

# General Terms and Conditions of Business of CiK Solutions GmbH

Version: 04.10.2017

## 1. Application of the General Terms and Conditions of Business

- 1.1. The following General Terms and Conditions of Business (GTCB) apply to all contracts including future contracts, goods and miscellaneous services of CiK Solutions GmbH, Haid-und-Neu-Strasse 7, D-76131 Karlsruhe, (hereinafter called "CiK") with/for all its trade customers (hereinafter called "Customer"): The version of the GTCB in force at the time of the Customer's last binding statement leading to the conclusion of the contract always applies.
- 1.2. These GTCB apply exclusively; conflicting confirmations by the Customer or the Customer's General Terms and Conditions of Business are expressly contradicted. This also applies if the Customer's offers or acceptance of offers are made with reference to the precedence of his own GTCB or if CiK executes the supply of goods or services without reservations although aware of conflicting GTCB or the Customer's GTCB which differ from these GTCB.
- 1.3. CiK reserves the right to amend these GTCB. Within the framework of a continuing obligation, the Customer will be expressly informed and his attention drawn to the amended passages which will be highlighted. If the Customer fails to give notice within six (6) weeks of receiving the information about the new version that he does not accept the new version, this is deemed to be tacit consent and the contractual relationship is deemed to continue in existence from this time with reference to the new version. If the Customer does not accept the new version the contract continues in existence with the unamended version of the GTCB. When providing the information about the amendments it wishes to make, CiK undertakes to draw the Customer's attention to the significance of his action.
- 1.4. CiK does not conclude any contracts with consumers (§ 13 of the German Civil Code (*Bürgerliches Gesetzbuch*)). Contractual partners of contracts subject to these GTCB are solely tradesmen or business persons (§ 14 of the German Civil Code). On concluding a contract with CiK the Customer warrants that he is a business person within the meaning of § 14 of the German Civil Code and thus is engaged in a commercial trade or is self-employed.

## 2. Contract conclusion

- 2.1. Offers made by CiK including indications of price are non-binding and subject to final confirmation. Statements of acceptance by the Customer and all orders placed by the Customer require the written confirmation of CiK to be valid in law.  
The goods displayed in CiK's web-shop do not constitute an offer by CiK. Rather, by his order in the web-shop, the Customer makes a binding offer to conclude a purchase contract for the goods he orders. The Customer will then immediately receive an order confirmation by email. This still does not constitute an acceptance of the offer to purchase. The contract only comes into being with the express acceptance of the order by CiK. The acceptance or refusal of the offer to purchase is made by the transmission of a statement of acceptance or refusal by email to the email address indicated by the Customer. The despatch of the goods to the Customer is also deemed to be the acceptance of the offer to purchase.
- 2.2. Employees or self-employed persons working on behalf of CiK are not empowered to conclude oral collateral agreements or give written assurances which extend beyond the actual contract unless such a person is expressly nominated to be empowered to do so in respect of the Customer.
- 2.3. The right is reserved to make technical and design deviations from descriptions and information in brochures, catalogues, other written documents or in CiK's web-shop as well as amendments to models, designs and materials in the course of technical advancement which are reasonable for the Customer. No entitlements arise for the Customer in the event of such reasonable deviations which do not prejudice the purpose of the contract.

## 3. The Customer's general obligation of cooperation

The Customer will support CiK in meeting its performance obligations. He must in particular divulge all information necessary for the performance of the contractual service. The Customer will undertake any actions necessary for cooperation at his own expense unless otherwise agreed.

## 4. Remuneration, despatch of invoices by email

- 4.1. The agreed remuneration counts as the consideration for the agreed service.
- 4.2. In other respects, every activity and service of CiK over and above the stated extent of the service(s) in the offer and underlying the offer will be invoiced separately.

- 4.3. If the parties have not concluded any agreement on the remuneration for a service, the performance of which, due to the circumstance, the Customer could only expect to be rendered in exchange for payment, the Customer must pay the customary remuneration for this service. In cases of doubt, the remuneration rates demanded by CiK for this service are deemed to be customary.
- 4.4. Unless expressly agreed to the contrary, CiK will send invoices by email in digital form. CiK wishes to point out that a qualified digital signature on an email of this nature is no longer necessary for the use of the invoice in book-keeping.

## **5. Payment, due date of payment**

- 5.1. All the stated prices are net prices unless they are expressly marked as gross prices and are to be understood as excluding the Value Added Tax imposed by law.
- 5.2. Unless agreed otherwise, all amounts are due for payment to CiK in full and without deduction immediately on receipt.
- 5.3. In the event of delayed payment by the Customer CiK is entitled, as minimum compensation, to charge default interest and other compensation for default in the amount defined by law in accordance with § 288 of the German Civil Code. The right of CiK to assert claims for additional losses or higher interest rates arising from another reason in law remains unaffected hereby.
- 5.4. In the event of payment default all other (residual) debts owed to CiK by the Customer arising from the business relationship immediately become due for payment
- 5.5. Any serious damage to or destruction of the subject of the contract for which CiK is not responsible after risk has passed to the Customer does not affect the Customer's obligation to pay for the goods or service.

## **6. Retention of title**

- 6.1. All supplies and services are subject to retention of title. The goods which are supplied remain the property of CiK up to the time when the purchase price is paid in full and all other receivables of CiK owed by the Customer from the on-going business relationship (in the case of payment by cheque or bill of exchange, until their encashment) are also paid in full. The retention of title remains in place if individual receivables of CiK are included in a running account and the balance has been established and accepted and the balance is thus secured.
- 6.2. The goods subject to retention of title may only be sold by the Customer in the normal course of business and under the condition that the purchase-money claim arising from the resale will be passed to CiK. The Customer hereby assigns to CiK his receivable with all ancillary rights arising from the resale of the goods subject to retention of title as security for all claims to which CiK is entitled in respect of the Customer at the time of the resale. The Customer is authorised to collect all debts assigned to CiK. However, the Customer's authorisation may be revoked if the Customer is in default with his payments to CiK. In this case CiK is authorised in the name of the Customer to inform the latter's end-customer of the assignment. The Customer is obliged to give CiK the information needed to assert his rights against this end-customer, and particularly to name the end-customer and to hand over the necessary documents.
- 6.3. The Customer is not entitled to dispose in any other way of the goods subject to retention of title, particularly as a pledge or as a transfer by way of security.
- 6.4. Any impairment of the goods subject to retention of title such as third party attachments must also be notified to CiK. If the authority to resell the goods lapses, the Customer, if so required by CiK, is obliged to provide CiK with information about the stock of the goods subject to retention of title and to return these goods if so required by CiK. In order to enforce the entitlement to the return of the goods CiK is also entitled, after giving prior notice and setting a grace period, to enter the Customer's business premises and remove the goods. In order to satisfy his entitlements, CiK is also entitled to sell the goods subject to retention of title which have been returned as soon as CiK has withdrawn from the contract or the preconditions for the assertion of claims for compensation due to default have come into being.
- 6.5. if the value of all the security rights of CiK exceed the latter's claims by more than 20%, CiK, if so requested by the Customer, is obliged to release securities which exceed his entitlements by more than 20%.

## **7. Despatch, transfer of risk, default of acceptance**

- 7.1. If delivery of the goods has been agreed, the goods will be despatched by CiK from the warehouse in 76131 Karlsruhe, Germany to the address indicated by the Customer unless agreed otherwise in the contract. CiK may make use of a third party transport company with the result

that delivery will be made in this case directly by this transport company to the Customer unless agreed otherwise in the contract.

- 7.2. The Customer must immediately inspect each consignment for external damage. Any external transport damage must be notified immediately in writing to the driver of the transport company. CiK cannot accept any externally discernible transport damage for which a claim is subsequently raised. If transport damage or missing goods are suspected, the packaging must be retained for inspection by an appraiser. Photos for the preservation of evidence would be helpful.
- 7.3. The risk of destruction and deterioration in the post passes to the Customer in all cases with the despatch of the goods or transfer of the goods to the person intended to make the delivery. If delivery is delayed at the Customer's request, risk passes to the Customer on notification that the goods are ready for despatch.
- 7.4. If the Customer becomes culpably in default in respect of acceptance of the goods, CiK is entitled, at his option, to insist on acceptance or to demand five (5) percent of the purchase price as liquidated damages and reimbursement of expenses.
- 7.5. For the duration of the culpable default in acceptance by the Customer CiK is entitled to store the goods at the Customer's risk in his own premises, or in the premises of a transport company or in a commercial warehouse. During the duration of the default in acceptance the Customer must pay storage costs in a lump sum of EUR 20.00 per week net plus the Value Added Tax imposed by law.

## **8. Delivery dates, delivery problems, force majeure, part deliveries**

- 8.1. Information on delivery or performance times is not binding. Binding delivery or performance times must be expressly designated as binding.
- 8.2. If CiK, for no reason attributable to CiK, is unable to deliver the goods which have been ordered or to perform the service because a corresponding transaction was concluded with a supplier in order to supply the Customer and this supplier then fails to perform his contractual obligations, CiK is entitled to withdraw from the business with the Customer. In this case CiK will promptly inform the Customer about his inability to supply. If the purchase price has already been paid, it will be repaid immediately.
- 8.3. For so long as CiK (a) waits for the Customer's cooperation or information from the Customer, or (b) is prevented from performing his obligations through strikes or lock-outs in third party businesses or his own works (in the latter case however, only if the labour dispute is lawful), official intervention, legal prohibitions or other circumstances for which he is not responsible ("force majeure"), delivery and service times are deemed to be extended by the duration of the interference and by a reasonable start-up time after the end of the interference ("lost time") and no breach of obligations occurs during the lost time. CiK will inform the Customer immediately of obstacles of this nature and their likely duration. If the force majeure lasts without interruption for more than 3 months, both parties are released from their performance obligations.
- 8.4. If, in the case of Clauses 8.2 and 8.3, payments had already been made by the Customer in respect of the supply/service, such payments must be returned. However, in the cases of services rendered or supplies already delivered at the time the force majeure came into effect, the part of the agreed remuneration accruing to these services or supplies may be demanded. In all other respects both parties have no claim on the other in these cases.
- 8.5. Partial deliveries and partial performance are permitted unless the Customer obviously has no interest in these or if it is obvious that these are unreasonable for him. In these cases the Customer must accept partial deliveries.

## **9. Obligation of investigation and notification of complaints**

In accordance with § 377 of the German Commercial Code (*Handelsgesetzbuch*) the Customer accepts an obligation of investigation and notification of complaints with regard to all services and supplies from CiK in the performance of the contract. Thus the Customer must examine the goods for freedom from defects and completeness immediately after delivery and give notice of any defects which are discovered without delay and in writing. If the Customer fails to investigate the goods or notify any defects without delay, the goods which are delivered are deemed to have been accepted unless the defects could not be identified during the investigation. Concealed defects which are subsequently discovered must be notified within 14 days from their detection; if this is not done, the goods are deemed to have been accepted even in respect of these defects. The defects must be notified in writing and the defects which are the subject of the complaint described in detail.

## **10. Defects as to quality and title; other disruptions to services; period of prescription**

- 10.1. In accordance with the precepts of commercial law CiK warrants the agreed attribute of the goods which are the subject of the contract and also warrants that no third party rights conflict with the use of such goods by the Customer within the scope of the contract. The warranty for the freedom from third party rights of the goods which are the subject of the contract applies only to the country of destination agreed between the parties in which such goods are to be used. Unless expressly agreed otherwise, the warranty applies to the country in which the Customer has his registered office.
  - 10.2. In the event of defect as to title CiK will initially fulfil the warranty by subsequent performance. To this end, CiK will, at his option procure for the Customer the ability to use the goods which are the subject of the contract which is permissible in law or will procure a legally permissible use on modified but equivalent items.
  - 10.3. In the event of material defects CiK will initially fulfil the warranty by subsequent performance. In order to achieve this, CiK will, at his option, provide the Customer with a new, defect-free item; rectification of the defect is also deemed to apply if CiK demonstrates to the Customer reasonable opportunities to obviate the effects of the defect.
  - 10.4. CiK is entitled to make the subsequent performance conditional on the Customer having paid at least a reasonable part of the remuneration.
  - 10.5. If two attempts at subsequent performance fail, the Customer is entitled to set a reasonable period of grace for the rectification of the defect. In doing so he must expressly draw attention in writing to the fact that he reserves the right to withdraw from the contract in the event of further failures and/or to claim compensation.
  - 10.6. If the subsequent performance also fails during the grace period, the Customer may withdraw from the contract or reduce the remuneration unless a minor defect is present. At the end of a deadline which has been set CiK may request the Customer to exercise his rights resulting from the expiry of the deadline within two weeks of the receipt of the request. After the end of this period the option transfers to CiK.
  - 10.7. If CiK performs services involving the search for defects and their rectification without being obliged to do so, CiK may request remuneration for such services in accordance with his usual rates. This applies in particular if there was no defect or it was obvious to the Customer that it could not be attributed to CiK. The additional costs for CiK arising from the fact that the Customer did not properly comply with his obligation of cooperation must also be reimbursed.
  - 10.8. The Customer may only derive rights from other infringements by CiK of the latter's obligations if he complains about these to CiK in writing and has granted a grace period to CiK for remedial action. This does not apply insofar as remedial action does not come into question due to the nature of the infringement of the obligation.
  - 10.9. The period of prescription for all claims under the warranty is one year commencing from the delivery or supply of the goods (and notification to the Customer thereof); the same period applies for other claims against CiK of any nature whatsoever.
- 0410:10 In the event of intent or gross negligence on the part of CiK, fraudulent concealment of the defect, injury to persons or defects of title within the meaning of § 438, Paragraph 1, Number 1 a of the German Civil Code, and guarantees, the statutory periods of prescription apply (§ 444 of the German Civil Code); the same applies to claims under the German Product Liability Act (*Produkthaftungsgesetz*).

## **11. Special provisions in the case of rentals**

- Insofar as the Customer enters into contractual obligations with CiK under a lease, the provisions of this Clause 11 take precedence.
- 11.1. The Customer may only use the leased items within the term of the contract and for the contractually agreed purpose. The Customer guarantees that he will treat the leased items with due care.
  - 11.2. After the leased items have been supplied, the Customer is liable in all respects for theft and such damage as lies outside the bounds of normal wear and tear.
  - 11.3. The Customer undertakes to provide reasonable protection for the leased items against damage and theft at all times.
  - 11.4. The items leased items are delivered in good condition. The Customer is obliged to undertake customary repair and maintain work on the leased items in order to avoid escalating defects on the leased items during their continued use.
  - 11.5. Rectification of defects will be by remedial work or supply of a replacement free of charge at CiK's option.

- 11.6. Termination by the Customer in accordance with § 543, Paragraph 2, Sentence 1 Number 1 of the German Civil Code because the item cannot be used for the purpose under the contract is only admissible if CiK has been given adequate opportunity to rectify the defect and such rectification was unsuccessful. Failure of the rectification can only be assumed if rectification is impossible, if rectification was refused by CiK or unreasonably delayed, if there is reasonable doubt about a successful outcome or if rectification is unreasonable for the Customer for other reasons.
- 11.7. The rights of the Customer arising from defects are excluded insofar as the Customer has modified the leased item or caused it to be modified without CiK's consent unless the Customer proves that the modification has no effects on the identification and rectification of the defects which are unreasonable for CiK. The Customer's rights arising from defects remain unaffected insofar as the Customer was entitled to undertake modifications particularly within the framework of the exercise of his right to rectify defects himself as set out in § 536 a, Paragraph 2 of the German Civil Code and such modifications were carried out expertly and were recorded in a traceable manner.
- 11.8. CiK's liability without fault as defined by § 536 a, Paragraph 1, 1st Alternative of the German Civil Code for defects which already exist at the time of the conclusion of the contract is excluded. This restriction of liability also applies correspondingly for CiK's liability with regard to the reimbursement of fruitless expenditure.
- 11.9. The lease comes into effect on conclusion of the contract and has the agreed term. The right of each party to extra-ordinary termination for good cause remains unaffected. Good cause for CiK includes in particular but is not limited to a situation in which the Customer or a third party applies for the institution of insolvency proceedings against the assets of the Customer or if the Insolvency Court allows an application for the opening of insolvency proceedings against the Customer's assets or if insolvency proceedings are opened against the Customer's assets or are refused for lack of assets.
- 11.10. Termination must be made in writing to be valid.

## **12. Particular provisions in respect of advice, instruction and training.**

If CiK performs services in respect of advice, training or instruction, the provisions of this Clause 12 take precedence.

- 12.1. The scope of the service derives from the underlying agreement between the parties. CiK is not liable for any specific result but only for the performance of the service.
- 12.2. The Customer must meet all the obligations of cooperation which are necessary for CiK to perform the service under the contract and which lie within the Customer's area of influence (e.g. the provision of suitable training rooms, if needed).
- 12.3. If the service to be provided by CiK cannot start or can only start after a delay or can only be concluded later than scheduled by reason of inadequate performance of the obligations of cooperation by the Customer, the resultant extension of the period needed to perform the service is for the Customer's account.
- 12.4. The nature and extent of the service to be performed by CiK and the Customer's obligations of cooperation can be defined in more detail in the underlying agreement between the parties.
- 12.5. If expenditure and out-of-pocket expenses (e.g. travelling and overnight accommodation costs) should be incurred for the proper performance of the service due under the contract, CiK must bear these costs unless otherwise agreed. In addition, the customary rates of CiK and the reimbursement of normal travelling costs are deemed to have been agreed.

## **13. Liability**

- 13.1. The Customer may only assert claims for compensation outside the statutory entitlement to compensation for defects in the event of intent or grossly negligent conduct. This liability exclusion does not apply in the event of loss of life, bodily injury or impairment of health and in the event of the infringement of material contractual obligations.
- 13.2. Except in the case of intent, gross negligence and loss or damage arising from the loss of life, bodily injury or the impairment of health the amount of the liability of CiK is limited to loss or damage typically foreseeable at the time of the conclusion of the contract.
- 13.3. The liability of CiK under the German Product Liability Act and other mandatory statutory regulations remains unaffected.

## **14. Off-setting, retention and assignment.**

The Customer may only offset debts which are uncontested or have been judged to final and absolute. A right of retention may only be based on claims arising from this contract. The Cus-

tomers is not entitled to assign or transfer his rights and obligations arising from the contract without the prior consent of CiK .

**15. Place of performance, place of jurisdiction and applicable law, language version**

- 15.1. The registered office of CiK in 76131 Karlsruhe, Germany is agreed to be the place of performance for all mutual services and payments arising from this contract.
- 15.2. The place of performance for all claims, including for CiK arising from payments by bills of exchange and cheques as well as for summary procedures relying on documentary evidence, is also 76131 Karlsruhe. CiK is also entitled to select the place of performance as being at the registered office of the Customer. The right of the parties to seek interim relief before the courts which are competent according to the provisions of law remains unaffected.
- 15.3. German law applies but with the exclusion of international provisions such as the United Nations' Convention on Contracts for the International Sale of Goods.
- 15.4. In the event of doubt the German language is definitive and, if more than one language version of a contract exists, the German language version is definitive.

**16. Separability clause**

- 16.1. If one of the provisions of these GTCB should be or become invalid or if they should contain a lacuna, the validity of the remaining provisions is unaffected thereby.
- 16.2. If lacunae should become evident in the practical application of the contract between the parties which the parties did not foresee or if the invalidity of a provision should be judged to be final and absolute or identified and agreed by both parties, the parties will endeavour to fill or replace the lacuna or the invalid provision in an objective and reasonable manner which is oriented towards the financial purpose of the contract.