

General terms and conditions from Generatoren und Motoren-Vertriebs und Service GmbH

1. Scope

- (1) These general terms and business conditions apply to sales contracts concluded with consumers and who therefore cannot be assumed to have either a commercial or a self-employed professional occupation (purchase of consumer goods). They apply, furthermore, to contracts for work and labour to which the Law on the Sale of Good according to § 651 BGB applies. The contract parties are here in after described as "vendor" and as "purchaser", also in so far as it is legally a matter of contracts for work and labour.
- (2) For contracts which are not concluded between persons present and, therefore, are concluded **under exclusive use of means of telecommunications**, in addition the following special terms apply for distant sales contracts.
- (3) In case of the sale of ships which are listed in a shipping register, the provisions of law on the sale of goods shall be applied which are valid for the sale of property.

2. Conclusion of a contract

- (1) Both sides are bound to obligatory offers for the duration of 2 weeks. A contract is then concluded if the other party accepts a contract offer. A contract is also concluded in that the vendor makes a delivery by order of the purchaser.
- (2) Should the delivery of a product be agreed which is not in stock or which must still be produced according to the specifications of the purchaser, so that the vendor must obtain a delivery confirmation from his supplier, the vendor can only then accept an order from the purchaser if he is in possession of a binding delivery confirmation from the supplier.
- (3) The purchaser may only transfer rights and duties arising from the contract, including the claims arising from liability for faulty goods to third parties with the written consent of the vendor.
- (4) The vendor or his supplier holds the copyright to drawings and documents submitted to the purchaser.

3. Obligations of the vendor

- (1) The condition of the goods shall be oriented on the specifications defined in the contract, it must correspond to the use defined in the contract and the performance features defined in order confirmations. Own brochure statements and those of manufacturers are only then material if they are binding performance descriptions and not non-binding descriptive features. All performance descriptions mentioned in the contract do not represent guarantees of the qualities on the part of the vendor. Construction and form changes in the object sold, deviations in the colour as well as changes in the scope of supply on the part of the manufacturers continue to be reserved during the delivery period, insofar as the object is not substantially changed and the changes are not unreasonable for the purchaser.
- (2) The quoted delivery dates are initially non-binding. They require written confirmation by the vendor. Short-term delivery delays are irrelevant, unless the parties have expressly designated the delivery date as obligatory in the contract. Delivery periods begin with the conclusion of the contract. In the event that subsequent amendments to the contract are agreed upon, then the delivery periods shall be extended by the same time period which lies between the conclusion of the contract and the amendment to the contract, insofar as the parties have not agreed otherwise.
- (3) In the event of agreement on a non-binding delivery date or a non-binding delivery period, the vendor is only then in default with respect to his delivery obligations if he is warned by the purchaser. In the event of an obligatory delivery date or an obligatory delivery period being exceeded, the vendor is already in default by exceeding the date or the period.
- (4) Force majeure or an operational interruption occurring with the vendor or his suppliers, for example, as a result of a riot, strike or lockout, which temporarily prevents the vendor, for no fault of his own, from delivering the purchased object on the agreed date or within the agreed

period, changes the agreed dates and periods once by the duration of the default in performance caused by these circumstances. Should a default in performance lead to a performance delay of more than four months, the purchaser can withdraw from the contract. In this case a previous extension of the period by the purchaser is not required. The vendor can only refer to the mentioned circumstances if he immediately informs the purchaser about the non-availability. Other rights to rescind the contract remain unaffected by this.

(5) In the event of default by the vendor, the purchaser can demand compensation for damage caused by delayed performance. In the event of minor negligence of the vendor or his vicarious agents, the claim for compensation is limited to no more than 5% of the purchase price. The limit to liability does not apply to injuries to life, body or health.

(6) Furthermore, should the purchaser want to withdraw from the contract and/or request compensation rather than performance, he must set the vendor an extension of at least 2 weeks for the delivery. The setting of an extension is not required, if the vendor seriously and definitively refuses to make the delivery or if special circumstances exist which, under due consideration of the interests of both parties justify the immediate assertion of the claim to compensation.

(7) Should the transfer not take place at the legal place of performance, then this must be specifically agreed upon. Should the product be sent to a place other than the place of performance agreed upon, then the transport shall be at the expense of the purchaser. Packing costs will only then be charged if for safe transport of the goods to be transported it requires packaging or, if necessary, a nautical packaging, or the purchaser wishes this. Costs of transport insurance, loading and transportation as well as agreed supplementary payments are at the expense of the purchaser.

4. Obligations of the purchaser

(1) The purchaser shall pay the agreed purchase price on the date of handing over of the purchased object. Payments must be made free of expense. The payment is only rendered when credited to the account of the vendor. The receipt of cheques is made on account of payment. Bills of exchange will only be accepted by special agreement on account of payment against invoicing of all collection and discount expenses. The purchaser can only then offset claims of the vendor if the counterclaim of the purchaser is undisputed or a legally enforceable title exists; the purchaser can only assert a right to reserve insofar as it is based on claims arising from the contract.

(2) For exports, the commissioning of the forwarding agent shall be done by the purchaser.

(3) If down-payments are agreed upon in the contract, which are not made by the purchaser, the vendor can withdraw from the contract and/or demand compensation instead of the performance, if it is apparent that the purchase price claim is endangered by the purchaser's inability to make payment. The right to refuse performance of the vendor expires if the purchase price is paid or the purchaser has provided security.

(4) Should the purchaser not respond to a reminder of the vendor, which is issued after the due date, he is in default as a result of the reminder. The purchaser is also then in default if he does not pay within 30 days of the due date and receipt of an invoice, in so far as these legal consequences are specifically stated on the invoice.

(5) In the event that the parties have agreed on payment in instalments, then the complete outstanding sum – without consideration for the maturity of possible bills of exchange – will be due for payment immediately if the purchaser falls completely or partly behind with at least two successive instalments and the sum for which he is in the default amounts to at least one-tenth of the purchase price.

5. Acceptance

(1) The purchaser has the right to check the object sold within 8 days after receipt of the notification of availability at the agreed place of take-over. The purchaser is obliged to take over the purchased object free of faults within the aforementioned period and to pay the agreed purchase price. Should the purchased object be driven on a test drive before its acceptance by the purchaser or his representative, then the purchaser shall be liable for

damages resulting to the purchased object, if these were caused deliberately or as a result of gross negligence.

(2) Prior to handing over, an acceptance protocol will be submitted to the purchaser which will be considered in detail with the purchaser at the take-over. Insofar as it is proved by entry in the acceptance protocol that the product was free of faults when handed over, the assumption of § 476 BGB is regarded as disproved, unless it is a matter of concealed faults.

(3) Should the purchaser remain unwarrantedly in default with the acceptance of the purchased object and payment of the purchase price for longer than 2 weeks as of receipt of the notification of availability, the vendor can set the purchaser an extension of 2 weeks in writing. An extension is not necessary if the purchaser unwarrantedly, seriously and definitely refuses the acceptance and payment, or is obviously not capable within this time of fulfilling his payment obligations arising from the sales contract. On expiry of the extension or its dispensability, the vendor is entitled to withdraw from the contract by written declaration and/or to demand compensation instead of payment.

(4) Should the vendor demand compensation instead of payment, this will amount to 15% of the agreed purchase price. The damage sum shall be set higher or lower if the vendor is able to prove a higher damage or the purchaser a considerably lower damage or the non-existence of damage.

6. Shipping

(1) The danger for the product is transferred with the handing-over of the product to the purchaser or to the forwarding agent commissioned by the purchaser. The purchaser bears the transport costs in the event that the parties have not agreed otherwise.

(2) The vendor is obliged, at the request of the purchaser, to conclude transport insurance at the expense of the purchaser.

(3) The vendor must be informed about apparent damages in transit within 2 weeks after receipt of the product. The timeliness depends on the date of despatch of the notification. Should transport insurance be concluded, the insurance company shall be informed immediately about any damage in transit.

(4) Should the transport route, method of shipping or type of packaging not be expressly stipulated by the purchaser, the vendor is entitled to decide on the required measures taking into account the presumed interests of the purchaser. The vendor, however, is not liable for delays in transport.

7. Liability for faulty goods

(1) If the product is unsatisfactory, the purchaser can first choose to demand supplementary performance in the form of rectification or subsequent delivery. The vendor will first attempt to eliminate the fault and offer this to the purchaser. The vendor can refuse the type of supplementary performance chosen by the purchaser if it is only possible with unreasonable costs. In this connection, particular attention should be given to the value of the object in fault-free condition, and the importance of the fault and to the question as to whether the other form of supplementary performance could be made use of without considerable disadvantages for the purchaser.

(2) The parties agree that the purchaser hands over the sold object to the vendor at the place of delivery for the purpose of supplementary performance. Should the purchaser demand the rectification at another place, he shall bear the additional costs incurred. Should rectification not be possible at the other place, the vendor can demand the transport of the object to a suitable place - this can be the place of business of the vendor – at the expense of the purchaser.

(3) If a third party, for example, a supplier of the vendor, has provided a manufacturer's guarantee, the parties agree that the purchaser shall first assert his claims arising from the manufacturer's guarantee, as the performances from the manufacturer's guarantee often go further than the obligation to supplementary performance of the vendor, for example, through a worldwide service network. As a result of this agreement, however, the legal claims of the purchaser against the vendor are in no way limited. The purchaser can, at any time, directly call upon the vendor without giving reasons, for the purposes of supplementary performance.

(4) Claims of faults by the purchaser are subject to limitation for new objects and for new ships within **2 years**, for second-hand objects and for second-hand ships within **1 year**, in each case calculated from hand-over. Insofar as the vendor has given a guarantee for the condition or fraudulently concealed a fault, the statute of limitations shall not apply. Furthermore, the statute of limitation does not apply to claims to compensation for damages due to faults which are based on a grossly negligent or deliberate infringement of the obligations of the vendor, as well as for injuries to life, body or health.

8. Reservation of proprietary rights

(1) The vendor reserves the proprietary rights to all objects delivered by him until the purchase price has been paid in full.

(2) The vendor can demand the return of the sold object if he has withdrawn from the sales contract.

(3) The purchaser bears the costs of the return and the utilization of the purchase object. The utilization costs amount to 5% of the utilization revenue without proof. They shall be set higher or lower, if the vendor proves higher or the purchaser lower costs or the non-existence of costs.

(4) The purchaser is obliged to notify the vendor immediately of any access of third parties to the object of sale delivered under reservation of proprietary rights - e.g. of attachments, of the exercise of business rights of lien of a workshop. He must point out the right of ownership of the vendor to bailiffs or other third parties and to notify the vendor of this in writing with submission of the pledge protocol. He shall bear all costs which are necessary for the cancellation of a lien and for the recovery of the object of sale and must replace all damages which result from the access to the object of sale, insofar as costs and compensation cannot be collected from third parties.

(5) As long as the reservation of proprietary rights exists, a disposal, a pawning, an assignment as security or a leasing of the object of sale, as well as a change of its regular location, is only permissible with the previous written consent of the vendor.

(6) The purchaser is obliged to maintain the object of sale in proper condition during the period of reservation of proprietary rights and to have all scheduled maintenance work and necessary repairs done immediately – apart from emergency situations – by the vendor or by a workshop named by the vendor.

9. Agency transactions

(1) Should the dealer act by order of a customer, the provisions applying to sales of consumer goods do not apply, as direct legal relations exist between the parties to the contract of sale.

(2) The dealer will act exclusively in the interest of his customer, he does not assume any obligation to instruct and inform towards the purchaser.

10. Liability

(1) The vendor has limited liability for damages resulting from minor negligence.

(2) A liability of the vendor exists only through the infringement of essential contract obligations. In the case of slightly negligent infringement of obligations, the liability of the vendor is limited to the foreseeable, contract-typical, direct average damages for the type of product. This also applies to slightly negligent infringements of obligations by the legal representatives or vicarious agents of the vendor. The same also applies to damages which were caused by a material defect.

(3) The limitations and exclusions of liability do not apply to claims which have arisen as a result of fraudulent behaviour of the vendor, his legal representatives or vicarious agents, as well as to a liability for guaranteed quality features or the assumption of a procurement risk, for claims in accordance with the product liability law as well as damages arising from injuries to life, body or health.

(4) The liability of the vendor due to delay in delivery for compensation for the damages caused by delay, is regulated, with the exception of the compensation instead of performance, in § 3 (5) of these general terms and conditions.

(5) In so far as the liability of the vendor is excluded or restricted, this also applies to the personal liability of the staff, employees, representatives and vicarious agents of the vendor.

11. Data protection

In accordance with § 33 Federal Data Protection Law, we make reference to the fact that the contract data is stored in a data processing system. It is ensured that unauthorized persons cannot gain knowledge of this stored data.

Special terms for distant sales contracts

§ 12 Conclusion of contract

The offers of the goods listed in the price list are non-binding. If goods are sold out, a contract is not concluded. Apart from this, a sales contract is concluded on receipt of the ordered goods as well as the receipt of these general terms and conditions.

Should the sales contract be concluded exclusively on the basis of a written or telephone order, an order by e-mail or fax, the purchaser is then entitled to a right of revocation. The right of revocation does not exist in the case of delivery of goods, which are made according to the customer's specifications or are obviously tailored to the personal requirements or which are not suitable for return due to their condition or can go bad quickly or whose expiry date has been exceeded. The revocation must not contain any grounds and be made in text form (e.g. letter, fax, e-mail) or through return of the product within 2 weeks. The period starts at the earliest upon receipt of this instruction. The punctual despatch of the revocation or the product is sufficient for the observation of the period of revocation. The revocation or the return of the product should be addressed to the following address:

GEMO GmbH
Auf dem Baggersand 5
23570 Lübeck/Travemünde

In the case of a valid revocation, the performances received on both sides shall be returned and, if applicable, accrued benefits (e.g. interest payments) surrendered. Should the purchaser not be able to return the received performance totally or in part or only to return it in a deteriorated condition, in this respect he must provide substitute value, if necessary. In the transfer of objects, this does not apply, if the deterioration of the object is solely due to its examination – which would also have been possible, for the purchaser in a retail shop, for example. Apart from that, the purchaser can avoid the obligation to provide substitute value in that he does not make use of the object as if it was in his possession and avoids anything which impairs its value. The purchaser must bear the costs of the return, if the delivered goods correspond to those ordered and if the order value does not exceed a sum of 40 Euro, or if the purchaser, by a higher order value, at the time of revocation had not yet made the counter-performance or a contractually-agreed instalment. Otherwise, the return is cost-free for the purchaser. Goods which cannot be packaged (e.g. bulky objects) will be collected from the purchaser. The purchaser must meet his obligations to the refund of payments within 30 days after despatch of the declaration of revocation.

§ 14 Prices

The prices indicated in the price list include all taxes and other price components. The price lists remain valid until they are replaced by a new price list. In the event of parcel delivery, a flat-rate shipping fee will be charged, the level of which depends upon the costs normally arising.

§ 15 Complaints

(1) The purchaser must lodge complaints about obvious faults to the vendor within a period of 2 weeks after receipt of the product. The despatch of the customer's complaint is decisive for its timeliness. A violation of this incumbency obligation can impair the claims of the purchaser on grounds of liability for faulty goods.

(2) In the event of transport damages or theft, a report on the facts of the matter must be requested immediately from the freight handling department of the reception station, the freight forwarding company or the postal service and submitted to the vendor. The forms of packaging used by the vendor are recognized by the rail and post services, so that in case of damage, the refund is guaranteed.

§ 16 Place of performance

Place of performance for deliveries and payments for distant sales contracts is the place of residence of the purchaser.

GEMO GmbH

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