

## 1. GENERAL PROVISIONS

Legal relations between Gastro-Gerätebau GmbH (hereinafter referred to as „Gastro“ or „the Supplier“) and Purchaser in connection with supplies and/or services of Gastro (hereinafter referred to as „Supplies“) shall – also for future Supplies – be solely governed by the present General Terms and Conditions. The Purchaser’s general terms and conditions shall apply only if expressly accepted by Gastro in writing. The scope of delivery shall be determined by the congruent mutual written declarations. Individual agreements made with the buyer in individual cases (including collateral agreements, supplements and amendments) shall in any case take precedence over these terms of sale. Subject to proof to the contrary, a written contract or our written confirmation shall be decisive for the content of such agreements.

## 2. QUOTES - DOCUMENTS

- 2.1 The Supplier herewith reserves any industrial property rights and/or copyrights pertaining to its cost estimates, drawings and other documents -also in electronic form - (hereinafter referred to as “Documents”). The Documents shall not be made accessible to third parties without the Supplier’s prior consent and shall, upon request, be returned without undue delay to Gastro if the contract is not awarded to Gastro. This shall also apply for such written documents being identified as „confidential“.
- 2.2 Quotes are only valid for the country where the Purchaser has its business seat. The Purchaser is responsible for all losses and liabilities accruing from the use of the Supplies outside this country.
- 2.3 In case of no other individual provision the commercial terms shall be interpreted according to the Incoterms 2000 including any amendments valid at the time of the conclusion of the contract.

## 3. PRICES, TERMS OF PAYMENT

- 3.1 Except as agreed otherwise in the order confirmation prices are ex works and excluding packaging; value added tax shall be added at the then applicable rate.
- 3.2 In case of cif-Supplies the costs charged at the port of destination for unloading, lighterage, cargo, port and/or quay-dues are not included in the purchase price.
- 3.3 Duties, consular fees and other taxes, duties fees and any related costs due to regulations by the law of the Federal Republic of Germany are borne by the Purchaser. Supplies including customs or other duties the indicated price shall be calculated according to the rate effective at the date of the quote. The actual costs will be invoiced. VAT, if any will be calculated additionally.
- 3.4 The Supplier shall only observe foreign packaging, weighing or custom regulations if the Purchaser did provide detailed information in due time. In such case any additional costs are borne by the Purchaser.
- 3.5 In case of exchange rate fluctuations the Supplier can request that the original value ratio being the base of the indicated prices shall be preserved.
- 3.6 In case a money transfer out of the country where the payment has to be instructed is impossible during the payment date, the Purchaser undertakes to duly pay the balance due on a bank account in his country. In case of a price drop of the not agreed currency the Purchaser will perform a subsequent payment.
- 3.7 A cash discount deserves a special written agreement.
- 3.8 The Purchaser may set off only those claims which are undisputed or nonappealable.

## 4. TIME FOR SUPPLIES; DELAY

- 4.1 Times set for Supplies shall only be binding if all Documents to be furnished by the Purchaser, necessary permits and approvals, especially concerning plans, are received in time and if agreed terms of payment and as the case may be the adduction of agreed securities and/or other obligations of the Purchaser are fulfilled. If these conditions are not fulfilled in time, times set shall be extended reasonably; this shall not apply if the Supplier is responsible for the delay.
- 4.2 If non-observance of the times set is due to force majeure such as mobilization, war, rebellion or similar events, e. g. strike or lockout, such time shall be extended accordingly. The same shall apply if Gastro does not receive its own supplies in due time or in due form. If Gastro is responsible for the delay and the Purchaser has demonstrably suffered a loss therefrom, the Purchaser may claim a compensation as liquidated damages of 0.5 % for every completed week of Delay, but in no case more than a total of 5 % of the price of that part of the Supplies which due to the Delay could not be put to the intended use. Purchaser’s claims for damages due to delayed Supplies as well as claims for damages in lieu of performance exceeding the limits specified in this clause 4.2 are excluded in all cases of delayed Supplies, even upon expiry of a time set to Gastro to effect the Supplies. This shall not apply in cases of mandatory liability based on intent, gross negligence, or due to loss of life, bodily injury or damage to health. Rescission of the contract by the Purchaser based on statute is limited to cases where Gastro is responsible for the delay. The above provisions do not imply a change in the burden of proof to the detriment of the Purchaser. If dispatch or delivery, due to Purchaser’s request, is delayed by more than one month after notification of the readiness for dispatch was given, the Purchaser may be charged, for every additional month commenced, storage costs of 0.5 % of the price of the items of the Supplies, but in no case more than a total of 5 %. The parties to the contract may prove that higher or, as the case may be, lower storage costs have been incurred.

## 5. PASSING OF RISK

- 5.1 In case of no other agreements the Supplies will be agreed as „ex works“.
- 5.2 Even where delivery has been agreed freight free, the risk shall pass to the Purchaser as follows:
  - 5.2.1 if the Supplies do not include assembly or erection, at the time when the Supplies are shipped or picked up by the carrier. Upon the Purchaser’s request, Gastro shall insure the Supplies against the usual risks of transport at the Purchaser’s expense;
  - 5.2.2 if the Supplies include assembly or erection immediately after the effected assembly or erection respectively if so agreed, after a fault-free trial run.
- 5.3 The risk shall pass to the Purchaser if dispatch, delivery, the start or performance of assembly or erection, the taking over in the Purchaser’s own works, or the trial run is delayed for reasons for which the Purchaser is responsible or if the Purchaser has otherwise failed to accept the Supplies.

## 6. RETENTION OF TITLE

- 6.1 The items pertaining to the Supplies (“Retained Goods”) shall remain the Gastro’s property until each and every claim Gastro has against the Purchaser on account of the business relationship has been fulfilled. If the combined value of Gastro’s security interests exceeds the value of all secured claims by more than 10 %, Gastro shall release a corresponding part of the security interest if so requested by the Purchaser; Gastro shall be entitled to choose which security interest it wishes to release.
- 6.2 For the duration of the retention of title, the Purchaser may not pledge the Retained Goods or use them as security, and resale shall be possible only for resellers in the ordinary course of their business and only on condition that the reseller receives payment from its customer or makes the transfer of property to the customer dependent upon the customer fulfilling its obligation to effect payment. The Purchaser assigns now already to Gastro the payments accruing to him from the onward sale to the amount of the final invoice including VAT arising from the delivery transaction between Gastro and the Purchaser, irrespective of whether the delivery items have been sold onwards before or after processing, linkage or mixing.
- 6.3 The Purchaser shall inform Gastro forthwith of any seizure or other act of intervention by third parties.
- 6.4 Where the Purchaser fails to fulfil its duties, fails to make payment due, or otherwise violates its obligations Gastro shall be entitled to rescind the contract and take back the Retained Goods in the case of continued failure following expiry of a reasonable remedy period set by Gastro; the statutory provisions providing that a remedy period is not needed shall be unaffected. The Purchaser shall

be obliged to return the Retained Goods. The fact that Gastro takes back Retained Goods and/or exercises the retention of title, or has the Retained Goods seized, shall not be construed to constitute a rescission of the contract, unless Gastro so expressly declares.

- 6.5 Processing or transformation of the delivery item by the Purchaser is always undertaken for Gastro without any obligations arising to the latter therefrom. If the delivery item is processed with other objects which are not the property of Gastro, Gastro acquires the co-ownership in the new matter in relation to the value of the delivery item to the other processed objects at the time of processing. In all other respects, the matter arising through processing has the same conditions attached as the object under retention. If the delivery item is linked with other objects which are not Gastro's, Gastro acquires co-ownership in the new matter in relation to the value of the delivery item to the other processed objects at the time of processing. If linkage takes place such that the matter of Gastro must be considered the main matter, it is deemed to have been agreed that the Purchaser transfers the proportionate ownership to Gastro.

## 7. ASSEMBLY AND ERECTION

Unless otherwise agreed in written form, assembly and erection shall be subject to the following provisions:

- 7.1 The Purchaser shall provide at its own expense and in due time:
- a) all earth and construction work and other ancillary work outside the Supplier's scope, including the necessary skilled and unskilled labor, construction materials and tools,
  - b) the equipment and materials necessary for assembly and commissioning such as scaffolds, lifting equipment and other devices as well as fuels and lubricants,
  - c) energy and water at the point of use including connections, heating and lighting,
  - d) suitable dry and lockable rooms of sufficient size adjacent to the site for the storage of machine parts, apparatus, materials, tools, etc. and adequate working and recreation rooms for the erection personnel, including sanitary facilities as are appropriate in the specific circumstances; furthermore, the Purchaser shall take all measures it would take for the protection of its own possessions to protect the possessions of Gastro and of the erection personnel at the site,
  - e) protective clothing and protective devices needed due to particular conditions prevailing on the specific site.
- 7.2 Before the erection work starts, the Purchaser shall unsolicitedly make available any information required concerning the location of concealed electric power, gas and water lines or of similar installations as well as the necessary structural data.
- 7.3 Prior to assembly or erection, the materials and equipment necessary for the work to start must be available on the site of assembly or erection and any preparatory work must have advanced to such a degree that assembly or erection can be started as agreed and carried out without interruption. Access roads and the site of assembly or erection must be level and clear.
- 7.4 If assembly, erection or commissioning is delayed due to circumstances for which Gastro is not responsible, the Purchaser shall bear the reasonable costs incurred for idle times and any additional traveling expenditure of Gastro or the erection personnel.
- 7.5 If, after completion, Gastro demands acceptance of the Supplies, the Purchaser shall comply therewith within a period of two weeks. In default thereof, acceptance is deemed to have taken place. Acceptance is also deemed to have been effected if the Supplies are put to use, after completion of an agreed test phase, if any.
- 7.6 Unless otherwise agreed we are not obliged to take back any packaging material.

## 8. DEFECTS AS TO QUALITY

- 8.1 Notifications of Defect by the Purchaser shall be given in written form without undue delay. § 377 HGB (German Commercial Code) shall apply.
- 8.2 Defective parts or defective services shall be, at Gastro's discretion, repaired, replaced or provided again free of charge, provided that the reason for the Defect had already existed at the time when the risk passed.
- 8.3 In case of a disposal of the Supplies in whole or in part to a country different of the country where the Purchaser has its business seat, the warranty claims of the Purchaser are limited to an abatement of the Purchase Price.
- 8.4 Claims for repair or replacement are subject to a statute of limitations of 12 months calculated from the start of the statutory statute of limitations; the same shall apply mutatis mutandis in the case of rescission and reduction. This shall not apply where longer periods are prescribed by law according to Sec. 438 para. 1 No. 2 (buildings and things used for a building), Sec. 479 para. 1 (right of recourse), and Sec. 634a para. 1 No. 2 (defects of a building) German Civil Code ("BGB"), in the case of intent, fraudulent concealment of the Defect or non-compliance with guaranteed characteristics (Beschaffenheitsgarantie).
- 8.5 The Purchaser has no right to withhold payments to the extent that its claim of a Defect is time-barred. Unjustified notifications of Defect shall entitle Gastro to demand reimbursement of its expenses by the Purchaser.
- 8.6 Gastro shall be given the opportunity to repair or to replace the defective good ("Nacherfüllung") within a reasonable period of time. If repair or replacement is unsuccessful, the Purchaser is entitled to rescind the contract or reduce the remuneration; any claims for damages the Purchaser may have according to 8.9 shall be unaffected.
- 8.7 There shall be no claims based on Defect in cases of insignificant deviations from the agreed quality, of only minor impairment of usability, of natural wear and tear, or damage arising after the passing of risk from faulty or negligent handling, excessive strain, unsuitable equipment, defective civil works, inappropriate foundation soil, or claims based on particular external influences not assumed under the contract, or from non-reproducible software errors. Claims based on defects attributable to improper modifications or repair work carried out by the Purchaser or third parties and the consequences thereof are likewise excluded.
- 8.8 The Purchaser shall have no claim with respect to expenses incurred in the course of supplementary performance, including costs of travel, transport, labor, and material, to the extent that expenses are increased because the subject-matter of the Supplies has subsequently been brought to another location than the Purchaser's branch office, unless doing so complies with the normal use of the Supplies. 8.3 shall remain unaffected.
- 8.9 The Purchaser shall have no claim for damages based on Defects. This shall not apply to the extent that a Defect has been fraudulently concealed, the guaranteed characteristics are not complied with, in the case of loss of life, bodily injury or damage to health, restrictions to liberty and/or intentionally or grossly negligent breach of contract on the part of the Supplier. The above provisions do not imply a change in the burden of proof to the detriment of the Purchaser. Any other or additional claims of the Purchaser exceeding the claims provided for in this Article 8, based on a Defect, are excluded.

## 9. OTHER CLAIMS FOR DAMAGES; STATUTE OF LIMITATIONS

- 9.1 The Purchaser has no claim for damages based on whatever legal reason, including infringement of duties arising in connection with the contract or tort.
- 9.2 The above shall not apply in the case of mandatory liability, e. g. under the German Product Liability Act ("Produkthaftungsgesetz"), in the case of intent, gross negligence, loss of life, bodily injury or damage to health, or breach of a condition which goes to the root of the contract ("wesentliche Vertragspflichten"). However, claims for damages arising from a breach of a condition which goes to the root of the contract shall be limited to the foreseeable damage which is intrinsic to the contract, unless caused by intent or gross negligence or based on liability for loss of life, bodily injury or damage to health. The above provision does not imply a change in the burden of proof to the detriment of the Purchaser.
- 9.3 To the extent that the Purchaser has a claim for damages, it shall be timebarred upon expiration of the statute of limitations pursuant to Article 8.4. The same shall apply to the Purchaser's claims in connection with actions undertaken to avoid any damage (e. g. callback). In the case of claims for damages under the German Product Liability Act, the statutory statute of limitations shall apply.

**10. VENUE AND APPLICABLE LAW**

- 10.1 If the Purchaser is a businessman, sole venue for all disputes arising directly or indirectly out of the contract shall be the Supplier's place of business. However, Gastro may also bring an action at the Purchaser's place of business.
- 10.2 Legal relations existing in connection with this contract shall be governed by German substantive law, to the exclusion of the United Nations Convention on contracts for the International Sale of Goods (CISG).
- 10.3 Unless otherwise agreed place of fulfilment shall be our business seat.

**11. SEVERABILITY CLAUSE**

The legal invalidity of one or more provisions of this Agreement in no way affects the validity of the remaining provisions. This shall not apply if it would be unreasonable for one of the parties to be obligated to continue the contract.