

Carmeq GmbH General Terms and Conditions of Purchase

1. Applicability, Conclusion of the Agreement

- (1) Any purchase of goods or services by Carmeq GmbH (hereinafter "Carmeq") shall exclusively be governed by these General Terms and Conditions of Purchase ("Terms and Conditions"). Any terms and conditions of the contractual partner (hereinafter "Partner") conflicting with or deviating from these Terms and Conditions shall only be accepted by Carmeq if we expressly agree to their application in writing. These Terms and Conditions shall also apply if Carmeq accepts any of the Partner's deliveries or services having knowledge of the Partner's conflicting or deviating terms and conditions even if Carmeq does not expressly object to their application.
- (2) *Vis-à-vis entrepreneurs (Unternehmer)*, companies and legal entities incorporated under public law, these Terms and Conditions shall also apply to any future business relations.
- (3) A legally effective agreement shall only be concluded upon written confirmation of acceptance by Carmeq.
- (4) These Terms and Conditions shall govern all aspects of the contractual relationship between the Partner and Carmeq ("Project") unless otherwise agreed in writing.
- (5) Any amendments, subsidiary agreements and modifications shall only be effective if expressly and specifically agreed to in writing.

2. Performance of the Agreement

- (1) The Partner shall perform its services in accordance with the objectives specified or agreed in the purchase orders and free from any defects which impair the value for the ordinary or contractual use. Any services are to be provided on the Partner's own responsibility and using only qualified staff. Any services must be provided in accordance with the current state-of-the-art of science and technology and the principles of proper professional practice as well as in compliance with the standard of care customary in its business branch. Any technical, functional or other specifications by Carmeq shall not release the Partner from its obligation and responsibility to provide complete services free from defects. All relevant legal and governmental regulations must be observed.
- (2) The Partner shall provide its services in continuous coordination with Carmeq and shall appoint – if required by the nature and scope of the services to be provided or agreed upon – a project manager who shall arrange or supervise the assignment of staff and the provision of services respectively. This project manager is the responsible contact person in respect of all matters related to the project. He shall be authorized to accept declarations by Carmeq with binding effect for the Partner.
- (3) Carmeq shall communicate any specifications regarding the services to be provided exclusively to the project manager or - in the absence of such – to the contact person appointed by the Partner and shall not give instructions to other staff employed by the Partner. The persons deployed by the Partner shall not enter into any employment relationship with Carmeq, even if they provide services on Carmeq's premises. The Partner shall arrange for its staff to provide the agreed services independently and in a separate working space from Carmeq's staff. The Partner shall ensure that the persons deployed will be recognizable as external service providers at any time and will to permanently wear a distinctly visible identity card.
- (4) If information, documentation or instructions, in particular the performance specifications provided to the Partner, should be incomplete or incorrect in its contents, the Partner shall immediately notify Carmeq in writing specifying reasons therefor.
- (5) At Carmeq's request, the Partner shall allow inspection of the work results and documentation to be delivered as well as of

any preliminary drafts. The Partner shall provide status reports if requested.

- (6) Carmeq shall support the Partner in the provision of the contractual services to a reasonable extent. Carmeq shall supply any necessary information and documentation if requested. Any further cooperation to be provided must be separately agreed upon in writing.
- (7) In case of subcontracting, the Partner shall adhere to all relevant laws and regulations, in particular those of employment and social welfare law.

3. Time of Performance

- (1) Any agreed delivery dates and schedules ("deadlines") are binding and may only be amended by mutual agreement; such amendment must be made in writing.
- (2) Should the Partner realize that it may not be able to meet a deadline, it shall immediately notify Carmeq thereof in writing. Such notification shall not release the Partner from its obligation to meet the agreed deadlines.
- (3) In case of non-compliance with any deadline due to reasons which the Partner is responsible for, the Partner shall for each commenced week of delay pay a penalty of 0.5%, up to the amount of 5% in total, of the value of that portion of the overall performance affected by the delay. The Partner shall be entitled to give evidence that Carmeq incurred no or lesser damages because of the delay. In addition to this penalty, Carmeq shall be entitled to assert further legal claims (rescission and compensation for damages in lieu of performance); in this case any penalty paid shall be credited against such legal claims.

4. Change Orders

- (1) Any changes to the agreed scope of services may only be executed upon signature of a written agreement between the parties. This agreement shall define the amended scope of services, any additional remuneration accruing, schedules and deadlines as well as any other provisions which become necessary because of the amendment.
- (2) The Partner shall only refuse change requests by Carmeq for good cause. Good cause for refusal shall be, in particular, if in the Partner's reasonable opinion the amended delivery or service cannot be executed or if the resources required execute the amendments are not available to and cannot be made available by the Partner.
- (3) If, following the Partner's refusal of any change request, the continuation of the project should no longer being expedient in Carmeq's equitable discretion, Carmeq may terminate the Project by giving two weeks' notice to the end of a calendar month.

5. Prices and Payment Terms

- (1) If the remuneration is explicitly stipulated as a maximum price in the agreement, the Partner shall invoice its services based on a duly approved record of performance and the agreed hourly rate up to the maximum price. For any services provided by the Partner after the maximum price is reached, the Partner shall not be entitled to any remuneration without an express written order by Carmeq.
- (2) Any contractual fixed price shall cover all agreed services. Unless expressly otherwise agreed in writing, an invoice for services provided at a fixed price may only be issued upon completion of all services under the agreement.
- (3) The fixed price and the daily rates shall include all expenses which are not expressly to be borne by Carmeq. Travel time, travel expenses and incidental expenses shall only be remunerated if expressly agreed upon in writing.
- (4) The cost of materials shall only be paid separately if expressly agreed in writing.

- (5) For any services provided in addition to the agreed scope of services, the Partner shall only be remunerated in case of a respective prior agreement between the parties in writing. Additional services shall be remunerated in accordance with the agreed daily rate.
 - (6) The Partner shall submit a proper and verifiable invoice no later than 4 weeks upon completion of the services. The invoice must include a record of performance signed by the Partner and counter-signed by Carmeq. The record of performance is deemed to have been approved if and to the extent Carmeq does not raise any objection within 6 weeks of receipt. This shall not apply to calculation errors.
 - (7) Value added tax shall be charged at the rate applicable at the date of the issue of the invoice and shown separately.
 - (8) Following the performance of services and the transmission of a verifiable and proper invoice to Carmeq, payments shall become due within 30 days without deduction. In case of receipt of payment within 14 days of receipt of the invoice, Carmeq shall be entitled to deduct a discount of 3%.
- (5) The title to any tangible work results created within the scope of the contractual services such as documents, electronic records, software programs (object and source codes), data bases, computations, samples, tools, models, plans, sketches, drawings etc. shall be transferred to Carmeq immediately upon their completion. The Partner shall hold such work results until their delivery to Carmeq.
 - (6) When delivering software, the source code and documentation must also be delivered in German. The obligation to deliver source codes shall not apply to the delivery of standard software.
 - (7) Unless agreed otherwise, any of the Partner's claims for consideration for granting the rights specified in Clause 7 (1) to (7) shall be fully covered by the payment of the contractually agreed remuneration.

6. Defaults

- (1) Carmeq shall be entitled to the statutory warranty claims for defects (*Mängelgewährleistungsansprüche*) without limitation; in any case Carmeq shall at its discretion be entitled to demand the remediation of a defect (*Nachbesserung*) or the delivery of new goods/rendering of services free of defects (*Nachlieferung*). We specifically reserve the right to claim compensation for damages, in particular the claim for compensation in lieu of performance. Any warranty claims are subject to the statutory periods of limitation.
- (2) Carmeq may request replacement of a person employed within the scope of any project if such person is in breach of contractual obligations and, having considered all facts and circumstances, Carmeq cannot reasonably be expected to continue the cooperation with this person. In the selection of his staff, the Partner shall reasonably take into account Carmeq's interests. The initial training costs of persons deployed to Carmeq shall be borne by the Partner.

7. Rights of Use

- (1) The Partner shall grant Carmeq the exclusive, transferable, worldwide, permanent and unrestricted and – except for the remuneration agreed upon – royalty free right to use and exploit all contractual services in the respective stage of completion for all types of use. Notwithstanding the foregoing, the Partner shall only grant Carmeq ordinary, non-exclusive rights of use to standard software (software covering a clearly defined scope of application which may be purchased as fully finished product). This shall include the right to edit, modify, make publicly available, copy, transmit and exploit the computer programs and software in any other way. The Partner shall assign all rights to Carmeq when they accrue; Carmeq shall accept any such assignments of rights.
- (2) The Partner warrants that the granting of rights to Carmeq does not conflict with any rights of the Partner's employees, vicarious agents and subcontractors.
- (3) The Partner shall, in consultation with Carmeq but on its sole responsibility, review all work results for patentable inventions of its employees, vicarious agents and subcontractors. The Partner shall immediately notify Carmeq in writing of the results of such review and shall transmit to Carmeq all documents and information necessary for evaluation.
- (4) Upon request, the Partner shall acquire all protectable rights created in the performance of the agreement from its employees, vicarious agents and subcontractors and shall transfer such rights to Carmeq free of charge. Carmeq may then apply for protection of the invention at its own expense.

8. Third Party Rights

- (1) Should the contractual services infringe any third party rights (including industrial property rights and copyrights), the Partner shall in the course of remedying such defect take all reasonable measures in order to achieve conditions in accordance with the agreement by acquisition of rights. If the Partner fails to acquire the rights, it shall provide Carmeq with an amendment of the contractual services and delivery items (including the documentation) which is of equivalent value to Carmeq and which does not infringe any third party rights (bypass solution). The bypass solution shall only be considered equivalent if the usability of the contractual services by Carmeq is not or only insignificantly limited. The Partner shall bear the costs of the bypass solution and any necessary amendment of the surroundings of the contractual services unless the Partner is not responsible for the infringement of third party rights.
- (2) The Partner shall indemnify Carmeq to an unlimited extent from all third party claims and related costs arising from any infringement of third party rights. This shall not apply if the Partner is not responsible for the infringement of third party rights, in particular if the infringement results from a use of contractual services by Carmeq which is prohibited according to the Partner's conditions of use (e.g. any prohibited combination of software with third party software).
- (3) If any claims are brought against Carmeq due to the infringement of third party rights by contractual services and/or delivery items, the Partner shall take over defend the legal defense of Carmeq independently and at its own expense. If necessary, Carmeq will support the Partner in its defense against third party claims to a reasonable extent and at the Partner's expense. Carmeq shall be entitled to take over the legal defense itself but will consult with the Partner in this regard. In this case, all necessary costs shall also be borne by the Partner.

9. Liability

- (1) The Partner shall be liable for any damages caused by the Partner, its organs, employees and other staff members, representatives and (vicarious) agents as well as other third parties commissioned by the Partner in accordance with the statutory provisions. Liability claims shall be subject to the statutory periods of limitation.
- (2) The Partner shall take out a liability insurance providing a coverage per damaging event of no less than 1 million euros for personal damage and property damage and at least 50,000 Euros for financial losses, and to maintain such policy for a duration of no less than 6 additional months following the end of the contractual relationship with Carmeq. At Carmeq's request, the Partner shall show evidence of such insurance no later than 10 days after the conclusion of contract.

10. Confidentiality, Data Protection, References

- (1) The Partner undertakes to treat all of Carmeq's commercial and technical information and data which is not publicly known or obvious as a business secret and to obligate its staff, subcontractors and representatives accordingly in writing. The confidentiality obligation shall survive the expiration of an agreement; it shall cease if and to the extent that the information received from Carmeq becomes publicly known, but no later than (ten) 10 years after completion of the project or agreement respectively.
- (2) If the Partner receives any data from or processes any data on behalf of Carmeq, the Partner shall be liable for the full compliance with all applicable data protection provisions.
- (3) The parties may only refer to the parties' business relationship in their advertising or other documentation with the respective other party's prior written consent. The same shall apply regarding the use of the respective other party's trademarks, trade names and other descriptions.

- (4) In case of cross-border deliveries and services, the exclusive place of jurisdiction for any disputes under the contractual relationship shall be Berlin, Germany (Article 23 of the European Council Directive on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters [EuGVVO] or Article 17 of the European Civil Jurisdiction Convention [EuGVÜ]). Carmeq also reserves the right to sue the Partner at its place of general jurisdiction or call upon any court which has jurisdiction according to the said European Council Directive or European Convention.

11. Termination of the Agreement

- (1) Notwithstanding Section 649 German Civil Code (*BGB*) in the case of Carmeq's termination of the agreement, the Partner shall only be entitled to payment in respect of
 - (partial) services already provided which are commercially utilizable by Carmeq, as well as in respect of
 - all other (partial) services amounting to 5% of the remuneration in respect thereof insofar the Partner demonstrates to be also entitled to such payment in case of a calculation in accordance with Section 649 sentence 2 *BGB*.

12. Assignment

- (1) Any assignment of the Partner's contractual rights and obligations shall only be effective upon Carmeq's prior written consent.
- (2) The Partner shall only be entitled to assign its rights to any third party or to have its claims collected by a third party with Carmeq's prior written consent; such consent shall not be unreasonably withheld. Should the Partner assigns its claims against Carmeq in breach of foregoing without obtaining Carmeq's consent, such assignment shall nevertheless be effective; however, Carmeq may at its sole discretion effect performance to the Partner or to the third party with the effect of a full discharge.

13. Place of Performance, Jurisdiction, Applicable Law

- (1) Unless otherwise agreed between the parties, the place of performance for any of the Partner's obligations under this agreement shall be Berlin, Germany.
- (2) All business relations and all legal relationships between the Partner and Carmeq shall exclusively be governed by the laws of the Federal Republic of Germany. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.
- (3) The exclusive legal venue for any claims against merchants (*Kaufleute*) and legal entities incorporated under public law arising under the business relationship shall be Berlin, Germany. This also applies with respect to claims resulting from checks, torts and third party notices (*Streitverkündung*). Carmeq also reserves the right to sue the Partner in any other court having statutory jurisdiction.