

**General terms and conditions of sale, delivery and rental  
of CAPTRON Electronic GmbH**  
(Last revised: August 2022)

**1. General information and scope**

- 1.1 These general terms and conditions of sale, delivery and rental ("T&Cs") apply to all business relations between CAPTRON Electronic GmbH, domiciled in Olching, Germany, (the "CAPTRON") and customers of CAPTRON ("Customer") if these Customers are entrepreneurs (as defined in Section 14 of the German Civil Code - BGB), legal entities under public law or special asset bodies subject to public law.
- 1.2 These T&Cs apply particularly to contracts concerning Hardware and Software ("Goods")
- a) for the sale and/or delivery of physical movable Goods (referred to below as "Hardware") and the provision of services by CAPTRON without consideration of whether the Goods were produced by CAPTRON or purchased from suppliers (Sections 433 and 651 BGB);
  - b) for the sale and/or rental of Software;
  - c) and on contracts for services or works relating to the creation, customization or maintenance of software.
- 1.3 Where the parties have executed a separate software license agreement and/or software support agreement, the provisions of said agreements shall prevail in case of conflicts.
- 1.4 The respective version of the T&Cs also applies as a framework agreement for future contracts for the sale and delivery of Goods and/or provision of services with the same Customer without the necessity of explicit reference by CAPTRON to this in each individual case.
- 1.5 General terms and conditions of the Customer which differ from, conflict with or supplement these only become part of the contract if and to the extent that CAPTRON has explicitly agreed to their application. This requirement of approval applies in each case, for example even if CAPTRON provides delivery and/or service to the Customer without reservation and is aware of the Customer's general terms and conditions.
- 1.6 Material declarations and notifications to be made by the Customer to CAPTRON after the signing the contract, particularly with regard to setting deadlines, defect notices, declaration of withdrawal or reduction, must be in written form to be valid. Text form (Section 126b BGB) is sufficient to meet the requirement of written form.

**2. Quotation and conclusion of contract**

- 2.1 All quotations from CAPTRON are without obligation and are subject to confirmation if they are not explicitly indicated as binding or do not contain a specific deadline for acceptance.
- 2.2 The ordering of Goods and services by the Customer is considered a binding offer of contract, which CAPTRON can accept within two weeks after receiving said offer if the order contains no other deadline for acceptance. Acceptance can ensue in writing or by an order confirmation by CAPTRON or by delivering the Goods to the Customer.
- 2.3 CAPTRON retains ownership and/or the copyright to all quotations and cost proposals submitted by CAPTRON as well as to drawings, diagrams, data sheets, 3-D data, calculations, brochures,

catalogues, models, tools and other documentation and resources made available to the Customer. The Customer is not permitted to allow third parties to access these items, nor to disclose them, use them directly or via a third party or reproduce them as such or with regard to their content. Upon demand of CAPTRON, these items are to be returned in their entirety to CAPTRON and any copies made are to be destroyed if they are no longer required by the Customer in the ordinary course of business or if negotiations do not lead to the conclusion of the contract.

### **3. Delivery periods and delivery default**

- 3.1 Deadlines and schedules proposed by CAPTRON for delivery and/or services are always considered to be only approximate, unless an explicit fixed deadline or firm schedule has been accepted or agreed. If shipment has been agreed, delivery periods and schedules referred to the time of transfer to the forwarding agent, shipping company or other third parties assigned for transport.
- 3.2 Irrespective of CAPTRON's rights arising from default on the part of the Customer, CAPTRON can demand an extension of periods for delivery and service or a rescheduling of delivery and service dates for the period of time during which the Customer does not meet the contractual obligations to CAPTRON.
- 3.3 CAPTRON is not liable for infeasibility of delivery and/or of service provision or for delays in delivery or service if these are caused by force majeure or other events for which CAPTRON is not responsible, in particular disruptions of operations of all kinds, war, strikes, legal lockouts, measures by authorities or untimely delivery to CAPTRON by suppliers; if CAPTRON has concluded a congruent covering transaction, neither CAPTRON nor the supplier is at fault or CAPTRON is not obligated for sourcing in the individual case. CAPTRON undertakes to inform the Customer without delay if such an event occurs. If such events significantly complicate the delivery or service for CAPTRON or make it impossible, and the difficulty is not just temporary, CAPTRON is entitled to withdraw from the contract, and CAPTRON will return payments already made by the Customer without delay. In the case of temporary obstacles, the delivery periods are extended or the delivery schedule moved by the period in which the difficulty persists; CAPTRON will inform the Customer of the expected new delivery period or new delivery schedule.
- 3.4 Default on the part of CAPTRON always requires a reminder notice from the Customer. If CAPTRON is in default with a delivery, then the Customer can demand for each completed calendar week of the default a lump sum compensation for damages caused by the delay amounting to 0.5% of the net price (delivery value) of the Goods delivered late, but no more than 5% of the delivery value. CAPTRON retains the right to document that the Customer has suffered no damages at all or significantly lesser damages than the aforementioned lump sum.
- 3.5 The rights of the Customer as detailed in Section 10 of these T&Cs and the statutory rights of CAPTRON, in particular in the case of an exclusion of the duty to perform (for example due to the impossibility or unreasonableness of performance and/or subsequent performance), remain unaffected.

### **4. Delivery, place of fulfilment, shipping, transfer of risk and acceptance**

- 4.1 Deliveries take place ex works at CAPTRON's location in 82140 Olching, Germany, which is also the place of fulfilment. The Goods can also be sent to another destination (sales involving shipment) at the request of the Customer and at the Customer's cost. If not otherwise explicitly agreed, CAPTRON is entitled to determine the type of shipment (in particular transportation companies, route and packaging).

- 4.2 CAPTRON is entitled to make partial deliveries if the partial delivery is usable by the Customer as part of the contractually intended use, the delivery of the remaining Goods ordered is ensured, and the Customer incurs no considerable additional expense or additional costs as a result.
- 4.3 The Customer bears the risk of accidental loss and accidental deterioration of the Goods until the handover. With sales involving shipment, the risk of accidental loss and accidental deterioration of the Goods and the risk of delay is transferred upon delivery of the Goods to the forwarding agent, shipping company or other third party designated to carry out the shipment. If an acceptance has been agreed, it is decisive for the transfer of risk. Moreover, the statutory provisions of the law on contracts for work and services apply accordingly to an agreed acceptance. If the shipment or the transfer of the Goods is delayed due to a circumstance, the cause of which lies with the Customer, the risk transfers to the Customer as of the day on which the Goods are ready for shipment and CAPTRON has notified the Customer of the readiness to ship.
- 4.4 If the Customer is in default of acceptance or the delivery by CAPTRON is delayed for other reasons for which the Customer is responsible, then CAPTRON is entitled to claim compensation of the resultant damages, including additional expenses (such as warehousing costs). For this CAPTRON is entitled to charge a lump sum compensation amounting to 0.50% of the net price (delivery value) for each completed calendar week of the delay, but no more than 5% of the delivery value of the Goods affected by the delay, beginning with the delivery period or the notification of readiness to ship for the Goods. The right of CAPTRON to document higher damages remains unaffected; however, the lump sum is to be credited against further monetary claims. The Customer retains the right to document that CAPTRON has suffered no damages at all or significantly lesser damages than the aforementioned lump sum.
- 4.5 Section 4 does not apply to the rental of Software.

## **5. Prices and terms of payment**

- 5.1 If no other agreement has been made in the individual case, CAPTRON's current prices at the time the contract is concluded apply. These prices are ex works and – if applicable - do not include packaging and statutory VAT.
- 5.2 For sales involving shipment, the Customer bears the cost of transportation ex works, the costs of any transportation insurance desired by the Customer and any incidental customs, fees, taxes and other public charges.
- 5.3 The remuneration is due and payable without discount within 30 days of invoicing and delivery or acceptance of the Goods or performance of the service if there is no other agreement in the individual case. The Customer is in default if payment is not made by the date on which it is due. During the period of default, the purchase price due is subject to interest at the applicable statutory interest rate in each case; the enforcement of further damages for default by CAPTRON remains unaffected.
- 5.4 The Customer is entitled to offsetting and retention rights only to the extent that the Customer's claim is established as legally enforceable or is undisputed.
- 5.5 If after the signing of the contract with the Customer it becomes apparent that the claim of CAPTRON to payment of unsettled accounts from the respective contractual relationship (including from other individual orders for which the same general agreement applies) is endangered by insufficient capacity to perform on the part of the Customer, then CAPTRON is

entitled to make outstanding deliveries only upon the condition of prepayment or collateral security or (after previously specifying a deadline as required) to withdraw from the contract according to the statutory provisions for defence of uncertainty (Section 321 BGB).

## **6. Retention of ownership**

6.1 The Goods delivered to the Customer by CAPTRON remain the property of CAPTRON until complete payment of all current and future receivables of CAPTRON arising from the underlying contract and any ongoing business relationship ("secured receivables"). The Goods and the Goods covered in their place by the retention of ownership according to the following provisions are referred to hereinafter as "Goods subject to the reservation of ownership".

6.2 The Customer is entitled to process and sell the Goods subject to the reservation of ownership in the proper course of business subject to the following provisions.

a) Processing of the Goods subject to the reservation of ownership by the Customer always takes place in the name of and for the account of CAPTRON as the producer. CAPTRON acquires ownership directly or – if the processing takes place with materials from multiple owners or the value of the processed item is higher than the value of the Goods subject to the reservation of ownership – co-ownership (a fractional share) of the newly created item in proportion to the value of the Goods subject to the reservation of ownership compared to the value of the newly created item. In the case that no such acquisition of ownership should occur with CAPTRON, the Customer herewith assigns the Customer's future ownership or co-ownership of the newly created item referred to in Sentence 2 to CAPTRON as collateral. If the Goods subject to the reservation of ownership are associated with other items to form a unified item or are inseparably mixed and one of the other items is to be considered the primary item, then CAPTRON, to the extent the primary item belongs to CAPTRON, assigns to the Customer the proportional co-owned share of the unified item in the proportion stated in Sentence 2.

b) In the case of resale of the Goods subject to the reservation of ownership, the Customer herewith as-signs to CAPTRON for purposes of collateral the receivable resulting herefrom and payable by the party acquiring the Goods from the Customer, and with co-ownership of the Goods subject to the reservation of ownership by CAPTRON proportionally according to the co-owned share. The same applies to other receivables in lieu of the Goods subject to the reservation of ownership or which otherwise arise with regard to the Goods subject to the reservation of ownership, in particular insurance claims or claims from prohibited action upon loss or destruction.

c) CAPTRON revocably authorizes the Customer to collect the receivables assigned to CAPTRON in the Customer's own name. CAPTRON is only permitted to revoke this collection authorization if the Customer has not met the Customer's payment obligations to CAPTRON, is in default of payment, an application for opening insolvency proceedings for the assets of the Customer has been made, or there is another deficiency with regard to the Customer's capacity to perform. If this is the case, CAPTRON can revoke the collection authorization and demand that the Customer disclose the claims assigned to CAPTRON and the parties from which they are due, provide all information required to collect the debts, hand over the associated documentation and inform the (third) parties obligated to pay of the assignment.

6.3 The Goods subject to the reservation of ownership are not permitted to be pledged to third parties nor given as collateral before complete payment of the secured receivables. If third parties take possession of the Goods subject to the reservation of ownership, particularly by seizure, the

Customer will notify these parties without delay of the ownership of CAPTRON and inform CAPTRON regarding this to facilitate the assertion of CAPTRON's rights of ownership.

- 6.4 CAPTRON will release the Goods subject to the reservation of ownership as well as items or receivables in their place if their value exceeds the amount of the secured receivables by more than 20%. CAPTRON has the choice of the items to be released in this regard.

## **7. Warranty and material defects**

- 7.1 The Customer must inspect the Goods delivered without delay after these have been delivered by CAPTRON. Apparent defects of the Goods, including incorrect and short delivery and other defects which would be recognizable upon careful inspection, must be reported in writing by the Customer to CAPTRON within seven working days after delivery. The sending of notification during this period is sufficient for compliance with the deadline. Other defects of the Goods must be reported in writing by the Customer to CAPTRON within seven working days after the defects of the Goods were apparent, with the sending of notification during this period again being sufficient for compliance with the deadline. If the Customer fails to inspect the Goods properly and/or give timely notice of defects, then the Goods are considered approved with regard to the defect. Liability of CAPTRON is excluded to this extent.
- 7.2 If the Goods delivered and/or service provided by CAPTRON are defective, CAPTRON is entitled to subsequent performance by correcting the defect or delivering an item without defects or performing the service once again within an appropriate period according to the choice of CAPTRON.
- 7.3 The Customer is obligated to give CAPTRON the necessary time and opportunity to carry out the subsequent performance due, in particular to hand over or send back to CAPTRON the Goods subject to complaint upon the request of CAPTRON. The subsequent performance does not include removal or reinstallation of the Goods subject to complaint if CAPTRON was not originally obligated to perform installation.
- 7.4 The expenses required for the purposes of testing and subsequent performance, in particular the costs of transportation, travel, work and materials, are borne by CAPTRON if in fact the Goods are defective. Exceptions to this are the costs of any removal and re-installation if CAPTRON was not originally obligated for installation. If a demand on the part of the Customer for the correction of defects proves to be unjustified, CAPTRON can demand compensation from the Customer for the resultant costs.
- 7.5 If the subsequent performance by CAPTRON is unsuccessful or CAPTRON allows a suitable grace period to be set by the Customer for subsequent performance pass without success, the Customer can with-draw from the contract or reduce the purchase price appropriately. There is no right of withdrawal on account of an insignificant defect of the Goods.
- 7.6 In the case of defective components from other manufacturers which CAPTRON cannot correct due to license restrictions or factual reasons, CAPTRON has the choice to enforce CAPTRON's warranty claims against the manufacturers on behalf of the Customer or to assign these to the Customer. There are only warranty claims against CAPTRON for such defects under the other preconditions and according to the measure of these T&Cs if the legal enforcement of the aforementioned claims against the manufacturer has been unsuccessful or appears to have no prospect of success, for example due to insolvency. The limitation of time for the relevant warranty claims of the Customer against CAPTRON is suspended during the period of the legal dispute.

- 7.7 There are no claims on the part of the Customer based on defects of the delivered Goods if the Customer modifies the delivered Goods without the agreement of CAPTRON or allows these to be modified by third parties and this makes the correction of defects impossible or unreasonably difficult. In this case the Customer must bear the additional costs for the correction of defects arising from the modification.
- 7.8 The Customer has claims for compensation of damages and futile expenses only as stipulated in Section 10; these are otherwise barred.
- 7.9 Section 7 does not apply to the rental of Software.

## **8. Defects of title and violation of commercial property rights**

- 8.1 If not agreed otherwise in the individual case, CAPTRON warrants only that the Goods delivered by CAPTRON are free of defects of title in the country where delivery takes place, in particular that they do not violate commercial property rights and intellectual property rights of third parties ("property rights"). If a third party asserts justified claims against the Customer due to violation of commercial property rights by the Goods delivered by CAPTRON and used by the Customer in accordance with the contract, then CAPTRON is liable to the Customer only according to the measure of this Section 8.
- 8.2 If the Goods delivered by CAPTRON violate a property right, then CAPTRON has the choice either to obtain a right of use or to modify or replace said Goods at the cost of CAPTRON in such a way that the property right is no longer violated, but the Goods can continue to fulfil the contractually agreed functions. If this is not possible for CAPTRON within a suitable period under appropriate conditions, then the Customer is entitled to withdraw from the contract or reduce the purchase price appropriately. Any claims on the part of the Customer for compensation of damages are subject to the limitations of Section 10 of these T&Cs.
- 8.3 The obligations of CAPTRON specified in Section 8.2 apply only if and to the extent that the Customer notifies CAPTRON in writing without delay of the claims asserted by the third party, does not recognize a property right violation and CAPTRON is given all rights to defensive measures and settlement negotiations and enabled in these. If the Customer ceases to use the Goods due to the assertion of claims by third parties, the Customer must ensure that the cessation of use is not associated with a recognition of a property right violation, for example by an explicit indication of this to the third party.
- 8.4 Claims of the Customer due to defects of title are excluded to the extent that the Customer is responsible for the property right violation, the property right violation is caused by particular specifications of the Customer, by a use which could not be anticipated by CAPTRON or due to the Goods being modified by the Customer or third parties or being used together with Goods not delivered by CAPTRON.

## **9. Warranty period**

- 9.1 The warranty period (*Gewährleistungsfrist*) for claims of the Customer arising from material defects and defects in title comprises five years for Hardware that is marked with the CAPTRON brand and for other Goods two years as of delivery or, if an acceptance is agreed, as of acceptance. The warranty period is two years if the Hardware has been customized or specifically designed for the Customer. This does not apply in cases where the law in accordance with Section 438 Paragraph 1 No. 2 BGB provides a longer period for construction and items for construction. Furthermore, the special statutory provisions for bad faith on the part of CAPTRON, non-

compliance by CAPTRON with a guarantee of condition and the periods stipulated by product liability law remain unaffected.

- 9.2 It is further clarified that all products must be operated within their specifications. Defects and/or damages resulting from the improper operation, and/or normal wear and tear are not considered to be material defects.
- 9.3 The limitation periods specified in Section 9.1 also apply to contractual and non-contractual claims on the part of the Customer for compensation of damages to the extent that these are based on a defect of the Goods.
- 9.4 For any further claims of the Customer, the limitation period shall be two years after the claim arises.

## **10. Liability for compensation of damages**

- 10.1 The liability on the part of CAPTRON for compensation of damages on any legal grounds is limited to malicious intent and gross negligence. In the case of ordinary negligence, CAPTRON is only liable for damages
- a) from injury to life, limb or health and
  - b) from violation of an essential contractual duty. An essential contractual duty is any duty for which fulfilment is necessary to make proper performance of the contract possible and for which the contractual partner trusts that it will be met and is entitled to do so. Liability on the part of CAPTRON is limited in this case to foreseeable damages which may typically occur in such cases.
- 10.2 In the case of liability for ordinary negligence within Section 10.1 b), the duty of CAPTRON for compensation of property damage and the resultant further financial losses is limited according to the current coverage amount of (product) liability insurance for CAPTRON to an amount of € 5 million per claim.
- 10.3 The limitations of this Section 10 do not apply to the extent that CAPTRON has fraudulently concealed a defect or assumed a guarantee for the condition of the Goods and with regard to claims on the part of the Customer arising from German product liability law.
- 10.4 For the loss of data or their recovery, CAPTRON is only liable in accordance with Sections 10.1 to 10.3 insofar as the loss of data could not have been avoided with adequate measures of the Customer to back up data.

## **11. Confidentiality**

- 11.1 "Confidential Information" shall mean all information and documents of the respective other party which are marked as confidential or are to be regarded as confidential due to the circumstances, in particular information about operational processes, business relations and know-how, as well as all work results.
- 11.2 The parties agree to keep such information secret. This obligation shall continue after termination of the contracts referred to in section 1.2.
- 11.3 This obligation does not extend to confidential information

- a) which was demonstrably already known to the receiving party at the time of conclusion of the agreement or subsequently was disclosed to the receiving party by a third party without this infringing a confidentiality agreement, statutory provisions or official orders;
- b) which were generally known to the public at the time of conclusion of the contract or became publicly known thereafter without a breach of this contract;
- c) which must be disclosed due to statutory obligations or by order of a court or an authority. To the extent permitted and possible, the receiving party shall give prior notice to the disclosing party and enable it to take action against such disclosure.

11.4 The Parties shall only grant access to confidential information to those consultants, who are bound by professional confidentiality or who have previously been subject to obligations of confidentiality under these terms and conditions or a related agreement. Furthermore, the Parties shall only disclose confidential information to those employees who need to know such information for the performance of under these terms and conditions or a related agreement and shall oblige such employees to maintain secrecy to the extent permitted by labor law, even after their departure.

11.5 The Customer is prohibited from obtaining confidential information by means of reverse engineering. "Reverse engineering" shall mean all actions, including observing, testing, examining and dismantling and, if necessary, reassembling, with the aim of obtaining confidential information.

## **12. Intellectual Property**

12.1 Each party shall remain the owner of any industrial property rights and copyrights as well as the know-how ("Intellectual Property") already existing at the time of conclusion of the contract.

12.2 The Intellectual Property created by CAPTRON alone or jointly with the Customer in the execution and during the term of the contract ("Foreground") shall be the exclusive property of CAPTRON. Insofar as protectable Intellectual Property rights arise at the Customer, these are hereby - or in accordance with the following provisions - transferred in full by the Customer to CAPTRON after they have come into existence.

12.3 Insofar as the Foreground consists of works protected by copyright, the Customer hereby transfers to CAPTRON the exclusive, transferable and sublicensable world wide perpetual right of use. This right of use includes in particular the duplication, distribution, public reproduction and public making available of the Foreground in all known types of use including the right to process and further develop the foreground and the use of the results arising from this to the aforementioned extent.

12.4 Both parties also acknowledge that acts of use with regard to the Intellectual Property acquired by the other party do not constitute a right of prior use.

12.5 The scope of a possible license granted by CAPTRON to the Customer is governed by the provisions of the individual contract.

## **13. Final provisions**

13.1 Should individual provisions of these T&Cs or of the contract between CAPTRON and Customer prove to be partially or completely void, invalid or infeasible, the effectiveness, validity and enforceability of these T&Cs shall not be affected in the remainder. To the extent legally permitted, such a void, invalid or infeasible provision is to be replaced by a valid, effective and feasible provision which most closely embodies the business sense and purpose of the void, invalid or



infeasible provision. The same applies correspondingly if these T&Cs for the contract between CAPTRON and Customer contains unintentional loopholes.

- 13.2 Insofar as these T&Cs require the written form for declarations of CAPTRON or Customer, text form (Section 126b BGB) is sufficient to meet this requirement.
- 13.3 These T&Cs and all legal relations between CAPTRON and the Customer are governed exclusively by the law of the Federal Republic of Germany, with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and of conflict of laws provisions.
- 13.4 If the Customer is a registered merchant, legal entity under public law or a special asset body subject to public law, then the exclusive place of jurisdiction, even in international cases, is Munich, Germany for all disputes arising from or in conjunction with the contractual relationship between CAPTRON and Customer, including its formation and termination. CAPTRON is also entitled to file suit in the general place of jurisdiction for the Customer.