

# General terms and conditions

January 2006

Translation of the German "Allgemeine Verkaufs-, Lieferungs- und Zahlungsbedingungen, Januar 2003"

## 1 Validity

1.1 For delivery of the GfM Gesellschaft für Maschinendiagnose mbH (in the following passages GfM) are only the following terms and conditions valid. Different terms and conditions, also some of the purchaser, are only firm to us, if we confirmed them in writing.

1.2 While current business relations this terms and conditions are firm subject to all following delivery also if this has not been explicit agreed in future.

## 2 Conclusion of the contract, scope of delivery

2.1 Our offers are without engagement. For the scope of delivery our confirmation of order in writing is decisive. If our offer with temporal attachment is accepted within the period stipulated and we did not confirm the order, then our offer is decisive for scope of delivery. Additional agreements and changes has to be confirmed from as in writing.

2.2 The unloading of the parts/hardware and the transport from the unloading place to the place of destination are tasks of the purchaser and are made at his charge, also if we deliver carriage free.

2.3 Necessary means of protection caused by the operating conditions have been made by the purchaser. They are not included in the scope of delivery. The same applies to cases in which the installation and the start up procedure will be made by us.

2.4 Documents like illustrations, drawings, declarations of weight and measurements, which belong to the offer, are only roughly authoritative, unless it is expressly stated that they are firm. We reserve the copyright and related rights for estimates of costs, project proposals, documentations and other documents. It is not permitted to make these documents accessible to third party.

2.5 The customer is obligated to arrange for essential electrical connections and for other requirements of installation.

2.6 If a copyrighted software belongs to the delivery the purchaser shall be entitled, with complete payment of invoice, of a simple, transferable right which is not exclusive and only valid in the combination with the corresponding hardware, to use this software, in the at the time of delivery available programme state, with the delivered hardware.

2.7 If user software is delivered the purchaser shall be entitled, with complete payment of invoice, of a single, not exclusive and not transferable right to use the delivered programs on the, for its using defined computer equipment. A using on another or an enlarged equipment is only valid on the basis of an explicit written agreement. The right of use ends without revocation as soon as the customer stops the using of the equipment for which the programmes are defined.

2.8 The customer accepts that the delivered user software contains patents, trademarks, trade secrets, know-how and other intellectual properties and that GfM and its supplier reserve this rights. The customer expressly accepts that this rights do not pass on to him by sale or delivery of products.

## 3 Prices and payment

3.1 Our prices are quoted ex GfM including loading at GfM but packing excluded. The VAT in legal extent is not included in the prices.

3.2 Unless particular agreements payment has to be made in cash-based without any discounts free to our paying office, as follows:

1/3 advance payment with acknowledgement of the order and receipt of the advance payment invoice,

1/3 30 days after partial delivery or advice of readiness of despatch and receipt of invoice for partial delivery, in case that the delivery is delayed due to reasons which we can not be hold responsible for,

1/3 30 days after delivery or advice of readiness of despatch and receipt of invoice. All instalments by direct banker's transfer to our account.

3.3 The purchaser is not entitled to withhold payments or make deductions due to eventual counterclaims, which are disclaimed from us.

3.4 At acceptance of order the credit standing of the purchaser is provided. If afterwards an essential deterioration of pecuniary circumstances of the purchaser occur by which our payment claims are at risk, we are entitled to withhold our delivery until the payment has been effected, unless there have been furnished enough securities.

3.5 Payment by transmission of a draft or by a negotiable promissory note, and also payments by a , from the purchaser prepared, draft which is signed by us and is sent back to the purchaser, will only be classified as payment if the bill of exchange is cashed by the payer and we are released from the endorser's liability. Discount charges have to be born by the purchaser.

## 4 Passing of risk and acceptance

4.1 The passing of risk is by dispatch of delivery. Returns of the purchaser effect at his risk.

4.2 At delays in delivery, due to circumstances we are not liable for, the risk is transferred to the purchaser from the day of the advice of readiness of dispatch.

4.3 The transport insurance "door-to-door" will be taken out by us, if it is not differently arranged .

4.4 Delivered items have to be received from the purchaser without prejudice of his rights in paragraph 9, also if they show unessential failings.

4.5 Partial delivery and partial calculation shall be permissible.

## 5 Retention of title

5.1 We retain title in the delivery item until all accounts receivable from the business relation between us and the purchaser, inclusive future claims from simultaneous or later conclusions of contract, have been balanced. In case the purchasers conduct shall be contrary to contract, especially at delay in payment, we shall be entitled to take back the delivery item and the purchaser shall be bound to return them. Taking back or attachment of the item by us can only be construed as a withdrawal from the contract if we declare this in writing. In the case of attachment or other interventions by a third party the purchaser has to inform us promptly, following in writing and he shall give us the necessary documents and information for prosecution, at no charge.

5.2 The purchaser shall be entitled to sale the delivery item in the ordinary course of business. The purchaser shall not be entitled for other disposals, especially paving or transfer of safety. The purchaser is bonded to sale the product only with reservation of title, if the item has not been paid immediately from third party. The right of re-sale is cancelled with bankruptcy of the purchaser. He assigns, already now, all claims to us which occur by re-sale against the buyer or third party and it does not matter whether the product has been sold with or without manufacturing. In the case of processing of reservation products and the consequential co-ownership (paragraph 5.3) the assignment covers only this part of claim which corresponds to our co-ownership. If the above mentioned claims of the purchaser are brought to a account current, the account current will be assigned to us in full expense. After balancing the account balance, which is classified as assigned until the expense of the amount corresponding to the original account loans, take this place. This is also valid for the final account balance after finishing the account current. The purchaser shall not be entitled to make agreements which interfere with the assignment in advance to us or which ruin them. The purchaser shall be entitled to collect these claims even after assignment. Our right to collect the claims ourselves remains unaffected by this. We promise, however, not to collect these claims as long as the purchaser fulfills his liabilities to pay. We can demand from the purchaser to give us the assigned claims, the name of the debtor, all details necessary for the collection, to hand over all documents and to notify the debtor of the assignment. In the case that the product is resold together with other goods which not belong to us, the claim of the purchaser against his buyer is assigned to us until the amount of the delivery price agreed between us and the purchaser.

5.3 Processing of the product by the purchaser shall always be made for us. If the product becomes an integral part of other articles, which not belong to us, a co-ownership in the new object is assigned to us in the ratio of the value of our product to the value of other processed goods at the time of processing. If products of us are connected with other movable articles to be one integrated object and the other object has to be regarded as main thing, so the agreement that the purchaser assigns a pro rata co-ownership to us, in so far as the main thing belongs to him, will be valid. The purchaser shall detain for us the ownership or co-ownership. For the processed product are the same terms valid as for the product.

5.4 We engage to release by request the safety, which appertains us, in so far as its value exceeds the securing claims for more than 10%, as far as they are already not balanced. Our retention of title causes in this way, that at payment in full the ownership is transferred to the purchaser and that the transferred claims appertain him.

5.5 We shall be entitled to take out an insurance for the product against theft, fire and water damages and so on until payment in full, provided that the purchaser has not verifiable taken out an insurance.

## 6 Time of delivery

6.1 The time of delivery begins with the dispatch of our acknowledgement of order, but not before sending or clarification of the by the purchaser obtained documents, authorizations, releases and also not before receipt of an agreed advance payment.

6.2 The time of delivery will be adhered to if until its end the product has vacate the firm GfM or the readiness for despatch has been told.

6.3 The time of delivery extends adequate to arrangements in the context of labour dispute especially at strike, lockout and also after acceleration of unavoidable obstacles, no matter whether in our firm or at our suppliers firm, e.g. breakdowns, delays in delivery of essential raw materials or fuels, as far as such obstacles lead verifi-

able to delays in production or delivery of the product. We can also not be hold liable for this obstacles if they occur while an already existing delay. In important cases we will inform the purchaser about the begin and the end of such obstacles.

6.4 Meeting the delivery date assumes the fulfillment of duties under a contract of the purchaser.

6.5 If the purchaser do not accept the goods in the date agreed or immediately on notice of readiness for despatch, we shall be entitled to charge the costs for storage and maintenance in the amount of at least 0,5 per cent of the invoice amount for every month. The enforcement of further claims of damages will be reserved. We are entitled after end of a placed deadline to dispose otherwise of the goods and to deliver the purchaser with an adequate extended period.

## 7 Delay in delivery

7.1 If for the purchaser a loss occurs due to a delay in delivery caused by reasons we are liable for, the purchaser shall be entitled to claim a loss compensation. The loss compensation has to be made in writing. It amounts, from the time we received the claim, for every week of the delay 0,5 per cent, but in whole only a maximum of 5 per cent of the amount of this product which can not be used in time or conventional.

7.2 The purchaser shall only be entitled to withdraw from the contract, if he fixed an adequate final deadline after end of a 10 week period, which begins with the receipt of the loss compensation claims in writing (paragraph 7.1), with explicit statements that he will not accept the goods after this final deadline and we did not get the final deadline. The same is valid in the case of a partial delay in delivery provided that the purchaser verifies that this partial delivery will not be of interest for him.

7.3 Advanced claims from the delay are barred by paragraph 6.

## 8 Impossibility of performance

8.1 The purchaser shall be entitled to withdraw from the contract if it is clear that we can not fulfil our services due to reasons we are liable for. At a partial impossibility the purchaser shall be only entitled to withdraw from the contract if the partial delivery is verifiable not of interest for him. Apart from that he is entitled to claim for an adequate depreciation.

8.2 If the impossibility is caused by neither of the trade partner, we have the claim for a part of the payment corresponding to the work rendered.

8.3 If the impossibility is a result of the delay in acceptance or is caused by the purchaser, the purchaser is liable for consideration.

8.4 Advanced claims due to partial or arrant impossibility are barred.

## 9 Decline of business

9 If we take our products into operation, we will inform the purchaser in writing of the state of readiness. As not agreed differently our products are accepted two weeks after our notice, unless the purchaser proves in writing essential damages within this period.

## 10 Warranty

10.1 GfM gives warranty that the hardware, software have no material defect or manufacturing-defectives at the time of passing of risk. As so far as operation software belongs to the scope of delivery, GfM gives the warranty of its operability. Mistakes in program of normal software, which was not been developed by GfM, will be passed on to the manufacturer by GfM. The correction of defects and all related liabilities behove the manufacturer and not GfM.

Mistakes in software of GfM and private software have to be announced in writing. They have to be stated and documented in a way that the checking concerning the content is possible. The customer knows that as the state of the art mistakes in program can not be excluded. This mistakes are therefore no defectives within the meaning of the law. Mistakes of program are corrected by GfM within the period of warranty for free and after the period in return for payment.

10.2 The period of warranty add up to 6 month for user software, operation software and hardware, if it is not arranged differently. The warranty does not apply to equipment and items, which are subjects to natural wastage. It does also not apply to damages due to exorbitant or improper using. All claims of warranty will expire, if the customer fixes not approved attachments or encroachments or repairs at items or operation software and user software are realized, without explicit collusion with GfM, by himself or third party. This also applies for software or firmware of the GfM, if the software or firmware was not released by GfM

10.3 If from the customer declared defects not exist, the customer will have to bear the arising costs on the basis of the prices of GfM. This is also valid for expenditures of return.

## 11 Liability

11 Claims for damages of all kinds will only exist against GfM as far as a wilful or a gross delinquency is present unless contractual conditions or other ? are violated. If after it a liability for damages for soft negligence exists, the claim for damages of the purchaser is limited to 10 per cent of the amount on this part of delivery and service which can not be used serviceable. This limitation is also valid for damages due to defects.

## 12 Place of jurisdiction

12 The place of jurisdiction and delivery is Berlin. But we are also entitled to invoke the court, which is responsible for the place of business of the purchaser.

## 13 Conditions for installation, activation, repairs and measurements

13.1 Qualified and installation personnel will be delegated after request corresponding to our acknowledgement whereby we are anxious to allow for desires of date of the purchaser. If a firm date is not adhered to from us the purchaser shall be entitled under exclusion of further claims to withdraw from the contract after end of final deadline.

13.2 The purchaser shall not be entitled to enlist our personnel, without our acceptance, for work, which is not agreed.

13.3 For works of several days a room, nearby the place of work, have to be prepared for materials and tools. It is necessary that the room can be sealed. Moreover adequate washing, dressing and common room for our personnel have to be prepared.

13.4 On request of our personnel adequate back staff as also necessary tools and auxiliary agents like welding equipment, lifting gears, frameworks and so on have to be provided.

13.5 The insurance of installation have to be taken out by the purchaser of not differently arranged. For damages caused by our personnel we will be liable until the amount of € 2.5 millions for single damages and maximal € 5.0 millions.

13.6 We will be liable for defects of the executed works to which also the default of explicit ensured attributes belong, under exclusion of further claims of this kind, we are bond to debug the damages within an adequate period. Putatively defects have to be notified immediately. The right to claim a defect expires three months after ending of the work at the latest. On works, installation, activation or repairs the purchaser shall be entitled to repair the product by himself or by third party at the expense of us as far as we have not eliminated the defects while an adequate final deadline. Measurement service defects can only be claimed, if the measurement results are useless due to delinquency of the GfM. If the repair is impossible or inable the purchaser shall be entitled to withdraw from the faulty positions of contract.

13.7 Verbal agreements with our installing personnel will only be valid, if these are acknowledged from us in writing.

13.8 GfM is authorised by the customer to file all measuring data, secondary data, reports and technical documents as hard copy as well as paper copy. GfM commits to the data confidentiality. GfM is not allowed to pass on this information to third party without the explicit consent of the customer.

## 14 Transfer prices

14.1 Working, travel and waiting periods in normal working time of 8 hours/day or 40 hours/week:

Working hour of an engineer per hour € 120,00

Travel hour of an engineer per hour € 60,00

The same cost rate are valid for preparatory operations, analysis and reporting. The necessary effort normally

orients by experiences and is being declared before.

14.2 Cost allocations for the above mentioned transfer prices:

Extra hour up to 3 hours/day 25% premium

Night work from 19:00 to 6:00 o'clock 50% premium

On Saturday after 12:00 o'clock 50% premium

On Sunday and statutory holidays 100% premium

14.3 Releases

The legal records of releases of the fiscal authority in Germany are valid.

14.4 Travel costs

Arrival and departure by car per km: € 0,50

Rail and air fare will be cleared at cost.

14.5 Closing conditions

The transfer prices correspond to the legal labour costs. We reserve the right of conformation.

In case of doubt only the German general terms and conditions are valid.

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