us, we shall become partial owners of the resulting product ("Resulting Product") in proportion to the ratio, at the time of processing, between the invoiced value of the purchased item (including sales tax/VAT) and the value of the other items that were processed. The foregoing terms and conditions concerning any Resulting Product shall likewise apply to deliverables that are accepted with reservations.

8.5. Insofar as any deliverable is inseparably combined ("Combining") with any item to which we do not hold title, we shall become co-owners of the Resulting Product in proportion to the ratio, at the time of Combining, between the invoiced value of the purchased item (including sales tax/VAT) and the value of the other items that were subject to Combining. Insofar as any Combining is carried out in such a way that any customer item can be considered to be the main item, the customer shall assign to us pro rata joint title to such item. The customer shall grant the consequent sole title or joint title for us.

8.6. The customer shall furthermore assign to us the receivables necessary to secure any claims against the customer that are lodged against a third party by virtue of any combination of the purchased goods with real property.

8.7. At the customer's behest, we shall release any guarantee accruing to us insofar as the realizable value of our guarantee exceeds the amount under guarantee by more than 10 percent. It shall fall to us to determine the amount of the guarantee that is to be released.

## **9. Defect claims; warranty**

9.1. Promptly on receipt of any deliverables, the customer shall examine them to determine whether (a) any item is defective; (b) any incorrect item was delivered; (c) any item is missing from the delivery; or (d) any deliverable is lacking any guaranteed characteristic ("Defect"). Any immediately discernible Defect shall be reported to the supplier within eight days, while any Defect that is not immediately discernible shall be reported promptly upon detection thereof. In either case, notice shall be submitted in writing. Insofar as such notice is not submitted within eight days or promptly upon detection of the relevant defect (as the case may be), the delivery shall be deemed to have been approved.

9.2. Insofar as, during the statutory warranty period, we are notified of a bona fide Defect in a timely manner, we shall, eliminate such Defect by either (in our discretion) effecting a repair or by supplying a replacement item. We shall acquire title to any replaced item. The customer shall allow us a reasonable time and afford us a reasonable opportunity for the Defect elimination process. Insofar as any repair or any replacement delivery exhibits a Defect, the customer's sole legal recourse shall be to rescind the sale. The customer shall be entitled to correct a Defect on his own or have a third party correct a Defect and request reimbursement of the requisite costs only (a) in an emergency entailing any operational safety risk; or (b) in order to avert disproportionate loss or damage.

9.3. Any warranty obligation shall be excluded in connection with the following: any loss or damage resulting from any improper or unsuitable use, improper mounting, or improper commissioning by the customer or any third party; normal wear and tear; improper or negligent handling; the use of unsuitable operating materials; the use of substitute materials; or the effect of any electrochemical or electrical element. Application of the foregoing sentence shall be excluded insofar as any such loss or damage is attributable to us. Furthermore, any liability on our part for the consequences of any improper modification or repair work ("Modification") by the customer or a third party shall be excluded, insofar as such Modification is undertaken without our express permission.

9.4. Any assignment of the warranty obligations hereof shall be excluded.

## **10. Liability; indemnification for damages**

We shall be liable as follows, to the exclusion of any other claim, for damages, regardless of the legal ground therefor, and in particular for damages arising from unsatisfactory performance, "positive" breach of contract (*positive Vertragsverletzung*), consequential loss or damage, default on accessory obligations in connection with contract negotiations, or any wrongful act:

10.1. Our liability shall be unlimited for any intentional misconduct or gross negligence on the part of our legal representative or any managerial employee. In the event of any intentional misconduct or gross negligence on the part of any other agent, our liability shall be limited to any loss or damage that would typically arise in connection with a purchase contract.

10.2. Our liability shall be unlimited for any lack of a guaranteed characteristic, and insofar as we are liable for personal or property damage under the Product Liability Act (*Produkthaftungsgesetz*; hereinafter: "Product Liability Act") for any defect in any product that is intended for personal use. Insofar as we are liable for any lack of any guaranteed characteristic, we shall also be liable for any loss or damage that is not directly related to the deliverable in question, insofar as the relevant guarantee was intended to cover such consequential loss or damage.

Insofar as the customer uses any product manufactured by us (or for which in our capacity as manufacturer we are liable under the Product Liability Act) to manufacture another product, the customer shall be the sole liable party in connection with any third party claim arising from the Product Liability Act and shall hold us harmless against any such claim.

10.3. We shall furthermore be liable for any negligence on our part only insofar as such negligence results in any breach of any duty whose fulfillment is essential for the performance of the contract ("Cardinal Duty"). In the event of any breach of a Cardinal Duty, our liability shall be limited to 150 percent of the purchase price of the relevant deliverable, to the exclusion of any incidental or consequential loss or damage that is atypical for the contract in question. This shall apply in particular, but not exclusively, to any

claim for loss or damage arising from unsatisfactory performance, “positive” breach of contract (*positive Vertragsverletzung*), default on accessory obligations, or any breach of duty in connection with contract negotiations. Our liability for a breach of a Cardinal Duty shall apply in the event that we are liable for initial incapacity or any defect in title.

Any indemnification for damage that is not incurred by a specific deliverable per se shall be excluded. In addition, our liability for property damage alone, and in particular for any production breakdown, reduced production, or lost profit shall be limited to the general tenets of good faith – for example, in the event of an unreasonable discrepancy between the purchase price and the amount of damages.

10.4. Any liability on our part of any delay or incapacity shall be excluded.

10.5. The foregoing shall be without prejudice to any liability for culpable injury to life, limb or health, as well as any customer right to terminate the contract on any ground prescribed by law.

## **11. Product returns**

We will accept returns on products provisioned by us (“Returned Product”) solely as provided in this section 11, insofar as we are not subject to any contractual or statutory obligation in this regard. The Returned Product must be in mint condition and shall be returned to us free of any shipping or shipping insurance costs, as well as any ancillary costs. Any Returned Product shall be credited to the customer, minus a 10 percent handling and storage charge. The return of any special-ordered product shall be excluded. The foregoing shall be without prejudice to our right of cancellation as regards any consumer contract.

## **12. Data privacy**

We shall be entitled to process data (within the meaning of the Data Privacy Act) that we receive concerning or in connection with the contract, regardless of whether such data stem from the customer or a third party. This advisory replaces the advisory required by the Data Privacy Act to the effect that personal data concerning the customer will be stored and processed in a computer system.

## **13. Place of performance and place of jurisdiction**

The place of performance for all obligations and the place of jurisdiction for all claims arising from the contract shall be the city in which our company’s registered office is located. The laws of Germany shall apply to the exclusion of the laws of any other state.

## **14. Copyright**

Our catalogues, foldouts, operating instructions, servicing information, advertising and application photos, website and the content thereof, pictograms, logos, sketches, and any other promotional or informational document are copyrighted. Any copying or reproduction of any such element in whole or in part shall be subject to our prior authorization.

**GAPTEC Electronic GmbH & Co. KG**

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