

# General Terms and Conditions of Sale of COMET AG

## Version dated March 2020

These General Terms and Conditions of Sale are available on the internet under COMET AG's website.

### 1 SCOPE, BINDING EFFECT

1.1 These General Terms and Conditions of Sale ("Terms and Conditions") shall apply to any offer made by COMET AG ("COMET") to the respective customer ("Customer") as well as to any agreement between COMET and the respective Customer regarding the sale of goods and services ("Agreement"), unless otherwise agreed in writing. If there is a conflict between the Agreement and the General Terms and Conditions of Sale, the Agreement shall prevail. General terms and conditions of the Customer are expressly excluded.

1.2 The current version of the Terms and Conditions is available on COMET's website. By placing an order, the Terms and Conditions become an integral part of the Agreement and become valid and binding with respect to any further offers and deliveries by COMET.

1.3. These Terms and Conditions exist in German, English and French versions. In case of any contradictions or discrepancies, the English version shall prevail.

### 2 OFFER AND ACCEPTANCE

2.1 All offers made by COMET are nonbinding and free of charge unless otherwise noted. By placing an order, the Customer makes a binding offer to enter into an Agreement.

2.2 Orders shall be deemed accepted by COMET if confirmed by COMET in writing (in print, by email or facsimile).

### 3 PRICES AND MINIMUM ORDER VALUE

3.1 The prices offered or confirmed shall be deemed net prices without packaging and transportation unless otherwise agreed in writing.

3.2 The Minimum Order Value is CHF 200.-- unless agreed differently in writing.

### 4 DELIVERY

4.1 Delivery dates or delivery period shall be understood as shipping date ex works or period of production until shipment and are contained in the written confirmation of COMET pursuant to Section 2.2 above. Any delivery date or delivery period shall serve for orientation purposes only and shall be non-binding unless expressly confirmed by COMET in writing as binding.

4.2 The transfer of goods to the Customer shall be made in conformity with the INCOTERMS 2010. Unless otherwise agreed in writing, delivery shall be made FCA. The transfer to the carrier at COMET's premises or at any other named place of loading shall be considered as delivery to the Customer, and the risk of loss or damage during transportation therewith passes to the customer, irrespective of any existing dispatch conditions.

4.3 The general dispatch proceedings with respect to the delivered items shall be determined by the Customer. However, COMET reserves the right to determine the detailed dispatch proceedings in its own discretion and to split a delivery into partial deliveries, whereby the partial deliveries shall be charged separately and fall due for payment on the due date indicated on the invoice, irrespective of the remaining deliveries.

4.4 Any delay in the dispatch of a partial delivery shall not release the Customer from its obligations to accept the remaining deliveries.

4.5 In case the Customer refuses to accept the ordered goods, COMET shall have the right to withdraw from the contract with 30 days prior notice or to claim damages for non-performance. Moreover, the Customer shall be liable for any additional handling costs, storage costs and any other costs as well as for the risk of loss relating to the ordered goods.

4.6 In addition, COMET reserves the right to retain any further deliveries irrespective of whether or not they are related to the refused goods.

### 5 PAYMENT TERMS

5.1 Unless otherwise agreed between the parties, the Customer undertakes to make the net payment within 30 days from the date of invoicing.

5.2 Any discounts granted by COMET shall only be valid if payment is made within the agreed term.

5.3 COMET reserves the right to make the delivery and acceptance of the goods contingent on a credit assessment of the Customer. By placing an order, the Customer consents to the right of COMET to conduct a credit assessment. COMET reserves the right to withdraw, without compensation, in whole or in part from the contract if the solvency of the Customer is questionable from an objective point of view.

5.4 A payment is deemed to have been made only if COMET may freely dispose of the respective amount, irrespective of the payment method.

5.5 In case of non-payment of the purchase price by the Customer, COMET shall – in its own discretion and without limiting any other rights or remedies – have the right to withhold any further deliveries, to withdraw from the contract and to sell the remaining goods for the account of the Customer and to offset the proceeds against the sales price owed to COMET by the Customer. The Customer shall be obliged to pay to COMET the residual owed. Further, the Customer shall be liable for any additional costs, including but not limited to, reasonable legal and accounting costs as well as further collection costs resulting from the delayed or non-payment on the part of the Customer. In case of late payment, a default interest rate of 8% shall apply.

5.6 The Customer shall not have the right to offset any of its claims against claims of COMET. Agents of COMET are not authorized to accept payments.

### 6 RESERVATION OF TITLE

6.1 All goods supplied by COMET remain the property of COMET until full payment has been made. The Customer hereby authorizes COMET to have the reservation of title entered into the official register.

### 7 COMPLAINTS, NOTIFICATION OF DEFECTS

7.1 Upon receipt of the goods, the Customer shall inspect the goods immediately and shall notify COMET in writing of any shortages, defects or damages within 14 days after detection. Apparent transport damages shall be reported on the waybill immediately.

7.2 The Customer shall not be entitled to retain any payments in relation to the rejected goods.

### 8 WARRANTY AND LIABILITY

8.1 The warranty terms of COMET which specify the different product groups and form an integral part of the Terms and Conditions, shall apply.

8.2 Warranties of COMET shall only apply to manufacturing or material defects occurring within the warranty period determined separately for each product.

8.3. In case that no specific warranty terms of COMET are applicable, then the warranty period shall be limited to 12 months after delivery of the product.

8.4 It shall be expressly pointed out that

COMET, to the extent permitted by law, shall not be liable for any indirect or consequential damages, including the loss of business opportunities and/ or lost profits, however caused.

8.5. In no event, whether under contract or statutory law, shall the liability of COMET under these Terms and Conditions exceed the price paid in respect to the Products to which such liability relates.

8.6. The limitation of liability defined under 8.5 shall not apply to acts of intent or gross negligence, fraud, in the case of body injuries and death or in the case of claims under any applicable Product Liability Law.

8.7 The Customer is aware that the use of goods may result in adverse health effects or other damages. The Customer is obliged to comply with all domestic and foreign laws and regulations applicable to him regarding the safe use of such goods and not to use them improperly.

#### **9 FORCE MAJEURE**

9.1 Any delay in delivery or any other impairment of performance of COMET or of any supplier or subcontractor of COMET due to events of force majeure, such as labour strike, lock-out, governmental acts, natural disaster, epidemic plagues, etc. shall release COMET from any liability, even if a specific delivery date or delivery time has been agreed. In such events, COMET shall have the right to postpone the delivery for the term of the delay including a reasonable additional period, or to withdraw in whole or in part from the contract.

#### **10 INTELLECTUAL PROPERTY RIGHTS**

10.1 Any drawing, plan, draft, design, etc. shall at all times and for all purposes remain COMET's exclusive property. The use, reproduction or transfer of an intellectual property right of COMET to any third party requires prior written consent of COMET. Unless otherwise agreed, all intellectual property rights (including know-how) of COMET in the goods remain with COMET.

10.2 COMET shall not be liable for the violation of any intellectual property right or laws regarding unfair competition or any related claims resulting from the manufacturing of objects based on drawings, models or templates provided by the Customer. The Customer shall indemnify and hold COMET harmless on first request for any third party claims.

#### **11 CONFIDENTIALITY**

11.1 The Customer shall keep strictly confidential any information about COMET and products obtained from COMET in connection with the business relationship with COMET and shall ensure that its staff and any appointed subcontractors comply with said obligation. In case of a breach of this obligation by the Customer, its staff or a subcontractor, the Customer shall pay to COMET a contractual penalty in the amount of CHF 50,000.--. The payment of the contractual penalty does not release the Customer from the confidentiality obligation. Any further claims for damages remain reserved.

#### **12 PRODUCT RECALL**

12.1 In case there are reasonable grounds for COMET to recall a product, the Customer shall take all possible and necessary actions to assist COMET.

12.2 The Customer shall take all appropriate measures necessary to be at all times able to return the products to COMET in case of a product recall. In particular, the Customer shall take measures in order to ensure the traceability of the products.

12.3 Upon request by COMET, the Customer shall return to COMET all products affected by a product recall. This also applies to affected products which are already in possession of the end customer; the Customer shall request the end customer to return the products to the Customer.

12.4 COMET shall not bear any costs in connection with a product recall unless COMET culpably caused the reasons for such recall. To the extent permitted by law, the liability of COMET for any indirect or consequential damages such as costs due to service interruptions, loss of revenue, third party claims etc. shall be explicitly excluded.

#### **13 APPLICABLE LAW, SEVERABILITY**

13.1 In the event that provisions of these Terms and Conditions are invalid in whole or in part, such invalidity shall not affect the validity of the remaining provisions of the Terms and Conditions or of the respective Agreement. The parties agree to replace the invalid provision with a provision that comes closest to the economic purpose of the invalid provision.

13.2 These Terms and Conditions and all agreements entered into hereunder shall be exclusively governed by and construed in accordance with Swiss law. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG, dated 11 April 1980) shall be explicitly excluded.

13.3 Any dispute arising out of or in connection with these Terms and Conditions shall be subject to the exclusive jurisdiction of Berne, Switzerland. Irrespective of the foregoing, COMET is unilaterally entitled to take the Customer to any other competent court.