

## **Cairon MEA GmbH General Terms of Delivery**

### **§ 1 Area of Validity**

(1) All deliveries, services and offers shall be provided solely on the basis of these General Terms of Delivery. These are part of all the contracts that we conclude with our contracting partners (hereinafter referred to as "Clients") in relation to the deliveries or services offered by us. They also apply to all future deliveries, services or offers to the client, even if they are not agreed again separately.

(2) The terms of business of the Client or Third Party shall not apply, even if we do not dissent from their validity separately on an individual basis. Even if we refer to a document that contains or refers to the terms of business of the Supplier or of a Third Party, this shall not be construed as agreement with the validity of those business terms.

### **§ 2 Offer and Conclusion of the Contract**

(1) All offers from us are subject to confirmation and non-binding insofar as they are not expressly identified as binding and do not contain a specific term of acceptance. Orders or tasks can be accepted within fourteen days of receipt.

(2) The legal relationships between us and the Client is determined solely by the purchasing agreement concluded in writing, including these General Terms of Business. These reproduce in full all agreements between the contracting parties in relation to the object of the agreement. Any oral agreements on our part prior to the conclusion of this contract are not legally binding and oral agreements between the contracting parties will be replaced with the written contract insofar as it is not expressly evident from them that they continue to apply on a binding basis.

(3) Supplements and amendments to the agreements made, including these General Terms of Delivery, must be made in writing in order to become valid. With the exception of Managing Directors or Authorized Signatories, our employees are not entitled to enter into divergent oral agreements. Agreements can be made by fax or e-mail in order to fulfill the requirement of the written form.

### **§ 3 Prices and Payment**

(1) Prices apply for the scope of services and deliveries listed in the order confirmations. Additional services or special services will be billed separately. The prices are ex works in EURO and do not include packaging and the legal rate of Value Added Tax, or customs duties on export deliveries, as well as charges and other statutory contributions.

(2) If the agreed prices are based on our list prices and delivery is to be made more than four months subsequent to the conclusion of the contract, our list prices at the time of delivery shall

apply (in each case minus an agreed percentage or fixed discount).

(3) Offsetting against counter-claims by the Client or the retention of payments because of such claims is only permitted insofar as the counter-claims are undisputed or are supported in law.

(4) We are entitled only to provide outstanding deliveries or services against advance payments or securities if, after the contract is concluded, we become aware of circumstances that could seriously impair the creditworthiness of the Client and that threaten the payment of our outstanding claims by the Client arising from the relevant contract (including other individual jobs, for which the same framework agreement applies).

#### **§ 4 Delivery and Lead Time**

(1) Unless otherwise agreed, deliveries shall be ex works.

(2) We shall not accept liability when delivery is impracticable or delayed, insofar as this is due to force majeure or some other unforeseeable event at the time that the contract is concluded (e.g. malfunctions of all kinds, difficulties in obtaining materials or energy, transport delays, strikes, legal lockouts, shortage of workers, energy or raw materials, difficulties in obtaining the necessary statutory approval, or statutory measures, or if the Supplier fails to make a delivery, or if the delivery is incorrect or made at the wrong time) which is beyond our control. If such events make it very difficult or impossible for us to provide a delivery or service and if the impediment is not of a temporary nature, we shall be entitled to withdraw from the contract. In the event of impediments of a temporary nature, the delivery or service periods or the delivery and service deadlines shall be extended by the length of time of the impediment plus an appropriate start-up period. Insofar as the Client cannot be reasonably expected to accept the delivery or service as a result of the delay, he can withdraw from the contract by sending an immediate written notification to us.

(3) We shall only be entitled to make part deliveries if

- the part delivery can be used by the Client in the contract of contractually agreed purpose,
- the delivery of the remaining ordered goods is assured and
- the client does not incur considerable added effort or additional costs as a result (unless we agree to cover these costs).

(4) If we fall in arrears with a delivery or service or if it becomes impossible to provide a delivery or service for whatever reason, our liability shall be limited to compensation according to the provisions in § 7 of these General Terms of Delivery.

#### **§ 5 Warranty, Material Defects**

(1) The warranty period is one year from the date of delivery or, insofar as an inspection is necessary, from the date of inspection.

(2) The delivered objects are to be examined carefully immediately after delivery to the Client or to the Third Party nominated by him and to be kept. They are to be used exclusively to the regulation purpose. They shall be considered approved if we do not receive a written notification of defects in respect of obvious defects or other defects that became evident in an immediate, careful examination within seven working days of the delivery of the object or otherwise within seven working days of the discovery of the defect or every earlier time at which the defect was evident to the Client during normal use of the object without closer examination. At our request, the object that is the subject of complaint is to be returned to us carriage paid. If the notification of defect is justified, we shall reimburse the cost of the least expensive method of dispatch; this shall not apply insofar as the costs increase because the object is located at a place other than the site of intended use.

(3) In the event of material defects to the objects delivered, we are obliged and entitled to carry out a repair or provide a replacement, as we choose, within a reasonable deadline. In the event of failure, i.e. the impossibility, impracticability, refusal or unreasonable delay in relation to the repair or replacement delivery, the Client can withdraw from the contract or reduce the purchasing price accordingly.

(4) If we are responsible for a defect, the Client can demand compensation under the conditions set down in § 7.

(5) In the event that there are defects in components from other manufacturers that we cannot repair for licensing reasons or other actual reasons, we shall either pursue our warranty claims against the manufacturers and suppliers on behalf of the Client or transfer these to the Client. In the event of such defects, warranty claims against us shall only apply under the other conditions and provisions of these General Terms of Delivery, if the pursuit of these claims against the manufacturer and supplier through the courts was unsuccessful or is futile, for example because of insolvency. A stop shall be placed on the expiry of the relevant warranty claims of the Client against us for the duration of the legal dispute.

(6) The compatibility of the components with other objects of the Client, in particular mobile phones, is not an agreed feature of the objects supplied. In the event that the components are not compatible with the mobile telephones used, the Client shall have no claim against us. § 7 shall not be affected.

(7) The warranty shall not apply if the Client alters the object delivered or has it altered by a Third Party without our agreement, thereby rendering the repair impossible or unreasonably difficult. In all cases, the Client shall bear the excess cost of repairing the defect as a result of the alteration.

(8) A delivery of used objects agreed with the client on a case-by-case basis shall exclude all warranties for material defects.

## **§ 6 Trade Mark Rights**

(1) According to the provisions of § 6 we offer an assurance that the object delivered is free from commercial trade mark rights or third party commercial property rights. Each contracting party shall immediately inform the other contracting party in writing if claims are being pursued against them for the violation of such rights.

(2) In the event that the object to be delivered violates commercial property rights or copyrights belonging to a Third Party, we shall, at our discretion and at our own expense, alter or replace the object to be delivered in such a way that no further third party rights are violated, but the object to be delivered continues to fulfill the contractually agreed functions, or procure utilization rights for the client by concluding a licensing agreement. If this does not happen within a reasonable period of time, the Client is entitled to withdraw from the contract or to reduce the purchasing price appropriately. Any Compensation entitlements of the Client shall be subject to the restrictions of § 7 of these General Terms of Delivery.

(3) In the event that any rights are violated by products from other manufacturers but supplied by us, we shall, at our discretion, either pursue our claims against the manufacturer and subcontractors on behalf of the Client or transfer these claims to the Client. Claims against us in these cases according to this § 6 shall only be permitted if the pursuit of the aforementioned claims against the manufacturers and subcontractors through the courts was unsuccessful or is futile, for example because of insolvency.

## **§ 7 Liability for Compensation due to Culpability**

(1) Our liability for compensation, on whatever legal basis, in particular impracticability, delay, defective or incorrect delivery, violation of contract, violation of obligations in the case of contractual negotiations and impermissible activities, is, insofar as culpability applies, restricted to the provisions of this § 7.

(2) We shall not be liable for minor negligence of the part of our institutions, legal representatives, employees or other agents insofar as this does not entail the violation of significant obligations under the terms of the contract. Significant obligations under the terms of the contract are the obligation to supply and install in good time the objects to be delivered free of significant defects and duty to provide advice, protection and care in order to enable the Client to use the object to be delivered according to contract or to protect the life and limb of the Client's personnel or to protect the Client's property from major damage.

(3) If we are liable to pay compensation on the grounds of § 7 (2), this liability shall be limited to damages that we foresaw as possible consequences of the violation of the contract when the contract was concluded or that we should have foreseen if we had exercised due diligence. Indirect damages and collateral damages that are the consequence of defects in the delivery are

otherwise only eligible for compensation insofar as such damages are typically to be expected when the object delivered is used as intended. We cannot be made liable in case of misapplied use of our delivery items, including individual components and thereby resulted damages.

(4) In the event of liability for minor negligence, our obligation to pay compensation for material damages and resulting further financial losses shall be limited to the relevant amount in accordance with the current amount of coverage of our product liability insurance or general liability insurance, even if this involves the violation of significant contractual obligations.

(5) These exclusions and restrictions in relation to liability apply to the same extent in favor of our institutions, legal representatives, employees or other agents.

(6) If we provide technical information or work in an advisory capacity and if this information or advice is not part of the scope of services owed by us as agreed in the contract, this shall be free-of-charge and all liability shall be excluded.

(7) The restrictions of this § 7 shall not apply to our liability due to deliberate behavior, for guaranteed characteristics, due to loss of life, physical injury or damage to health, or according to the product liability act.

## **§ 9 Comprehensive Retention of Title**

(1) The retention of title agreed in § 9 serves to secure all existing and future claims by us against the client arising from the existing supply relationship between the contracting partners (including outstanding balance claims arising from a current account restricted to this supply relationship).

(2) The goods supplied by us to the client shall remain our property until all secured claims have been paid in full. The goods and the goods standing for them covered by the retention of title according to this clause are referred to below as the goods subject to retention of title.

(3) The Client shall keep the goods subject to retention of title for us free of charge.

(4) The Client is entitled to process and sell the goods subject to retention of title by way of orderly business transactions until the enforcement event occurs (paragraph 9). Such goods may not be pledged as collateral or transferred by way of security.

(5) If the goods subject to retention of title are processed by the Client, it is agreed that the processing shall take place in our name and for our benefit as manufacturer and that we shall immediately acquire ownership or – if processing involves materials from several owners or the value of the processed article is higher than the value of the goods subject to retention of title – co-ownership (part ownership) of the newly created article in the proportion of the value of the goods subject to retention of title as a ratio of the value of the newly created article. In the event that such acquisition of ownership does not take place on our part, the Client shall hereby cede to us his future ownership or part-ownership (in the aforementioned proportion) of the

newly created article for security purposes. If the goods subject to retention of title are attached to other articles to produce a unitary article or are inseparably mixed and if one of the other articles is to be regarded as the main article, we shall, insofar as the main article belongs to us, cede co-ownership of the unitary article to the Client in the proportion mentioned in item 1.

(6) If the goods subject to retention of title are resold, the Client hereby cedes to us by way of security the resulting claim against the purchase – if we only own a part of the goods subject to retention of title, we shall be ceded a share proportionate to our property. The same shall apply to other claims that stand for the goods subject to retention of title or that otherwise arise in relation to the goods subject to retention of title, e.g. insurance claims or claims arising from impermissible activities, loss or destruction. We give the Client the revocable authorization to collect the claims ceded to us on his own behalf. We may only revoke this collection authorization in the event that collateral is realized.

(7) If Third Parties have access to the goods subject to retention of title, in particular through attachment, the Client will inform them immediately of our property rights and notify us of this in order to enable us to pursue our property rights. If the Third Party is not in a position to reimburse us for the court or out-of-court costs arising from this, the Client shall be liable to reimburse us these costs.

(8) If the Client so chooses, we shall release the goods subject to retention of title and the material or claims in their place to him upon request, provided their value exceeds the amount of the secured claims by more than 50%.

(9) If we withdraw from the contract in the event of behavior by the Client contrary to the contract – in particular default of payment – (liquidation), we shall be entitled to demand the goods subject to retention of title.

## **§ 10 Final Provisions**

(1) Unless otherwise determined, the place of fulfillment for all obligations arising from the contract is Paderborn. The court of jurisdiction for any disputes arising from the business relations between us and the Client is Paderborn.

(2) Relations between us and the Client are subject solely to the laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods, dated 11 April 1980 (CISG) shall not apply.

(3) Insofar as the contract or these General Terms of Delivery contain loopholes, the legally effective provisions necessary to close these loopholes that the contracting partners would have agreed according to the economic targets of the contract and the purpose of these General Terms of Delivery shall be deemed agreed.