

General Terms and Conditions

GENERAL TERMS AND CONDITIONS of CREA SYSTEMS Electronic GmbH, Würzburg Straße 12, 97855 Triefenstein:

§ 1 Validity

- (1) There is an agreement between CREA Systems and the Contractual Partner that all contracts, deliveries and other services are to be governed by the following General Terms and Conditions (GTC). These General Terms and Conditions shall also apply to all future business relationships between entrepreneurs, even if they are not agreed upon anew. Deviating conditions for the Contractual Partner, to which CREA Systems have not expressly consented, shall not be recognised.
- (2) Within the meaning of these Terms and Conditions, consumers are natural persons with whom a business relationship is entered into, but to whom no commercial or independent professional activity can be attributed. Within the meaning of these Terms and Conditions, entrepreneurs are natural or legal persons or judicable partnerships, with whom a business relationship is entered into and who exercise a commercial or independent occupational activity. Within the meaning of these Terms and Conditions, customers are both consumers and entrepreneurs.

§ 2 Offer, Contract Conclusion and Scope of Delivery

- (1) The offers of CREA system are subject to change and are submitted in full. Only the offers made in writing shall be valid. The offers do not include packaging, delivery, installation or training.
- (2) An order placed with CREA Systems shall bind the customer for a period of 4 weeks of receipt. Such an order shall be accepted by CREA Systems only if confirmed in writing, with a notification of readiness for delivery, or with an execution of delivery.

- (3) A written order confirmation is decisive only for the scope of delivery and performance obligations of CREA Systems.
- (4) Should planning for an order preparation be conducted on behalf of the customer, then the Contractor may invoice their efforts therefor in an analogous application of the valid HOAI (*Honorarordnung für Architekten und Ingenieure*, the Fee Structure Imposed on Architects and Engineers), if the customer fails to process the actual order.
- (5) All sales materials, specifications and price lists are to be treated by entrepreneurs as confidential and they must not be made accessible to third parties without the express prior written consent of CREA Systems. CREA Systems reserves copyrights and property right for all sales materials, specifications and price lists.
- (6) At the time of placing an order, the customer makes a binding declaration of the will to purchase the product ordered. After receipt of the order changes are no longer possible. Side agreements or assurances shall only be valid if confirmed in writing by CREA Systems.
- (7) Technical changes or improvements of the object of delivery remain reserved, unless the delivered item shall not be substantially altered and no deterioration in form, function or price shall occur as a result and as long as the changes are deemed reasonable by the customer.
- (8) The Customer is aware that special / customised products made can be neither exchanged nor withdrawn. If the customer fails to accept the ordered goods, they shall be obliged to compensate all the costs incurred in connection with the order processing, as already demonstrably incurred by CREA Systems, including the additional costs incurred and the profit lost.

§ 3 Prices, Terms of Payment, Offsetting and Security

- (1) The prices are stated in Euros and "ex works". Incidental packaging and transport / shipping costs are not included in the prices. Their amount depends on the specifics of the respective offer and the information provided regarding shipment and they shall be invoiced separately.

- (2) The prices quoted to consumers are final and include VAT. The prices quoted to entrepreneurs do not include VAT; it will be indicated separately on the invoice at the statutory rate on the date of billing.
- (3) Prices remain valid for four months from receipt of order confirmation. Should longer delivery dates be agreed upon and if after conclusion of the contract a change in terms of raw material and auxiliary material prices, wages, salaries, freight, public charges or fees relating to other relevant circumstances, CREA Systems shall have the right to increase or decrease the prices accordingly.
- (4) The invoice will be issued on the day of dispatching of the goods or their partial delivery.
- (5) The customer may object to the invoice only in writing and within 4 weeks of its receipt. Claims of warranty rights shall remain unaffected. The obvious miscalculations are subject to correction at all times.
- (6) Unless otherwise expressly agreed in writing, the invoice is due no later than on the 20th day after the invoice date. Payments are to be made out in Euros and without deductions, so that on the due date CREA Systems may have the amount at their disposal without any loss.
- (7) Payment by check, bill of exchange or accepted bill will be subject to a prior agreement. Checks, bills of exchange or accepted bill are always accepted only on account of performance and not in its stead.
- (8) If partial payments are agreed upon and if the customer remains in arrears more than 14 days with their instalment, then the agreed total price shall be due immediately.
- (9) If the customer fails to meet their payment obligation when due, CREA Systems shall be entitled to charge interest on arrears to be calculated at the rate of 8% above the base rate for entrepreneurs and in the amount of 5% above the base rate for consumers. The enforcement of a higher claim for damages remains reserved. In addition, CREA Systems shall have the right to make further deliveries to the customer only against advance payment.

- (10) Any volume and price discounts allocated in respect of the individual items total shall be cancelled in the event of late payment, default of acceptance, or the conduct of in-court or out-of-court composition or insolvency proceedings, bankruptcy and notarial recovery.
- (11) The customer may only offset claims or exercise a right of retention against them when the claim has been legally established, and it is undisputed or recognised by CREA Systems. In addition, the consumer is only entitled to exercise a right of retention only when their counterclaim is based on the same contractual relationship.
- (12) If the economic situation of the customer is adversely affected by various circumstances after the conclusion of the contract or if CREA Systems gains knowledge of such circumstances that may question the creditworthiness of the customer only until after signing of the contract, then CREA Systems shall be entitled to withhold shipment of the goods until the goods have been paid for in advance or a security for payment has been provided. For new orders, CREA Systems not only have the right to demand payment in advance, but they are also entitled to deliver the goods step by step, subject to a fee. In addition, CREA Systems shall be entitled to withdraw from the Contract.

§ 4 Delivery Deadlines and Delay

- (1) Delivery and production times are approximate and not binding, unless otherwise agreed.
- (2) Compliance with delivery terms assumes a timely receipt of all documents to be furnished by the customer, such as necessary and approvals, especially of plans, as well as the observance of the agreed terms of payment and other obligations of the customer. If these obligations are not met in due time, the delivery deadline shall be extended accordingly. This shall not apply if CREA Systems is responsible for the delay. The non-fulfilment of obligations by the customer excludes delays caused by CREA Systems.

- (3) If the non-compliance of delivery times is due to force majeure (e.g. mobilisation, war, acts of terrorism, riots) or similar events (e.g. strikes, lockouts), or due to virus or other third-party attacks on the IT system of CREA Systems, or further due to impediments arising out of German and other applicable national, EU or international foreign trade and customs requirements, or any other circumstances which are not attributable to CREA Systems, or can not constitute an untimely or improper delivery on their part, then the delivery periods shall be extended accordingly. However, the customer has the right to withdraw from the contract after setting an appropriate respite, if the maintenance of the contract is unreasonable for them. The same right is also executable by CREA Systems. The enforcement of claims for damages is excluded in this case.
- (4) CREA Systems is entitled to provide partial services and partial deliveries, as long as the service / delivery in question can be carried out in parts. CREA Systems reserves the right to invoice partial deliveries separately.
- (5) If CREA Systems are responsible for the delay of delivery or device CREA Systems, then the customer may withdraw from the contract in accordance with statutory provisions. However, the liability for damages in the case of slight and medium negligence is limited to 50% of the foreseeable damage cost. A change in the burden of proof to the detriment of the customer is not connected with the above regulations. A change in the burden of proof The replacement of further damage requires proof of at least grossly negligent breach of contract.
- (6) If the customer is in default of acceptance or violates other obligations to cooperate, then CREA Systems shall be entitled to demand compensation for the damage incurred, including any additional expenses. The customer's obligation to pay the purchase price when due shall remain unaffected. In cases of default of acceptance by the customer, CREA Systems shall be entitled to store the delivery item at the risk and expense of the customer. Furthermore, CREA Systems shall have the right to withdraw from the contract.

In this case, CREA Systems shall be entitled to a compensation in the amount of 15% of the contract value, unless that CREA Systems can prove that the damage exceeds that amount, or unless the customer can prove that the actual damage is much less than the value of the contract.

§ 5 Transfer of Risk

- (1) The risk of accidental loss and accidental deterioration of the goods is transferred onto the customer with the delivery of the purchased item. This also applies in case of shipment, provided that the customer is a consumer. If the customer is an entrepreneur, the risk of accidental loss or deterioration of the goods passes onto them once the shipment has been handed over to the agent performing the transport.
- (2) If the customer is an entrepreneur, then the delivery conducted by CREA Systems shall be insured against the usual risks of transport according to their wishes and at their expense. Liability for damage upon delivery by the company-owned transportation means shall be limited to intent and gross negligence.
- (3) The transfer shall be equally deemed executed, if the customer is in default of acceptance.
- (4) If the customer is an entrepreneur, then the purchase constitutes a commercial transaction and any defects must be reported immediately; otherwise, the right to complain shall be rendered null and void.
- (5) The customer shall support CREA Systems to the best of their capacity in terms of lodging these claims against the carrier in question, or a transport insurance. Any rights and claims of the customer - in particular the legal rights of the buyer in the case of defective purchased goods - shall not be affected by the above.

§ 6 Warranty, Compensation for Damages

- (1) If the customer is an entrepreneur, then CREA Systems shall remedy any defects of the goods delivered that are indicated within the warranty period, by means of repair or replacement, depending on the customer's choice.
- (2) If the customer is a consumer, then they have the choice whether the supplementary performance is to take place by means of repair or replacement.

However, CREA Systems is entitled to refuse the type of the selected late performance if it is only possible at disproportionate cost and performance and if the other type of supplementary performance bears no significant disadvantages for the consumer.

- (3) The defect liability does not cover expendable parts (fuses, relays, triacs), which are commonly subject to wear and tear during the warranty period. Furthermore, the warranty covers no damages arising after the transfer of risk from faulty installation, improper use or storage, misuse, faulty commissioning, alteration or repairs, natural wear and tear, a faulty electrical connection, or operation in conjunction with inappropriate control components. Also excluded from liability for defects shall also be any defects of the goods, which fall back on the product description or specification provided by the customer, as well as parts, material or other equipment that have been produced by the customer or on their behalf and then made available to CREA Systems. Moreover, § 12 of these GTC is also applicable to liability for defects in SUNNYHEAT products.
- (4) CREA Systems meets the requirements for CE marking of the products in the context of the current DIN EN standards. The proper use of the products is the responsibility of the customer. The customer may use the product only under the conditions described in the technical documentation as well as the operating and installation instructions.
- (5) If CREA Systems are not prepared to remedy the defect/provide a replacement delivery or not able to, and in particular if these actions are delayed over and above a reasonable period of time for reasons responsible for which CREA Systems are responsible, or if the remedy of defects/post-delivery fails in any other way, then the customer is entitled - at their own discretion - either to withdraw from the contract or demand an appropriate reduction of the purchase price. In a minor breach of contract, particularly in case of minor defects, the customer shall not be entitled to withdraw from the contract.
- (6) Customer's claims for compensation damages due to material defects are excluded. This does not apply in cases of fraudulent concealment of the defect and a failure to comply with a guaranteed quality / in absence of an assured property.

- (7) Entrepreneurs must indicate obvious defects within a period of 2 weeks from receipt of the goods; otherwise the right to lodge a warranty claim shall be excluded. Timely dispatch shall be considered as sufficient for the observance of the delivery deadline. The entrepreneur shall bear the burden of proof for all eligibility requirements, in particular for the defect itself, for the time of discovery of the defect and the timeliness of the notice of defects.
- (8) If the customer chooses to withdraw from the contract due to a legal or material defect following an unsuccessful performance, then they shall have no right to claim damages for the defect.
- If following such an unsuccessful performance of contract, the customer opts for a compensation for damages, then the goods shall remain with the customer, if they deem such condition reasonable. The compensation for damages is limited to the difference between the purchase price and the value of the defective item. This does not apply when the breach of contract was caused maliciously.
- (9) For entrepreneurs, the period of limitation for warranty claims shall be 1 year from date of delivery of the goods. For consumers, it is 2 years from the ex-delivery of the goods. This does not apply if the customer – as long as they are an entrepreneur – fail to indicate the defect in due time.
- (10) For any correction of defects / follow-up deliveries performed in a gesture of goodwill after the expiration of the statutory or contractual warranty periods in terms of the original service, any warranty is excluded. A new warranty period is not thereby set in motion.
- (11) If the customer is an entrepreneur and they resell the product purchased from CREA Systems to a consumer / purchaser, then they are - and not CREA Systems – the target of potential warranty claims of the consumer in the case of defectiveness of the product. The entrepreneur is therefore obliged to determine the existence of the defect in the product themselves before they involve CREA Systems by way of recourse, e.g. to remedy the defect by means of supplementary performance. If they fail to meet this obligation, and if CREA Systems thus incur unnecessary expenses, then the entrepreneur is obliged to replace them.

Moreover, recourse by the entrepreneur against CREA Systems exists only insofar as the entrepreneur has not entered into any agreements with their customers that would exceed the statutory warranty claims.

§ 7 Title Retention

- (1) For contracts with consumers, the goods to be delivered remain the property of CREA Systems until the full payment of the purchase price is made. For contracts with entrepreneurs, the goods to be delivered remain the property of CREA Systems until all claims resulting from ongoing business relationships have been resolved.
- (2) The customer is obliged to handle the goods with care. Whenever maintenance and inspection works are required, the customer shall perform them regularly at their own expense.
- (3) The customer is obliged to immediately inform CREA Systems of any third-party access to the goods delivered under retention of title, whether in the case of a seizure or any damage or destruction of the goods.
- (4) If the customer acts in violation of the contract especially in case of any delay in payment or in case of any breach of any duty under para. 2 and 3 of this regulation, then CREA Systems shall be to withdraw from the contract and demand that the goods be returned; optionally CREA Systems shall be entitled to enter the establishment or the premises of the customer and disassemble and remove the goods. If the customer is an entrepreneur, then CREA Systems shall further have the right to prohibit the resale and the removal of the delivered goods.
- (5) The contractor shall be entitled to sell the goods in the ordinary course of business. They herewith assign to CREA Systems all accounts receivable, in the sum of the invoiced amount that accrue against a third party as a result of reselling.

CREA Systems accepts the assignment. Following the assignment, the Contractor shall be entitled to collect receivables, unless CREA Systems revoke the authorisation to collect, for example, if the Contractor fails to properly meet their payment obligations and falls into arrears. At the request of CREA Systems, the contractor is required to inform his customers immediately about the cession to us of the company is obliged to inform its customers immediately of the assignment - if CREA Systems do not do this themselves - and to provide us with the necessary information and details to accomplish the collection. The amounts collected by the Contractor in consideration of the receivables assigned must be promptly transferred to CREA Systems. Covered by the assignment are also those receivables against a third party to which the contractor is entitled to by processing or combining of the goods with a new item.

- (6) . The contractor shall not be entitled to further disposal of the reserved goods, such as by means of a lien or transfer of ownership.
- (7) Should the value of the existing security exceed the total value of the secured claims by more than 20 per cent, then upon customer's request, CREA Systems shall be obliged to release securities at their discretion.

§ 8 Liability

- (1) CREA Systems shall be held fully liable under the statutory provisions for damages to life, body and health, which are due to a negligent or wilful breach of duty by us, our legal representatives or our vicarious agents, caused by a negligent or wilful breach of duty by CREA Systems, as well as for damages covered by the liability under the Product Liability Act.
- (2) For damages not covered by (1) and which result from misconduct or gross negligence or bad faith, CREA Systems shall be held liable in accordance with the statutory provisions. In this case, however, the liability for compensation shall be limited to the contract-typical, foreseeable damages - insofar as CREA Systems was not acting intentionally.

(3) Within the extent that CREA Systems have provided a guarantee of the composition and/or durability of goods or components, or of a specific property, they shall also be held liable within the scope of this warranty / guarantee. Provided, however, that the property was explicitly assured in writing at the moment of contract conclusion. Brochure details, general descriptions and the specification of DIN Standards are not considered as warranted characteristics.

For damages based on the lack of guaranteed quality or warranted property, but not directly relating to the goods themselves, CREA Systems shall be liable only if the risk of such damage is clearly covered by the warranty / guarantee.

- (4) CREA system shall also be held liable for damages caused by negligence, whereby the negligence concerns the breach of contractual obligations whose fulfilment is essential to the proper performance of the contract and on the observance of which the customer can regularly rely (contractual obligations). CREA Systems shall, however, be only liable if the damages are typically associated with the contract and if they are predictable.
- (5) Where other standards different to DIN and CE norms are to be considered for the order in question, the customer is to be notified thereof. A liability for compliance with standards is only valid if the customer has an awareness of the function and purpose of the parts which has been fully described in a clearly cognisable manner and it was seen that in a specific case, a compliance with certain standards was achieved.
- (6) Any further liability is excluded regardless of the legal nature of the asserted claim. This especially applies to tort claims or wasted expenditure in lieu of performance.
- (7) If the liability of CREA Systems is excluded or limited, this also applies to the personal liability of its employees, representatives and agents.

§ 9 Limitation of Liability and Insurance

To the extent provided in these GTCs, the scope of liability of CREA Systems for a damage caused by them under the preceding provisions shall be limited to a substitute performance covered by the liability insurance of their company / producer. -

The coverage sum typically includes general, contractual and material damages. As far as the insurance cannot be executed, or not fully, then the liability of CREA Systems - limited to the insurance-sum covered - shall remain unaffected. If the sum of the insurance does not cover damages, contracts, or materials, then the liability of CREA Systems shall be limited to the typical in such cases amount of compensation for damages, contract issues and / or material damages.

§ 10 Copyrights, Intellectual Property, Confidentiality

- (1) Media, designs and other formats of CREA Systems always remain their intellectual property and may not be used, imitated or reproduced without their express permission or a license, in accordance with legal regulations.
- (2) In addition to § 11 (3), applicable to all software products that CREA Systems provides the customer with subject to a fee or free of charge, is the license provided with the product.
- (3) The products marked as "Beta" or "exclusively for the customer" may not be passed on to third parties and are subject to confidentiality.

§ 11 Separate Contracts

- (1) Work Contract

The customer must inform CREA Systems of any such work contracts (in particular repair orders) that bear special risks, such as loss of production. Moreover, the above GTCs shall apply analogously.

- (2) Installation / Maintenance / Training

Special agreements should be concluded regarding the modalities of assembly work and maintenance, and in particular with respect to the duration maintenance contracts and trainings.

(3) Software Development, Program Adaptation

- a. The software is manufactured upon the issuing of the specifications and in consultation between CREA Systems and the customer. The details will be delineated in a separate agreement. The above GTCs also apply supplementarily to this contract, unless specifically provided otherwise.
- b. The customer is obliged to assist in the preparation of the specifications. Delays resulting from the fact that the customer has not fulfilled this obligation, or sufficient enforcement, shall be accounted for by the customer.
- c. CREA Systems do not warrant that the software created by them will be working properly on all hardware configurations. This is especially true if the hardware has been retroactively changed or if other hardware is used. CREA Systems renders the software run-capable for the hardware configuration which is delineated in the specifications. Subsequent necessary adjustments shall be reimbursed separately upon a prior written agreement.
- d. In deviation from the payment conditions referred to in the foregoing GTCs, the following payment methods shall apply for the development of custom software, if an individual contract does not determine otherwise:
 - 30% of the agreed purchase price is payable after the issuing of the specifications,
 - 50% of the purchase price is payable upon the installation on the hardware of the customer or upon delivery of a complete set of data carriers upon which the software is stored,
 - The remaining balance is to be paid within one month of the execution of the software by the customer. If the customer fails to notify CREA Systems to the contrary and within one month of commissioning, the delivered software shall be deemed as accepted.
- e. The customer may use the software purchased by them or commissioned only within the contractual framework and only in the hardware stated in the specifications.

Copy, disclosure, and granting access to non-operating third parties is not permitted without prior written consent of CREA Systems.

- f. If the customer so desires, CREA Systems shall deposit with a notary - at the expense of the customer – the sentence containing the source code of the software. The customer may rely thereon only if CREA Systems has expressed its consent thereto, or if insolvency or settlement proceedings have been opened against the assets of CREA Systems and the access is required to repair the software due to lack of participation on the part of CREA Systems or to render it run-capable. The Copyrights of CREA Systems or its employees are not restricted thereby.
- g. The details for software development shall be delineated in a separate agreement.

§ 12 Special Provisions for SUNNYHEAT Products

(1) Liability for Defects

- a. The following constitute no grounds for complaint and therefore are not covered by the warranty:
 - Expansion noise of the heating panels;
 - Production-induced defective pixilation up to 3 pieces with a diameter of 1 mm;
 - Slight production-related distortions in safety glass mirrors;
 - Material-related differences in colours from the use of different materials (e.g. frame and glass), despite the application of the same RAL colour;
- b. The customer represents and warrants that they are entitled to use the templates. If an authorisation thereto does not actually exist, then the customer shall exempt the company responsible for the production and delivery of any third-party claims for replacement.
- c. For special productions that do not form part of the standard CREA Systems product range of are not (e.g. a specific RAL colour) or are individually commissioned by the customers, a subsequent cancellation of the order is not possible.

(2) Warranty

- a. CREA Systems ensures impeccable quality of SUNNYHEAT products. However, should grounds for complaint exist due to material defects, then the customer is entitled to lodge a warranty claim for the products, as mentioned in § 6 (statutory warranty). These rights are not affected by the following guarantee.
- b. CREA Systems provides the customers with a time-limited warranty on material and manufacturing defects. The manner in which the warranty service is performed (repair, replacement, etc.) is the responsibility of CREA Systems. An extension of the warranty period does not occur with a warranty service provided. Transportation and travel expenses, as well as the costs incurred in the process of assembly and disassembly of the product are not covered by the warranty.
- c. The warranty period shall be that of 10 years. It begins with the date on which the product was purchased by the customer.
- d. The free-of-charge warranty service on the part of CREA Systems shall only be deemed applicable if the warranty claim has been lodged by the Customer in writing, either by submission of the purchase contract - if the customer is a consumer - or by quoting the serial number / invoice number - if the customer is an entrepreneur. In this case, the warranty case must be accurately described under exact dates.
- e. The following are excluded from the warranty:
 - Electronic parts;
 - Products that are used commercially;
 - Damage caused by improper handling of the product, for example, caused by faulty assembly, incorrect installation, by covering the heating surface or by inadequate ventilation, as well as by the grossly negligent handling of the product;
 - Damage to tangible objects caused by the radiation heat produced by the heater;
 - Damages caused by misuse and incorrect use of the product;
 - Damage caused by modifications to the product or the fact that an agent unauthorised by CREA Systems has disassembled or attempted to repair the product;

- Damage caused by failure to observe the technical instructions and / or safety information, as well as that caused by a spontaneous breakage of the glass;
- Damages caused by lightning, water, fire, force majeure, war, incorrect mains voltage or similar causes not culpable directly to by CREA Systems;
- SUNNYHEAT products with broken or damaged warranty seal;

§ 13 Place of Performance, Jurisdiction and Applicable Law

- (1) If the customer is a merchant, a legal entity under public law or a special fund under public law, then the place of fulfilment for all claims arising from this contract shall be that of the registered seat of CREA Systems.
- (2) If the customer is a merchant, a legal entity under public law or a special fund public law, then the sole place of jurisdiction for all disputes arising directly or indirectly from this contractual relationship shall be the registered office of CREA Systems. CREA System shall also be entitled to initiate legal proceedings at the domicile of the customer.
- (3) For contracts with customers who are not domiciled in the Federal Republic of Germany, the place of jurisdiction shall be that relevant to the registered office of CREA Systems.
- (4) German law shall govern the legal relations in connection with this contract. The language of the Contract is German. The provisions of International Sales Law (INCOTERMS, CISG, etc.) are not applicable.

§ 14 Final Provisions

The customer is hereby informed that CREA Systems processes their personal data in the context of the business relationship and in accordance with the provisions of the Data Protection Act.

The only binding terms of general terms and conditions is the version in the German language.

Status as of: 01/2015

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