

# **General Terms and Conditions of Sale and Delivery (GTC) of jumavis GmbH, Odenwaldstr. 22, 76337 Waldbronn/ Germany**

## **§ 1 Scope, General**

(1) These General Terms and Conditions of Sale and Delivery (GTSD) shall apply to all contracts with our customers (hereinafter also referred to as: "Buyer") for the sale and delivery of movable goods (hereinafter referred to as: "Devices" or, individually, but also together with software: "Goods") as well as software (hereinafter referred to as: "Software" or, individually, but also together with movable goods/devices: "Goods") without regard to whether we manufacture the Goods ourselves or purchase them from suppliers. The GCS shall only apply if the Buyer is an entrepreneur, a legal entity under public law or a special fund under public law.

(2) The GCS in their respective version shall also apply as a framework agreement for future contracts on the sale and delivery of movable goods and software with the same Buyer without us having to refer to them again in each individual case; we shall inform the Buyer immediately of any changes to our GCS in this case.

(3) Our AVL shall apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the Buyer shall only become part of the contract if and to the extent that we have expressly consented to their application. This requirement of consent shall apply in any case, for example even if we carry out the delivery to the Buyer without reservation in the knowledge of the Buyer's GTC. If the buyer does not agree to this, he must inform us immediately. In this case, we reserve the right to withdraw our offers without any claims of any kind against us. We hereby expressly object to the Buyer's reference to its own terms and conditions of business in the form of a form.

(4) Individual agreements made with the Buyer in individual cases (including collateral agreements, supplements and amendments) shall in any case take precedence over these GCS. The content of such agreements shall be governed by a contract in text form or our confirmation in text form.

(5) Legally relevant declarations to be made by the Buyer to us after conclusion of the contract (e.g. setting of deadlines, declaration of withdrawal or reduction) shall require text form to be effective.

(6) References to the applicability of statutory provisions shall only have clarifying significance. Therefore, even without such clarification, the statutory provisions shall apply unless they are directly amended or expressly excluded in these GCS.

(7) Consulting services are not owed by us within the scope of the purchase contract. It is the sole responsibility of the Buyer to determine whether the goods are suitable for the purpose for which he intends to use them.

## **§ 2 Conclusion of contract**

(1) Our offers are subject to change and non-binding. This shall also apply if we have provided the Buyer with catalogs, technical documentation (such as drawings, plans, calculations, references to DIN standards), other product descriptions or documents - also in electronic form. We reserve all rights of ownership and copyright to the aforementioned documents.

(2) The documentation as annexes to offers and cost estimates are for illustration and orientation purposes. Illustrations, drawings, dimensions and weights are therefore not necessarily exact, unless it is indicated in the contract or on the respective document that these are exact values.

(3) Specifications or descriptions of quality do not constitute guarantees unless we expressly grant a guarantee. Only our management is authorized to grant guarantees.

(4) The order of the goods by the Buyer shall be deemed to be a binding offer of contract. Unless otherwise stated in the order, we shall be entitled to accept this contractual offer within 14 days of receipt.

(5) Acceptance may be declared in text form (e.g. by order confirmation) or by delivery of the goods to the Buyer.

### **§ 3 Delivery period and delay in delivery**

(1) The delivery period shall be agreed individually or stated by us upon acceptance of the order.

If no individual agreement is made, the delivery period shall be at least six weeks from the conclusion of the contract. However, it shall not begin to run until all documents (e.g. releases, approvals) necessary for the execution of the delivery, which are to be procured by the Buyer, have been received and - if agreed - the advance payment has been made by the Buyer.

(2) If we are unable to meet binding delivery deadlines for reasons for which we are not responsible, we shall inform the Buyer of this without delay and at the same time notify the Buyer of the expected new delivery deadline. If the service is also not available within the new delivery period, we shall be entitled to withdraw from the contract in whole or in part; we shall immediately refund any consideration already paid by the Buyer. A case of non-availability of the performance in this sense shall be deemed to be in particular the failure of our supplier to deliver on time if we have concluded a congruent hedging transaction, neither we nor our supplier are at fault or we are not obliged to procure in the individual case.

(3) The occurrence of our delay in delivery shall be determined in accordance with the statutory provisions. In any case, however, a reminder by the Buyer shall be required.

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(4) The rights of the Buyer pursuant to § 8 of these GCS and our statutory rights, in particular in the event of an exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of performance and/or subsequent performance) shall remain unaffected.

### **§ 4 Delivery, Transfer of Risk, Acceptance, Default of Acceptance, Import and Export Control Provisions**

(1) Delivery shall be made ex warehouse, which is also the place of performance. At the Buyer's request and expense, the goods shall be shipped to another destination (sale by delivery to a place other than the place of performance). Unless otherwise agreed, we shall be entitled to determine the type of shipment (in particular transport company, shipping route, packaging) ourselves and, if necessary, to divide the goods into several deliveries, unless this is unreasonable for the Buyer.

(2) The Buyer shall ensure that the goods can be properly delivered at the agreed delivery time.

(3) The risk of accidental loss and accidental deterioration of the goods shall pass to the Buyer at the latest when the goods are handed over. However, in the case of sale by delivery to a place other than the place of performance, the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay shall pass to the

risk of delay shall already pass upon delivery of the goods to the forwarding agent, the carrier or the person or institution otherwise designated to carry out the shipment. Insofar as an acceptance has been agreed, this shall be decisive for the transfer of risk. In all other respects, the statutory provisions shall also apply to an agreed acceptance. The handover or acceptance shall be deemed equivalent if the Buyer is in default of acceptance.

(4) If the Buyer is in default of acceptance, fails to cooperate or if our delivery is delayed for other reasons for which the Buyer is responsible, we shall be entitled to demand compensation for the resulting damage including additional expenses (e.g. storage costs). For this purpose, we shall charge a lump-sum compensation in the amount of 0.5% of the net price (delivery value) in EURO plus VAT in the respective statutory amount per calendar week, starting with the delivery deadline or, in the absence of such, with the notification that the goods are ready for shipment.

The proof of a higher damage and our legal claims (in particular compensation of additional expenses, reasonable compensation, termination) shall remain unaffected; however, the lump sum shall be credited against further monetary claims. The Buyer shall be entitled to prove that we have incurred no damage at all or only significantly less damage than the aforementioned lump sum.

(5) If goods are subject to German and/or foreign import or export regulations, compliance with the applicable regulations as well as the application for and procurement of the respective necessary documents in the event of a delivery or onward delivery abroad shall be the sole responsibility of the Buyer. If the fulfillment of the delivery obligation is not permissible for legal reasons, e.g. an export ban, or if it is unreasonable for jumavis, jumavis shall be entitled to a contractual right of rescission for a period of 2 months from the date on which it became aware of the obstacle to delivery, but for no longer than 2 years from the date of order confirmation. The declaration of withdrawal must be made in text form.

## **§ 5 Provision of Software**

(1) We shall only be obliged to provide software if and to the extent that this has been contractually agreed in the individual case. For software, the provisions of the End User License Agreement (EULA) shall apply in addition to the further provisions of these GCS.

(2) Installation and maintenance of the Software as well as training of the Buyer shall only be owed if this has been expressly contractually agreed.

(3) For reasons of compatibility, we recommend that the Software be purchased together with the appropriate hardware and that an agreement be made to the effect that the Software will be installed on the hardware by us prior to delivery.

If, however, the purchaser prefers to use other hardware, he shall be responsible for installing the software and setting up a functional - and also, taking into account the additional load caused by the software, sufficiently dimensioned - hardware and software environment for the software. The software may then be delivered, at our discretion, either on a data carrier or by making files available for download. This shall not apply if our products may only be used in combination with the appropriate hardware and software due to their intended use and the system description in the offer.

(4) The user manual for the software (documentation) may be provided to the Buyer either in printed form or in file form (on a data carrier or for download).

(5) If we provide the Buyer with supplements (e.g. patches, supplements to the user manual) or a newer version of the software (e.g. update, upgrade) within the scope of rectification or maintenance, which replaces the previously provided software, these shall also be subject to the provisions of this agreement.

(6) The performance description agreed with the respective contract shall be conclusively authoritative for the quality of the software supplied by us. We shall not be liable for any further quality of the software unless such quality has been expressly warranted by our management. Other employees or sales partners are not authorized to grant guarantees.

(7) The source code of the Software shall not be passed on to the Customer unless expressly agreed otherwise.

(8) The Buyer shall be obliged to provide sufficient data backup. He shall carefully store data carriers with the Software and secure access to the Software by means of a password in order to exclude misuse and access by unauthorized persons.

## **§ 6 Prices and Terms of Payment**

(1) Unless otherwise agreed in individual cases, our list prices current at the time of the conclusion of the contract shall apply, namely ex warehouse, plus statutory VAT, excluding packaging and shipping costs.

(2) In the case of a sale by delivery to a place other than the place of performance within the meaning of § 4 (1) of these GCS, the Buyer shall bear the transport costs ex warehouse and the costs of any transport insurance requested by the Buyer.

(3) The purchase price shall be due and payable within 14 days from the date of invoice and delivery or acceptance of the goods, unless otherwise agreed. In the case of contracts with a delivery value of more than EUR 10,000, we shall be entitled to demand a down payment of 50% of the purchase price. The down payment is due and payable within 14 days from the date of invoice.

(4) The Buyer declares his consent to the transmission of the invoice in electronic form.

(5) We reserve the right to sell goods only against cash in advance or cash on delivery.

(6) If the performance is not yet complete but has been performed in essential parts, in particular by partial deliveries which constitute functional units, we may invoice for the partial deliveries already made even before the last partial delivery.

(7) Upon expiry of the payment period, the Buyer shall be in default. During the period of default, interest shall be charged on the purchase price at the statutory default interest rate applicable at the time. We reserve the right to assert further damage caused by default.

(8) The Buyer shall only be entitled to rights of set-off or retention to the extent that his claim has been legally established or is undisputed. Counterclaims arising from the same contractual relationship shall be excluded from the aforementioned offsetting prohibition.

(9) If, after conclusion of the contract, it becomes apparent that our claim to the purchase price is jeopardized by the Buyer's inability to pay (e.g. by an application for the institution of insolvency proceedings), we shall be entitled to refuse performance in accordance with the statutory provisions and - if necessary after setting a deadline - to withdraw from the contract. In the case of contracts for the manufacture of unjustifiable items (custom-made products), we may declare withdrawal immediately; the statutory provisions on the dispensability of setting a deadline shall remain unaffected.

(10) We do not take back transport packaging and all other packaging within the meaning of the Packaging Ordinance; it becomes the property of the Buyer.

(11) If, despite exercising reasonable care, we are prevented from fulfilling our obligation due to force majeure, in particular due to the occurrence of unforeseeable, extraordinary circumstances (e.g. energy supply difficulties, strike or lockout, operational disruptions), the delivery period shall be extended to a reasonable extent. If in such cases delivery and performance becomes impossible for us, we shall be released from our performance obligations.

## **§ 7 Retention of title**

(1) We shall retain title to the goods sold until all our present and future claims arising from the purchase contract and an ongoing business relationship (secured claims) have been paid in full.

(2) The Buyer shall be obliged to treat the goods subject to retention of title with care and to insure them at its own expense against fire, water and theft in the amount of the replacement value of the purchased goods and to provide us with evidence of this upon request. If such proof is not provided despite a request, we shall be entitled to insure the reserved goods ourselves at the Buyer's expense.

(3) If the goods subject to retention of title are seized by third parties, the Buyer shall be obliged to point out the Seller's ownership and to inform the Seller immediately of the seizure.

(4) The goods subject to retention of title may not be pledged to third parties or assigned as security before full payment of the secured claims.

(5) Insofar as maintenance of the goods subject to retention of title is necessary, this shall be carried out in a timely and proper manner. The costs for this shall be borne by the Buyer.

(6) In the event of conduct by the Buyer in breach of contract, in particular in the event of non-payment of the purchase price due, we shall be entitled to withdraw from the contract in accordance with the statutory provisions and to demand return of the goods on the basis of the retention of title and withdrawal. If the Buyer fails to pay the purchase price due, we may only assert these rights if we have previously set the Buyer a reasonable deadline for payment without success or if setting such a deadline is dispensable under the statutory provisions.

(7) The Buyer shall be entitled to resell or process the goods subject to retention of title in the ordinary course of business. In this case, the following provisions shall apply in addition.

a) The retention of title shall extend to the products resulting from the processing, mixing or combining of our goods at their full value, whereby we shall be deemed to be the manufacturer. If, in the event of processing, mixing or combining with goods of third parties, their right of ownership remains, we shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined goods. Otherwise, the same shall apply to the resulting product as to the goods delivered under retention of title.

b) The Buyer hereby assigns to us by way of security all claims against third parties arising from the resale of the goods or the product in total or in the amount of our co-ownership share, if any, in accordance with the preceding paragraph. We accept the assignment. The obligations of the purchaser stated in paragraph 2 shall also apply in respect of the assigned claims.

c) The Buyer shall remain authorized to collect the claim in addition to us. We undertake not to collect the claim as long as the Buyer meets his payment obligations towards us, is not in default of payment, no application for the opening of insolvency proceedings has been filed and there is no other deficiency in his ability to pay. If this is the case, however, we may demand that the Buyer inform us of the assigned claims and their debtors, provide all information required for collection, hand over the relevant documents and inform the debtors (third parties) of the assignment.

(d) If the realizable value of the securities exceeds our claims by more than 10%, we shall release securities of our choice at the Buyer's request.

## **§ 8 Claims for Defects of the Purchaser**

(1) The statutory provisions shall apply to the Buyer's rights in the event of material defects and defects of title, unless otherwise stipulated below.

(2) The contractual limitation period for claims arising from material defects and defects of title shall be one year from delivery of the goods. If acceptance has been agreed, the limitation period shall commence upon acceptance.

(3) The basis of our liability for defects is above all the agreement reached on the quality of the goods.

(4) Insofar as a quality has not been agreed, it shall be assessed in accordance with the statutory provisions whether or not there is a defect. However, we shall not be liable for public statements made by third parties, e.g. a manufacturer, regarding the quality of the goods (e.g. advertising statements).

(5) The Buyer's claims for defects shall be subject to the condition that he has complied with his statutory obligations to examine the goods and to give notice of defects.

If a defect becomes apparent during the inspection or at a later date, we must be notified thereof without delay. The notification shall be deemed to be made without delay if it is made within two weeks, whereby timely dispatch of the notification shall suffice to meet the deadline. Irrespective of this obligation to inspect and give notice of defects, the Buyer shall notify us of obvious defects (including incorrect and short deliveries) within two weeks of delivery, whereby timely dispatch of the notification shall also suffice to meet the deadline. If the Buyer fails to duly inspect the goods or to give notice of defects, our liability for the defect not notified shall be excluded.

(6) If the delivered item is defective, we may initially choose whether to provide subsequent performance by remedying the defect (subsequent improvement) or by delivering an item free of defects (replacement delivery). The Buyer shall be entitled to demand a specific form of subsequent performance on his part if the respective other form of subsequent performance is unreasonable for him. We may also remedy the defect by instructing the Buyer to do so by telephone or electronically. Our right to refuse subsequent performance under the statutory conditions shall remain unaffected.

(7) We shall be entitled to make the subsequent performance owed dependent on the Buyer paying the purchase price due. However, the Buyer shall be entitled to retain a part of the purchase price which is reasonable in relation to the defect.

(8) The Buyer shall give us the time and opportunity required for the subsequent performance owed, in particular to hand over the goods complained about for inspection purposes. In the event of a replacement delivery, the Buyer shall return the defective item to us in accordance with the statutory provisions. Subsequent performance shall neither include the dismantling of the defective item nor the reassembly if we were not originally obliged to assemble the item.

(9) We shall bear the expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labor and material costs (not: dismantling and installation costs), if a defect is actually present. However, if a request by the Buyer to remedy a defect turns out to be unjustified, we shall be entitled to demand reimbursement of the costs incurred from the Buyer.

(10) In urgent cases, e.g. if operational safety is at risk or to prevent disproportionate damage, the Buyer shall have the right to remedy the defect itself and to demand reimbursement from us of the expenses objectively necessary for this purpose. We are to be informed immediately of such a self-remedy, if possible in advance. The right of self-execution shall not apply if we would be entitled to refuse a corresponding subsequent performance in accordance with the statutory provisions.

(11) If the subsequent performance has failed or a reasonable period to be set by the Buyer for the subsequent performance has expired unsuccessfully or is dispensable according to the statutory provisions, the Buyer may withdraw from the purchase contract or reduce the purchase price. In the case of an insignificant defect, however, there shall be no right of withdrawal.

(12) In the event of a justified withdrawal on the part of the Buyer, we shall be entitled to demand reasonable compensation for the use made of the goods by the Buyer until the rescission. This compensation for use shall be determined on the basis of a four-year total period of use, with an appropriate deduction for the impairment due to the defect that led to the rescission.

(13) Claims of the Buyer for damages or reimbursement of futile expenses shall only exist in accordance with § 8 and shall otherwise be excluded.

(14) The limitations of liability shall not apply if we acted intentionally, fraudulently concealed a defect or assumed a guarantee for the quality of the goods. The same shall apply to claims of the Buyer under the Product Liability Act.

## **§ 9 Other liability**

(1) Unless otherwise provided in these GCS including the following provisions, we shall be liable for any breach of contractual and non-contractual obligations in accordance with the relevant statutory provisions.

(2) We shall be liable for damages - irrespective of the legal grounds - in the event of intent and gross negligence. In the case of simple negligence on the part of our executive bodies, legal representatives, employees or other vicarious agents, we shall be liable only

a) for damages resulting from injury to life, body or health,

b) for damages arising from the breach of a material contractual obligation (obligation, the fulfillment of which is a prerequisite for the proper performance of the contract and on the observance of which the contractual partner regularly relies and may rely); in this case, however, our liability shall be limited to compensation for the foreseeable, typically occurring damage.

(3) The Buyer may only withdraw from or terminate the contract due to a breach of duty that does not consist of a defect if we are responsible for the breach of duty. A free right of termination on the part of the Buyer is excluded. In all other respects, the statutory requirements and legal consequences shall apply.

## **§ 10 Choice of Law and Place of Jurisdiction**

(1) The law of the Federal Republic of Germany shall apply to these GCS and all legal relationships between us and the Buyer, to the exclusion of international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods. The prerequisites and effects of the retention of title pursuant to § 7 shall be subject to the law at the respective place of storage of the item, insofar as the choice of law made in favor of German law is inadmissible or ineffective thereafter.

(2) If the Buyer is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive - including international - place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be Karlsruhe, Germany. However, we shall also be entitled to bring an action at the Buyer's general place of jurisdiction.

## **§ 11 Precautionary Mandatory Information for Consumers**

(1) Pursuant to § 1 (1) of these GCS, these GCS shall only apply if the Buyer is an entrepreneur, a legal entity under public law or a special fund under public law. Consumers are usually not supplied directly by us and are therefore only informed as a precautionary measure and in the alternative that the European Commission provides a platform for online dispute resolution (OS) for the purposes of alternative dispute resolution in accordance with Article 13 of Directive 2013/11/EU. This platform can be found at [webgate.ec.europa.eu/odr/](http://webgate.ec.europa.eu/odr/).

Our email address is [info@jumavis.de](mailto:info@jumavis.de).

(2) We are not obligated or willing to participate in dispute resolution proceedings before a consumer arbitration board in accordance with the Consumer Dispute Resolution Act.

In the event of contradictions or discrepancies between the German and English versions, the German version of these AVL shall apply.

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