

## **General Terms and Conditions of Sale and Repair**

### **A. General Provisions**

- (1) The following General Conditions of Sale and Repair (GCSR) shall apply to all – also future – contracts unless a written agreement with the Customer states otherwise. Our GCSR shall be considered acknowledged by placing of an order or acceptance of the delivered product; this also applies, if Toshiba does not expressly object to the Customer's differently formulated business terms and conditions. If the Customer does not agree to this regulation, he has to indicate expressly in a separate writing. In this case, we reserve the right to withdraw our offer, without the Customer having any compensation claims towards us.
- (2) Our offers shall be subject to alteration. Technical specifications and descriptions of the object of the delivery in offers, prospectuses and other information are subject to alterations due to technical development. Offers, contracts, alterations and amendments and all other agreements and declarations, shall be binding for us only if confirmed expressly by us in writing. (cf. as to the dates of delivery c. sect. B.I.(2) below.)
- (3) The invalidity of individual provisions shall not affect the validity of the other provisions. Invalid provisions shall be replaced by provisions which come closest to the economic objective of such clause.
- (4) As long as no other agreements have been reached, place of performance for all obligations of payment and other contractual obligations shall be the place of office of Toshiba Europe GmbH. Place of performance for deliveries shall be the place of dispatch.
- (5) For all litigations with Customers owning a commercial business, including cheque and bill of exchange actions, the exclusive court of venue shall be at Düsseldorf. However, we reserve the right to bring an action against the Customer also at the court competent for his place of office.**
- (6) Our entire business relations are governed by the law of the Federal Republic of Germany. The application of the UN Convention on International Sale of Goods (CSIG) is expressly excluded.
- (7) The rights of our Customer under the agreement may not be assigned.
- (8) Within the overall contract individual contractual agreements apply in the following ranking:
  - all individual agreements
  - the sales contract plus annexes
  - the special contractual conditions of our divisions (e.g. for repairs, maintenance etc.)
  - these General Conditions of Sale and Repair
  - the modifiable statutory provisions

### **B. Conditions of Sale**

#### **I. Delivery, Passing of Risk, Default**

- (1) The scope of our obligation to deliver is exclusively determined by our written offer and/or by our written order acknowledgement.
- (2) We will use our best endeavors to comply with the delivery terms and/or dates as indicated by us. In case we are not supplied without our fault, though we have placed congruent orders at reliable suppliers, we are released from our obligation of delivery. If this happens we will inform our Customer timely. The delivery time begins if not otherwise agreed in writing, with the dispatch of our order acknowledgment. In any case the compliance with the delivery term is subject to proper and timely receipt of all **duties of cooperation** which have to be fulfilled by the Customer based on the contract or these conditions. This includes especially the presentation of documents, concerning the observance of duties of payment, the procurement of export permits and similar documents.

Deliveries in installments are permitted and may be invoiced separately. Orders on call shall be called up by the Customer within 3 months. Between the call and the requested delivery date there must be appropriate time period of at least one month.

- (3) Unforeseen events such as force majeure, delays in delivery or shipping or labour disputes shall exempt us for their duration from the obligation to ensure timely delivery as far as they are beyond our control. Delivery times shall be extended by the duration of the disruption. If the disruption lasts longer than two months, both parties can withdraw from the contract, claims for damages by the Customers do not to that extent exist.
- (4) In case of import and export transactions our obligation of performance is not applicable as far as the necessary governmental permits are not granted.
- (5) If, after conclusion of the contract, it becomes apparent that our claim for payment is endangered by the Customer's inability to make payment, we are entitled to refuse delivery until the Customer pays or provides security. In case we set an appropriate period of time for this without any success we are entitled to rescind the contract.**
- (6) In cases of default of delivery the Customer is entitled to rescind the contract only if, after commencement of default, he will fix an appropriate extension term of at least 3 weeks and simultaneously announces the rescission of contract in case of non-delivery within the fixed term. Art. 323 subparagraph 2 – 6 of the German Civil Code remain unaffected by this.
- (7) If the Customer should get into delay with the call-up, the acceptance or the take-over of the goods or if he should be responsible for delay of dispatch or delivery, we shall be entitled without prejudice to any other and more extensive remedy,
- (a) to store the goods at his costs and risk at our premises or at premises of a third party and to charge to him storage in the amount of at least 0,5% of the invoice amount pertaining to the not accepted goods for every started week of storing, unless he provides evidence to show that the actual warehousing costs were lower or
- (b) to withdraw from the contract after an additional period of time determined by us as regards to the not accepted quantities.
- (8) The dispatch and the package are executed on account of the Customer. Unless otherwise agreed upon expressly in writing, the conclusion of eventual transportation or other insurances is left to the Customer.
- (9) If so-called cost clauses are used, the terms and definitions of the INCOTERMS 2000 shall be applicable as far as these GCSR do not provide otherwise.
- (10) Unless an obligation to be performed at the creditor's place of business has been agreed upon, in the case of all deliveries the transport risk passes to the Customer as soon as the goods have left the respective factory or warehouse of Toshiba Europe GmbH or have been handed over to means of conveyance, including our own means of transportation, to a forwarding agent or carrier on the factory or warehouses, and that irrespective of who bears the freight costs.
- (11) If we should, exceptionally, be held liable for transport damages or losses, the Customer may raise such claims only if he has fulfilled his statutory or contractual duties to cooperate. This means in particular, before payment of the freight cost, that he has to provide for the entry of proper notes of damage and/or loss into the freight documents and freight insurance and the proper recording in the minutes, and if he has notified such damages or losses to us or the transport firms within a strict time limit of 7 days after arrival of the delivered goods at the place of destination or, in case of non-arrival, after receipt of the notification of readiness for shipment, and has kept the goods together with the package available for our inspection.

## **II. Prices, Payment Conditions, Securities**

- (1) All deliveries shall be subject to the prices mentioned in the order acknowledgement (plus the current rate of the value added tax).  
Unless otherwise expressly agreed upon in writing, we shall be entitled to increase the stipulated purchase price accordingly if duties, taxes and other dues to which the goods are subject, in particular EC levies and anti-dumping or countervailing duties or the like, are subsequently introduced or increased, and if currency parities change.
- (2) Payments have to be effected in cash or by bank transfer net within, unless otherwise agreed in writing, at maximum 30 days after delivery or respectively invoicing. Payments shall be regarded as effected at the date in which we can dispose of amount.

- (3) We accept bills of exchange only after previous express agreement, and only if such bills are re-discountable and under exclusion of our liability for presentation of, and protesting such bills in due time and form. Bills and cheques are credited only subject to redemption and at the value of the day the equivalent is at our disposal. Discount charges, collection charges and other charges or expenses, are to be borne by the Customer. We are not obliged to seek payment primarily out of the bills of exchange, cheques or other documents and securities given to us instead of payment in cash.
- (4) If several similar obligations of our Customer are not fulfilled, he shall not be entitled to decide for which debt he pays. On the contrary, we shall be entitled to credit received payments against unfulfilled commitments, including costs and interests pursuant to §§ 366, 367 German Civil Code (BGB).
- (5) In case of delay of payment we are entitled without prejudice to more extensive claims to charge default interest at the rates we have to pay ourselves for credits taken up, but at least in the amount of 8 % above the basic interest rate.
- (6) All claims including those we have accepted bills of exchange for, shall become due immediately if and when the Customer culpably defaults in payment or if circumstances suitable to diminish the credit-worthiness of the Customer come to our attention, in particular insolvency or proceedings of composition or of bankruptcy. In such case we have the right on the provisos of Sec. B.I.(5) to retain outstanding deliveries or to carry out such delivery only upon advance payment or against security.
- (7) Moreover, we shall be entitled to rescind the contract in case of delay of payment after the setting of a reasonable time period and to claim for damage because of non-fulfillment.
- (8) Any setting-off with claims other than acknowledged or finally awarded shall be prohibited. The Customer shall only be entitled to claim for a right of retention due to claims which are undisputed or final and conclusive.**

In case the Customer exercises unauthorized a right of retention, it is prohibited to the Customer to use this good. If the Customer uses it nevertheless he has to pay a compensation for use in the amount usual in the market to rent such goods.

### III. Reservation of Ownership

- (1) The delivered goods shall remain our property until the Customer will have paid all claims originating from and based on the contract. In case of several claims or in case of a current account, the reservation of ownership shall serve as security for the total debit balance regardless of the fact some goods may have been paid for already.

Departing from the previous paragraph in the case of cheque/bills of exchange procedure the goods delivered remain our property as long as we are in the cheque or bill of exchange-related liability.

- (2) The Customer shall be entitled to transfer the goods only under reservation of ownership and only in the proper course of his business but shall not be entitled to pledge such goods as security, to bond them or to dispose of them in other extraordinary ways. Already now the Customer assigns to us his claims arising out of his transfer of the goods under reservation. The Customer shall have the right of incashment, however, he shall have to administer the amounts in trust for us. He will have to leave such incashment to us if he does not fulfill his obligations in relations to us or does become insolvent. The Customer will have to support us in every way with our incashment. For this purpose the Customer has to give us all necessary information and to submit to us the necessary documents. If the goods under reservation are transferred together with other goods, the anticipated assignment of claims shall be valid only up to the amount of the value of the goods under reservation.
- (3) The Customer shall undertake the eventual processing or manufacture of the goods under reservation for us without us becoming obliged out of such undertaking. In case of manufacture, assemblage, intermixture or comminglement of the goods under reservation with other goods not owned by us, we shall as a rule obtain a share in the thereby caused joint ownership of the new object, such share in the case of processing and manufacture corresponding to the ratio of the value (gross invoice value plus ancillary costs and taxes) of the goods under reservation versus the value of the new object in case of assemblage, intermixture or comminglement corresponding to the ratio of the value of the goods under reservation versus the value of the other goods. As a security for the event that the Customer should become sole owner, he already now grants to us co-ownership in the relation of the above values, and he shall keep the object for us without charge. If the

object should be transferred to a third party, the above agreed upon anticipated assignment of claims shall comprise also the claims of the Customer arising out of such transfer, however, only up to the amount of the value of the goods under reservation.

- (4) The Customer shall be obliged to insure the goods adequately against all usual risks, to store them separately and to treat them carefully. Claims arising against the insurance company out of a damaging event are already now assigned to us up to the amount of the value of the goods under reservation.
- (5) We shall have to be notified without delay in writing by notifying of the name and the address of the creditor or the third party, of all seizures of the goods under reservation or other attachments by third parties.
- (6) If the Customer should culpably come into delay of payment or if he should culpably not fulfill other substantial contractual obligations, we shall be entitled to take away from him the goods under reservation and to sell them to third parties. The Customer has to allow the taking back of the goods and the entering of his offices and premises for this purpose. If we have fixed a term under threat of a refusal as well as having given a declaration of rescission and, thereafter, we should sell the goods, the Customer shall be liable for the difference between the original and the sell-off price. Beyond that he shall pay the expenses of the taking back.
- (7) In so far as the value of existing securities should altogether exceed the value of our secured claims by more than 20%, the Customer shall have the right to ask for a release of securities, the choice of which securities to release being in our discretion.
- (8) The conclusion of financing agreements (e.g. leasing), which include the transfer of our goods under reservation, require our previous consent in writing, unless the agreement obliges the financing enterprise to pay the part of the purchase price owed to us directly to us.
- (9) In case of claims out of reserved ownership we shall be free to sue a foreign Customer also before his national court and under his national law. In the latter case the reservation of ownership regulation shall be regarded agreed upon, which comes economically nearest to the reservation of ownership agreed upon hereabove.

#### **IV. Rights in the case of defects**

As far as not in the individual case or for individual areas of our enterprise special separate prevailing regulations exist the following rulings shall apply in case of defects:

- (1) Immediately after receipt the Customer has to inspect each delivery thoroughly and completely. Defects and shortages recognizable from such inspection must be claimed in writing within 7 days after receipt of goods. Otherwise the entire delivery shall in so far be considered approved of. If a defect not recognizable from the original inspection is noticed later, the Customer has to notify us without delay. When notifying us of a defect the Customer has to describe the alleged defect detailed in writing and, in particular, has to inform us in which way and under which circumstances such defect has occurred.
- (2) In the case of defects we can first of all repair or replace the defective products. We shall be liable in accordance with this Section B.IV as well as otherwise with the statutory regulations within a period of 12 months, beginning with delivery, for that the products are free from defects in material, workmanship and functionality under the respective state of the art at the time of passing of the risk.  
In the cases in which also for our customer there is no purchase of consumer goods within the supply chain, the regulations Arts. 474 – 479 of the German Civil Code shall not be applicable. Should the Customer resell the goods within the scope of a purchase of consumer goods, the Customer cannot demand a refund of expenditure incurred in the sense of Art. 478 of the German Civil Code, if we by means of prior provisions of individual divisions offer an equivalent compensation for the expenditure incurred. To the extent that we offer a warranty aid, a manufacturer's guarantee or a warranty discount for the respective delivery item this shall be deemed to be an equivalent offsetting. Claims in accordance with Art. 478 of the German Civil Code shall in these cases be excluded.
- (3) In the case of faults which are caused by improper treatment, care, servicing or by the use of unqualified personnel on the part of the Customer, we shall not accept any liability. The same shall apply if a fault occurs on the basis of natural wear and tear (e.g. corrosion of individual parts) or of a technical stress beyond the limits of the performance data or it is attributable to a repair not in conformity with the state of the art or modification/conversion by the Customer himself or the fitting of an additional component. We do not assume any liability that the supplied hardware/software is compatible with each hardware/software available in the market.

- (4) For the return of the claimed goods the customer shall send documents (order confirmation, bill of lading, invoice ) proving that he is entitled to the warranty claim. The Customer has to send the claimed goods to us in the original packaging or, if this is not at his disposal anymore, in another as safe packaging.

If our written consent is not given, we are allowed to refuse the acceptance. In addition the rules under D are to be observed.

In all cases, the Customer bears the transport risk for sending and returning the goods. The transport costs incurred for sending and returning, costs for repair and material arising from founded defects shall be borne by us.

- (5) The Customer is entitled to rescind the contract or to ask for a price reduction only if the violation of duties lying in the defectiveness of the goods is significant, he requested us beforehand in writing to repair or replace the product within a reasonable period of time and we have not performed within this period. A right to rescind or to reduce the purchase price shall exist only if the subsequent performance has failed twice. Art. 323 paras. 2 to 6 of the German Civil Code shall not be affected. In case the Customer rescinds from the contract we reserve the right to claim compensation.
- (6) Claims for defects in the goods become statute barred 12 months after the date of delivery. This shall not apply, if the law according to Arts. 438 subparagraph 1 No. 2 (Buildings and items for buildings), 479 subparagraph 1 (Recourse claim) and 634 a subparagraph 1 No. 2 (Building defects) of the German Civil Code prescribes longer periods and in cases of fatal or physical injury or health impairment, in the case of an intentional or grossly negligent violation of duties by us and in the event of fraudulent failure to disclose a fault. The statutory provisions concerning suspension of running of the statute of limitations, interruption and restart of the periods shall not be affected.

## **V. Liability**

- (1) Our liability – no matter for what legal reasons – shall be restricted to damages which we or our statutory representatives or vicarious agents caused with intent, gross negligence or during the violation of duties essential for meeting the purpose with slight negligence.
- (2) In cases of slight negligence the level of our liability is restricted to the damage typical of comparable business transactions of this kind which were predictable at the time of the conclusion of contract or at the latest at the time the violation of duties is committed.
- (3) Claims for damages according to the Product Liability Act and due to fatal injury, physical injury and health impairment shall not be affected by the above provisions.

## **C. Conditions of Repair**

### **I. Order and Scope of Service**

- (1) Repair services apart from our liability for defects in goods are provided by us only if we have confirmed in writing the repair order before the Customer handing in the product for repair.

In this case the handing in must then be effected by mentioning the number indicated in the order acknowledgement. The provisions of section D shall be paid attention to. We shall not be obliged to accept the handing in of products which are delivered without mentioning the order number. On the contrary, we shall be entitled to return them under exclusion of any liability and cost.

- (2) Usual repairs and maintenance works shall be charged in global amounts. Unusual repairs shall be charged according to the duration of the expenditure of work, each started quarter of an hour will be charged as a whole, and according to the consumed material.
- (3) Exchanged parts having only scrap value shall become our property.
- (4) The risk and the cost for handing in and returning of the repaired products shall be borne by the Customer.

## **II. Conditions of delivery, Prices, Reservation of Ownership**

Unless otherwise agreed in this Section C, the provisions in Section B shall apply accordingly.

## **III. Warranty**

- (1) We accept liability in accordance with this Section C. III and otherwise with the statutory regulations for the professional execution of all repair services undertaken, however, we grant no warranty for the permanent operation readiness of the machines or products repaired by us.
- (2) In case of incorrectly executed work the Customer shall be entitled to claim subsequent improvement or repair free of charge. The reconditioning as well as the repair shall be executed in the repair shop of Toshiba. However, also in these cases the Customer shall bear the risk of transport as to the handing in and returning of the machines and products.

Moreover, the warranty provisions under section B.IV. above shall apply accordingly to the warranty.

## **D. Return of products**

### **I. Delivery documents**

If not otherwise regulated in cases of warranty or defect (section B.IV.4 and C.I.1), every return provides our written release. The following documents have to be appended:

- (1) a copy of our delivery note and/or the reference number of the received products;
- (2) the return delivery note of the Customer with the note "division order processing" or – with spare parts – "spare parts warehouse";
- (3) copy of our return delivery release and/or the reference number;
- (4) in cases of transport damages the damage notice of the Customer to the forwarder.

### **II. Credit Note**

In case we take back products, though the products do correspond to the notices in our order confirmation or in our delivery note, and we therefore are not obliged to take back products, we are allowed to collect a lump sum of 30% of the value of the credit note, but not less than EURO 10,- for costs incurred. The Customer is allowed to prove a lower damage. This regulation is not valid for warranty cases.

### **E. Export authorizations**

The export of the contractual products and documents can, for example, due to their type or intended use be subject to the requirement of official approval.

### **F. Data privacy**

All data shall be electronically and/or manually stored in accordance with the data privacy laws and other statutory provisions. As far as is necessary for the handling of business transactions, we pass on data also to third parties, the statutory regulations being duly observed.

Version: 2003/10