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**General Terms and Conditions of sale –  
GOTEC Gorschlüter GmbH or Companies of the Gotec-Group**

(in the following named “GOTEC”)

**A. General**

- 1) These General Terms and Conditions of Sale will apply to the entire business relationship between the customer and the companies of the GOTEC Group, in particular to the present supply agreement and any supply agreements to be concluded in the future. Deviating provisions shall be ineffective even if GOTEC does not expressly object thereto. Deviations from these General Terms and Conditions of Sale proposed by the Customer shall only be effective if GOTEC accepts the same in writing.
- 2) Instructions provided by GOTEC in brochures, instructions for use or other product information shall be strictly complied with in order to prevent damage. GOTEC expressly warns the customer against any use or treatment of the products beyond the defined areas of application and GOTEC shall not be liable for any consequences deriving from any abuse. The customer shall ensure that any further customer or user will be instructed sufficiently.
- 3) Our general terms and conditions of sale only apply to companies in the context of § 310, Paragraph 1 BGB.

**B. Confidentiality**

- 1) All commercial or technical information made available by GOTEC (including features that are to be gathered for instance from the objects, documents or software handed over, and other knowledge or experiences) are, as long as and as far as they are not demonstrably public knowledge, to be kept in confidence from third parties and may be made available in the customers business only to such persons as necessarily have to be brought in for their use for the purpose of supply to the customer and who are likewise committed to maintaining confidentiality; they remain the exclusive property of GOTEC.
- 2) Without the prior written consent of GOTEC, such information must not be duplicated or exploited commercially.
- 3) At GOTECs request, all information originating from GOTEC (if appropriate also including any copies or records made) and loaned items must be, without undue delay, returned to GOTEC in full or destroyed.
- 4) In this respect, GOTEC reserves the express rights to all the aforementioned information (including copyrights and the right to registration of industrial property rights, such as patents, utility models, semiconductors etc.).

**C. Offers**

- 1) Offers shall be valid for a maximum period of four weeks as of their date of issue.
- 2) Mailing of the GOTEC price list shall not be considered an offer. GOTEC shall be under no supply obligation regarding orders received on the basis of general offers, circulars or price lists.

- 3) GOTEC reserves rights of ownership and copyright in cost estimates, drawings, plans and other documents and information of a tangible and intangible nature, including in electronic form; they may only be made available to third parties with the prior written agreement of GOTEC.
- 4) All details about weights, dimensions, performance and other technical data as well as DIN, VDE or other operational or co-external norms referred to in printed papers such as documents, catalogues, price lists, other sales documents of GOTEC, in electronic mediums or in the world wide web are indicative in as far as they are not expressly described as binding.
- 5) Agreements concluded orally or by telephone as well as written and oral agreements with agents of GOTEC will only be binding on GOTEC if GOTEC has acknowledged them in writing.
- 6) As far as nothing else is agreed, all prices shall be quoted in Euro, excluding any statutory VAT and excluding freight and package costs. The statutory VAT becomes due in full at the date of delivery.
- 7) If, as a result of a change of law between the date of contract and the delivery date, additional or increased charges - in particular duties, levies, currency compensation payments, shall be payable, then the parties shall have the right to change the purchase price accordingly.
- 8) In the unforeseeable case that costs for raw material, wage, energy or production increase, GOTEC is entitled to adapt the selling prices accordingly at their discretion to the date of delivery.

#### **D. Terms of delivery**

- 1) Deliveries will be made and invoiced at the prices and on the terms and conditions applicable on the date of delivery.
- 2) The Incoterms applicable from time to time shall apply to all trade clauses. Unless otherwise agreed GOTEC will deliver EXW. The goods designated for processing, refining or repair shall be delivered DDP by the customer to the GOTEC production plant and will be returned EXW. If delivery is delayed due to the customer's fault, the risk shall pass to the customer on the day the goods are ready for shipment. If GOTEC delivers goods free of charge to the address of the customer once or several times, no legal claim to be granted that benefit permanently will arise therefrom.
- 3) The measurements provided for by the relevant standards and the statutory provisions shall be complied with.
- 4) Partial shipments shall be permitted.

#### **E. Packaging**

- 1) GOTEC packages all materials in the standard manner with its choice of packaging materials, upon consideration of the means of transportation (by sea, air, or land)
- 2) GOTEC is free to choose the means of transportation, insofar as no other special agreements have been made. The customer bears all costs for a special request regarding the method of shipping; this also applies to express (non-standard) and next-day shipping, even if GOTEC pays the initial freight charges.
- 3) Upon the customer's request, GOTEC will cover the shipment by a transportation insurance policy; the customer bears all costs for this insurance.

## **F. Delivery periods**

- 1) Delivery deadlines and dates only become binding on express written agreement.
- 2) Adherence to the delivery period by GOTEC assumes that all commercial and technical issues between the contractual partners have been resolved and the customer has met all the obligations accruing to him, such as the provision of the necessary official certifications or approvals or the making of down payments. If this is not the case the delivery time is extended by a reasonable period. This shall not apply to the extent that GOTEC shall be answerable for the delay.
- 3) Changes subsequently requested by the customer entitle GOTEC to put the delivery on hold until the desired changes have been examined with regard to their implementability and effects, particularly on costs and deadlines. The changes only become binding on express written confirmation from GOTEC. GOTEC is entitled to change the delivery dates to implement the changes.
- 4) GOTEC concludes the delivery dates exclusively under the reservation of correct and timely delivery by our suppliers.
- 5) In the event of delay in delivery, the customer shall be obliged, at Gotecs request, to declare within a suitable period whether it still insists on delivery or asserts to his legal rights.
- 6) The customer shall be able and entitled to rescind the contract within the setting of and under existing statutory provisions and stipulations in so far only as the delay in delivery is due to our fault and GOTEC is responsible for it.
- 7) Customers claims for damages due to delayed supplies are limited to the typically resulting damage to the extent that liability has not been ruled out in general in these conditions.
- 8) If the customer is in default of acceptance or if he violates other duties to cooperate, GOTEC shall be able to prefer orders of third parties and to extend the delivery date.
- 9) GOTEC shall be entitled, without prejudice to any further-reaching statutory and/or contractual claims, to demand compensation for the damages that GOTEC has have accrued thus far, including any additional expenditure.
- 10) If dispatch or shipment is delayed at the customer's request by more than one month after notice of the readiness for dispatch was given, the customer may be charged, for every month commenced, storage costs of 0.5% of the price of the items of the supplies, but in no case more than a total of 5 %. The parties to the contract may prove that higher or, as the case may be, lower storage costs have been incurred. More far-reaching claims in cases of default of acceptance shall remain reserved.

## **G. Retention of title**

- 1) GOTEC shall retain full title of the delivered goods until the customer has discharged – in the event of payment by cheque or by bill of exchange by encashment-, all claims arising from the business relationship which shall include any account balance. All deliveries shall be considered as one inclusive delivery transaction. For open accounts the reserved property is deemed to be security for the amount outstanding.
- 2) Any processing of conditional commodities shall be undertaken by the customer on behalf of GOTEC without GOTEC assuming any obligations hereto as a result thereof. The treated and processed goods are deemed to be conditional goods.
- 3) If the goods in which GOTEC has retained title shall be inseparably assembled or mixed with goods that are third party property, then GOTEC shall acquire co-title in the new goods or the mixed stock. The proportion of title shall follow from the

proportion of the invoice value of the goods delivered by GOTEC under retention of title and the invoice value of the other goods.

- 4) If the customer re-sells the goods supplied in accordance with provisions, it shall then assign by so doing the claims arising from the sale against its purchasers including all ancillary rights to GOTEC until all of its claims have been redeemed in full. Even after such assignment the customer is authorized to collect these claims until revoked by GOTEC which GOTEC can do at any time.
- 5) Customers shall not be entitled to otherwise dispose of the goods sold subject to GOTEC's retention of title and ownership (e.g. transfer of ownership by way of security, pledging as collateral).
- 6) Customers shall inform GOTEC immediately about distraints or other legal restrictions with respect to articles or claims belonging wholly or partly to GOTEC. The customer shall pay all costs incurred for the rescission of the measures and regain of the article unless these can be recovered from third parties.
- 7) GOTEC is entitled to rescind the collection authorization for good reason, such as delayed payment, suspension of payment, significant deterioration in the assets of the customer.
- 8) Customer's authorization to dispose of the goods that are subject to retention of title as well as process, reorganize, connect, mix, and combine such goods and collect the assigned claims shall lapse upon non-compliance with payment terms, unauthorized disposition of goods or protesting of a check or bill or if insolvency proceedings have been instituted against the customer or GOTEC becomes aware of a substantial worsening of the customer's financial situation. In these cases, GOTEC shall be entitled, without cancelling the contract, to immediately take possession of the goods that are subject to reservation of title, enter customer's place of business for this purpose, demand relevant information about the goods that are subject to reservation of title and any claims arising from re-sale of said goods, and inspect customer's accounts whenever necessary to secure GOTEC's rights.
- 9) If the customer or a third party applies for insolvency proceedings to be opened over the assets of the customer, or insolvency proceedings against the customer are opened by court order or the opening of such proceedings is refused due to lack of assets, GOTEC is entitled to rescind the contract and to demand the immediate return of the conditional goods.
- 10) GOTEC agrees to release the securities granted to us upon request of the customer if the value of the security exceeds the amount of our receivables by more than 25%.

## **H. Terms of payment**

- 1) The amounts invoiced shall be payable within 30 days after the date of the invoice without any deductions and shall be paid free of postage and charges.
- 2) Employees and agents of GOTEC will only be authorized to accept payments if they hold collection authority. Advance payments and payments on account shall yield no interest.
- 3) There won't be a return in cases of advanced payments or payments on account.
- 4) In principle, the customer shall transfer payments into the account advised by GOTEC at his risk and cost. The place of performance for the customer shall be Wülfrath, Germany.
- 5) Any retention or set-off by the customer of any claims whatsoever against claims of GOTEC shall be excluded.
- 6) Acceptance of bills of exchange in lieu of payment shall require the written consent of GOTEC.

- 7) If the customer is in default of payment, GOTEC shall be entitled to charge default interest at a rate of at least 12% p.a. If GOTEC is entitled to a higher rate of interest due to statutory provisions or if higher interest has to be paid by GOTEC due to higher borrowing costs, GOTEC shall be entitled to charge such interest.
- 8) In addition, the defaulting customer shall bear any and all dunning charges, collection charges, investigation and information charges incurred in connection with collection of the accounts receivable outstanding.

## **I. Warranty**

- 1) Guarantees by GOTEC, especially distinct guarantees and guarantees concerning the nature and life of products, for example in delivery specifications, performance specifications or further documents, are excluded, even if they are named as such guarantees.
- 2) GOTEC will remedy any defects in production or material that occur in products of GOTEC or deviations from the relevant standards at its option by means of repair or substitute delivery. Notices of defects due to patent defects and quantity variances can only be taken into account if they are recorded immediately upon receipt of the goods on the shipping document directly at the carrier and claimed vis-à-vis GOTEC by no later than three working days of such receipt.
- 3) GOTEC is entitled for immediate delivery and possession of the replaced parts.
- 4) Where complaints of deficiency are raised the customer may withhold payments only inasmuch as they are in reasonable proportion to the deficiency. The customer, however, may withhold payments only if the subject-matter of the notification of the Defect occurred is justified beyond doubt. If a defect complaint is not justified, GOTEC has the right to demand compensation from the customer for expenses we have incurred.
- 5) The customer shall give GOTEC the time and the opportunity which may be needed to remove any defect in any of the goods provided that GOTEC shall not be held liable for any consequences of not being given such time and opportunity. Only in urgent cases where there is a risk to work safety or to avoid disproportionately large damage (of which GOTEC shall be informed immediately) shall the customer have the right to remedy the defect itself or have it remedied by third parties, and to demand reimbursement of the necessary expenses by GOTEC.
- 6) In the case of deliveries of class two goods or low-quality goods the right to complain on grounds of optical defects and other impairments of quality shall always be expressly excluded.
- 7) If the items are to be in conformity with earlier deliveries, deviations will be avoided to the extent technically possible. In the case of substantial deviations GOTEC shall at its option either provide substitute delivery or rescind the contract.
- 8) Changes within the range of available allowances will not be regarded as a material defect. In case of a significantly deviations, GOTEC is able to send a compensation delivery or to withdraw from the contract.
- 9) The following are not deemed to be defects:
  - ordinary wear and tear;
  - characteristics of the product and damage caused after the date of transfer of risk due to improper handling, storage or erection, non-compliance with installation or handling regulations or to excessive strain or use;
  - characteristics of the product or damage caused by force majeure, special external circumstances not foreseen under the terms of the contract or due to

the use of the product beyond normal use or the use provided for under the terms of the contract;

- non-reproducible software errors.
- 10) Claims on account of defects do not exist if the product is modified by third parties or due to the installation of parts manufactured by third parties unless the defect has no causal connection with the modification.
- 11) Before rejected goods are returned, GOTEC's consent shall be obtained. The items shall be returned free of any charge to GOTEC.
- 12) Subsequent performance by GOTEC, in any form, does not represent acknowledgment

## **J. Liability**

- 1) GOTEC will be liable for damage caused by its own fault or by the fault of its agents but not in cases of ordinary negligence. To the extent permitted by law no liability shall be assumed in cases of gross negligence either for lost profit due to delayed or defective delivery, for disadvantages due to business interruptions caused thereby, for transportation costs incurred in connection with replacing the defective goods with non-defective goods, for costs of dismantling or installation, if any, for damage to items that are in the custody of GOTEC for processing resulting from a violation of custody or occurring during processing, or for claims asserted vis-à-vis the customer by customers of his. GOTEC will take out an insurance against those kind of disadvantages at the customer's request and at his cost.
- 2) GOTEC will be liable for personal injury according to the German Product Liability Act [Produkthaftungsgesetz] as amended. Liability for damage to property will only be accepted by GOTEC if suffered by a consumer and is otherwise excluded. In the case of resale of products purchased from GOTEC, the customer shall be obliged to pass on the above exclusion of liability regarding damage to property in the commercial area to each further customer.
- 3) If items are produced or distributed on the basis of drawings, specimens or other documents or instructions of the customer and rights of third parties are infringed thereby (in particular industrial property rights of third parties), the customer shall indemnify and hold GOTEC harmless.
- 4) If the customer cannot use the delivery item in the way intended by the contract due to the fault of GOTEC resulting from not or incorrectly carrying out suggestions and agreements made before or after the contract is signed, or from a breach of other secondary contractual duties especially instructions for operating and servicing the delivery item the provisions of the following sections apply accordingly and to the exclusion of all and any other rights of the customer.
- 5) GOTEC shall be liable for defects other than to the delivery item, for whatever legal reasons, only in case of intent, gross negligence of bodies or executives, culpable violation of life, body, health, defects whose presence was disclosed by GOTEC maliciously or their absence guaranteed by GOTEC, as well as in case of delivery item defects to the extent as liability is provided under the product liability law for personal injury and property damage in relation to privately used items.
- 6) In the event of culpable fundamental breach of contract GOTEC shall also be liable for gross negligence by GOTECs employees and for slight negligence; in the event of slight negligence liability shall be limited to the contractually relevant, foreseeable damage or loss.

- 7) Claims for damages and compensation for expenses by the customer, regardless of the legal basis, in particular due to breach of duties resulting from the contractual obligation and from unlawful actions are excluded.

## **K. Force Majeure**

- 1) If GOTEC is prevented from delivering due to force majeure, the delivery date shall immediately be extended for the duration of the force majeure, plus an appropriate start-up time. This case shall not constitute as a violation of law or contract.
- 2) Force majeure shall be understood to be external and extraordinary circumstances that did not exist at the time of the signing of the contract and that arose against the will of GOTEC and/or the customer, force majeure shall include, without limitation: earthquake, flood, fire, epidemics, transport accidents, military actions, strikes, lock out, acts of public authorities, subsequent cease of export or import opportunities and the reservation of timely supply from own suppliers riots, civil commotions.
- 3) The customer and GOTEC shall be relieved of liability for partial or full non-fulfillment of their obligations provided that the customer and GOTEC prove that said non-fulfillment was prevented by circumstances beyond the control of the customer and GOTEC and arose upon the signing of any Contract.
- 4) The parties will do everything they can, in case it is necessary and reasonable, to minimize the extent of the consequences, caused by force majeure.
- 5) The party affected by force majeure circumstances or facing circumstances beyond its control shall immediately notify the other party of the occurrence, type and anticipated duration of said circumstances.
- 6) Should force majeure circumstances or circumstances beyond the control of the parties continue for more than two months the customer and GOTEC shall agree upon further execution of any contract. If at that the customer and GOTEC fail to reach a mutual agreement the party that was not affected by said circumstances shall have the right to terminate the contract without applying to the arbitration court.

## **L. Property Rights**

- 1) GOTEC shall not be liable for claims arising from an infringement of third party intellectual or industrial property rights or copyright (hereinafter: industrial property right) if the industrial property right is or was owned by the customer or by an enterprise in which the customer holds, directly or indirectly, a majority of the shares or voting rights.
- 2) GOTEC shall not be liable for claims arising from an infringement of third party industrial property rights unless at least one industrial property right from the property right family has been published either by the European Patent Office or in one of the following countries: Federal Republic of Germany, France, Great Britain, Austria or the USA.
- 3) The customer must notify GOTEC immediately of (alleged) infringements of industrial property rights and of risks of infringement in this respect which become known and, at GOTECs request – insofar as possible – allow GOTEC to conduct the litigation (including non-judicial proceedings).
- 4) GOTEC is entitled, at GOTECs discretion, to obtain a right of use for a product infringing an industrial property right, to modify it so that it no longer infringes the industrial property right or to replace it by an equivalent substitute product which no longer infringes the industrial property right. If this is not possible subject to reasonable conditions or within a reasonable period of time, the customer shall –

insofar as the customer allowed GOTEC to carry out a modification – be entitled to the statutory rights of rescission. Subject to the aforementioned preconditions GOTEC too shall have a right of rescission. The ruling set forth shall apply accordingly.

- 5) GOTEC reserves the right to carry out the action at our disposal under the terms of sentence one of this clause even if the infringement of the industrial property right has not been ruled on by a court of law with res judicata effect or recognized by GOTEC.
- 6) Claims by the customer are excluded insofar as the customer is responsible for the infringement of the industrial property right or if the customer has not supported GOTEC to a reasonable extent in the defense against claims by third parties.
- 7) Claims by the customer are also excluded if the products were manufactured in accordance with the specifications or instructions of the customer or if the (alleged) infringement of the industrial property right ensues from the use in conjunction with another product not stemming from GOTEC or if the products are used in a manner which GOTEC was unable to foresee.
- 8) Further-reaching claims or claims other than those claims of the customer governed by this clause on account of an infringement of third party industrial property rights are excluded.

## **M. Miscellaneous**

- 1) Unless mandatory statutory regulations to the contrary exist, warranty claims shall be asserted in court within two years and claims for damages within three years after delivery. Claims which are asserted thereafter or exceed the scope determined in these general terms and conditions of sale shall be excluded.
- 2) GOTEC and all of its affiliated companies will be entitled to offset claims against accounts receivable, whether already due or not, including future accounts receivable to which GOTEC is entitled vis-à-vis the customer or to which the customer is entitled vis-à-vis GOTEC. (If necessary, the customer will be informed about the status of such shareholdings upon request).
- 3) If any provision of these general terms and conditions of sale or any contractual agreement between GOTEC and the customer is held by any court or other competent authority to be void, illegal or unenforceable in whole or part, the other provisions of these general terms and conditions of sale or the affected agreement as well as the remainder of the affected provisions shall continue to be valid, in force and binding. The void, illegal or unenforceable provision shall be automatically deemed replaced by such valid, legal and enforceable provision that comes closest to the business purpose of the replaced provision.
- 4) If after conclusion of the contract GOTEC learns that the financial situation of the Customer has developed unfavorably or that insolvency proceedings have been initiated or have not been initiated for lack of assets or that proper fulfillment of the contract is not secured, GOTEC may demand advance payment or collateral security equal to the value of the delivery. If the customer fails to fulfill this request, GOTEC shall be entitled to rescind the contract with immediate effect.
- 5) For all legal disputes arising out of or in connection with the business relationship between GOTEC and the customer (in particular in connection with supply agreements) the court having jurisdiction over the subject-matter and over Wülfrath, shall be the exclusive place of jurisdiction. GOTEC shall, however, at its option be entitled to sue the customer also before the court having jurisdiction over (i) the

place of the customer's registered office or (ii) the location of any goods which may be the subject of dispute.

- 6) Unless mandatory statutory regulations to the contrary exist, the entire business relationship between GOTEC and the customer (in particular the supply agreements concluded) shall exclusively be subject to German substantive law. Applicability of UN Sales Law (United Nations Convention on Contracts for the International Sale of Goods) and similar international agreements is hereby excluded.

## **N. Supplementary rules**

In cases of deliveries of goods to GOTEC, the BARSP regulations shall also apply. Any case of violation against the BARSP regulations will be seen as a violation of contractually relevant duties.