

General Terms and conditions of Cetrac GmbH - for consumers -

March 2011



1. Jurisdiction

1.1 The following terms and conditions shall apply to consumers – hereafter called “Customer” - for the sale and delivery of used building equipment. They are valid unless other terms are agreed individually.

2. Conclusion of contract

2.1 Except for the characteristic “used”, any illustrations and descriptions of the goods on the website or in the catalogue are non-binding, in particular they are no assurance of distinct technical attributes, quality, availability, quantity, shape, color or weight. The named prices are ex work (Diezmannstr. 13, DE-04207 Leipzig).

2.2 On Customer’s request, Cetrac establishes an individual offer without obligation.

2.3 With a Customer’s confirmation of an order Cetrac submits a binding offer for the conclusion of a contract. The Customer’s order has to be taken as a non-binding Customer’s offer to Cetrac for the submission of a binding offer.

Cetrac comments to a Customer’s order within two weeks after the receipt of the order or within three working days (relevant are working days in Leipzig) after the receipt of an electronic order. Nevertheless, Cetrac may confirm the receipt of the order in writing, electronically or by telephone (acknowledgement). The acknowledgement does not contain a binding offer of Cetrac to conclude an agreement unless it is explicitly stated by Cetrac in the acknowledgement.

2.4 By signing the offer, the Customer declares its acceptance. Cetrac is bound to it three working days (relevant are working days in Leipzig). After that period Cetrac may sell the goods otherwise.

3. Subject matter/terms of the contract

3.1 The replacement of used elements by equivalent parts is admissible as far as they do not impair usability for the contractually agreed purpose. Corresponding to this, the article descriptions (in particular in catalogue, website, offer, order, acknowledgement, confirmation of order) of the used equipment include also compatible elements – f.e. the description “Layher SpeedyScaf” also includes scaffolding elements which are compatible to this Layher elements. Scaffolding decks may be replaced by other types of decks (f.e. steel decks may be replaced by wooden or robust decks), f.e. “30 steel decks 0,32m width” by “15 aluminium decks 0,61m width”.

3.2 According to the replacement in paragraph 3.1 a deviation of 10% above or below the named price is considered to be agreed.

3.3 Considering the well-known limited availability of used building equipment, the Customer entitles Cetrac to offer any non-available elements as compatible new elements, instead. As part of this authorization, Cetrac’s obligation to deliver used equipment does not apply as well as the Customer’s payment obligation. This entitlement applies to:

- a) the replacement of used articles amounting to 10% of the named total net sum (without consideration of the deviation according to paragraph 3.2) before tax, possible discounts e.g. with
- b) new elements, whose net sum (before tax and possible discounts) exceeds the named net total sum by at maximum 25%.

As soon as it is foreseeable that used articles by at maximum 10% of the named total net sum will not be available until the agreed delivery date, Cetrac will immediately inform the Customer and offer him an appropriate offer about new articles. This offer is binding and can be accepted by the Customer within three working days (relevant are working days in Leipzig). For the delivery of new elements a new delivery date will be arranged.

4. Payment and reservation of title

4.1 The payment of the purchase price as well as the delivery costs (in case of delivery) is payable by (express) bank transfer or in cash before picking up, respectively before delivery. In case that the payment has not been received until the agreed date for collection or delivery, Cetrac retains the right to claim expenses for further storage or for damages caused by late payment.

4.2 In case that the collection or delivery of goods takes place without prepayment, the delivered goods remain property of Cetrac until full payment.

4.3 The Customer is only entitled to offset and retain payments if the counter-claim of the Customer is ascertained legally, is indisputable or is recognized by Cetrac. In addition the Customer is authorized to practice the right of retention in so far as his counterclaim is based on the same contractual relationship.

5. Delivery respectively collection of goods

5.1 The goods are to be collected by the Customer from stock (Diezmannstr. 13, 04207 Leipzig, Germany) unless delivery is agreed. The occurring delivery costs which correlate to the content and volume of the order are displayed separately. The date of delivery or collection shall be agreed individually.

5.2 In case that is agreed that the Customer has to collect the goods, he has to ensure the collection in due time. Otherwise Cetrac retains the right to claim expenses for further storage or for damages caused by delayed collection.

5.3 In case that it is agreed that the goods are to be delivered, after prior date agreement the goods will be delivered to the address indicated by the Customer, unless otherwise agreed. If Cetrac has concluded a congruent hedging transaction with a supplier at the time of conclusion of the contract with the Customer, the compliance of the delivery date depends on the proper supply of Cetrac by its supplier. Does an improper or belated delivery of Cetrac’s supplier lead to exceeding the agreed delivery date of more than six weeks, Cetrac is entitled to withdraw from the contract, except the Customer declares that he wants to continue with it. Cetrac advises the Customer of the non-availability without delay and immediately refunds any payments already made by the other party. All cases of force majeure (such as for example interruptions of operations, delays in delivery of essential raw auxiliary and operating materials, strikes and lockouts) shall entitle the Cetrac to defer the date of delivery for as long as the occurrence which caused the delay persists.

5.4 Cetrac is entitled to partial deliveries, if the partial delivery can be used by the customer within the scope of the contractual intended use, the delivery of the remaining ordered goods is guaranteed, and no significant additional work and expenses are incurred for the customer. The Customer may withhold acceptance of partial deliveries if he is legitimately not interested in partial deliveries.

5.5 Does force majeure – especially interruptions of operations, delays in delivery of essential raw auxiliary and operating materials, strikes and lockouts - lead to terminal, lasting, irreparable obstacle to performance, both parties are entitled to withdraw from the contract. Such a terminal, lasting and irreparable obstacle to performance is generally the persistence of force majeure for a period of 6 weeks.

6. Warranty and liability

6.1 If delivered new equipment is damaged, Cetrac has the option to either eliminate the defects or - according to the customer’s preference - to replace the equipment by new equipment. The supplementary performance will be conducted within a reasonable time. The supplementary performance can be refused according to applicable legal rules. During the subsequent performance the Customer is not allowed to reduce the purchase price or cancel the contract. Should the rectification of a defect fail, the Customer may withdraw from the contract or reduce the purchase price. At least two attempts at reworking fail are reasonable to the Customer. The necessary expenses for subsequent performance, in particular transport, travel, labor and material expenses are to be borne by Cetrac.

6.2 If delivered used equipment is damaged, there is a warranty if Cetrac did know the defect upon conclusion of the agreement or remained unknown as a result of gross negligence. Claims become time-barred one year from the statutory start of the limitation period.

6.3 Cetrac is liable in full for damage to life and limb or the impairing of the health, regardless of the legal reason.

6.4 Furthermore Cetrac is liable for any damage caused by malicious intent or gross negligence of essential contractual obligations. In cases of simple neglect, Cetrac assumes liability for violation of a cardinal obligation – the liability is then limited in amount to such damage, typically provided for in contracts, as was foreseeable at the time of conclusion of the contract

6.5 Any further liability is excluded. The liability under the Product Liability Act as well as for fraud and/or guarantees will remain unaffected.

7. Place of jurisdiction - choice of law - partial nullity

7.1 The place of jurisdiction is that of the registered office of Cetrac, if the customer has no general place of jurisdiction in Germany. In this case, Cetrac is entitled to sue the customer at his local court as well.

7.2 The law of the Federal Republic of Germany shall apply exclusively. The United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.

7.3 Should any of the provisions of General Terms and Conditions become invalid to full or in part, the validity of other provisions shall not be affected.

End of the GTC