



Dated: 20. February 2017

### 1. General information

1.1 The following conditions are valid for all our offers, sales, deliveries and services and they are part of the contract. The conditions are not valid if our contract partner is a private person and when he is not a professional or a commercial person. They are also valid for all future business, also when they are not expressly agreed again.

1.2 Herewith we formally contradict other different or additional General Conditions of Sales of the customer. They are also not valid when the customer takes it as basis of his order or other declarations.

### 2. Offers and orders

2.1 Our offers are subject to confirmation in so far as they were not stated in writing to be binding. The contract is not concluded until we submit the official order confirmation.

2.2 Measurements, weights, images, drawings as well as other documents which belong to our offers are without engagement and remain our property. Only on expressly request by us it is possible that they can become reliable content of the contract.

### 3. Doubtful financial standing

3.1 In case of knowledge of reasoned financial circumstances after conclusion of the contract which allow the doubt of a solvency, we are allowed to change the conditions of payment in cash in advance before the delivery of the goods will be done. We are allowed to give a time limit for cash in advance to the customer. Besides we are allowed to withdraw from the contract, if we do not receive the cash in advance within the agreed time. It is however for the customer possible to make a bank guarantee instead of cash in advance. If the delivery of the goods has already been taken place, the payable amount has to be paid without delay, net and without any further deduction, in spite of other agreed terms of payment.

3.2 The solvency of a customer has to be queried when there was made an application for bankruptcy proceedings or when he does not make payments punctually and within the agreed time to us or to a third party.

### 4. Prices

4.1 Our prices are valid "ex our works" if there are made no other agreements with the customer. The charges for Euro-Pallets are not included in our price and will be charged separately, if necessary. If they are necessary they will of course just be charged at cost price without any profit margin. An exchange of pallets is not intended.

4.2 All our prices are net. The value-added tax is not included in our price and will be shown in a separate line on our invoice, on the day of invoice.

4.3 In case of frame orders we guarantee the confirmed prices for the duration of the contract. A prolongation will just be possible after new calculation and thus adjusted pricing. In general there is no right for prolongation of frame orders.

4.4 The customers obligation is to call off the ordered products until the end of the frame order and to pay the prices he agreed on. The delivery of remaining quantities out of frame orders will automatically take place at the end of the duration of the frame order. The customer thus has an unrestricted obligation to take and accept the delivery.

### 5. Period of delivery

5.1 All delivery times which are stated are not binding and are deemed to have been agreed as being approximate in so far as they were not expressly designated by us as binding. If it is a question of a delivery date without obligation it is still sufficient when the goods will be supplied within 5 days before or after the delivery time mentioned in our order confirmation.

5.2 If we are not in the position to supply the goods within the expressly agreed period or if we will get in delay by other reasons, the customer has to grant us a reasonable period to supply the goods. If this grace period should elapse without performance, the customer is entitled to withdraw from the contract.

5.3 If performance is rendered temporarily impossible or extremely difficult in whole or in part for us for reason of force majeure or other unusual circumstances for which we are not responsible, the agreed delivery period is extended by the duration of the circumstances preventing delivery. The same regulation will become valid for a legal period or for a period stated by the customer.

5.4 According to paragraph 3 "prolonged delivery time resp prolonged time of service" the customer neither has the right to withdraw from the contract nor the right to claim for damages. If the failure of services will take longer than 4 weeks, the customer as well as we are entitled to withdraw from the contract, so far the contract is not yet completed.

5.5 If it is not possible for us to comply with the confirmed delivery date due to customer provided reasons as for example unclear product specifications, defective drawings, not received changes of drawings, there is no delayed delivery for our part. The period of delivery starts to count again after receiving all complete necessary documentation, drawings and specifications of the product

5.6 In case of delay in delivery there will be excluded any claims for damages if they are not done in firm intention or gross negligence.

## **6. Shipping**

6.1 The dispatch is carried out at the risk and expense of the customer, if nothing else is agreed upon in written form. The risk shall transfer to the customer when the item is loaded, even if a freight paid delivery is agreed and/or shipment is made with our own transports.

6.2 Unless not particularly agreed on something else in written form we are entitled to do appropriate partial deliveries which will be charged separately.

## **7. Under- and overdeliveries**

Our products are customer specific products based on individual drawings. They are only produced for the order of the customer and thus not available for sale to any other third party. Due to the character of these products and the fact that the production quantity is not totally predictable

7.1 We are entitled to do deliver 10% more or less of the ordered quantity.

7.3 the customer has no obligation on subsequent delivery of underdelivered quantities or return of overdelivered quantities.

7.4 In case of minimum quantities up to 10 pieces the overdelivered quantity may be up to 50%.

## **8. Payment**

8.1 The purchase price shall be payable net (without deduction) within 30 days from invoice date, unless the order confirmation contains anything different.

8.2 Without need of any warning, the customer shall be regarded as being in arrears if he shall fail to pay the due amount within 7 days from the time of its becoming payable and from the time of the receipt of the invoice or an equivalent payment schedule.

8.3. If the customer gets into delay in payment, all obligations of payment with our company will become payable immediately. In this case, we are entitled to require the payment of interest at the rate determined by law as well as an additional 3% interest on current account.

8.4 The customer is only entitled to offset, withhold or reduce payment, even if claims or complaints have been put forward, when their claims are legally binding, undisputed or acknowledged by us in writing. The customer shall only be entitled to practice a retention, if his counterclaim is based on the same contract relationship.

## **9. Warranty / Liability**

9.1 Immediately after receipt, the customer shall examine the goods for completeness, transport damages and apparent defects. Manifest defects are to be notified to the seller in writing by the buyer within 1 week at the latest from receipt of the goods. Before sending back the goods the customer shall notify Cool Tec Electronic GmbH about the return of goods. Non-agreed returns will not be accepted.

9.2 We are not committed for warranty if the customer has not given notice in writing of the apparent damage in due time. The statute of limitations for defect claims is 12 months following delivery of goods to the customer, where the law does not prescribe longer timescales. So far we have notice of an acceptable damage of the goods and if the customer has made its complaint in time and in writing, we are liable for subsequent improvement (under exclusion of the rights of the customer to withdraw from the contract or to decrease the price) unless we are entitled to refuse the subsequent improvement because of legal provision. The customer has to grant us a reasonable grace period for every single damage in order to fulfil the subsequent improvement.

9.3 The remedial work can, according to our choice, be in the form of correcting the fault (improvement) or the delivery of a fault-free article. Regardless of the other rights of the customer, we are entitled to deny the post-fulfilment of the product according to the mode chosen by him if it will become possible only at disproportionate costs. During the rectification, it is forbidden for the customer to level down the price or to withdraw from the contract. The rectification ranks as failed after the second unsuccessful effort. If subsequent performance has failed or if the seller refused subsequent performance in total, the customer, at his option, may require the reduction of the purchase price or state that he is withdrawing from the contract.

9.4 There is no defect if the product is produced according to provided customer specification and the customer recognizes after delivery that the product does not meet his needs regarding any internal information that were not available for us at any time.

9.5 Claim for damages according to the following conditions are only able to assert for in case of that the rectification is failed or if we refused the rectification. The right of the customer to assert a further claim according to the following conditions remain untouched.

9.6 For intentional or outraged negligent breach of duties as well as damages of hurt of life, of the body or of the health we are held responsible, unrestricted according to the legal regulations. Apart from that we are only liable when the breach of the contract is noticeable in view of obtaining the intention of the contract and if that is of utmost importance and only limited up to the height of a typical predictable damage.

9.7 The limitation of liability according to paragraph 6 is adequate to other, in contract agreed claims for damages, particularly claims arisen of illegal acts. Furthermore, it applies to shall also apply to our staff, employees, freelancers, representatives, and vicarious agents.

9.8 So far as we gave a guarantee of quality and / or duration with regard to the goods, we are reliable for these goods within the limits of this guarantee. For damages which based on defects of guaranteed quality or duration, however which are not direct at the goods, we are only reliable when the risk of such a damage is clearly evident with regard to the guarantee of quality and duration.

9.9 We are also reliable for damages which caused by simple negligence, so far this negligence concerns the damage of such contract obligations whose compliance it is to obtain the intention of the contract because of great significance (Kardinalpflichten). However, we are only reliable for damages which are typical connected with the contract and which are predictable. Apart from that we are not liable for simple negligent breaches of not essential joint duties of the contract. The limitations of liability, mentioned in paragraph 9.7 will also become valid so far, the liability of the legal representative, the officers directors and other helpers of the vendor are concerned.

9.10 Liability for compensation for damages which goes beyond that is excluded, regardless of the nature of the claim being asserted. Insofar as our liability is disclaimed or restricted, this shall also apply to the personal liability of our salaried employees, workers, employees, representatives and vicarious agents.

## **10. Reservation of proprietary rights**

10.1 We reserve the right of propriety in goods (reservation of goods) until we have received the complete payments, which were agreed in the contract. The supplied goods will become proprietary of the customer not before he has paid all obligations arisen from the business connection including joint claims, claim for damages and the honouring of cheques and bill of exchanges. In case of the cheque and bill of exchange process the reservation of proprietary rights in all here mentioned forms expired not with the presentation of the cheque but with the acceptance of the bill of exchange.

10.2 The customer has to inform us immediately and in writing in case of access of a third person on his property, especially of foreclose actions as well as other restrictions of the property. The customer has to settle all the damages and cost with us, which aroused by a breach of a contractual obligation and by necessary measures for the protection of the access of a third person.

10.3. If the customer defaults in payments in spite of a reminder from us, we are able to ask for the return of the reserved goods without prior setting of a deadline. The accrued transport charges have to be paid by the customer. In the attachment of the matter of reservation by us there always will be a withdraw of the contract. After taking back the reserved goods we are authorized to realise it. The proceeds of the conversion will be counted up to the active debts.

## **11. Tool property, copyrights**

11.1 Tools and any other equipment which is needed for production of goods will remain our property. Even if the tools will be equipped in cooperation with third party companies.

11.2 The customer will always just be charged for partial cost for tooling. With payment of partial costs for tooling the customer has no claim for transfer of property or surrender of these.

11.3 During contract duration we commit only to use tools for the products of the customer. Differing regulations must be in writing.

11.4 In the case of delivery according to drawings or specifications of the ordering party the customer shall indemnify us from all property rights of third parties. The customer is obligated to ensure that no property rights will be violated using the delivered goods produced by us.

## **12. Place of performance**

The place of performance for all payments and shipment of goods is 98701 Großbreitenbach – Germany.

## **13. Data processing**

The customer agrees that we may process the data about the customer which we received in the context of this business in order to fulfil our own business obligations. We confirm that the data process will be with the data protection act in mind. That means in particular that we would save the data or submit them to a Credit organisation, so far that is necessary within the legal limits in order to fulfil the obligations of the contract or in order to safeguard the entitled interests. Besides there may not be a reason to assume that the protected interest of the customer overbalanced the action of the processing, particularly the data transfer of these dates.

## **14. Court of jurisdiction and applicable law**

14.1 For the contract between the customer and us the exclusive right of the Federal Republic of Germany will be applied. This will also be the case when the place of residence or business domicile is abroad. The application of the uniform law of the international purchase of goods and chattels as well as the low of the conclusion of international contracts for chattels is excluded.

14.2 The customer is not entitled to abandon claims of this contract of sale without assent of the vendor.

14.3 When the customer act as merchant, legal person of the public law or a public law fund assets, the court of jurisdiction will be for both parties – also for legal actions of bill of exchange and cheque – 98701 Großbreitenbach. However, we are also entitled to sue the customer at his general court of jurisdiction.