

## **General Terms of Delivery / General Terms and Conditions**

of GIFAS ELECTRIC GmbH, Borsigstraße 9, 41469 Neuss  
(hereinafter referred to as "**Seller**")

### **§ 1 Validity**

- (1) All deliveries, services and offers of the Seller are made exclusively on the basis of these General Terms and Conditions of Delivery. They are an integral part of all contracts which the Seller concludes with its contractual partners (hereinafter referred to as "**Customers**") for the deliveries or services offered by it. They also apply to all future deliveries, services or offers to the Customer, even if they are not separately agreed on again.
- (2) Terms and conditions of the Customer or third parties shall not apply, even if the Seller does not separately object to their validity in individual cases. Even if the Seller makes reference to a letter which contains or refers to the terms and conditions of the Customer or of a third party, this shall not constitute an agreement with the validity of those terms and conditions.

### **§ 2 Offer and Conclusion of Contract**

- (1) All offers of the Seller are subject to confirmation and non-binding, unless they are expressly marked as binding or contain a specific acceptance period. The Seller may accept orders or commissions within fourteen days of receipt.
- (2) The legal relationship between Seller and Customer shall be governed solely by the purchase contract concluded in writing, including these General Terms and Conditions of Delivery. This completely reproduces all agreements between the contracting parties on the subject matter of the contract. Oral promises made by the Seller prior to the conclusion of this contract shall be legally non-binding and oral agreements of the parties to the contract shall be replaced by the written contract unless it is expressly stated in each case that they shall continue to be binding.
- (3) Supplements and amendments to the agreements made, including these General Terms and Conditions of Delivery, must be made in writing in order to be effective. With the exception of managing directors or individual authorised signatories, the employees of the Seller are not entitled to make verbal agreements deviating from this. Telecommunications transmission, in particular by fax or e-mail, shall suffice to comply with the written form, provided that a copy of the signed declaration is transmitted.
- (4) Information provided by the Seller on the subject of the delivery or service (e.g. weights, dimensions, utility values, load-bearing capacity, tolerances and technical data) as well as our statements regarding the same (e.g. drawings and illustrations) are only approximate unless the usability for the contractually intended purpose requires an exact agreement. They are not guaranteed characteristics, but descriptions or markings of the delivery or service. Deviations customary in the trade and deviations which occur due to legal regulations or represent technical improvements, as well as the replacement of components by equivalent parts, are permissible provided that they do not impair the usability for the contractually intended purpose.
- (5) The Seller reserves the right of ownership or copyright to all offers and cost estimates submitted by him as well as drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and aids made available to the Customer. The Customer may not make these objects accessible to third parties, disclose them, use them himself or through third parties or reproduce them without the express consent of the Seller. At the Seller's request, he shall return these items to the Seller in their entirety and destroy any copies made if they are no longer required by him in the ordinary course of business or if negotiations do not lead to the conclusion of a contract. Excluded from this is the storage of electronically provided data for the purpose of customary data backup.

### **§ 3 Prices and Payment**

- (1) The prices shall apply to the scope of services and deliveries specified in the order confirmations. Additional or special services shall be invoiced separately. Prices are quoted in EURO ex works plus packaging, statutory value-added tax, customs duties for export deliveries and fees and other public charges.
- (2) Invoiced amounts are to be paid within thirty days without any deduction unless otherwise agreed in writing. The date of receipt by the Seller shall be decisive for the date of payment. Payment by cheque is excluded unless agreed separately in individual cases. If the Customer does not pay by the due date, interest shall be charged on the outstanding amounts from the due date in accordance with the statutory provisions; the assertion of further damages in the event of default shall remain unaffected.
- (3) The Seller shall be entitled to execute or render outstanding deliveries or services only against advance payment or provision of security if, after conclusion of the contract, it becomes aware of circumstances which are suitable to significantly reduce the creditworthiness of the Customer and which endanger the payment of the outstanding claims of the Seller by the Customer from the respective contractual relationship (including from other individual orders to which the same framework contract applies).

### **§ 4 Delivery and Delivery Time**

- (1) Deliveries shall be made ex works, unless expressly agreed otherwise.
- (2) Periods and dates for deliveries and services envisaged by the Seller are always only approximate, unless a fixed period or date has been expressly promised or agreed. If shipment has been agreed, delivery periods and delivery dates shall refer to the time of handover to the forwarding agent, carrier or other third party commissioned with the transport.
- (3) Notwithstanding the Seller's rights arising from the Customer's default, the Seller may demand from the Customer an extension of delivery and performance periods or a postponement of delivery and performance dates by the period in which the Customer fails to meet its contractual obligations towards the Seller.
- (4) The Seller shall not be liable for the impossibility of delivery or for delays in delivery insofar as these are caused by force majeure or other events not foreseeable at the time of conclusion of the contract (e.g. operational disruptions of any kind, difficulties in procuring materials or energy, transport delays, strikes, lawful lockouts, shortages of labour, energy or raw materials, difficulties in procuring the necessary official permits, official measures or the lack of, incorrect or untimely delivery by suppliers) for which the Seller is not responsible. Insofar as such events substantially impede or render impossible delivery or performance by the Seller and the impediment is not only of a temporary nature, the Seller shall be entitled to withdraw from the contract. In the event of hindrances of a temporary nature, the delivery or service deadlines shall be extended or the delivery or service dates postponed by the period of the hindrance plus a reasonable start-up period. If acceptance of the delivery or service cannot be reasonably expected of the Customer as a result of the delay, the Customer may withdraw from the contract by immediate written declaration to the Seller.
- (5) The Seller shall only be entitled to make partial deliveries if
  - a) the partial delivery can be used by the Customer within the scope of the contractual purpose,
  - b) delivery of the remainder of the ordered goods is ensured; and
  - c) the Customer does not incur any significant additional costs or expenses (unless the Seller agrees to bear such costs).
- (6) If the Seller is in default with a delivery or service or if a delivery or service becomes impossible for the Seller for any reason whatsoever, the Seller's liability shall be limited to damages in accordance with § 8 of these General Terms and Conditions of Delivery.

## **§ 5 Place of Performance, Shipping, Packaging, Passing of Risk, Acceptance**

- (1) Place of performance for all obligations arising from the contractual relationship is Neuss, Germany, unless otherwise specified. If the Seller also owes the installation, the place of performance shall be the place where the installation is to take place.
- (2) The mode of dispatch and packaging are subject to the dutiful discretion of the Seller.
- (3) The risk passes to the Customer at the latest when the delivery item is handed over (whereby the start of the loading process shall be decisive) to the forwarding agent, carrier or other third party appointed to carry out the shipment. This shall also apply if partial deliveries are made or if the Seller has undertaken other services (e.g. dispatch or installation). If dispatch or handover is delayed due to circumstances for which the Customer is responsible, the risk passes to the Customer from the day on which the delivery item is ready for dispatch and the Seller has notified the Customer accordingly.
- (4) Storage costs after transfer of risk shall be borne by the Customer. In the case of storage by the Seller, the storage costs shall amount to 0.25% of the invoice amount of the delivery items to be stored per expired week. We reserve the right to assert and prove further or lower storage costs.
- (5) The consignment shall only be insured by the Seller against theft, breakage, transport, fire and water damage or other insurable risks at the express request of the Customer and at the Customer's expense.
- (6) Insofar as acceptance is to take place, the object of purchase shall be deemed to have been accepted if
  - a) the delivery and, if the Seller also owes the installation, the installation has been completed,
  - b) the Seller has informed the Customer of this with reference to the acceptance fiction in accordance with this § 5 Paragraph (6) and has requested him to accept the goods,
  - c) twelve working days have elapsed since delivery or installation or the Customer has started using the purchased item (e.g. the delivered system has been put into operation) and in this case six working days have elapsed since delivery or installation and
  - d) the Customer has omitted acceptance within this period for a reason other than a defect notified to the Seller which makes the use of the purchased item impossible or significantly impairs it.

## **§ 6 Warranty, Defects as to Quality**

- (1) The warranty period for quality defects and defects of title shall be two years from delivery or, if acceptance is required, from acceptance. This period shall not apply to claims for damages by the Customer arising from injury to life, limb or health or from intentional or grossly negligent breaches of duty by the Seller or its vicarious agents, which shall in each case become time-barred in accordance with the statutory provisions.
- (2) The delivered items shall be carefully inspected immediately after delivery to the Customer or to the third party designated by the Customer. With regard to obvious defects or other defects that would have been recognisable in an immediate, careful examination, they shall be deemed to have been approved by the Customer if the Seller does not receive a written notice of defect within seven working days of delivery. With regard to other defects, the delivery items shall be deemed to have been approved by the Customer if the notice of defect is not received by the Seller within seven working days of the time at which the defect became apparent; if the defect was already recognisable to the Customer at an earlier point in time under normal use, this earlier point in time shall, however, be decisive for the start of the notice period. At the Seller's request, a rejected delivery item shall be returned to the Seller carriage paid. In the event of a justified notice of defects, the Seller shall reimburse the costs of the most favourable dispatch route. This shall not apply if the costs increase because the delivery item is located at a location other than the location of the intended use.
- (3) In the event of quality defects of the delivered items, the Seller shall initially be obliged and entitled to remedy the defect or deliver a replacement at his discretion within a reasonable period of time. In the event of failure, i.e. impossibility, unreasonability, refusal or unreasonable

delay of the rectification or replacement delivery, the Customer may withdraw from the contract or reduce the purchase price accordingly.

- (4) If a defect is based on the fault of the Seller, the Customer may claim damages under the conditions specified in § 8.
- (5) In the event of defects in components of other manufacturers which the Seller cannot remedy for licensing or actual reasons, the Seller shall, at its discretion, assert its warranty claims against the manufacturers and suppliers for the account of the Customer or assign them to the Customer. Warranty claims against the Seller for such defects shall only exist under the other conditions and in accordance with these General Terms and Conditions of Delivery if the judicial enforcement of the aforementioned claims against the manufacturer and supplier was unsuccessful or has no prospect of success, for example due to insolvency. During the duration of the legal dispute, the statute of limitations of the relevant warranty claims of the Customer against the Seller shall be suspended.
- (6) The warranty does not apply if the Customer changes the delivery item or has it changed by third parties without the consent of the Seller and the removal of the defect becomes impossible or unreasonably difficult as a result. In any case, the Customer shall bear the additional costs of remedying the defect resulting from the change.
- (7) A delivery of used items agreed with the Customer in individual cases shall be made to the exclusion of any warranty for quality defects.

## **§ 7 Industrial Property Rights**

- (1) The Seller warrants in accordance with this § 7 that the delivery item is free from industrial property rights or copyrights of third parties. Each contracting party shall immediately notify the other contracting party in writing if claims are asserted against it due to the infringement of such rights.
- (2) In the event that the delivery item infringes an industrial property right or copyright of a third party, the Seller shall, at his option and expense, modify or exchange the delivery item in such a way that no rights of third parties are infringed, but the delivery item continues to fulfil the contractually agreed functions, or provide the Customer with the right of use. If the Seller fails to do so within a reasonable period of time, the Customer shall be entitled to withdraw from the contract or to reduce the purchase price accordingly. Any claims for damages by the Customer shall be subject to the restrictions of § 8 of these General Terms of Delivery.
- (3) In the event of infringements of rights by products of other manufacturers supplied by the Seller, the Seller shall, at its option, assert its claims against the manufacturers and sub-suppliers for the account of the Customer or assign them to the Customer. In these cases, claims against the Seller pursuant to this § 7 shall only exist if the judicial enforcement of the aforementioned claims against the manufacturers and sub-suppliers was unsuccessful or is futile, for example due to insolvency.

## **§ 8 Liability for Damages due to Fault**

- (1) The Seller's liability for damages, irrespective of the legal basis, in particular for impossibility, delay, defective or incorrect delivery, breach of contract, breach of duties during contract negotiations and tort, shall be limited in accordance with the provisions of this § 8, insofar as this depends on culpability.
- (2) The Seller shall not be liable in the event of simple negligence on the part of its executive bodies, legal representatives, employees or other vicarious agents, insofar as this is not a breach of essential contractual obligations. Essential to the contract are the obligation to deliver and install the delivery item on time, its freedom from defects of title and quality defects which more than insignificantly impair its functionality or fitness for use, as well as obligations to provide advice, protection and care which are intended to enable the Customer to use the delivery item in accordance with the contract or which are intended to protect the life and limb of the Customer's personnel or to protect the Customer's property from considerable damage.
- (3) Insofar as the Seller is liable for damages in accordance with § 8 (2), this liability shall be limited to damages which the Seller foresaw at the time of conclusion of the contract as a possible

consequence of a breach of contract or which he should have foreseen if he had exercised due care. Indirect damages and consequential damages resulting from defects of the delivery item are also only eligible for compensation if such damages are typically to be expected when the delivery item is used as intended.

- (4) In the event of liability for simple negligence, the Seller's liability for damages to property and other financial losses resulting therefrom shall be limited to an amount of EUR 15.0 million per claim (corresponding to the current sum insured under its product liability insurance or liability insurance), even if it is a breach of material contractual obligations.
- (5) The above exclusions and limitations of liability shall apply to the same extent for the benefit of the organs, legal representatives, employees and other vicarious agents of the Seller.
- (6) Insofar as the Seller provides technical information or acts in an advisory capacity and this information or advice is not part of the contractually agreed scope of services owed by him, this shall be done free of charge and to the exclusion of any liability.
- (7) The limitations of this § 8 shall not apply to the Seller's liability for intentional conduct, for guaranteed characteristics, for injury to life, limb or health or in accordance with the German Product Liability Act.

## **§ 9 Retention of Title**

- (1) The retention of title agreed in this § 9 serves to secure all existing current and future claims of the Seller against the Customer arising from the supply relationship between the contracting parties.
- (2) The goods delivered by the Seller to the Customer shall remain the property of the Seller until all secured claims have been paid in full. The goods as well as the goods covered by the retention of title and replacing them in accordance with the following provisions shall hereinafter be referred to as "**reserved goods**".
- (3) The Customer shall store the reserved goods free of charge for the Seller.
- (4) The Customer is entitled to process and sell the goods subject to retention of title in the ordinary course of business until the occurrence of the event of exploitation in accordance with paragraph (9). However, pledges and transfers by way of security are not permitted.
- (5) If the reserved goods are processed by the Customer, it is agreed that the processing is carried out in the name and for the account of the Seller as manufacturer and that the Seller directly acquires the ownership or - if the processing is carried out from materials of several owners or the value of the processed object is higher than the value of the reserved goods - the co-ownership (fractional ownership) of the newly created object in the ratio of the value of the reserved goods to the value of the newly created object. In the event that no such acquisition of ownership should occur with the Seller, the Customer hereby transfers his future ownership or - in the above-mentioned proportion - co-ownership of the newly created item to the Seller as security. If the reserved goods are combined or inseparably mixed with other items to form a uniform item and if one of the other items is to be regarded as the main item, the Customer shall assign to the Seller, to the extent that the main item belongs to him, the proportionate co-ownership of the uniform item in the proportion stated in sentence 1.
- (6) In the event of resale of the reserved goods, the Customer hereby assigns to the Seller by way of security the resulting claim against the purchaser - in the event of co-ownership by the Seller of the reserved goods pro rata in accordance with the co-ownership share. The same applies to other claims which take the place of the reserved goods or otherwise arise with regard to the reserved goods, such as insurance claims or claims arising from tort in the event of loss or destruction. The Seller revocably authorises the Customer to collect the claims assigned to the Seller in his own name. The Seller may only revoke this direct debit authorisation in the event of realisation.
- (7) If third parties have access to the reserved goods, in particular by seizure, the Customer shall immediately inform them of the Seller's ownership and inform the Seller thereof in order to enable him to enforce his ownership rights. If the third party is not in a position to reimburse the Seller for the judicial or extrajudicial costs incurred in this connection, the Customer shall be liable to the Seller for such costs.

- (8) The Seller shall release the goods subject to retention of title as well as the items or claims replacing them insofar as their value exceeds the amount of the secured claims by more than 50%. The Seller shall be responsible for selecting the items to be released thereafter.
- (9) If the Seller withdraws from the contract ("**case of utilization**") in the event of conduct contrary to the terms of the contract on the part of the Customer - in particular default in payment - he shall be entitled to demand the return of the reserved goods.

## **§ 10 Final Provisions**

- (1) If the Customer is a merchant, a legal entity under public law or a special fund under public law or if he has no general place of jurisdiction in the Federal Republic of Germany, the place of jurisdiction for any disputes arising from the business relationship between the Seller and the Customer shall be Neuss, Germany. Mandatory statutory provisions on exclusive places of jurisdiction shall remain unaffected by this provision.
- (2) The relations between the Seller and the Customer are subject exclusively to the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) shall not apply.
- (3) Insofar as the contract or these General Terms and Conditions of Delivery contain loopholes, those legally effective provisions shall be deemed to have been agreed for filling these loopholes which the contracting parties would have agreed according to the economic objectives of the contract and the purpose of these General Terms and Conditions of Delivery had they been aware of the loophole.