

# General Terms and Conditions of Delivery of CADEA Gesellschaft für Anwendung und Realisierung computerunterstützter Systeme mbH

## 1. Application

1.1 All deliveries, services, and offers of CADEA Gesellschaft für Anwendung und Realisierung computerunterstützter Systeme mbH (hereinafter referred to as »CADEA«) shall be provided exclusively on the basis of these General Terms and Conditions of Delivery. They shall be part of all contracts concluded by CADEA with its contractual partners (hereinafter referred to as »Customer«) regarding the deliveries or services offered by it. They shall apply also with respect to all future deliveries, services, or offers to the Customer, even if they have not been agreed upon again separately.

1.2 Any terms and conditions of the Customer or third parties shall not be applicable, even if CADEA has not specifically objected to their application in a given case. Even if CADEA makes reference to a document which contains terms and conditions of the Customer or a third party or mentions such terms and conditions, this shall not constitute a consent to the application of such terms and conditions.

## 2. Conclusion and Contents of Contracts

2.1 All offers by CADEA shall be subject to confirmation and without engagement, unless they have expressly been identified as being binding or involve a certain acceptance period. CADEA may accept any orders or commissions by the Customer within fourteen days upon receipt.

2.2 Only the contract concluded in writing including these General Terms and Conditions of Delivery shall govern the contents of the contract. Any amendments and modifications to the agreements reached including these General Terms and Conditions of Delivery shall be made in writing to be effective. Except for managing directors (Geschäftsführer) and holders of a general power of attorney (Prokuristen), the employees of CADEA shall not be entitled to make any oral agreements deviating therefrom. In order to satisfy the written form requirement, transmission by fax shall be sufficient, however, transmission by telecommunication, in particular e-mail, shall not suffice.

2.3 Any information provided by CADEA regarding the item of delivery or service (e.g., weights, measurements, utility values, capacity, tolerances, and technical data) as well as CADEA's presentations thereof (e.g., drawings and illustrations) are only approximations, unless the usability for the purpose contemplated by the contract requires an exact conformity. They are no warranted quality features, but descriptions or identifications of the delivery or service. Customary deviations and deviations based on legal provisions or representing technical improvements as well as the replacement of parts by equivalent parts shall be admissible to the extent they do not impair the usability for the purpose contemplated by the contract.

2.4 CADEA reserves title or copyright to all offers and quotations submitted by it and to any drawings, illustrations, calculations, brochures, catalogs, models, tools, and other documents and resources provided to the Customer. The Customer may not provide any third party with, disclose, use or have used by third parties, or reproduce such objects neither as such nor their contents without the express consent of CADEA. Upon CADEA's request, the Customer shall completely return such objects to CADEA and destroy any copies possibly made if they are no longer required by it in the ordinary course of business or if negotiations do not result in the conclusion of a contract.

## 3. Prices, Terms of Payment

3.1 The prices shall apply to the scope of services and delivery specified in the confirmation of the order. Any additional or special services will be charged separately. The prices are quoted in euros ex works, packing included, and plus statutory VAT as applicable. Shipping charges and other ancillary costs shall be borne by the Customer.

3.2 Any amounts invoiced shall be paid without any deduction within thirty days of the date of the invoice, unless otherwise agreed in writing. The receipt by CADEA shall be decisive for the date of payment. Bills of exchange and checks shall not be considered as payment until they have been honored; any costs of discounting and collecting shall be borne by the Customer. If the Customer fails to pay by the due date, the outstanding amounts shall bear interest of 5% p.a. as from the due date; the assertion of higher interest and further damage in the event of default shall remain unaffected.

3.3 If it turns out after the conclusion of the contract that CADEA's claim to consideration is put in danger due to the lacking performance capability of the Customer, the provisions set forth in Sec. 321 of the German Civil Code (Bürgerliches Gesetzbuch; BGB) shall apply.

## 4. Right of Retention, Offset, Assignment

4.1 The offset against counterclaims of the Customer or the retention of payments based on such claims shall be admissible only to the extent the counterclaims have been admitted by CADEA or recognized by declaratory judgment.

4.2 The Customer's rights may be assigned only subject to CADEA's prior written consent.

## 5. Delays in Delivery, Impossibility

5.1 If a fixed period has been agreed upon for the execution of the order by CADEA, this period shall begin upon receipt of the order confirmation by CADEA, however, not until the receipt of all documents, permits, approvals, and other information to be procured by the Customer for the order processing. Without prejudice to its rights arising from a default of the Customer, CADEA may demand the Customer to extend the agreed periods of delivery and performance or to postpone agreed dates of delivery and performance by the time period in which the Customer defaults on its contractual obligations to CADEA.

5.2 CADEA shall not be liable for the impossibility to deliver or for delays in delivery to the extent they have been caused by force majeure or any other events not foreseeable at the time of the conclusion of the contract (e.g., operational breakdowns of any kind, difficulties in procuring materials or energy, delays in transport, strikes, legal lockouts, shortage of labor, energy, or raw materials, difficulties in procuring necessary official permits, official measures, or absent, incorrect, or late delivery by suppliers or other subcontractors) for which CADEA is not responsible. If such events render the delivery or performance considerably more difficult or impossible for CADEA and such impediment is not only of temporary duration, CADEA shall be entitled to rescind the contract. In case of impediments of temporary duration, the periods of delivery or performance will be prolonged or the dates of delivery or performance will be deferred by the duration of the impediment in addition to a reasonable starting period. To the extent it may not be expected from the Customer to accept the delivery or performance due to the delay caused thereby, it may rescind the contract by giving notice in writing to CADEA without undue delay.

5.3 If CADEA is responsible for the delay in delivery due to negligence, the Customer shall be entitled, after the expiry of a reasonable grace period, either to rescind the contract or to claim damages up to a maximum amount of 0.5% of the contractually agreed compensation for each full week of default, however, not exceeding a total of 5% of the contractually agreed compensation; any further claims of the Customer shall be excluded.

5.4 Likewise, the Customer's rights shall be limited to rescission of the contract or to damages up to a maximum amount of 5% of the contractually owed compensation for each event of damage if it becomes completely or partially impossible for CADEA to effect the performance owed and CADEA is responsible in this respect due to negligence.

## 6.0 Place of Performance, Passing of Risk

6.1 The place of performance for all obligations arising from the contractual relationship shall be Munich, unless otherwise stipulated. If CADEA is also obligated to carry out the installation, the place of performance shall be the place where the installation is to be carried out.

6.2 The risk shall pass to the Customer at the latest upon delivery of the delivery item (the beginning of the loading process being decisive in this context) to the shipping agent, carrier, or other third party commissioned to effect the shipment. This shall apply even if partial deliveries are effected or if CADEA agreed to provide additional services such as the shipment, assembly, setup, installation, or startup. If the shipment or delivery is delayed due to a circumstance caused by the Customer, the risk shall pass to the Customer as soon as CADEA is ready for shipment and has notified the Customer thereof.

## 7. Warranty

7.1 A prerequisite for any warranty claims of the Customer is its proper fulfillment of all obligations to examine and give notice of defects pursuant to Sec. 377 of the German Commercial Code (Handelsgesetzbuch; HGB).

7.2 Warranty claims may be asserted only within a period of 12 months from the passing of the risk.

7.3 In the event of defects as to the quality of the delivered items, CADEA shall be obligated and entitled, at its option subject to a reasonable time period, to rectify the defects or to deliver a substitute at first. In the event of a failure, i.e., the impossibility, unreasonableness, refusal or unreasonable delay of the rectification

of defects or substitute delivery, the Customer may rescind the contract or reduce the purchase price to a reasonable extent.

7.4 If a defect is caused through CADEA's fault, the Customer may claim damages pursuant to Clause 8 of these General Terms and Conditions of Delivery.

7.5 In the event of defects of parts of other manufacturers, which CADEA may not remove due to existing licenses or for actual reasons, CADEA will, at its option, assert its warranty claims against the manufacturers and suppliers for the account of the Customer or assign them to the Customer. In the event of such defects, warranty claims against CADEA exist on the other conditions and in accordance with these General Terms and Conditions of Delivery only if the legal enforcement of the aforementioned claims against the manufacturer and supplier was unsuccessful or is unpromising, for instance due to insolvency. For the duration of the legal dispute, the limitation period for the Customer's respective warranty claims against CADEA shall be suspended.

7.6 The Customer's warranty claims shall become extinct if the Customer modifies the delivery item or has it modified by third parties without CADEA's consent and the removal of defects is therefore rendered impossible or unreasonably impeded. In any event, the Customer shall bear the additional costs of the removal of defects resulting from the modification.

## 8. General Limitation of Liability

8.1 To the extent that the special liability provisions and limitations set forth in these General Terms and Conditions of Delivery are not applicable, the fault liability of CADEA for damages, on whatever legal ground, in particular based on impossibility, default, defective or incorrect delivery, breach of contract, breach of duties during contract negotiations and based on tort, shall be limited in accordance with the provisions set forth below.

8.2 In the event of ordinary negligence of its bodies, legal representatives, employees, or other vicarious agents, CADEA shall be liable only to the extent that essential contractual obligations have been violated. Essential contractual obligations shall include the obligation to deliver and install the delivery item free from any substantial defects in due time as well as duties to provide advice, protection, and to exercise proper care which are intended to enable the Customer to use the delivery item in accordance with the contract or to protect the health and life of the Customer's personnel or to protect its property from substantial damage.

8.3 To the extent that CADEA is liable on the merits for damages pursuant to Clause 8.2 above, such liability shall be limited to damages which have been foreseen by CADEA at the conclusion of the contract as a possible result of a breach of contract or which it ought to have foreseen if it had exercised ordinary care. Moreover, indirect and consequential damage resulting from defects of the delivery item may be replaced only to the extent that such damage is typically to be expected if the delivery item is used as intended.

8.4 In the event of liability for ordinary negligence, CADEA's obligation to compensate for defects as to quality and any other financial loss resulting therefrom shall be limited to an amount of EUR 25,000 for each event of damage.

8.5 The exclusions and limitations of liability set forth above shall equally apply in favor of CADEA's bodies, legal representatives, employees, and other vicarious agents.

8.6 If CADEA provides technical information or advice and such information or advice is not covered by the contractually agreed scope of performance owed by it, such information shall be provided free of charge and excluding any liability.

8.7 CADEA will not assume any liability for a loss or defectiveness of data if such loss or defectiveness has been caused by the exchange of the data. The Customer shall bear the burden to prove that the loss or defectiveness of the data has not been caused by the data exchange.

8.8 The limitations of liability set forth in this Clause 8 shall not apply to liability for intentional or grossly negligent behavior, to warranted quality features, for injury to life, body, or health or pursuant to the German Product Liability Act (Produkthaftungsgesetz, ProdHaftG).

## 9. Reservation of Title

9.1 The delivery item shall remain the property of CADEA until all claims of CADEA existing at the time of the acceptance of the delivery item under the business relationship with the Customer have been paid. The delivery item as well as the goods substituting it pursuant to this Clause and covered by the reservation of title is referred to in the following as reserved goods.

9.2 The Customer shall be entitled to resell the reserved goods and to otherwise dispose thereof only with the prior consent of CADEA.

9.3 If the reserved goods are processed by the Customer, it is agreed that the processing is made in the name and for the account of CADEA as manufacturer and CADEA will directly acquire title to or – if the processing is made using materials of several owners or if the value of the processed item exceeds the value of the reserved goods – the co-ownership (ownership in fractional shares) in the newly created item in proportion of the value of the reserved goods to the value of the newly created item. In the event that no such acquisition of title by CADEA occurs, the Customer shall transfer already at this point its future title to or – in the aforementioned proportion – the co-ownership in the newly created item to CADEA by way of security. If the reserved goods are combined with other items to become a uniform item or is inseparably intermixed therewith and if one of the other items is to be considered the main item, the Customer, if it owns the main item, shall transfer the co-ownership in the uniform item on a pro rata basis in the proportion specified in Sentence 1 to CADEA by way of security.

9.4 In the event of a resale of the reserved goods, the Customer shall assign the claim against the acquirer arising therefrom already at this point to CADEA – if CADEA has a co-ownership in the reserved goods, on a pro rata basis in proportion to the co-ownership interest. The same shall apply with respect to any other claims substituting the reserved goods or otherwise arising with respect to the reserved goods, such as insurance claims or tort claims in the event of loss or destruction. CADEA shall revocably authorize the Customer to collect in its own name the claims assigned to CADEA. CADEA may revoke this authorization for collection only in the event of enforcement.

9.5 If third parties take hold of the reserved goods, in particular by seizure, the Customer shall inform them without undue delay about CADEA's title thereto and notify CADEA thereof in order to enable it to enforce its property rights. If the third party is not able to reimburse CADEA for the judicial and extra-judicial costs arising in this context, the Customer shall be liable to CADEA in this respect.

9.6 CADEA will release the reserved goods as well as the items or claims substituting them at its option upon request to the extent their value exceeds the amount of the secured claims by more than 50%.

9.7 If CADEA rescinds the contract due to the Customer's behavior being in breach of contract – in particular default in payment – (event of enforcement), CADEA shall be entitled to demand the reserved goods.

10. Confidentiality CADEA and the Customer shall be obligated to observe secrecy regarding all trade and business secrets of the respective other party which are disclosed to them within the scope of the order processing, provided that they were informed by the respective other party in writing about the existence of the trade or business secrets.

## 11. Final Provisions

11.1 The legal relationships between CADEA and the Customer shall be governed exclusively by the laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980 (CISG) shall not apply.

11.2 The place of jurisdiction for all disputes arising from or in connection with the business relationship between CADEA and the Customer shall, at CADEA's option, be Munich or the Customer's place of business. Munich shall be the exclusive place of jurisdiction for any actions filed against CADEA. Any mandatory legal provisions regarding exclusive places of jurisdiction shall not be affected by this provision.