



## Scope

1. These General Terms and Conditions of Sale shall apply to all business transactions between Celsion Brandschutzsysteme GmbH (hereinafter referred to as "Celsion") and the customer, even if they are not mentioned in subsequent contracts. They shall equally apply to work performance or services. In place of accepting the delivered products, inspection and approval shall apply in the case of work performance and receipt of the service in the case of services. The customers belong to a select group and are therefore familiar with the products, their use, risks and the relevant provisions and stipulations.
2. Any conflicting or additional terms and conditions or any of the customer's that differ from these General Terms and Conditions of Sale shall not form part of any contract, unless Celsion would have explicitly agreed to their validity in writing. These General Terms and Conditions of Sale shall also apply in cases where Celsion unconditionally completes a delivery to the customer without any reservations in full knowledge of the customer's conflicting, additional or differing conditions.
3. Any conflicting, additional or differing arrangements compared to these General Terms and Conditions of Sale, which are agreed between Celsion and the customer for the completion of a contract, must be stipulated in the contract in writing. This shall also apply to any cancellation of this requirement to put matters in writing.
4. Any rights, to which Celsion is entitled in accordance with the statutory provisions or other agreements that go beyond these General Terms and Conditions of Sale, shall not be affected by this.

## Concluding the contract

1. All quotations supplied by Celsion shall be subject to alteration and non-binding.
2. Any illustrations, drawings, details regarding weight, dimensions, performance and consumption, heat calculations, general building supervision permits (AbZ) or other descriptions, information, specifications on the products in the documentation appertaining to the quotation shall only be approximate and purely serve to describe the products, if they are not explicitly designated as binding. They do not constitute an agreement or a guarantee of the relevant quality or durability of the products, unless these features were specifically agreed in writing as such. The same shall apply to expectations on the part of the customer with regard to the products or their use.
3. Celsion shall retain all the ownership, copyright and other industrial property rights related to all the quotation documents. These documents may not be made accessible to any third parties. If Celsion so requests, the customer shall immediately return all the quotation documents to Celsion or shall provide evidence that the relevant files have been permanently deleted if they are no longer needed in the ordinary course of business. The same shall particularly apply to all other documents, designs, specimens, samples and models too.
4. An order shall only become binding if it has been confirmed in writing by Celsion in a confirmation of the order within two weeks or if Celsion completes the order, in particular if Celsion completes the order by sending the products. Any confirmation of an order, which has been prepared with the help of automatic mechanisms and does not contain a signature and name, shall be deemed to be in written form. If the confirmation of the order contains obvious errors, spelling mistakes or erroneous calculations, it shall not be binding for Celsion. Changes to orders or cancellations shall only be possible if Celsion agrees to these in writing. In these cases, Celsion shall be entitled to demand cancellation costs of 30% of the net value of the order for standard systems and 100% for special systems. The customer shall be entitled to prove that Celsion has not suffered any losses or the losses are lower. Any further claims by Celsion shall not be affected by this. Orders and call-off orders and any changes or additions to them must be made in writing.
5. Any refusal by Celsion to comment on quotations, orders, requests or other declarations by the customer shall only be deemed to be its acceptance if this has been agreed in writing in advance.
6. If the customer's financial circumstances deteriorate significantly or if a justified claim for the initiation of insolvency or similar proceedings relating to the customer's assets is rejected because of a lack of assets, Celsion shall be entitled to completely or partly withdraw from the contract.



### **Scope of deliveries**

1. The scope of deliveries shall be governed by the written confirmation of the order provided by Celsion. Any changes to the scope of deliveries by the customer shall not be valid unless Celsion has confirmed them in writing. Changes to the design and shape of the products shall remain feasible, provided that such changes are normal commercial deviations or if the deviations are within the DIN tolerances or if the changes are not significant and are reasonable for the customer. The same shall apply to non-essential deviations from the certificates of suitability, the choice of material, the specification and the design.
2. The customer itself must dispose of transport packaging or other packaging.
3. Delivery is permitted in parts.
4. Deliveries shall take place within the Federal Republic of Germany free of charge to the kerbside, excluding the German islands.

### **Delivery time**

1. Agreements on delivery periods and dates must be made in writing. All delivery periods and dates shall be non-binding unless Celsion has explicitly declared that they are binding in advance and in writing.
2. The delivery period shall commence at the time when Celsion sends the confirmation of the order, however not before the full provision of the documents, permits and approvals needing to be obtained by the customer, the clarification of all the technical issues and the receipt of any agreed advance payment or, in the case of any foreign business, after receipt of the full payment. If a delivery date has been set, the delivery date shall shift in an appropriate manner if the customer does not provide the documents and permits that it needs to obtain on time, does not provide approvals on time, all the technical questions have not been fully clarified in good time or if Celsion has not received the agreed advance payment or, in the case of any foreign business, full payment. Compliance with the delivery time is dependent on the customer meeting all its other obligations on time and in a proper manner.
3. The delivery time shall be deemed to have been met if the products have left the factory or Celsion has declared that they are ready to be picked up or dispatched before the expiry of the delivery period. Compliance with the delivery time shall depend on Celsion receiving proper and, in particular, punctual deliveries, unless Celsion is responsible for the fact that deliveries have not been made properly. Celsion shall be entitled to withdraw from the contract if deliveries have not been made to it properly. Celsion shall immediately inform the customer if Celsion exercises its right of withdrawal and shall reimburse the customer for any advance payments that have been made. If the customer collects the items itself, the products must be picked up by the customer from Celsion's premises (i.e. from the factory or the distribution warehouse) within three working days of any communication. The customer must ensure that it is possible to make the delivery and the necessary free access is guaranteed if a delivery to the intended place of use has been agreed.
4. In the event of any delay in delivery, the customer shall be entitled to withdraw from the contract after it has set an appropriate period of grace for Celsion in writing after the delay in delivery has occurred and this extra period has expired without producing any positive results.

### **Cross-border deliveries**

1. In the case of any cross-border deliveries, the customer must provide all the declarations necessary for export from Germany and for import into the country of destination to the responsible authorities in good time and take any action, particularly to obtain the documents required for customs clearance and meet the requirements for any export controls or other restrictions regarding marketability.
2. The deliveries shall be subject to the proviso that the fulfilment does not conflict with any obstacles arising from national or international regulations, in particular export control stipulations as well as embargos or other sanctions.
3. Any delays due to export controls shall invalidate delivery times.



## Prices and payment

1. Unless otherwise agreed, the prices shall apply from the factory or distribution warehouse and shall not include any shipping and packaging costs, insurance, statutory taxes, customs duties or other charges. The costs incurred in this respect, in particular the costs for packaging and transport, especially when delivering the products to the German islands and abroad, shall be invoiced separately. For deliveries made to the place of use, the additional costs shall be charged separately, taking into account the conditions at the site, in particular the statics, lifts, door openings and which storey it is. The legal value-added tax shall be itemised separately on the invoice at the legal rate that applies on the invoice date. If there is a shortfall in package quantities according to Celsion's current price list, Celsion shall be entitled to charge an appropriate minimum order surcharge. If the delivery address is changed, the customer shall be charged for the additional costs separately.
2. Orders, for which fixed prices have not been specifically agreed and for which the delivery time has been set at a time that is at least two months after the signing of the contract, shall be charged at the Celsion list prices that are valid on the day of delivery. Entering the list price that is valid on the day of the order on an order form or the confirmation of an order shall not be viewed as confirmation that a fixed price has been agreed. If prices increase by more than 5%, the customer shall be entitled to withdraw from the contract as a result. If Celsion so requests, the customer shall immediately declare whether it is going to make use of its right of withdrawal. If any price increases caused by production occur up to the date of delivery, Celsion shall be entitled to adjust the price accordingly, regardless of the quotation and the confirmation of the order.
3. If there is no special agreement, the delivery price must be paid net in advance. In the case of existing customers (evidence of creditworthiness necessary), invoices must be settled within 30 calendar days of the date on the invoice without any deductions or within 10 calendar days of the date on the invoice with a 2% discount. Other invoices, particularly for services (e.g. seminars and lectures) and assembly work must be settled within 10 calendar days of the date on the invoice without any deductions. The day, on which Celsion can dispose of the delivery price funds, shall be viewed as the payment date. If there is any delay in payment, the customer shall be subject to interest in arrears amounting to 9 percentage points above the relevant annual base rate. Any ongoing claims by Celsion shall not be affected by this.
4. In the case of foreign business, payment shall be made prior to delivery, in a departure from paragraph 3, unless something different has been agreed in writing in advance.
5. The acceptance of bills of exchange and cheques shall be made as conditional payment. The payment obligations have only been met once the relevant amount has been irrevocably credited to Celsion. The customer shall be responsible for any costs incurred by using bills of exchange or cheques, particularly bill of exchange and cheque charges.

## Transfer of risk

1. The customer shall be responsible for any risk of accidental loss or accidental deterioration as soon as the products have been handed over to the person completing the transport operations or leave the Celsion warehouse for the purpose of being shipped. If the customer picks up the products itself, the risk shall be transferred to the customer when it indicates its readiness to pick up the goods. Sentence 1 and sentence 2 shall also apply if the delivery is made in parts or Celsion has assumed responsibility for other services like the transport costs, setting up or assembling the products at the customer's premises.
2. If the customer causes delays in accepting the goods, Celsion may demand compensation for the damage caused, including any additional expenditure. Celsion shall particularly be entitled to store the products during the delay in accepting the goods at the customer's expense. The costs for storing the products shall be set at a general figure of EUR 6.50 net per pallet per day. Any further claims by Celsion shall not be affected by this. The customer shall be entitled to prove that Celsion has not incurred any costs or that the costs are lower. The same shall apply if the customer infringes other obligations to cooperate, unless the customer is not responsible for the infringement of other obligations to cooperate. The risk of any accidental loss or accidental deterioration to the products shall pass to the customer at the latest at the time when it causes a delay in accepting the goods. Celsion shall be entitled to dispose of the products in some other way if an appropriate period of grace set by Celsion expires without producing any results and supply the goods to the customer within an appropriately extended period of time.
3. If the shipment is delayed by circumstances, for which Celsion is not responsible, the risk shall pass to the customer at the time when the message that the goods are ready for shipment was sent.



4. The customer must also accept products that are delivered, regardless of its claims for defects, even if they have non-essential defects that do not impair their fire protection function.

### Claims for defects

1. The customer's rights regarding defects assume that it has checked the products supplied immediately after their delivery and, if reasonable, by trial processing or trial usage, and has immediately informed Celsion in writing of any overt defects, at the latest 5 working days after the delivery of the products. Any transport damage must be immediately noted on the freight forwarder's consignment note. Any hidden defects must be communicated to Celsion in writing immediately after they have been discovered. The customer must describe the defects in writing in its communication to Celsion. The customer's claims for defects also assume that the stipulations, instructions in the certificates of suitability, guidelines and conditions in the technical instructions, assembly, usage and operating instructions and other documents for the individual products have been followed when planning, building, assembling, completing, connecting, installing, putting into service, operating and maintaining the products. Maintenance in particular must be completed properly and evidence of this provided and recommended components must be used.
2. If products have defects, Celsion is entitled to eliminate the defect either by subsequent repair work or by supplying a defect-free product, as it wishes. If subsequent repair work takes place, Celsion shall be obliged to bear all the costs required for the repair work, particularly transport, road, work and material costs, if they are not increased by the fact that the products are taken to a different place than the delivery address. Personnel and material costs, which the customer asserts in this connection, shall be calculated at cost prices. Replaced parts shall be the property of Celsion and must be returned to Celsion.
3. If Celsion is not prepared or is unable to perform the repair work, the customer may either choose to withdraw from the contract or reduce the delivery price, regardless of any claims for compensation or the reimbursement of expenses. The same shall apply if the repair work fails, is unreasonable for the customer or is delayed beyond appropriate periods of time for reasons, for which Celsion is not responsible.
4. The customer's right to cancel the contract shall be excluded if it is incapable of returning the performance that it has received and this is not based on the fact that the return is impossible according to the very nature of the performance that it has received, or Celsion is responsible for this or the defect has only come to light during the processing or transformation of the products. The right to cancel the contract shall also be excluded if Celsion is not responsible for the defect and if the customer has to pay compensation for the value of the item instead of returning it.
5. No claims for defects shall be triggered by natural wear and tear, particularly with regard to parts that are subject to wear, improper treatment, assembly, use or storage, or if the unit has been put into service improperly or non-recommended components have been used for the product, or through insertion work that has been completed incorrectly or changes, maintenance work or repairs to the products that have been completed by the customer or third parties. The same shall apply to defects that are attributed to the customer or can be traced back to a technical cause that is different from the original defect.
6. Any claims by the customer for the reimbursement of expenses instead of compensation in lieu of performance shall be excluded, if a reasonable third party had not incurred the expenditure too.
7. Celsion shall not provide any guarantees, particularly guarantees about the particular features and durability, if nothing different has been agreed in writing in an individual case.
8. The statutory period of limitation for the customer's claims for defects shall be one year. If the defective products have been used for a building structure in line with their normal manner of use and this has caused its defectiveness or a defect in the building structure is the problem, the statutory period of limitation shall be five years. It shall apply to any claims based on unauthorised action that is based on a defect in the products. The statutory period of limitation shall start when the products are delivered. Any shortening of the statutory period of limitation shall not apply to Celsion's unrestricted liability for any damage/loss caused by an infringement of a guarantee or any injury to life, limb or health or for deliberate intent and gross negligence or for product errors or if Celsion has taken on a risk of procurement. Any statement by Celsion on a claim for defects asserted by the customer shall not be viewed as the start of negotiations about the claim or the circumstances giving rise to the claim, if the claim for defects is completely rejected by Celsion.



### **Celsion´s liability**

1. Celsion shall be liable for any damage/loss caused by the infringement of a guarantee or injury to life, limb or health without any restrictions. The same shall apply to deliberate intent and gross negligence or if Celsion has taken on a risk of procurement. Celsion shall only be liable for slight negligence if essential duties, which arise from the nature of the contract and are particularly important for achieving the purpose of the contract, have been infringed. If these obligations have been infringed or any delay or impossibility of performance occurs, Celsion's liability shall be restricted to such damage/loss that could typically be expected to occur as part of this contract. Mandatory, statutory liability for product defects shall not be affected by this.
2. If Celsion's liability is excluded or restricted, this shall also apply to the personal liability of Celsion's workers, workforce, employees, representatives and subcontractors.

### **Product liability**

1. The customer shall not change the products and it shall particularly not change or remove any existing warnings about the risks of using the products in an improper manner. If it infringes this obligation, the customer shall exempt Celsion from any product liability claims by third parties within the internal relationship, unless the customer is not responsible for the error that triggered the liability case.
2. If Celsion is impelled to issue a product recall or a product warning because of a product error in the products, the customer shall cooperate to the best of its ability with the measures that Celsion believes are necessary and appropriate and support Celsion in the process, particularly in identifying the necessary customer data. The customer shall be obliged to bear the costs of the product recall or warning, unless it is not responsible for the product error and the damage that has been caused according to product liability principles in law. Any ongoing claims by Celsion shall not be affected by this.
3. The customer shall immediately inform Celsion in writing about any risks that it learns about when using the products and any possible product errors.

### **Force majeure**

1. If Celsion is prevented from meeting its contractual obligations by force majeure, particularly with regard to delivering the products, Celsion shall be exempt from its obligation to perform for the duration of the obstacle and an appropriate start-up period without being obliged to pay the customer any compensation. The same shall apply if it is unacceptably difficult or temporarily impossible for Celsion to meet its obligations as a result of unforeseen circumstances, for which Celsion is not responsible, in particular industrial disputes, measures adopted by public authorities, shortages of energy, bad weather, obstacles to delivery from one supplier or major interruptions to operations. This shall also apply if these circumstances occur at one sub-supplier. This shall also apply if Celsion is already behind schedule. If Celsion is exempted from its obligation to deliver, Celsion shall return any advance payments made by the customer.
2. Celsion shall be entitled to withdraw from the contract after the expiry of an appropriate period of time, if this kind of obstacle continues for more than four months and Celsion is no longer interested in fulfilling the contract as a result of the obstacle. Celsion shall explain at the end of the period whether it will make use of its right of withdrawal or supply the products within an appropriate period, if the customer requests this.

### **Retention of title**

1. The products supplied shall remain the property of Celsion until the full payment of the delivery price and all claims, to which Celsion is entitled from the business relationship with the customer. The customer shall be obliged to deal with the products subject to the retention of title carefully for the period of the retention of title. In particular, it shall be obliged to adequately insure the products against any damage caused by fire, water and theft at their new value at its own expense. The customer must provide evidence of taking out this insurance, if Celsion requests this. The customer shall already assign any compensation claims arising from this insurance to Celsion. Celsion hereby accepts the assignment.



If the assignment is not permissible, the customer must instruct the insurance company to only make any payments to Celsion. Any ongoing claims by Celsion shall not be affected by this.

2. Any sale of the products subject to retention of title shall only be permitted to the customer within the framework of the ordinary course of business. In other matters, the customer shall not be entitled to pledge the products that are subject to retention of title, assign them as security or dispose of them in any other way that would threaten the ownership of Celsion. In the case of pledges or other intervention by third parties, the customer must immediately inform Celsion of these developments in writing and provide all the necessary information to inform third parties about the ownership rights of Celsion and comply with Celsion's measures to protect the products that are subject to retention of title. If the third party is not in a position to compensate Celsion for the legal expenses or those incurred out of court to enforce Celsion's ownership rights, the customer shall be obliged to compensate Celsion for the resulting shortfall, unless the customer is not responsible for the breach of duty.
3. The customer shall already assign the claims arising from the onward sale of the products with all ancillary rights to Celsion, regardless of whether the products that are subject to retention of title are sold on without or after any processing. Celsion shall accept this assignment now. If any assignment is not permissible, the customer shall instruct the third-party debtor to only make any payments to Celsion. The customer shall be revocably entitled to collect the claims assigned to Celsion in trust for Celsion in its own name. The amounts collected must be immediately transferred to Celsion. Celsion may revoke the customer's authorisation to collect funds and the customer's authorisation to sell the goods for an important reason, especially if the customer is not properly fulfilling its payment obligations towards Celsion, drifts into arrears with payments, halts its payments or if the customer makes an application to initiate insolvency proceedings or a similar procedure to settle debts regarding the customer's assets or if the well-founded application by a third party to initiate insolvency proceedings or a similar procedure to settle debts regarding the customer's assets is rejected because of a lack of assets. If a general assignment is used by the customer, the claims assigned to Celsion must be explicitly excluded from this.
4. If Celsion so requests, the customer shall be obliged to immediately inform the third-party debtor about the assignment and make available to Celsion the information and documents required to collect the funds.
5. If any behaviour takes place that is contrary to the contract, particularly if the customer falls into arrears with payments, Celsion shall be entitled to withdraw from the contract after the expiry of an appropriate period of grace that is set by Celsion, regardless of its other rights. The customer must immediately grant access to the products that are subject to retention of title to Celsion or its authorised representatives and hand them over. Following an appropriate announcement in good time, Celsion may use the products subject to the retention of title to pay off its accounts receivable that are due from the customer.
6. Any combination in the products that are subject to retention of title with other items not belonging to Celsion by the customer shall always be made for Celsion. If the products are combined with other items not belonging to Celsion, Celsion shall acquire the joint ownership of the new item in proportion to the value of the supplied products with the other items at the time that they are combined. The customer shall keep the new items safe on behalf of Celsion. In other respects, the same rules shall apply to the item created by the combination process as to the products that are subject to retention of title.
7. Celsion shall be obliged, at the customer's request, to release the securities to which it is entitled, if the realisable value of the securities, taking into account normal banking valuation discounts, exceeds Celsion's claims arising from the business relationship with the customer by more than 15%. When assessing the value, the accounting value of the products that are subject to retention of title and the nominal value of claims should be assumed. The details as regards which securities are to be released is a matter for Celsion.
8. In the case of deliveries to other legal systems, where the rules of retention of title do not have the same effect of providing security as in the Federal Republic of Germany, the customer shall hereby grant Celsion an appropriate security right. If other measures are necessary for this, the customer shall do all in its power to grant Celsion this kind of security right immediately. The customer shall cooperate with all the measures that are necessary and beneficial for the effectiveness and enforceability of these kinds of security rights.





### **Non-disclosure**

1. The parties shall be obliged to maintain secrecy about all the information made available to them, including technical drawings, documents, files or software, knowledge and experiences, which are described as confidential or are recognisable as business or operating secrets according to other circumstances, for a period of five years from the delivery date and neither record them or pass them on or use them in any way that is not necessary for the business relationship.
2. The non-disclosure obligation shall lapse if it can be proved that the information from the receiving party was known before the start of the contractual relationship or was generally known or generally accessible before the start of the contractual relationship or was generally known or accessible without any blame on the part of the receiving party. The receiving party is responsible for providing the evidence here.
3. The parties shall ensure through suitable contractual arrangements with the employees and representatives working for them, in particular their freelance employees and the works companies or service providers working for them, that they too refrain from any usage, transfer or unauthorised recording of any such business and operating secrets on their part for a period of five years from the delivery.

### **Final clauses**

1. The transfer of the customer's rights and obligations to third parties shall only be possible with the prior permission of Celsion in writing.
2. Any counterclaims by the customer shall only entitle it to offset amounts if they have been finally settled in the courts or are not in dispute. The customer may only assert any right of retention if its counterclaim is based on the same contractual relationship.
3. The laws of the Federal Republic of Germany, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG), shall apply to the customer's legal relationships with Celsion.
4. The exclusive place of jurisdiction for all disputes arising from the business relationship between Celsion and the customer shall be the headquarters of Celsion. Celsion shall also be entitled to initiate legal proceedings at the location of the customer's headquarters or at any other permissible place of jurisdiction.
5. The place of fulfilment for all the services by the customer and Celsion shall be the headquarters of Celsion, if nothing different has been agreed.
6. The contractual language shall be German.
7. If any clause in these General Terms and Conditions of Sale is completely or partly invalid or unenforceable or becomes so, or if there is an omission in these General Terms and Conditions of Sale, the validity of the remaining clauses shall not be affected by this. It shall be agreed that a valid and enforceable clause, which most closely matches the purpose of the invalid or unenforceable clause, shall replace the invalid or unenforceable clause. If there is an omission, it shall be agreed that the clause, which matches what would have been agreed according to the purpose of these General Terms and Conditions of Sale if the contractual partners had considered the matter from the outset, shall be used.

Celsion Brandschutzsysteme GmbH  
Bautzen, January 2016

Current general terms and conditions can also be found on our homepage:  
[www.celsion.de](http://www.celsion.de)