

General Terms and Conditions of Sale of GEMOTEG GmbH  
(hereinafter "GEMOTEG")

(Version: September 2023)

**1. Scope of the terms and conditions**

a) These General Terms and Conditions of Sale shall apply to all offers, acceptances and contracts for deliveries and/or services (hereinafter "Services") of GEMOTEG GmbH (hereinafter referred to as "GEMOTEG") in relation to all contractual partners who are not consumers pursuant to Section 13 BGB (German Civil Code) (hereinafter referred to as "the Customer").

b) Any terms and conditions of the Customer that deviate from or supplement these General Terms and Conditions of Sale shall apply only if GEMOTEG expressly accepts such terms and conditions in writing. This shall also apply in particular if GEMOTEG carries out deliveries without reservation or accepts payments in awareness of deviating or supplementary terms and conditions of the Customer. Any reference by the Customer to its own general terms and conditions is here and now expressly disputed. Within the framework of a continuing business relationship, these General Terms and Conditions of Sale shall also apply to all future deliveries. Commercial letters of confirmation from the Customer shall not be binding on GEMOTEG, even if GEMOTEG does not expressly object to them.

c) The invalidity of an individual term of business shall not affect the validity of these General Terms and Conditions of Sale in their entirety, nor shall it affect the validity of assumptions, offers and contracts made or concluded on the basis of the invalid term of business.

**2. Offer and conclusion of contract**

a) GEMOTEG submits its offers subject to commercial and technical clarification and subject to the proviso that GEMOTEG itself receives the required supplies. Declarations of acceptance and all orders are legally valid only when confirmed by GEMOTEG in text or written form.

b) Drawings, illustrations, dimensions, weights, or other performance data shall be binding only if they have been expressly agreed. Insofar as this is not unreasonable for the Customer, GEMOTEG reserves the right to make any customary or technically unavoidable deviations from the indicated physical and chemical parameters, in particular in relation to colour, composition, any chemical impurities, use of raw materials and production processes. In all other respects, the target quality and composition of our performance will be according to the expressly agreed performance characteristics. GEMOTEG shall not be liable for any quality specifications other than those expressly agreed. In particular, information provided in catalogues, product descriptions, electronic media or on labels or accompanying leaflets are to be understood as being merely indicative or representing data based on general experience and knowledge of the objects of performance. Any specific intended purposes or specific suitability, including the duration of use and durability of the Services, shall be agreed separately, otherwise risks relating to suitability and use shall be borne exclusively by the Customer. The Customer shall test suitability for the intended use of the goods and ensure suitable storage.

c) GEMOTEG is not obliged to provide any certificates or confirmations that have not been expressly agreed or to procure any other documents. It shall in no case be responsible for fulfilling the obligations associated with placing the goods on the market outside the Federal Republic of Germany.

d) The Customer may assign claims arising from its transactions with GEMOTEG only with GEMOTEG's express consent.

e) If GEMOTEG makes advance payments, e.g. by way of payment on account, the Customer authorises GEMOTEG to disclose its data to Creditreform or a comparable service provider, for the purpose of checking creditworthiness on the basis of the applicable mathematical-statistical

procedures. GEMOTEG reserves the right to refuse to accept the desired method of payment based on the outcome of the creditworthiness check.

f) GEMOTEG's goods are intended exclusively for commercial users. Any resale of the goods to consumers requires the prior written consent of GEMOTEG.

### **3. Prices and shipping costs**

a) The prices quoted by GEMOTEG in the relevant declaration of intent to conclude the contract plus the respective statutory turnover tax shall be applicable. The decisive parameters for calculations are, furthermore, the weights, quantities and square metre figures determined by GEMOTEG. Any additional deliveries and services not included in the order confirmation and that are requested by the Customer shall be invoiced separately.

b) Prices are quoted ex works and do not include costs of packaging, freight and insurance. These extra costs will be invoiced separately where necessary. GEMOTEG shall not accept return of packaging materials unless it is legally obliged to do so.

c) If, in the case of contracts with an agreed delivery period of more than 4 months, there have during this period been substantial increases in the prices of raw materials, labour costs, transport costs, energy costs or increased costs due to changes in legal standards – in particular customs duties, levies, currency hedging – GEMOTEG and the Customer undertake to enter into new negotiations to reassess the purchase price accordingly. If no agreement can be reached in this regard, GEMOTEG and the Customer shall be each equally entitled to withdraw from the contract. Any further claims (e.g. compensation for damages and expenses) are excluded.

### **4. Delivery and performance periods, partial deliveries, call-off orders**

a) Delivery periods and dates are subject to commercial and technical clarification and to GEMOTEG itself being supplied in good time, unless the parties have expressly agreed otherwise in writing or in text form.

b) Delivery periods and dates shall be reasonably extended for the duration of a disruption in the event of force majeure, industrial disputes, civil unrest, official measures, non-delivery by its suppliers for which GEMOTEG is not responsible and other unforeseeable, unavoidable and serious events. The aforesaid impediments to delivery shall also entitle GEMOTEG to withdraw from the contract without the Customer being entitled to damages or other claims as a consequence. GEMOTEG shall provide the necessary information to the Customer without delay to a reasonable extent and shall act in good faith in adjusting its obligations to the changed circumstances.

c) If it is impossible to dispatch the goods as a result of exceptional circumstances for which GEMOTEG is not responsible, GEMOTEG shall be entitled, without prejudice to immediate invoicing, to store the goods elsewhere for the Customer's account and risk if GEMOTEG's storage facilities are not sufficient for this purpose.

d) GEMOTEG is entitled to make partial deliveries and provide partial services. In the case of custom-made or standard packaged goods, GEMOTEG is entitled to make excess or short deliveries to the extent customary in the industry, but not deviating by more than 10%.

e) The expiry of certain delivery periods and dates shall not release the Customer who wishes to withdraw from the contract or claim damages in lieu of performance from setting a reasonable period of grace, generally two weeks, in writing for late performance of the delivery. In the case of indeterminate obligations, GEMOTEG shall assume the procurement risk only in cases of delivery from stocks and inventories.

f) If delivery is delayed on the part of the Customer, GEMOTEG may demand reimbursement of the storage costs incurred, starting with the first of the month following notification of the delay, but at least 0.5% of the invoice amount of the goods ordered for each month, without prejudice to further claims. The Customer is entitled to prove that GEMOTEG incurred no or less damage as a result of the delay.

g) An application for the institution of insolvency proceedings or comparable proceedings under foreign law, the declaration of a statement of assets pursuant to Section 807 ZPO (German Code of Civil Procedure), the occurrence of payment difficulties or the discovery of a significant deterioration in the Customer's financial circumstances shall entitle GEMOTEG to suspend deliveries immediately and to refuse continued performance of current contracts unless the Customer has provided adequate counter-performance or at GEMOTEG's request.

h) In the case of call-off orders, GEMOTEG shall be entitled to manufacture and stock the entire order quantity in a complete manner. Requests for changes after the order has been placed can be entertained only if this has been expressly agreed. Payments for open quantities from call orders shall become due on expiry of the agreed final date irrespective of the delivery situation of the call order. If no final date has been agreed, GEMOTEG shall be entitled to call in the remaining payments at the latest one year after the contract was concluded.

## **5. Delivery clause, transfer of risk**

Deliveries shall be executed in accordance with the INCOTERMS term agreed by the parties pursuant to the INCOTERMS version issued by the International Chamber of Commerce that is current at the time the contract is concluded. If the parties do not agree on an INCOTERMS term, delivery shall be made FCA, named place of destination, in accordance with the version of the INCOTERMS current at the time the contract is concluded. In the case of delivery of goods, the risk shall pass to the Customer as soon as the goods have been handed over to the entity performing transportation or have left GEMOTEG's warehouse for the purpose of shipment. Notwithstanding the agreed INCOTERMS, GEMOTEG is in principle not obliged to insure the goods for transport. Transport insurance shall be taken out only at the express request of the Customer. Any costs arising therefrom shall be borne solely by the Customer. The choice of shipping route and the mode of shipment shall be at the discretion of GEMOTEG, and GEMOTEG assumes no liability for selecting the least expensive and the fastest transportation. Freight shall be calculated according to the freight rates valid on the day of invoicing. Any increase in freight costs due to subsequent changes in the type of packaging, the transport route, the destination or similar circumstances affecting freight costs shall be borne by the Customer, insofar as the Customer has caused the changes. In the event of the Customer collecting the goods itself (self-collectors), the risk shall pass to the Customer when the goods are made available at the agreed place of delivery and the Customer is informed that the goods are ready for collection. If the Customer provides the means of transport, he shall be responsible for punctual performance. Any delays must be notified to GEMOTEG in good time. Any costs arising therefrom shall be borne by the Customer.

## **6. Warranty**

a) GEMOTEG provides warranty that the goods are suitable for normal use and are of a quality that is usual for goods of the same type, unless the parties have expressly agreed otherwise in writing. GEMOTEG shall be liable for defects within the meaning of section 434 BGB subject to the following provisions: The Customer shall immediately inspect the goods received for defects and quality. Supplementary to and independently of the incoming goods inspection to be carried out in accordance with the preceding sentence, the Customer must check the functional capacity of the goods at the earliest possible point in its production process, if possible and as far as economically feasible before installation or before processing of the goods that we deliver, but at the latest before delivery of any of its products in which the goods have been installed. Noticeable defects must be reported to GEMOTEG in writing within 14 days at the latest. Notwithstanding the above, the applicability of

section 377 HGB (German Commercial Code) to mutual commercial transactions between merchants shall remain unaffected.

b) If the Customer discovers defects in the goods, he may not dispose of these goods, i.e. the goods may not be split, resold or further processed until an agreement has been reached on processing of the complaint or before an independent investigation procedure has been carried out.

c) The Customer must notify GEMOTEG immediately of any transport damage. The Customer shall arrange the necessary formalities with the carrier.

d) In the event of a justified complaint, GEMOTEG shall be entitled at its own discretion to rectify the goods subject to the complaint or to make a replacement delivery. Multiple rectifications are permissible.

e) Expenses within the meaning of section 439 (3) BGB in connection with subsequent performance shall be borne by GEMOTEG only up to an amount equivalent to 150% of the value of the defective item delivered in a defect-free condition.

f) The warranty does not cover damage caused by incorrect information provided by the Customer, storage contrary to instructions or incorrect processing or use.

g) If GEMOTEG is unable to remedy the defect or make a replacement delivery within a reasonable period of grace granted by the Customer, the Customer shall be entitled only to withdraw from the contract or reduce the purchase price and all other claims are excluded.

h) If the Customer does not give GEMOTEG the opportunity and reasonable time to obtain satisfactory verification of the defect that was the subject of the complaint and, if necessary, to carry out the required subsequent performance (repair or replacement), all claims relating to defects shall elapse. This shall not apply to consequential damage caused by a defect for which the conditions set out in clause 7 are met.

## **7. Limitation of liability**

a) GEMOTEG shall be liable for damage only in the event of wilful misconduct, gross negligence and slightly negligent breaches of material contractual obligations, as well as in the event of guaranteed characteristics being not present. In the event of a slightly negligent breach of material contractual obligations ("*wesentliche Vertragspflichten*"), the amount of liability shall be limited to the typically foreseeable damage. Material contractual obligations are obligations that make render performance of the contract possible in the first place and on whose fulfilment the Customer may regularly rely. Liability for indirect and unforeseeable damage, loss of production and use, loss of profit, loss of savings and financial loss due to claims by third parties are excluded in the case of slight negligence.

b) To the extent that GEMOTEG's liability is excluded or limited, this shall apply mutatis mutandis to the personal liability of its employees, legal representatives and vicarious agents.

c) Notwithstanding the above, the applicability of the statutory provisions on the burden of proof shall remain unaffected.

d) The above limitations of liability do not apply to claims arising pursuant to ProdHaftG (German Product Liability Act), for damage resulting from injury to life, limb or health or damage to privately used property.

e) GEMOTEG shall furthermore be liable only in cases where the product has been used for its intended purpose in accordance with the relevant instructions or has been subject to foreseeable misuse.

## **8. Limitation of actions**

All claims by the Customer against GEMOTEG are subject to a period of limitation of 12 months upon the statutory commencement of the limitation period. In deviation from this, the statutory periods shall apply in cases of compulsory statutory limitation provisions, in particular section 438 (1) no. 1 BGB, section 438 (1) no. 2 BGB, section 445b BGB and section 478 (2) BGB, for intentional, fraudulent or grossly negligent conduct, for culpable injury to life, limb or health and for claims under the German Product Liability Act (*Produkthaftungsgesetz*).

## **9. Payment**

a) Unless otherwise agreed, all payments are to be remitted net within 14 days of the invoice date after delivery.

b) GEMOTEG expressly reserves the right to refuse cheques and bills of exchange. Acceptance shall always be only on account of performance. Discount and bill charges shall be borne by the Customer and are due immediately. Subject to sections 366, 367 BGB and notwithstanding any provisions or specifications by the Customer to the contrary, GEMOTEG shall determine at the time the contract is concluded which claims shall be satisfied by Customer payments.

c) The Customer shall be in default at the latest 10 days after the due date of the claim for payment without the need for a reminder. If, after conclusion of the contract or in the case of an ongoing business relationship, it becomes apparent during the course of the same that GEMOTEG's claim for payment is at risk due to the Customer's inability to pay, GEMOTEG may exercise the rights under section 321 BGB (*Unsicherheitseinrede*, Plea of uncertainty).

d) The Customer shall be entitled only to set-off, retain or reduce claims that have been established in law or that have been expressly recognised by GEMOTEG.

## **10. Retention of title**

a) GEMOTEG shall retain title to the goods delivered until the purchase price has been paid in full. Until this time, the Customer may not pledge the goods, assign them by way of security or encumber them with other rights.

b) In the case of goods which the Customer obtains from GEMOTEG within the framework of an ongoing business relationship, GEMOTEG shall retain title until all claims against the Customer under contracts concluded within the business relationship have been settled. This shall also apply if individual or all claims have been included in a current account and the balance has been drawn up and accepted by the Customer. If, in connection with the Customer's payment of the purchase price, GEMOTEG's liability under a bill of exchange is established (in the case of payment by cheque or bill of exchange), the retention of title shall not expire before the bill of exchange has been honoured by the Customer as drawee. If the Customer is in default of payment, GEMOTEG shall be entitled to reclaim the goods after issuing a reminder and the Customer shall be obliged to surrender them.

c) If the Customer processes any goods subject to retention of title into a new movable item, the processing shall be carried out on behalf of GEMOTEG without GEMOTEG incurring any obligation as a result; the new item shall become the property of GEMOTEG. In the event of processing together with goods not belonging to GEMOTEG, GEMOTEG shall acquire co-ownership of the new item in proportion to the value of the reserved goods in relation to the other goods at the time of processing. If the goods subject to retention of title are combined, mixed or blended with goods not belonging to GEMOTEG pursuant to sections 947, 948 BGB, GEMOTEG shall become co-owner in accordance with the statutory provisions. If the Customer acquires sole ownership through combining, mixing or blending, it hereby assigns to GEMOTEG co-ownership in proportion to the value of the goods subject to retention of title in relation to the other goods at the time of this combining, mixing or blending. In

such cases, the Customer shall keep in safe custody, free of charge, the items owned or co-owned by GEMOTEG, which shall also be deemed to be goods subject to retention of title within the meaning of the above provisions.

d) If goods subject to retention of title are sold alone or together with goods not belonging to GEMOTEG, the Customer hereby assigns to GEMOTEG its claims arising from its further processing performance to the amount of the value of the goods subject to retention of title with all ancillary rights and priority over the rest; GEMOTEG accepts the assignment. The value of the goods subject to retention of title shall be the amount shown in the relevant invoice, which, however, shall remain out of the calculation if they are opposed by any third-party rights. If the goods subject to retention of title which are resold are co-owned by GEMOTEG, the assignment of the claims shall extend to the amount corresponding to the portion value in the co-ownership.

e) The Customer is entitled and authorised to resell and use or process the goods subject to retention of title only in the ordinary course of business and only on condition that the claims within the meaning of the preceding paragraphs are transferred to GEMOTEG with legal effect. The Customer shall not be entitled to dispose of the goods subject to retention of title in any other way, in particular by pledging them or assigning them as security.

f) GEMOTEG authorises the Customer, subject to revocation, to collect payment of the claims assigned to GEMOTEG in accordance with paragraphs c) and d). GEMOTEG will not make use of its own power of collection as long as the Customer meets its payment obligations – including towards third parties. At GEMOTEG's request, the Customer shall, in the event of a failure to fulfil its payment obligations, name the debtors of the assigned claim and notify them of the claim assignment to GEMOTEG. GEMOTEG shall then also be authorised to notify the debtors of the assignment. The Customer shall inform GEMOTEG without delay of any enforcement measures undertaken by any third party against the goods subject to retention of title or the assigned claim, and shall provide all documents necessary for filing an objection.

g) The right to resell, the right to use or process the goods subject to retention of title or the authorisation to collect payment of the assigned claims shall expire when remittance of due payments has ceased or insolvency proceedings have been opened. The authorisation to collect shall also expire in the event of a protest of a cheque or bill of exchange. The above shall not apply to the rights of the insolvency administrator.

h) If the value of the securities granted exceeds the claims (reduced by advance payments and part payments, if applicable) by more than 20%, GEMOTEG shall be obliged to retransfer or release certain security at its discretion. Upon settlement of all claims arising from the business relationship, ownership of the goods subject to retention of title and the assigned claims shall pass to the Customer.

## **11. Industrial property rights**

a) GEMOTEG reserves all property rights, patent rights, utility rights, design rights, trademark rights, copyrights, personal rights and other industrial property rights, in particular to illustrations, drawings and other documents, designs, design proposals, templates, work documents, moulds, copyrights, know-how, contributions to joint development and calculations belonging to GEMOTEG. The transfer of goods does not involve any transfer of rights to or from the objects in question. The Customer acknowledges GEMOTEG's rights to the trademarks and other marks used and will not use them for any other purpose, and in particular will not disclose them to third parties.

b) The Customer is not entitled to use GEMOTEG's intellectual property for purposes other than the agreed purpose of the contract. After the end of the contract, the Customer must return to GEMOTEG, at GEMOTEG's request, all drawings provided to it by GEMOTEG. The Customer accepts that it must

include a reference regarding GEMOTEG's intellectual property in any advertising material that is produced by or for the Customer in connection with the products. The Customer is obliged to use the labelling employed by GEMOTEG. The Customer is not permitted to remove or alter the markings on the goods or to affix other markings to the goods without the prior written consent of GEMOTEG.

c) If a claim is made against GEMOTEG or a company associated with GEMOTEG by a third party on account of any infringement of intellectual property rights committed by the Customer, the Customer shall indemnify GEMOTEG, or the company associated with GEMOTEG against this claim.

d) The Customer's obligation to indemnify GEMOTEG or its associates as set out above relates to all costs and expenses incurred by GEMOTEG or its affiliate as a result of or in connection with the said third party's claim.

## **12. Confidentiality & Data Protection**

a) GEMOTEG and the Customer undertake to treat information arising from their business relationship as confidential, whether or not information or materials have been marked as confidential. This does not apply to information that was already known to the other party or that was already available in the market prior to any disclosure. The obligation of confidentiality shall remain in force for a period of five years after the business relationship has come to an end. However, the disclosure of confidential information to group companies, consultants, suppliers and other third parties is permissible for GEMOTEG insofar as this third party necessarily requires the information in order to achieve the purpose of the contract between the Customer and GEMOTEG and insofar as the third party is also obliged to maintain confidentiality in a manner consistent with this clause.

b) Each party shall at all times comply with its respective obligations under the relevant data protection laws and regulations.

## **13. Compliance**

a) The Customer states and guarantees that it is not subject to any trade sanctions imposed by the USA, the EU and/or the UN. The Customer furthermore warrants not to have any direct or indirect business or other connections with terrorists, terrorist associations or other criminal or anti-constitutional organisations or sanctioned business partners. The Customer shall in particular ensure through appropriate organisational measures compliance with all applicable embargoes, the European anti-terrorism and anti-crime regulations applicable in the context of the supply relationship as well as the corresponding US or other applicable regulations within the scope of its business operations, in particular by ensuring that appropriate compliance processes and systems in this regard are in place. As soon as goods have left the respective GEMOTEG premises, the Customer alone shall be responsible for compliance with the above provisions and shall indemnify GEMOTEG against all claims and costs – including reasonable lawyers' and consultants' fees or administrative fees or fines – that GEMOTEG incurs as a result of a corresponding infringement of the law by the Customer, its affiliated companies or employees, representatives or vicarious agents.

b) The Customer is obliged to comply with foreign trade regulations, in particular the applicable export control regulations of the Federal Republic of Germany, the European Union and the United States of America and sanctions imposed by the United Nations.

c) In the case of products intended for export, a written end-use declaration including the identity of the end user as well as confirmation of non-military and non-nuclear use must be submitted at the latest by the time the order is placed. If the Customer has not provided this information at the time of placing the order or if the delivery violates national, European or US export control laws, GEMOTEG shall be entitled to revoke its offer or to withdraw from its offer and to refuse acceptance of the order or

to withdraw from a resulting contract, without any claim for damages on the part of the Customer due to non-acceptance of the order or non-performance of the contract.

d) The Customer undertakes to comply with all applicable laws, statutes, regulations and codes, including those directed against bribery and / or relating to anti-corruption, and not to engage in any act, practice or conduct that is not in accordance with the Ten Principles of the United Nations Global Compact.

e) The client undertakes to provide GEMOTEG with evidence of compliance with the foregoing in some appropriate way from time to time.

#### **14. Place of performance, place of jurisdiction and applicable law**

a) For all rights and obligations arising from the contract, GEMOTEG's registered offices as entered in the Commercial Register shall be the place of performance regarding delivery, performance and payment.

b) The sole place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship (including for proceedings relating to bills of exchange, cheques and other documents) shall be the venue of GEMOTEG's registered offices as entered in the Commercial Register. GEMOTEG may, however, at its discretion bring an action at the competent court of the Customer's general legal venue or at any other competent court.

c) These terms and conditions and the entire legal relationship between GEMOTEG and the Customer shall be subject exclusively to the law of the Federal Republic of Germany. Any application of the UN Convention on Contracts for the International Sale of Goods of 11 April 1980 and other bilateral and multilateral agreements serving to standardise international sales is excluded.