

§1 Scope of validity

GEMAC performs deliveries and services, concludes contracts and submits offers exclusively on the basis of these General Terms and Conditions of Business. Deviations are effective only if confirmed in writing by GEMAC. Our General Terms and Conditions of Business apply only to business with companies in accordance with §310 I BGB.

§2 Offers and conclusion of contracts

Offers are valid for a period of 4 weeks, unless agreed otherwise. All orders, acceptances of orders, amendments or collateral understandings in respect of offers or product specifications are to be executed in writing and require the written confirmation of GEMAC. Advance payments, or else a deposit and instalment payments in case of design services, are demanded from new customers. In the case of framework orders, binding call-up dates and delivery quantities are agreed with GEMAC upon granting of the order or else GEMAC retains the right to set deadlines to be observed by the customer in its order confirmation.

§3 Production and design documents

The customer is responsible for the accuracy and completeness of the details contained in his parts lists and manufacturing documents and in the product specification pertaining to a concluded contract, and bears all costs for damage, changes due to missing or incorrect details and/or changes at a later date. GEMAC expects the customer to supply parts lists in machine-readable form already in the offer phase (see supplement Module Production). If lists are not provided in machine-readable form, the costs for parts list preparation are charged to the customer.

§4 Packing units, provided materials

We reserve the right to apply surcharges should it be necessary to break into standard packing units, and the customer is required to take over at his own expense any remaining quantities from packing units and any excess supplies of raw circuit boards occasioned by the manufacturing process upon notification to do so by GEMAC. Materials provided by the customer must be supplied with an allowance of 2 per cent, unless agreed otherwise, and will not be purchased by GEMAC.

§5 Period for delivery or performance

A delivery obligation is founded only upon written confirmation of an order. The lead times given in the offer apply, and any additional costs and risks for expedited deliveries are to be borne by the customer. All unforeseeable circumstances or hindrances not attributable to GEMAC which render delivery or punctual performance impossible either in part or as a whole or which significantly affect the economic value or the contents of the services taken on by GEMAC, as well as any failure to deliver on the part of sub-suppliers, entitle GEMAC to extend periods for delivery or performance by the duration of the hindrance after notification of the hindrance to the customer, and if necessary to withdraw from the contract either in part or as a whole, without this founding claims for compensation of any kind against GEMAC on the part of the customer. If the extension exceeds 4 weeks, then the customer is entitled to set GEMAC a written final deadline of at least 2 weeks together with notification that he intends to withdraw from the contract upon passing of this deadline and may then withdraw from the contract upon futile expiry of this additional period. GEMAC is entitled to perform reasonable partial deliveries or services at any time. The delivery period is understood ex place of delivery plus the time for shipping.

§6 Transfer of risk

Risk is transferred to the customer as soon as the shipment is handed over to the person performing the transport or else leaves the warehouse of GEMAC for purposes of shipment. If shipment is delayed or rendered impossible by request of the customer or for other reasons not attributable to GEMAC, risk is transferred to the customer upon notification of the readiness for shipment.

§7 Acceptance

The customer is not entitled to refuse acceptance if any defect diminishes the suitability of the delivered product only insignificantly and GEMAC has acknowledged its obligation to remedy the defect. If a delivered product comprises several, individually usable units, then a

defect in only one or more units does not found an entitlement to refuse acceptance of the remaining units. The customer is obliged to accept the services or delivery agreed in the contract within 14 days, insofar as acceptance is not excluded by the nature of the services. A report is to be drawn up on the acceptance and is to be signed by both parties. If acceptance is not effected within the specified period, then the services provided are deemed accepted. In the case of manufacturing services/products, the delivery note with delivery date shall apply.

§8 Warranty

GEMAC gives a warranty that the products to be supplied are free of fabrication and material defects. The period of warranty is 24 months starting from the date of delivery or from the date of manufacture in case of call orders.

All warranty is excluded in respect of defects caused by improper handling or use or where products are no longer traceable due to unauthorised relabelling or the removal of serial numbers.

In case of design services, GEMAC gives a warranty with regard to observance of the recognised engineering standards and the exercising of due scientific care, but not for actual attainment of the research and development objective.

The customer must inform GEMAC in writing without delay concerning any defects. Defects which cannot be detected immediately even through careful examination are to be notified without delay upon detection. In case of a justified complaint regarding a defect, the product concerned is to be returned to a destination specified by GEMAC.

In case of acknowledged defects, GEMAC will remedy material or fabrication defects by way of repair or replacement of the relevant parts or else revise the design services. If remedy remains unsuccessful within a reasonable further period to be fixed in writing by the customer, then the customer is at his own discretion entitled to demand a reduction of the remuneration or cancellation of the contract. Further warranty claims, in particular claims for compensatory damages, are excluded, unless liability is imperative due to the lack of an explicitly warranted quality.

In case of an acknowledged complaint concerning a defect, GEMAC will reimburse the transport costs incurred by the customer for the return of the products subject of the complaint.

§9 Reservation of title

Before settlement of all dues and claims held on our part – irrespective of the legal basis – against the customer, including all current account balance claims and any claims regarding indemnity against liability risks assumed at the request of the customer, we are to be furnished the following security, which we will release at our discretion upon request, insofar as the value of the security exceeds our claims by more than 10 per cent.

All goods supplied by us remain our property. Processing or refashioning is always performed for us as manufacturer or supplier, but without founding obligations on our part.

The customer is entitled to process or sell the reserved goods (goods in which we retain ownership or co-ownership) in the course of his normal business, provided he is not in arrears with his payments to us, has not suspended his payments and has not filed an application for the opening of bankruptcy or insolvency proceedings. He is not permitted to pledge the reserved goods, nor to assign them as security or for any other purpose.

In case of conduct violating the contract on the part of the customer, in particular in case of payment arrears, we are entitled to demand immediate return of the reserved goods, without the customer being entitled to any right of retention, to obtain access to the business premises of the customer, to take possession of the reserved goods and, if appropriate, to demand assignment of any rights of return held by the customer against third parties. Assertion of our rights, in particular the recovery or seizure of the reserved goods, is not to be deemed withdrawal from the contract, insofar as hire-purchasing legislation is not applicable.

§10 Prices and terms of payment

The decisive prices are those specified in the order confirmation from GEMAC and are subject to the addition of value-added tax at the legally stipulated rate

applicable at the time of delivery. Additional deliveries and services will be invoiced to the customer separately. If the prices of the input materials to be obtained by GEMAC increase significantly between conclusion of the contract and delivery, then GEMAC is entitled to adapt the prices by the amount of the increase. GEMAC will provide proof of the price increase to the customer upon request. GEMAC reserves the right to implement price corrections for any follow-up orders. Prices are to be understood ex warehouse and still excluding packing and shipping costs, unless agreed otherwise.

Invoices from GEMAC are payable without deductions within 14 calendar days from the date of invoicing, with specification of the invoice number.

Irrespective of any deviating instructions given by the customer, GEMAC is entitled to use payments to first settle older dues. If costs or interest have already been incurred, then GEMAC is entitled to credit the payment first against the costs, then against the interest and finally against the main claim.

Payment is only deemed effected when GEMAC is able to dispose of the amount. In the case of cheques, payment is only deemed effected after the cheque has been honoured.

If the customer falls into arrears with payments, then GEMAC is from the relevant moment onwards entitled to charge interest at the rate charged by commercial banks for unsettled current account liabilities, but at least at a rate 2% above the official discount rate of the Deutsche Bundesbank.

The customer is only entitled to assert a claim for offsetting, retention or price reduction, also in case of complaints concerning defects or of counterclaims, if GEMAC has explicitly acknowledged this claim in writing or if the counterclaims are final and non-appealable in law.

If the customer culpably fails to fulfil his payment obligations or if GEMAC gains knowledge of circumstances which indicate a deterioration of the creditworthiness of the customer compared to the known circumstances at the time of conclusion of the contract, then GEMAC is entitled to declare all remaining dues payable immediately, even if GEMAC has previously accepted cheques. GEMAC is in this case furthermore entitled to demand advance payments or security.

§11 Limitation and exclusion of liability

Claims for damages arising from delay, from impossibility of performance, from positive breach of an obligation, from negligence in contracting, from tort or on any other legal grounds are excluded both against GEMAC and against its vicarious agents, except in case of wilful intent or gross negligence.

In the case of circuit boards and modules for which the order does not cover electrical or function testing, GEMAC provides a warranty only in respect of the processing technology, not in respect of the function.

Materials provided by the customer are excluded from all warranties. The customer bears the full risk in respect of the special procurement of components on his behalf. Illustrations, dimensions, descriptions, technical details and specifications of packing units contained in the corresponding catalogues and other publications are not binding. GEMAC expressly reserves the right to implement modifications without prior notice.

§12 Applicable law, jurisdiction, severability, miscellaneous stipulations

The legal relationship between the parties is governed exclusively by the law of the Federal Republic of Germany. The applicability of common legislation on international sales of movable goods and on the conclusion of international purchase contracts pertaining to movable goods, as well as UN trade law, is excluded.

The place of jurisdiction for all disputes arising directly or indirectly from the contract, including action pertaining to cheques or bills of exchange, is Chemnitz. If any stipulation in these General Terms and Conditions of Business or any stipulation within the framework of other agreements is shown to be or become ineffective, then this does not affect the effectiveness of all other stipulations or agreements.

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