



The German version shall prevail

# General Conditions for the Supply of Products and Services

Version: January, 2010

## 1 Subject matter of the General Conditions

The following conditions regulate the supply of products or services (hereinafter referred to as: Products) by CTDI GmbH (hereinafter referred to as: CTDI).

## 2 General

(1) The nature and scope of the Products shall result from the respective proposals unless otherwise agreed upon. General terms and conditions of the Customer shall apply only if and when expressly accepted by CTDI in writing.

(2) CTDI herewith reserves any industrial property rights and/or copyrights pertaining to its cost estimates, drawings and other documents (hereinafter referred to as "Documents"). The Documents shall not be made accessible to third parties without CTDI's prior consent and shall, upon request, be returned without undue delay to CTDI if the contract is not awarded to CTDI. Sentences 1 and 2 shall apply mutatis mutandis to documents of the Customer; these may, however, be made accessible to third parties to whom CTDI may rightfully transfer Supplies.

(3) Upon the full payment of the remuneration owed, CTDI shall grant the customer the right to use standard software to the extent specified in the contract. If the extent is not agreed upon in the contract, this shall be a single, non-exclusive permanent right of use. This shall authorize the Customer only to use the software on one computer and by one single user at the same time.

(4) Partial Supplies shall be allowed, unless they are unreasonable to accept for the Customer.

## 3 Prices and terms of payment

(1) Prices shall be ex works; value added tax shall be added at the then applicable rate. Packaging costs shall be charged at actual cost.

(2) If CTDI is also responsible for assembly or erection and unless otherwise agreed, the Customer shall pay the agreed remuneration and any incidental costs required, e. g. travel costs, costs for the transport of tools and equipment, and personal luggage as well as allowances.

(3) All invoices shall be paid without any deductions within 14 calendar days of receipt ex paying agent at the latest. The invoice amount is to be paid to the account specified in the invoice and shall have to be credited within the aforementioned deadline or the customer accounting department must have received a check in the amount of the invoice amount. If the Customer authorized direct debiting, CTDI shall debit the invoice amount directly from the agreed account.

(4) It shall be possible for the Customer to set off claims or exercise his right of retention only if these claims are undisputed or have been established legally effectively.

## 4 Retention of title

(1) CTDI shall reserve ownership of and rights to be granted concerning the Products until the remuneration owed will have been paid in full. CTDI shall furthermore reserve ownership until all its claims from the business relationship with the Customer will have been met.

If the combined value of the security interests of CTDI exceeds the value of all secured claims by more than 20 %, CTDI shall release a corresponding part of the security interest if so requested by the Customer.

(2) For the duration of the retention of title, the Customer may not pledge the Retained Goods or use them as security, and resale shall be possible only for resellers in the ordinary course of their business and only on condition that the reseller receives payment from its customer or makes the transfer of property to the customer dependent upon the customer fulfilling its obligation to effect payment.

(3) The Customer shall inform CTDI forthwith of any seizure or other act of intervention by third parties.

(4) Where the Customer fails to fulfil its duties, including failure to make payments due, CTDI shall be entitled to cancel the contract and take back the Retained Goods in the case of continued failure following expiry of a reasonable time set by CTDI; the statutory provisions that a time limit is not needed shall remain unaffected. The Customer shall be obliged to surrender the Retained Goods.

## 5 Times for Supplies; Delay

(1) Times set for Supplies can only be observed if all Documents to be supplied by the Customer, necessary permits and releases, especially concerning plans, are received in time and if agreed terms of payment and other obligations of the Customer are fulfilled. Unless these conditions are fulfilled in time, times set shall be extended appropriately; this shall not apply where CTDI is responsible for the delay.

(2) If non-observance of the times set is due to force majeure such as mobilization, war, rebellion or similar events, e. g. strike or lockout, such time shall be extended accordingly.

(3) If CTDI is responsible for the delay (hereinafter referred to as „Delay“) and the Customer – in so far as he can prove that this caused damage to him - demonstrably suffered a loss therefrom, the Customer may claim a compensation as liquidated damages of 0.5 % for every completed week of Delay, but in no case more than a total of 5 % of the price of that part of the Supplies which because of the Delay could not be put to the intended use.

(4) Customer's claims for damages due to delayed Supplies as well as claims for damages in lieu of performance exceeding the limits specified in No. 3 above shall be excluded in all cases of delayed Supplies even upon expiry of a time set to CTDI to effect the Supplies. This shall not apply in cases of mandatory liability based on intent, gross negligence, or due to injury of life, body or health. Cancellation of the contract by the Customer based on statute shall be limited to cases where CTDI is responsible for the delay. The above provisions do not imply a change in the burden of proof to the detriment of the Customer.

(5) At CTDI's request the Customer shall declare within a reasonable period of time whether the Customer cancels the contract due to the delayed Supplies or insists on the Supplies to be carried out.

(6) If dispatch or shipment is delayed at the Customer's request by more than one month after notice of the readiness for dispatch was given, the Customer may be charged, for every month commenced, storage costs of 0.5 % of the price of the items of the Supplies, but in no case more than a total of 5 %. The parties to the contract may prove that higher or, as the case may be, lower storage costs have been incurred.

## 6 Transfer of risk

(1) Even where delivery has been agreed freight free, the risk shall pass to the Customer as follows:

a) If the Supplies do not include assembly or erection, at the time when the Supplies are shipped or picked up by the carrier. Upon request of the Customer, CTDI shall insure the Supplies against the usual risks of transport at the expense of the Customer;

b) If the Supplies include assembly or erection, at the day of taking over in the own works or, if so agreed, after a fault-free trial run.

(2) The risk shall pass to the Customer if dispatch, shipping, the start or performance of assembly or erection, the taking over in the own works or the trial run is delayed for reasons for which the Customer is responsible or if the Customer has otherwise failed to accept the Supplies.

## 7 Assembly and erection

Unless otherwise agreed in writing, assembly/erection shall be subject to the following provisions:

(1) The Customer shall provide at its own expense and in good time:

a) All earth and construction work and other ancillary work outside the scope of CTDI, including the necessary skilled and unskilled labour, construction materials and tools,

b) The equipment and materials necessary for assembly and commissioning such as scaffolds, lifting equipment and other devices as well as fuels and lubricants,

c) Energy and water at the point of use including connections, heating and lighting,

d) Suitable dry and lockable rooms of sufficient size adjacent to the site for the storage of machine parts, apparatus, materials, tools, etc. and adequate working and recreation rooms for the erection personnel, including sanitary facilities as are appropriate in the specific circumstances. Furthermore, the Customer shall take all measures it



would take for the protection of its own possessions to protect the possessions of CTDI and of the erection personnel at the site,

e) Protective clothing and protective devices needed due to particular conditions prevailing on the specific site.

(2) Before the erection work starts, the Customer shall make available of its own accord any information required concerning the location of concealed electric power, gas and water lines or of similar installations as well as the necessary structural data.

(3) Prior to assembly or erection, the materials and equipment necessary for the work to start must be available on the site of assembly/erection and any preparatory work must have advanced to such a degree that assembly/erection can be started as agreed and carried out without interruption. Access roads and the assembly/erection site itself must be level and clear.

(4) If assembly, erection or commissioning is delayed due to circumstances for which CTDI is not responsible, the Customer shall bear the reasonable costs incurred for idle times and any additional travelling of CTDI or the erection personnel.

(5) The Customer shall attest to the hours worked by the erection personnel towards CTDI at weekly intervals and the Customer shall immediately confirm in writing if assembly, erection or commissioning has been completed.

(6) If, after completion, CTDI demands acceptance of the Supplies, the Customer shall comply therewith within a period of two weeks. In default thereof, acceptance is deemed to have taken place. Acceptance is also deemed to have been effected if the Supplies are put to use, after completion of an agreed test phase, if any.

## 8 Receiving of Supplies

The Customer shall not refuse to receive Supplies due to minor defects.

## 9 Defects as to quality

CTDI shall be liable for defects as to quality ("Sachmängel", hereinafter referred to as "Defects") as follows:

(1) All parts or services where a Defect becomes apparent within the limitation period shall, at the discretion of CTDI, be repaired, replaced or provided again free of charge irrespective of the hours of operation elapsed, provided that the reason for the Defect had already existed at the time when the risk passed.

(2) Claims based on Defects are subject to a limitation period of 12 months. This provision shall not apply where longer periods are prescribed by law according to Sec. 438 para. 1 No. 2 (buildings and things used for a building), Sec. 479 para. 1 (right of recourse), and Sec. 634a para. 1 No. 2 (defects of a building) German Civil Code ("BGB"), as well as in cases of injury of life, body or health, or where CTDI intentionally or grossly negligently fails to fulfil its obligation or fraudulently conceals a Defect. The legal provisions regarding suspension of expiration ("Ablaufhemmung"), suspension ("Hemmung") and recommencement of limitation periods remain unaffected.

(3) The Customer shall notify Defects to CTDI in writing and without undue delay.

(4) In the case of notification of a Defect, the Customer may withhold payments to a reasonable extent taking into account the Defect occurred. The Customer, however, may withhold payments only if the subject-matter of the notification of the Defect occurred is justified beyond doubt. Unjustified notifications of Defect shall entitle CTDI to have its expenses reimbursed by the Customer.

(5) CTDI shall first be given the opportunity to supplement its performance ("Nacherfüllung") within a reasonable period of time.

(6) If supplementary performance is unsuccessful, the Customer shall be entitled to cancel the contract or reduce the remuneration, irrespective of any claims for damages it may have according to Art. 11.

(7) There shall be no claims based on Defect in cases of insignificant deviations from the agreed quality, of only minor impairment of usefulness, of natural wear and tear or damage arising after the transfer of risk from faulty or negligent handling, excessive strain, unsuitable equipment, defective workmanship, inappropriate foundation soil or from particular external influences not assumed under the contract, or from non-reproducible software errors. Claims based on defects attributable to improper modifications or repair work carried out by the Customer or third parties and the consequences thereof shall be likewise excluded.

(8) Any claims of the Customer due to the expenses required for the purpose of the subsequent performance, in particular transportation, travelling, labour and material costs, shall be ruled out for deficient work performance/industrial service in so far as the expenses increase because the object of the delivery was subsequently taken to another

place than the Customer's branch office, unless this corresponds to its intended use. A reimbursement of increased expenses arising due to the delivery of a defective bought object may lead to a refusal according to § 439 par. 3 of the BGB [German Civil Code].

(9) The Customer's right of recourse against CTDI pursuant to Sec. 478 BGB is limited to cases where the Customer has not concluded an agreement with its customers exceeding the scope of the statutory provisions governing claims based on Defects. Moreover, No. 8 above shall apply mutatis mutandis to the scope of the right of recourse the Customer has against CTDI pursuant to Sec. 478 para. 2 BGB.

(10) Furthermore, the provisions of Art. 11 (Other Claims for Damages) shall apply in respect of claims of damages. Any other claims of the Customer against CTDI or its agents or any such claims exceeding the claims provided for in this Art. IX, based on a Defect, shall be excluded.

## 10 Impossibility of performance; adaptation of contract

(1) To the extent that Supplies are impossible to be carried out, the Customer shall be entitled to claim damages, unless CTDI is not responsible for the impossibility. The Customer's claim for damages shall, however, be limited to an amount of 10 % of the value of the part of the Supplies which, owing to the impossibility, cannot be put to the intended use. This limitation shall not apply in the case of mandatory liability based on intent, gross negligence or injury of life, body or health; this does not imply a change in the burden of proof to the detriment of the Customer. The right of the Customer to cancel the contract shall remain unaffected.

(2) Where unforeseeable events within the meaning of Art. 5 No. 2 substantially change the economic importance or the contents of the Supplies or considerably affect CTDI's business, the contract shall be adapted taking into account the principles of reasonableness and good faith. Where doing so is economically unreasonable, CTDI shall have the right to cancel the contract. If CTDI intends to exercise its right to cancel the contract, it shall notify the Customer thereof without undue delay after having realized the repercussions of the event; this shall also apply even where an extension of the delivery period had previously been agreed with the Customer.

## 11 Other Claims for Damages

(1) Any claims for damages and reimbursement of expenses the Customer may have (hereinafter referred to as "Claims for Damages"), based on whatever legal reason, including infringement of duties arising in connection with the contract or tort, shall be excluded.

(2) The above shall not apply in the case of mandatory liability, e. g. under the German Product Liability Act ("Produkthaftungsgesetz"), in the case of intent, gross negligence, injury of life, body or health, or breach of a condition which goes to the root of the contract ("wesentliche Vertragspflichten"). However, Claims for Damages arising from a breach of a condition which goes to the root of the contract shall be limited to the foreseeable damage which is intrinsic to the contract, unless caused by intent or gross negligence or based on liability for injury of life, body or health. The above provision does not imply a change in the burden of proof to the detriment of the Customer.

(3) To the extent that the Customer has a valid Claim for Damages according to this Art. 11, it shall be time-barred upon expiration of the limitation period applicable to Defects pursuant to Art. 9 No. 2. In the case of claims for damages under the German Product Liability Act, the statutory provisions governing limitation periods shall apply.

## 12 Venue and applicable law

(1) If the Customer is a businessperson, sole venue for all disputes arising directly or indirectly out of the contract shall be CTDI GmbH's place of business. However, CTDI GmbH may also bring an action at the Customer's place of business.

(2) Legal relations existing in connection with this contract shall be governed by German substantive law, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

## 13 Severability clause

The legal invalidity of one or more provisions of this contract shall in no way affect the validity of the remaining provisions. This shall not apply if it would be unreasonable for one of the parties to continue the contract.