

# General terms and conditions for the supply of products and services of congatec GmbH

## Section 1 General provisions

- (1) The following general terms and conditions for the supply of products and services apply to all deliveries, services and offers of congatec GmbH, Auwiesenstraße 5, 94469 Deggendorf.
- (2) We conclude contracts exclusively with companies, legal persons under public law, or public law special assets.
- (3) All of our deliveries, services and offers are provided exclusively on the basis of these conditions, even if they are not specifically referred to in negotiations. We do not recognise conflicting conditions, including if we do not expressly reject such same or if we refer to a letter from the contractual partner that makes reference to the partner's conditions. Our general terms and conditions apply to all future commercial relations, even if this is not expressly agreed. Our general terms and conditions are deemed to have been accepted at the latest on acceptance of the goods.
- (4) Customers' terms and conditions that contradict or diverge from our terms, shall only be effective if we agree in writing thereto.

## Section 2 Offers, concluding of contracts, and documents

- (1) Our sales employees are not authorised to enter into verbal ancillary agreements or commitments that extend beyond the content of the written contract. All agreements of this contract shall be set out in the written deed. Verbal ancillary agreements shall not exist.
- (2) Information about delivery times shall be approximate and non-binding unless an express commitment has been made. Information about the object being delivered (e.g. technical data, tolerances, measurements, weights etc.) and its presentation shall comprise solely descriptions and designations, which shall have binding character only if we confirm this expressly.

The right to make technical and constructive modifications to items being delivered, and such as are normal in the trade, shall remain reserved to the extent that they do not inappropriately disadvantage the customer, and to the extent that they do not affect the ability to utilise the purchased object.

- (3) Our offers shall be non-binding until the time when the contract is concluded.
- (4) Our obligation to fulfil contracts is subject to the provision that the fulfilment is not prevented by any impediments arising out of national or international foreign trade and customs requirements or embargoes or other sanctions. Customer undertakes to refrain from transactions (a) involving persons, organisations or institutions listed in sanction lists under the EC-Regulations or U.S. export control laws or US sanctions laws, (b) involving embargoed countries, or (c) related to nuclear, biological or chemical weapons or transactions related to any other military end-use and for which the required licenses have not been granted.
- (5) We shall retain the property and copyrights to all construction designs, samples, cost proposals and similar corporate objects of both physical and non-physical nature. They must always be treated with strict confidentiality. They must not be made accessible to third parties without our consent. The customer shall be fully liable to us according to statutory regulations if these duties are infringed. The utilisation of our name as a reference for marketing purposes and similar shall be permitted only after prior consent.

## Section 3 Prices

- (1) Our prices shall be ex-works, excluding shipping and packaging, which shall be invoiced separately. The customer shall be responsible for unloading and warehousing. The statutory value-added tax valid at the date of invoice date shall be added to prices. Subject to other agreements, the customer shall be responsible for all costs of any transportation or similar insurance that is agreed. In the case of partial deliveries, each delivery may be invoiced separately.
- (2) If changes to the pricing basis occur at a delivery date four months after the contract is concluded (e.g. price increases for raw materials, materials, wages, transportation or warehousing costs), we shall reserve the right to make corresponding price adjustments after informing the customer. We are entitled to make such price increases only within two months after the aforementioned price increases have occurred. The individual cost elements and their increase must be weighted appropriately when setting the new price. In case certain cost elements increase, and others decrease, this must also be considered in setting the new price.
- (3) If no prices have been agreed when the contract was concluded, our prices valid on the date of delivery shall be applicable.

## Section 4 Payment terms

- (1) Unless otherwise stated on the order confirmation (alternatively, the invoice), the price (excluding deduction) shall be due for payment within 10 days after the invoice date.
- (2) If the customer defaults, we are entitled to invoice default interest payments to a level of nine percentage points above the base interest rate and an additional lump sum charge of € 40. In doing so, we shall be entitled at all times to provide evidence of, and to invoice, a higher interest cost. In the instance of payment default, we shall also be entitled to revoke any rebates, discounts and other benefits that have been agreed. We shall be entitled to make further deliveries only against prior payment.
- (3) Non-compliance with the payment terms, default, or circumstances that may impair the customer's creditworthiness shall result in all of our receivables falling due immediately.
- (4) The customer shall be entitled to set off counter claims only if those have been legally determined, are ready for decision, are undisputed or have been acknowledged by us.
- (5) The customer shall be entitled to exercise a right of retention only to the extent that its counterclaim is based on the same contractual relationship, or the counterclaim has been recognised, legally determined, or is ready for decision.
- (6) We are not obligated to accept bills of exchange and checks. Related credits shall always apply subject to redemption (on account of payment, not in lieu); they shall be acknowledged as payment on the value date on which the funds are at our disposal.
- (7) The right to any further-reaching contractual or statutory claims in the instance of default shall remain reserved.

## Section 5 Delivery modalities and delivery problems

- (1) The delivery period shall commence when the order confirmation is dispatched, but not before the customer has provided any documents, permissions, and approvals that need to be procured, and also not before any agreed advance payment has been received, and all technical queries have been clarified.
- (2) The delivery period shall be deemed to have been complied with if the delivery object has left the works before its expiry, or the readiness for dispatch has been communicated.
- (3) If unforeseen difficulties outside of our power occur, and which we are unable to prevent despite of all due care on our side – irrespective of whether they occur to us or to a sub-supplier – such as force majeure (e.g. war, fire and natural catastrophes), delays in the receipt of significant raw materials etc. – the delivery period shall be extended by the period of the difficulty. We shall be entitled to the same rights in the instance of strikes or lockouts at our premises or our suppliers'. We shall communicate such circumstances immediately to the customer, and immediately reimburse any payments already made. If the difficulty results in a delay of more than one month, we shall be entitled to either wholly or partially withdraw from the supply agreement.
- (4) The right to correct and timely self-delivery shall be reserved. We shall communicate any delays to the customer. To the extent that our suppliers make incorrect or late deliveries to us, and we are not responsible for such, the performance period shall be extended by a corresponding period. In this instance, and with regard to the undelivered objects, we shall also be entitled to withdraw from the agreement to the extent that the performance period is not extended by more than one month as a result of incorrect or late self-delivery. To the extent permitted under competition law, we shall cede to the customer our claims against the supplier due to non-contractual delivery. Customers' further damage and expense compensation claims to us shall be excluded.
- (5) In case of delays to supplies, the customer shall be entitled to withdraw from the agreement after the expiry of an appropriate prolongation period; in the case where it is impossible for us to perform the service, the customer shall also be entitled to this right without the setting of a prolongation period.

Irrespective of Paragraph 6 and Section 9, whose purpose is not to reverse the burden of proof, claims to damage compensation (including any consequential damages) shall be excluded; the same shall apply for compensation of expenses.

- (6) If a fixed transaction was agreed, we shall be liable according to statutory provisions; the same shall apply if the customer is able to assert, that because of a delay for which we are responsible, its interest in the fulfilment of the contract has fallen away.

- (7) If the dispatch is delayed at the customer's request, we shall invoice the customer any warehouse costs, beginning one week after notification of readiness for dispatch.
- (8) Cancellations and reschedulings of orders require the prior written consent of Congatec in each individual case to be effective.

#### **Section 6 Transfer of risk, acceptance of goods and partial deliveries**

- (1) In case the delivery is an obligation to be performed at the suppliers place of business, title of the goods will transfer upon their separation and placing them at the customer's disposal as agreed. The same shall apply in case of an obligation to send the goods, when those are handed over to a forwarder. In case the delivery is an obligation to bring the goods to the customer, the risk shall transfer when the goods leave our works premises. The same shall apply in the instance of creditor's delay in accepting performance.
- (2) Irrespective of the customer's rights arising from Sections 9 and 10, the customer shall accept delivered objects even if they show minor defects.

Partial deliveries shall be permitted in intervals and quantities reasonable to the customer.

#### **Section 7 Retention of title**

- (1) Goods shall remain our property until they have been paid for. In case of transactions with companies, we shall retain title to all delivered goods until the customer has paid all current and future receivables arising from the business relationship. This retention of title shall also comprise replacement or exchange parts such as motors and control units etc, even if they have been used in assembly, because then they become minor components in the meaning of Section 93 of the German Civil Code (BGB).

In case of cheque-and-bill processes, our retention of title shall also exist beyond the cheque payment until we are released from the bill-of-exchange liability. In the instance of a current account relationship (business relationship), we shall retain title until the receipt of all payments arising from the existing current account relationship; the retention shall relate to the recognised balance; in such cases the regulations of this Section 7 shall apply analogically.

- (2) In the instance where the customer infringes the contract, in particular, in the instance of payment default, we shall be entitled to recover the goods after the expiry of a set period without result. Mere recovery of the goods shall be construed withdrawal from the agreement only if an appropriate period set by us has expired without result, and withdrawal has been expressly declared. Cost that we incur as a result of recovery (particularly transportation costs) shall be borne by the customer. We shall also be entitled to forbid the customer to resell or process, combine or mix delivered goods to which we retain title, and to revoke the direct debit authorisation (Section 7 V). The customer shall be entitled to demand the delivery of goods recovered without express withdrawal declaration only after the full payment of the purchase price and all costs.
- (3) The customer shall be obligated to treat the goods with care (including inspection and maintenance work required).
- (4) The customer may neither pledge, transfer as collateral, nor cede the delivery object and its related receivables. In the instance of pledging or other third-party interventions, the customer must inform us immediately in writing so that we can bring an action pursuant to Section 771 of the Code of Civil Procedure (ZPO). The customer shall bear any remaining costs of such suit despite prevailing in legal action pursuant to Section 771 of the Code of Civil Procedure (ZPO).
- (5) The customer shall be entitled to resell, process or combine the purchased item as part of normal business; in doing so, however, it shall immediately cede all receivables arising from resale, processing or combination, or from any other legal reasons (in particular, arising from insurance or impermissible actions) to the extent of the final invoicing amount (including VAT) agreed with us, as well as all ancillary rights. If we co-own the delivered item due to retention of title, the cession of the receivables shall be on the basis of the ratio of the co-ownership shares. If the delivered item is sold together with third-party goods that are not the customer's property, the receivables that arise shall be ceded to us in the ratio by which the final invoice amount of our item corresponds to the final invoice amount of the third-party item. In the instance where the ceded receivable is transferred to a current account, the customer shall immediately cede a corresponding portion of the balance (including the final balance) from the current account to us; where interim balances are drawn and it has been agreed that they shall be carried forward, the receivable from the interim account for the next balance that is owed to us according to the aforementioned regulation shall be treated as having been ceded to us.

Also the following the cession, the customer shall remain authorised to collect these receivables, whereby our authorisation to collect the receivable ourselves shall remain unaffected.

We shall nevertheless obligate ourselves not to collect the receivable as long as the customer complies with its payment obligations arising from the revenue, is not in payment default, no submission has been made for the opening of insolvency proceedings, and there has been no suspension of payment.

If this is the case, however, the customer must notify us on request of the ceded receivables and the debtors, notify all information necessary for collection, forward the related documents, and inform the debtor (third party) of the cession. This shall also apply if the customer resells, processes or combines the purchased item in infringement of the contract.

- (6) The retention of title shall also extend to products arising from the processing or reforming of our goods to their full value, whereby such transactions occur for us so that we are deemed to be the manufacturer. If the processing or reforming occurs together with other goods that do not belong to us, we shall acquire co-ownership in relation to the objective values of these goods; in doing so, it shall herewith be agreed that the customer shall store the goods for us in such instances.

If our retained goods are combined or inseparably mixed with other movable items to become a unified item, and if the other item is to be regarded as the main item, the customer shall transfer proportional co-ownership to us to the extent that the main item belongs to the customer; the customer shall store the (co-) property for us. The same as for goods delivered under retention of title shall otherwise apply for items that arise in such manner.

- (7) The security attributable to us shall not be reported to the extent that the estimated value of our security exceeds the nominal value of the receivables to be secured by 50% or more; in that case we shall decide which securities are to be released.
- (8) To the extent that the validity of the retention of title in the country of destination is subject to particular preconditions or special formal regulations, the customer shall be responsible for ensuring that they are complied with.

#### **Section 8 Terms for Software, License Conditions, Hardware Bundling, No Right to Decompile, Labelling**

- (1) The product may include software, in particular so-called embedded software (e.g. BIOS), open-source software and/or software from third parties. Information on any software included can be found in the Congatec technical support area, available at [www.congatec.com](http://www.congatec.com).
- (2) Use of the software is subject to the terms and conditions set out in the respective owner or author's license agreements, which are referred to separately in the Congatec technical support area, available at [www.congatec.com](http://www.congatec.com).
- (3) Unless explicitly stated to the contrary in the license conditions applicable to the particular software, the embedded software may only be used on Congatec hardware. Embedded software may only be transferred to any third party if bundled with Congatec hardware, or another device that contains Congatec hardware.
- (4) The purchaser may only decompile and copy the software to the extent necessary to ensure interoperability with the software of other programs and only in case Congatec has not made available the information necessary for that purpose within an appropriate time.
- (5) Congatec reserves the right to publish security information and patches and make them available for download in the technical support area, available at [www.congatec.com](http://www.congatec.com). The customer must take suitable measures to take note of the content available in the technical support area and implement the same.
- (6) Copyright notices, serial numbers or other markings for the program identification may not be removed or altered.

#### **Section 9 Liability for material defects and warranty of title**

We shall be liable for material defects in deliveries to the extent that the customer is a business person, but only if it has properly fulfilled inspection and complaint duties arising from Section 377 of the German Commercial Code (HGB) (notification of defects must be in writing or in text form):

- (1) To the extent that the purchased item contains a defect, we shall be entitled to choose to either remove the defect or to deliver an item that is free of defects (subsequent satisfaction).

The precondition for this is that the defect is not insignificant.

If one or both of these two types of subsequent fulfilment proves impossible or incommensurate, we shall be entitled to refuse it.

We shall be entitled to refuse subsequent fulfilment to the extent that the customer fails to meet its payment obligations to us at a ratio that corresponds to the defect-free portion of the performance.

In case of subsequent fulfilment, we shall bear expenses only to the level of the purchase price, to the extent that these are not increased by the purchased item being delivered to a place other than the place of fulfilment.

We shall bear the expenses required for subsequent fulfilment, in particular transportation, travel, labour and material costs; we shall not bear costs to the extent that the delivery of the item to a place other than the place of fulfilment gives rise to additional costs.

- (2) If the subsequent fulfilment as mentioned in Paragraph 1 proves impossible, or fails, the customer, at its option, may either reduce the purchase price correspondingly, or withdraw from the contract according to statutory provisions; this shall apply particularly in the case of culpable delay, or refusal of subsequent fulfilment, including if this fails on a second occasion.

In accordance with Section 9, further claims on the part of the customer shall be excluded or limited, irrespective of legal reason.

- (3) We assume no warranty for damages arising from the following reasons: Inappropriate or erroneous use, erroneous assembly by the customer or third parties, natural wastage and normal wear and tear, erroneous or neglectful treatment, excessive utilisation, inappropriate equipment, chemical, electrochemical or electrical effects (to the extent that we are not responsible for them), erroneous modifications, or modifications that have been performed without our prior consent, or maintenance work performed by the customer or third parties.

We assume no warranty for defects on products that represent samples, prototypes, pilot-productions, etc., and customer is not entitled to claim subsequent fulfilment, exchange with a non-defective product, or damages caused by defects on those samples, prototypes, pilot-productions. Those products are labelled as such when delivered. They are provided for evaluation purposes only and are not fit for operative use or resale. Customer shall not alter or remove the labelling of samples, prototypes, pilot-productions or use them in operative environments or resell, lease or otherwise market them.

- (4) The customer's right of recourse pursuant to Section 445a of the German Civil Code (BGB) is excluded. Liability pursuant to Section 478 of the German Civil Code (BGB) remains unaffected.
- (5) Liability for defects due to the defective nature of in-built products we did not manufacture is restricted to a sum in the amount of 50% of the purchase price.
- (6) Claims due to defects shall be subject to statute of limitations two years after the delivery of the purchased item to the extent that they relate to claims for which limited liability exists pursuant to Sections 8 or 9.

No warranty is issued for public statements made by third parties. Such statements do not represent assurances of properties.

Claims to mitigation, and the exercise of the right to withdraw, shall be excluded to the extent that the subsequent fulfilment claim is subject to the statute of limitations.

In the instance of sentence 3, however, the customer may refuse to pay the purchase price to the extent that it would be entitled on the basis of withdrawal or mitigation; in the instance of exclusion of withdrawal, or a subsequent refusal to pay, we shall be entitled to withdraw from the agreement.

Nothing above is intended to reverse the burden of proof.

- (7) Commitments and guarantees shall only be effective if we provide them expressly and in writing.
- (8) This does not affect our liability in the event of intent or gross negligence (including on the part of our legal representatives and vicarious agents) or in the event of injury to life, limb or health. In addition, liability for so-called key contractual obligations (cf. Section 10 Clauses 3 and 8) remains unaffected.

#### **Section 10 Withdrawal of the customer and other liability on our part**

- (1) Apart from the instances set out in Section 8, the customer's statutory entitlement to withdraw shall be neither excluded nor limited. Equally, statutory or contractual rights and claims to which we are entitled shall be neither excluded nor limited.

- (2) We shall also be liable on an unlimited basis when issuing guarantees and commitments if a defect that comprises part of this triggers our liability. There should also be no limitation in the instance of liability arising from absolute offence ("Gefährdungstatbestände", particularly according to the Product Liability Act). Any potential liability pursuant to the principles of recourse of the business entity pursuant to Sections 478 et seq. of the German Civil Code (BGB) shall remain unaffected.
- (3) In the instance of other culpable infringement of key contractual obligations (cardinal obligations, please refer to Paragraph 8 Clause 2), our remaining liability shall be limited to foreseeable damages that are contractually typical.
- (4) Other liabilities – irrespective of legal reason (in particular claims arising from the infringement of contractual primary and ancillary duties, impermissible action, and other tortious action) – shall be excluded.
- (5) The same (exclusions, limitation and exceptions therefrom) shall apply for claims for any fault arising on the conclusion of the contract.
- (6) Section 9 shall apply accordingly for cases of expense compensation (with the exception of those pursuant to Sections 439 II, 635 II of the German Civil Code [BGB]).
- (7) An exclusion or limitation of our liability shall also be effective for our legal representatives and vicarious agents.
- (8) This is not intended to reverse the burden of proof. Cardinal duties shall comprise essential contractual obligations, in other words, such duties that give character to the agreement and which the contractual partner is entitled to have confidence in; they consequently comprise key rights and obligations that create the preconditions for contractual fulfilment, and which are indispensable for reaching the contractual purpose.

#### **Section 11 Place of satisfaction, place of jurisdiction, applicable law, contractual language, and distribution of burden of proof**

- (1) The place of fulfilment shall be the place of dispatch (location of works or warehouse).
- (2) The place of jurisdiction shall be our business headquarters to the extent that the customer is also a business person, a legal person under public law, or public law special assets. The same shall also apply if the customer has no general place of jurisdiction within Germany, relocates its headquarters abroad after the conclusion of the contract, or its headquarters is unknown at the time when a lawsuit is filed. We shall also be entitled to bring suits against the customer at other permissible places of jurisdiction.
- (3) The law of the Federal Republic of Germany (German Civil Code [BGB], German Commercial Code [HGB]) shall be applicable with regard to all claims and rights arising from this agreement. The validity of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the conflict of laws standards of the Introductory Act to the German Civil Code (EGBGB) shall be expressly excluded. The language of this agreement shall be German.
- (4) Neither the statutory nor judicial law distribution of the burden of proof shall be modified by any of the clauses agreed throughout the entire terms.

#### **Section 12 Final provisions**

- (1) Modifications to this agreement shall become effective only by agreement with us.
- (2) Should individual provisions of these terms become wholly or partially ineffective or null and void, the remaining provisions shall remain unaffected. The contractual partners shall obligate themselves to agree to a regulation that largely achieves the meaning and economic purpose by the ineffective or null and void provision.
- (3) We shall treat all of the customer's data exclusively for the purposes of processing business, and according to the regulations of the respective valid data protection provisions. On request, the customer is also entitled to information about its personal data that we gather, process and utilise.
- (4) All terms and regulations are gender-neutral, and also otherwise free of discrimination in the meaning of the General Equal Treatment Act (AGG).