

# **General Terms and Conditions for Deliveries and Services of CENIT AG**

– as of June 2010 –

## **1. Scope of Application**

- 1.1 In the absence of a separate agreement, all offers and orders concerning deliveries and services of CENIT AG (CENIT) shall be based on the present *General Terms and Conditions for Deliveries and Services* of CENIT. This applies even in the event that, in the context of ongoing business relations, no express reference is made to these *General Terms and Conditions for Deliveries and Services* at a later point in time. Terms and conditions of the customer that are contrary to or deviate from the present *General Terms and Conditions for Deliveries and Services* apply only if CENIT recognizes their applicability expressly in writing.
- 1.2 These *General Terms and Conditions for Deliveries and Services* apply only in relation to entrepreneurs within the meaning of § 14 BGB (German Civil Code) and only if the contract relates to the operation of the enterprise, as well as in relation to legal persons under public law and special public funds within the meaning of § 310 para. 1 BGB.
- 1.3 To the extent referred to in the confirmation of the order by CENIT, further General Terms and Conditions may be applicable in addition to the present *General Terms and Conditions for Deliveries and Services*, especially the *General Terms and Conditions for Software Licenses* and the *General Terms and Conditions for the Maintenance of Software* of CENIT. Within the limits of their respective scope of application, said General Terms and Conditions shall take precedence over the provisions of the present *General Terms and Conditions for Deliveries and Services*.

## **2. Offers, Conclusion of Contract**

- 2.1 All offers submitted by CENIT are subject to confirmation. Orders shall not be deemed accepted until confirmed by CENIT in writing. The confirmation of the order by CENIT is binding with regard to the content of the contract unless written objection is received by CENIT within 8 days from the date of its

confirmation of the order. Oral collateral agreements must in all cases be confirmed by CENIT in writing to be effective.

- 2.2 CENIT reserves all rights without limitation in respect of all service and product descriptions, drawings, test programs, and other documentation supplied to the customer within the framework of the offer. This documentation may be made available to third parties only with the prior consent of CENIT. All product descriptions and technical data contained in such documentation as well as in brochures, advertisements, and other informative and advertising materials are compiled with due care; they do not constitute guaranties in respect of quality, however, unless expressly identified as such. CENIT reserves the right to carry out technically required changes even after the conclusion of the contract if such changes do not materially affect the agreed upon functions of the delivery item or object of the service.

### **3. Prices, Terms of Payment**

- 3.1 In the absence of special information in the confirmation of the order, the prices according to the price list of CENIT as amended from time to time shall apply. The indicated prices will be invoiced plus the applicable statutory VAT, in the case of deliveries of goods ex warehouse Stuttgart, including packing, plus freight and transport insurance. In the absence of an agreement to the contrary, travel costs and expenses will be billed separately.
- 3.2 If the net order value is less than EUR 150, an extra charge for small orders in the amount of EUR 15 will be payable.
- 3.3 Subject to a confirmation of the order to the contrary, invoices of CENIT are payable immediately upon receipt without deduction. If the customer fails to effect payment upon receipt of a reminder that has been issued after the due date, the customer will be in delay with payment. Without the issue of a reminder, the customer will be in delay with payment no later than 30 days after the due date and receipt of the invoice. In the event of a delay with payment, CENIT shall be entitled to default interest in the amount of 8% p.a. above the basic interest rate according to § 247 BGB as from the beginning of delay. CENIT reserves the right to furnish evidence of greater damage caused by delay.
- 3.4 Should the customer be in delay with payment, CENIT is entitled – without prejudice to any other statutory rights – to exercise without prior notice a right of retention over all outstanding deliveries and services or to request advance

payment and/or provision of security with respect to all outstanding deliveries and services. Regardless of the maturity dates of accepted bills of exchange, CENIT is furthermore entitled in such a case to demand payment in cash subject to the restitution of the bills. The same shall apply in the event that, after accepting the order, CENIT obtains knowledge of facts that give rise to justified doubts about the customer's ability to pay.

- 3.5 Payment by bill of exchange or check is possible only on the basis of a prior written agreement. Bills and checks are accepted only on account of performance (*erfüllungshalber*); the point in time of payment shall be deemed the point in time the bill or check is collected, in the case of bill of exchange or check proceedings the point in time of release of liability. All costs and expenses for the discounting or collection of the bills of exchange shall be borne by the customer.
- 3.6 The customer is not entitled to set counterclaims off against claims of CENIT to the extent that the counterclaims have not been expressly admitted by CENIT or that they have not been finally recognized by declaratory judgment. The customer shall be entitled to exercise a right of retention only to the extent that its counterclaim is based on the same contractual relationship. The customer shall have no right of retention because of partial performances according to § 320 para. 2 BGB.

#### **4. Passing of Risk, Delivery and Performance Dates**

- 4.1 As regards deliveries of goods, the risk passes to the customer as soon as the goods leave the warehouse of CENIT; if the goods are collected by the customer, the risk passes with the customer's notification of the goods being ready for collection. Shipment shall always occur at the customer's cost and risk. In the absence of the customer's written instructions, CENIT will determine the manner of shipment. Transport insurance will be taken out only on the customer's express instructions and at its own expense. Should there be a delay in dispatch due to circumstances for which the customer is responsible, then the risk passes to the customer upon notification that the goods are ready for dispatch. In this case, CENIT is willing, however, to take out the insurance policies requested by the customer at the latter's cost.
- 4.2 The provisions of no. 4.1 shall also apply if installation of the delivered goods by CENIT has been agreed upon, unless installation is performed under a works agreement (*Werkvertrag*), in which case the risk shall not pass to the customer before acceptance of the work.

- 4.3 In the absence of express agreements in writing, the indication of deadlines for the performance of deliveries and services is not binding. Delivery and service periods firmly agreed upon shall begin no earlier than upon receipt of CENIT's confirmation of the order, however not before the timely and proper fulfillment of the customer's cooperation duties, especially not before the provision of the documentation, approvals, or releases to be furnished by the customer and the receipt of the agreed down-payment, if any. Delivery periods shall be deemed to have been observed if, at their expiry, the delivery item has left the warehouse or the customer has been notified of the delivery item being ready for collection and/or dispatch. The foregoing provision does not apply if, according to the contract, acceptance is required or CENIT is obligated to carry out the installation.
- 4.4 CENIT will endeavor to comply with agreed delivery and service deadlines. If CENIT is in delay with a delivery or another service, the customer shall be entitled to demand for each entire week of delay lump-sum damages in the amount of 0.5% of the order value, up to an overall amount of 5% of the order value, provided that the customer satisfactorily shows that it has incurred a loss or damage due to such delay. Further claims for damages of the customer due to the delay with the delivery or service shall be excluded. This does not apply to the extent that the delay is due to the violation of an essential contractual duty or to the extent that CENIT is compulsorily liable in cases of willful misconduct or gross negligence and/or for a violation of life, body, or health; this provision does not lead to a change in the burden of proof to the customer's disadvantage.
- 4.5 The customer's statutory right of rescission in the event of a delay with delivery or service shall remain unaffected but requires that CENIT be responsible for the delay. The customer shall be obligated to declare at CENIT's request within a reasonable period of time whether it will rescind the contract after the expiration of this period due to the delay with the delivery or service, or whether it will insist upon the delivery or service.
- 4.6 CENIT shall be released from the duty to perform in the event of operational breakdown (shortage of materials, strikes) for which CENIT is not responsible and other events of force majeure, as well as late delivery of supplies to CENIT itself, for the period during which the impediment continues to exist. This shall also apply if these circumstances occur to suppliers of CENIT. To the extent that CENIT is released from the duty to perform, CENIT shall grant back advance performances, if any, made by the customer. Further reaching claims for damages of the customer shall be excluded.

4.7 Partial deliveries and services shall be permissible to a reasonable extent.

## **5. Copyrights, License Conditions for Software**

- 5.1 The customer shall be obligated to observe such copyrights and other intellectual property rights as exist in respect of the delivered good or the work created in the context of performance, especially rights in respect of software.
- 5.2 In the event of a delivery of software of other manufacturers (Third-party Software), the customer shall be obligated to use the delivered software only in accordance with the license conditions of the respective manufacturer and to impose the same duties on the buyer in the event of a resale of the Third-party Software, provided that such resale is permissible.
- 5.3 Additionally to the present *General Terms and Conditions for Deliveries and Services*, the use of CENIT standard software shall be subject to the *General Terms and Conditions for Software Licenses* of CENIT, unless otherwise agreed.
- 5.4 If software is individually developed on behalf of the customer or if individual adjustments are programmed (Individual Software), the customer will be granted a non-exclusive right of use with regard to the respective work result , unless otherwise agreed. Besides, the use of such Individual Software shall be governed by the *General Terms and Conditions for Software Licenses* of CENIT in addition to the present *General Terms and Conditions for Deliveries and Services*.

## **6. Retention of Title**

- 6.1 As regards deliveries of goods, CENIT retains title to the goods supplied until all claims arising from the business relationship with the customer have been discharged in full, regardless of the cause in law. With respect to current accounts, the title retained is regarded as security for the offset balance of CENIT at any time given.
- 6.2 In the event of a conduct on the part of the customer that is contrary to the terms of the contract, especially in the event of a delay with or imminent cessation of payment, bill protest, unsatisfactory information about the financial solvency of or compulsory enforcement actions against the customer or if a motion to open insolvency proceedings has been filed against the customer, CENIT shall be entitled to take back and the customer shall be obligated to return the delivered

goods. CENIT is not required to rescind the contract in order to be able to take back the delivered goods and/or assert its retention of title. These acts, as well as the attachment of the delivered goods by CENIT, do not constitute a rescission of the contract unless CENIT has expressly declared so in writing. After taking back the delivered goods, CENIT shall be entitled to sell or otherwise dispose of the same. The proceeds from such sale or other disposition, less reasonable costs thereof, shall be credited towards the customer's liabilities.

- 6.3 The customer shall be obligated to treat the delivered goods with care and, at the request of CENIT, to sufficiently insure the same against damage for the period of time CENIT retains its title to the goods. The customer assigns to CENIT already now any claims it may have against the insurance company. In the event of attachments or other interventions by third parties, the customer must immediately notify CENIT in writing so that CENIT can assert its title. To the extent that the third party is not able to reimburse CENIT for the judicial and extra-judicial costs incurred by CENIT in connection with the enforcement of its property rights, the customer shall be liable for the loss incurred by CENIT.
- 6.4 The customer shall be entitled at any time, subject to revocation, to process the goods supplied or combine them with other objects in the proper course of business dealings. Any processing or combination shall be deemed to be on behalf of CENIT without commitment on the part of CENIT. In the event of such processing or combination, the customer shall give CENIT co-ownership in the new or combined item in the same proportion to which the invoice value of the goods in which title is retained is to the total of the invoice value of all other goods used including processing costs. In all other respects, the provisions applicable to goods supplied by CENIT subject to a retention of title shall likewise apply to the item created through processing or combination.
- 6.5 The customer may dispose of the goods in which CENIT has title or co-ownership only in the proper course of business dealings on its usual terms; this applies, however, only as long as the customer is not in default with payment. In the event of resale, the customer assigns to CENIT already in advance the claims arising against its purchasers or any third party in the amount of the value of CENIT's invoice (plus VAT) plus a security surcharge of 10%. CENIT hereby accepts the assignment.
- 6.6 The customer shall be entitled to collect the claims assigned to CENIT under no. 6.5 above until revoked by CENIT; such revocation shall be permitted at any time. CENIT will exercise this right of revocation for cause only. The customer shall, upon request, be obligated to notify the third-party debtors of the

assignment to CENIT and to furnish CENIT with the information and documentation required for collection.

- 6.7 The customer may not transfer to third parties the goods in which CENIT has a title or co-ownership by way of security or pledge the same, may not assign the claims resulting from the resale to a third party or make an offset, nor agree a ban on assignment with its purchasers with respect to such claims. In the event of a global assignment by the customer, the claims assigned to CENIT are to be expressly exempted.
- 6.8 If the value of the security existing on behalf of CENIT exceeds CENIT's claims against the customer by more than 10%, CENIT shall be obligated to release the security exceeding this limit at the customer's request; the individual objects to be released will be chosen by CENIT.

## **7. Defects as to the Quality of Deliveries and Works**

- 7.1 In the case of deliveries of goods, the customer shall carefully examine the delivered good without undue delay upon receipt and complain vis-à-vis CENIT about defects, if any, promptly in writing, however no later than seven working days upon receipt of the goods or – in the case of hidden defects – within seven working days after the defects are discernible. Works must be accepted by the customer without undue delay upon performance; acceptance may not be refused due to insignificant defects.
- 7.2 In the event of defects of the delivered goods that are objected to in a timely manner, defective works that are not accepted or only under reserve by the customer or defects that have not been detected upon acceptance, the customer primarily has, at CENIT's choice, a claim for rectification of the defect or for a new delivery/performance. The expenses necessary for this purpose, such as wage, material, transport, and travel costs, will be borne by CENIT only to the extent that such expenses are not increased due to the fact that the delivery item or the object of the works has subsequently been brought to a place other than the agreed place of delivery or performance, unless such relocation is in accordance with the agreed use of the respective delivery item or object of the respective works. Replaced parts become the property of CENIT and must be returned to CENIT.
- 7.3 If the rectification of the defect or the new delivery/performance of a work is not carried out successfully during a reasonable period of time set by the customer,

the customer is entitled, at its own choice and without prejudice to possible claims for damages or for reimbursement of expenses according to no. 10 below, to demand a reduction of the purchase price (*Minderung*) or – if the violation of duty on the part of CENIT is not only insignificant – to rescind the contract.

- 7.4 The obligation of CENIT to answer for defects as to quality terminates if the delivery item or object of the works of CENIT has been modified without authorization, especially through the installation of alien parts or, in the case of software, through subsequent programming. The customer is entitled to remedy a defect itself or have it remedied by a third party and demand reimbursement of the necessary costs by CENIT only in emergencies where operational safety is endangered or for the prevention of disproportionate damage. The same shall apply if CENIT is in delay with the rectification of a defect. In all of these cases, CENIT must be notified immediately.
- 7.5 Claims based on defects (including claims for damages and for reimbursement of expenses due to defects, unless such claims are based on a willful or grossly negligent violation of duty or a violation of life, body, or health) shall become statute-barred within 12 months after delivery or after acceptance (if works are concerned). The foregoing provision does not apply to the extent that a longer limitation period is compulsorily prescribed by law, e.g. according to § 479 para. 1 BGB (recourse claims in the case of a purchase of consumer goods). With regard to replacement parts and/or the rectification of defects, CENIT is liable until the expiration of the limitation period applicable to the original delivery item or object of the works.
- 7.6 In the event of complaints in respect of defects, the customer may retain payments only to an extent reasonably proportional to the defects having occurred and only if the customer's claims are uncontested or have been finally recognized by declaratory judgment. If the complaint in respect of a defect is unjustified, CENIT shall be entitled to demand from the customer reimbursement of the expenses incurred by CENIT.

## **8. Supplemental Provisions for the Purchase or Programming of Software**

- 8.1 As regards software, it is not possible according to the current state of the art to exclude all software defects under all conditions of application. For this reason, the object of the warranty is software generally corresponding to the information contained in the respective program documentation. Subject to a possible express guaranty given by CENIT in the confirmation of the order, the information

contained in the program documentation and other program descriptions shall not constitute warranties as to quality within the meaning of §§ 443 and 639 BGB (*Beschaffheitsgarantie*).

- 8.2 A software defect is deemed to exist if the software does not fulfill the functions set forth in the program documentation, if it furnishes incorrect results, interrupts its run in an uncontrolled manner, or otherwise fails to work according to its functions so that the use of the software is prevented or considerably impaired. Imperfections of the software that do not frustrate or considerably impair the purpose of its use are not covered by the warranty obligation.
- 8.3 CENIT does not warrant for defects of the software
- that have been caused by faulty application on the part of the customer and that could have been prevented in the event of careful consultation of the program documentation; this applies also in the event of non-existent or insufficient backup measures;
  - due to virus infestation or other external influences such as fire, accidents, power outage, etc. for which CENIT is not responsible;
  - that are due to defects of the hardware, the operating system, or the software of other producers;
  - that are due to the software having been modified by the customer or a third party.
- 8.4 In the event that defects within the meaning of no. 8.2 above occur, the customer shall be obligated to furnish CENIT with all information necessary for the error analysis and repair, and to grant CENIT and/or the persons commissioned by CENIT unrestricted access to the software and the system of the customer on which the software is installed. Notifications of defects must contain information on the type of defect, the application during which the defect has occurred, as well as the work that has been carried out for purposes of removing the defect. The defect must be described such that it can be reproduced. If CENIT carries out an error analysis at the customer's request and the analysis shows that there is no defect CENIT is obligated to remove, CENIT may invoice the customer for the corresponding expenditure on the basis of the hourly rates of CENIT as applicable from time to time.
- 8.5 The warranty covers only such defects as existed already at the delivery or acceptance of the software. The warranty ceases to apply to the extent that the customer makes modifications to the software or has such modifications made by third parties without the consent of CENIT, or does not use the software in accordance with the respective program description, or uses the software with a

system (hardware and software) other than the one for which the software was configured.

## **9. Third Party Rights**

- 9.1 CENIT warrants within the limits of the statutory provisions that the goods delivered or the works performed by CENIT are free of third-party rights that prevent the customer's use of such goods or works as agreed.
- 9.2 In the event that such rights are asserted by third parties, CENIT shall use its best efforts to defend the customer, at CENIT's own expense, against the asserted rights of third parties. The customer shall inform CENIT without undue delay of the assertion of such third-party rights and grant CENIT any and all powers and authorities necessary for purposes of defending the customer against the asserted rights of third parties. CENIT shall reimburse the necessary costs incurred by the customer for defending itself against such legal action.
- 9.3 If it is certain that third party rights with respect to the goods delivered or the works performed exist, CENIT will be entitled, at its choice:
- to remove the third-party rights, or the assertion of third-party rights, that affect the use of the goods or works as agreed by taking suitable measures; or
  - to modify or replace the goods or works such that they no longer infringes third-party rights, if and to the extent that such modification or replacement does not affect the warranted functions of the goods or works.
- 9.4 To the extent that CENIT fails to take the measures according to no. 9.3 above within a reasonable period of time to be fixed by the customer, the customer may at its choice, without prejudice to possible claims for damages or for reimbursement of expenses according to no. 10 below, demand a reduction of the agreed remuneration (*Minderung*) or – if the restrictions originating from the third party rights are significant – terminate the contract.
- 9.5 With regard to the limitation-period for claims based on third party rights, no. 7.5 above shall apply correspondingly.

## **10. Liability**

- 10.1 Subject to the provision of no. 10.2 below, CENIT shall be liable within the limits of the statutory provisions if the customer asserts claims for damages or for reimbursement of expenses that are based on willful misconduct or gross negligence or if CENIT violates an essential contractual duty in a culpable manner, as well as in the cases of a violation of life, body, or health.

- 10.2 Unless CENIT has committed a willful or grossly negligent violation of duty or a violation of life, body, or health, claims for damages and for reimbursement of expenses shall become statute-barred within twelve months and liability for damages shall be limited in its amount to the foreseeable, typically occurring damage, however to no more than EUR 250,000 or, if the value of the respective order exceeds this amount, to the order value. In the event of a loss of data, CENIT shall be liable at most for the expenses that would be necessary for reconstruction if the customer had made data backups in due manner. Claims for reimbursement of expenses on the part of the customer shall in all cases be limited to the interest the customer has in the performance of the contract.
- 10.3 Any further liability for damages or for reimbursement of expenses beyond the scope provided for in these *General Terms and Conditions for Deliveries and Services* shall be excluded, regardless of the legal nature of the asserted claim. Insofar, CENIT is, in particular, not liable for damages that have not occurred to the delivery item or object of the service itself, such as loss of profit and other financial losses of the customer. The imperative provisions of the German Product Liability Act (*Produkthaftungsgesetz*) shall remain unaffected.
- 10.4 To the extent that liability on the part of CENIT is excluded according to these *General Terms and Conditions for Deliveries and Services*, this shall likewise apply to the liability of the representatives of CENIT as well as the persons employed for the fulfillment of its obligations and its vicarious agents, especially staff members.

## **11. Protection of Confidential Information**

- 11.1 The contracting parties shall treat important information of the respective other party that is not generally known and of which they obtain knowledge in the context of the performance of the contract with the care usual in business dealings. Any further reaching protection of especially confidential information and the related determination of the requirements and conditions for the use of such information shall require the conclusion of a separate written agreement (Confidentiality Agreement) in the individual case.
- 11.2 The contracting parties may freely use any ideas, conceptions, know-how, and methods with regard to data processing that are not protected by copyrights or other property rights and are not subject to any Confidentiality Agreement.

## **12. Export Control Laws**

- 12.1 The customer shall at all times comply with all applicable export control laws including, but not limited to, the applicable EU-export control regulations.
- 12.2 Upon CENIT's request the customer shall be obligated to submit end user declarations which comply with the provisions referred to in para. 1 above

## **13. Applicable Law, Place of Performance, and Place of Jurisdiction**

- 13.1 The legal relations between CENIT and its customers shall be governed exclusively by the laws of the Federal Republic of Germany, to the exclusion of the provision of Private International Law and the United Nations Convention on Contracts for the International Sale of Goods.
- 13.2 The exclusive place of performance for both parties to the contract shall be Stuttgart. The place of jurisdiction is Stuttgart. However, CENIT shall be entitled to sue the customer also at its general place of jurisdiction.

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