

## International sales and delivery conditions

(valid from 1st of April 2011)

### 1. General

- 1.1 All sales, deliveries and services of the Geberit International Sales AG (hereinafter referred to as "Geberit") are effected exclusively on the basis of the following International Sales and Delivery Conditions. General terms and conditions of the buyer are hereby contradicted. They are also not accepted in case Geberit does not expressly contradict them again after their receipt. These International Sales and Delivery Conditions are considered to have been accepted by the buyer at the latest with the acceptance of the delivered goods.
- 1.2 All contracts, orders and agreements - particularly those purporting to change the conditions set out herein - shall only become binding if expressly accepted by Geberit in writing.

### 2. Conclusion of contract - Written form

- 2.1 The offers of Geberit are non-binding, unless otherwise agreed in writing.
- 2.2 An order is only accepted by Geberit when it has been confirmed in writing and the order confirmation has been sent to the buyer.
- 2.3 All agreements, declarations and other information are required to be in writing if they are to be valid.

### 3. Conditions of delivery - Transfer of Risks

- 3.1 The delivery of goods shall be made "Free Carrier" Geberit's respective work or warehouse (FCA - INCOTERMS 2010) unless otherwise agreed and stated on the order confirmation.
- 3.2 Geberit's prices shall be understood as net prices without tax or customs duty. Any taxes, duties, charges, etc. imposed in connection with the sale, delivery, import or export of the goods must be borne by the buyer.
- 3.3 The buyer shall be liable to provide Geberit in due time with all information necessary for Geberit to fulfil its obligations with respect to tax and customs duty. In particular the buyer shall be liable for providing Geberit with a qualified export documentation (e.g. original certificate of export) and/or its correct VAT ID-Number. In case the buyer does not fulfil his obligation to supply all necessary information to Geberit the buyer shall be liable for all claims and damages arising for Geberit out of this default of contract, in particular taxes (VAT, GST, sales tax or similar turnover dependent taxes), customs duty, interest, any administrative cost (e.g. legal and consulting expenses) and penalties.
- 3.4 The risk of loss - including accidental loss - or accidental deterioration of the goods is transferred to the buyer when the goods are handed over to the commissioned freight-forwarder or carrier but no later than the time of leaving the respective work or warehouse of Geberit unless otherwise provided for in the corresponding order confirmation.
- 3.5 Delivery of goods notified as ready for dispatch must be requested immediately, otherwise at its own discretion Geberit shall be entitled to store them at the expense and risk of the buyer and invoice them as delivered ex works. If despatch is delayed for reasons for which Geberit is not responsible, then instead of the point in time according to Section 3.3 the particular date of indication of readiness for despatch applies.
- 3.6 Geberit may arrange, upon buyer's request, for insurance at buyer's cost against damage arising in connection with the storage, delivery or shipment of goods ordered by buyer.

### 4. Delivery period, delays in delivery, partial delivery

- 4.1 The stated delivery period is non-binding, unless it is specifically agreed in writing to be binding.
- 4.2 The delivery period begins with the sending of the order confirmation to the buyer. It has been met when, by its expiry, the object of the delivery has left Geberit's particular works or the buyer has been informed of the order's readiness for dispatch.

4.3 In the event of the occurrence of unforeseeable or inevitable events (force majeure) and in the case of operational stoppages of any kind, in particular damage to machinery, strikes and employment disputes, delayed supplies to us of important operating media and input materials or administrative measures, Geberit is entitled to withdraw from the contract of sale either wholly or in part or to extend the delivery period appropriately, taking into consideration a start-up period. Geberit shall inform the buyer about any such event in writing.

4.4 In cases of delay of delivery the buyer can, following the abortive expiry of an appropriate final deadline, withdraw from the contract; in cases where the performance is impossible, he has this right even without the setting of a final deadline. All claims of the buyer for compensation for damages resulting from a delay of delivery, including but not limited to any consequential damages, are - with reservation of the regulation in the following section 4.5 - excluded; the same applies to the buyer's claim for the reimbursement of expenses.

4.5 The exclusion of liability regulated in section 4.4 does not apply in the case of damages caused by wilful intent or gross negligence on Geberit's part. Subject to mandatory law in other cases Geberit's liability is limited to the contractually typical, foreseeable damages not exceeding the amount of the respective order.

4.6 Unless otherwise agreed in writing, Geberit is entitled to make partial deliveries.

### 5. Prices, payment, default

- 5.1 Geberit's prices are based on the respective price lists valid at the date of the order confirmation.
- 5.2 Unless other credit terms have been agreed between Geberit and the buyer, goods must be paid for immediately after the receipt of the order confirmation and before delivery.
- 5.3 If any payment is overdue, interest on the outstanding sum is payable at commercial bank rates but not less than 6 percent p.a.
- 5.4 Bills of exchange and cheques are accepted by Geberit only on account of performance and not as performance. Payments made by bills of exchange or cheques do not constitute fulfilment until the amount in question has been irrevocably credited to Geberit's bank account. Taxes and expenses for bills of exchange are borne exclusively by the buyer.
- 5.5 In the case of buyer's payment default, insolvency or the debts being jeopardised through deterioration of the buyer's creditworthiness Geberit shall be entitled to demand immediate settlement of all debts falling due at the time and in the future or the provision of securities. Geberit shall also be entitled to only make outstanding deliveries if they are paid for in advance or sufficient securities are provided. If this cannot be established by buyer within a reasonable period of time, Geberit may withdraw from the contract of sale.

### 6. Delay in calling goods

If the specified quantities of goods ordered by buyer are not called for delivery within the agreed timeframe, Geberit is entitled to withdraw from the sale with immediate effect, and/or to adjust the prices accordingly. Buyer is prohibited from claiming any damages.

### 7. Packaging

Unless otherwise agreed the goods shall be delivered in standard packaging. The buyer will be charged for any special packaging agreed.

### 8. Defective goods (Warranty)

- 8.1 Buyer must inspect the goods immediately upon receipt. Any defects recognisable in the course of a customary examination must be notified to Geberit in writing within eight (8) days after receipt. Otherwise, the goods purchased are deemed to have been accepted and any defect claims against Geberit are excluded.

- 8.2 To the extent there are defects involved which were not recognisable in the course of a customary examination, written notification of such defects must be given immediately upon their discovery. Otherwise, the goods purchased are deemed to have been accepted with respect to such defects and any defect claims against Geberit are excluded.
- 8.3 Buyer undertakes to make the defective goods or the defective part of the goods available to Geberit for a reasonable time immediately after discovery of the defect, in unaltered condition, so that the defect can be checked. This obligation does not however release the buyer from his burden of proof of the presence of a defect.
- 8.4 Provided the goods, that have been professionally and duly stored, maintained and used by the buyer, are proven defective and buyer has notified the defects as set out hereinabove, Geberit at its own choice shall be entitled to subsequently fulfil its obligations by repairing the defective goods or by supplying replacements free of cost. Should one or both of these types of subsequent fulfilment be impossible or not reasonable, Geberit is entitled to decline them. Geberit can also decline subsequent fulfilment for as long as the buyer does not fulfil his payment obligations.
- 8.5 Should the subsequent fulfilment according to section 8.4 be declined by Geberit or not have been successful, the buyer has the choice either of demanding a corresponding reduction of the purchase price (price reduction) or of withdrawing from the contract in accordance with the legal regulations (withdrawal).
- 8.6 Defect claims are subject to a period of limitation of one (1) year after delivery of the goods to the buyer and no more than fifteen months after notification of readiness for dispatch.
- 8.7 Defect claims are conditioned upon buyer's prior performance of any and all of buyer's own obligations.
- 8.8 Any claims based on defects of the goods are subject to the limitations of liability named in section 9.
- 8.9 The above provisions apply correspondingly if other goods or smaller quantities are delivered instead of those agreed.

#### 9. Liability of Geberit

- 9.1 Unless otherwise specified, any claims of the buyer against Geberit for whatever legal reason, in particular claims arising from infringement of principal and subsidiary contractual obligations, the reimbursement of expenses or tort are excluded. The exclusion in particular includes claims for damages other than to the purchased goods, claims for loss of profit and claims which do not result from a defect of the delivered goods.
- 9.2 The exclusion of liability in section 9.1 does not apply for damages resulting from culpable injury of life, body or health, from wilful intent or gross negligence. It also does not apply in cases where mandatory liability exists in accordance with product-liability laws for products supplied for private use.
- 9.3 Subject to mandatory law in other cases as said in section 9.2 Geberit's liability is limited to the contractually typical, foreseeable damages not exceeding the amount of the respective order.
- 9.4 Insofar as liability is excluded or limited for Geberit, this also applies for its representatives, employees, subcontractors and commercial agents.

#### 10. Retention of title, securities

- 10.1 Geberit shall retain ownership of the goods supplied until full payment of the corresponding purchase price and the fulfilment of all other outstanding debts owed by the buyer to Geberit has been effected (hereinafter "Retained Goods"). Buyer shall take all necessary measures for the protection of the ownership rights of Geberit.
- 10.2 The buyer processes the Retained Goods for Geberit as manufacturer but without any obligation on the latter's part. The processed Goods are still deemed to be Retained Goods.

10.3 Should the buyer process, combine and mix the Retained Goods with other goods Geberit shall become part owner of the new product in the proportion of the invoice value of the Retained Goods to the invoice value of the other goods used. Should Geberit's ownership cease as a result of combination or mixing the buyer hereby agrees to transfer its ownership of the new product in the amount of the invoice value of the Retained Goods to Geberit. Geberit's part ownership shall be deemed to be Retained Goods.

10.4 The buyer is only entitled to resell the Retained Goods in the normal course of business and subject to his normal terms and conditions.

10.5 At the time of the conclusion of the sales contract with Geberit, the buyer assigns to Geberit all claims which base / will base on the resale of the Retained Goods. The assigned claims shall be deemed to be security for the Retained Goods. The buyer shall not be entitled to otherwise assign the claims. Insofar as a continuous account relationship is agreed between the buyer and his customers, the assignment refers to the balance at the time. The buyer is still entitled to collect these resale claims from his customers or third parties after they have been assigned; Geberit's authority to collect the claims remains unaffected by this. Geberit is entitled to request that the buyer informs Geberit about the assigned claims and their debtors, gives Geberit all information in writing which is necessary for collection, surrenders to Geberit the relevant documents and informs the debtors in writing about the assignment of the claims. However, Geberit does not undertake to collect the claims or requests the abovementioned information as long as the cases specified in section 5.5 do not occur.

10.6 In the cases specified in section 5.5 and if the buyer fails to meet the obligations of section 10.4. Geberit shall also be entitled to forbid the processing and the resale of the Retained Goods with immediate effect. A declaration of withdrawal from the contract by Geberit is also deemed to be a withdrawal of the authorisation to resell and to collect the resale claims. In these cases Geberit shall also be entitled to demand the immediate return of the Retained Goods at the expense of the buyer and with exclusion of a right of retention. In the above-mentioned cases the buyer hereby authorises Geberit or its agent presenting written authorisation to enter its business premises on foot or in vehicles in order to repossess the Retained Goods.

10.7 To the extent that retention of title cannot be agreed with the buyer in accordance with the applicable law, a lien on the goods and on the processed goods and on the purchase price claims of the buyer resulting from the resale of the goods shall be deemed to be agreed. A lien means that the goods serve as a security for Geberit until the purchase price is paid completely and that the buyer is therefore entitled to process or resell the goods only with the agreement of Geberit.

10.8 If the value of the securities due to Geberit exceeds the claims to be secured by more than 20% Geberit is obliged, on request of the buyer, to release the securities of Geberit's choice which exceed the above-mentioned excess cover.

#### 11. Re-export

11.1 Geberit explicitly draws attention to the fact that Geberit products are protected by various intellectual property rights in other countries. Buyer has therefore to seek advice from Geberit prior to planned exports.

11.2 The onward delivery of the goods and any product documentation, including but not limited to the product descriptions and the installation guidelines, to the USA or Canada is expressly prohibited and requires the prior written permission of Geberit.

#### 12. Prohibition of assignment and offsetting

12.1 The buyer shall only be entitled to assign rights and debts arising from contracts of sale to third parties with the prior agreement of Geberit.

## Appendix

### International sales and delivery conditions

12.2 The buyer is not entitled to offset counter-claims against the purchase price claim, unless in the case of an undisputed or legally established claim.

12.3 The buyer is not entitled to retain the purchase price on the basis of any counter-claims which do not result from the delivery contract concerned.

#### 13. Place of performance, jurisdiction and applicable law

13.1 Place of performance for all obligations resulting from the sales contract shall be the principal place of business of Geberit in Jona, Switzerland.

13.2 All disputes arising out of or in connection with any sales contract shall be resolved, to the exclusion of the ordinary courts, by an arbitral tribunal in accordance with the International Arbitration Rules of the Zurich Chamber of Commerce. The arbitration shall take place in Zurich; the language of the proceedings shall be English.

13.3 The sales contract is subject to the laws of Switzerland. The application of the UN Convention for the International Sale of Goods ("Vienna Sales Convention") is expressly excluded.

#### 14. Guarantee

14.1 In addition to the warranty of section 8, Geberit guarantees for the products and periods listed below, that the delivered goods are free from any material or production failures.

Geberit concealed cisterns and mounting elements	10 Years
Geberit Monolith	10 Years
Geberit traps, sinks, bathtub drain assemblies	10 Years
Geberit exposed cisterns AP123 and AP128	10 Years
Geberit exposed cisterns AP110, 116 and 117	5 Years
Replacement fill- and flush mechanisms Impuls590, 360, 380, 280	5 Years
Replacement fill- and flush mechanisms ImpulsBasic330, 340, 230	2 Years
Geberit actuator plates	5 Years
Geberit pneumatic taps	2 Years
Pneumatic remote controls	5 Years
Geberit AquaClean	2 Years
Geberit flushing systems for WC and urinals (electronics)	2 Years
Geberit taps for washbasins (electronics)	2 Years

14.2 The guarantee periods shall start from date of delivery to the buyer.

If any material or production failures occur during the guarantee period Geberit will fulfil its guarantee obligations by repairing the defective goods or by supplying replacements free of cost. Any further claims against Geberit on the basis of this additional guarantee are expressly excluded, if possible according to the applicable law.

By expiration of the guarantee period all guarantee claims, in particular claims concerning goods that have been repaired or replaced during the guarantee period, are excluded.

14.3 The guarantee is only valid under the following conditions:

- the installation follows the written rules of application technique as issued by Geberit; and
- the goods have been correctly and professionally stored, installed, maintained and used; and
- the goods have not been modified, in particular no parts have been removed, changed or added; and
- the systems are built only with original parts of Geberit.

#### 15. Severability

The invalidity or unenforceability of any provisions of the conditions above shall not affect the validity or enforceability of any other provision of these conditions.

In such an event both parties commit themselves to compose a legally valid replacement rule which approaches the invalid provision as closely as possible within the economic interpretation of the conditions. This shall apply accordingly to any omissions in the conditions.