

# GENERAL TERMS AND CONDITIONS

## §1 General

These General Terms and Conditions (hereinafter also referred to as "GTC") apply to all existing and future business relations between menten GmbH (hereinafter also referred to as "menten") and its Customers.

The Customer's general terms and conditions are hereby expressly rejected. Any terms and conditions or other similar documents introduced or submitted by the Customer for acknowledgement will not be accepted and do not require any further notice confirming the rejection thereof.

All notices and declarations to be issued to menten (e.g. fixing of a time limit, notice of deficiencies, rescission of contract or reduction) must be made in writing in order to become effective.

## §2 Offers

Our offers are subject to change at any time. Any information contained in menten's offers, price lists and other printed material or offer-related documents, especially technical details and service descriptions, is not binding.

Menten assumes no liability or responsibility for the accuracy, correctness or completeness of any technical details and other information contained in the manufacturer's price lists. Menten reserves the right to change the technical specifications at any time. Any alterations hereof may be applied, as far as they are reasonably acceptable to the Customer.

## §3 Order Confirmation

Orders placed by telephone or verbally are legally binding upon the Buyer (Customer) and shall only become legally binding upon the Seller (menten) when confirmed by the latter in writing or on the delivery of ordered products or services.

Any objections to the order confirmation are to be made in writing within one week after receipt hereof. In the event of any relevant increases in price or in costs we are entitled to reasonably adjust our prices at any time between the conclusion of the contract and the delivery date agreed upon, provided that the period of time between the conclusion of the contract and the delivery date agreed upon exceeds four months.

## §4 Intellectual Property Rights

The use of circuit diagrams, drawings, drafts and descriptions or similar documentation of the delivered hardware or software is permitted only under the terms of our License Conditions. User manuals or other documentation shall not be copied, disclosed or otherwise distributed, including to any third party, without the prior written consent of menten.

## §5 Pricing and Payment Terms

Unless otherwise agreed between the parties in writing, all prices shall be calculated according to our price list prevailing at the time of concluding the contract. Our prices are exclusive of statutory VAT. Transportation costs as well as any other related expenses (e.g. shipping insurance) are not included in our prices, except where stated otherwise. All customs duties, fees or any other applicable taxes and government levies are to be paid by the Customer.

Payments are due immediately after issuing of invoice as well as upon acceptance of sup-

plies delivered or services performed. The total amount due must be settled within 14 days of the invoice date.

In the event that any amounts due are not received by the payment deadline, the Customer will be considered in default and will be charged late payment interests at the prevailing statutory interest rate. In commercial transactions, menten reserves the right to claim compensation for all losses, expenditures and damages sustained as a result of a late payment as well as the right to claim fees on any unpaid amounts at the fixed rate of 5% of the amount invoiced according to § 353 of the German Commercial Code (HGB). The Customer may not withhold the payment of any invoice or other amounts due to menten. Any right to set-off counterclaims shall be excluded, unless it's undisputed by menten or has been legally determined by a final judgment of a competent court.

## §6 Delivery

The terms of delivery shall be ex works from menten's premises. The Customer bears all costs, charges and risks involved in bringing the deliverables to the desired destination. Should the parties agree upon a free house delivery, the transfer of risk rules (pursuant to § 7) shall remain unaffected hereby.

The delivery dates specified by us in the order confirmation or otherwise agreed upon in writing shall be met. In the event that we are unable to meet any binding delivery dates due to causes beyond our reasonable control (non-availability of the deliverables), the Customer will be immediately notified of these circumstances and will receive information on an estimated alternative delivery date. If the deliverables are still not available by the alternative delivery deadline, menten is entitled, to rescind the contract in whole or in part; any consideration already made or provided by the Customer under this contract shall be refunded forthwith. In this context, the term "non-availability of the deliverables" refers, in particular, to any event of the deliverables being not available as a result of a late delivery by a supplier of menten, where menten has concluded a congruent hedging transaction with the supplier in question. Our statutory rescission and termination rights as well as the statutory regulations on the performance of contracts, with respect to conditions excluding the obligation to perform contractual duties (e.g. where the performance is deemed impossible or unreasonable, or/and in case of a subsequent performance), remain unaffected. The Customer's right to rescind or terminate this contract in accordance with §10 of these GTC remains unaffected as well. Menten explicitly reserves the right to make partial deliveries and/or to demand installment payments.

The definition of an event when the Seller (menten) is deemed to be in default on the performance of the delivery shall be determined according to the applicable statutory regulations; in any case, the Customer is required to issue a reminder notice. The compensation for damages caused by or arising from our delay in delivery is limited to 5% of the net invoice value of the relevant goods.

## §7 Shipping – Passing of Risk

The risk of accidental loss and deterioration of the goods shall pass to the Customer no later

than upon handover. However, in case of sale transactions involving shipping, the risk of accidental loss and deterioration of the goods as well as the risk of delays shall pass to the Customer as soon as the goods are delivered to the nominated carrier or to any other person designated to carry out the transportation of goods. If applicable due to an agreement between the parties or where prescribed by law, the passing of risk is subject to an inspection and acceptance of the goods upon their receipt. In addition, where the parties agreed on the procedure of inspection and acceptance upon receipt, the respective regulations of the German law on work and service contracts will apply accordingly. The same consequences arise, if the Customer is in default on accepting delivery.

If the Customer defaults on the acceptance, fails to cooperate where required and essential for the performance of contractual obligations, or if our delivery becomes delayed due to any other reason for which the Customer is legally responsible, menten shall be entitled to claim compensation for damages occurred as a result of these circumstances, including compensation for additional expenditures (e.g. storage costs).

For damages as specified above menten will claim a lump-sum compensation payment at the rate of 0,5% of the invoice amount per month, accruing from the delivery deadline date or upon the notification that the goods are ready for dispatch.

Our statutory claims (in particular reimbursement of additional expenditures, reasonable and adequate compensation and termination) as well as the right to prove more extensive damages remain unaffected; the lump-sum compensation payment is to be deducted from any further monetary claims.

The Customer may prove that no damages were suffered by menten or that the damages were much less severe and that the aforementioned compensation should be essentially lower than the lumpsum claimed by menten.

## §8 Retention of Title

The title to the goods shall remain vested in menten until all monies owed to menten by the Customer under this agreement, both owing in present and accruing in future, as well as all claims arising from any existing business relation between menten and the Customer are paid in full. Should the goods delivered by menten be subsequently altered or processed in any way, menten shall have the ownership of the new goods as well.

The Customer is entitled to resell the goods delivered by menten or any altered or processed goods created therefrom only in the ordinary course of business. The Customer will assign to us the proceeds accruing from such resale transactions as well as any other pertinent receivables, arising on whatever legal grounds, as collateral for our claims. The Customer shall be authorized to collect the receivables assigned to menten, provided that its payment obligations to us under this agreement are fulfilled accordingly.

The Buyer is obliged to immediately report to

# GENERAL TERMS AND CONDITIONS

us any third-party appropriation or seizure of the goods subject to retention of title or of the receivables assigned in advance. Any relevant documents essential to an intervention are to be passed over to us forthwith. The Buyer bears all intervention fees or costs.

## 59 Warranty

The Customer's rights as to material deficiency and deficiency in title (including misdelivery and short shipment as well as improper installation or insufficient instructions for assembly) shall be determined by the applicable statutory regulations, except where the following terms or §10 stipulate otherwise.

Any warranty claims of the Customer are subject to a prior fulfillment of its statutory duties to inspect the goods and to give notice of defects or deficiencies (§§ 377, 381 of the HGB). If the goods are found to be deficient or defective in the course of inspection or afterwards, the Customer is obliged to immediately notify us of this fact in writing. A notification is deemed to have been made immediately, if given within two weeks; however, the deadline shall still be considered met, if the notification is sent in due time. Apart from the aforementioned duties to inspect the goods and to give notice of deficiencies or defects, the Customer is obliged to report to us in writing any patent defects (all obvious flaws, including misdelivery and short shipment) within two weeks of the delivery date; the rule saying that the notification is considered in due time, when sent within the deadline, applies here as well. Should the Customer neglect to duly inspect the goods and/or to notify us as required by the pertinent provisions, our liability for any deficiencies or defects that haven't been brought to our notice shall be excluded.

In the event that the delivered goods are found to be deficient or defective, we may decide at first, if we choose to fulfill our duty of subsequent performance by correcting the deficiency (rectification) or by delivering defect-free goods (replacement). Our right to refuse to fulfill our duty of subsequent performance as chosen – subject to respective statutory prerequisites – remains unaffected.

Menten is entitled to refuse to fulfill the owed duty of subsequent performance, as long as the purchase price for the goods in question remains unpaid when due. However, the Customer is entitled to withhold a part of the price payable for the respective goods in due proportion to the defect or deficiency.

The Customer shall afford us the necessary opportunity and time needed to fulfill our duty of subsequent performance; Menten shall therefore receive the goods reported as defective or deficient, in order to conduct an examination hereof. In the event of a replacement, the Customer is obliged to return to us the defective goods pursuant to the applicable statutory regulations.

Menten shall bear all necessary costs and expenses arising from or in connection with the aforementioned examination and subsequent performance, in particular any costs of transportation, travel, labor and material, provided that the reported defect or deficiency proves existent. If the Customer's demand to remedy

the defect or deficiency proves unwarranted, menten shall be entitled to demand reimbursement of costs incurred as a result hereof.

The Customer may rescind the contract or reduce the purchase price, if the measures taken in course of the subsequent performance fail to remedy the defect or deficiency, or when the period of time for the subsequent performance that was reasonably set by the Customer has expired with no success or if such time limits are deemed dispensable pursuant to the applicable law. However, minor defects or deficiencies do not entitle the Customer to rescind the contract.

The Customer may only claim damages and compensation for wasted expenditures in accordance with §10, any other claims are excluded.

## 510 Liability

Except as otherwise provided in these GTC, menten assumes liability for any violation of contractual and non-contractual obligations pursuant to the applicable legal provisions.

We are liable for indemnity – on whatever legal grounds – for malicious intent and gross negligence. For ordinary negligence we are only liable:

- for damages arising from injury to life, limb or health,
- for damages arising from violation of an essential contractual obligation (an obligation whose fulfillment is a fundamental prerequisite for the proper implementation of the contract and compliance with which the contractual party relies and may rely upon as a matter of course); in this case, however, our liability is limited to compensation for foreseeable, typically occurring damages.

These provisions on limitation and exclusion of liability will not apply, if menten has made a warranty as to the condition of the goods or in the event that menten fraudulently conceals any defects. The same applies to the claims of the Customer under the German Product Liability Act.

The Customer shall only have the right to terminate or rescind the contract due to a breach of duty other than a defect, provided that menten is legally responsible for that breach. The Customer's right to terminate the contract for convenience (especially according to §§ 651, 649 of the German Civil Code - BGB) is excluded. In addition, legal prerequisites and consequences apply.

## 511 Statute of Limitations

Notwithstanding the provisions of § 438 ¶ 1 no. 3 and § 634a ¶ 1 no. 1 of the BGB, the general period of limitation applicable to claims for material deficiency and deficiency in title shall be one year from the date of delivery or handover. Where the procedure of inspection and acceptance is prescribed by law or has been agreed upon between the parties, the limitation period commences upon the acceptance of goods. Furthermore, these limitation periods shall also apply to any contractual and extra-contractual claims of the Customer for damages sustained as a result of a defect in the goods, except for cases where applying the regular sta-

tutory limitation (§§ 195, 199 of the BGB) would result in a shorter period of limitation.

The statutory regulations on third-party in rem claims for surrender or return (§ 438 ¶ 1 no. 1 of the BGB), in case of fraud or deceit (§ 438 ¶ 3 and § 634a ¶ 3 of the BGB) and on claims for recourse against a supplier of the Seller upon final delivery to an end customer (§ 479 of the BGB) remain unaffected. The limitation periods under the German Product Liability Act remain unaffected as well. Any claims of the Customer for damages pursuant to § 10 are subject to the statutory limitation periods only.

## 512 Severability

Should these General Terms and Conditions be partially invalid or unenforceable, the remaining part hereof as well as the contract concluded between the parties shall remain in full force and effect. The Parties are obliged to substitute the invalid or unenforceable provision with a provision that most closely approximates the intent and economic effect of an agreement that the Parties would have established instead, if they had been aware of such invalidity. The same applies to loopholes in the provisions.

## 513 Choice of Law and Jurisdiction

Cologne is the place of jurisdiction (international or otherwise) for all legal disputes arising from the contractual relationship and pertaining to its formation and validity, as well as those arising directly therefrom.

These GTC and all legal relations between menten and the Customer are subject to the German Federal law, to the exclusion of the UN Convention on the International Sale of Goods and the conflict of law regulations.

Dated: September 12th, 2013



### menten GmbH

📍 An der Gohrsmühle 25  
51465 Bergisch Gladbach  
Germany

☎ +49 2202 2399 0  
☎ +49 2202 2399 23  
✉ ILN 45 99901 544994

✉ info@menten.com  
🌐 www.menten.com

👤 Managing Director: Ralph Menten  
Local court Cologne: HRB 47762