

General Terms and Conditions of Sale of COMET AG



Version_01_dated 14th July 2008

These General Terms and Conditions of Sale are available on the internet under the following address: www.comet.com.

1 SCOPE, BINDING EFFECT

1.1 These General Terms and Conditions of Sale shall apply to any offer made by COMET AG or any of its affiliates ("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. Contradictory terms and conditions of the Customer are expressly excluded.

1.2 The current version of the General Terms and Conditions of Sale is available on the internet (www.comet.ch). By placing an order, the General 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.

2 OFFER AND ACCEPT

2.1 Offers made by COMET shall in any case be non-binding and at no charge unless otherwise agreed. 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

3.1 The prices offered or confirmed shall be deemed net prices, unless otherwise agreed in writing.

4 DELIVERY

4.1 Delivery dates shall be understood ex works 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 2000. Unless otherwise agreed, the transfer to the carrier at the production plant of COMET or at any other place of lading shall be considered as dispatch 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 a one week prior notice or to claim damages for non-performance. 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 or the delivery of the ordered goods.

4.6 In addition, COMET reserves the right to retain any further deliveries not related to the respective delivery.

5 PAYMENT TERMS

5.1 The Customer undertakes to make the net payment within the term agreed from the date of the invoice.

5.2 Cash 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 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 be made only if COMET may freely dispose of the respective amount, irrespective of the payment method.

5.6 In case of non-payment of the purchase price by the Customer, COMET shall – in its own discretion and without limiting any further legal 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 residue 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 non-performance on the part of the Customer.

5.7 The Customer shall not have the right to offset any debts receivable against debts receivable of COMET. The representatives of COMET shall not be authorised 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

authorises COMET to have the reservation of title entered into the official register.

7 COMPLAINTS, NOTIFICATION OF DEFECTS

7.1 Immediately upon receipt of the goods purchased, the Customer shall inspect the goods and shall notify COMET in writing of any claims for shortages, defects or damages.

7.2 The warranty terms of COMET shall apply.

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

8 WARRANTY AND LIABILITY

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

8.2 The warranties for the different product groups are specified in the warranty terms of COMET.

8.3 It shall be expressly pointed out that COMET shall not be liable for any consequential costs in relation to any warranty claims.

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.

10.2 COMET shall not be liable for the violation of any intellectual property right or related claims resulting from the manufacturing of objects based on drawings, models or templates provided by the Customer. The Customer shall hold COMET harmless 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 reasonable reasons exist for a product recall by COMET, the Customer undertakes all possible and necessary actions to assist COMET in the best possible way.
12.2 The Customer shall take any measures to be at all times in a position to return the products to COMET in case of a product recall. In particular, the Customer shall take measures in order to secure the statutory traceability of the products.

12.3 Upon request by COMET, the Customer undertakes to return to COMET all products affected by a product recall. These provisions shall apply, if feasible, to affected products which are already in possession of the end customer.

12.4 COMET shall not bear any costs in connection with a product recall unless the cause for the product recall was set by COMET. In general, any liability of COMET for any consequential costs incurred by the Customer such as costs due to breakdown, loss of revenue, etc. shall be explicitly excluded.

13 APPLICABLE LAW, SEVERABILITY

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

13.2 These General Terms and Conditions of Sale and all Agreements between COMET and the Customer 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 General 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.