



## **GENERAL TERMS AND CONDITIONS – CERONA GmbH**

### **1. Scope**

The following General Terms and Conditions apply to all products and services provided by CERONA GMBH (hereinafter referred to as 'Seller') including but not limited to the sale of exclusively used IT equipment, and to all future business relationships even in the absence of an explicit agreement to that effect. They apply solely to business persons with whom the Seller enters into a commercial relationship. Any conditions of the Buyer that contradict or deviate from these General Terms and Conditions will not be recognized unless their validity has been explicitly agreed in writing. These General Terms and Conditions of Sale also apply if the Seller supplies goods and/or services to the Buyer without reservation despite being aware of contradictory or divergent conditions provided by the Buyer.

### **2. Formation of Agreement**

2.1 The Seller shall submit a written offer for sale to the Buyer, to which the Seller shall be bound for a period of 14 days, in each case calculated from the date of dispatch of the offer. The acceptance of the offer by the Buyer shall be made by written confirmation from the Buyer. A contract shall come into existence upon dispatch of an order confirmation or proforma invoice by the Seller. The Seller's order confirmation/proforma invoice shall be effective without its signature.

2.2 Oral collateral agreements and assurances are not valid.

### **3. Prices**

3.1 Unless the confirmation/proforma invoice specifies otherwise, the prices are quoted net from the specified delivery/collection address. The Seller shall package the goods in packaging suitable for transportation.

3.2 The prices of the Seller do not include statutory VAT. VAT will be calculated at the rate applicable on the day of invoicing and shown separately on the invoice. VAT is due and payable to the Seller unless the Buyer presents confirmation of export to the Seller. If the Buyer presents the export certificate to the Seller after payment of VAT, the Seller shall refund the VAT to the Buyer.

### **4. Payment Terms, ex-Works (EXW) as per Incoterms 2020, Terms of Transfer, Default by the Buyer**

4.1 The purchase price is payable immediately via bank transfer and in full. Payment of the invoice must be made from a business bank account of the Buyer in the form of a SEPA credit transfer, which is mandatory for Buyers domiciled within the SEPA area. For Buyers outside the SEPA zone, the payment order type of the respective bank must contain all the Buyer's business bank account information (in particular account number and name of the bank, or IBAN and BIC, as well as name or correct company name of the Buyer).

4.2 Unless otherwise agreed, the equipment detailed in the purchase agreement is sold ex works (EXW) in accordance with Incoterms 2020 from the specified delivery/collection address.

4.3 The goods will not be dispatched or collected until the entire purchase price amount has been deposited into the Seller's account or until the Seller has received confirmation from the bank executing the transaction that the transfer has been requested and carried out in full. If the Buyer is in default of payment, the Seller reserves the right to charge default interest at the statutory rate. The Seller reserves the right to claim for higher losses or damages as a result of the default if they can be proven. The rights afforded by clause 8 remain unaffected. The Seller reserves the right to make additional claims.

4.4 The Seller shall notify the Buyer in writing of the date on which the equipment will be available for collection (availability date). If the Buyer is in default of acceptance or culpably breaches other obligations to cooperate, the Seller shall be entitled to assert the rights set out in clause 8. The Seller reserves the right to assert further claims.

4.5 If requested by the Buyer, the Seller can – without being obliged to do so and at the Buyer's expense – send the equipment to an address specified by the Buyer.

4.6 The Buyer is only entitled to exercise a right of set-off if its counterclaims have been confirmed by a non-appealable court decision or are uncontested or recognized by the Seller. The Buyer is entitled to exercise rights of retention only in respect of receivables arising from the same legal relationship that are uncontested or have been confirmed by a non-appealable court decision.

## **5. Partial Deliveries**

The Seller is entitled to make partial deliveries but will only do so if payment is received in advance.

## **6. Intra-Community Deliveries (Entry Certificate)**

6.1 For deliveries made from the Federal Republic of Germany to other countries within the European Community (intra-Community deliveries), the Seller will not add VAT to the amount charged to the Buyer insofar as the deliveries are exempt from VAT under the German Value Added Tax Act. Upon Seller's request, Buyer shall cooperate in the issuance of the necessary proofs of delivery and other documents required for the proof of VAT exemption according to the German VAT Act. The Buyer shall in particular confirm to the Seller upon first request the receipt or arrival of the goods in the area of the EC outside of Germany (confirmation of arrival) as proof of a tax-exempt intra-Community delivery. The Entry Certificate will be produced by the Seller for every delivery and made available to the Buyer who will inspect it and confirm to the Seller that it is correct.

6.2 The Buyer shall without being requested to do so, notify the Seller of its VAT identification number and, if applicable, any changes thereto and shall provide the Seller with information on its status as an entrepreneur, the use and transport of the delivered goods and its statistical reporting obligation.

6.3 If the Buyer fails to provide some or all of the necessary information/documents described in clauses 6.1 and 6.2 it shall be liable for any resulting losses, expenses and costs incurred by the Seller, especially German VAT and any additional charges.

6.4 The Seller shall not be liable for the consequences of defective or completely omitted information provided by the Buyer, except in cases of intent or gross negligence on the part of the Seller.

## **7. Export**

7.1 The Buyer is responsible for obtaining any necessary export licenses unless the Seller is required to do so by statute or by a final, non-appealable administrative decision or court ruling. If the Seller is responsible for obtaining the license(s), the Buyer shall provide to the extent required.

7.2 The Buyer assures that it will not export or re-export the goods acquired from the Seller to any person, organization, institution, or to any country directly or indirectly subject to an embargo in respect of such goods as being imposed and currently enforced by the German Federal Office of Economics and Export Control (BAFA) and the European Union.

## **8. Withdrawal and Compensation**

8.1 The Seller reserves the right to withdraw from the contract in the following instances without prejudice to any of its other rights:

- a) If the Buyer does not pay the purchase price within 14 days of the dispatch date of the order confirmation/proforma invoice, or if no bank confirmation of a completed payment transfer is provided within this period.
- b) If, in the case of clause 4.4, the Buyer has not fully taken receipt of the goods within 14 days of the availability date notified in writing.
- c) If the Buyer acts contrary to the assurance provided in clause 7.2 or is in breach of its obligation to cooperate as per clause 7.1 sentence 2.

8.2 The Buyer shall compensate the Seller for any loss incurred, including, but not limited to, any profit lost, as a result of the equipment being sold at a lower purchase price. The Buyer shall furthermore be liable for the costs of storing the equipment until such time

as it is remarketed and collected. These costs to be charged at the rate of €1.00 per day per pallet plus a one-off administration charge of €75.00 per order. If the Buyer fails to collect the equipment, the same storage costs will be charged to the Buyer until it is collected.

8.3 The Buyer reserves the right to produce proof of lesser loss.

## **9. Transfer of Risk**

Risk passes to the Buyer when the object of purchase is collected or, in the circumstances provided for in clause 4.5, transferred to the haulage operator. Insofar as the circumstances described in clause 4.4 apply, the risk of accidental destruction or accidental deterioration of the object of purchase will pass to the Buyer as soon as it defaults on acceptance of or payment for the object of purchase. The Buyer is liable for all transport-related costs and risks from the moment of the transfer of risk. These costs include, but are not limited to, transport costs, customs and public charges, taxes and other public charges, costs for customs formalities for import and export, insurance, and costs for loss, damage, delays, etc.

## **10. Warranty and Guarantee**

10.1 The goods being sold are used equipment for which all warranties are excluded. The Seller provides no guarantees of quality or durability. The Seller assumes no liability for the compatibility of the various equipment and components with one another. This also applies to the compatibility of the supplied equipment with equipment already existing at the Buyer's premises.

10.2 Claims under any guarantee must be made exclusively in writing and at the Buyer's expense.

10.3 Any potential guarantee of the Seller under clause excludes all batteries and consumables in any case.

10.4 Unless explicitly specified in the purchase agreement, software, manuals, accessories, and technical support services are not included in the sale. If software is included in the delivery, the Buyer will be granted usage rights to the software. Copying, transferring, or reselling the software is only permitted with the consent or prior authorization of the rights holder. The Buyer undertakes in particular to observe and comply with the usage and licensing conditions of the respective manufacturers/providers. In the event of a breach of these usage rights, the Buyer shall be fully liable for any resulting damage.

## **11. Liability**

11.1 The Seller will be liable in accordance with statutory provisions for claims for compensation brought by the Buyer on the grounds of intent or gross negligence, including the intent or gross negligence of the Seller's agents or representatives. Insofar as the Seller is not accused of deliberate breach of contract, liability for damages will be limited to foreseeable and typical loss.

11.2 Liability for loss arising from death or bodily harm, where fault exists on the part of the Seller, remains unaffected. Mandatory liability under the terms of the German Product Liability Act also remains unaffected. The Seller shall also be liable under other statutory provisions if it is culpably in breach of a material contractual obligation, although in such a case liability for damages is limited to typical and foreseeable loss.

11.3 Any liability for damages that exceeds liability provided for in clauses 11.1 and 11.2 is hereby excluded, regardless of the legal grounds on which the claim is brought. This shall especially apply to claims for damages arising from culpa in contrahendo or from other derelictions of duty, or tortious claims for compensation for damage to property.

11.4 The exclusion or limitation of the Seller's liability to the Buyer for damages shall also apply to the personal liability of the Seller's employees, staff, representatives, and agents.

11.5 The Seller shall not be liable to the Buyer for any failure to perform the contract or for any default where the failure or default are caused by natural disasters, fire, flood, acts of war, strikes, industrial disputes, non-delivery or late delivery of accessories, or state or official interventions or regulations.

## **12. Reservation of Title**

The Seller retains ownership of the object of sale until receipt of all payments arising from the business relationship with the Buyer.

## **13. Applicable Law, Place of Jurisdiction, Place of Performance, and Partial Invalidity**

13.1 These General Terms and Conditions and all legal relations arising between the Seller and the Buyer are governed by the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods (CISG) will not apply in any circumstances.

13.2 If the Buyer is a general merchant (Vollkaufmann) or a legal entity incorporated under public law or a special-purpose entity organized under public law, the place of jurisdiction for all disputes will be Tübingen, Germany. The same place of jurisdiction applies if the Buyer does not have a general place of jurisdiction within the Federal Republic of Germany or its domicile or usual place of residence is moved abroad after the contract has been formed or is unknown at the time of the institution of proceedings. This does not affect the Seller's right to bring a claim against the Buyer in the court of the Buyer's place of residence.

13.3 The place of performance is Tübingen, Germany.

13.4 Should individual provisions of these General Terms and Conditions or of other agreements be or become partly or wholly invalid, this will not affect the validity of the other provisions or agreements. The same applies in the event of a gap in the contract. In the place of the invalid provisions, agreements or gaps, an appropriate provision shall be substituted that shall insofar as possible by law reflect what the parties intended or would have intended had they been aware of the invalidity or gap.