

# General Terms and Conditions of Supply and Payment (GTS) of DACOM West GmbH as of April 2014

## NOTICE

*This is a translated version from the original German document and is therefore legally not binding. If there are any differences between the understanding of these GTC and the German original version of "Allgemeine Liefer- und Zahlungsbedingungen", the latter prevails and is controlling. The German original can be downloaded under:*

[http://www.dacomwest.de/fileadmin/Dacom/Dokumente/Dacom/alb\\_2014\\_04.pdf](http://www.dacomwest.de/fileadmin/Dacom/Dokumente/Dacom/alb_2014_04.pdf)

### I. Application of GTS, written form

1. Exclusively these General Terms and Conditions of Supply and Payment (GTS) apply to all business transactions between us and the buyer, principal or customer, hereinafter called the Customer, in supplementation of the other contractual agreements made. We do not recognise differing customer terms, even if we render performance or accept payment without reservation, unless we expressly agree to the application of such terms in writing.
2. These GTS only apply to business transactions with entrepreneurs as defined in Section 14 of the German Civil Code [BGB].
3. Without any renewed reference being required, these GTS also apply to all future business relations until we draw up new GTS.
4. So that documentation is available, all agreements made between us and the Customer in the course of contractual negotiations must be recorded in writing and confirmed by both parties.

### II. Advisory services

1. Our advisory services in the form of product- and performance-related consultation refer exclusively to the products we supply and services we render.  
They do not include advisory services unrelated to the contract, i.e. statements made without any products being sold or services rendered by us.
2. Our advisory services are based on empirical values. A failure to make statements does not constitute advice.
3. The Customer must himself review the suitability of the products for his area of application.

### III. Conclusion of contract

1. Our offers are without commitment and represent a request to make an offer.
2. The first processing of an offer is usually free of charge. Further offers and design work are only free of charge insofar as the contract becomes and remains effective.
3. Descriptions and photographs of our goods and products in technical documents, catalogues, brochures, circulars, advertisements and price lists are not binding if they are not expressly incorporated into the contract; they do not exempt the Customer from carrying out his own tests.
4. The order placed by the Customer shall always represent the offer for conclusion of a contract. We will accept the order within 4 weeks if no other period of acceptance has been agreed.
5. All data on performance of the order is to be included in the order. This applies to all supplies, services, work performance or other performance we may render. Such data includes but does not exclusively comprise the following: data on the name of the article(s), quantity, measurements, material, material composition, pretreatments, processing specifications, treatment regulations, storage, standards and all other technical parameters and physical characteristics. Missing, incorrect or incomplete data will be deemed expressly not agreed and does not constitute the basis for any obligations on our part, whether relating to performance and warranty claims or to damages claims.
6. If the order placed by the Customer differs from our offer, the Customer must mark the differences individually.
7. We have the right to obtain further information which serves the proper performance of the order.
8. Orders should be placed in writing or electronically (EDI); any orders placed orally or by telephone will be performed at the Customer's risk.
9. In cases in which cancellation of an order is not ruled out from the onset, we have the right – without prejudice to the option of claiming actual higher damages – to charge 10% of the price of supplies or services for the costs incurred for the processing of the order and for the loss of profit, if the Customer withdraws an order already accepted by us. The Customer has the right to provide evidence of lesser damages.
10. Our services are shown in the confirmation of order.

### IV. On-call orders

Components to which no specific time schedule applies will be identified as on-call. The term of on-call orders is limited to a maximum of 12 months. After 12 months, any residual quantities will automatically be delivered at the risk and expense of the Customer and invoiced.

### V. Modifications, deviations, partial deliveries

1. A separate contractual agreement is required for any modifications of the ordered items or services desired after conclusion of the contract.
2. If information is not provided or is incorrect, we reserve the right to modify the ordered item or service appropriately. Any detriment due to a lack of or incorrect information, in particular additional costs or losses, will be the responsibility of the Customer.
3. The right is reserved to make technical modifications to the ordered item or service if they do not jeopardise the contractual target, in particular modifications which produce a technical improvement to the ordered item or service.
4. Quantity differences as customary in the industrial sector are permitted.
5. Partial deliveries or partial services are permitted and can be invoiced separately.

### VI. Delivery period

1. If a period for delivery or for the rendering of the service has been agreed, this will begin upon dispatch of our confirmation of order but not before complete clarification of all details of the order and due fulfilment of all the Customer's co-operation obligations; the same applies accordingly to any delivery or performance dates.
2. If modifications to the subject of the order are jointly agreed, delivery or performance periods and delivery or performance dates are to be agreed anew.  
This also applies if new negotiations relating to the subject of the order were held after the contract had been concluded but no modifications made to the subject of the order.
3. Delivery or performance periods and delivery or performance dates are subject to the reservation of non-defective and on-time prior delivery to the company and unforeseeable disruptions to production.
4. The delivery or performance period is considered to have been observed if, before said period expires, the subject of the order has left our works or has been handed over in our works to the commissioned forwarding company or we have given notice of readiness for collection.
5. We have the right to provide the agreed delivery or service before the agreed time.

### VII. Delay in acceptance or delivery

1. If the Customer fails to accept the goods on the agreed delivery date or, respectively, at the end of the agreed delivery period, due to circumstances for which he is responsible, we have the right to require compensation for the additional expenses which we incur as a result.  
In particular, we are entitled to charge the Customer storage costs of 0.5%, but totalling no more than 5% of the price of supply or performance, for every month or part of a month. The parties to the contract have the right to prove evidence of higher or lower storage costs.
2. We are also authorised to specify a suitable place of storage at the cost and risk of the Customer and to insure the ordered items at said Customer's expense.
3. If we have the right to require damages instead of performance, we may – without prejudice to the option of claiming actual higher damages – require 15% of our price in damages, if the Customer does not provide evidence that no damages have been incurred at all or that damages are significantly lower than the above flat rate.
4. In the event of a delay in delivery, the Customer only has the right to rescind the part of the order with which we are in default and can only do so after we have been notified of this threat of rescission and allowed a reasonable period of grace.

### VIII. Force majeure

In cases of force majeure, our delivery and performance periods will be extended by the length of the disruption occurring. Force majeure includes, but does not exclusively comprise, circumstances for which we are not responsible, such as war, fire damage, strikes, lock-outs, traffic disruptions, orders of higher authorities, operational stoppages or major operational disruptions, such as a lack

of material or energy, if such circumstances occur at our facilities or at those of commissioned sub-contractors or sub-suppliers. This also applies if we were already in default when such circumstances occurred.

We will notify the Customer immediately of the beginning and end of such hindrances.

If delivery or performance is delayed by more than six weeks, both the Customer and we ourselves have the right to rescind the contract in relation to the scope of performance affected by the disruption. To this extent, the contracting parties have no claim to compensation.

#### **IX. Prices, terms of payment**

1. Insofar as nothing has been agreed to the contrary, all prices are quoted in euros net "ex works" excluding statutory value-added tax, which will be added at the rate applicable at the time of invoicing. Subsidiary costs, such as packaging, freight, shipment costs, customs, assembly, insurance and bank charges, will be invoiced separately.

We will only take out insurance for the goods being shipped at the request and expense of the Customer.

2. We have the right to adjust the agreed price appropriately if cost increases, in particular as a result of changes in material prices, occur after conclusion of the contract. On request, we will furnish the Customer with evidence of the change in costs.

3. We have the right to adjust the agreed price appropriately if modifications result before or during performance of the order due to the data and documents provided by the Customer having been incorrect or if modifications are otherwise requested by said Customer.

4. We have the right to require a reasonable advance payment upon conclusion of the contract. No interest will be paid on such an advance payment.

5. Insofar as nothing has been agreed to the contrary, invoices will be payable net within 30 days of the date of the invoice. They are to be paid without any deductions. If the Customer fails to make payment, he will be in default as of the time at which the invoice was due, without any further reminder being required.

Discounts and reductions will only be granted by special agreement.

Partial payments are subject to separate written agreement.

6. Settlement by bill of exchange is subject to separate prior agreement. The Customer will pay the discount charges and costs of the bill of exchange. Settlement of invoices by a bill of exchange or cheque is only deemed to be on account of performance and is not considered as payment until credited without any reservations.

7. If we have several outstanding claims against the Customer and payments by the Customer are not assigned to a certain claim, we have the right to stipulate to which of the outstanding claims the payment is to be credited.

8. In the event of delay in payment, deferment of payment or partial payment, we are entitled to charge default interest at a customary bank rate but no less than 8 percentage points p.a. above the then applicable basic interest rate. We may also withhold further performance until settlement of all due invoices. Evidence of higher default damages can be provided.

9. By placing the order, the Customer confirms his solvency or, respectively, his sound credit standing.

In the event of justified doubts about the solvency or credit standing of the Customer or if an application is filed for the opening of insolvency proceedings relating to the Customer's assets, we have the right to require advance payment or suitable security for the payment to be made by the Customer. If the Customer is not willing to make advance payment or furnish security, we have the right to rescind these contracts after allowing a reasonable period of grace and to claim damages for non-performance.

10. The Customer may only offset his counter-claims against our claims if such counter-claims are undisputed by us or have been confirmed in a final form by a court of law.

The assignment of claims held against us is subject to our consent.

11. The Customer only holds a right of retention if his counter-claim is based on the same contractual relationship and has been recognised or confirmed in a final form by a court of law or if we have committed a major breach of our obligations under the same contractual relationship, despite being sent a written caution, and have not offered any appropriate security.

If a product we have supplied or service we have rendered is undisputedly defective, the Customer only has the right to withhold payment to the extent that the withheld amount is in reasonable proportion to the defects and the anticipated costs of remedying the defects.

12. The payment dates shall also continue to apply if there are delays in delivery for which we are not responsible.

13. If no value-added tax is included in our invoice, in particular because we have assumed "an intra-community delivery" pursuant to Section 4 no. 1 b in conjunction with Section 6 a of the German Turn-Over Tax Act [UStG] in accordance with the data provided by the Customer, and we are then subsequently required to pay value-added tax (Section 6 a IV UStG), the Customer will have an obligation to pay to us the amount which we have been charged. This obligation applies irrespective of whether we are subsequently required

to pay value-added tax, import turn-over tax or comparable taxes at home or abroad.

#### **X. Place of fulfilment, acceptance, passage of risk, packaging**

1. The place of fulfilment for the services ordered and for payment is our seat of business in Haan.

2. If shipment has been agreed, the risk of the destruction, loss or damaging of the goods passes to the Customer upon dispatch of the goods or hand-over to the forwarding company.

If shipment or delivery is delayed due to the behaviour of the Customer, the risk will pass to the Customer as of the day of readiness for shipment.

3. The Customer has an obligation to perform acceptance as soon as we notify him of completion of the items or services ordered.

If the Customer fails to accept the items or services within two weeks of notification, acceptance will be deemed performed.

4. If no other agreement has been made, we will decide on the type and size of packaging. The Customer is responsible for disposing of non-returnable packaging.

5. If shipment is made in returnable packaging, it must be returned carriage paid within 30 days of receipt of the delivery. The Customer is responsible for any loss of or damage to returnable packaging.

Returnable packaging is not to be used for other purposes or for packaging other items. It is solely intended for transportation of the goods supplied. Marking must not be removed.

6. If goods are damaged or lost while being transported, the Customer must arrange for an inventory control immediately and notify us of the results. The Customer must submit claims for any transportation damage to the forwarding company without delay.

#### **XI. Obligation to inspect the goods and give notice of defects**

1. The Customer has an obligation to inspect the goods pursuant to Section 377 of the German Commercial Code [HGB] immediately after delivery, to notify us of defects and damage found at this time or at a later date immediately upon discovery and to send us a reference sample from the delivery concerned. The ruling in Section 377 HGB applies accordingly to services and work performance. Notices of defects must be submitted in writing.

2. Defective supplies or services must not be used. If discovery of a defect was not possible upon receipt of the goods or upon the rendering of the service, all further use of the supplied item or service must be discontinued immediately upon discovery.

3. The Customer will furnish us with the items relating to which the notice of defects has been submitted and allow us the necessary time to inspect the defect concerned. In the event of unjustified complaints, we reserve the right to charge the costs of inspection to the Customer.

4. A notice of defects does not release the Customer from his obligation to meet his payment obligations.

#### **XII. Warranty**

1. Insofar as our supplied items or services are found to be defective, we are entitled, at our discretion, to remedy the defect, to supply a replacement or to issue a credit note within a reasonable period.

2. Claims by the Customer relating to the expenses incurred for subsequent performance, in particular costs of transportation, travel, work and material, are ruled out insofar as such expenses were increased because the goods were subsequently taken to a location other than that of the Customer's branch.

3. The same warranty terms apply to substitute deliveries and rectified items as to the item originally supplied.

#### **XIII. Legal defects, industrial property rights**

1. Orders based on drawings, sketches or other particulars supplied to us are performed at the Customer's risk. If we infringe property rights by performing such orders, the Customer shall hold us harmless in relation to claims made by the holders of such property rights. Any further damages will be the responsibility of the Customer.

2. We assume no liability for any infringements of property rights associated with the use of the items supplied or services rendered or the combination or use of the items supplied or services rendered with other products.

3. In the event of legal defects, we are entitled, at our discretion, to take the following action:

- to obtain the necessary licences for the infringed property rights  
- or to remedy the defects in the items supplied or services rendered by providing an item or service amended to an extent which the Customer can be reasonably expected to accept.

4. Our liability for the infringement of third-party property rights only covers property rights registered and published in Germany.

#### **XIV. Liability**

1. We only assume liability for company debts within the limits of company assets.

2. In the event of ordinary negligence, we are only liable for infringement of a major contractual obligation. In the event of gross negli-

gence, we are also liable for infringements of non-major contractual obligations.

In the above cases, liability is limited to the foreseeable damage typical of the contract.

3. If characteristics of the product have been assured, our liability is limited to the scope and amount of our product liability insurance. The scope of such coverage complies with the non-binding recommendations on product liability insurance made by the German Insurance Association [*Gesamtverband der Deutschen Versicherungswirtschaft*]. For the events insured by the insurance policy, coverage amounts to 2 million euros per insurance year.

4. Damages claims for reason of an intentional breach of contractual obligations on our part or claims for reason of injury to persons or claims based on the Product Liability Act are governed by legal rulings.

5. We are liable for tort claims in accordance with contractual liability.

6. Liability for damages in excess of the above provisions is ruled out.

7. The Customer only holds rights of recourse to us to the extent that he has not made any contractual agreement with his customer going beyond statutory defect and damages claims.

8. We assume no liability to the extent that the Customer for his part has effectively limited liability to his customer.

9. Insofar as we have ruled out or limited liability, this also applies to the personal liability of our employees, workers, collaborators and vicarious agents.

10. Insofar as liability is ruled out or limited under the above provisions, the Customer has an obligation to also hold us harmless at first request in relation to claims by third parties.

11. Statutory rulings shall also apply.

12. The Customer must notify us immediately in writing of any claims made by third parties and we reserve the right to take all defence measures and conduct all settlement negotiations.

13. Evaluation boards are for evaluation purposes only. They are meant to test the corresponding circuits. A guarantee of compliance with production or qualification standards, necessary for customer applications, is not granted. Evaluation boards are particularly not meant for line production, sample production or any field application.

#### **XV. Limitation period**

1. The limitation period for claims and rights relating to defects in our products, services and works and the losses resulting from the same is 1 year. The start of the period of limitation is governed by statutory rulings.

The above reduction of the period of limitation does not apply if longer periods are prescribed by law in cases pursuant to Sections 438 para. 1 no. 2, 479 and 634 a para. 1 no. 2 of the German Civil Code [BGB].

2. The period of limitation under Number 1 above does not apply in the event of intent or if we have maliciously concealed the defect or if we have assumed a guarantee of qualities or in the event of damages claims due to injury to a person or violation of the liberty of a person or in the event of claims under the Product Liability Act or in the event of a grossly negligent breach of obligations.

3. Subsequent performance measures neither suspend the limitation period applicable to original performance nor mean that the limitation period starts anew.

#### **XVI. Acquisition and reservation of title**

1. We reserve the title to all the contractual items until full settlement of all the claims which we hold as a result of the business relationship with the Customer.

We reserve all rights of ownership and all copyrights to the illustrations, drawings, costings and other (technical) documents supplied.

2. If our property is processed, combined or mixed with third-party property, we acquire ownership to the new item in compliance with Section 947 BGB.

3. If processing, combination or mixing is performed in such a way that the third-party item or service is to be deemed the principal item or service, we will acquire ownership in the ratio of the value of our item or service to the third-party item or service at the time of processing, combination or mixing.

4. Insofar as we acquire a title to an item through our work, we reserve the title to this item until settlement of all existing liabilities resulting from the business relationship with the Customer.

5. The Customer must keep the reserved goods with due care and, if necessary, carry out servicing and maintenance work in due time at his own expense. He must insure the reserved goods against loss and damage at his own expense. If such losses occur, the resulting security claims are to be assigned to us.

6. The Customer has the right to resell the item to which we hold (co-)ownership rights in the due course of business, as long as he meets his obligations to us resulting from the business relationship. In such a case, the receivable arising from sale is deemed assigned to us in the ratio of the value of the DACOM item secured by reservation of ownership to the total value of the goods sold. Even after such as-

ignment, the Customer is still authorised to collect this receivable. Our power to collect this receivable ourselves is not prejudiced.

7. The Customer's right to dispose of the goods to which we have reserved ownership and to collect the receivables assigned to us will cease to apply as soon as he fails to meet his payment obligations and/or an application is made for the opening of insolvency proceedings. In these cases listed above and in the event of any other non-contractual behaviour by the Customer, we have the right to repossess the goods to which we have reserved ownership without any previous warning.

8. The Customer will notify us immediately if there are any risks to our reserved goods, in particular in the event of insolvency, inability to pay and compulsory enforcement measures. At our request, the Customer must provide all the necessary information about the status of the goods to which we hold (co-) ownership and about the receivables assigned to us and must also notify his customers of such assignment. The Customer will support us with all action which is necessary to protect our (co-) title and will pay the costs thus incurred.

9. If the realisable value of the securities exceeds our claims by more than 15%, we will release securities to this extent at the Customer's request; we have the right to select the securities for release.

#### **XVII. Confidentiality**

1. The Customer undertakes to treat all the confidential aspects of the business relationship as business secrets. In particular, he will treat as business secrets all commercial and technical details that are not generally known and of which he learns through the business relationship. This obligation to maintain confidentiality does not include information about or aspects of the business relationship which were already publicly known when he learned of them or such information or aspects of the business relationship as can be proved to have been known to the contracting partner before disclosure by us.

The Customer will ensure that his employees are also placed under an appropriate obligation to maintain confidentiality.

2. The duplication of documents supplied to the Customer is only permitted as required in business operations and in compliance with copyright law.

3. Without our written consent, no documents are to be made available to third parties, either in whole or in part, or to be used for purposes other than those for which they were furnished to the Customer.

4. Disclosure of the business relationship with us to third parties, even if only partial, is subject to our prior written consent; the Customer must also place such third parties under an agreement obliging them to maintain confidentiality.

5. The Customer is only permitted to use his business relationship with us in advertising subject to obtaining our prior written consent.

6. The Customer remains under an obligation to maintain confidentiality even after termination of the business relationship.

#### **XVIII. Supplier's declaration**

We cannot issue any supplier's declarations pursuant to EC Regulation 1207/2001 in conjunction with EC Regulation 1617/2006 and EC Regulation 75/2008.

#### **XIX. Exports by the Customer requiring official approval**

Insofar as we do not export the products ourselves, we have no obligation to check whether export of the products we supply requires official approval. This is the Customer's responsibility, e.g. by making an enquiry to the Federal Office of Economics and Export Control (BAFA) in Eschborn near Frankfurt am Main.

#### **XX. Legal venue, applicable law,**

1. At our discretion, the legal venue is either our seat of business in Haan or the Customer's legal venue.

2. The business relations with the Customer are governed solely by the law of the Federal Republic of Germany. Application of the Convention on the International Sale of Goods (CISG – "UN purchasing law") is ruled out.

3. If any parts of these General Terms and Conditions of Supply and Payment are ineffective, the effectiveness of the other provisions will not be prejudiced thereby. The contracting parties will make every effort to replace the ineffective clause by a clause approaching as closely as possible the financial purpose and legal intent of the original wording.

#### **XXI. Contact data**

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Trade Register No. HRB 14166

Court of Registration: Wuppertal Local Court