

Standard Terms and Conditions for the Sale of Goods and the Realisation of Construction Projects



1. Preamble

These Standard Terms and Conditions for the Sale of Goods and the Realisation of Construction Projects shall exclusively apply, save as varied by express agreement acceptance in writing by both parties. The offers, order acknowledgment, order acceptance of sale of any products and workmanship covered herein is conditioned upon the terms contained in this instrument. Any conditional or different terms proposed by the contractor are objected to and will not be binding upon CENO TEC GmbH unless assented in writing by CENO TEC GmbH.

These conditions shall govern any future individual contract of sale and workmanship between CENO TEC GmbH and the contractor to the exclusions of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the contractor.

Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document of information issued by CENO TEC GmbH shall be subject to correction without any liability on the part of CENO TEC GmbH.

The provisions of these Standard Terms and Conditions extend to standard contract conditions which are used in a contract with a merchant in the course of business only.

2. Orders and Specifications

No order submitted by the contractor shall be deemed to be accepted by CENO TEC GmbH unless and until confirmed in writing by CENO TEC GmbH or CENO TEC GmbH's representative within 21 days after submittal.

The quantity, quality and description of and any specification for the goods and the workmanship shall be those set out in CENO TEC GmbH's quotation (if accepted by the contractor) or the contractor's order (if accepted by CENO TEC GmbH). Any such specification, sales literature, quotation etc. shall be strictly confidential and must not be made available to third parties.

The contractor shall be responsible for CENO TEC GmbH for ensuring the accuracy of the terms of any order submitted by the contractor, and for giving CENO TEC GmbH any necessary information relating to the goods and workmanship within a sufficient time to enable CENO TEC GmbH to perform the contract in accordance with its terms.

If the goods are to be manufactured or any process concerning the workmanship is to be applied to the goods by CENO TEC GmbH in accordance with a specification submitted by the contractor, the contractor shall indemnify CENO TEC GmbH against all loss, damages, costs and expenses awarded against or incurred by CENO TEC GmbH in connection with or paid or agreed to be paid by CENO TEC GmbH in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual rights of any other person which results from CENO TEC GmbH's use of the contractor's specification.

CENO TEC GmbH reserves the right to make any changes in the specification of the goods and workmanship which are required to conform with any applicable statutory requirements or, where the goods and workmanship are to be supplied to CENO TEC GmbH's specification, which do not materially affect their quality or performance.

3. Price of the goods and the workmanship

The price of the goods and the workmanship shall be CENO TEC GmbH's quoted price or, where no price has been quoted, the price listed in CENO TEC GmbH's published price list current at the date of acceptance of the order. Where the Goods are supplied for export from Germany, CENO TEC GmbH's published export price list shall apply.

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CENO TEC GmbH reserves the right, by giving notice to the contractor at any time before delivery, to increase the price of the goods to reflect increase in the cost to CENO TEC GmbH which is due to any factor beyond the control of CENO TEC GmbH (such as foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of materials or other costs of manufacture) or any change in delivery dates.

Except as otherwise stated under the terms of any quotation or in any price list of CENO TEC GmbH, and unless otherwise agreed in writing between the contractor and CENO TEC GmbH, all prices are given by CENO TEC GmbH on an ex works basis, and where CENO TEC GmbH agrees to deliver the goods and/or to perform the workmanship otherwise than at CENO TEC GmbH's premises, the contractor shall be liable to pay CENO TEC GmbH's charges for transport, packaging and insurance.

The price is exclusive of any applicable value added tax, which the contractor shall be additionally liable to pay to CENO TEC GmbH.

4. Terms of Payment

The contractor shall pay the price of the goods and the workmanship within 30 days of the date of CENO TEC GmbH's invoice unless otherwise accepted by CENO TEC GmbH.

Payment shall be effected by interbank payment transaction only; no cheque or bill of exchange will be considered as fulfilment of the payment obligation.

It may be agreed between the parties that the contractor has to deliver a letter of credit issued by his bank (or any bank acceptable to CENO TEC GmbH). In this individual case it is assumed that any letter of credit will be issued in accordance with the Uniform Customs and Practice for Documentary Credits, 1993 Revision, ICC Publication No. 500.

If the contractor fails to make any payment on the due date then, without prejudice to any other right or remedy available to CENO TEC GmbH, CENO TEC GmbH shall at his discretion be entitled to:

- cancel the contract or suspend any further deliveries to the contractor; or
- charge the contractor interest on the amount unpaid, at the rate of 7 per cent per annum above European Central Bank reference rate from then being valid, until payment in full is made. The contractor shall be entitled to prove that the delay of payment caused no or little damage only.

5. Delivery and realisation

The time-frame for the delivery of the goods and realisation of workmanship shall be arranged in a separate agreement between the parties.

6. Transfer of Risks

Risk of damage to or loss of the goods and/or the damage or destruction of the workmanship shall pass to the contractor from the time of the acceptance of the goods and/or workmanship by the contractor. From the time of the delivery of goods and/or the completion of the workmanship the contractor may only refuse to accept the goods and/or workmanship if they are affected with essential failings.

7. Retention of Title

Notwithstanding delivery and the passing of risk in the goods, or any other provision of these conditions, the property in the goods shall not pass to the contractor until CENO TEC GmbH has received payment in full of the price of the goods and all other goods agreed to be sold by CENO TEC GmbH to the contractor for which payment is then due.

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CENO TEC GmbH shall have absolute authority to retake, sell or otherwise deal with or dispose of all or any part of the goods in which title remains vested in CENO TEC GmbH; the goods as CENO TEC GmbH's fiduciary agent, and shall keep the goods properly stored, protected and insured.

Until that time the contractor shall be entitled to resell or use the goods and the construction works in the ordinary course of its business, but shall account to CENO TEC GmbH for the proceeds of sale and workmanship or otherwise of the goods and the construction works including insurance proceeds, and shall keep all such proceeds separate from any moneys or properties of the contractor and third parties.

If the goods are processed or reshaped by the contractor and if processing is done with goods that CENO TEC GmbH has no property in, CENO TEC GmbH shall become co-owner of the goods. The same shall apply if CENO TEC GmbH's goods are completely reshaped and mixed with other goods.

If third parties take up steps to pledge to otherwise dispose of the goods, the contractor shall immediately notify CENO TEC GmbH in order to enable CENO TEC GmbH to seek a court injunction in accordance with § 771 of the German Code of Civil Procedure. If the contractor fails to do so in due time he will be held liable for any damages caused.

CENO TEC GmbH shall on demand of the contractor release any part of the collateral if the value of the collateral held in favour of CENO TEC GmbH exceeds the value of the claims being secured. It is to CENO TEC GmbH's decision to release those parts of the collateral suitable for him.

8. Warranties and Exclusion Clauses

The contractor shall examine the goods as required by German Law (§§ 377, 378 of the German Commercial Code) and in doing so check every delivery in any respect.

CENO TEC GmbH warrants that all items delivered and workmanship realised under this agreement will be free from defects in material, conform to applicable specifications, and, to the extent that detailed designs have not been furnished by the contractor, will be free from design defects and suitable for the purposes intended by the contractor.

CENO TEC GmbH shall not be liable for the goods being fit for a particular purpose unless otherwise agreed upon, to which the contractor intends to put them.

The above warranty is given by CENO TEC GmbH subject to the following conditions:

- CENO TEC GmbH shall not be liable in respect of any defect in the goods arising from any design or specification supplied by the contractor;
- CENO TEC GmbH shall not be liable under the above warranty if the total price for the goods has not been paid by the due date for payment;
- the above warranty does not extend to parts, materials or equipment manufactured by or on behalf of the contractor unless such warranty is given by the manufacturer to CENO TEC GmbH.

This warranty does not cover defects in or damage to the products and the workmanship which are due to improper installation or maintenance, misuse, neglect or any cause other than ordinary commercial application.

Any discharge from liability will be void if a defect results from a negligent or intentional breach of contract on the part of CENO TEC GmbH. The same applies if CENO TEC GmbH may be held responsible for the breach of any further essential contractual obligation.

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Any claim by the contractor which is based on any defect in the quality or condition of the goods or their failure to correspond with specification shall be notified to CENO TEC GmbH within six months from the date of delivery.

The contractor is entitled to demand the delivery of any substitute goods and/or workmanship, or repair or a reduction of the price for the goods and workmanship as set forth with the terms of each individual contract.

Where any valid claim in respect of any goods and/or workmanship which is based on any defect in the quality or condition of the goods and/or workmanship or their failure to meet specification is notified to CENO TEC GmbH in accordance with these conditions, CENO TEC GmbH shall be entitled at CENO TEC GmbH's sole discretion to either replace the goods free of charge or repair the goods or rather perform the workmanship again. If CENO TEC GmbH is neither ready nor able to either repair or replace the goods the contractor shall be entitled at the contractor's sole discretion to claim for a reduction of price or the cancellation of the contract.

9. Miscellaneous Clauses

CENO TEC GmbH reserves the right to improve or modify any of the products and the related workmanship without prior notice, provided that such improvement or modification shall not affect the form and function of the product.

This agreement supersedes and invalidates all other commitment and warranties relating to the subject matter hereof which may have been made by the parties either orally or in writing prior the date hereof, and which shall become null and void from the date of the agreement is signed.

This agreement shall not be assigned or transferred by either party except with the written consent of the other.

Each party shall be responsible for all its legal, accountancy or other costs and expenses incurred in the performance of its obligation hereunder.

10. Choice of Law; Disputes

This agreement shall be governed by and construed in accordance with German law.

All disputes arising out of the agreement between the parties or related to the agreements violation, termination or nullity shall be finally settled under the Rules of Arbitration and Conciliation of the International Arbitral Centre of the Austrian Federal Economic Chamber in Vienna (Vienna Rules) by three arbitrators appointed in accordance with these rules. The language to be used in the arbitral proceedings shall be German. Pursuant to § 598 (2) of the Austrian Code of Civil Procedure (ZPO), parties expressly waive the application of § 595 (1) figure 7 of the said code.