

# GENERAL TERMS AND CONDITIONS OF BUSINESS

## 1 | General provisions

### 1.1 | Formation of the contract, performance

We do not enter into contracts with consumers in the sense of article 14 of the German Civil Code (BGB). Contracts only come into force on receipt of a written order confirmation from us.

All verbal agreements and changes and additions to legal regulations including these General Terms and Conditions of Business must be made in writing. This also applies to a change or cancellation of this requirement for the written form.

These terms and conditions also apply for future deliveries and services without our having to specifically refer to them or their inclusion again.

Contracts that we conclude are subject solely to the present Terms and Conditions and, where these contain loopholes, are subject to the statutory law; deviating or supplementary terms and conditions of the other contracting party (hereinafter the "Ordering Party") are not and shall not become part of the contract.

Our range of services does not include the procurement of evidence for authorisations and requirements under public law or of services required by the German Ordinance on Architects' and Engineers' Fees (HOAI).

We reserve sole ownership and copyright and all industrial property rights to the documentation (copies, drawings, description and the like) relating to our range of products and services and to all such documents produced by us during execution of the contractual relationship. The documents may only be passed to third parties – including excerpts thereof – with our prior written agreement. We are entitled to provide partial deliveries and partial services at any time.

### 1.2 | Delivery and performance time

Binding dates and deadlines for execution or deliveries may only be agreed in writing. If we have concluded contracts with third parties, in particular suppliers, in order to meet our obligations to the Ordering Party, and if these third parties do not meet their obligations from these contracts, in particular do not supply us, and we are not at fault for this failure to meet obligations, we will inform the Ordering Party of this without delay. In this event, the delivery date will be rearranged, to the extent that this is reasonable for the Ordering Party taking into account our interests.

As a prerequisite for compliance with our delivery and service obligations, the Ordering Party is required to meet their obligations in a timely and proper manner. If the Ordering Party is in default of acceptance, the risk of accidental deterioration and accidental loss transfers to the Ordering Party. If costs are incurred to us as a result of delays to the execution or delivery dates that are not our fault but the fault of the Ordering Party, the Ordering Party shall bear these costs.

### 1.3 | Payments

Our invoices are to be paid immediately in full. If we have agreed part payments, we are entitled to declare the total remaining debt due if the Ordering Party defaults in whole or in part on at least two consecutive instalments and is in default on at least 10% of the instalment price, or 5% for a contract duration of more than three years, and we have without success set a two-week time limit on the Ordering Party for payment of the overdue amount, with the clarification that if this is not paid by the deadline we will demand the total remaining debt.

In this event, we are furthermore entitled to demand advance payment or surety, or to withdraw from the contract.

In the absence of contrary provisions of the Ordering Party, we are entitled to offset payments against other outstanding claims. If costs and interest have already been incurred, we are entitled to count the payment first of all towards the costs, then towards the interest, and finally towards the main claim.

The Ordering Party has no rights of retention or offsetting; undisputed or legally established claims of the Ordering Party or those that are ripe for adjudication are excluded from this.

### **1.4 | Acceptance**

The Ordering Party must carry out any required acceptance procedure on the confirmed delivery date in accordance with our order confirmation, at the latest following completion of the work. We may verbally announce execution of the acceptance procedure. In the case of partial services or work steps that are separated in time, a partial acceptance will take place after each completion of a partial section or work step separated in time.

If acceptance is required and the Ordering Party does not formally accept the essentially defect-free completed services from us in spite of a corresponding request, acceptance will take place in the form of tacit acceptance through the intentional putting into use of our services or through other behaviour of the Ordering Party from which it is possible to infer the approval of our services as being essentially in accordance with the contract.

### **1.5 | Statute of limitation**

If the subject of the warranty for defects is the delivery of a building, or of goods that, in accordance with their usual manner of use, have been used for a building and have caused the defectiveness thereof, or the performance of a task, the success of which lies in the rendering of planning or monitoring services for a building, claims against the warranty for defects expire within five years of delivery of the goods, in the event of delivery, or from the point of

acceptance, in the event of performance of a task. Warranty claims other than those in the preceding clause expire within a year of delivery of the goods or from the point of acceptance of the task, with the exception of claims for payment of compensation, which expire within two years of delivery of the goods or the acceptance of the task. The statute of limitation in respect of the warranty for defects other than those for which subsequent performance has been provided ends at the latest on expiry of the original warranty period.

### **1.6 | Liability**

We are not liable for compensation for damages. This does not apply to

(a) damages resulting from violation of an essential contractual obligation. An essential contractual obligation in the above sense is, in particular, an obligation the fulfilment of which is required to facilitate the proper execution of the contract and which fulfilment the Ordering Party fundamentally relies on and is also entitled to rely on. In these cases, our liability is limited to compensation for foreseeable losses or damages typical of such contracts;

(b) damages resulting from violation of a guarantee provided by us;

(c) damages caused by a deliberate or grossly negligent violation of obligations by us or one of our representatives or vicarious agents;

(d) damages to life, body or health resulting from a negligent violation of obligations by us or from a deliberate or negligent violation of obligations by one of our representatives or vicarious agents;

(e) claims resulting from a no-fault liability or compelling law, in particular the German Product Liability Act (ProdHaftG).

The above provisions do not affect the legal distribution of the burden of proof.

### **1.7 | Force majeure**

If one of the Parties should be unable to fulfil a contractual obligation owing to an unforeseeable event that is outside the control of a contractual party and that is not connected

with their business operations, that was caused externally by elementary natural forces or by the actions of third parties, that was unforeseeable based on human insight and experience, that could not be prevented or rendered harmless through economically bearable means even with extreme care that is reasonably to be expected according to the circumstances, and that the affected Party should also not have simply accepted owing to its frequency (“force majeure”), such as war, unrest, natural disasters, strikes, export and import restrictions, epidemics and pandemics caused by infectious diseases, the relevant obligation is suspended for the duration of the force majeure and for a reasonable period thereafter, to put the affected Party in the position to restore their ability to fulfil their obligations. The affected Party shall inform the other Party without delay about the force majeure event and the suspension of the relevant obligations, and about the expected duration of this suspension. If the other Party has already rendered return services in relation to the suspended contractual obligation, these must be reimbursed to the other Party without delay. If the obligation of one Party is suspended for more than three months in accordance with the above provisions, the other Party may partially terminate the contract in respect of the services that have not yet been provided. In view of the circumstances of the contractual relationship overall, if the terminating party has no further interest in the services already rendered, they can terminate the contract as a whole. A Party is not liable for damages caused by a force majeure event and for which the Party is in no way at fault.

## **1.8 | Applicable law, place of jurisdiction, partial nullity; written form**

The applicable law for these Terms and Conditions of Business and for all legal relationships between us and the ordering party is that of the Federal Republic of Germany. The Hague Convention of 01.01.1967 relating to uniform laws on the international sale of goods and the United Nations Convention of 11.04.1980 on Contracts for the International Sale of Goods (CISG) and the conflict-of-law

rules applicable in Germany do not apply. Karlsruhe is the sole place of jurisdiction for all disputes arising from or in connection with the contractual relationship. The same place of jurisdiction applies if the ordering party has no place of general jurisdiction in the Federal Republic of Germany at the time of initial legal proceedings. However, we are entitled to take action against the ordering party in their place of general jurisdiction. If a provision in these Terms and Conditions of Business or a provision in the context of other agreements should be or become ineffective, this shall not alter the effectiveness of all other provisions or agreements. The Parties are agreed that the ineffective provision shall be replaced through an interpretation of the remaining provisions of the contract which allows the originally intended contractual purpose and the business purpose of the ineffective provision to be achieved in a legally permissible manner.

## **2 | Special provisions for deliveries**

For deliveries of buildings or individual parts, the following provisions apply in addition to the above provisions under I.:

### **2.1 | Prices**

Our prices are ex works or ex stock excluding transportation and packing but in each case plus statutory sales tax. EXW applies (Incoterms 2020). If, in individual cases, we have agreed with the Ordering Party free-of-charge delivery to the construction site by truck on passable streets approached at ground level with unloading, in these cases DPU applies (Incoterms 2020).

### **2.2 | Retention of title**

All deliveries are subject to retention of title. The supplied goods (jointly with the objects covered by retention of title replacing them under the following provisions: the “goods subject to retention of title”) shall remain our property until the purchase price and, where the Ordering Party is a trader, all claims that have already been acquired from the business relationship

with the Ordering Party, have been paid in full. In this case, the Ordering Party shall store the goods subject to retention of title for us, free of charge.

If the Ordering Party is a trader, the goods subject to retention of title shall furthermore remain our property until full payment of the existing and future claims that we acquire from the business relationship with the Ordering Party up to the point of transfer of ownership, regardless of when payment is due. If the realisable value of the goods subject to retention of title exceeds the secured claims by 110% or the estimated value of the goods subject to retention of title exceeds the secured claims by 150%, we will release the respective exceeding amount without delay.

The Ordering Party may process and sell the goods subject to retention of title in the normal course of business provided they have properly met their obligations arising from the contract. Pledging or use of the goods as security is not permitted. The Ordering Party must without delay notify third parties accessing the goods subject to retention of title as to their ownership, and must inform us without delay about any such access.

Where the Ordering Party processes the goods subject to retention of title into a new item, the Ordering Party is carrying out this processing on our behalf and for our account and we shall immediately become owners of the new item. If the goods are processed with other goods that do not belong to us, or if the value of the new processed item is higher than the value of the goods subject to retention of title, we shall acquire co-ownership of the new item in accordance with the ratio of the value of the goods subject to retention of title to the value of the new item. Should the Ordering Party not obtain title by virtue of combination or processing, the Ordering Party now transfers their future ownership or co-ownership – in the above ratio – of the new item to us as security. The new item shall be deemed goods subject to retention of title in the sense of these Terms and Conditions. If the goods subject to retention of title are combined or inseparably mixed with

other items to form a single new item, and if one of the other items is considered to be the main item, the Ordering Party, to the extent that the main item belongs to them, shall transfer their co-ownership of the new item to us proportionally in the above ratio.

The Ordering Party now assigns to us as security their claims on the acquiring party arising from further sale of the goods subject to retention of title. This applies likewise to processed, mixed or combined goods. If we are co-owners of the sold item on the basis of processing, combination or mixing, the Ordering Party shall assign the claim proportionally according to our co-ownership share. The same applies to other claims that replace the goods subject to retention of title or arise in respect of the goods subject to retention of title (e.g. security claims, claims against third parties for loss or destruction). The Ordering Party may collect the assigned claims in their own name until this is retracted by us. We are only entitled to retraction if the Ordering Party has behaved in violation of the contract (in particular is in default). In this case, we are also entitled to reclaim the goods subject to retention of title.

If the goods supplied by us should become an essential component of the property of a third party, the Ordering Party now assigns to us their claim on the third party arising therefrom proportionally to the amount of our payment claim.

The agreement to supply the goods subject to retention of title directly to the end customer or any such delivery does not indicate consent for further sale of the goods subject to retention of title.

### **2.3 | Shipping and transfer of risk**

The Incoterms valid under clause II.1 apply for shipping and transfer of risk. Goods that have been reported as ready for shipping on the agreed date and are provided ready for collection must be collected without delay. If this does not happen, we can, at our discretion and at the Ordering Party's cost and risk, store the goods and charge them as supplied, wherein we can demand as costs the objectively



required additional expenses including the customary storage costs (the costs for storage of stations can be found in the "Storage Costs Price Sheet"). Where we have agreed with the Ordering Party that we are responsible for transportation and unloading of the goods at a destination named by the Ordering Party (DPU, Incoterms 2020), we have met our obligation to supply the Ordering Party with material possession of the goods when the means of transport has arrived at the destination and has been unloaded. The risk is also transferred at this point in time. The costs of any waiting times for unloading that arise because the Ordering Party has culpably not met their obligations in respect of preparing the construction site or access routes shall be borne by the Ordering Party.

### **2.4 | Installation**

If we agree to transport the goods, the Ordering Party must provide suitable access to the destination for heavy haulage vehicles, special low-loaders and mobile cranes with axle loading of up to 12 tonnes, and the Ordering Party must be authorised for passage and use of the routes including the property for delivery. In this case, the passage heights, passage widths and radii must be taken into account, in particular on the construction site access and on the construction site premises. We will provide the Ordering Party with the necessary dimensions on request. The space for the crane must be made sufficiently secure by the Ordering Party (in accordance with the supporting pressure specifications of the crane company, if appropriate), observing the radius of the crane specified in the quotation, and fully prepared for installation. Where this is not possible, the Ordering Party must make this known without delay, at the latest 8 calendar days before the agreed delivery date. The costs required by us, the Ordering Party or third parties to create local and legal conditions that make delivery possible shall be borne by the Ordering Party (including the costs for using other cranes and for transport and arrangement of the cranes at the place of installation, the costs for any damage to ground or roads caused by the creation of a suitable place for delivery and installation or

waiting costs or sales shortfalls calculated by the transport company used that is unable to properly unload the goods).

In all cases, including where we are responsible for transport to the destination, the Ordering Party shall bear the costs of official requirements for transport, delivery and installation (e.g. for transport permits including the requirements, also for one-way permits, escort vehicles, police escort, road closures, signage) and all other costs arising as a result of transport, installation and delivery (e.g. costs for diversions owing to changes to the route, costs of clearing the construction site) with the exception of the costs for the transport company.

If the Ordering Party is in default on acceptance of the goods or service, they shall bear the costs for additional effort that we had to make to unsuccessfully offer the goods and for storage and retention of the goods and furthermore, if they are culpable for the default on acceptance, all other additional expenses and damage accrued to us as a result of the default on acceptance.

The Ordering Party must ensure that the construction trench has sufficient working space to deliver the goods. If necessary, the building must be protected with drainage to DIN 4095, including in the case of seepage of groundwater and slopes.

### **2.5 | Notification of defects and liability for defects**

To the extent that this is feasible in the normal course of business, the Ordering Party must inspect the goods without delay and at the latest within eight days following supply to them or to a third party named by them. If the Ordering Party identifies defects at this time, they must inform us in writing without delay. If the Ordering Party identifies defects at a later date, they must likewise inform us about these defects in writing without delay.

In the event of material defects, the rights of the Ordering Party are governed by the statutory provisions with the following stipulations:

Agreements as to the quality of the goods are limited to our own specifications and product descriptions. We can choose whether we offer subsequent performance through repair of the goods or supply of new goods.

The following, in particular, are not material defects:

(a) Deterioration in the condition of the goods as a result of natural or usual wear, incorrect commissioning, incorrect or negligent handling, inappropriate loading, owing to incorrect or delayed application of protective coatings, as a result of external influences (e.g. magnetic fields), defective installation and assembly work by third parties who were not our vicarious agents for these works, incorrect preparation of the supporting surface or construction site and failure to comply with the installation instructions; these exceptions respectively do not apply if we are at fault for the above causes.

(b) Deterioration of the condition of the goods caused by repair work, modifications or other actions carried out by the Ordering Party or by a third party not commissioned by us without our prior agreement;

(c) Insufficient lightfastness of plastic coatings;

(d) Wear of supplied parts which, owing to their material characteristics or nature of use are subject to increased natural wear, e.g. seals, plastic bearings.

If the subject of the defect liability is a construction work, the right to withdraw from the contract is excluded.

### **3 | Special provisions for work, installation, servicing and maintenance activities**

For provision of installation, servicing and maintenance activities, the following provisions apply in addition to the above provisions under 1.:

#### **3.1 | Obligations on the Ordering Party to co-operate**

The Ordering Party is responsible, at their own costs, (1) for supplying as required for the performance of the service any plans, detailed drawings, reinforcement plans, stress analysis plans, and permits under public law, the disconnection of electricity to the entire electrical system including documentation, and the supply of electricity and water including all permits, (2) for bringing the place of performance into a condition which makes it possible to carry out the work, this in particular comprising the provision of access including barrier-free traffic areas to the place of performance, (3) for informing the local area and authorities about the impact of the work and obtaining their consent to it, to the extent this is legally required, (4) for performing all co-operation measures required for any acceptance of the work that may be required, (5) for disposing of any wastewater, rubbish and garden waste arising during the work, (6) for ensuring that the tools and materials that we have stored at the place of performance with the consent of the Ordering Party are protected from soiling, theft and damage, and (7) for informing us about the effects of our work on other trades and facilitating and co-ordinating our working relationship with said trades.

#### **3.2 | Installation**

We are entitled to use subcontractors as vicarious agents. The agreed installation price assumes that the Ordering Party has implemented all preparations required for carrying out a smooth installation. If using their own employees for installation, the Ordering Party can neither request remuneration nor make deductions from the agreed installation price without explicit written agreement. Such use is at the Ordering Party's own risk and we are not liable for the actions of these employees.

#### **3.3 | Customer Services**

The Ordering Party can contact our Customer Services department with queries Mon-Fri between 8.00am and 5.00pm by phone on +49

8456 9181 999 or by email at [service@GRITEC.com](mailto:service@GRITEC.com).

## 4 | Special provisions for online orders

The following provisions apply in addition to the above provisions under I. and II. if business owners in accordance with article 14 BGB, legal entities under public law and special funds under public law order goods in our online shop, in which we offer goods solely for purchase by such ordering parties:

### 4.1 | Ordering process

The presentation of the products in the online shop is not a legally binding offer but a non-binding online catalogue of our range.

The Ordering Party can initially put our products in the basket without obligation and can correct their inputs at any time before submitting their binding order by using the correction aids provided and explained in the ordering procedure.

By clicking the "BUY NOW" button, the Ordering Party is entering into a binding contract of purchase with us for the goods that are in the basket. There is no requirement for a further confirmation from us on entering into the purchase contract.

A binding contract may also come into force beforehand as follows:

If the Ordering Party has selected credit card payment, the contract comes into force at the point in time that the credit card is charged. If the Ordering Party has selected PayPal as payment method, the contract comes into force at the point in time of confirming the payment method in PayPal.

The available languages for entering into a contract are German.

We will save the contract text and send the order data and our Ts and Cs to the Ordering Party via email. The Ts and Cs can also be viewed and downloaded from the website

<https://www.GRITEC.com/services/downloadc-enter/agb> and Ts and Cs ([GRITEC-shop.com](https://www.GRITEC.com)) at any time. The Ordering Party can view their previous orders by logging into their customer account.

### 4.2 | Shipping

Shipping costs are additional to the product prices stated. More detail about shipping costs can be found in the description in the online shop.

In principle, orders and deliveries are only possible within Germany. It is also possible to deliver to other countries after obtaining consent via our Service Hotline (tel: +49 7254 980 777, contactable Mon-Fri, 8.00am - 5:00pm).

For shipping outside the EU, tariffs and taxes may be payable; these must be paid separately by the Ordering Party and are not included in the purchase price.

We supply via delivery only. It is not possible to collect the goods yourself. We do not deliver to packing stations.

### 4.3 | Time-limited offers

We reserve the right to set up time-limited offers in the online shop. The details can be found in the respective product descriptions. It may be that, in spite of careful stockage, a promotional item sells out faster than envisaged. The company does not provide a guarantee of supply for these items.

### 4.4 | Payment

The following methods of payment are available to the Ordering Party in our online shop:

#### Advance payment

If advance payment is selected as the method of payment, we will provide the Ordering Party with our bank details in the order confirmation and we will deliver the goods after receipt of payment.

#### Credit card

The Ordering Party's credit card will be charged on completion of the order.

#### PayPal

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The Ordering Party pays the invoice amount via the online provider PayPal. The Ordering Party must be registered with the site first or must first register, must verify themselves with their login data and confirm the payment instruction to us. The Ordering Party will receive more information during the ordering process.

The technical information and data included in these technical documents correspond to the situation at time of printing in April 2019. We reserve the right to make technical changes in the course of product development. All obligations on GRITEC result from the respective contract of purchase and are neither extended nor restricted by this technical documentation. We accept no liability for damage and disruptions to business caused by operating errors, failure to comply with this technical documentation/operating instructions or caused by improper modifications by third parties, improper repairs or provided components/equipment.

### **4.5 | Customer Services**

The Ordering Party can contact Customer Services with queries and complaints Mon-Fri between 8.00am and 5.00pm by phone on +49 7254 980 777 or by email at [info@GRITEC-shop.com](mailto:info@GRITEC-shop.com).