

General Terms and Conditions (GTC)

1. Scope

1.1. These GTC apply to contracts concluded between GECEM GmbH & Co. KG based in Kleinkarlbach (hereinafter referred to as 'GECEM') and companies pursuant to section 14 of the German Code of Civil Law (BGB) (hereinafter referred to as 'Customer') on the delivery of goods and the provision of work and services by GECEM.

1.2. The contractual relationship between the Customer and GECEM is based exclusively on these GTC. Hence, any deviating terms and conditions set by the Customer are expressly rejected. These GTC also apply exclusively if GECEM, being aware of the Customer's opposing or deviating terms and conditions, provides services to the Customer without reservation.

1.3. Subject to the re-inclusion of any amendments to the General Terms and Conditions by GECEM, these GTC shall also be applicable to future contracts concluded between GECEM and the Customer on the sale of goods as well as the rendering of toll manufacturing services without their needing to be re-included.

2. Declarations of contract

2.1. Unless circumstances dictate otherwise, service offers made by GECEM are nothing more than the description of services and a request directed at the Customer ('*invitatio ad offerendum*') to submit a binding offer of contract to GECEM. GECEM shall have the right to accept any offers of contract made by the Customer within three weeks. Within this period of time, the Customer shall be bound by his declaration of contract. In the absence of provisions to the contrary, offers of contract made by GECEM are not binding. Hence, they can be revoked until their acceptance by the Customer.

2.2. For purposes of proof, all agreements entered into between GECEM and the Customer must be documented in writing.

3. Content of contract

3.1. Concerning the content of contract and the scope of services, the written order confirmation as well as the description of services by GECEM shall be applicable. If instead of an order confirmation being provided in due time, an offer of contract has been submitted by GECEM and accepted on time by the Customer, this offer shall be applicable.

3.2. GECEM can make notes on potential discussions regarding details of or amendments to the contractual provisions, particularly on any changes to the purpose of the contract, which shall become binding onto both parties if the Customer has been notified hereof and does not raise any objections within two weeks from receipt of these notes.

4. Customer's duty of assistance

4.1. The delivery of fillers or other material by the Customer shall take place at his risk free of all charges upon arrival at the works in Kleinkarlbach or at another agreed delivery site. GECEM shall not be liable for any damage caused by the goods to be delivered having been packed inadequately or, in particular, having been stored in containers that fail to ensure consistent quality.

4.2. The Customer shall ensure that the completion of the placed order does not result in the violation of third parties' industrial property rights. However, if this were to occur nevertheless, the Customer shall, upon GECEM's first request, release GECEM from all claims and make up for any damage that may have been caused.

5. Prices

5.1. Unless the offer or the order confirmation contain provisions to the contrary, all prices are net (excluding the respective statutory level of any value added tax) ex works Kleinkarlbach and excluding packaging and delivery.

5.2. Any cost increases that are not due to GECEM (in particular general price increases of the required raw material) shall entitle GECEM to increase its prices accordingly, if the delivery is to take place at least two months after contract conclusion as well in the case of long-term obligations. If price increases exceed 5%, the Customer shall be free to withdraw from the contract.

6. Payment

6.1. Subject to agreements to the contrary or to possible rights to refuse performance, the Customer shall settle any payment claims made by *GECHEM* forthwith and without deduction. The deduction of a cash discount requires a separate agreement. If, subject to an earlier dunning letter, the Customer has failed to pay 14 days after the due date and the receipt of an invoice or of an equivalent request for payment, he is in default.

6.2. As a rule, payments must be made by bank transfer only. Cheques shall only be accepted on account of performance.

6.3. A payment is only considered to have been made when *GECHEM* can dispose of the amount. In the case of cheques, payment is only deemed to have been made when the amount has been credited to an account of *GECHEM* without reservation.

6.4. The Customer shall only be entitled to claims for a set-off if counterclaims have been established with final and binding effect, are indisputable or have been acknowledged by *GECHEM*. On the basis of disputed counterclaims and counterclaims that have not been established with final and binding effect, the Customer shall not be entitled to a right of retention.

7. Customer's obligation to pay damages

If, in accordance with the statutory rules and regulations, *GECHEM* is entitled to claim damages from the Customer instead of rendering services/delivering products, these damages shall be limited to the standardized amount of 25% of the agreed price, without consideration of any goods already delivered/services already rendered and subject to *GECHEM* proving that the actual level of damage is higher. The Customer has the right to prove that either no damage has been caused at all or that the level of damage is much lower and does not correspond to the standardized amount.

8. Period of performance

8.1. Unless otherwise stipulated, the period of performance starts as soon as the order confirmation has been dispatched, and is considered to be approximate as well as, at times, subject to the correct and timely arrival of goods from sub-contractors. The period of performance is deemed to have been adhered to if the object of performance has been delivered or sent by the end of it.

8.2. Compliance with the period of performance requires that the Customer meets his obligations on time and in due form, in particular concerning the provision of possible documents and materials to be made available by the Customer as well as the receipt of a deposit that may have been agreed.

8.3. In the case of unforeseen events that are not due to *GECHEM* and that have a considerable impact on the completion or delivery of the object of performance, the periods of performance shall be extended by the duration of the obstructing event. This shall also apply if these events have occurred (in the factory or) at a sub-contractor's. In particular, these may be: operational breakdown, legal strikes or lockouts at *GECHEM* or its suppliers. Without prejudice to other rights of withdrawal, the Customer shall be entitled to withdraw from this contract if the duration of the obstacle to the performance exceeds the period of 2 months.

8.4. If, for the reasons listed in paragraphs 2 and 3, performance is impossible for more than 2 months or for the foreseeable future without this being the fault of *GECHEM*, *GECHEM* has the right to withdraw from the contract.

8.5. Taking into consideration an extension according to paragraphs 2 and 3, non-compliance with deadlines and periods of performance shall – without prejudice to the right of withdrawal according to paragraph 3 – entitle the Customer to assert the rights due to him, in particular his right of withdrawal, as long as he has offered *GECHEM* an adequate additional period of grace of at least 14 days.

8.6. The Customer's claims for damages caused by the delayed performance of *GECHEM* are limited to 1% of the price agreed for the delayed performance, which shall be due for each completed week by which delivery is delayed. However, overall, it shall not amount to more than 25 percent of the invoiced amount if *GECHEM* can be accused of no more than minor negligence.

9. Partial performance

In the absence of agreements to the contrary, *GECHEM* shall be entitled to provide partial deliveries and partial performance as long as, in the individual case, this is not unacceptable to the Customer.

10. Performance, passing of risk

10.1. In the absence of agreements to the contrary, the performance takes place at the registered office of *GECHEM* (section 269 paragraph 2 of the BGB).

10.2. (At the latest) upon the transfer or dispatch of the subject of the contract to the Customer, the risk of accidental destruction or deterioration shall pass to the Customer. If, at the request of the Customer, the transfer or the dispatch of the goods is delayed, the risk shall pass to the Customer as soon as he has been notified that the goods are ready for dispatch. The same applies if *GECHEM* makes use of the right of retention. If required by the Customer, *GECHEM* shall take out a transport insurance policy; any associated costs shall be borne by the Customer.

11. Required quality of performance

11.1. The required quality of performance is based on the contractual agreements as well as on potential specifications. Unless explicitly specified, *GECHEM* shall not accept liability independent of fault.

Over- or under-delivery of up to 10% due to production-related rejects caused by trial runs, machine run etc. are common occurrences in industry. The ordering party shall be obliged to accept and pay for the delivered quantities notwithstanding these deviations. In the case of short runs, the production tolerance increases to 20%.

11.2. Documents such as images, drawings, details on weights and measurements are only mandatory as approximate values unless they have been expressly stipulated as binding. Any details contained in brochures, catalogues, samples and other product information are non-binding with regard to the technical and design qualities of the featured performance. *GECHEM* reserves the right to make technical and design changes in line with technical progress.

11.3. *GECHEM* shall not be liable if faults are due to measures that have been expressly requested by the Customer or that occur in materials or products supplied by the Customer. Under no circumstances shall *GECHEM* be liable for defects and faults that have been caused by: inappropriate or inadequate use, faulty or negligent handling, chemical, electrochemical or electrical influences unless they have been caused by *GECHEM*.

12. Complaints/inspection

12.1. Upon delivery of the goods supplied by *GECHEM*, the Customer must inspect the goods directly upon receipt or have them inspected by the recipient determined by the Customer if the Customer himself cannot carry out the inspection. After the goods have been accepted by the Customer or by a person commissioned by him without reservation, any retrospective complaint referring to the external quality of the goods shall be rejected. Complaints regarding other faults can, if they are noticeable during careful inspection, only be made within 14 working days of receipt, and otherwise, only within 5 working days of discovery. Any notification of defects must be made in writing.

12.2. In as far as, according to the statutory rules and regulations, a final inspection of the goods supplied by *GECHEM* has been agreed, compliance of the goods shall be established during final inspection. If the Customer has not signed and returned the inspection protocol two weeks after the provision of the goods, the final inspection is implicitly deemed to have taken place. Upon receiving the inspection protocol, the Customer shall once more be explicitly informed of the aforementioned legal consequences of remaining silent.

13. Notification of complaint by the Customer

13.1. Without prejudice to Customer's claims for damages applicable under the conditions listed under article 14, *GECHEM* shall warrant defects that considerably limit the value or usability of the goods by either improving the goods supplied or by supplying new goods ('retroactive performance') according to the following rules and regulations:

The Customer is obliged, at the request of *GECHEM*, to return to *GECHEM* all defective objects of performance at *GECHEM*'s cost. Defective goods however must only be returned to *GECHEM* if *GECHEM* has given its prior consent. If goods are returned without the prior consent of *GECHEM*, *GECHEM* shall have the right to refuse acceptance.

If, during retroactive performance, it turns out that a defect that had been pointed out by the Customer did in fact not exist and that the Customer himself was responsible for the cause of the defective performance, the Customer shall bear the costs of all attempts undertaken to remove the defects.

13.2. Warranty measures by *GECHEM* are exclusively undertaken to meet the warranty obligations for the original performance. Without prejudice to the warranty rights of the Customer with regard to the initial delivery, there shall be no warranty rights for any services performed as part of a faulty retroactive performance. Hence, it shall not result in the warranty period being re-initiated.

13.3. In the case of retroactive performance, the Customer shall not be entitled to reduce the agreed purchase price or to withdraw from the contract until a second failure has occurred. If the fault is minor, the Customer shall only be entitled to a lower contractual price.

13.4. With the exception of claims for damages made by the Customer under the circumstances listed in article 14, the period of limitations pursuant to section 438 paragraph 1 no. 3 and section 634a no. 1 and no. 3 of the BGB shall be reduced to 12 months unless the defective performance has been the result of a deliberate breach of duty.

13.5. If the Customer is entitled, on the one hand, to ask *GECHEM* for the supply of goods/services or for retroactive performance and, on the other hand, to withdraw from the contract, claim damages instead of goods/services and/or request reimbursement of costs, *GECHEM* can ask the Customer to exercise his rights within due time.

14. Liability

14.1. On principle, the liability of *GECHEM* is limited to damage that is caused by the deliberate conduct or gross negligence of *GECHEM* or its employees. *GECHEM* shall only be liable for minor negligence in cases involving any damage to life or health or physical injuries as well as if there has been a breach of the duties that are essential to fulfill the purpose of the contract.

14.2. If *GECHEM* is liable for a breach of duty based on minor negligence, the level of liability shall be limited to an amount for any damage that is commonly associated with contracts of this type and that is foreseeable upon conclusion of the contract or, at latest, when the breach of duty was committed. The aforementioned rules shall not apply in cases involving any damage to life or health or physical injuries.

14.3. Claims for damages, which, by law, do not presuppose negligence, shall remain unaffected by the provisions set out in paragraphs (1) to (3).

15. Limitation

In the absence of provisions to the contrary or unless set out otherwise in these GTC, all claims made by the Customer, irrespective of the legal grounds they are based on, with the exception of claims for damages made by the Customer subject to article 14.1, shall be statute-barred within 12 months of the goods having been supplied and/or accepted. The aforementioned rule shall not apply if *GECHEM* is liable due to deliberate conduct, gross negligence, a breach of warranty or deceit.

16. Retention of title

16.1. All deliveries shall take place subject to retention of title. *GECHEM* shall retain title to the delivered goods until the purchase price has been paid in full. Furthermore, *GECHEM* shall retain title to the delivered goods until all claims that have arisen from the business relationship with the Customer upon conclusion of the contract (current claims) as well as all further claims of *GECHEM* vis-à-vis the Customer that have arisen from the business relationship prior to the full settlement of the current claims (overall claim) have been settled in full. The Customer shall be obliged to store the goods that are subject to retention of title and keep them appropriately insured against all reasonable risks, in particular against burglary and fire. The purchaser currently assigns all claims against the insurance companies to the vendor.

16.2. The Customer has the revocable right to process or resell the delivered goods in accordance with the following rules and regulations in the course of a properly conducted business transaction:

16.2.1. If the retention goods are combined or joined with other items that do not belong to *GECHEM*, *GECHEM* shall become joint owner according to the statutory regulations. If the items that do not belong to *GECHEM* are deemed to be the principal part of these combined or joined goods, it is agreed that the Customer transfers joint ownership to *GECHEM* on a pro rata basis. The rules that are applicable to the new movable item resulting from the processing are the same as the ones applicable to the goods that were delivered subject to retention of title.

16.2.2. If the retention goods are resold, the Customer assigns any receivables due to him from the resale of the goods that total the final invoiced amount including VAT, independently of whether the supplied goods have been resold without or after processing. Herewith *GECHEM*

accepts this assignment. If the resold retention goods are jointly owned by *GECHEM*, the assignment of receivables shall be limited to the amount that is commensurate with the pro-rata value of the joint ownership of *GECHEM*.

If, in particular due to priority assignments to third parties, the Customer cannot make an assignment in accordance with the aforementioned rules, the resale does not take place in the course of a properly conducted business transaction under the terms of this regulation.

The Customer shall be entitled to collect the assigned receivables until cancelled by the vendor. The right of *GECHEM* to collect the receivables itself shall remain unaffected hereof. However *GECHEM* undertakes to not notify the third party debtor of the assignment of receivables and to not collect the receivables as long as the Customer meets his payment obligations from the collected proceeds, is not behind schedule with payments and, in particular, as long as there is no application to open insolvency proceedings or payments are discontinued altogether. Prior to this, *GECHEM* can, at any time, request that the Customer divulges the assigned receivables and their debtors, that he provides all the details required for collection and that he hands over the respective documents.

16.2.3. The Customer shall notify *GECHEM* forthwith of any execution proceedings or other interventions by third parties affecting the retention goods or the assigned receivables by handing over all documents necessary for proceedings. If the third party is in no position to reimburse the court and non-court related costs to *GECHEM*, the Customer shall be liable to *GECHEM* for the shortfalls.

16.2.4. Upon suspension of payments, the application and instituting of legal insolvency proceedings or out-of-court settlement proceedings, the right to resell and use the retention goods as well as the authorization to collect the assigned receivables shall expire.

16.2.5. *GECHEM* shall be obliged to release any securities that it is owed of its own choice, as long as their estimated value is more than 150 percent of the outstanding receivables. The estimated value of receivables is their nominal value, the estimated value of goods is the purchase price paid by the Customer or, in the case of the retention goods having been processed by the Customer, the manufacturing costs of the property serving as security, which may be pro rata costs if the vendor is merely joint owner.

16.3. Concerning contracts where the supplied goods are subject to title of retention, *GECHEM* shall be entitled to withdraw from the contract on the basis of which the retention goods have been supplied if the purchaser does not pay the purchase price for the retention goods under the terms of the contract even after he has been granted an appropriate period of grace, or if the Customer is in breach of one of his duties concerning the retention goods. The same applies if the vendor does not settle another overall claim (article 15.1.) under the terms of the contract even after he has been granted an appropriate period of grace and if this claim exceeds the amount of € 500.

17. Applicable law

Concerning all legal relationships between *GECHEM* and the Customer arising from or in connection with this contract, the laws of the Federal Republic of Germany shall apply. The United Nations Convention on Contracts for the International Sale of Goods shall not be applicable.

18. Jurisdiction

18.1. The jurisdiction for all disputes arising between *GECHEM* and the Customer from or in connection with this contract is the town/city where *GECHEM* has its registered office or – if proceedings are initiated by *GECHEM* – at the choice of *GECHEM*, the general or a particular jurisdiction of the Customer if the Customer has merchant status.

18.2. Paragraph 1 shall not apply if the legal dispute refers to a claim unrelated to property rights, which has been assigned to the local courts without consideration of the value of the matter in dispute or if exclusive jurisdiction has been established.

As of February 1, 2008