

General Terms and Conditions of GENEREX SYSTEMS Computervertriebsgesellschaft mbH

§ 1 Validity

- (1) The following terms and conditions apply exclusively for all deliveries, services and offers made by GENEREX SYSTEMS Computer Vertriebsgesellschaft mbH (hereinafter: GENEREX). They are an integral part of all contracts, which GENEREX enters into with his contracted partners (hereinafter: buyer) concerning any and all deliveries and services. They are also valid for all future deliveries, services and offers to the buyer, even if they are not agreed again separately.
- (2) General terms and conditions of the buyer or third parties do not apply, regardless of whether or not GENEREX expressly object to them in a particular case. Even if GENEREX refers to correspondence which contains terms and conditions of the buyer or of third parties or makes mention of such, this does not suggest any agreement to the validity of such terms and conditions.

§ 2 Offer and conclusion of contract

- (1) All offers from GENEREX are subject to change and non-binding, insofar as not expressly declared as binding or contain a specific term of acceptance. Any orders or commissions may be accepted by GENEREX within fourteen days after receipt.
- (2) Exclusively applicable for the privity of contract between GENEREX and the buyer is the concluded contract, including these general terms and conditions. This fully reflects all agreements between the contracting parties on the object of the contract. Oral promises by GENEREX before the conclusion of this contract are not legally binding, unless it is expressly stated therein that they will continue to be binding in each case.
- (3) Any amendments to or changes of the agreements made, including the present general terms and conditions, require written form to become effective. With the exception of managing directors and authorised company officers, the employees of GENEREX are not entitled to make any oral agreements that deviate from these conditions. To comply with the written form, transmission by fax is sufficient; otherwise transmission by means of telecommunications, in particular e-mail, is not sufficient.
- (4) Information from GENEREX on the object of the supply or service (e.g. weight, dimensions, practical value, capacity, tolerances and technical data) as well as the representations of the same (e.g. drawings and illustrations) are only approximately applicable, unless its applicability for the purpose contractually envisaged requires precise conformity. These are not guaranteed characteristics but descriptions or identifications of the supply or service. Differences which are customary in the trade, which are the result of legal provisions or which represent technical improvements, as well as the replacement of components by parts of equivalent value, are permissible in so far as they do not detract from the applicability for the purpose contractually envisaged.
- (5) GENEREX retains the ownership or copyright for all offers and cost estimates issued by him as well as drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and resources made available to the buyer. Without the express agreement of GENEREX, the buyer may not make these objects, or the content of them, accessible to third parties or make them known to third parties, or have them used or reproduced, either by himself or by third parties. On request by GENEREX he must return these objects to him in their entirety and, where applicable, destroy any copies made of them, if they are no longer needed by him in the proper course of business or if negotiations do not result in the conclusion of a contract.

§ 3 Price and payment

- (1) Prices are valid for the scope of supply and performance stated in the order confirmation. Additional or special services will be calculated separately. Prices are given in EUROS ex works plus packaging, legal value added tax, customs for export deliveries plus duties and other official charges.
- (2) In so far as the prices agreed are based on GENEREX list prices and delivery is not to be made until more than four months after the conclusion of the contract, GENEREX list prices valid at the time of delivery apply (in each case minus an agreed percentage or fixed discount).
- (3) Invoiced sums are to be paid in full within thirty days, unless an agreement has been made otherwise in writing. Authoritative shall be the date of receipt by GENEREX. Cheques will be valid payment after being cashed. If the buyer does not pay by the due date, then interest will be charged on the outstanding amounts at a rate of 5 % p. a. as from the due date; the application of higher interest rate and additional damages in case of late payment remains unaffected.
- (4) Setting off counterclaims of the buyer or retention of payments because of those claims is only permissible for the buyer if the claims are indisputable or legally binding.
- (5) GENEREX is entitled only to make deliveries or provide services against prior payment or deposit if, after the conclusion of the contract, circumstances become known to him which are of a nature to considerably reduce the buyer's credit worthiness and on account of which the payment of GENEREX outstanding demands from the relevant contractual relations (including those from other individual orders for which the same framework contract applies) is put at risk.

§ 4 Supply and delivery time

- (1) Terms and deadlines announced by GENEREX in advance are always only approximate unless a fixed term or a fixed deadline is expressly promised or agreed. In so far as shipment has been agreed, delivery terms and delivery deadlines relate to the point of handover to the forwarding agent, freight carrier or other third party commissioned for the transport.
- (2) GENEREX is authorized - without limiting his further rights of delay of the buyer - demand a prolongation of delivery and performance period from the buyer for the period, the buyer does not fulfil his contractual obligations.
- (3) GENEREX is not liable for impossibility of delivery or for delays in delivery where these are caused by force majeure or other circumstances not foreseen at the time of conclusion of the contract (e.g. operating disruptions of all kinds, difficulties in procuring materials or power, transport delays, strikes, lawful lockouts, workforce, energy or raw materials shortages, difficulties in procuring necessary official approvals, official measures or non-delivery or incorrect or late delivery by suppliers), for which the GENEREX is not responsible. In the event of such circumstances significantly complicating the supply of goods or services by GENEREX, or rendering this impossible, and where the hindrance is not only of temporary nature, then GENEREX shall be entitled to withdraw from the contract. In the case of hindrances of temporary nature the delivery period shall be extended or postponed by the time period of the hindrance, plus a reasonable warm-up period. If, as a consequence of the delay, the buyer cannot be expected to accept the delivery of goods or services, then he may withdraw from the contract with a prompt, written declaration to GENEREX.
- (4) GENEREX is only entitled to make part deliveries if
 - the part delivery is usable by the buyer in the context of the contractual intended use,
 - the delivery of the rest of the goods ordered is ensured and
 - partial delivery causes no extensive additional expenditure or additional costs for the buyer (except the buyer intends to bear these costs).
- (5) In the case GENEREX is behind the schedule with delivery or service, or delivery or service becomes impossible, independent from the reason, liability of GENEREX is limited according to § 8 of these general terms and conditions.

§ 5 Place of fulfilment, Dispatch, Packaging, Passing of risk, Acceptance

- (1) The place of fulfilment for all obligations from the contractual relationship is the registered office of GENEREX in Hamburg, Germany, as far as no other place is determined. Should GENEREX also be responsible for the installation, the place of fulfilment is the location at which the installation takes place.
- (2) The mode of dispatch and packaging are subject to the dutiful discretion of GENEREX.
- (3) At the latest, the transfer of risks to the buyer occurs with the handover of the object of delivery (whereby the commencement of the loading process is decisive) to the forwarding agent, freight carrier or other third party specified for carrying out the dispatch. This also applies if part deliveries are made or GENEREX has taken on other services (e.g. dispatch or installation). If dispatch or handover is delayed due to circumstances whose cause lies with the buyer, the transfer of risks to the buyer takes place on the day when GENEREX is ready for dispatch and has notified this to the buyer.
- (4) Storage costs after the transfer of risk will be borne by the buyer. In case of storage by GENEREX, the storage costs amount to 0.25 % of the invoice amount of the objects of supply to be stored per week of elapsed time. The right to claim for additional storage costs or request proof of lower storage costs remains reserved.
- (5) Any goods are insured by GENEREX against theft, breakage, transport, fire and water damage or other insurable risks upon express request by the buyer and on his own account.
- (6) In so far that an acceptance needs to take place, the delivery item is to be seen as legally accepted, if
 - the delivery, and in the case of installation, the installation is complete,
 - GENEREX has informed the buyer by noting the friction of acceptance according to this § 5 (6) and GENEREX has required the buyers' acceptance,
 - Twelve days have passed since the delivery or installation and the buyer has begun to use the delivered items (e.g. the delivered facility has been put into operation or the delivered products have been used) and in such a case if six days have passed since the delivery or installation and,
 - the buyer failed to accept within this period of time for a different reason than a defect notified toward GENEREX which makes a use of the item impossible or considerably impairs such use.

§ 6 Warranty

- (1) The warranty period are 24 months from date of delivery.
- (2) The delivered goods have to be accurately inspected immediately after delivery to the buyer or to a third party appointed by same. The products are considered to have been accepted if GENEREX are not notified of a defect concerning manifest defects or other defects identifiable with a careful inspection straight away following delivery within seven workdays from the delivery of the items supplied, or otherwise GENEREX should receive notification of a defect by the method specified in § 2 (3) S. 3 above within seven workdays of the discovery of the default or from the point in time at which the buyer should have been able to identify the defect given normal use of the supplied item without subjecting it to a detailed inspection. Upon request, the supplied item about which a complaint has been made is to be returned to GENEREX carriage-free. If the claimed defects are legitimate GENEREX will reimburse the buyer of any transport costs up to an amount of the least expensive dispatch route; this does not apply if transport costs are higher because the delivery was not at the contractually agreed place.

- (3) In the case of material defects of the delivered goods GENEREX may choose, within an acceptable period of time, whether he wishes to complete a replacement delivery or improve the delivered goods. In case this remedy or new delivery fails due to impossibility, unreasonableness and refusal or due to an unreasonable delay of remedy or replacement delivery for the buyer he is allowed to withdraw from the contract or to reasonably reduce the price.
- (4) If a defect is the responsibility of GENEREX the buyer can, in case of premises according to § 8, claim for damages.
- (5) If the defect is found in a part from another manufacturers, which GENEREX cannot deal with due to licensing rights or for other reasons, GENEREX will either claim warranty rights against the manufacturers for the account of the buyer or will recede his rights to do so to the buyer. Warranty claims against GENEREX exist with these described defects under normal circumstances and under these general terms and conditions only if claims made legally and directly to the manufacturer were unsuccessful, or were futile for instance due to a bankruptcy. During the legal dispute the expiry of period of limitation concerning the warranty rights will be suspended.
- (6) The warranty does not apply if the buyer alters the delivered product or allows the product to be altered by a third party without the permission of GENEREX and in so doing makes the repair of defects difficult or impossible. In such a case the buyer must bear the additional cost of improvement of the product.
- (7) Delivery of used products as agreed in individual cases with the ordering party shall exclude all and any guarantee for material defects.

§ 7 Industrial Property Rights

- (1) Under § 7 GENEREX vouches for his products and his responsible to ensure that his deliveries do not affect the industrial property rights or trademark rights of any third party. Each contract partner will inform the other partner in writing without delay should any demands be made upon them due to the infringement of any of these rights.
- (2) Should a product infringe on any industrial property rights or copyrights of a third party then GENEREX may choose whether he wishes to alter or exchange the products, at his cost, so that the rights of a third party are no longer affected. In this case the products must still fulfill the contractually agreed functions. Alternatively GENEREX may reach a licensing agreement enabling the buyer to the usage rights. If GENEREX does not succeed in doing this within an acceptable period of time, the buyer is authorised to withdraw from the contract or to reasonably reduce the agreed price. Any claims by the buyer for damages are subject to the limitations of § 8 of these general terms and conditions.
- (3) If products delivered by GENEREX but produced by another manufacturer cause rights violation GENEREX may choose whether to assert his rights against the manufacturer and subcontractors for the account of the buyer or whether he wants to cede his rights to the buyer. In this case claims against GENEREX only apply within the boundaries of § 7 if legal implementation of the afore mentioned claims against the manufacturer were unsuccessful or futile, due to e.g. an insolvency.

§ 8 Liability for compensations caused by fault

- (1) Liability of GENEREX for compensation, irrespective of legal basis, especially of impossibility, delay, insufficient or wrong delivery, breach of contract, breach of duties during contract negotiations and any unlawful act, is limited to the regulations to this § 8 as far as default is required.
- (2) GENEREX is not liable in case of simple negligence of its organs, legal representatives, employees or other assistants, as long as the violation does not refer to essential contractual obligations. Essential contractual obligations are the obligation for punctual, free from defects delivery and installations as well as consulting-, protection- and care obligations which shall enable the contractual usability of the goods to the buyer or have the purpose to provide protection of physical condition or life of personnel of the buyer or property of the buyer against considerable damage.
- (3) In so far as GENEREX is liable for damages on the grounds of and in accordance with § 8 (2), this liability is limited to damage which GENEREX has foreseen when concluding the contract as a possible consequence of a contractual infringement or which, by applying due care and attention, he should have foreseen. Furthermore, indirect damage and consequential damage resulting from defects in the item supplied are only subject to compensation in so far as such damage is typically to be expected when using the item supplied as stipulated.
- (4) In the event of liability for simple negligence, the obligation of GENEREX to make compensation for property damage and personal injury is limited to an amount of EUR 3 million per claim (corresponding to the current cover sum the business liability insurance), even if this is a case of infringement of obligations essential to the contract.
- (5) The previous exclusions and limitations of liability apply on the same scale in favour for the organs, legal representatives, employees or other assistants of GENEREX.
- (6) If GENEREX provides technical advice or support over and above the agreed service level, he does not charge for and any liability claims are excluded.
- (7) The limitations of § 8 do not apply for the liability of GENEREX against intentional acts, for guaranteed product characteristics, against damage to life, body or health or according to the product liability act.

§ 9 Reservation of proprietary rights

- (1) The following agreed reservation of property rights is the basis for the security of all present and future financial claims of GENEREX against the buyer according to the contractual agreement between the two parties (including payment balance requests on a current account limited to this delivery agreement).
- (2) All products delivered to the buyer remain the property of GENEREX until complete payment of all accounts has been made. All goods to which the reservation of property rights applies will now be referred to as reserved property.
- (3) The buyer stores products which are considered to be reserved property at no cost.
- (4) The buyer may process and sale the reserved property in his usual business processes (paragraph 9). The buyer is not entitled to pledge or assign the reserved property as a security.
- (5) Should the reserved property be processed by the buyer it is agreed that this happens in the name and for account of GENEREX as manufacturer and that GENEREX acquires ownership in the new products or co-ownership in the new products in proportion to the value of his reserved property. Should there be no acquisition of property by GENEREX in the above mentioned manner the buyer transfers his future ownership or co-ownership of the new products as a security to the supplier. If the reserved property is processed in such a way that it can no longer be separated from the newly produced product then the buyer transfers his co-ownership (as long as the main part of the product belongs to him) in proportion to the value of the reserved property to GENEREX.
- (6) In case of selling-on the reserved property the buyer assigns the resulting claims against the purchaser of the reserved property or in case of co-ownership his share of co-ownership to GENEREX. The same applies to other receivables that are connected to the reserved property (i.e. insurance claims). The buyer authorizes GENEREX precariously to collect the assigned receivables in his own name and to his own account. GENEREX may only revoke this authorisation for collection in case of realisation.
- (7) Should a third party seize the reserved property, especially through garnishment, the buyer is obliged to inform the third party about the reserved property status immediately and inform further GENEREX about this, to enable him to assert his ownership rights. Should the third party not be in a position to reimburse GENEREX of any judicial or extra judicial costs then the buyer is liable to bear these costs.
- (8) GENEREX will release to him assigned rights on demand at his own choice if the value of the secured rights will exceed the value of the reserved property by more than 50 %.
- (9) Should GENEREX withdraw from a contract due to a breach of contract on behalf of the buyer, particularly with regard to delayed payment, then he is entitled to demand the return of his reserved property.

§ 10 Other terms

- (1) GENEREX reserves the right to attach company texts, company logo, or company identification number to all deliveries in line with corresponding regulations.
- (2) The buyer may process and sale the delivered products. The buyer is not entitled to reproduce software products and user manuals. This also applies for demonstration products.
- (3) A manipulation of goods, such as the removing the brand name, trademark, serial- and device numbers, special tags and labels is prohibited. This does not apply for OEM versions of GENEREX products, as far as the customer respects the copyright laws and the branding of the products or accessories by GENEREX.

§ 11 Final clause

- (1) As far as the buyer is a registered trader, a corporate body under public law or a special fund under public law or has no residence in the Federal Republic of Germany, the court jurisdiction for any possibly disputes arising from the business connections between GENEREX and the buyer according to GENEREX choice is Hamburg or the domicile of the buyer. For any legal proceedings against GENEREX the exclusive court of jurisdiction is Hamburg. Imperative laws concerning exclusive courts of jurisdiction remain unaffected by this regulation.
- (2) The contractual agreement between the supplier and the buyer are subject solely to the law of the Federal Republic of Germany. The UN Convention on contracts for the International Sale of goods (CISG) from 11 April 1980 does not apply.
- (3) Should the contract or these general terms and conditions contain any loopholes, the lawful effective regulations are classed as applying which the contract partners would have agreed upon to fulfil the contract economically, and to fulfil the stipulations of these general terms and conditions had they been aware of any loopholes.
- (4) This general terms and conditions are executed in the German and English languages. In the event of any inconsistencies, the German version shall prevail.

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