

GENERAL TERMS OF SALE

1. Scope

These General Terms of Sale in their respective current version shall exclusively govern all offers and supply contracts of CEROBEAR GmbH ("Seller"). The purchasing terms of the customer ("Customer" or "Buyer") are hereby specifically excluded unless Seller has given its written consent.

All offers, order acknowledgments, or order acceptances made by Seller are conditioned upon the terms contained in this agreement. Seller hereby rejects and objects to any conditional, additional, varying or different terms proposed by the Buyer unless Seller agrees to such terms in writing.

These terms shall also apply to all advisory services, and any works and/or services provided by Seller as well as all subsequent business.

2. Quotations and Conclusion of Contracts

A Customer's order is a binding offer. Seller shall have the right to accept this offer at its discretion within four weeks by sending a written confirmation of the order or by the dispatch of the order to the Customer within this four week period.

The quantity, quality and description of and any specification for the goods shall be those set out in the Seller's offer (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller). Any such specification, sales literature, offer, etc. shall be strictly confidential and shall not be made available to third parties.

The Buyer shall be responsible for ensuring the accuracy of the terms of any order submitted by the Buyer, and for giving the Seller any necessary information relating to the goods within a sufficient time period to enable the Seller to perform the contract in accordance with its terms.

The Seller reserves the right to make any changes in the specification of the goods which are required to fulfil applicable statutory requirements or, where the goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.

3. Prices

The price of the goods shall be the Seller's quoted price or, where no price has been quoted, the price listed in the Seller's price list current at the date of acceptance of the order. Where the goods are supplied for export from Germany, the Seller's export price list shall apply.

Unless agreed otherwise in writing, Seller prices shall apply ex works. If no other price determination is stipulated, the prices are net, exclusive of statutory VAT.

4. Payment

Seller invoices shall be due 30 calendar days after the respective invoice date without discount. If the Customer is in default with its payment, Seller shall be entitled to charge interest at a rate of 9% above the base interest rate of the European central bank. Seller's ability to claim further damages shall remain unaffected.

In the case of Customers who do not have an account with Seller, Seller shall reserve the right to deliver goods on a "cash on delivery" or "after prior payment" basis.

Deviating payment terms shall not apply. Checks and bills of exchange shall only be accepted upon special written agreement, which shall include a calculation of all collection fees and discount charges and an agreement as to how such fees and charges shall be handled.

The Customer shall not be entitled to set off and/or withhold payments, assert liens and/or rights of retention claims unless such claim is unchallenged and Seller expressly consents thereto or such claim is finally established by court as being legally valid.

5. Delivery time

Delivery of the goods shall be made by the Buyer collecting the goods at the Seller's premises after the Seller has notified the Buyer that the goods are ready for collection or, if some other place for delivery is agreed, by the Seller dispatching the goods to that place. If required by the Buyer, the Seller shall insure the goods at the Buyer's expense.

Any delivery dates expressed in purchase orders or otherwise by the Buyer shall not be binding until accepted by Seller in writing or by rendering the respective performance.

If the Buyer fails to accept delivery on the agreed delivery date, it shall nevertheless pay any part of the purchase price which becomes due on delivery.

Force majeure or operational interruption at Seller's supplier's end, such as civil unrest, strikes, lockouts, embargos which prevent the Seller temporarily from delivering the contracted goods at the agreed date, will entail corresponding delay. If such disruption should lead to a delay in service of more than four months, the Customer shall have the right to withdraw from the contract in writing. If the delivery or service proves impossible on account of the above circumstances, Seller shall be freed from its obligations. Partial delivery shall be, however, permitted.

6. Shipment

Shipment shall be made ex works in accordance with INCOTERMS 2010. If express delivery is requested by the Customer, such delivery costs shall be charged to the Customer separately. Seller shall, at its sole discretion, choose the method of delivery.

Transport insurance shall only be undertaken after prior written agreement with the Customer and at Customer's expense. In compliance with transport insurance coverage, the Customer shall be obligated to inspect the goods for possible transport damage. Obvious damage to the goods or to the packaging shall be confirmed on the consignment note by the carrier or its representative. Concealed damage shall be reported to the carrier as soon as possible after discovery.

7. Warranty

All warranties contained herein shall be expressly conditioned upon (i) the Customer inspecting the goods for defects after delivery and (ii) the Customer notifying the Seller about such defects, as provided below.

The Customer shall notify Seller in writing of obvious defects within 10 days after receipt of the respective goods and in the event of hidden defects, within 10 days from the date of detection. If such written notification is not provided within the time limits outlined above, all claims against Seller for any such defects shall be excluded.

The Seller warrants that all items delivered under this agreement will be free from defects in material and workmanship, conform to applicable specifications, and, to the extent that detailed designs have not been furnished by the Buyer, will be free from design defects.

The Seller shall not be liable for the goods being fit for a particular purpose to which the Buyer intends to put them unless otherwise agreed upon in writing by the parties.

The above warranty is given by the Seller subject to the following conditions:

- the Seller shall not be liable with respect to any defect in the goods arising from any design or specification supplied by the Buyer;
- the above warranty does not extend to parts, materials or equipment manufactured by or on behalf of the Buyer unless such warranty is given by the manufacturer to the Seller.
- This warranty does not cover defects in or damage to the goods which are due to improper installation or maintenance, misuse, neglect or any improper application.
- Any discharge from liability will be void if a defect results from a gross negligent or intentional breach of contract by the Seller.

In the event of a defective good, Seller shall be entitled, at its sole discretion, to either repair or replace the defective good ("Subsequent Performance"). Notwithstanding the aforementioned, Seller has the right to refuse any claim for Subsequent Performance if it would entail unreasonable cost for Seller or for any other reasons is unacceptable to Seller. If Subsequent Performance fails, is denied, be unreasonable or should the Customer have granted to Seller a grace period in vain or should it be unnecessary for the Customer to set such grace period as provided for under German law, the Customer shall be entitled to ask for abatement or rescind the corresponding contract. All further claims are excluded, unless liability is due to intentional or gross negligence as expressly provided for in Article 8 below.

Warranty claims must be submitted within 12 months from the date transfer of risk occurs.

Seller's liability shall be expressly excluded if the Customer undertakes any alterations or installation work on goods delivered by Seller, or instructs a third party to do so.

All remittances and returned items shall be sent together with the delivery note (packing slip) and the original packaging. If it turns out that the complaint is unjustified, Seller shall be entitled to claim, in addition to the costs for the dispatch, an appropriate refund.

8. Limitation of Liability

The liability of Seller no matter for what legal cause – shall be limited to damages directly caused by Seller either intentionally or through gross negligence. Mandatory liability under applicable statutory law remains unaffected.

9. Transfer of Risk

Risk of damage to or loss of the goods shall pass to the Buyer as follows:

- Where goods are to be delivered somewhere other than the Seller's premises, transfer of risk shall occur at the time of delivery or, if the Buyer wrongfully fails to accept delivery of the goods, the time when the Seller has tendered delivery of the goods;
- Where goods are to be delivered at the Seller's premises („ex works“, Incoterms 2010), transfer of risk shall occur at the time when the Seller notifies the Buyer that the goods are available for collection.

10. Retention of Title

Seller shall retain title of ownership to the goods delivered to the Customer until Seller has received payment in full for the goods and until full payment has been received for any and all claims arising out of this agreement, including any incidental/secondary claims (e.g. default interest) ("Retained Goods").

Notwithstanding any other claims Seller shall be entitled to make against the Customer, Seller shall also have the right to repossess the Retained Goods if the Customer fails to act in accordance with its obligations under this agreement ("Repossessed Goods").

If Seller decides to initiate its repossession rights, the Customer shall release the Repossessed Goods without undue delay. Repossession of the Retained Goods does not constitute a rescission of the agreement unless expressly stated in writing. After written notification, Seller shall have the right to sell the Repossessed Goods to satisfy Customer's debt.

The Customer shall be entitled to resell Retained Goods in its ordinary course of business as long as the Customer is not in default of payment. The Customer herewith assigns to Seller the title to any receivables from the resale of the Retained Goods, in the last invoice amount agreed with Seller (including value added tax) and Seller accepts the assignment.

The Customer shall be entitled to transform, combine and commingle Retained Goods with other goods ("Processing" or "Processed Goods") in its ordinary course of business as long as the Customer is not in default of payment. Such Processing takes place for Seller. In case of Processing, any rights of the Customer with respect to becoming owner of the Retained Goods shall be retained in any Processed Goods. If the Customer combines and/or commingles the Retained Goods with items not belonging to Seller, Seller shall acquire co-ownership of the Processed Goods in the ratio of the value of the Retained Goods to the value of the other processed goods at the time of processing. In the event the Customer acquires sole ownership of the Processed Goods through commingling, the parties agree that the Customer shall grant Seller proportional co-ownership of the Processed Goods. The Customer assigns to Seller its receivables from the Processing and/or the resale of the Processed Goods. Seller accepts the assignment.

The Customer shall remain entitled to collect the receivables even after assignment provided that the resale/Processing is affected within the scope of a regular business transaction. Seller's right to collect assigned receivables by itself shall remain unaffected by this. Seller can revoke the Customer's right to sale and collection, and demand the information and documents necessary for collection of the receivables and collect such receivables if the Customer does not comply with its payment commitments, is in default of its payment, has filed a bankruptcy petition and/or suspended payments.

The Customer shall store the Retained/Processed Goods separately and identify them as Seller's property. The Customer shall, at its own expense, insure the Retained/Processed Goods for their full replacement value against all damage caused by theft, fire and water. Any insurance proceeds received by the Customer with respect to the Retained/Processed Goods must be paid to Seller immediately on receipt. All necessary maintenance and inspections of the Retained/Processed Goods shall be performed by the Customer in a timely manner and at its own expense.

Unless title of the Retained/Processed Goods has been transferred to the Customer, the Customer shall not be entitled to pledge or assign the Retained/Processed Goods as a security. In the case of attachment, seizure or other dispositions by a third party, the Customer shall inform Seller immediately in writing and provide Seller with the necessary documentation which will allow Seller to institute necessary counter actions. Furthermore, the Customer shall be liable for any loss incurred by Seller with respect such third party depositions if the third party is not in a position to refund the judicial and extra-judicial costs of actions taken pursuant to § 771 ZPO (German Code of Civil Procedure).

As soon as the value of the collateral exceeds the value of the outstanding receivables owed to Seller by the Customer by 20%, Seller, at the Customer's request, is obliged to release the excess collateral.

11. Data protection and Confidentiality

The Seller shall be entitled to process the data provided by this business arrangement or in connection with details supplied, in accordance with the applicable data protection law.

The Customer undertakes to treat strictly confidential all documents, information and data relating to Seller which it receives in connection with or incidentally through their contractual relationship.

12. Miscellaneous

The Seller reserves the right to improve or modify any of the goods without prior notice, provided that such improvement or modification shall not affect the form or the agreed functions of the goods.

Rights and duties shall not be assigned or transferred by either party except with the prior written consent of the other party.

13. General Provisions

The law of the Federal Republic of Germany, excluding the conflicts of law provisions and the United Nations Convention on Contracts for the International Sale of Goods (CISG), shall apply exclusively to all legal relationships between Seller and the Customer.

The Courts of Aachen, Germany shall have exclusive jurisdiction for all disputes arising out of this agreement.

If any of the provisions of these General Terms of Sale should be or become ineffective or impracticable, the validity of the other provisions shall remain unaffected. The ineffective or impracticable article shall be replaced by the statutory provision unless agreed otherwise by the parties. This shall also apply in case of a loophole.

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CEROBEAR GmbH, Kaiserstrasse 100, 52134 Herzogenrath, Germany