

# General Terms and Conditions of Sale, Delivery, Service and Payment (GTC).

Ternica Systems GmbH (hereinafter referred to as "TERNICA SYSTEMS")

## 1. Validity

- 1.1 These GTC are the basis for all business transactions with our customers which relate to the sale and delivery of goods, the construction of special vehicles, the repair or maintenance of equipment or software or other services (hereinafter referred to as "products") on the part of TERNICA SYSTEMS.
- 1.2 Contractual terms and conditions of the customer that conflict with, supplement or deviate from these GTC shall not be recognised. This also applies if TERNICA SYSTEMS carries out the transaction with its customers without reservation in the knowledge of terms and conditions of the customer that contradict or deviate from its GTC.
- 1.3 Regulations deviating from these GTC shall only apply as an exception in the case of express written confirmation by TERNICA SYSTEMS.
- 1.4 Within the framework of an ongoing business relationship, these GTC shall also be valid after their first effective inclusion, even if we do not expressly refer to them in subsequent transactions.

## 2. Offer and conclusion of contract

- 2.1 Offers made by TERNICA SYSTEMS are always subject to confirmation, unless otherwise stated on the respective offer. TERNICA SYSTEMS reserves the right to correct any calculation or printing errors. Our employees are not authorised to make verbal subsidiary agreements or assurances that go beyond the content of the written contract.
- 2.2 Unless otherwise agreed in writing, the validity of the offer shall be 30 days.
- 2.3 By placing an order, the client bindingly declares to place the respective order. Contracts with TERNICA SYSTEMS shall only become legally binding after written declaration of acceptance by TERNICA SYSTEMS or with the start of execution by TERNICA SYSTEMS. The same applies to order changes and order supplements.
- 2.4 Subsequent changes to the subject matter of the contract as well as any ambiguities regarding the services of TERNICA SYSTEMS (for example ambiguities in the specifications etc.) shall be borne by the client. If such changes or ambiguities give rise to additional costs, these shall be notified by TERNICA SYSTEMS and subsequently remunerated separately by the customer, unless expressly agreed otherwise.
- 2.5 In the event of a lack of agreement on changes or ambiguities, TERNICA SYSTEMS shall be entitled to cancel the order. In this case, the client shall pay in full for the activities/deliveries already carried out by TERNICA SYSTEMS. A claim for damages against TERNICA SYSTEMS is excluded in this case, unless otherwise agreed.

- 2.6 Insofar as TERNICA SYSTEMS provides development services, only the content of the order, the order confirmation, the product description and the specifications (documentation) shall be authoritative. The respective product description in the documentation shall be decisive for the quality of the development service delivered by TERNICA SYSTEMS. TERNICA SYSTEMS does not owe any further quality. Guarantees are expressly not assumed by the product description. A guarantee requires express written confirmation by TERNICA SYSTEMS.
- 2.7 If samples are required, extra enquiries must be made for this purpose. In this case, TERNICA SYSTEMS will make an extra offer to the customer. Sampling shall then only be carried out on the basis of the customer's enquiries. In the event of changes, a new enquiry and a new quotation must be prepared.

### **3. Quotation documents and plans**

- 3.1 TERNICA SYSTEMS reserves the rights to its offer documents as well as the documents handed over within the scope of the contractual relationship. In particular, TERNICA SYSTEMS reserves ownership and copyrights to construction drawings, samples, cost estimates and similar company objects of a physical or non-physical nature. They must always be treated as strictly confidential. They may not be made accessible to third parties without the consent of TERNICA SYSTEMS. In the event of a breach of these obligations, the client shall be fully liable in accordance with the statutory provisions.
- 3.2 The client acknowledges the rights of TERNICA SYSTEMS and shall not reproduce the documents in whole or in part, make them accessible to third parties or use them for purposes other than those for which they were handed over without the prior written consent of TERNICA SYSTEMS.

### **4. Delivery and transfer of risk**

- 4.1 Deadlines and dates stated by TERNICA SYSTEMS (e.g. delivery periods and delivery dates) are not binding unless they have been expressly confirmed in writing as fixed dates. The delivery period shall commence with the dispatch of the order confirmation, but not before the provision of the documents, approvals, releases to be procured by the customer and before receipt of an agreed down payment and clarification of all technical questions.
- 4.2 Partial deliveries and/or partial services on the part of TERNICA SYSTEMS are permissible. TERNICA SYSTEMS shall be entitled to make excess or short deliveries of up to 5% compared to the order quantity. The agreed price shall be adjusted accordingly.
- 4.3 Insofar as the performance of TERNICA SYSTEMS to the customer depends on the supply of TERNICA SYSTEMS by third parties, TERNICA SYSTEMS shall be entitled to withdraw from the contract in the event of non-delivery or incorrect or untimely delivery by its suppliers for which TERNICA SYSTEMS is not responsible.
- 4.4 Delivery and dispatch of items shall be for the account and at the risk of the customer. The risk shall pass to the customer as soon as the goods leave the warehouse of TERNICA SYSTEMS. In the case of vehicles, the transfer of risk takes place when the vehicle is moved by the carrier.
- 4.5 TERNICA SYSTEMS is not responsible for securing the load of deliveries and shipments.

## 5. Remuneration, prices, due date and terms of payment

- 5.1 All prices are generally quoted according to Incoterm EXW ex warehouse TERNICA SYSTEMS plus the statutory value added tax applicable on the day of delivery. Any costs for packaging, insurance, freight and other ancillary costs shall be borne by the customer. Price quotations by TERNICA SYSTEMS are subject to change unless they are expressly confirmed as fixed.
- 5.2 Invoices are due immediately and payable net within 14 days of receipt by the client, unless otherwise agreed in writing. If acceptance is required, this shall be carried out immediately by the customer.
- 5.3 If no express acceptance takes place within 10 days of delivery, acceptance shall be irrevocably deemed to have taken place if there are no significant defects.
- 5.4 If the customer defaults towards TERNICA SYSTEMS or a company affiliated with TERNICA SYSTEMS or if reasonable doubts arise at TERNICA SYSTEMS regarding the customer's willingness or ability to pay, all outstanding invoices shall become due immediately. TERNICA SYSTEMS is entitled to make further services dependent on advance payment or to carry out deliveries on a cash on delivery basis.
- 5.5 If, on a delivery date which is four months after conclusion of the contract, changes occur in the price basis (e.g. price increases for basic materials, material, wage, transport or storage costs), we reserve the right to adjust the price accordingly after informing the customer. The price increase can only be asserted by us within two months after the occurrence of the said price increases. The individual cost elements and their increase must be weighted appropriately when forming the new price. If individual cost elements increase while others decrease, this must also be taken into account in the formation of the new price.
- 5.6 Payments shall be made by the customer in euros by cashless transfer to the bank account specified by TERNICA SYSTEMS without deduction of discounts, expenses, taxes and fees of any kind. Bank charges in particular shall be borne by the client.
- 5.7 Insofar as the customer is not obliged to perform in advance in accordance with the aforementioned conditions, TERNICA SYSTEMS shall have the right to demand an advance payment from the customer at its own discretion of up to 50% of the order value, insofar as the net order value exceeds EUR 25,000.00. The Customer shall be obliged to make advance performance in this respect. The down payment shall be due within 14 days net after receipt of a corresponding invoice from TERNICA SYSTEMS.
- 5.8 Non-compliance with the terms of payment, default or circumstances which are likely to reduce the creditworthiness of the customer shall result in the immediate maturity of all claims.

## 6. Prohibition of set-off and assignment; subcontractors

- 6.1 The customer shall only be entitled to offset or exercise a right of retention to the extent that a recognised, undisputed or legally established claim of the customer exists.

6.2 The assignment of rights of the customer arising from contractual relationships with TERNICA SYSTEMS shall require the prior consent of TERNICA SYSTEMS in order to be effective. This shall not apply insofar as § 354 a of the German Commercial Code (HGB) applies.

6.3 TERNICA SYSTEMS is entitled to employ third parties (subcontractors) to fulfil its contractual obligations.

## 7. Retention of title

7.1 The goods remain the property of TERNICA SYSTEMS until payment has been made. In the case of business transactions with entrepreneurs, TERNICA SYSTEMS retains ownership of all delivered goods until the customer has paid all current and future claims arising from the business relationship. The retention of title also covers replacement or exchange parts such as motors, control units, etc., even if they are installed, as they do not thereby become essential components within the meaning of § 93 BGB. If the cheque/bill of exchange procedure is carried out, the retention of title shall continue to exist after the cheque has been paid until we are released from liability under the bill of exchange. In the event of a current account relationship (business relationship), TERNICA SYSTEMS shall retain title until receipt of all payments from the existing current account relationship; the retention shall refer to the recognised balance; in these cases, the provisions of this § 7 shall apply accordingly.

7.2 In the event of behaviour contrary to the contract on the part of the customer, in particular in the event of default in payment, TERNICA SYSTEMS shall be entitled to take back the goods after setting a deadline to no avail. The mere taking back of the goods shall only constitute a withdrawal from the contract if a reasonable period of time set for performance has expired fruitlessly and the withdrawal has been expressly declared. The costs incurred by TERNICA SYSTEMS as a result of taking back the goods (in particular transport costs) shall be borne by the customer. TERNICA SYSTEMS is further entitled to prohibit the customer from any resale or processing, combination or mixing of the goods delivered under retention of title and to revoke the direct debit authorisation (§ 7 V). The customer may only demand the delivery of the goods taken back without an express declaration of withdrawal after full payment of the purchase price and all costs.

7.3 The customer is obliged to treat the goods with care (incl. necessary inspection and maintenance work).

7.4 The customer may neither pledge nor assign by way of security the delivery item and the claims replacing it. In the event of seizure or other interventions by third parties, the customer shall immediately notify TERNICA SYSTEMS in writing.

7.5 The customer is entitled to resell, process or mix the purchased goods in the ordinary course of business; in doing so, however, he already now assigns to TERNICA SYSTEMS all claims arising from the resale, processing, mixing or other legal grounds (in particular from insurance or tortious acts) in the amount of the final invoice amount agreed with TERNICA SYSTEMS (incl. VAT) as well as all ancillary rights. If the delivered goods are co-owned on the basis of the retention of title, the assignment of the claims shall be made in proportion to the co-ownership shares. If the delivered goods are sold together with goods of third parties which are not the property of the customer, the resulting claims shall be assigned to TERNICA SYSTEMS in the ratio which corresponds to the final invoice amount of the goods to the final invoice amount of the third party goods. If the assigned claim is included in a current invoice, the customer already now assigns to TERNICA

SYSTEMS a corresponding part of the balance (including the closing balance) from the current account; if interim balances are drawn and their carry forward is agreed, the claim to which we are entitled per se from the interim balance according to the above regulation shall be treated as assigned to TERNICA SYSTEMS for the next balance. The customer remains authorised to collect these claims even after the assignment, whereby the authority of TERNICA SYSTEMS to collect the claim itself remains unaffected. However, TERNICA SYSTEMS undertakes not to collect the claim as long as the customer meets his payment obligations from the collected proceeds, is not in default of payment, and no application for the opening of insolvency proceedings has been filed or payments have been suspended. However, if this is the case, the customer shall, upon request, disclose to TERNICA SYSTEMS the assigned claims and the debtors, provide all information required for collection, hand over the relevant documents and inform the debtor (third party) of the assignment. This shall also apply if the customer resells, processes or mixes the purchased goods in breach of contract.

- 7.6 The retention of title also extends to the products resulting from the processing or transformation of the goods at their full value, whereby these processes are carried out for TERNICA SYSTEMS, so that TERNICA SYSTEMS is deemed to be the manufacturer. If the processing or transformation is carried out together with other goods that do not belong to TERNICA SYSTEMS, TERNICA SYSTEMS shall acquire co-ownership in proportion to the objective values of these goods; it is already now agreed that in this case the customer shall carefully keep the goods for TERNICA SYSTEMS. If goods subject to retention of title are combined or inseparably mixed with other movable items to form a uniform item and if the other item is to be regarded as the main item, the customer shall transfer co-ownership to TERNICA SYSTEMS on a pro rata basis insofar as the main item belongs to him; the customer shall keep the resulting (co-)ownership for TERNICA SYSTEMS. For the rest, the same shall apply to items thus created as to those delivered under retention of title.
- 7.7 The customer also assigns to TERNICA SYSTEMS the claims to secure the claims of TERNICA SYSTEMS against him, which arise against a third party through the connection of the delivery items with a property. The assignment shall be made with priority over the remainder.
- 7.8 The securities to which TERNICA SYSTEMS is entitled shall not be covered insofar as the estimated value of the securities exceeds the nominal value of the claims to be secured by 50%; the decision as to which securities have been released shall be at the discretion of TERNICA SYSTEMS.
- 7.9 Insofar as the validity of the retention of title in the country of destination is linked to special prerequisites or special formal requirements, the customer shall ensure that these are fulfilled.

## 8. Warranty

- 8.1 Insofar as the creation of a work is agreed between TERNICA SYSTEMS and the customer, i.e. the law on contracts for work and services applies, the following shall apply: TERNICA SYSTEMS warrants that delivered goods are free from manufacturing defects under normal use and use in accordance with the contract. Should a justified defect nevertheless occur, TERNICA SYSTEMS shall be entitled, at its own discretion, to rectify the defective item or to make a replacement delivery. If the subsequent performance finally fails, the customer may assert the statutory rights. In all other respects, Clause 9 shall apply to claims for damages.

- 8.2 The customer shall notify TERNICA SYSTEMS in writing of any obvious defects without delay, but no later than 5 working days after receipt of the delivery. Other defects which cannot be discovered within this period, even after careful examination, shall be notified to TERNICA SYSTEMS in writing immediately after their discovery. In the case of a commercial transaction on both sides, § 377 HGB (German Commercial Code) shall apply.
- 8.3 Insofar as service contract law applies to the services of TERNICA SYSTEMS, the following shall apply:  
If the services of TERNICA SYSTEMS are defective, TERNICA SYSTEMS shall initially be entitled and obliged to rectify the defect. If the rectification of defects finally fails, the customer shall be entitled to damages according to clause 9.
- 8.4 Excluded from the warranty are damages due to natural wear and tear, defective maintenance (insofar as TERNICA SYSTEMS has not contractually assumed the maintenance), disregard of regulations, excessive stress, defective construction and assembly work by third parties, faulty operation as well as other causes for which TERNICA SYSTEMS is not responsible.
- 8.5 The warranty expires if the customer or third parties carry out changes or repairs to services provided by TERNICA SYSTEMS without the prior written consent of TERNICA SYSTEMS, unless the customer can prove that the defect is not attributable to this.
- 8.6 Claims of the customer due to material defects and defects of title shall become statute-barred 12 months after acceptance of the work or knowledge of defects in the provision of services, provided that the customer is an entrepreneur and that there are no mandatory statutory provisions to the contrary.
- 8.7 Unless otherwise agreed in writing, complaints about components can only be accepted after the defective components have been returned and analysed by TERNICA SYSTEMS, insofar as the fault can be proven to lie with TERNICA SYSTEMS. If the fault does not lie with TERNICA SYSTEMS or the components are not returned to TERNICA SYSTEMS for analysis, no costs will be accepted.

## 9. Liability

- 9.1 The customer's legal right to withdraw from the contract shall - apart from the cases of § 8 - neither be excluded nor limited. Likewise, legal or contractual rights and claims to which TERNICA SYSTEMS is entitled shall neither be excluded nor limited.
- 9.2 TERNICA SYSTEMS shall be liable without limitation only for intent and gross negligence (also of its legal representatives and vicarious agents) as well as for injury to life, body and health. Likewise, TERNICA SYSTEMS shall be liable without limitation in the event of the provision of guarantees and warranties, if it is precisely a defect covered by these that triggers the liability of TERNICA SYSTEMS. There shall also be no limitation in the case of liability arising from endangering circumstances (in particular in accordance with the Product Liability Act). A possible liability according to the principles of recourse of the entrepreneur according to §§ 478 f. BGB shall remain unaffected.

- 9.3 In the event of any other culpable breach of material contractual obligations (cardinal obligations, see para. (8) sentence 2), the remaining liability shall be limited to the foreseeable damage typical for the contract.
- 9.4 In all other respects, liability - irrespective of the legal grounds (in particular claims arising from the breach of primary and secondary contractual obligations, tort and other tortious liability) - is excluded.
- 9.5 The same (exclusions, limitation and exceptions thereto) shall apply to claims arising from culpa in contrahendo.
- 9.6 In the case of reimbursement of expenses (with the exception of those according to §§ 439 II, 635 II BGB) § 9 applies accordingly.
- 9.7 Any exclusion or limitation of liability shall also apply to the legal representatives and vicarious agents of TERNICA SYSTEMS.
- 9.8 A reversal of the burden of proof is not intended. Cardinal obligations are essential contractual obligations, i.e. those obligations which give the contract its character and on which the contractual partner may rely; these are thus the essential rights and obligations which create the conditions for the fulfilment of the contract and are indispensable for the achievement of the purpose of the contract.

## 10. Trade secrets

TERNICA SYSTEMS warrants that all business secrets of the client as well as all information classified as confidential by the client shall be kept strictly confidential. In return, the client undertakes to treat all information about methods and procedures of TERNICA SYSTEMS as business secrets in confidence.

## 11. Scope of services for the maintenance and/or repair of hardware

- 11.1 The following provisions shall apply in addition to the general provisions if a contract for the maintenance and/or repair of hardware has been concluded between TERNICA SYSTEMS and the customer.
- 11.2 Depending on the individual contractual agreement, TERNICA SYSTEMS shall perform the preventive services (maintenance) and/or repairs or replacements in the event of the elimination of faults that have occurred (repair), hereinafter referred to as maintenance services, necessary to maintain the operational readiness of the hardware to be maintained.
- 11.3 In order to carry out the maintenance services, TERNICA SYSTEMS may replace defective parts or defective systems and install technical modifications. Consumables, wear parts or spare parts used are either new or equivalent to new parts in terms of their usability. The costs for such parts shall be paid separately by the customer, unless expressly agreed otherwise. Technical modifications must be agreed with the customer in advance. Data stored on replaced or returned parts or systems shall be deleted by TERNICA SYSTEMS without delay. If this is not possible, TERNICA SYSTEMS will render these parts completely unusable. The disposal of exchanged spare parts shall be paid for separately by the client, unless expressly agreed otherwise.

- 11.4 This maintenance service does not include services in connection with the replacement of consumable and wear parts. If these services are provided by TERNICA SYSTEMS at the request of the customer, they shall be invoiced separately to the customer in accordance with the applicable prices of TERNICA SYSTEMS.
- 11.5 Not covered by these maintenance services are malfunctions of the hardware caused by improper use of the hardware (e.g. non-observance of the relevant user manual), modifications of the hardware by the client or third parties engaged by the client or by other circumstances for which the client is responsible.
- 11.6 The performance of maintenance is subject to the proviso that TERNICA SYSTEMS itself is supplied by its respective upstream supplier in good time and in accordance with the contract.
- 11.7 TERNICA SYSTEMS is entitled to provide the services by subcontracting them to third parties (subcontractors). TERNICA SYSTEMS shall be liable for the performance of services by subcontractors as for its own actions.
- 11.8 Maintenance work shall be carried out during normal business hours of TERNICA SYSTEMS.
- 11.9 The place of performance for the maintenance of the customer's hardware shall be the customer's agreed place of business and the installation location specified therein.
- 11.10 The relocation of hardware to a place of performance other than the agreed place of performance shall be notified to TERNICA SYSTEMS by the customer in writing at least two months in advance. In this case, TERNICA SYSTEMS shall continue the maintenance if this does not involve increased expenditure. If the implementation affects the effort for the provision of the service, TERNICA SYSTEMS shall be entitled to demand payment of a remuneration appropriate to the changed circumstances.
- 11.11 As a matter of principle, only the hardware which has been expressly included in the maintenance contract shall be the subject of the maintenance contract. Replacement purchases are not part of the maintenance contract, unless the replacement purchase has been made through TERNICA SYSTEMS.

## **12. Scope of services for the creation and/or maintenance of software**

- 12.1 The nature and scope of the services provided by both parties in the creation and maintenance of software shall be governed by the following contractual agreements:
- Service description
  - these General Terms and Conditions
  - generally applied guidelines and technical standards.
- In the event of discrepancies, the contractual agreements shall apply in the above order.
- 12.2 Insofar as TERNICA SYSTEMS has created software for the customer, TERNICA SYSTEMS shall assume responsibility for the elimination of defects in the programs and the program documentation. When used in accordance with the contract, the programmes shall provide the services specified in the service description. Insofar as TERNICA SYSTEMS is not the licensor of the existing software at the customer's premises, the customer and TERNICA SYSTEMS shall determine the status of the software in the form of a status report prior to the commencement of the contract, which will be the basis for the subsequent determination of a defect.



- 12.3 If agreed in the contract, TERNICA SYSTEMS shall provide the customer with certain new statuses of the software in order to keep it up to date and to prevent faults. For this purpose, TERNICA SYSTEMS shall provide the customer with updates of the software with technical modifications and improvements as well as minor functional extensions and improvements. Furthermore, TERNICA SYSTEMS shall provide the customer with patches with corrections to the software and other workarounds for possible malfunctions.
- 12.4 The scope of services does not include the provision of upgrades with significant functional enhancements and necessary changes due to legal requirements that can only be implemented by partial or complete reprogramming of the affected software to be maintained. In this case, TERNICA SYSTEMS may demand an appropriate additional remuneration after prior written notification. If the client does not give his written consent to this, TERNICA SYSTEMS may terminate the contract for good cause or exclude the software concerned from the contract.
- 12.5 If TERNICA SYSTEMS provides open-source software for the client within the scope of the service provision, TERNICA SYSTEMS is not to be understood as the licensor of this software used. In this case, the contractual partner shall comply with the respective licence conditions of third parties, if such exist.
- 12.6 TERNICA SYSTEMS itself grants the licence for the use of the created software only insofar as this is necessary to use the software for the contractually agreed use.
- 12.7 TERNICA SYSTEMS is entitled to provide the services by subcontracting them to third parties (subcontractors). TERNICA SYSTEMS shall be liable for the performance of services by subcontractors as for its own actions.
- 12.8 TERNICA SYSTEMS or subcontractors commissioned by it shall provide the services agreed in the service description in countries of the European Union, unless otherwise agreed. TERNICA SYSTEMS or subcontractors commissioned by it may, at their own discretion, also relocate the place of performance to countries outside the European Union, insofar as this does not result in any significant disadvantages for the customer.
- 12.9 Unless expressly agreed otherwise, TERNICA SYSTEMS shall not provide the customer with the source code of the software produced. This remains the property of TERNICA SYSTEMS.

### **13. Data protection clause**

- 13.1 Personal data from the contract may only be used for the purpose of contract execution, customer care, market and opinion research as well as for own advertising campaigns. In this respect, personal data of the customer accruing within the framework of the contractual relationship and required for its execution shall be stored by TERNICA SYSTEMS. As far as this is necessary for the execution of the contract, the data will also be transmitted to other companies which are entrusted by TERNICA SYSTEMS in a permissible way with the execution of the contract or parts of it.

### **14. Place of jurisdiction, applicable law**

- 14.1 If the customer is a merchant or a legal entity under public law, the place of performance shall be our registered office in Arnstorf.

- 14.2 The legal relationship shall be governed solely by the substantive law of the Federal Republic of Germany to the exclusion of private international law and the UN Convention on Contracts for the International Sale of Goods.
- 14.3 The place of jurisdiction shall be our registered office, provided that the customer is also a merchant, a legal entity under public law or a special fund under public law. The same shall apply if the customer does not have a general place of jurisdiction in Germany, if he moves his registered office abroad after conclusion of the contract or if his registered office is not known at the time the action is brought. We are also entitled to sue the customer at other admissible places of jurisdiction.

## 15. Severability clause

- 15.1 Should individual provisions of the contract with the customer, including these terms and conditions, be or become invalid in whole or in part, this shall not affect the validity of the remaining provisions. The wholly or partially invalid provision shall be replaced by a provision whose economic success comes as close as possible to that of the invalid provision. The same shall apply mutatis mutandis if a loophole in need of filling arises during the execution of the contract, or if a provision has become pointless or impracticable as a result of changed circumstances.