

**GENERAL TERMS AND CONDITIONS (INTERNATIONAL)
OF GENKINGER GMBH**

- I. SCOPE OF APPLICATION; GENERAL**
- The present general terms and conditions (AGB (INTERNATIONAL)) of Genkinger GmbH, Alstraße 49, 72525 Münsingen, Germany, (hereinafter: „GENKINGER“ and/or „we“) shall apply to all transactions on the delivery of goods to the customer by GENKINGER, insofar as the customer has its branch relevant for the contract outside Germany.
 - The field of application of the present AGB is limited to contracts with businessmen, legal entities of public law or special funds under public law. The present AGB do not apply to business dealings with consumers.
 - The present AGB shall apply exclusively. The integration of contrary, complementary AGB or AGB different from our AGB of the customer is herewith contradicted. These do not apply, even if we carry out delivery to the customer being aware of or without express contradiction to different terms and conditions of the customer.
 - Individual agreements made with the customer on a case-by-case basis (including side agreements, amendments and modifications) in any case take priority over the present AGB. For the content of such agreements, a written contract and/or our written confirmation is authoritative.
 - The present AGB shall apply also to future transactions between GENKINGER and the customer without a new integration being necessary.
 - Rights to which GENKINGER are entitled pursuant to statutory provisions or other agreements beyond the present AGB remain unaffected.
- II. RIGHTS TO DOCUMENTS**
- Offers, cost estimates and other documents remain our property and may only be made available to third parties with prior written approval (Art. 13 CISG).
 - We are exclusively entitled to all (copy) rights to samples, appliances, tools, drawings, cost estimates, drafts and plans produced by us, in particular to patent rights, copyrights and inventor's rights. They are only permitted to be made accessible to third parties, if we have expressly given our approval (Art. 13 CISG).
 - The ceding of the above mentioned items and documents does not represent an assignment of rights or granting of rights (licence to use).
- III. SECONDARY OBLIGATIONS OF THE CUSTOMER**
- The customer is obliged to communicate promptly to us all binding statutory provisions, which are valid at its registered office or at the place of destination of the goods known to it, insofar as these binding statutory provisions are contradictory to the present contract content or may impair the performance of the present contract.
 - The customer engages itself, insofar as we have to carry out measures within the scope of fulfillment of the present contract in the country where the customer has its registered office or where the place of destination of the goods known to the customer is located, to assist us in full.
- IV. CONTRACT CONCLUSION**
- Unless expressly stated otherwise, our offers are non-binding and without obligation. This applies also, if, upon the customer's request, we transmit a preliminary invoice (proforma invoice) or comparable declarations, in particular for the purpose of fulfillment of requirements of public administrations.
 - The contract is only effectively concluded by our written order confirmation (Art. 13 CISG).
 - A submitted offer of the customer is irrevocable for the time period of three weeks as from receipt by GENKINGER. This does not apply, if the customer has expressly reserved free revocability in written form (Art. 13 CISG).
- V. SUBJECT MATTER OF THE CONTRACT**
- The contractually agreed performance is determined by the agreement according to the order confirmation, alternatively the ordinary intended use of goods of the same type. A special intended use envisaged by the customer is authoritative only, if such intended use has been expressly made known to us in writing (Section 126 BGB) prior to contract conclusion.
 - The subject matter of contract is according to contract, if it complies with the legal requirements, in particular the governmental, public or official requirements at our registered office. We shall only be responsible for compliance with outlined requirements at the customer's registered office, in the country of the place of destination of the goods known to the customer or in any other third country, if we have made an express written covenant (Section 126 BGB) in this respect, and the customer complies with its obligations to cooperate regarding existing requirements, in particular pursuant to III. Generally it is incumbent upon the customer to obtain approvals which might be necessary.
 - Technical specifications of our products such as specifications of weight and dimensions, performance and property descriptions as well as illustrations, drawings and other documents do not represent warranted properties. Specific properties are only deemed to be guaranteed, if a separate written agreement (warranted property) has been made. For the written form of the warranty declaration Section 126 BGB is authoritative.
 - A possible documentation is owed only in German or English language subject to mandatory statutory regulation. The documentation is available by GENKINGER to make available a possible documentation in another language must be made in writing in order to be valid (Section 126 BGB).
 - Subsequent modifications or adjustments of the service owed by GENKINGER are admissible insofar as they are customary in the trade or technically required, and do not afflict the customer in a manner which is not unreasonable.
- VI. DELIVERY PERIOD, FORCE MAJEURE, PARTIAL DELIVERY**
- Subject to a different provision on an individual case basis, delivery periods are approximate data. GENKINGER will notify the actual time of delivery with adequate advance notice, usually two weeks, in writing (Art. 13 CISG). Subject to Clause 2, 3, 5 and 6, the actual time of delivery to be notified must not be more than four weeks after the approximate delivery period previously notified.
 - Start of a delivery period requires clarification of all technical questions. The delivery period does not start before the customer has complied with its obligations to cooperate in this respect.
 - An agreed upon delivery period does not start in the case of an agreement of an obligation of advance performance by the customer such as, for example, a down payment or proof of a financing commitment, before the customer has complied with the obligations of advance performance incumbent upon it.
 - GENKINGER shall be relieved of the obligation of performance of the contract.
 - An agreed upon delivery period is subject to complete delivery in time by our contractual partners (reservation regarding availability of supplies).
 - The delivery period is extended adequately in the case of Force Majeure, the duration of the impediment and an adequate start-up time having to be taken into account in the assessment. Cases of Force Majeure are also shortages of energy and raw material, strikes, lockouts, administrative measures, terrorist acts and war unforeseeable at the time of contract conclusion. GENKINGER will promptly inform the customer on the existence of Force Majeure and the probable end of this circumstance. If the condition of Force Majeure lasts more than three months without interruption or if the delivery date is extended due to several circumstances of Force Majeure by more than four months, not only the customer but also GENKINGER is entitled to withdraw from contract. In the case of Force Majeure, the assertion of claims for damages and other claims is excluded. The obligation of counter-performance is omitted, advance payments already made are reimbursed. The provisions of the present clause apply accordingly, if the circumstances occur at a sub-supplier and affect the delivery to GENKINGER.
 - We shall be entitled to partial deliveries, if this is not unreasonable for the customer. A partial delivery is not unreasonable in particular, if the partial delivery is usable for the customer pursuant to its intended purpose, delivery of the remaining goods ordered is guaranteed and no considerable additional expenditure or additional cost is incurred by the customer due to the partial delivery.
 - Claims for damages due to non-compliance with the delivery period are based on XII.
- VII. PASSING OF RISK**
- The risk of accidental loss passes to the customer with handing over (Incoterms 2010 FCA GENKINGER, Münsingen, Germany) to the customer, its freight carrier or a third party designated by it.
 - If the customer does not take delivery of the goods declared ready for delivery at the time of delivery (VI, Clause 1 Sentence 2), the risk of accidental loss passes to the customer at the time of delivery.
- VIII. DEFAULT IN ACCEPTANCE; DAMAGE RESULTING FROM DELAY**
- If the customer does not take delivery of the goods in time (VII.) or if it is in default of acceptance in any other manner, it owes GENKINGER per week started a sum in the amount of 0.5% of the order value and/or the value of the partial delivery but in total 5% max. of the order value and/or the value of the partial delivery.
 - The customer shall reserve the right to prove a lower damage, GENKINGER shall reserve the right to prove a higher damage.
- IX. PRICES; PAYMENT TERMS AND CONDITIONS; PRICE ADJUSTMENT**
- All prices are net prices and are to be understood plus applicable statutory V.A.T.
 - Unless otherwise agreed upon, payments have to be made in EUR. If agreement of payment in Euros is inadmissible, payment has to be made in the currency valid at the registered office of the customer. In that case, payment has to be made in the amount which corresponds to the invoice value in EUR at the time of maturity of (partial) payment. If payment is impossible in both currencies mentioned above, payment has to be made in a third currency. Sentence 3 as well as clause 6, sentence 2 apply accordingly.
 - All other cost possibly incurred, in particular for settlement of payment, transportation, customs duties on importation and exportation, fees etc. are borne by the customer.
 - Unless otherwise agreed upon on an individual case basis, all prices apply Incoterms 2010 FCA GENKINGER, Münsingen, Germany.
 - For the deduction of cash discount, a separate agreement on an individual case basis is necessary.
 - Payments have to be made at the registered office of GENKINGER at Münsingen, Germany. Cost and risk of payment shall be at the expense of the customer.
 - Unless otherwise agreed upon in writing (Art. 13 CISG) on an individual case basis, the following payment terms and conditions shall apply:
 - down payment in the amount of 40% upon contract conclusion;
 - final payment in the amount of 60% within one week as from notification of the time of delivery (VI, Clause 1 sentence 2).
 - If more than twenty weeks have passed between contract conclusion and passing of risk and if we have not intentionally caused exceeding of said period, we shall be entitled to increase the price in accordance with the increase in production cost, in particular due to increased raw material prices incurred by us.
- X. NOTIFICATION OF DEFECTS**
- The customer is obliged to examine the services rendered within one week as from passing of risk as to whether they are free from defects. This is not valid, if the actual passing of risk is prior to the agreed upon delivery date (time of delivery according to VI, Clause 1 sentence 2). In that case the time of examination starts to run with the agreed upon delivery date (time of delivery according to VI, Clause 1 sentence 2).
 - The customer is obliged to notify to us defects detected within the scope of the examination (Clause 1 sentence 1) within another week.
 - Moreover, the customer is obliged to notify defects to us which were not detectable within the scope of the examination (Clause 1, sentence 1) within one week as from actual detection.
 - The notification of defects has to be made in writing (Art. 13 CISG). The notification must include a detailed description by means of which the suspected causes as well as the effects are evident. Upon request, appropriate documentation, in particular photos, must be made available to us.
 - If the customer does not comply with its examination and notification obligation, the service shall be deemed to have been approved, and it is not entitled to warranty claims and damage claims. This does not apply, if the defect had been fraudulently concealed by us or the exclusion would be incompatible with the provisions of a warranty (V, Clause 3).
- The customer is obliged to bear the cost incurred by GENKINGER associated with the unjustified notification of defects.
 - The deadlines of Clauses 1 to 3 start, if GENKINGER owes a documentation, only when the customer has received the documentation.
 - If between delivery and notification of a defect, a time period of two years has elapsed, the customer can no longer raise any rights associated with defects.
- XI. RIGHTS OF THE CUSTOMER IN CASE OF BREACHES OF DUTY OF THE SELLER (= WARRANTY CLAIMS); STATUS OF LIMITATIONS OF CLAIMS; RELATION TO COMPENSATION FOR DAMAGES**
- In the case of defective performance by GENKINGER, hence lagging of the actual rendering of service behind the contractually owed service (defectiveness), the claims of the customer are based on the following provisions.
 - At first, the customer shall only be entitled to request elimination of defective performance (removal of defects) from GENKINGER within a reasonable period of time. GENKINGER is entitled to choose the type of elimination of defects, mainly rework or replacement delivery, by which GENKINGER carries out elimination of defective performance. For the purpose of elimination of defects, the customer must grant access to the goods to GENKINGER or to third parties mandated by GENKINGER, and support measures which become necessary and advisable. GENKINGER shall bear appropriate and required expenses of the elimination of defects with the exception of those surplus cost associated with further transportation of the goods to another place of destination than the original place of destination.
 - If GENKINGER does not carry out the elimination of defects within the adequate period of time, or if the type of elimination of defects chosen by GENKINGER does not result in freedom from defects, the customer shall be entitled to reduce the purchase price.
 - The customer is generally only entitled to cancel the contract, if
 - a fundamental breach of contract exists and
 - only, if the elimination of defects had not been carried out within an adequate period of time or did not result in freedom from defects.
 Lit. b. must not have been fulfilled for cancellation of the contract, if the elimination of defects is unreasonable for the customer due to the circumstances of the individual case or will obviously remain unsuccessful.
 - The customer shall also be entitled to cancel the contract, if GENKINGER does not render the service in the case of non-observance of the delivery period despite setting of another adequate period of time which generally must not be less than two weeks. With respect to this further deadline, VI, Clause 6 sentence 1 applies accordingly.
 - The customer is obliged to raise the claims according to Clause 2-5 within an adequate period of time. It must submit a written request to GENKINGER asking to carry out the actions (Art. 13 CISG).
 - If the non-performance or defective performance refers only to a part of the delivery, the claims pursuant to Clause 2 and 3 apply only to the part affected by the non-performance or defective performance. Cancellation of the entire contract (Clause 4 and 5) in such a case can only be made, if the incompleteness of the delivery or the delivery only partially according to contract in itself constitutes a fundamental breach of contract.
 - Warranty claims – with the exception of damage claims – become time-barred within twelve months as from passing of risk. This does not apply in the case of defects fraudulently concealed as well as hidden defects (X, Clause 3).
 - The above claims due to defective performance caused by inappropriate handling by the customer or non-compliance with the instructions for use are excluded.
 - With respect to the raising of damage claims due to defectiveness Clause 4.b, as well as Clause 4 sentence 2 apply accordingly. In addition XII. shall apply.
- XII. LIABILITY**
- GENKINGER shall be liable pursuant to statutory provisions in the case of culpable breach of duty for all damages from injury to life, body or health.
 - GENKINGER shall be liable pursuant to the provisions of the applicable Product Liability Act.
 - If a contractual guarantee has been agreed upon (V, Clause 3), GENKINGER shall be liable according to the warranty declaration.
 - GENKINGER shall be liable for deliberate and grossly negligent breach of duty.
 - Liability pursuant to Clause 4 in the case of the grossly negligent breach of duty is limited to the triple of the order value concerned. But if the triple of the order value concerned is below the amount of 250,000.-- EUR, the liability amount of GENKINGER shall be 250,000.-- EUR max. Considering the above provision, GENKINGER recommends to conclude an additional insurance.
 - Liability for other negligent breaches of duty or non-culpable damages is excluded.
- XIII. SUPPORT IN CASES OF PRODUCT LIABILITY**
- The customer will not modify products with respect to safety-related aspects. In particular, it will not modify or remove existing warnings regarding dangers in the case of improper use. In the case of infringement of this duty, the customer will indemnify GENKINGER in internal relationship against third party product liability claims unless the customer is not responsible for the fault causing the liability.
 - If GENKINGER is obliged to introduce measures, in particular for product warning or product recall, the customer will support GENKINGER to the best of its ability.
 - The customer will promptly inform GENKINGER in writing (Art. 13 CISG) on risks of which it becomes aware.
- XIV. SET-OFF, RIGHT OF RETENTION**
- Set-off by the customer is only admissible with undisputed or legally determined claims.
 - To the exercise of a right of retention, Clause 1, applies accordingly.
 - Clause 1 and 2 do not apply, if assertion of a claim was denied to the customer as a result which is in close, synallagmatic connection with the claim raised by GENKINGER.
- RETEMENTION OF TITLE**
- Goods supplied by us remain our property up to complete payment (goods subject to retention of title).
 - The customer is obliged to insure the goods under retention of title sufficiently against, fire, water and theft at its own expense.
- APPLICABLE LAW**
- All contracts on the basis of the present AGB (INTERNATIONAL) as well as questions on their conclusion are governed by the United Nations Convention on Contracts for the International Sale of Goods dated 11th April 1980 (CISG). In addition, the laws of the Federal Republic of Germany shall apply.
 - Clause 1 sentence 2 applies accordingly for non-contractual claims.
- SETTLEMENT OF DISPUTES, COMPETENT COURT, ARBITRATION AGREEMENT**
- The competent court at the registered office of GENKINGER at MÜNSINGEN, Germany shall have exclusive jurisdiction.
 - Moreover, we are entitled to sue the customer at its general place of jurisdiction.
 - If the customer has its relevant branch outside the European Union as well as outside the states of Switzerland, Norway and Iceland, all disputes between GENKINGER and the customer resulting in connection with the delivery of goods by GENKINGER will be finally resolved pursuant to the Rules of Arbitration of the International Chamber of Commerce (ICC) under exclusion of the jurisdiction of a court. Place of the arbitration proceedings will be Stuttgart. The number of arbitrators is three. The language of the arbitration proceedings is English.
- XVIII. RIGHTS OF USE**
- GENKINGER grants to the customer a simple right of use in copyrights, industrial property rights and know-how to the extent as this is necessary for contractual use. Copying to other machines, systems and data processing units not mentioned in the contract is prohibited to the customer.
 - Any other use beyond such use is permitted to the customer only after prior written approval (Section 126 BGB) by GENKINGER.
- XIX. MISCELLANEOUS**
- Contract languages are German and/or English. All declarations must be made in one of the contract languages in order to be valid.
 - The customer is only allowed to assign rights and duties from the present contract wholly or in part to third parties after our prior written approval (Art. 13 CISG).
- WRITTEN FORM REQUIREMENT**
- All modifications and amendments of the present AGB as well as waiver of their application must be made in writing in order to be valid pursuant to Section 126 BGB. This applies also with respect to a possible waiver of the written form requirement
- SEVERABILITY CLAUSE**
- If one or several provisions of the present AGB or parts of any provision is or are invalid, such invalidity does not affect the validity of the remaining provisions or of the contract as a whole.
 - The parties engage themselves to agree amicably on a valid provision instead of the invalid provision which from an economic point of view comes closest to the invalid provision.
 - Clause 1 and 2 apply accordingly in the case of a loophole.