

## General Trade of Terms of the Companies

**ACD Elektronik**  
GmbH Engelberg 2  
88480 Achstetten

**ACD Systemtechnik GmbH**  
Zum Mühlenberg 6  
07806 Neustadt (Orla)

**ACD Antriebstechnik GmbH**  
Zum Mühlenberg 6  
07806 Neustadt (Orla) sowie  
Engelberg 2  
88480 Achstetten

### § 1 General provisions – area of application

(1) The services, products and quotations of the companies ACD Elektronik GmbH, ACD Systemtechnik GmbH and ACD Antriebstechnik GmbH (hereinafter referred to only as ACD) are provided exclusively based on these Terms of Trade, unless other individual contractual agreements have been made. These Terms of Trade apply to all current and future business relations.

(2) These Terms of Trade are deemed accepted at the latest on acceptance of the service or product. Statements to the contrary by the customer or ordering party (hereinafter referred to only as the Customer) with reference to their own Terms of Trade are hereby rejected. Any deviating, contrary or supplementary Terms of Trade of the Customer, even if known, are not part of this contract unless expressly agreed to in writing.

(3) All agreements made between ACD and the Customer for the purpose of implementing the corresponding contract must, for the purpose of completeness, be written in the corresponding contract.

### § 2 Order placement

(1) Quotations and cost estimates from ACD are unbinding and subject to confirmation.

(2) With the placement of an order, the Customer bindingly declares its intention to place an order with ACD. ACD is entitled to accept the contract offer contained in the order within two weeks of receipt. Acceptance can be made either in writing or by transfer of the work or ordered item to the Customer or to a third person authorised by the Customer.

(3) If the Customer orders the work by electronic means, ACD will immediately confirm receipt of the order. The confirmation of receipt does not constitute a binding acceptance of the order. The confirmation of receipt can be linked with the declaration of acceptance.

(4) In the order document or confirmation document, the services or products to be supplied are named and the probable completion or delivery date stated. The Customer receives a duplicate of the order certificate. Price statements on the order certificate can also be made by reference to the price lists published by ACD with regard to the items in question.

(5) The contract is concluded under reservation of the correct and timely supply of ACD by its subcontractors. This only applies if ACD is not responsible for the failure to deliver, in particular on conclusion of a congruent cover transaction with its subcontractor. The Customer will be immediately informed of the non-availability of the service or product. Any payment already made will be refunded immediately.

### § 3 Quotations and preliminary work

(1) If the Customer requests a binding price statement from ACD, a written quotation is necessary. ACD is bound to this quotation up to the expiry of four weeks after its submission.

(2) Quotations as well as drawings, illustrations or other performance data are only binding if this has been expressly agreed in writing. ACD retains unrestricted ownership and copyright exploitation rights to cost quotations, drawings, illustrations and other performance data. These documents may only be made accessible to third parties after prior agreement of ACD, and if the order is not placed with ACD, they must be returned immediately on request.

(3) Quotations are charged for unless agreed otherwise separately and in writing between ACD and the Customer.

(4) Preliminary work such as the compilation of specifications, project planning documents, drawings, illustrations or other performance data which the Customer requests are also charged for if this has been agreed.

#### **§ 4 Revocation clauses due to distance selling contract or doorstep**

(1) If the Customer is a consumer in the sense of § 13 BGB (German Civil Code), the Customer has the right in case of distance selling or doorstep selling to revoke his declaration of intention to conclude a contract within two weeks of contract conclusion. The revocation does not require a reason and can be declared in text form or simply by returning the goods to ACD. However, the goods must be dispatched in good time to observe the time period.

(2) However, ACD expressly reserves the right to commence the service and/or supply only after expiry of the two-week revocation period.

#### **§ 5 Prices and payment conditions**

(1) Prices are ex ACD works, excluding packaging, plus the statutory VAT applicable in each case.

(2) If ACD has assumed responsibility for erection, installation or assembly of the service or product and unless otherwise agreed, the Customer pays not only the agreed remuneration for this, but also all necessary auxiliary costs such as travel expenses, transport costs for the tools and personal luggage as well as severance allowances.

(3) Payments must be made free payment point of the Supplier.

(4) The Customer may only set off claims which are undisputed or have been legally established.

(5) If the Customer defaults on payment, ACD is entitled as from the relevant point in time to demand interest payments on the main accounts receivable to the amount of eight percentage points above the basic interest rate of the European Central Bank as fixed compensation. This rate must be reduced if the Customer provides proof of a lower cost. This does not affect the right of ACD to provide proof of higher damage.

(6) If ACD becomes aware of facts that raise doubts about the creditworthiness of the Customer, in particular if a cheque can not be redeemed or the Customer ceases payments, or if ACD becomes aware of other circumstances that raise doubts about the creditworthiness of the Customer, ACD is entitled to declare the entire residual payment due, even if it has accepted cheques. In such a case, ACD is also entitled to demand advance payments or securities.

#### **§ 6 Reservation of ownership**

(1) In the case of contracts with consumers in the sense of § 13 BGB, ACD reserves ownership of the service or product until full payment of the purchase price.

(2) In the case of contracts with companies in the sense of § 14 BGB, ACD reserves ownership of the goods until full payment of all accounts receivable from the ongoing business relationship. If the value of all security rights to which ACD is entitled exceeds the value of all secured claims by more than 20 %, ACD will release a corresponding part of the security rights at the request of the Customer. ACD authorises the Customer to resell the goods in the ordinary course of business. The Customer hereby assigns to ACD to the amount of the invoice all debts from a third party that arise from the resale. ACD hereby expressly accepts this assignment. According to the assignment, the Customer is authorised to collect the debt on behalf of ACD. However, ACD reserves the right to collect the debt itself as soon as the Customer fails to correctly meet its payment obligations and defaults on payment. Processing by the Customer of the product or service supplied is always in the name of and on behalf of ACD. In the event of processing together with items that do not belong to ACD, ACD acquires co-ownership of the new item in the ratio of the value of the product or service provided by ACD to the other processed items. The same applies if the service or product is mixed with other items that do not belong to ACD.

(3) Irrespective of whether it is a consumer or a company, the Customer is obliged to treat the service or product with care. If maintenance and inspection work is necessary, the Customer must perform this regularly at its own cost.

4) The Customer is obliged to inform ACD immediately of access by a third party to the service or product, for instance in the event of a seizure, as well as to inform ACD immediately of any confirmations or destruction of the service or product. The Customer must inform ACD immediately of a change of ownership of the service or product as well as of any change of its own address.

(5) ACD is entitled in the event of behaviour of the Customer in contravention of the contract, especially in the event of default of payment, to repossess the reserved service and product, or if applicable to demand assignment of the Customer's claim for return from third parties. The repossession or seizure of the reserved products by ACD does not constitute a withdrawal from the contract.

### **§ 7 Delivery and performance period, transfer of risk**

(1) Delivery and performance periods or deadlines that can be agreed bindingly or non-bindingly must be made in written (§ 126 BGB) or electronic (§ 126 a) form. The observation of these deadlines for deliveries requires that the Customer submits in good time all the necessary documents, authorisations and approvals, in particular relating to plans, as well as that the Customer complies with the agreed payment conditions and other obligations. If the Customer does not meet these conditions in good time, the delivery and performance periods are extended by an appropriate period to the advantage of ACD. However, this does not apply if ACD is responsible for the delay.

(2) ACD is not responsible for delivery and performance delays due to force majeure or events that temporarily make performance or delivery extremely difficult or impossible for ACD, even if deadlines or dates have been bindingly agreed. Such events entitle ACD to postpone the performance or delivery by the duration of the hindrance plus an appropriate start-up period or to partly or fully withdraw from the contract due to the part not yet performed. If the hindrance lasts longer than three months, the Customer is entitled after the setting of an appropriate extension to withdraw from the contract with regard to the part not yet performed. If the delivery or performance period is extended or if ACD is released from its obligation, the Customer may not derive any rights to compensation from this. However, ACD can only cite the aforementioned circumstances if ACD immediately informs the Customer of them.

(3) ACD is at all times entitled to part-performance unless the part-performance is unreasonable for the Customer and not in the Customer's interests.

(4) If ACD is responsible for failure to adhere to bindingly agreed deadlines and dates, or if ACD is in default of delivery, the Customer has a right to default compensation to the amount of ½ % for each full week of delay, however altogether up to five % of the invoice value of the service or product affected by the delay, if the Customer can convincingly argue that it has suffered damage due to the delay. Claims that go beyond this are excluded unless the default is the result of at least gross negligence by ACD.

(5) If the Customer defaults on acceptance, ACD is entitled to demand compensation for the damage incurred. On commencement of the default of acceptance, the risk of accidental deterioration and accidental destruction is transferred to the Customer.

(6) In the case of carriage-free delivery, the risk is transferred to the Customer when the service or product is dispatched or collected. If the Customer requires insurance for normal transport risks, ACD will insure the service or product at the cost of the Customer against normal and known transport risks.

(7) If the service or product supplied by ACD includes erection, installation or assembly at the Customer's facility, the risk is transferred to the Customer on the day of transfer at the works or, in as far as agreed, after successful trial operation.

(8) Otherwise the risk is transferred to the Customer as soon as it has received the service or product. If receipt is delayed at the request of the Customer, the risk is transferred to the Customer on notification by ACD of completion or readiness for delivery.

### **§ 8 Liability for material defects and defects of title**

(1) ACD guarantees that all services and products are free of manufacturing and material defects. Should a material defect be present despite this, ACD will at its own discretion and free of charge repair, replace or re-perform such products or services which have material damage within the period

of limitation (irrespective of the period of operation) in as far as the cause of the defect already existed at the time of the transfer of risk. With regard to the aforementioned right of discretion of ACD, ACD expressly reserves the right to engage third parties to remedy defects. At the same time, ACD provides assurance that the Customer will not have to bear any further costs due to the engagement of third parties to remedy defects.

(2) If the material defect is recognised and can be remedied by ACD by so-called remote diagnosis, the Customer declares its consent to ACD accessing the customer's network. In turn, ACD guarantees that it will observe the usual security standards during this remote diagnosis. ACD will only log in to the Customer's network after consultation with the Customer. Simultaneously, the Customer declares its consent in the case of network problems to provide ACD with the test protocols regarding the Customer's network. After completion of the remote diagnosis conducted after logging into the Customer's network, ACD will immediately indicate the termination of the remote diagnosis session.

(3) ACD is responsible for the content-related correctness of the representation of the service or product, in particular in the case of accompanying software, exclusively on the basis of the data provided by the Customer. ACD does not accept responsibility for the correctness of this data, also to third parties.

(4)

If operating and maintenance instructions from ACD are not observed, changes are made to the services or products, software or other parts are replaced or used which do not comply with the original specification, this renders all warranties invalid if the Customer does not disprove a corresponding well-founded claim that one of these circumstances caused the defect.

(5) The Customer must inform ACD immediately, or at the latest within one week of receipt of the service or product, of any defect in writing. Defects which cannot be discovered even through careful inspection within this period must be reported to ACD in writing immediately after their discovery.

(6) Only the Customer holds warranty rights against ACD; they cannot be assigned.

(7) Material defect claims are subject to a period of limitation of twelve months. This does not apply if the law according to §§ 438 Subs. 1 No. 2, 479 Subs. 1 and 634 a Subs. 1 No. 2 BGB specifies longer limitation periods or in the event of injury to life, limb or health, intent or grossly negligent breach of duty by ACD or in the case of fraudulent concealment of a defect. This does not affect the statutory regulations on suspension of expiry, suspension and recommencement of periods of limitation.

(8) The right to claims for material defects does not exist in the case of an insignificant deviation from the agreed quality, insignificant impairment of utility, natural wear or damage incurred after the transfer of risk due to incorrect or careless handling, excessive stress, unsuitable operating materials, defective construction work, unsuitable construction substrate or due to special external influences which are not foreseen in the contract as well as in the case of non-reproducible software errors.

(9) If the service or product includes erection or assembly by ACD, the auxiliary supplies and items necessary for the work must be located at the place of erection or assembly prior to commencement of the work, and all preparatory work must be advanced to such a degree before the start of construction that the erection or assembly can be started as agreed and performed without interruption. ACD does not provide any warranty for the structural, fire or other safety of the surroundings, nor for the substrate at the place of assembly. The access routes and the erection or assembly areas must be levelled and cleared as appropriate in the individual cases. If in a specific case special installation aids or equipment such as lifting platforms or special guards are necessary for installation of the service or product due to the position of the installation in the room, the Customer must provide this equipment in good time prior to the previously agreed installation date so that ACD can use this equipment on time on the installation date. If the erection, assembly or commissioning are delayed due to reasons for which ACD is not responsible, the Customer must bear the costs to a reasonable extent for waiting time or necessary additional travel expenses of ACD or the assembly personnel.

(10) If ACD requests approval of the products after completion of the work, the Customer must perform this approval within two weeks. If the Customer fails to do so, approval is deemed to have been granted. Approval is also deemed to have been granted if the service or product (if appropriate after the end of an agreed test phase) has been put into operation.

(11) The aforementioned Nos. apply correspondingly for defects of title. Otherwise, the statutory regulations apply.

### **§ 9 Industrial property rights, copyrights and utilisation rights**

(1) If the service item offered consists of planning, development, compilation, system support, maintenance and administration of media representations in the broadest sense, irrespective of their form of expression, as well as parts, modifications or further developments of these representations which are used in computer programs (§ 69 a UrhG – German Copyright Law) or independently of them, as well as draft/design material, then the creation of the work ordered is exclusively a contract for copyright work, so that the provisions of § 69 b UrhG expressly do not apply to this contractual relationship.

(2) If the service or product from ACD consists of software, computer programs or media representations in a broad sense, all services and products from ACD are protected by copyright law as personal intellectual work. The provisions of copyright law are also deemed agreed if the level of creation specified by § 2 UrhG is not achieved.

(3) ACD transfers simple rights of use of the works protected by copyright according to § 2 UrhG for the entire period of the contractual relationship. Any transfer of rights of use to third parties or any multiple use must be agreed in writing with ACD. Unless otherwise agreed, the work from ACD may only be used for the agreed type of use and for the agreed contractual purpose. The Customer acquires the right to use the works within this framework by paying the agreed remuneration. After the end of the contractual relationship, all rights of use revert to the originator without the need for any separate act of transfer.

(4) ACD has the right to be named as the originator on reproductions. A breach of this right to be named entitles ACD to compensation. Without proof of higher damage, the compensation is 50 % of the agreed remuneration. This does not affect the right to enforce higher compensation on provision of evidence.

(5) Works from ACD may only be altered or reproduced with the consent of ACD; any imitation, also of parts of the service or product, is not permitted. Any violation of this provision entitles ACD to demand a contractual penalty to the amount of double the remuneration agreed.

(6) As the originator in the sense of § 7 UrhG, ACD grants the Customer exclusive rights of use, unlimited in time and territory, to all other non-copyrighted services or products for all known forms of use. This includes in particular the right to alterations, translations, processing or other redesign, the right to digitally store the item in the original or altered, translated, processed or redesigned form on any medium and to reproduce and publish it in any other way, to distribute it in physical form or via data networks, to make it accessible to users of data networks and to use it for the operation of computers and other IT processing equipment.

(7) All suggestions and instructions by the Customer do not provide grounds for co-copyright unless this has been expressly agreed.

(8) The Customer is obliged not to provide ACD with confidential information, documents, data or copyrighted works of third parties. ACD undertakes to keep confidential all business and operational secrets of the Customer. This obligation continues to apply even after termination of the contractual relationship. However, unless expressly determined otherwise in writing, the information provided to ACD in connection with the order is not deemed to be confidential. If the Customer is not entitled to use the data provided, it hereby releases ACD from all compensation claims.

(9) The Customer assures that the content provided does not violate valid law. The same applies to references by the Customer to content from third parties. ACD will not perform a legal check.

(10) ACD retains the right to make changes to content and programming at any time if this is of significant importance for one of the contracting parties. However, ACD is not obliged to make such changes to products already supplied.

### **§ 10 Limitation of liability**

(1) Rights to compensation for contractual breach of secondary duties and prohibited action against both ACD and against vicarious or performance agents are excluded unless they are the result of intent or gross negligence. This also applies to compensation instead of performance, although only

to the extent that compensation for indirect consequential damage is demanded, unless the liability is based on an assurance intended to insure the Customer against the risk of such damage.

(2) Any liability is limited to the damage foreseeable at the time of contract conclusion.

(3) This does not affect the liability of ACD according to product liability law and other claims from producer's liability.

#### **§ 11 Applicable law, place of jurisdiction, partial invalidity**

(1) The law of the Federal Republic of Germany applies to these Terms of Trade and the entire legal relations between ACD and the Customer.

(2) If the Customer is a businessman in the sense of the Commercial Code, a legal entity under public law or a special fund under public law, 88480 Achstetten is the exclusive place of jurisdiction for all disputes arising directly or indirectly from this contractual relationship. However, ACD is also entitled to lodge a suit at the seat of business of the Customer.

(3) Should any provision of these Terms of Trade or any provision of other agreements be or become invalid or incomplete, this shall not affect the validity of all other provisions or agreements.