

**This is an English translation of the German “General Terms and Conditions of CENTRAVIS Sales Germany GmbH. In the event of a discrepancy, the German-Language version shall prevail.**

## **GENERAL TERMS AND CONDITIONS OF CENTRAVIS SALES GERMANY GMBH**

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### **1. Scope of Application**

1.1 These General Terms and Conditions shall apply for all sales and services in business relations with companies and juridical persons as defined in § 310 I BGB (German Civil Code). Any terms and conditions of our customer which contradict or deviate from these General Terms and Conditions are non-binding and will only be respected if and provided that we have explicitly agreed to such different Terms and Conditions in writing.

1.2 Any contradiction or retention at a later date against these Terms and Conditions, despite of the acceptance of our sales and services, shall be unremarkable and void.

1.3 These Terms and Conditions shall also be effective for all future sales and services with the customer insofar as such contractual relations have a certain similarity as defined in § 305 III BGB.

### **2. Offer and Contract Conclusion**

2.1 If any order can be regarded as an offer as set out in § 145 BGB, then we are allowed to accept such offer within an economically adequate period of time, provided that such period of time is not definitely defined as set out in § 148 BGB.

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### **3. Property of Documents and Information delivered**

We shall reserve our property and intellectual property rights on all documents and information delivered to our customer in relation with the contract conclusion, e.g. electronic data and information, calculations, drawings etc. These documents and information are confidential and shall not be disclosed to any third party, unless with our prior written approval. Upon our request, such documents must be immediately returned to us.

### **4. Prices and Payment**

4.1 Our prices shall be invoiced in EURO plus VAT in the effective amount, if applicable. Any payment must be exclusively made to the bank account as indicated in the invoice.

4.2 All sales prices are immediately due and payable, net of any unauthorized cash discount, unless we have agreed to any payment targets. In case of any payment default, the rate for default interest is agreed to be 8 % above the German base interest rate as defined in § 288 BGB, at least

a minimum default interest of 12 % p.a. shall apply, unless the customer can give evidence of a lower interest damage.

4.3 Unless a fixed price is explicitly agreed, we reserve our right to reasonably increase the agreed price based on modified costs and expenses for loan, material and sale for deliveries which are made 3 months or later after conclusion of the contract.

4.4 (1) We have the right to assign our receivables and claims against our customer to any third party.

(2) If the customer is in payment default with one invoice, all remaining invoices and receivables can and may be declared immediately due and payable.

(3) The customer must pay all fees, costs and levies which may be incurred against him in case of any legally successful court, arbitration and other claim procedure, inside and outside of Germany.

4.5 All applicable costs and fees for payment by bank drafts and cheques shall be paid by the customer

### **5. Rights of Set-off and Retention**

The customer shall have the right of set-off only if and provided that his counterclaims have been effectively confirmed in court or are undisputed. He is only allowed to execute his rights of set-off and retention if such counterclaim is based on the same contractual relation.

### **6. Time Period of Delivery**

6.1 Scheduled delivery dates and periods are fixed provided that they are confirmed in writing with each order form. The beginning of any delivery period indicated by us is conditional upon the proper and timely performance of all obligations by our customer.

6.2 If the customer is in default of acceptance, or if he, by culpable misconduct, is in breach of any other obligations to cooperate with the supplier, then we shall be entitled to claim any damages and additional costs, fees and expenses. We reserve our rights for additional claims and requests. In case of such preconditions, the risk of the goods in case of accidental destruction or deterioration shall pass to the customer as soon and at the time when he is in default of the acceptance of the delivered goods, or in payment default.

6.3 Any circumstances which make the timely deliverance of any sold or ordered goods entirely or partially impossible (e.g. Force Majeure, administrative acts, business malfunctions, even if they occur with third parties, default or late delivery of goods of third parties) shall release us, for the period of such malfunction or any of its consequences, from any fixed delivery period and any claims of default otherwise possible. We will inform the customer immediately about any such problems, and we are, at our own choice, entitled for a later delivery or cancellation of part or the entire contract.

6.4 If we are culpably responsible that the sale and services become impossible to be performed, then the customer, upon a granted remedy time period of at least 4 weeks, may be entitled to cancel the contract.

6.5 In case of a delivery default which is not caused by us either by willful misconduct or gross negligence, we will be liable for each complete week of default with a lump-sum compensation of 0.2 % of the delivery value, maximum however 2 % of the entire delivery value, provided however that the customer can give evidence that the default has caused a damage to him at all. Any additional liability, especially for indirect or consequential damages or loss of profit, is explicitly excluded unless mandatorily instructed by German law.

## **7. Transfer of Risk upon Delivery**

If, upon request by the customer, the goods are transported and delivered to him, then with dispatch to the customer, latest with leaving the works/storage ex mill, the risk of accidental destruction or deterioration shall pass to the customer, independently of the dispatch at place of delivery, or whoever will bear the costs of the freight.

## **8. Retention on Title**

8.1 We retain title to all our goods and deliveries to the customer, until full payment of all our invoices and receivables has been made by the customer. This will apply also to all future deliveries of our goods, even if we do not explicitly refer to such right. We are also entitled to take back part or the entire goods delivered, if and provided that the customer is in breach of the contract.

8.2 As long as the title and property of the goods has not been transferred to him, the customer shall be obliged to treat such deliveries with due care, and shall insure any and all valuable goods at his own costs and expenses at the insurance value as new. Any works for service and maintenance shall be executed by the customer in time at his own costs and expenses. Seizures, garnishments and other legal executions of third parties shall be notified to us immediately in writing.

8.3 The customer is only entitled to sell and commingle the unpaid goods in his normal business relations. All invoices and claims related to the sale of the unpaid goods shall be already now assigned and transferred to us, independently if such sales have occurred before or after the commingling of the unpaid goods.

8.4 Any processing or commingling of the unpaid goods by the customer shall be always done in the name and on behalf of us. We gain partial title and property of the new processed goods in relation to its actual value.

## **9. Warranty, Notice of Defects, Exclusion of consequential damages**

9.1 Any representations and warranty obligations of the contractual party shall have the explicit precondition that the other party has diligently fulfilled its legal obligations to examine the delivered goods upon delivery, and to notify in time the other party of any defects, as set out in § 377 HGB (German Commercial Code). Defects of the goods shall be immediately, latest within 7 days after delivery, notified in writing. Any defects which could not be discovered within such period despite of most diligent examination, shall be – upon immediate termination of any possible processing or commingling – notified in writing latest before the end of any legal lapse period or agreed limitation period.

9.2 Any representations and warranties for movable new goods shall terminate and lapse within 12 months after delivery, provided that no longer limitation or lapse periods are ruled by applicable mandatory law. IN case of sale of used or second hand goods, any representations and warranties are excluded. Before any delivered goods are sent back to us, the customer shall ask for our prior written approval.

9.3 If despite of our prior due diligence, inspection and care, the delivered goods or part thereof were defective already at the time of transfer of risk, and the customer has notified us accordingly, then we will, upon our own option, either rectify the goods with the producer, or deliver new goods. We must be always given the opportunity to fulfill our warranties within an adequate time period. If our warranties

fail, the customer may either withdraw from the contract or may reduce the payment. If the goods have already been sold, processed or commingled, then the customer has no right to reduce the payment.

9.4 The customer has no right and entitlement to any warranty claims in case of only negligible deviation from the agreed normal quality and usability, in case of natural wear and tear, inappropriate treatment or storage, overuse or improper repair or modification, also executed by third parties.

9.5 In case of deceit or fraudulent concealment relating to any defect or quality guarantee of the goods, § 444 BGB shall apply.

9.6 Any and all liability, warranty or representation which is exceeding the above warranty obligations, especially any compensation for direct and indirect damages, shall be explicitly excluded as far as legally possible under applicable German law.

## **10. Cancellation of Orders, lump-sum Compensation for Non-Performance**

If the customer cancels or revokes his order 30 days or later after the date of the order, then the customer shall be obliged to pay 20 % of the total value of the original order as lump-sum damage compensation for non-performance of his duties. If such cancellation takes place 60 until 31 days prior to the delivery of the order ex works, then he shall be obliged to pay a lump-sum compensation of 50 % of the total value of the original order. In case of a cancellation within 30 days prior to the delivery of the order ex work, then the customer shall pay 100 % of the total value of the original order. Thereby, the parties assume that in all such cases as stipulated above, such lump-sum compensations correspond with the actually expected damages based on the usual business and technical performance of such orders. The customer is, however, entitled to give evidence, as set out in § 309 Nr. 5 BGB, that no damage has occurred at all, or that such damage actually occurred, is essentially lower than the lump-sum compensation.

## **11. Anticorruption Clause**

Customer and/or the Company [Parties] hereby represents and warrants in favour of the other party that it:

11.1. operates and will operate, as applicable, in accordance with Anticorruption Laws. The Anticorruption Laws shall be understood as:

- any law or other legal act enacting or approving application of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions;
- any provisions of the U.S. Foreign Corrupt Practices Act of 1977 and U.K. Bribery Act 2010 applicable to the Parties; and
- any other similar laws or legal acts in jurisdictions (countries) where the Parties are registered or operate, or which are otherwise applicable to the Parties;

11.2. complies with applicable Anticorruption Laws and has implemented measures and procedures necessary to ensure compliance with applicable Anticorruption Laws;

11.3. and all its affiliated entities, directors, officers, employees and other persons acting on behalf of the Party did not make any offers or solicitations as to the provision or receipt, as applicable, of undue or unlawful benefits, did not receive the same, do not have an intent to receive the same in future, and such Party has used all possible and

reasonable endeavours to avoid any of the same on the part of its contractors and agents;

11.4. will not use funds or property received to finance or support any activity which may lead to violation of Anticorruption Laws (including, but not limited to, by the means of provision of loan, contribution, donation or otherwise transfer of funds or property in favour of any person).

In case any of the Parties violates any of the representations and warranties contained in this clause, such Party undertakes to compensate the other Party for all losses caused by the violation.

In case the Company has reasonable grounds to conclude that any of the representations and warranties contained in this clause has been violated by the Customer, the Company shall have a right to unilaterally suspend or terminate agreement between two Parties.

## **12. Governing Law, Jurisdiction, Miscellaneous**

12.1. These Terms and Conditions and the contractual relations between the parties, even if one party is foreign, shall be exclusively governed by, interpreted and construed in accordance with the laws of the Federal Republic of Germany, excluding the United Nations Convention on Contracts for the International Sales of Goods of 11 April 1980 (CISG), unless it is explicitly otherwise agreed and legally permitted under German Law.

12.2 Place of performance and exclusive place of jurisdiction for all disputes, also for disputes under bank drafts and cheques' legal procedures, shall be Essen, Germany, as far as such jurisdiction is permitted under German law.

12.3 If any provisions of these Terms and Conditions are or shall become invalid, then the other provisions shall remain valid. The parties shall be obliged to replace such invalid provision with a valid one which shall be as close as possible to the originally intended economic objectives.

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