

## GENERAL TERMS AND CONDITIONS OF BUSINESS FOR THE TECHNOLOGY SERVICE

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### I. Scope of application

1. These General Terms and Conditions of Business for the technology service (hereinafter referred to as "General Terms") apply to the legal relations existing between CemeCon AG (hereinafter referred to as "CemeCon") and Customer, i.e. all offers, contracts, services and deliveries of CemeCon AG in connection with the deliveries and services to be provided by CemeCon for the performance of technology services, in particular the sale of spare parts, accessories and expendable parts. The details of the order placement follow from the contracts concluded between Customer and CemeCon. Agreements made there take precedence over these General Terms.
2. These General Terms shall apply exclusively. Any general terms and conditions of business of Customer that conflict with or deviate from these General Terms shall not be recognized unless CemeCon has expressly agreed to their validity in writing. Acceptance of a counter confirmation by Customer with a reference to the latter's general terms and conditions of business shall not represent such agreement. These General Terms shall also apply if CemeCon performs deliveries or services without reservation and with knowledge of general terms and conditions of Customer that conflict with or deviate from these General Terms.
3. These General Terms shall apply in their respectively valid version for all future legal transactions with Customer.

### II. Conclusion of contract

1. Offers by CemeCon shall be made on a non-binding basis unless they are expressly designated as binding in writing.
2. The contract between CemeCon and Customer is concluded on CemeCon's acceptance of Customer's order. CemeCon shall send Customer a written order confirmation.

### III. Subject matter of contract

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CemeCon also markets and sells technical spare parts, accessories and expendable materials (hereinafter referred to as "Products").

2. The precise scope of the work and services to be performed results from the contracts concluded individually between CemeCon and Customer and/or from the order confirmations. This applies particularly to payment for the deliveries and services.

### IV. Deadlines for delivery and performance / Delivery

1. The deadlines indicated in the offer or order confirmation for delivery of the Products or performance of the services by CemeCon are non-binding target deadlines. These deadlines shall apply as binding deadlines only if they are expressly designated as such, but not prior to clarification of all necessary technical questions that arise in this context and provision of all documents, information, etc. to be procured by Customer.
2. The delivery deadline has been met if the Products have left the plant or readiness for delivery has been reported prior to expiration of the deadline.
3. If delivery of the Products or performance of the service by CemeCon is delayed due to circumstances that lie solely or very predominantly within Customer's scope of responsibility, the respective deadlines shall be reasonably extended by a period appropriate to the duration of these circumstances. The same shall apply to the occurrence of delays due to circumstances for which neither CemeCon nor Customer is responsible, in particular force majeure, acts of terrorism, official directives, etc.
4. If delivery of the Products is delayed due to circumstances for which Customer is responsible or if Customer is in default of acceptance, the latter shall compensate CemeCon for the resulting loss and additional expenditures. In this case Customer shall be charged, in particular, the costs incurred for storage each month – beginning with the month of notification of readiness for shipment.
5. If CemeCon cannot carry out the delivery or the contractual services on schedule, CemeCon shall inform Customer of this as soon as possible and at the same time explain the major reasons for the delay and indicate the expected duration of the delay.
6. The costs for transport and packaging shall be borne by Customer.

### V. Transfer of risk

1. The risk shall be transferred to Customer as of dispatch of the Products at the latest. This also applies if partial deliveries are made or CemeCon performs any other services.
2. If delivery is delayed due to circumstances for which Customer is responsible, the risk is transferred to Customer as of the date of readiness for shipment.

#### Commerzbank Aachen

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#### Amtsgericht Aachen, HRB 8716

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1. Among other things, CemeCon is involved in performing services in the technology sector and in connection with sales of technological products. CemeCon advises Customer with respect to the use of technological products. In particular
2. All payments and prices apply exclusive of VAT and, furthermore, in the case of delivery from or to foreign countries, exclusive of any charges and customs duties incurred.
3. If not otherwise agreed, the invoices shall be paid within 30 days net from the invoice date. The payment shall apply as effected at the time it is credited to CemeCon's account.
4. If several accounts receivable are due to CemeCon from Customer and Customer does not expressly designate his payment as settlement of the respective receivable, the incoming payment of Customer shall be allocated in accordance with Section 366 subsection 2 of the German Civil Code (BGB).
5. If Customer is more than three months in arrears with a payment, CemeCon shall have the right to cancel the contract after sending a reminder and expiration of a reasonable period and to demand compensation for the resulting loss. Furthermore, CemeCon shall be entitled to demand interest for arrears as from the due date. If the parties have not specified the respective interest rate, CemeCon shall have the right to demand interest to an amount of 8% p.a. above the respective base rate.

#### VII. Retention of title

1. CemeCon reserves title to the Products until all accounts receivable due from Customer have been settled. This shall also apply without special reference to all future deliveries.
2. In the event of actions on the part of Customer in breach of the contract, in particular in the case of delay of payment, CemeCon shall have the right to take back the Products after sending a reminder and Customer is required to hand over these Products.
3. Enforcement of the retention of title as well as attachment of the Products by CemeCon shall not apply as cancellation of the contract. Cancellation of the contract only exists if CemeCon declares this expressly.
4. Customer shall be required to treat the Products with proper care for the duration of the retention of title and to provide for any necessary maintenance or inspection work.
5. Customer shall have the right to resell the Products in the normal course of business. As of now, Customer assigns to CemeCon all accounts receivable from resale of the Products to the amount of the final invoice amount agreed with CemeCon (including VAT). This assignment shall apply regardless of whether the Products were sold before or after any processing. Customer shall remain entitled to collect the receivables even after this assignment, though CemeCon shall be at liberty to collect the receivables itself. However, CemeCon shall not collect the receivables until Customer fails to meet his contractual duties for payment.
6. Processing or modification of the Products subject to retention of title by Customer shall always be carried out on behalf and by order of CemeCon. This does not mean that Customer thus acquires title to the Products. Nevertheless, should retention of title expire due to any circumstances, the parties agree that title to the newly produced items shall be transferred to CemeCon, which accepts the transfer of title, when processing is carried out. Customer remains custodian without payment for this. If the Products are processed with items with a third-party title, CemeCon shall acquire co-ownership of the new items at the ratio of the objective value of the Products to the other processed objects at the time of processing. The same applies to the case of mixing. If the mixing of the items takes place in such a way that Customer's item can be regarded at the main

#### VI. Payment

1. Payment shall be based on the contractual agreements.  
  
item, the parties agree that Customer shall transfer to CemeCon co-ownership on a pro rata basis and keep the resulting title for CemeCon. To secure the accounts receivable of CemeCon, Customer shall assign the receivables to CemeCon that he has acquired through the combination of the reserved goods. CemeCon accepts the assignment.
7. In the case of access to the Products by third parties, particularly in the case of attachment of the Products or in the case that the mechanic's lien is exercised, Customer has to notify CemeCon immediately and point out the existing retention of title to the third party.

#### VIII. Material defects

CemeCon shall be responsible for ensuring that the work it has performed and Products it has delivered are free of material defects. The liability is based on the following provision:

1. Customer shall be required to inspect the work and services performed by CemeCon without delay, giving consideration to the former's inspection duties and requirements to give notice of defects due in accordance with Section 377 of the German Commercial Code (HGB) and to inform CemeCon promptly of any defects in writing.
2. Notwithstanding possible claims for damages or compensation of expenses, Customer shall have the following stipulated rights in the case of material defects:
  - Material defects shall be eliminated by CemeCon within a reasonable period (subsequent performance). This shall take place, at CemeCon's option, either through elimination of the defect (remedy of defect) or renewed performance of the work and services (new production).
  - If a significant material defect exists, Customer has the right to cancel the contract or reduce the payment. The prerequisite for exercising the right of cancellation is that Customer has previously set a reasonable deadline, coupled with a warning of rejection, for CemeCon to carry out subsequent performance and that this deadline has elapsed fruitlessly. Such a setting of a deadline with a warning of rejection is not required if subsequent performance fails because of a significant material defect, it is unreasonable for Customer or is rejected by CemeCon or this is justified for other reasons in consideration of the interests of both parties.
  - If subsequent performance fails because of an insignificant material defect, it is unreasonable for Customer or is rejected by CemeCon or this is justified in the case of an insignificant material defect for other reasons in consideration of the interests of both parties, Customer has the right to reduce payment.
  - Customer's right to elimination of the defect himself and to compensation for the expenditures necessary for this (Section 637 of the German Civil Code [BGB]) is expressly excluded.

#### IX. Liability

1. CemeCon shall be liable for compensatory damages according to the statutory provisions for personal injury and for damage in accordance with the Product Liability Act.

- CemeCon shall be liable according to the statutory provisions for damage that has been caused by malicious action as well as for damage that has been caused due to wilfulness or gross negligence on the part of the legal representatives or senior executives of CemeCon.
  - CemeCon shall be liable for compensatory damages limited to the amount of the foreseeable damage typical for the contract with respect to damage arising from a slightly negligent violation of major contractual or cardinal obligations (1<sup>st</sup> alternative) and with respect to damage that has been caused with gross negligence or intent by ordinary vicarious agents of CemeCon without violation of major contractual or cardinal obligations (2<sup>nd</sup> alternative).
  - Within the framework of the first alternative mentioned in subsection IX. 2., second bullet point, CemeCon shall not be liable for lost profit, indirect damage, consequential damage and claims of third parties, with the exception of claims arising from the violation of industrial property rights of third parties.
3. Contributory negligence on the part of Customer shall be set off by the amount of any claim for damages.
  4. Otherwise any liability on the part of CemeCon shall be excluded.
  5. Customer shall be required to give prompt written notice to CemeCon of any damage or allow CemeCon to record such damage in accordance with the above liability provisions in such a way that CemeCon is informed as early as possible and can possibly minimize the loss together with Customer.

#### X. Period of limitation

1. Provided the case does not involve malice, claims of Customer because of a material defect or defect in title in connection with the performance shall expire by limitation within one year, beginning with delivery of the Products. This shall also apply to claims arising from an unlawful act based on a defect.
2. Otherwise the statutory periods of limitation shall apply.

#### XI. Termination of the contract

1. The individually agreed contract between the parties shall end on delivery of the Products or expiration of the agreed term.
2. Both contracting parties shall have the right to extraordinary termination if the other contracting party respectively violates major contractual duties to a substantial degree.

2. Unless otherwise specified in a warranty assumed by CemeCon, the latter shall be liable for other damage exclusively in accordance with the following provisions:
3. After termination of the contract each of the parties must promptly return to the other party all technical documents, materials and tools provided by this other party in accordance with the contract as well as all copies that may exist in this connection.

#### XII. Setting-off, retention, assignment

1. Customer can set off or exercise a right of retention because of his own claims only if his claim has been legally established, is uncontested or has been legally recognized.
2. CemeCon shall have the right to assign its claims arising from the current business relations with Customer to a third party (Section 354 a German Commercial Code [HGB]). The parties agree that corresponding assignment exclusions in the general terms and conditions of Customer shall not apply.
3. The assignment of claims against CemeCon without CemeCon's written consent shall be excluded.

#### XIII. Final provisions

1. CemeCon reserves the right to amend these General Terms at any time. CemeCon shall notify Customer of the changes made in writing. Customer agrees to the change if he does not object to it in writing within a period of 14 days from the notice of the change. CemeCon shall inform Customer of this consequence in the notice.
2. Side agreements, amendments and additions to these General Terms must be in writing to obtain effect; the same shall apply to any rescission of this requirement of written form.
3. Should any provisions of these General Terms be or become invalid, this shall have no effect on the effectiveness of the other provisions. In this case the client shall be required to agree to a provision that most closely approximates to the purpose and business intention of the ineffective provision. This shall also apply to the closure of any loopholes or gaps in the provisions.
4. The place of performance is CemeCon's registered place of business.
5. The place of jurisdiction for any disputes arising from the contractual relationship is Aachen. However, CemeCon shall have the right to sue Customer at any other permissible place of jurisdiction.
6. The laws of Germany shall apply to all legal relations of the contracting parties. The UN Sales Convention of 11 April 1980 (Vienna CISD Convention) shall not be applicable.

Status as at: 6<sup>th</sup> January 2005

