General Terms and Conditions of GigaTera EU GmbH

As at: 07.09.2015

I. General, Conclusion of Contract

1. Our terms of business (GTC) as described below shall apply exclusively with regard to entrepreneurs, corporate bodies under public law and special funds under public law.
2. The following terms shall apply to all contracts concluded between the customer and us. They shall also apply to all future business relationships even if they are not expressly agreed once again. Our GTC shall be deemed adopted at the latest on acceptance or receipt of performance. Deviating terms of the customer not expressly recognised by us shall be non-binding for us even if we do not expressly object to them. The following terms shall also apply if in the knowledge of opposing or deviating terms of the customer we carry out the customer's order without reservation.
3. Our offers shall be without engagement and non-binding unless we have expressly declared them to be binding. They shall be valid for a maximum of thirty days. Contracts shall come into being only through our written contract note or through execution of the order.
4. We may within two weeks by sending a contract note accept an order of the customer which is to be qualified as an offer to conclude a contract.
5. Technical and creative deviations from descriptions and statements in brochures, offers and written documents as well as changes in performance, construction and materials in the course of technical progress shall remain reserved without the customer being able to derive rights from them. Statements about our products (technical data, dimensions and others) shall be only approximate; they shall not be guaranteed properties, unless the guarantee is given expressly in writing.
6. We shall reserve our ownership rights and copyrights as well as other proprietary rights to all samples, drawings, calculations and other documents, including those in electronic form. They may not be made available to third parties without written consent and shall be returned without delay on demand.

II. Price and Payment

1. In the absence of a special agreement, prices shall apply ex works including loading and packing in the works. Turnover tax in the respective statutory amount shall be added to the prices. Any official test and authorisation charges as well as transport and insurance costs shall be borne by the customer.
2. If between conclusion of contract and delivery the applicable prices of our suppliers or other costs of our performance should rise, we shall be entitled to increase the agreed payment commensurately insofar as a period of more than four months lies between conclusion of contract and agreed delivery date, even if the customer has already made an advance payment.
3. A cash discount deduction shall only be permissible by special written agreement between us and the customer. A payment shall only be deemed to have been made once we are able to dispose of the sum. In the case of payment by cheque the payment shall only be deemed to have been made once the cheque has been honoured in the due course of business.
4. The customer shall only be entitled to exercise a right of retention if its counterclaim is based on the same contractual relationship.
5. Offsetting shall not be permissible on the basis of any counterclaims of the customer which are disputed by us and not determined without further legal recourse and which derive from other legal relationships.
6. Should it become evident after conclusion of contract that our payment claim is jeopardised by the customer's lack of ability to pay, we shall be entitled to the rights in § 321 of the German Civil Code which also applies to all other outstanding payments from the business connection with the customer. Should the customer not effect the payment or not furnish security in a reasonable period, we shall also be entitled to accelerate maturity of all unprescribed claims from the current business connection.

III. Delivery Time, Delayed Delivery

1. Delivery dates or deadlines not expressly agreed as binding shall be exclusively non-binding statements. Our adherence to them shall presuppose that all commercial and technical questions between the contracting parties have been resolved and the customer has fulfilled all the obligations incumbent on it, such as providing the necessary official certificates or permits or making an advance

payment. Should this not be the case, the delivery time shall be extended commensurately. This shall not apply insofar as we are answerable for the delay.

2. Compliance with the delivery deadline shall be subject to correct and punctual deliveries by our own suppliers as long as we have properly concluded congruent covering transactions (i.e. in terms of quality and quantity according to the delivery agreed with the customer) and the incorrect or unpunctual deliveries by our own suppliers are not attributable to us. This reservation shall not apply in the event that we have assumed a procurement risk. We shall inform the customer of impending delays as soon as possible.
3. The delivery deadline shall have been complied with if by its expiry the deliverable has left our works or readiness for dispatch has been notified. Insofar as an acceptance test is to be carried out, unless acceptance has been justifiably rejected the acceptance date or alternatively the notification of readiness for acceptance shall be decisive.
4. If dispatch or acceptance of the deliverable is delayed for reasons attributable to the customer, the customer shall be charged the costs arising from the delay beginning one month after notification of the readiness for dispatch or acceptance.
5. Should we not be answerable for the delay, for example in the case of energy shortage, import difficulties, operational and transport hold-ups, industrial action or force majeure, the period of performance shall be extended commensurately. Should we be unable to perform even after a reasonable period, both the customer and we shall be entitled to withdraw from the contract. Damage claims of the customer shall be excluded.
6. If as a consequence of a delay in delivery attributable to us the customer is entitled to assert the discontinuance of its interest in further fulfilment of the contract, we shall be liable according to the statutory provisions. In this case our liability shall be limited to the foreseeable, typically occurring damage if the delay in delivery is not due to an intentional violation of the contract attributable to us. Culpability of our representatives or agents shall be imputed to us.
7. We shall likewise be liable to the customer according to the statutory provisions in the case of a delivery delay if this is due to an intentional or grossly negligent violation of the contract attributable to us. Culpability of our representatives or agents shall be imputed to us. Our liability shall be limited to the foreseeable,

typically occurring damage if the delay in delivery is not due to an intentional violation of the contract attributable to us.

8. In the event that a delivery delay attributable to us is due to the culpable violation of such contractual obligations the fulfilment of which makes the proper execution of the contract possible in the first place, the violation of which jeopardises the achievement of the purpose of the contract, and on compliance with which the customer regularly relies and may rely, while culpability of our representatives or agents is to be imputed to us, we shall be liable according to the statutory provisions with the stipulation that in this case the liability for damages shall be limited to the foreseeable, typically occurring damage.
9. If we are answerable for the delay, the customer may according to the statutory provisions withdraw from the contract if it has previously unsuccessfully set us a reasonable period of grace. Should damages accrue to the customer through the delay, it shall be entitled to claim a lump sum in compensation. It shall amount to 0.5 percent for every full week of delay but in total no more than 5 percent of the value of that part of the performance which due to the delay cannot be used punctually or according to contract.
10. Further liability for a delivery delay attributable to us shall be excluded. The further statutory claims and rights of the customer to which it is entitled apart from the claim for damages arising from a delivery delay attributable to us shall remain unaffected.
11. Should the customer be in default of acceptance we shall be entitled to claim compensation for the damages occurring and any additional expenditure. The same shall apply if the customer culpably violates duties of cooperation. With the onset of acceptance delay or debtor's delay the risk of incidental deterioration and accidental loss shall pass to the customer.

IV. Transfer of Risk, Acceptance

1. The risk shall pass to the customer when the deliverable has left the works, even if partial deliveries are made or we have taken over other performances such as shipping costs or delivery and assembly. Insofar as an acceptance test is to be carried out, this shall be decisive for the transfer of risk. It must be carried out immediately on the acceptance date or alternatively after our notification of

readiness for acceptance. The customer may not reject acceptance in the event of a non-essential defect.

2. Should dispatch or acceptance be delayed or omitted as a result of circumstances not attributable to us, the risk shall pass to the customer from the day readiness for shipping or acceptance was notified. We shall undertake at the customer's expense to take out the insurance policies it requests.
3. Partial deliveries shall be permissible as long as they are reasonable for the customer.

V. Retention of Title

1. The delivered goods (goods subject to retention of title) shall remain our property until fulfilment of all claims, including all current account balance claims, against the customer due to us now or in future. In the event of behaviour contrary to contract by the customer, e.g. payment default, we shall after previously setting a reasonable period have the right to take back the goods subject to retention of title. Should we take back the goods subject to retention of title, this shall represent a withdrawal from the contract. We shall be entitled to realise the goods subject to retention of title after taking them back. After deduction of an appropriate sum for the costs of realisation, the proceeds of the realisation shall be offset against the sums owed to us by the customer.
2. The customer shall treat the goods subject to retention of title with care and at its own cost insure them sufficiently to their replacement value against theft, breakage, fire, water and other damage. By doing so the customer shall now cede all claims against the insurance company to us. We shall accept this cession. Maintenance and inspection work that becomes necessary shall be promptly carried out by the customer at its own expense.
3. The customer shall be entitled to sell the goods under retention of title in the proper course of business and/or to use them as long as it is not in default of payment. Pledging assignments as security shall not be permitted. The customer shall now by way of security cede to us to their full extent claims (including all current account balance claims) relating to the goods under retention of title arising from reselling or any other legal foundation (insurance, tort). We shall hereby accept the cession. We shall revocably authorise the customer to collect the claims ceded to us for its account in its own name. The collection authorisation

may be revoked at any time if the customer does not meet its payment obligations properly. The customer shall not be authorised to cede this claim even for the purpose of collecting claims by way of factoring, unless it is simultaneously established that the factor is obliged to effect the consideration in the amount of the claims directly to us for as long as claims by us against the customer exist.

4. Processing or transformation of the goods subject to retention of title shall under all circumstances be done on our behalf. Insofar as the goods subject to retention of title are processed with other things not belonging to us, we shall acquire the joint ownership of the new thing in the proportion of the value of the goods subject to retention of title (final invoice amount including value added tax) to the other processed things at the time of processing. The same shall apply to the new thing created by processing as does to the goods subject to retention of title. In the event of inextricable amalgamation of the goods subject to retention of title with other things not belonging to us, we shall acquire joint ownership of the new thing in the proportion of the value of the goods subject to retention of title (final invoice amount including value added tax) to the other amalgamated things at the time of amalgamation. Should the customer's thing be regarded as the main thing as a consequence of the amalgamation, the customer and we hereby agree that the customer transfers proportional joint ownership to us. We hereby accept the transfer. The customer shall without charge keep safe for us our sole or joint ownership of a thing thus established.
5. In the event of access by third parties to the goods subject to retention of title, in particular attachments, the customer shall indicate our ownership and notify us without delay so that we can assert our rights of ownership. Insofar as the third party is not in a position to refund us the judicial or extrajudicial costs accruing in this connection, the customer shall be liable for this.
6. We shall be obligated to release the securities due to us to the extent that the realisable value of our securities exceeds the secured claims by more than 10%, whereby the choice of securities to be released shall reside with us. In this case the value of the goods subject to retention of title shall be deemed to be the net invoice amount of the goods supplied by us less a security deduction of 1/3.

VI. Claims for Defects

1. Claims for defects of the customer shall only obtain if it promptly complies with the duties to examine and give notice of defects it owes according to § 377 of the German Commercial Code.
2. Should an agreed or legally provided acceptance inspection be omitted for reasons not attributable to us, defects may to that extent no longer be asserted.
3. No warranty shall be given for damage arising from the following reasons: Unsuitable or improper use, incorrect installation or commissioning by the customer or third parties, natural wear, incorrect or careless treatment, in particular excessive operational demands, unsuitable operating resources, substitute materials, defective construction work, chemical, electronic or electrical influences, unless they are attributable to culpability on our part.
4. Should defects become apparent only during processing, complaints may only be considered if processing of these defective items is immediately halted.
5. Should the customer not immediately give us the opportunity to convince ourselves of the defect, in particular not immediately on request making the rejected goods or samples of them available, the claims for defects shall be inapplicable.
6. In the case of justified, prompt notice of defects we may initially remedy the defect or supply a non-defective thing (supplementary performance) at our discretion.
7. In the case of failure or rejection of the supplementary performance, the customer may abate the purchase price or after setting and unsuccessful expiry of a reasonable period withdraw from the contract, as long as the defect is not negligible and the goods have not already been sold, processed or transformed.
8. The customer shall be entitled to compensation claims subject to the provisions of Subparagraph VII.
9. We shall only assume expenses in connection with supplementary performance insofar as they are reasonable in individual cases, in particular in relation to the remuneration of the performance.
10. We shall not refund expenses determined by taking the goods to a place other than the place of fulfilment, unless this corresponds with their contractual use.
11. Claims of the customer for defects shall lapse one year after delivery to the customer, including cases where they are used for a building, unless this type of use was agreed in writing.

12. In cases of supplementary performance the period of limitation shall not begin anew.
13. The above provisions shall not affect claims of the customer arising from intentional and grossly negligent breaches of duty on our part, from fraudulent concealment of defects or from the giving of a guarantee by us, as well as rights of recourse of the customer under § 478 of the German Civil Code, as long as these do not go beyond the statutory claims for material defects.
14. In cases of force majeure we shall be freed from our liability. Compensation claims shall to this extent be excluded.

VII. Liability

1. Regardless of the liability limitations of this section we shall be liable according to the statutory provisions for damages to life, limb and health based on negligent or intentional breach of duty on our part or on that of our legal representatives or agents, as well as for damages included in the liability according to the product liability law. In the case of damages not covered by Sentence 1 we shall be liable only for intent and gross negligence by us, our legal representatives or our agents according to the statutory provisions. In this case the liability for damages shall however be limited to the foreseeable, typically occurring damage as long as we, our legal representatives or our agents have not acted with intent.
2. To the extent to which we have provided a guarantee of quality and/or durability regarding the goods or parts thereof, we shall also be liable within the context of this guarantee. In the case of damages based on a lack of the guaranteed quality or durability but which do not occur directly in the goods we shall only be liable if the risk of such damage is evidently included in the guarantee of quality and durability.
3. We shall also be liable for damages we cause by simple negligent violation of such contractual obligations the fulfilment of which makes the proper execution of the contract possible in the first place, the violation of which jeopardises the achievement of the purpose of the contract, and on compliance with which the customer regularly relies and may rely. We shall however only be liable insofar as the damages are typically associated with the contract and foreseeable.
4. Further liability shall be excluded without consideration of the legal nature of the claim asserted. Insofar as our liability is excluded or limited, this shall also apply

to the personal liability of our staff, employees, co-workers, representatives and agents.

VIII. Use of Software

1. Insofar as software is included in the delivery scope, the customer shall be granted a non-exclusive right to use the software including its documentation. It shall be provided for use on the deliverable designed for it. Use of the software on more than one system shall be prohibited.
2. The customer may reproduce, edit, translate or transform the software from the object code to the source code only to the legally permitted extent (§§ 69 d and e of the German Copyright Act). The customer shall undertake neither to remove manufacturer's information - in particular copyright notices - nor to change it without our express prior consent.
3. All other rights to the software and documentation including copies shall remain with us or with the software supplier. Issuing of sublicences shall not be permitted.

IX. Applicable Law, Arbitration Clause

1. The law of the Federal Republic of Germany shall apply exclusively to all legal relationships between us and the customer, to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).
2. Should disputes or differences of opinion arise from this contract or from agreements on its execution, both parties shall endeavour initially to settle these amicably. The attempt at settlement shall be deemed to have failed as soon as one of the parties has notified the other party of this in writing.
3. If the attempt at settlement has failed, the disputes shall be conclusively decided according to the Rules of Conciliation and Arbitration of the International Chamber of Commerce in Paris (ICC) by one or more arbitrators nominated in accordance with these rules.
4. The place of the arbitration proceedings shall be Düsseldorf and the language of the proceedings German. The procedural law of this place shall be applied supplementally insofar as the rules of the International Chamber of Commerce do not contain any provisions.
5. The arbitration award shall be justified in writing. The court of arbitration shall also rule on the costs of the arbitration proceedings.