

**General Terms and Conditions of Sale of CIECH S.A. German branch  
for use in business relations with companies**

**Article 1 Application**

(1) All supplies, services and offers/quotations of the Seller are subject exclusively to these General Terms and Conditions of Sale, unless otherwise agreed in writing. These General Terms and Conditions of Sale are intended for use in business relations with companies and are an integral component of any purchase contract concluded by the Seller with his contracting partners (hereinafter called 'Purchaser') for the provision of services or supplies offered by him. They also apply to any future supplies, services or offers/quotations to the Purchaser, even when not agreed separately.

(2) The terms and conditions of the Purchaser or third parties shall not be applicable, even when the Seller has not expressly contradicted their validity. Even when the Seller refers to a letter that contains the terms and conditions of the Purchaser or a third party or a reference to such terms and conditions, this does not mean that the Seller agrees to their application.

(3) The Seller is entitled to amend the General Terms and Conditions of Sale for objective reasons such as amendment of law, changes of court ruling, or changes of economic circumstances. If such amendment would considerably disturb the contractual balance between the parties, the amendment shall not take effect. The amendment takes effect if the customer does not object in writing within two weeks of its notification. Any amendments are principally subject to the customer's approval.

**Article 2 Offers/quotations and conclusion of contract**

(1) Any offers/quotations of the Seller are not binding, unless expressly identified as binding.

(2) Any orders must be placed by the Purchaser in writing (including also by fax and email) or electronically (EDI) and are deemed to be binding. The Seller shall accept orders by written confirmation or by delivery of the goods ordered.

(3) Unless otherwise agreed in writing, the quality of the products is governed exclusively by the product specifications of the Seller. Any information of the Seller in catalogues, leaflets, samples and other advertising material is not binding. Characteristics of state, shelf life and other data are deemed to be guaranteed properties and warranties only if agreed in writing and expressly described as such. Common deviations caused by statutory provisions or improvements are permissible provided they do not affect the suitability for the contractually agreed purpose.

(4) The Seller retains title and copyright to any documents and samples made available, in particular offers/quotations, calculations, specimen, etc. Without the Seller's prior written approval the Purchaser is not permitted to make them available to third parties or disclose their contents to such parties, to make them public, to use or copy them himself or have them used or copied by third parties. After termination of the contractual relationship the Purchaser is obliged to return them to the Seller without being requested to do so, and to destroy any copies made, except if statutory provisions require that they are preserved for a specified period.

**Article 3 Prices and payment**

(1) Prices are quoted net in EUR without any deduction free carrier (FCA) works CIECH/Staßfurt according to Incoterms 2010 plus statutory VAT.

(2) Unless otherwise agreed in advance in writing, the purchase price is due for payment promptly and strictly net. The date of the invoice is the decisive date for payment purposes. On

expiry of the period for payment the Purchaser shall be deemed to be in default even without a separate dunning letter. In the case of default the Seller is entitled to declare any claims due for payment and demand default interest at the statutory rate. The right to claim further damage caused by delayed performance is reserved.

(3) The Purchaser is entitled to reduce the invoiced amount, to set off and exercise the right of retention only when the counterclaims have been confirmed finally and are uncontested. The Purchaser may exercise the right of retention only subject to the condition that his counterclaim is based on the same contractual relationship.

(4) Notwithstanding any other rights the Seller is entitled to make outstanding deliveries or provide outstanding services against advance payment or provision of security only, if after conclusion of the contract he becomes aware of circumstance which may significantly affect the credit standing of the Purchaser (e.g. repeated delayed payment of invoices) and jeopardise the payment of outstanding debts from the respective contractual relationship by the Purchaser to the Seller (including other individual orders under the same contract).

#### **Article 4 Delivery and delivery time**

(1) Deliveries shall be made free carrier (FCA) works CIECH/ Staßfurt Incoterms 2010.

(2) Delivery periods and dates for supplies and services proposed by the Seller are not binding, unless they were defined expressly and in writing as 'fixed'. If dispatch is agreed, delivery periods and dates refer to the date of handover to the forwarding agent, carrier or third party commissioned with the transport.

(3) Notwithstanding his rights from delay in performance of the Purchaser, the Seller may demand an extension of the period for the delivery of goods and provision of services by the period during which the Purchaser has not discharged his contractual duties vis-à-vis the Seller.

(4) In the event of force majeure or any other incidents which could not be foreseen when the contract was signed and which are not the Seller's fault (e.g. disruptions of operation of any type, material and energy bottlenecks, transport delays, strikes, legal lookouts, shortage of labour, energy or raw materials, difficulties in the procurement of necessary official permits or non-delivery, incorrect or delayed delivery by subsuppliers) the Seller shall not be liable for failure to deliver or delayed delivery. If any such event significantly impedes or prevents the Seller's delivery or services significantly, and the disturbance is not only of a temporary nature, the Seller is entitled to rescind the contract. In the event of disturbances of a temporary nature the periods for delivery and performance shall be extended by the period the respective event lasts plus an appropriate startup period. If due to the delay the Purchaser cannot be expected to accept the delivery or services, he can rescind the contract immediately by way of a written declaration to the Seller.

(5) The Seller is entitled to provide partial services and make partial deliveries only, if this is reasonable for the purchaser.

(6) The occurrence of a delay in performance or delivery requires a dunning letter of the Purchaser and is otherwise governed by law.

#### **Article 5 Place of performance, dispatch, packaging, transfer of risk, acceptance**

(1) The place of performance for any obligations from the contractual relationship shall be Staßfurt, unless otherwise agreed.

(2) Type of dispatch and packaging are based on the Seller's professional judgment.

(3) The risk passes to the Purchaser at the latest when the delivery item is handed over (the beginning of the loading operation is the decisive moment) to the forwarding agent, carrier, or the third party commissioned with the dispatch. This also applies to partial deliveries, or when the Seller provides other services as well (e.g. the dispatch). If dispatch or handover is delayed by circumstances for which the Purchaser is responsible, the risk passes to the Purchaser on

the very day the delivery item is ready for dispatch and the Seller has informed the Purchaser accordingly.

(4) Any storage costs after passage of risk shall be borne by the Purchaser. If the goods are stored by the Seller, the storage costs amount to [0.25]% of the invoiced amount of the stored goods per expired week. The right to claim higher or lower storage costs is retained.

#### **Article 6 Warranty, material defects**

(1) The warranty period is one year from the date of delivery. This period does not apply to claims of the Purchaser from injury to life, body or health and wilful or grossly negligent breach of duty of the Seller or his vicarious agents; these limitation periods are governed by law.

Immediately after delivery to the Purchaser or the third party nominated by him the goods delivered shall be inspected thoroughly for any damage and missing quantities, and any defects detected shall be reported in writing to the Seller within five working days. If this is not done, obvious defects, missing quantities and any other defects which could have been detected during an immediate and thorough inspection are deemed to be approved by the Purchaser. With regard to other defects, the delivery is deemed to be approved by the Purchaser if the complaint is not received by the Seller within five working days of detection of the defect or manifestation of the defect during normal use. The Purchaser is further obliged to store and handle the goods properly and make them available for inspection by the Seller or the person authorised by him.

(2) Warranty claims can be asserted by the Purchaser only when he has duly discharged his inspection and complaint duties. Claims cannot be asserted in the case of minor deviations from the agreed quality or minor impact on the serviceability. The Seller, at his option, is first obliged and entitled to rework the defective part/s or provide substitute delivery. If a defect is the Seller's fault, the Purchaser's legal claims for damages or reimbursement of expenses incurred to no avail are subject to Article 8 of these General Terms and Conditions of Sale.

#### **Article 7 Industrial property rights**

(1) According to Article 7 the Seller ensures that the delivery item is free from property rights or copyrights of third parties. Each contracting partner will inform the other party immediately in writing, if claims for infringement of third-party rights are asserted against him.

(2) In the event that the delivery item infringes on an industrial property right or a third-party copyright, the Seller, at his option and costs, will change the delivery item or replace it to ensure that no third-party rights are infringed on, but that the delivery item continues to perform the contractually agreed functions, or by concluding a licence agreement he will ensure that the Purchaser obtains the right of use. If the Seller does not succeed in achieving this within a reasonable period of time, the Purchaser is entitled to rescind the contract or reduce the purchase price appropriately. Any potential claims for damages of the Purchaser are subject to the restrictions of Article 8 of these General Terms and Conditions of Sale.

(3) If the products of other manufacturers delivered by the Seller infringe on any rights, the Seller, at his option, will assert his claims against the manufacturers and suppliers for the account of the Purchaser or assign them to the Purchaser. Claims against the Seller according to Article 7 can be asserted in these cases only when the enforcement in court of the above claims against the manufacturers and suppliers was not successful, or if there is no reasonable chance of success, e.g. due to insolvency.

#### **Article 8 Liability for damages based on fault**

(1) Liability of the Seller for damages, on whatever legal ground, in particular impossibility of performance, delay, defective or incorrect delivery, breach of contract, breach of duty in

contractual negotiations and unauthorised action, to the extent this involves culpability, shall be limited in accordance with this Article 8.

(2) The Seller shall be liable for any damage/loss caused by him wilfully or grossly negligently as well as for any damage/loss consisting of injury to life, body or health.

(3) In the event of ordinary negligence the Seller shall only be liable for damage/loss from injury to life, body or health, and for damage/loss from breach of a material contractual duty. Material contractual duties are duties the fulfilment of which is an essential requirement for the proper performance of the contract and on which the contractual partner may rely regularly such as the duty to deliver the contract product in due time, the freedom from defects of title and material defects affecting the function or usability of the contract product to an extent that can no longer be classified as minor. In this case liability is restricted to the replacement of the foreseeable, typically occurring damage/loss, i.e. damage/loss the Seller foresaw as a potential consequence of breach of contract when the contract was concluded, or which he should have foreseen when exercising due diligence. Indirect damage/loss and consequential damage/loss can be compensated only to the extent such damage/loss is to be expected typically under the conditions of intended use of the object delivered.

(4) In the event of liability under section 2 the duty of compensation is limited to the insured sum of the manufacturer's liability insurance to an amount of EUR 5 million per claim (in words: five million Euros), however not more than EUR 10 million in total (in words: ten million Euros) for all claims within one year.

(5) To the extent liability is excluded or limited, this also applies to personal liability of employees, legal representatives, organs and vicarious agents of the Seller.

(6) To the extent the Seller provides technical information or gives advice, and such information or advice is not part of the contractually agreed scope of services, this shall be done free of charge and excluding any liability.

(7) The restrictions on or exclusions of liability under this Article 4 do not apply to the Seller's liability for wilful acts, guaranteed characteristics of state, injury to life, body or health and liability under the product liability act.

#### **Article 9 Retention of title**

(1) The Seller retains the title to the contract products until all present and future claims from the purchase contract and the current business relationship have been paid in full.

(2) The Purchaser is obliged to store the conditional goods free of charge, handle them with care and insure them at his own costs. The Purchaser shall assign his claims vis-a-vis his insurer or third parties for the event of potential damage/loss already now to the Seller who accepts the assignment.

(3) In the event of breach of contract by the Purchaser, in particular non-payment of the due purchase price, the Seller is entitled to rescind the contract in compliance with the statutory provisions, and demand that the goods are returned based on retention of title and rescission of contract.

(4) The Purchaser is not entitled to pledge the conditional goods or transfer the title to third parties as security, he is entitled however to sell the conditional goods within the framework of ordinary business. The Purchaser shall assign the receivables from such transaction with his business partners already today to the Seller as security who accepts the assignment. The Purchaser shall be revocably entitled to collect in his own name the receivables assigned to the Seller for the latter's account.

(5) Retention of title refers to the products created by processing, blending or combining at their full value. If the title of third parties is retained after processing, blending or combining with goods of such third parties, the Seller acquires co-ownership in proportion to the invoiced value

of the processed, blended or combined goods. The newly created goods are subject to the same provisions as the goods supplied under retention of title.

(6) If the value of all securities of the Seller exceeds the existing receivables by more than 10%, on the Purchaser's request the Seller shall release securities at the option of the Purchaser.

#### **Article 10 Final provisions**

(1) The Seller processes personal data of the Purchaser and his employees for the purpose of the performance and implementation of the contract concluded by the parties in accordance with the statutory provisions (GDPR and national data protection acts). The Seller makes sure that the Purchaser's interests requiring protection are not affected. For details, reference is made to the data protection information in conformity with the EU General Data Protection Regulation (GDPR).

(2) For any disputes arising out of this contract the venue shall be the Seller's seat, unless an exclusive venue is specified by law. The parties agree that German law shall be applied; the application of the UN Convention on Contracts for the International Sale of Goods shall be excluded.