

# Terms and Conditions of Ge:Net GmbH

From 12<sup>th</sup> February 2014

## § 1 Scope of Application and Contractual Basis

(1) The present terms and conditions apply on all purchase contracts with our customers concerning all products, all devices and all provisions of related services delivered by Ge:Net GmbH (herein after called Ge:Net). These terms and conditions apply on contracts for work and labour, on contracts for work and materials and contracts of service respectively, as far as its applying is not excluded by the nature of the respective contract for work and labour. These terms and conditions do not apply on consumers in terms of § 13 BGB (German Civil Code).

(2) Our terms and conditions apply exclusively. Deviating, opposing or supplementing terms of conditions of customers will only be part of a contract if its application has been agreed explicitly and in written form by Ge:Net. The necessity of this agreement applies on any case, even having knowledge of the terms and conditions of our customers for instance implicitly carrying out our delivery.

(3) Individual agreements made on single case with a customer (including subsidiary agreements, amendments and modifications) do have priority at any rate to this terms and conditions. For the content of such agreement a contract in written form or our confirmation in written form is authoritative and mandatory.

## § 2 Formation of a contract

(1) Our quotations are without obligation and non-binding. This also applies if we provide the customer with brochures, technical documentations, or other product descriptions or documents – including versions in electronical form – of which we hold the right of ownership or copy right.

(2) The order of goods by the customers is valid as binding offer of contract. Unless the order quotes differently we are allowed to accept the offer of contract within 14 days upon receipt.

(3) The acceptance can be declared in written for (with a confirmation of the order for instance) or by delivering the goods to the customer.

## § 3 Delivery and Time of Performance

(1) The quoted delivery date and delivery time by Ge:Net are exclusively non-binding offers, unless they where explicitly agreed between Ge:Net and customer as binding.

(2) Ge:Net is authorized to prolong the delivery time if unforeseen obstacles, which are not in the responsibility of Ge:Net, make the compliance of the delivery time impossible (e. g. force majeure, delay of subcontractors, etc.) Subsequently the delivery time is prolonged for the time of obstruction. Ge:Net is obliged to inform the customer about difficulties in observance of the delivery time. If, due to circumstances caused by such a delay, the acceptance of the delivered goods is not reasonable any more for the customer, the customer can resign from the contract by instant declaration presented to Ge:Net in written form. Further rights or claims due to not delivering or delivering too late for such reasons, do not persist even when this reasons first occurs when the delivery time has been exceeded.

(3) In case the customer is in default of acceptance Ge:Net is entitled, starting with 1 month after declaring the readiness for shipment, to charge the customer with storage costs resulted from the storage of the goods. Ge:Net is entitled to assume a claim amount of 1 % of the overall invoice of goods per month thereof. The customer shall be allowed to provide evidence of lower storages cots, as well as Ge:Net is allowed to plead higher storage costs as damage for delay.

(4) In those cases, in which the basis of the business forms a contract of work and services, the customer defaults with the acceptance of work, when he or she does not make the acceptance within one week after handover, announcement of completion or issuing the invoice. The acceptance is deemed to be effected when the customer puts the work into operation after handover, announcement of completion or issuing the invoice, without objection for a span of 14 days and Ge:Net has pointed out these consequences during handover, announcement of completion or issuing the invoice.

## § 4 Customer's Obligation to co-operate

(1) The customer is obliged to undertake a site visit together with Ge:Net immediately after awarding the contract. During the site visit the necessary anchors have to be determined, as far as possible, and in case of aggravating circumstances additional procedures and special tools have to be determined. The results of the site visit will be stated in a protocol which is authoritative for all further works.

The customer obliges to let draw up a soil expertise of the site at his own expense and promptly after fixing the exact position hand over the soil expertise. Without soil expertise Ge:Net cannot conduct reliable planning neither concerning the static nor the necessary anchors.

(2) Further the customer has to guarantee the following site conditions:

a) For the erection of steel lattice masts:

- Paved road up to 75 m to the site (centre of the mast) which can be fully driven on with a 40 t lorry, and which has a sufficient lorry loading gauge (for instance on forest sites).
- The mounting surface has to be clear of trees, bushes, and other obstacles with a minimum 5 m wide band in four directions (one alley for wire guide, three alleys for the guy wires). The clearance above the mounting surface and the four alleys has to be free of all trees, bushes, branches and other obstacles.
- The slope of the surface must not be more than 10 %

b) For the erection of tubular masts / aluminium lattice masts

- Paved road up to 75m to the site which can be fully driven on with a 7,5 t lorry, and which has a sufficient lorry loading gauge (for instance on forest sites).
- The mounting surface has to be clear of trees, bushes, and other obstacles.
- The slope of the surface must not be more than 5 %

(3) The compliance of the under § 3 mentioned terms of delivery and accomplishment implies the fulfilment of the customer's contractual obligation. Additional costs, which arise due to violation of the customer's obligation to co-operate have to be absorbed by the customer himself.

## **§ 5 Transfer of Perils**

The peril transfers to the customer with the delivery ex works. If there has been agreed on a different kind of delivery, the peril transfers to the customer with the handover of goods to the freight company, the freight carrier or the person picking up the goods.

## **§ 6 Prices and Payments**

(1) If not stipulated differently, Ge:Net prices are quoted ex works and do not include neither freight nor wrapping. The customer has to bear wrapping and freight costs. Prices are net prices plus legal value-added tax.

(2) If not stipulated differently, the payment of the purchase price is mature in the span of 7 days without discount after issuing the invoice. Different payment targets are stated in the invoice. Ge:Net reserves its right towards the customer to insist in individual case upon advance payment.

(3) Ge:Net reserves its right upon continuing obligation, to calculate its prices accordingly, when after contract conclusion cost increases arise, for instance due to collective agreement or significantly higher delivery costs of the subcontractor.

(4) The billing of working hours and travelling hours is carry out according to the actual accomplished working hours. Up to 5 working hours 0.5-fold day's rate, from 6 to 10 working hours 1.0-fold day's rate and >10 working hours 1.5-fold day's rate will be taken as a basis. The stated hours relate to the time of arrival on site and the time of leave of site and include the usual break time. In case the daily approach time is more than 30 minutes per way, the assembly is considered started from 30 minutes after start of approach and accordingly 30 minutes before end of departure as finished.

## **§ 7 Romalpa clause**

(1) Title to the goods shall remain vested in Ge:Net and shall not pass to the customer until the purchase price for the goods and all future debt claims arising from the purchase contract and other current business connections have been paid in full and received by Ge:Net.

(2) The goods under retention of title must not be pledged or its ownership transferred to a third party before complete payment of secured claim.

The customer has to inform us immediately in written form in case a third party has access to the goods belonging to Ge:Net.

(3) If the customer acts contrary to the contract, especially not paying the mature purchase price, we are entitled according to legal code to retreat from the contract and to claim the goods according to the retention of the title of goods and the retreat. If the customer does not pay the mature purchase price, we are only entitled to claim these rights if we have set an appropriate time-limit for the customer paying his debts without results or such time-limit is legally superfluous.

(4) The customer is not entitled to sell the goods under retention of title in the course of proper business and/or process the goods under retention of title

(5) In case the delivered goods or supply of services has been used in any way to collect measurement data, the right of exploitation on the collected data is only awarded to the customer after the customer has fulfilled every obligation towards Ge:Net. Before completion of all obligations the customer has no rights whatsoever on the collected data not even the right to survey the data. In case Ge:Net grants the customer insights of the measurement data this occurs without acknowledgement of any statutory duty. In no case this results in claims of the customer on further or additional rights of insight or use.

### **§ 8 Warranty**

(1) The customer is obliged to inspect the goods properly upon delivery to the agreed place of delivery. All recognizable defects, missing parts or wrong deliveries have to be reported immediately after receipt of goods in written form, at the latest 5 working days after receipt.

(2) The period of warranty is 1 year after transfer of perils. The regulations of §§ 479, 638 German civil code remain unaffected.

(3) Damage resulting from inappropriate and improper use, inaccurate or improper assembly or commissioning by the customer or third person are excluded from the warranty as well as damage resulting from usual wear and tear, faulty or careless treatment, using inappropriate operational supplements, inappropriate storage as well as climatical, chemical, electric-chemical and electrical exposure, unless the fault is lead back to Ge:Net. The same applies to damage resulted from contempt of assembly instructions, operating manual and maintenance instructions as well as inappropriate changing work or inappropriate maintenance work by the customer or third person.

(4) The delivered products are industrially respectively manually crafted products. Deviation from models as well as customary and product induced deviation in colour, structure, dimension, weight and slight model deviation, which do not or only slightly interfere with the functionality of the good are no defects to quality.

### **§ 9 Liability for damage due to default**

(1) Ge:Net's liability is restricted according to this paragraph irrespective of legal basis, the liability is restricted especially due to impossibility, delay, fault or wrong delivery, violation of contract, violation of duties during contract negotiations und unauthorized act, as far as a fault is concerning.

(2) Ge:Net is not liable in case of slight fault of its institutions, statutory agents, employees or any assistants, as far as no violation of main contract duties are concerned. Main contract duties are the duties to deliver in time and to install the mainly fault free delivery good as well as consulting, protection and care duties, which shall enable the customer the conventionary use or the protection of life and physical condition of customer's staff or the protection of the customer's property from severe damage.

(3) In case Ge:Net is liable according to § 8 paragraph 2, the liability is restricted to damages which Ge:Net has foreseen during formation of contract as a possible consequence of violation of contract or which had to had been foreseen during due diligence. Collateral damages and secondary damages, the consequences of faults of the delivered good, are only replaceable as far as such damages are not to be expected while using the good in a proper way.

(4) In case of liability for slight fault Ge:Net's duty of replacement of property damage and hence resulting further financial damage is restricted to an amount of 1 million EUR, even concerning a violaton of main contract duties.

(5) The preceding exclusions and restrictions of liability and apply to the full extent on Ge:Net's institutions, statuary agents, employees or assistants.

(6) As far as Ge:Net renders technical advice or acts advising and these advices or counsels are not part of the agreed scope of work, this happens without charge and excluding all liability.

(7) The restrictions of § 8 do not apply for Ge:Net's liability about deliberate act, guaranteed characteristics of state, injury of life, of body or health or law on product liability.

#### **§10 Copy right and right of use**

(1) Ge:Net is obliged to perform services free of possible third party industrial property rights respectively to inform the customer about possible third party rights and to mark goods accordingly.

(2) As far as the scope of delivery includes licensed software, in that case that the customer has fully paid the bill Ge:Net grants the customer a simple not exclusive and only in combination with the accompanying hardware right, to use the software in the valid programme state of the delivery date. The special licence determination applying on the mentioned software will be handed over to the customer accompanying the software.

#### **§ 11 Final clause**

(1) Court of jurisdiction for all possible disputes resulting from business connections between Ge:Net and the customer by choice of Ge:Net is Clausthal-Zellerfeld or place of business of the customer. Exclusive jurisdiction for lawsuits against Ge:Net is Clausthal-Zellerfeld. Mandatory legislations over exclusive jurisdictions remain unaffected by this regulation.

(2) The relationship between Ge:Net and the customer is exclusively subject of German law. The United Nations Convention on Contracts for the International Sale of Goods does not apply.

(3) As far as the contract signed between the parties or these terms and conditions contain loopholes, the statutory source is effective which the contract partners would have agreed on according to the business aims of this contract and for the purpose of these terms and conditions, if they had know the loophole.