

# General Conditions of Sale

## 1. Preamble

These general conditions of sale of Gema Switzerland GmbH apply to the entire product range of Gema and are an integral part of all sales contracts concluded with its customers. They also apply to future transactions even if these do not explicitly reference these general conditions of sale.

With the conclusion of the sales contract, at the latest, the customer accepts these general conditions of sale.

Customer orders become binding only when they are confirmed in writing by Gema, or when the ordered goods are shipped. Gema reserves the right to reject any orders without disclosing the reasons.

## 2. Technical specifications and documents

Technical documents such as drawings, descriptions, illustrations as well as any dimension, performance or weight specifications are strictly for information purposes and do not warrant specific characteristics. Gema reserves the right to make changes as technical progress may warrant.

All technical documents remain the intellectual property of Gema and may only be used for the purposes specified by or agreed to by Gema.

## 3. Regulations applicable at the place of destination

With the order, at the latest, the purchaser shall supply Gema with information on the regulations and standards applicable at the place of destination to the extent that these are relevant to the supply of goods and services as well as to the conformance with safety and approval regulations.

In the absence of any other stipulations the supplied goods and services shall conform to the regulations and standards applicable at the domicile of the purchaser as specified by the latter to Gema.

## 4. Prices

Save for any stipulations to the contrary, all prices are deemed to be net, f.o.b. plant in St.Gallen, excluding packing, and without any deductions. All extra costs such as freight, insurance, permits for export, transit, import etc., as well as any certificates, shall be borne by the purchaser. The purchaser is also responsible for any taxes, fees, and custom duties imposed on the delivery.

If the costs for packing, freight, insurance, taxes, duties and other extra costs are included in the offer or delivery prices, or if they are itemized separately in the offer

or on the order confirmation, then Gema reserves the right to adapt the rates to any changes in the tariffs.

## 5. Terms of payment

The purchaser shall tender payment at the domicile of Gema without any deductions such as discounts, expenses, taxes, and fees, in accordance with the agreed terms of payment.

In the event of late payment by the purchaser, default interest at the then prevailing Euromarket interest rate, but not less than 6% p.a., will be charged. If the purchaser defaults on his payments, Gema reserves the right to hold back deliveries relating to other orders or to cancel such orders.

Gema reserves the right to execute deliveries on C.O.D. basis for as long as the purchaser defaults on his payments or if requests for payment had to be issued for previous orders.

If after the placement of an order the purchaser becomes insolvent or if he suspends payment to Gema, or if the purchaser's ability to pay is impaired in any other way, Gema has the right to request adequate security and if none is pledged, Gema may rescind the contract.

The purchaser is neither entitled to make partial payments, nor to make offsets with counterclaims, nor to withhold payment due to any complaints. In particular payment shall also be made if only insignificant parts of the delivery are missing which do not render utilization impossible.

## 6. Reservation of ownership

All goods remain the property of Gema until Gema has received full payment from the purchaser in accordance with the contract.

The purchaser shall participate in all measures and execute all documents that are deemed necessary for protecting Gema's ownership of the goods. With the signing of the contract the purchaser consents that the reservation of ownership may be recorded, at his own expense, in public registers, books, or the like in accordance with the applicable national laws, and to sign any documents required for this purpose.

While the reservation of ownership is in force, the purchaser shall, at his own expense, maintain the supplied goods in proper order and insure them against theft, breakage, fire, water and other risks, with Gema designated as the beneficiary. In addition the purchaser shall take all necessary steps to prevent the impairment or nullification of Gema's ownership rights.

If the purchaser sells goods of which the ownership has been reserved by Gema,

the purchaser cedes already now to Gema in an internal relationship all rights against the buyer accruing to him from this sale, including all ancillary rights, securities and reservation of ownership.

If the value of the goods over which ownership has been reserved, together with any other securities granted to Gema exceed the claims of Gema against the purchaser by more than 20%, then Gema shall grant a partial release if this is demanded by the purchaser.

If the purchaser takes any action that contravenes the contract, particularly if he defaults on his payments, Gema is entitled, after having given notice, to take back the goods over which it holds reserved ownership and the purchaser is obligated to release the goods.

## 7. Delivery

The scope and the execution of the supply of goods and services shall be governed by the order confirmation.

Whenever possible, Gema will deliver the entire order of the customer. However, the purchaser agrees, to accept also partial deliveries. For partial deliveries Gema is entitled to issue corresponding partial invoices.

The delivery period begins when the contract has been signed, when all government formalities such as import and payment authorizations have been obtained, the payments or securities to be delivered together with the order have been received, and all technical specifications have been clarified.

Delivery is deemed to have been made on schedule if on expiration of the delivery period the goods are ready for shipment and a corresponding advice has been forwarded to the purchaser.

The delivery period shall be reasonably extended if:

a) The information required by Gema for executing the order are not received on time, or if they are subsequently modified by the purchaser and thus cause a delivery delay;

b) If Gema is impeded by force majeure from executing the order. The term force majeure comprises all unforeseeable circumstances for which Gema is not answerable and which make it unacceptably difficult or impossible for Gema to execute the delivery, such as delayed or faulty deliveries by its subcontractors, strike, government regulations, shortage of raw materials or energy, major interruption of operations caused, for example, by the complete or partial destruction of the plant or important departments, or by the breakdown of essential production equipment, serious transport problems, for example, caused by road blockage. If these conditions persist for more than six

months, either party has the right to rescind the contract. However, the purchaser is not entitled to raise any claim for damage;

c) If the purchaser or third parties are in arrears with their work to be performed or the fulfillment of their contractual obligations, particularly if the purchaser fails to meet the payment terms.

If the delivery period is exceeded for reasons that must be answered by Gema, the purchaser shall, through written notification, grant a reasonable extension which shall be at least one month. If delivery is not made within this extension period, the purchaser may rescind the contract. However, the purchaser is not entitled to raise any damage claim unless malicious intent or gross negligence on part of Gema can be demonstrated.

If the goods notified as being ready for shipment are not accepted on time by the purchaser, Gema is entitled to store the goods at the expense and risk of the purchaser and to invoice them as being delivered.

## 8. Passing of use and risk

The use and risk pass to the purchaser as soon as the shipment has left the Gema plant, even if the delivery is made c.i.f. or under similar clauses, or including installation, or if the transport has been organized and managed by Gema.

If shipment is delayed due to circumstances for which Gema is not answerable, the risk passes to the purchaser as soon as he has been advised that the goods are ready for shipment. From this moment the goods are stored and insured at the expense and risk of the purchaser.

## 9. Transport and insurance

In the absence of any stipulations to the contrary the goods are shipped at the expense and risk of the purchaser.

Insurance against damage in transit shall be arranged by the purchaser. Even if this insurance is arranged by Gema it is deemed to have been concluded on behalf and on the account and risk of the purchaser.

Special requests concerning shipment and insurance shall be communicated to Gema on time. Otherwise the fastest and most economical transport will be arranged at the discretion of, but without responsibility, by Gema.

For c.i.f. deliveries the transport is arranged by Gema. If any special requests are made by the purchaser the additional costs will be charged to him.

If any goods are lost or damaged in transit, the purchaser shall enter a corresponding exception on the delivery documents and have the damage immediately surveyed by the forwarding company.

Transport damages that were not immediately detectable must be reported to the forwarding company within eight days from the delivery of the goods.

## 10. Inspection and acceptance of the supplied goods and services

Gema inspects all goods during production within the normal scope. If the purchaser requires additional tests and inspections, these shall be agreed upon in writing and will be conducted at the expense of the buyer.

The purchaser shall examine the delivery within a reasonable time and report any defects to Gema immediately in writing after they have been detected, however, within the agreed warranty period. In the absence of any written complaint the delivery is deemed to have been accepted.

## 11. Warranty

On written request by the purchaser Gema shall, at its own discretion, either repair or replace as quickly as possible such parts of the delivered products that evidently became damaged or unusable due to poor workmanship, or incorrect operating instructions or installation instructions.

The replaced parts become the property of Gema.

The purchaser is entitled to rescind the contract or demand a price reduction if

- a) Repair or replacement is impossible;
- b) Gema is unable to remedy the defect within a reasonable time, or if Gema refuses or culpably delays remedy of the defect.

For products that have been manufactured based on the specifications, drawings or models supplied by the purchaser, Gema's warranty is limited to the quality and workmanship of the materials.

Not covered by the warranty are damages that are not clearly the result of poor material, design errors, poor workmanship or incorrect operating instructions and installation instructions, for example, due to normal wear, improper storage and maintenance, failure to follow the operating instructions, overloading, utilization of media that do not meet specifications, inexpert interventions by the user or third parties, utilization of spare parts not authorized by Gema, as well as due to other reasons for which Gema is not answerable.

For major third-party deliveries Gema grants a warranty only within the scope of the original supplier.

Warranty and liability claims become statute-barred twelve months from the receipt of the goods by the purchaser, but no later than 18 months from the date the goods left the Gema plant.

With respect to defects in materials, design or workmanship [as well as characteristics that do not conform to the specifications], the purchaser has no rights or remedies other than those explicitly stipulated in Section 11.

For claims of the purchaser that relate to inadequate counselling and the like, or to

the violation of any ancillary obligations, the supplier is only liable if he acted unlawfully or with gross negligence.

## 12. Liability (Exclusion of damages)

Gema's liability to pay damages of any kind is waived to the extent that this is permitted by the applicable law. This applies in particular to damages for delays, consequential damages, and product liability damages of all types.

## 13. Concluding provisions

Gema reserves the right to temporary suspend or terminate the contract if its execution would violate any Trade Compliance sanctions or Anti-Boycott laws issued by the United States, by the EU, by Switzerland or by any other country. Gema will not be liable to pay any penalty or damages that derive from the suspension or termination of the contract. In case of termination of the contract Gema will return the advanced payments that have been received, after deducting the expenses that have already been sustained.

Gema does not recognize any terms of business other than these. The purchaser explicitly waives the right to invoke his own conditions.

The acceptance of an order by Gema does not imply that the customer's terms of business are accepted, not even if this is mentioned on the order form.

If any part of these general conditions of sale or any delivery executed thereunder is deemed to be invalid, this shall in no way impair the validity of the other terms and conditions.

Changes to these general conditions of sale are only valid if they have been accepted by Gema in writing.

All contracts with Gema are subject to the laws of Switzerland.

Any legal disputes arising out of or in conjunction with contracts between Gema and the purchaser to which these general conditions of sale are applicable, shall be brought before a competent court at the domicile of Gema. In any action against the purchaser Gema reserves the right to institute legal proceedings at the domicile of the purchaser.

These General Conditions of Sale are written in the German and English languages. In case of ambiguities the version in the German language shall be controlling.