



CERA SYSTEM Verschleißschutz GMBH

General terms and conditions of delivery – German law (for use at delivery locations in Germany)
As at January 2017

1 General

1.1 These terms and conditions shall apply exclusively to merchants, legal entities under public law or public-law special funds within the meaning of Section 310(1) of the German Civil Code (BGB).

1.2 These terms and conditions shall apply exclusively, unless the contracting parties have made a deviating agreement in writing. Deviating terms and conditions of purchase issued by the customer shall not become part of the contract even if the order is accepted, unless the contracting parties have expressly agreed otherwise in writing.

2 Offer and conclusion of contract

2.1 Information in technical and advertising documents as well as information on weights, performance, etc. shall only be binding if it has been expressly agreed to define the quality of the item to be delivered. Special requirements of the customer shall only be deemed agreed if this has been done in writing.

2.2 CERA SYSTEM Verschleißschutz GmbH ("CERA SYSTEM") owns the property rights and copyrights to quotations, cost estimates, technical documents such as drawings and other documents; neither they nor their content may be made accessible to third parties.

2.3 These terms and conditions shall also be deemed to have been accepted by the customer if it accepts CERA SYSTEM's deliveries and services or provides services itself.

2.4 Third-party terms and conditions shall not become part of the contract without the written consent of CERA SYSTEM, even if they conflict with these terms and conditions.

3 Call-off orders

3.1 If call-off orders have been placed, the acceptance period shall be 12 months from the date of the seller's order confirmation, unless otherwise agreed in writing.

3.2 Insofar as products have not been accepted by the end of the acceptance period, the corresponding remaining stocks may be delivered.

3.3 Where call-off orders do not contain details of acceptance periods, production batch sizes and acceptance dates, CERA SYSTEM may demand a respective binding stipulation by the customer no later than three months after the seller's order confirmation or may

carry out the scheduling itself.

4 Scope of delivery

4.1 CERA SYSTEM reserves the right to make changes with regard to the technical design, provided that these do not negatively affect the function of the product.

4.2 As far as CERA SYSTEM provides consulting services, it does so to the best of its knowledge.

4.3 The occupational safety equipment included in the scope of delivery complies with the regulations applicable in Germany. If the products are used outside Germany, any additional occupational safety equipment that may be required will not be included in the scope of delivery.

4.4 If clauses customary in international trade are agreed regarding the type of delivery, the Incoterms of the International Chamber of Commerce Paris in the version applicable on the date of conclusion of the contract shall apply for their implementation.

4.5 If taxes or other duties are incurred in connection with the delivery in the customer's country or, in the case of agreed installation, in the country of installation, these shall be borne by the customer.

4.6 Products supplied for trials or tests shall be bought by the customer at the agreed price after the trial. Unless otherwise agreed, the maximum test period shall be 3 months following delivery. During the agreed test period, the product must only be used in accordance with the designated purpose, and must only be exposed to the agreed conditions. CERA SYSTEM must be notified without delay of any problems that may occur. The provisions on retention of title (Item 7) shall apply.

5 Prices

5.1 Unless otherwise agreed, the prices shall be ex works plus packaging and value added tax at the respective statutory rate. If the customer requests loading or shipment, this shall be invoiced separately.

5.2 The prices shall be calculated on the cost basis of the quotation. In the event of changes in material prices, wages or other cost factors, we reserve the right to adjust the price.

6 Terms and conditions of payment

6.1 Invoices shall be payable in cash and without discount to CERA SYSTEM's bank account within 14 calendar days of the invoice date. Agreed advance payments and deposits shall be due on the agreed payment dates.

6.2 A set-off or a right of retention may only be asserted in the case of counterclaims that have been established by a court of law or are undisputed.



6.3 From the time the payment date is exceeded, interest on arrears shall be owed – without prejudice to other statutory claims – at a rate of 9 percentage points above the base interest rate applicable at the time (Section 247 BGB).

6.4 If the customer does not fulfil its payment obligations or the obligations resulting from the retention of title, or if there is a significant deterioration in its economic circumstances or it stops its payments, the entire remaining debt shall become due.

6.5 In the event of default in payment by the customer, CERA SYSTEM shall be entitled to retain all deliveries or services.

7 Retention of title

7.1 The delivery item shall remain the property of CERA SYSTEM until all claims arising in connection with the delivery contract have been settled in full. This shall also apply if the claims are included in a running account.

7.1.1 Any processing of the delivery item subject to retention of title, as well as its combination with third-party items by the customer or third parties, shall be carried out for CERA SYSTEM. CERA SYSTEM shall be entitled to co-ownership of newly created items in proportion to the value of the delivery item.

7.1.2 If the customer acts in breach of the contract, in particular in case of default in payment, CERA SYSTEM shall be entitled to withdraw from the contract and the customer shall be obliged to surrender the goods. The customer shall be liable for all damage incurred as a result of the delivery item being returned. If the delivery item has been used, CERA SYSTEM is entitled to demand the full purchase price without proof of damage.

7.2 If the law of a country does not permit the retention of title but allows comparable rights to be reserved, CERA SYSTEM may exercise all rights of this kind. The customer shall take measures at its own expense which are necessary to make these rights to the delivery item effective and to maintain them.

7.3 The customer shall, during the period of retention of title or any other right under Item 7.1, insure the delivery item(s) against relevant risks with the condition that CERA SYSTEM is entitled to the rights under the insurance contract. The insurance policy and the premium receipts shall be presented to CERA SYSTEM on request.

7.4 In the event of attachments or other impairments of the owner's interests, the customer must notify CERA SYSTEM without delay.

8 Delivery period

8.1 The delivery period shall begin after complete technical and commercial clarification and agreement and not before receipt of an agreed down payment.

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8.2 Delivery periods shall be suspended in the event of redesigns and article changes requested by the customer. They shall not start to run again until the customer has approved the changes it requested.

8.3 The delivery period shall be deemed to have been met if the notification of readiness for dispatch has been sent to the customer by the time it expires.

8.4 All information on the start, duration and end of installation and commissioning is non-binding unless agreed in writing between the parties.

8.5 The delivery period shall be reasonably postponed – including in the case of a default in delivery – in cases of force majeure (including epidemics, war, civil war or conditions similar to war or civil war or the imminence of such events) and in the event of unforeseen events beyond the control of CERA SYSTEM, e.g. strike, lockout, operational disruptions, rejects, delays in delivery by subcontractors or other delays for which CERA SYSTEM is not responsible, insofar as these events affect the timely performance of the contract. In important cases CERA SYSTEM will notify the customer of the occurrence and expected duration of such events.

8.6 Delivery is subject to the timely and proper fulfilment of the customer's obligations. CERA SYSTEM reserves the right to assert breach of contract.

8.7 In the event of default in acceptance or other culpable breach of duties to cooperate on the part of the customer, CERA SYSTEM shall be entitled to compensation for the resulting damage, including any additional expenses. CERA SYSTEM reserves the right to assert further claims. In this case, the risk of accidental loss or accidental deterioration of the goods shall pass to the customer at the time of the default in acceptance or other breach of cooperation obligations.

8.8 In the event of a delay in delivery, CERA SYSTEM shall not owe any penalties or lump-sum damages.

9 Transfer of risk

9.1 The risk shall pass to the customer when the goods have left the factory or the sales office. If dispatch is delayed through no fault of CERA SYSTEM, the risk shall pass to the customer upon notification that the goods are ready for dispatch.

9.2 If the goods are dispatched at the customer's request, the risk of accidental loss and accidental deterioration of the goods shall pass to the customer at the time of dispatch.

10 Performance of delivery

10.1 The delivery shall be deemed to be fulfilled when the risk passes to the customer in accordance with Item 9.

10.2 Partial deliveries are permissible. Excess



quantities or quantity shortfalls of up to 10% are permissible. The minimum purchase quantity is one full packaging unit.

10.3 Insofar as corresponding services are to be provided by CERA SYSTEM, packing material and transport containers shall be selected and charged at CERA SYSTEM's reasonable discretion.

10.4 Insofar as CERA SYSTEM is obliged under the Packaging Ordinance (VerpackV) to take back packaging used for transport or sale, the customer shall bear the costs of the return transport and the reasonable costs of recycling or – insofar as this is possible and deemed appropriate by CERA SYSTEM – the reasonable costs additionally incurred for the reuse of the packaging. By placing its order, the customer undertakes and confirms to CERA SYSTEM that packaging which is not returned will be recycled in accordance with packaging regulations.

11 Installation and commissioning

11.1 If it has been agreed that CERA SYSTEM shall undertake the installation and commissioning of the delivery item, the customer shall ensure at its own expense that:

11.1.1 all conditions enabling CERA SYSTEM to quickly install and commission the delivery item are met in good time. Depending on the case in question, this includes in particular the provision of skilled and unskilled workers, equipment, power as well as working and operating materials and the parts to be set up and put into operation at the place of use.

11.1.2 suitable rooms are available at the installation site for the storage of objects and for personnel welfare;

11.1.3 the measures necessary for the protection of persons and objects at the installation site have been taken and that the installation manager has been informed about the safety regulations existing at the customer's premises that are to be observed by the personnel.

11.2 If the customer is unable to carry out individual preparatory work and services or to provide the necessary equipment, etc., these may – as far as possible – be carried out or provided by CERA SYSTEM and any costs incurred in this respect shall be charged to the customer.

11.3 In the case of installations abroad, all entry, work and other necessary permits shall be obtained by the customer at its own expense.

12 Claims for defects

In the case of defects of quality and title but to the exclusion of any further claims – subject to Items 13, 15 and 18 – CERA SYSTEM warrants as follows:

12.1 Defects of quality

12.1.1 Unless otherwise stipulated in these terms and conditions, the statutory provisions shall apply to defects

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of quality, including the statutory requirements on the burden of proof.

12.1.2 CERA SYSTEM shall, at its discretion, either remedy the defect in question or supply a new part in respect of parts which have become unusable or whose usability has been significantly impaired as a result of faulty design, manufacture or defective material. Replaced parts shall become the property of CERA SYSTEM.

12.1.3 The prerequisite for any warranty rights of the customer is its proper fulfilment of all investigation and complaint obligations owed in accordance with Section 377 of the German Commercial Code (HGB).

12.1.4 The statute of limitations shall commence on the day of the transfer of risk.

12.1.5 The customer shall grant the necessary time and opportunity to carry out any necessary subsequent performance work or to remove defective parts and install newly delivered parts and shall provide personnel, equipment and operating facilities and carry out secondary work at its own expense.

12.1.6 The removal of defective parts and the installation of newly supplied parts shall be carried out by CERA SYSTEM or by personnel authorised by CERA SYSTEM free of charge and at the risk of CERA SYSTEM. Additional costs for work outside regular working hours, additional costs for air freight or express shipments as well as additional costs arising from the transfer of the delivery item to a place other than the contractual place of use shall be borne by the customer.

12.1.7 The liability for defects of quality does not apply to natural wear and tear and parts that are subject to premature wear and tear due to their material composition or after their use, nor to damage resulting from improper storage, handling or use of unsuitable operating materials. The same applies for other circumstances arising after the transfer of risk due to no fault on the part of CERA SYSTEM.

12.1.8 Furthermore, the customer can only make a claim against CERA SYSTEM regarding liability for defects of quality if

a) CERA SYSTEM's instructions regarding the handling and maintenance of the delivery item have been observed and, in particular, any prescribed inspections have been carried out properly; no reworking has been carried out without the consent of CERA SYSTEM;

b) no parts have been installed that were not approved by CERA SYSTEM;

c) no operating materials have been used that were not approved by CERA SYSTEM;

d) no unauthorised changes have been made to the delivery item.



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In addition to the provisions of this Item 12, the provisions of Items 13 and 15 shall apply.

13 Customer's right to withdraw

13.1 The customer may, provided the remaining legal requirements are met, withdraw from the contract by written declaration only if

13.1.1 it has become fully impossible for CERA SYSTEM to fulfil the contract. In the case of partial impossibility, the right to withdraw shall only apply if the partial performance is demonstrably of no interest for the customer. Otherwise, it is obliged to accept the partial delivery and may demand an appropriate reduction of the purchase price. If the impossibility occurs during the default in acceptance or through the fault of the customer, the customer shall remain obliged to counter-performance. If neither party is responsible for the impossibility, CERA SYSTEM shall be entitled to a part of the purchase price corresponding to the performance rendered.

13.1.2 the customer has set a reasonable grace period in writing to remedy a default in delivery for which CERA SYSTEM is responsible and CERA SYSTEM has failed to meet that grace period through its own fault.

13.1.3 the customer has set a reasonable grace period in writing in accordance with Item 12.1.1 to remedy a defect for which CERA SYSTEM is responsible, the subsequent improvement of which CERA SYSTEM attempted without success, and if CERA SYSTEM has failed to meet that grace period through its own fault. Due to the complexity of the delivery item and any resulting defects, CERA SYSTEM shall be entitled to make more than two attempts at subsequent performance if necessary.

13.2 In the case of Items 13.1.2 and 13.1.3, the customer shall only be entitled to withdraw if it proves that, as a result of the delay or the defect, its interest in the delivery is substantially impaired.

13.3 At the request of CERA SYSTEM, the customer shall declare within a reasonable period of time whether or not it will make use of a right of withdrawal.

13.4 Item 15 shall apply in all other respects.

14 CERA SYSTEM's right to withdraw

In accordance with the statutory provisions and in cases where the customer's financial circumstances deteriorate significantly, CERA SYSTEM may withdraw from the contract in whole or in part without prejudice to further legal claims and rights.

15 Liability of CERA SYSTEM

15.1 CERA SYSTEM shall be liable

15.1.1 in case of intent or

15.1.2 gross negligence,

12.2 Defects of title

12.2.1 Insofar as it is not a case of contract manufacturing and the use of the delivery item leads to the infringement of industrial property rights or copyrights of third parties, CERA SYSTEM shall in principle procure the right of further use for the customer at its own expense or modify the delivery item in a manner that is reasonable for the customer and in such a way that the infringement of property rights no longer exists.

12.2.2 If this is not possible on economically reasonable terms or within a reasonable period of time, the customer shall be entitled to withdraw from the contract. Under these conditions, CERA SYSTEM is also entitled to withdraw from the contract.

12.2.3 Furthermore, CERA SYSTEM shall indemnify the customer against undisputed or legally established claims of the owners of the property rights concerned.

12.2.4 Subject to Items 15 and 19, these obligations of CERA SYSTEM are conclusive in the event of infringement of intellectual property rights or copyrights. They shall only be in force if

a) the customer notifies CERA SYSTEM without undue delay of any asserted infringements of intellectual property rights or copyrights, and

b) the customer provides CERA SYSTEM with reasonable assistance in defending the asserted claims or enables CERA SYSTEM to carry out the modification measures in accordance with Item 12.2.1, and

c) CERA SYSTEM retains the right to take all defensive measures, including out-of-court settlements, and

d) the defect of title is not based on an instruction given by the customer and

e) the infringement of rights was not caused by the fact that the customer modified the delivery item on its own authority or used it in a manner that is not in accordance with the contract.

12.3 Statute of limitations:

The limitation period shall be determined based on Item 17. In the event of subsequent performance by CERA SYSTEM, the statute of limitations shall in principle end with the expiry of the limitation period determined in Item 17. However, if CERA SYSTEM checks the existence of a defect claimed by the customer or provides subsequent performance, the statute of limitations shall be suspended until CERA SYSTEM notifies the customer of the result of the check, declares the subsequent performance to be completed or refuses subsequent performance. The statute of limitations shall commence at the earliest 3 months after the end of the suspension.

12.4 Other provisions:



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but then limited to 100% of the net order value or

15.1.3 in case of culpable injury to life, body and health or

15.1.4 in case of defects that were fraudulently concealed or

15.1.5 to the extent of a warranty assumed or

15.1.6 in cases of mandatory legal liability.

15.2 A quality/characteristic of the delivery item shall only be deemed to be guaranteed within the meaning of the law if this quality/characteristic is expressly designated as such in the text of the contract, e.g. as a "guaranteed quality".

15.3 Claims for damages by the customer that go beyond the liability provisions of these general terms and conditions of delivery, including those arising from a slightly negligent breach of non-essential contractual obligations, as well as claims and rights other than those listed in these terms and conditions or regulated in the text of the contract, are excluded.

16 Non-transferability of contractual rights

The customer must not transfer its contractual rights to third parties without the express consent of CERA SYSTEM.

17 Statute of limitations for defects:

The rights and claims of the customer arising from this contract due to defects in the delivery item shall become statute-barred within 12 months from the transfer of risk of the delivery item.

18 Special provisions for contract manufacturing

Unless the parties have agreed otherwise in writing, the following shall apply in addition to the other provisions of these general terms and conditions of delivery for each type of work whose performance is agreed within the framework of a contract for contract manufacturing (hereinafter also referred to as "Performance"):

18.1 The scope of Performance shall be exclusively governed by the Performance contract agreed between the parties (hereinafter referred to as "Production Order"). Performance within the meaning of the Production Order is only that which is expressly designated as Performance in the Production Order. If CERA SYSTEM provides services beyond the scope of the Production Order with the customer's consent, the provisions and conditions of the Production Order shall be deemed to have been agreed as applicable mutatis mutandis for the services provided. Services that go beyond the scope of the Production Order are those that are not expressly mentioned in the description of the Performance of the Production Order.

18.2 CERA SYSTEM shall decide at its own discretion on the type of Performance of the service, unless otherwise agreed in writing.

18.3 The customer shall specify the objective. CERA SYSTEM shall plan the Performance on this basis.

18.4 The customer shall bear the risk that the objective as well as the Performance correspond to its wishes, needs and requirements. Without delay, the customer shall check the objective, the planning of the Performance as well as the information required for the provision of the Performance (e.g. parameters, drawings, plans, etc.) for factual correctness, completeness, errors and discrepancies.

18.5 As a matter of principle, the customer shall provide the materials and moulds, tools, devices, etc. (hereinafter referred to as "Operating Materials") required for the Performance of the service by CERA SYSTEM at its own expense and risk and check whether they are suitable for the Performance. Where the Production Order stipulates that the procurement of the necessary materials or Operating Materials is the responsibility of CERA SYSTEM, this shall always take place against additional remuneration and the customer shall specify to CERA SYSTEM from which supplier which materials or Operating Materials (e.g. by indicating the part or product number) CERA SYSTEM is to procure material for the Performance. The risk that materials or Operating Materials procured from a third party do not have the quality required for the Performance shall be borne by the customer. CERA SYSTEM shall assume no liability for defects of the materials or Operating Materials that CERA SYSTEM procured from a third party. In this respect CERA SYSTEM hereby assigns to the customer all claims and rights – with the exception of repayment claims plus interest – due to defects in the materials or Operating Materials.

18.6 Unless otherwise agreed, the costs for Operating Materials as well as services shall be due net without discount at the time of Performance. In the case of Operating Materials with a pro rata value of EUR 2500 net or more, an advance payment of 50% shall be made upon conclusion of the Production Order; the balance shall be due upon delivery of the first sample.

18.7 Any warranty or other liability on the part of CERA SYSTEM is expressly excluded:

18.7.1 for defects or damage based on information provided by the customer or caused by materials or Operating Materials provided by the customer or obtained by CERA SYSTEM from third parties at its own expense.

18.7.2 in cases where the defect or damage was caused by the customer's task specification;

18.7.3 for damage that did not occur on the Performance itself as well as for consequential damage (e.g. loss of profit and other financial losses);

