

General Terms and Conditions for Suppliers

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1 General – Scope of Application

1.1

These terms and conditions form an integral part of all contracts concluded by us, Gabler Maschinenbau GmbH, Lübeck (Germany), with our suppliers and other contractors (both hereinafter referred to as "Supplier") for deliveries of goods and/or provision of services, if the Supplier is a domestic or foreign company within the meaning of sec. 14 para. 1 German Civil Code, a legal person under public law or a special fund under public law within the meaning of sec. 310 para. 1 German Civil Code.

1.2

The application of conflicting, supplementary and/or deviating terms and conditions by the Supplier is hereby rejected. They shall only apply and shall only become part of the contract to the extent that we have expressly agreed to their application in writing.

1.3

These terms and conditions shall also apply to all future business transactions with the Supplier arising from an ongoing business relationship.

2 Offer, orders

2.1

The Supplier shall submit offers to us free of charge. The Supplier is to adhere to our inquiry/tender in the offers with regard to quantities, quality and execution and shall expressly point out any deviations therefrom in writing.

2.2

Our orders and other declarations are only binding once we have placed or confirmed them in writing.

3 Deliveries or services

3.1

The Supplier shall provide its contractual deliveries of goods and provision of services in the contractually specified quality, otherwise in the customary commercial quality, brand-new and deliver to the delivery address stated in the order and on time. The deliveries of goods and services shall correspond to the current state of the art at the time of delivery, in particular – if applicable – the requirements pursuant to EN, DIN, VDE, VDI, DVGW and/or similar relevant norms and standards as well as the legal provisions applicable to the delivery item or services in question.

3.2

Unless expressly otherwise agreed to in writing, it is the sole responsibility of the Supplier to comply with governmental import and/or export regulations applicable to the performance of its deliveries of goods and provision of services and to obtain any permits required for its deliveries of goods and services in good time and at its own expense.

3.3

If software is developed specifically for us, the Supplier shall also provide us with all program documentation, including the source code. Upon the handing over, we acquire ownership thereof. For such software, we are irrevocably entitled to the exclusive rights of use, unlimited as to content and time, for all types of use known at the time of conclusion of the contract, as well as all rights of exploitation, unless otherwise agreed. We are also entitled without any restriction to transfer the rights of use of the software to third parties and to grant further rights of use to third parties.

3.4

The transfer of ownership of the goods delivered by the Supplier to us shall take place unconditionally upon their handover and regardless of the payment of the purchase price. If, however, in individual cases, we accept an offer by the Supplier to transfer ownership conditional upon the payment of the purchase price, the Supplier's retention of title to ownership shall expire at the latest upon payment of the purchase price for the delivered goods. However, even in the event of retention of title to ownership, we remain entitled to resell the goods in the ordinary course of business before payment of the purchase price. In the case of sentence 2 of this clause 3.4, the simple retention of title and the extended retention of title to ownership shall apply. In any case, all other forms of retention of title to ownership are excluded.

3.5

With the delivery, the Supplier also grants us irrevocably and without limitation as to time all rights of use for an unlimited number of users necessary for the contractually stipulated and intended use of the item, including any software contained therein.

4 Change Requests

4.1

We are entitled to change the place of delivery at any time by written notification with a notification period of at least seven calendar days prior to the agreed date of delivery. Furthermore, we are entitled to make changes to product specifications insofar as these can be implemented within the framework of the Supplier's normal production process without considerable additional expense, whereby in such cases the notification period shall be at least four weeks prior to the agreed delivery date. We shall reimburse the Supplier for the proven and reasonable additional costs incurred as a result of the respective change. If such changes result in delivery delays which cannot be avoided in the normal production and business operations of the Supplier, the originally agreed delivery date is postponed or the agreed delivery periods are extended accordingly.

4.2

For change requests other than those referred to in the previous clause 4.1, the Supplier shall examine the effects of the change request in terms of time and price within a reasonable period of time after receipt of the change request and send us a corresponding supplementary offer in writing, unless the implementation of the change requests is objectively unreasonable for the Supplier in the individual case.

5 Prices

5.1

All prices are fixed prices excluding value added tax, unless otherwise expressly stated in the Supplier's offer.

5.2

The prices include the remuneration for all deliveries of goods and provision of services to be performed by the Supplier (including any necessary certificates, permits, drawings, documents etc. in German and/or English) and shall be understood free of charge to the delivery address stated by us. Unless otherwise agreed in the individual case, the prices shall also include all ancillary services of the Supplier (e.g. assembly, installation, commissioning) as well as all ancillary costs (proper packaging, transport costs including any transport- and liability-insurance).

5.3

Subject to clause 4.1, any additional services shall only be remunerated by us if we have ordered them in writing prior to the commencement of the additional service. Should the Supplier determine that additional services not specified in the order are necessary for the proper performance of the contract, the Supplier shall notify us thereof in writing and of any consequential costs without delay. The Supplier shall not be entitled to perform additional services without our prior express written approval or instruction.

6 Delivery; packaging; transfer of risk; partial, excess or short-deliveries

6.1

Unless expressly agreed otherwise in writing, the delivery shall be made in accordance with Incoterm clause DDP of Incoterms 2010. The Supplier shall bear all shipping and transport costs, including all fees, customs duties and other charges incurred in connection with shipping, and shall provide suitable packaging at its own expense. Packaging material shall be taken back by the Supplier at our request. Additional costs due to non-compliance with shipping or packaging regulations or for accelerated transport necessary to meet a delivery date or a delivery deadline shall be borne by the Supplier.

6.2

On the day a delivery is dispatched, the Supplier shall send us a dispatch note stating our place of delivery, order number, dispatch quantity and quantity unit and the exact description of the goods. Each delivery shall be accompanied by a delivery note which shall contain the same information as the dispatch note. If the delivery note is missing, we shall be entitled to refuse to take delivery of the shipment

at the Supplier's expense or to invoice the Supplier for the additional costs incurred by us as a consequence.

6.3

Delivery shall be made carriage paid to the delivery address (place of destination) specified by us. Any risk shall only pass to us upon handover of the item of delivery at the agreed place of destination, which is likewise the place of performance. In the case of services which are subject to acceptance, the transfer of risk shall take place upon acceptance. Until the aforementioned points in time, the Supplier shall bear the risk of accidental loss and accidental deterioration of the item of delivery or performance.

6.4

Partial deliveries are only permitted with our prior written consent. We are not obliged to take delivery of partial, excess or short shipments which have not been agreed to. For quantities, dimensions and weights of the deliveries, the values determined by us during the receiving inspection are decisive.

7 Taking delivery, deadlines, default of taking delivery

7.1

The delivery and/or performance periods agreed with the Supplier shall commence upon conclusion of the contract. Delivery and performance periods as well as delivery and performance dates shall be strictly adhered to. Changes to dates or deadlines are only effective if they are agreed to in writing.

7.2

In the case of delivery of goods, the date of receipt of the object of delivery at the agreed destination point shall be decisive for compliance with a deadline or date. In the case of performance which is subject to approval, the time of approval shall be decisive.

7.3

If it becomes apparent that a deadline or period has been exceeded, the Supplier shall inform us immediately in writing of the reason for and the expected duration of the delay. Regardless of this, the Supplier shall be in default with its performance upon exceeding an agreed date and/or an agreed period, unless the Supplier can prove that it is not liable for exceeding the date or the period.

7.4

The performance of deliveries of goods and/or provision of services before the dates agreed for this purpose or before the expiry of agreed deadlines shall entitle us to reject the delivery or service until the due date.

7.5

The statutory provisions shall apply to the occurrence of our default of taking delivery, however, with the proviso that the Supplier shall also expressly offer its delivery of goods / its services if we have an obligation to act or cooperate, for which a specific or determinable calendar period has been agreed, but which we have not performed in a timely manner. If we are in default of taking delivery, the Supplier may demand reimbursement of its additional expenses in accordance with the statutory provisions (sec. 304 German Civil Code).

7.6

In the event of force majeure and other unforeseeable circumstances for which we are not responsible, such as events of nature or workers strikes, we shall be released from the obligation to accept or approve the delivery of goods / the services until the circumstance has been rectified. In such a case, the Supplier shall store the item of delivery at its own expense and risk. If the disturbance lasts longer than three months, we and the Supplier are entitled to withdraw from the contract after setting a reasonable grace period. Claims for damages are excluded in this case.

8 Liquidated damages in the event of delay on the part of the Supplier

8.1

In the event of a negligent or intentional delay in delivery of goods or provision of services, the Supplier shall pay us liquidated damages of 0.2 % of the Gross Contract Price for the respective delivery of goods and/or provision of services for each full calendar day with which the

Supplier is in delay, but limited to a maximum of 5 % of the Gross Contract Price.

8.2

For the purposes of clause 8.1, the "Gross Contract Price" shall be the gross final invoice amount for the goods and/or services provided by the Supplier as set out in the final invoice ("Final Invoice") of the Supplier.

8.3

We reserve the right to claim liquidated damages which have been incurred until settlement of the Final Invoice for the deliveries of goods and/or provision of services invoiced to us.

8.4

Notwithstanding the statutory rights of rescission/withdrawal, we shall be entitled to withdraw from the contract if the Supplier is obligated to pay the maximum amount of the liquidated damages due to delay in accordance with clause 8.1, provided that we have set the Supplier a reasonable period of time after it being obligated to pay the maximum amount for the subsequent delivery of goods and/or provision of services owed, which has expired without result.

8.5

We reserve the right to all further claims and rights to which we are entitled due to the negligent or intentional delay of the Supplier.

9 Production inspections, final inspections

9.1

If the Supplier provides works or services for end products manufactured by us and/or manufactures parts, components or systems required for our end products, we shall be entitled at any time during normal business hours, subject to a reasonable notification period, to inspect the quality of the Supplier's labor and the materials used by it during manufacturing and/or production as well as compliance with the contractual requirements and the relevant statutory and technical regulations at the Supplier's factory. The inspection may be carried out by us or by third parties instructed by us accordingly. The inspection of business secrets of the Supplier deserving protection may be refused *vis-à-vis* us or third parties instructed by us. If defects are found during such inspection, they shall be remedied immediately by the Supplier.

9.2

In the case of a manufacturing or processing service and/or a manufacture within the meaning of clause 9.1 sentence 1, the Supplier shall carry out a detailed functional and quality test prior to delivery of the object of performance. The Supplier shall inform us in writing of the date of the inspection with a reasonable advance notification period of at least 14 days and give us the opportunity to participate. The inspection shall be documented and the documentation shall be kept for a period of ten years after delivery of the performance to us. At our request, we shall be granted access to this documentation at any time.

9.3

We are entitled to carry out a final inspection of the completed item of delivery and/or performance at the Supplier's factory or to have it carried out by a third party instructed by us. If defects of the item of delivery or performance are found during this inspection, these shall be remedied within a reasonable period and the costs of such inspections – with the exception of the costs for personnel sent by us – shall be borne by the Supplier.

10 Provisions, processing/combining/mixing, cooperation

10.1

The Supplier shall be liable for the loss and damage of goods provided to him by us for the purpose of rendering performance. He must inform us immediately of any impairment of our supplies. The Supplier must mark the items provided to him - as long as they are not processed - for the duration of the provision and make them identifiable in this way. Such items shall be kept separately at the Supplier's expense and insured to an appropriate extent against destruction and loss.

10.2

Goods provided by us shall be worked with and processed on our behalf and shall remain our property at every stage of treatment and processing. In the case of processing with other items not belonging to us, we shall be entitled to co-ownership of the newly manufactured item in proportion to the value of the items provided by us to the value of all items used in the manufacture as well as the Supplier's expenses for their processing. In this respect, the Supplier shall store the goods for us free of charge. The same shall apply if our property should be lost due to mixing or combination.

10.3

If it is a contract for work and services or if the Supplier is obliged to manufacture and supply a non-fungible item, the Supplier shall only be entitled to the rights pursuant to §§ 642, 643 BGB (German Civil Code) if we are obliged to cooperate in the sense of a genuine contractual obligation and are responsible for the failure to cooperate.

11 Acceptance

11.1

If the Supplier performs a service under a contract for work and services, formal acceptance shall be required with a written acceptance declaration signed by us. An acceptance report, signed by both parties, shall be produced for the acceptance.

11.2

The requirement of formal acceptance pursuant to clause 11.1 shall also apply if the Supplier is instructed with the manufacture and delivery of a non-fungible item pursuant to sec. 650 sentence 2 German Civil Code and in all other cases in which acceptance has been contractually agreed to.

11.3

If no formal acceptance is carried out, the acceptance shall be deemed to have taken place if the Supplier has set us a reasonable deadline for acceptance after completion and we do not refuse acceptance within this deadline stating at least one defect (assumed approval). The assumed approval pursuant to sentence 1 above requires, however, that the Supplier's performance is ready for acceptance and does not have any significant defects.

12 Payments and invoices

12.1

The Supplier shall submit invoices to us after delivery of goods and/or provision of services in accordance with the contract for each order, stating the order number and date, call-off number and date, VAT ID number and, in the case of delivery, a copy of the delivery note. Value added tax shall be indicated separately in each case. If these details are not provided or if they are incorrect or incomplete, we are entitled to reject the invoice. Default in payment shall not occur in this case.

12.2

Unless otherwise agreed in writing, we shall pay within 14 days of receipt of the proper invoice with 3 % discount or within 30 days without deduction. A delivery of goods made before the deadline does not affect the payment period linked to this deadline.

12.3

Interest on maturity pursuant to sec. 352, 353 German Commercial Code is excluded. The statutory claim to interest on arrears shall remain unaffected. In the event of default in payment, the statutory provisions shall apply with the proviso that a required reminder shall always be issued in writing.

13 Assignment, set-off, retention

13.1

Without our prior written consent, the Supplier shall not be entitled to assign rights and/or obligations arising from the contract concluded with us or claims directed against us in whole or in part to third parties. However, sec. 354a German Commercial Code remains unaffected.

13.2

We shall be entitled to set-off and retention rights as well as to plead the defense of failure to perform the contract to the extent permitted by law. In particular, we are entitled to withhold due payments as long as we are still entitled to claims against the Supplier from incomplete or defective deliveries or services.

13.3

The Supplier shall only be entitled to set-off if its counterclaims have been legally established by final and binding decision, are undisputed or have been acknowledged by us.

13.4

The Supplier shall only be entitled to exercise a right of retention or a right to withhold performance if its counterclaims are based on the same legal relationship and are legally established by final and binding decision, undisputed or acknowledged by us.

14 Rights in case of defects

14.1

We are entitled to the statutory warranty claims with the proviso that the supplementary performance is in any case deemed to have finally failed within the meaning of sec. 439 German Civil Code at the latest with the second unsuccessful attempt to rectify defects.

14.2

The statutory provisions shall apply to the commercial duties of inspection and notification of defects, but with the following modifications: Our obligation to inspect shall be limited to defects which are openly recognizable during our incoming goods inspection by way of external inspection including the delivery documents (e.g. transport damage, incorrect and short deliveries). Our obligation to give notice of defects for hidden defects discovered later on remains unaffected. If acceptance has been agreed, there shall be no obligation to inspect in accordance with sec. 377 para. 1 German Commercial Code.

14.3

A delivered item shall only be deemed to have been accepted by us within the meaning of sec. 377 para. 2 German Commercial Code if we have not sent a notice of defects to the Supplier within eight calendar days after delivery.

14.4

Both, in the case of a contract for work and services and in the case of rectification of a defective item of delivery, the place of performance for the rectification of defects shall be the place where the item of delivery or performance is located in accordance with its intended purpose, unless this is associated with disproportionate costs for the Supplier in the individual case.

14.5

All costs necessary for the purpose of subsequent performance shall be borne by the Supplier. This also includes costs for disassembly and installation (if any).

14.6

We shall also be entitled to remedy the defect ourselves at the Supplier's expense or to have it remedied by third parties, provided that we have previously unsuccessfully set the Supplier a reasonable deadline for subsequent performance. We reserve the right to assert further claims, in particular claims for damages. The right to this substitute performance does not require setting a deadline if the Supplier seriously and definitively refuses subsequent performance or subsequent performance has failed within the meaning of clause 14.1.

14.7

We shall also be entitled to substitute performance without prior setting of a deadline if setting a deadline is unreasonable, such as in cases of particular urgency, endangerment of operational safety or imminent occurrence of disproportionate damage. In all of these cases we shall inform the Supplier immediately of the substitute performance.

14.8

Contrary to sec. 438 para. 1 no. 3 German Civil Code and sec. 634a para. 1 no. 1 German Civil Code, the limitation period for claims based on defects to which we are entitled in the cases regulated therein is 36 months from delivery or, if acceptance has been agreed or is required by law, from acceptance. Otherwise, the statutory limitation periods shall apply to claims based on defects.

14.9

In the event of a replacement delivery or rectification, the limitation period for replaced parts and/or parts affected by the rectification shall begin anew, unless the Supplier has expressly declared in writing that it is acting without acknowledging a legal obligation to do so.

14.10

The statutory provisions shall apply to our rights of recourse due to defects in an item of delivery by the Supplier or in accordance with sec. 650 German Civil Code newly manufactured in accordance with sec. 445a, 445b German Civil Code, but with the additional proviso that we shall also be entitled to recourse claims against the Supplier if the item of delivery has been further processed by us or by one of our customers by installation in another product prior to resale to the final purchaser.

14.11

Insofar as we are entitled to claims for reimbursement of expenses by way of independent recourse against the Supplier, these shall become time-barred 36 months after delivery, in deviation from sec. 445b para. 1 German Civil Code.

14.12

The statute of limitations shall be suspended during the examination of the existence of a defect by the Supplier or with the consent of the Supplier or during the remediation of the defect. The suspension shall not end until the Supplier has proven that the goods are free of defects or has remedied the defect and has declared this to us in writing or subsequent performance has been finally refused in writing.

15 Liability

15.1

The Supplier's liability for damages shall be governed by the statutory provisions.

15.2

Our liability for compensation for damages and expenses incurred by the Supplier, irrespective of the legal basis, in particular due to breach of duties arising from the contractual obligation and tort shall be governed by the following terms in clauses 15.3 through 15.5.

15.3

We shall be liable without limitation according to the statutory provisions in the following cases:

- a) in case of damages to life, body and health caused negligently or intentionally by us, our legal representatives and/or our vicarious agents;
- b) in case of intentional or grossly negligent breach of duty or fraudulent intent by us, our legal representatives and/or our vicarious agents;
- c) to the extent that we have given a guarantee;
- d) for claims pursuant to the German Product Liability Act.

15.4

If no case stated in the previous clause 15.3 applies, our liability for all damages and expenses of the Supplier in the case of simple negligence is excluded, unless a material contractual obligation (cardinal obligation) was negligently or intentionally breached. Material contractual obligations (cardinal obligations) are those obligations the fulfilment of which makes the proper performance of the contract possible in the first place and the fulfilment of which the Supplier has relied on and was entitled to rely on. However, to the extent that we are liable due to a simple negligent breach of material contractual obligations, our liability shall be limited to the amount of the foreseeable damage typical for such contracts.

15.5

To the extent that our liability is excluded or limited pursuant to clause 15.4, this shall also apply to the personal liability of our employees, personnel, legal representatives and vicarious agents.

16 Product liability, indemnification

16.1

If the item of delivery or performance manufactured by the Supplier has a product defect, the Supplier shall indemnify us against all claims by third parties asserted against us on account of the product defect that are not based on the German Product Liability Act to the extent that the product defect has its cause in the area of responsibility and organization of the Supplier and the Supplier has culpably breached an obligation to maintain safety with regard to the product defect.

16.2

Within the scope of its obligation to indemnify pursuant to clause 16.1, the Supplier shall also reimburse us for all expenses pursuant to sec. 683, 670 German Civil Code which result from or in connection with claims by third parties, including a product recall carried out by us. We shall inform the Supplier about the content and scope of product recall measures as far as possible and reasonable and give it the opportunity to comment. Further statutory claims remain unaffected.

16.3

If third parties assert claims against us based on the German Product Liability Act due to a product defect which is based on a product defect of the item of delivery or performance manufactured by the Supplier, the Supplier shall indemnify us in full against these claims irrespective of its fault.

16.4

The Supplier shall take out and maintain product liability insurance with a lump sum cover of at least EUR 5 million per personal injury and property damage.

17 Third party IP-Rights

17.1

The Supplier warrants that no industrial property rights or copyrights (hereinafter referred to collectively as "IP-Rights") of third parties are infringed in the countries to which the object of delivery is to be delivered or in which the service is to be rendered as well as in the countries in which the Supplier – to the extent that this may be the case – manufactures or has manufactured the object of delivery and/or performance.

17.2

In the event of an infringement of IP-Rights within the meaning of clause 17.1, the Supplier shall, at our option and in our favor and at its own expense, either (i) obtain and grant to us a right of use sufficient for the agreed or presumed use, or (ii) modify the object of delivery or performance in such a way that the IP-Right is not infringed, or (iii) replace the item of delivery or performance, as long as the agreed or presumed use of the item of delivery or performance by us is not impaired thereby.

17.3

The Supplier is obligated to indemnify us against all claims asserted against us by third parties due to the infringement of IP-Rights within the meaning of clause 17.1 and to reimburse us for all necessary expenses in connection with such assertion. The claims pursuant to this clause 17.3 shall not exist if the Supplier proves that he is neither responsible for the infringement of IP-Rights nor should have been able to know it at the time of delivery if he had exercised due commercial care.

17.4

Our further statutory claims for damages and for defects in title in the item of delivery or the services remain unaffected.

18 Spare parts

18.1

The Supplier is obligated to hold spare parts for delivery items delivered to us available in any case for a period of at least 10 years after delivery.

18.2

If the Supplier intends to discontinue the production of spare parts for the delivery items delivered to us, it shall inform us immediately after its decision to discontinue such production.

19 Rights to Documents

We reserve any and all rights (without restriction) of ownership and copyrights to all data, drawings, samples, calculations, specifications and other documents (hereinafter referred to collectively as "Documents") which we make available to the Supplier for the purpose of preparing an offer and/or executing a contract, including in electronic form. The Supplier may use the Documents only for the creation of the offer and for the execution of the ordered delivery and/or service. The Supplier is prohibited from using and/or duplicating the Documents for purposes other than those stipulated in the contract. The Supplier may only make the Documents accessible to third parties to the extent that this is necessary for compiling the offer and/or for fulfilling the contract. It shall keep the Documents in safe custody and protect them from unauthorized access by third parties.

20 Confidentiality

20.1

The Supplier shall be obligated to treat all Documents within the meaning of clause 19 as well as all our business secrets and company secrets, in particular technical know-how and economic operating data, which are made available to the Supplier in connection with a contract, made accessible or otherwise made known (hereinafter referred to collectively as "Confidential Information") confidential *vis-à-vis* third parties, not to make them accessible to third parties and to protect them from access by third parties, unless the Supplier is authorized in accordance with clause 19 to disclose Confidential Information to third parties or we have given our prior written consent to it being disclosed to a third party.

20.2

The confidentiality obligation pursuant to clause 20.1 shall not apply or no longer apply to Confidential Information (i) which is publicly known or becomes publicly known without breach of the confidentiality obligation, or (ii) which was already known to the Supplier prior to its disclosure by us, or (iii) which the Supplier otherwise lawfully obtained. The confidentiality obligation shall not apply either if it conflicts with the assertion of legal claims by the Supplier.

20.3

This confidentiality obligation shall remain in force even after termination of a contract and shall also be imposed on third parties in the event of permissible disclosure of Confidential Information to third parties.

21 Place of jurisdiction, applicable law

21.1

All disputes arising out of or in connection with all contracts between us and the Supplier to which these terms and conditions form an integral part or their validity shall be finally settled in accordance with the Arbitration Rules of the German Arbitration Institute (DIS) without recourse to the ordinary courts of law. The arbitral tribunal shall be comprised of three members. The seat of the arbitration is Lübeck, Germany.

21.2

These terms and conditions and all contracts between us and the Supplier to which these terms and conditions form an integral part shall be governed exclusively by German law with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (UNCITRAL/CISG).

22 Severability

Should individual provisions of these terms and conditions or of a contract for goods and services, of which these terms and conditions form an integral part, be or become invalid, the validity of the remaining provisions of these terms and conditions or of the contract shall not be affected thereby.