

GESA Form + Funktion Displaybau GmbH
General Terms and Conditions of Sale and Delivery

Last updated: November 2010

1. Scope of application

- a) The following General Terms and Conditions of Sale and Delivery shall apply exclusively to all our deliveries and services including the production of samples and other developmental services now and in the future. We do not acknowledge any conflicting terms of sale and delivery of the Buyer that differ to our own, specifically not when we unreservedly deliver the order in full awareness of such conflicting or differing conditions. Where our terms and conditions are not specific, the provisions of the law shall apply regardless of any trading practices.
- b) The present General Terms and Conditions of Sale and Delivery shall only apply to enterprises as defined in Section 310 (1) of the German Civil Code – BGB.

2. Offers/ Formation of Contract

- a) Our offers shall be subject to change. A contract shall only materialise by way of our order confirmation and most definitely by way of delivery of the goods. Any discrepancies shall be noted on our delivery note and on the CMR freight note and shall be countersigned by the driver; the Buyer shall immediately send us a copy of each of these documents.
- b) The quality and design of the goods we manufacture shall be distinguished and described by way of the production type sample that is presented for review and then approved by the Buyer. Nevertheless, the production type samples shall not embody any warranted properties. Standard discrepancies and differences resulting from legal regulations or constituting technical improvements and the replacement of modules with equivalent parts shall be admissible, insofar as they do not impede the goods being used for the contractually intended purpose.
- c) We shall retain rights of ownership and copyrights to all manufacturing standards, samples and other specifications and information that we send to the Buyer, whether of a material or immaterial nature, as well as in electronic form; access to them shall not be granted to third parties without our express written consent. In particular this shall apply to written documents marked as "classified". Upon our request, the Buyer shall return in full all items and documents mentioned in the present paragraph and destroy any copies that might have been made thereof if the Buyer no longer needs them for regular business transactions or if negotiations fail to lead to the formation of a contract.
- d) Moulds and tools produced that we manufacture or have manufactured shall remain our property. The Buyer shall have no claim thereto.
- e) If the order is to be qualified as an offer pursuant to Section 145 BGB, it shall be binding for the Buyer for a period of 14 workdays as from despatch of the order. Within this period, we shall be entitled to accept the offer by sending the Buyer an order confirmation or the ordered goods.

3. Third-party industrial property rights

- a) The Buyer shall guarantee that the items we manufacture and deliver pursuant to the drawings, models, samples or other templates of the Buyer do not breach any third-party industrial property rights.
- b) If, under reference to a third-party industrial property right, we are prohibited from manufacturing or delivering items that were manufactured according to the specifications of the Buyer, we shall be entitled to cease production and delivery immediately without first reviewing the actual legal position. Any additional expenditure thus incurred shall be borne by the Buyer. The Buyer also undertakes to hold us harmless from all and any claims derived from the breach of industrial property rights.

4. Price/ Payment/ Default penalty/Claims to compensation for damages

- a) Our prices are "ex-works" plus the value added tax required by law unless otherwise agreed in specific circumstances. For each delivery we shall compile a separate invoice.
- b) All billed amounts shall be due for payment without deduction within 30 (thirty) days as from the date of invoice, unless otherwise agreed. The date of payment shall be deemed to be the date on which we receive payment.
- c) Should we suffer damages as a result of the Buyer's unwarranted failure to fulfil the contract and/or unwarranted termination of the contract, a penalty shall be imposed of 5% of the net value of the goods ordered, notwithstanding the option of the Buyer to provide us with evidence that the damages in question are significantly less or not even existent and notwithstanding our own entitlement to assert damages in excess thereof.
- d) If the Buyer's capacity deteriorates after the conclusion of the contract – particularly if its business situation deteriorates significantly – and hence his consideration becomes questionable, we shall be entitled to revoke the contracted payment deadlines – for the future as well – and to only carry out outstanding deliveries from existing business relations with the Buyer against advance payment or the provision of security as practised by a bank. Any farther-reaching legal claims shall not be affected hereby.

- e) The Buyer shall only be entitled to offset or retain payments if its claim has been established by declaratory judgment, is undisputed or has been acknowledged by us in written form. The Buyer shall, however, be entitled to retain payment for claims derived from the selfsame contractual relations.

5. Place of Fulfilment/ Delivery / Force Majeure/ Packaging/ Transportation/ Transfer of Risk

- a) Place of fulfilment for all duties derived from the contractual relations shall be our head office unless otherwise agreed.
- b) We shall retain the right to receive accurate and timely deliveries of materials for ourselves. Failing these due to circumstances for which we are not responsible, we shall duly inform the Buyer immediately, at the latest, however within 5 (five) workdays after receiving said information. In this case, we shall be able to cancel the contract following the lapse of a suitable period of waiting; any payment already made by the Buyer shall be refunded immediately. Failing accurate and timely delivery to ourselves, following the lapse of an appropriate period of grace stipulated in written form – and/or even without such period of grace in the legally regulated exceptional instances – the Buyer shall be entitled to cancel the contract.
- c) Delivery dates shall only be binding if we explicitly confirm them in written form; they shall be subject to the conditions defined in Section 5 lit. b).
- d) Force majeure and other circumstances that were unforeseeable at the time the contract was formed, including war, uprising, legal industrial action, illegal industrial action, orders issued by the authorities, lack of power and raw materials, traffic problems and unavoidable disruptions of business as well as fire – prevailing with our suppliers as well – shall discharge us for the duration of the disturbance and to the reach of the consequences from our obligation to deliver and provide services. If the duration of said circumstances is incalculable or 30 (thirty) days at the earliest after their occurrence, circumstances such as described in sentence 1 of the present paragraph shall entitle us to cancel the contract in whole or in part without any entitlement on the part of the Buyer to claim compensation; the same shall apply if the circumstances in question render the implementation of the contract permanently uneconomic and we can no longer be reasonably expected to abide by the contract. We shall inform the Buyer as soon as possible of any occurrence of force majeure or similar circumstances; Section 5 lit. b), sentence 3 shall apply accordingly.
- e) We shall be entitled to deliver and to provide our services in instalments and may - after appropriate billing - then call for payment of the instalment unless the instalment is objectively of no interest to the Buyer or cannot be reasonably imposed upon the Buyer. The rights of the Buyer in respect of default or the impossibility of our service shall not be affected hereby.
- f) At the latest, the risk shall pass to the Buyer when the goods are handed over to the forwarder, freight operator or any other third party appointed to handle despatch (defined by the start of loading procedures). This shall also apply if deliveries are in instalments or other services (e.g. despatch) are carried out by us. If despatch or the handover of goods is delayed owing to circumstances for which we are not responsible, the risk shall pass to the Buyer on the day on which we declare our readiness for despatch and have duly informed the Buyer thereof.
- g) If we store the goods after the risk has passed to the Buyer, the storage costs shall be borne by the Buyer. When we store the goods, costs amount to EUR 2.50 for each week passed and for each stored pallet. We shall retain the right to assert and provide evidence of more or less storage costs.
- h) If the Buyer requires us to provide insurance cover against theft, breakage, transportation, fire and water damage or against other insurable risks, the Buyer shall bear the regular costs thereof.
- i) If an acceptance procedure is to take place, the goods shall be deemed accepted if
- delivery is completed,
 - we have notified this to the Buyer referring to the notional acceptance procedure and require the Buyer to accept,
 - twelve workdays have passed since delivery or the Buyer has started to use the goods and in this case six workdays have passed since delivery and
 - the Buyer has failed to inspect and accept the goods within this period of time for reasons other than because of a defect notified to us that render the use of the purchased item impossible or seriously compromised.

6. Warranty

- a) Claims of Warranty of the Buyer shall be subject to its compliance with its legal responsibilities to inspect the goods and file complaint on time.

- b) Notwithstanding legal regulations, the Buyer shall notify us immediately in written form of any defects that are obvious upon delivery of the goods, in particular of any short deliveries and transportation damages. If, upon due inspection of the goods or at a later date, a defect is revealed, the Buyer shall also notify us immediately thereof in written form. The notification shall be deemed immediate if it is made within seven workdays, whereby the date on which the notification was sent shall determine compliance with said period of time.
- c) The full onus of proof lies with the Buyer for all claims, in particular for the defect itself, the volume of goods objected to, the point in time when the defect was noticed and the timely notification of the complaint.
- d) If a complaint is justified for which we are responsible, we shall be able to choose how to provide subsequent fulfilment within an appropriate space of time, i.e. either by eliminating the defect or delivering flawless goods within an appropriate space of time that also takes account of the time needed to procure goods from our own suppliers. If fulfilment is not successfully provided within an appropriate period of time, the Buyer shall be able to call for a reduction in price pursuant to the statutory regulations of the law, or if the item features a flaw that is serious, shall be able to cancel the contract. Section 7 shall apply accordingly to any claims to damages filed by the Buyer derived from the deficiency of the goods.
- e) We are justified to render the subsequent fulfilment of contract dependent on due payment of the purchase price. Nevertheless, the Buyer shall be entitled to retain part of the purchase price in proportion to the defect in question.
- f) Legal claims to recourse of the Buyer against us shall only prevail to the extent the Buyer has not contracted any agreements with its customer in excess of the statutory claims arising from a defect. For the scope of claims to compensation for damages and claims to indemnity for futile disbursements incurred during recourse, Section 7 of the present General Terms and Conditions of Sales and Delivery shall apply.
- g) In the case of defects of modules from other manufacturers that we are unable to eliminate for licence or actual reasons, we shall decide whether to assert our claims of Warranty against the manufacturer and supplier for the account of the Buyer or to assign them to the Buyer. Claims of Warranty against us for such defects shall only prevail subject to the other conditions and the present General Terms and Conditions of Sale and Delivery if the aforementioned claims against the manufacturer and supplier could not successfully be asserted before a court of law or if it is futile to assert them owing, for example, to insolvency. For the duration of litigation the expiry of the period of limitation for the Buyer's claims of Warranty shall be suspended.
- h) The Warranty shall not apply if the Buyer modifies the delivered item without our consent or has it altered by third parties, so that it is impossible or unreasonable to expect any elimination of the defect. In any case, the Buyer shall bear the extra costs incurred in eliminating the defects as a result of the modification.
- 7. Compensation of Damages, Reimbursement of futile Disbursements**
- a) Claims to damages that are not attributable to a grossly negligent or wilful breach of contractual or statutory duties shall be ruled out. This shall apply for all claims to reimbursement, irrespective of their legal foundation, particularly also for claims to compensation derived from fault during the formation of the contract, for other breaches of duty, for tortious claims to compensation for damage to property pursuant to Section 823 BGB or for the reimbursement of futile disbursements of the Buyer.
- b) The warranty disclaimer in the above lit. a) shall not apply to our own liability for causing injury to life and limb, our liability for the guaranteed properties of a delivered consignment, our liability for defects that we have maliciously failed to reveal, our mandatory liability under the Product Liability Act and for those instances in which we have negligently breached a major contractual duty (an undertaking, the fulfilment of which is essential to being able to implement the contract and upon which the Buyer relies and has a right to rely). In the case of a slightly negligent breach of a major contractual duty and for direct damages and sequential damages attributable to defects in the delivered items, our liability shall nevertheless be restricted to the typical damages foreseeable upon the formation of the contract, unless the breach of contract in question led to injury of life and limb.
- c) In the event of liability for simple negligence, our duty to compensate for damages to property and for injury to life and limb shall be restricted to an amount of EUR 25,000.00 for each claim (corresponding to the current sum insured of our product liability insurance or third-party liability insurance), even if the breach relates to a major contractual duty pursuant to Section 7 lit. b).
- d) Insofar as our liability is ruled out or restricted, this shall also apply for the personal liability of our bodies, employees, representatives and vicarious agents.
- 8. Retention of Title**
- a) We shall retain title to the item delivered (referred to in the following as "retained goods") and the documents supplied with the delivered item for as long as we are still entitled to receivables of whatever nature from present or future business relations with the Buyer. With running

- invoices, said retention of title shall also serve as security for our respective claims to payment. In cases where the Buyer acts in breach of contract, with default in payment or if payment is jeopardized by a lack of capability on the part of the Buyer we shall be entitled – as the case may be after setting a period of grace where the law so requires – to cancel the contract pursuant to statutory regulations and to take back the retained goods and the documents; the Buyer undertakes to surrender same. After taking back the retained goods, we shall be authorized to sell them and offset the proceeds against the liabilities of the Buyer subject to the deduction of appropriate costs incurred thereby.
- b) Any transfer and/or assignment and any pledging of the retained goods and/or the assigned receivables as security shall not be permitted. The Buyer shall inform us in written form of any pledges or other dispositions relating to the retained goods and/or assigned receivables or other third-party interventions. Insofar as the third party is not in a position to reimburse us for the costs - court costs or out-of-court expenses - in connection with asserting our rights of ownership, the Buyer shall be liable.
- c) The Buyer shall keep the retained goods and documents for us free of charge. The Buyer undertakes to treat them with care; in particular the Buyer shall provide adequate insurance cover at reinstatement value against the usual risks such as fire, breaking and entering, theft and damages during transport and damages caused by water. The receivables derived from a claim against the insurer and third parties shall herewith now be assigned by the Buyer to us to the amount of the invoice value of the retained goods plus any costs for transport and disposal. We herewith also accept this assignment. If maintenance and inspection work is required, the Buyer shall carry this out in good time at its own expense.
- d) If the realisable value of the securities to which we are entitled exceeds the amount of our claims by a total by 10%, we undertake, if so requested by the Buyer or by a third party at detriment from the over collateralization, to release securities at our own discretion.
- e) If the retained goods are inseparably blended with other items, not belonging to us, we shall acquire co-ownership of the new item to the value of the retained goods in proportion to the other items compounded at the time of said compounding. If the compounding is such that the item of the Buyer is to be considered the main article, it shall be deemed agreed that the Buyer confers proportionate co-ownership upon us. The Buyer shall keep the wholly owned or part-owned article thus created on our behalf. In other respects the same shall apply to the item created from said compounding as for the retained goods.

9. Statute of Limitation

All the Buyer's claims of Warranty, compensation of damages and reimbursement of disbursements derived from material defects or defects in title shall become time-barred in 12 (twelve) months' time after delivery, unless the following regulates otherwise. In cases of gross default, i.e. in cases of malice, wilful intent and gross negligence, for claims subject to the Product Liability Act and in cases of injury to life and limb, the statutory deadlines shall be applicable.

10. Concluding Provisions

- a) None of the aforementioned clauses shall culminate in a change of the onus of proof to the detriment of the Buyer in such manner that the onus of proof shall be imposed for circumstances for which we bear responsibility.
- b) Insofar as the Buyer is a business person as defined in the German Commercial Code, a legal entity under public law or a special fund under public law, Offenbach am Main shall be the exclusive place of jurisdiction for all disputes derived directly or indirectly from contractual relations. However, we shall be entitled to bring action against the customer at its registered seat of business. Statutory provisions governing exclusive legal venues shall not be affected by the present ruling.
- c) The law of the Federal Republic of Germany shall apply to the exclusion of the Convention of the United Nations on Contracts for the International Sale of Goods of the 11. April 1980 (CISG), even then if the Buyer has its registered seat in another country. By contrast, the prerequisites and outcome of the retention of title as defined in Section 8 shall be subject to the law of the respective storage location for the item, insofar as the choice of law in favour of the law of the Federal Republic of Germany is accordingly inadmissible or inoperative.
- d) All agreements between the Buyer and ourselves regarding the orders of the Buyer and their satisfaction are and shall be set down in written form, unless the Parties have agreed otherwise in specific circumstances or agree otherwise in the future. Declarations and notifications of legal relevance to be delivered to us by the Buyer after formation of contract (e.g. the setting of deadlines, notifications of defects and declaration of cancellation of contract or of reduction in price) shall require the written form to be operative.

Registered domicile of the Company is Dreieich-Offenthal.
First Instance Court Offenbach am Main, HRB 30237