

## **General terms and conditions (GTC) of business, delivery and payment**

Please notice that the English version of the GTC is only for the customer's information and refers to the German Allgemeine Geschäftsbedingungen (AGB). Even though the translation is explicated to the best of our knowledge it does not guarantee that the GTC is exhaustive. The German AGB is legally binding.

### **§ 1 General**

(1) These General terms and conditions of business, delivery and payment, exclusively are applicable to the business relationship for its entire duration (including future business in case of an on-going business relation). GATTAquant GmbH (hereinafter referred to as "GATTAquant") does not recognize any conditions of the customer, which are in conflict with or deviate from these conditions and/or supplement these conditions unless GATTAquant has expressly agreed to these in writing. This approval requirement as well these GTC shall also apply, should GATTAquant unconditionally execute a delivery to the customer in full knowledge of the conflicting or deviating terms of the customer. Material statements and relevant notifications that have to be made by the customer after execution of the contract (such as the appointment of a deadline, notice of a defect, declarations of termination or price reducing) shall be in writing in order to become effective. "Writing" is the issuing of a declaration by letter, email, or fax, unless expressly specified otherwise in these General Terms and Conditions.

### **§ 2 Contract details**

(1) GATTAquant quotations shall always be provisional and non-binding unless explicitly marked as binding. Although in principle, contracts with GATTAquant only come into force once GATTAquant has issued a written confirmation, they in any case come into force with the commencement by GATTAquant of the execution of an order and/or delivery of the goods. There are no verbal supplements.

(2) Where a declaration by GATTAquant exists that has been designated as a description of a service or product, this description conclusively and completely specifies the characteristics and qualities of the supplied product or service. Such service and/or product descriptions are only nearly authoritative, unless the applicability for the contractually designated purpose requires exact conformity. In cases of doubt, these types of descriptions, illustrations, references to DIN/ISO standards etc. may not be deemed as to constitute the assumption of a guarantee. In cases of doubt, only explicit written declarations by GATTAquant are

authoritative for the determination of a guarantee promise.

### **§ 3 Delivery, Shipment, Passing of Risk**

(1) Delivery times/deadlines shall only be binding if confirmed as binding by GATTAquant in writing. They otherwise constitute "circa periods". The date of delivery will follow from the written confirmation of GATTAquant. Insofar as binding delivery dates cannot be observed for reasons outside the scope of GATTAquant (non-availability of performance), GATTAquant shall immediately inform the customer hereof and shall at the same time inform the customer of the anticipated new delivery date. Observance of the term of delivery presupposes that the customer fulfils his contractual obligations.

(2) All duties, taxes, tax penalties or other dues arising in connection with the performance or execution of the contractually stipulated deliveries and services outside of the Federal Republic of Germany will be borne by the customer. Furthermore, the customer will furnish all necessary notifications, information, and any other statements to be made to the competent authorities outside of the Federal Republic of Germany, also in cases where this would have to be done by GATTAquant under foreign laws or regulations.

(3) The customer may rescind the contract after two unsuccessful grace periods unless the hindrance is merely temporary in nature and a delay would not unreasonably affect the customer. Any contractual or statutory right of a customer to rescind the contract, which the customer fails to exercise within a reasonable period of time set by us, shall be forfeited.

(4) Part deliveries shall be permitted, as far as such deliveries are reasonable for the customer.

(5) The risk shall pass to the customer as soon as the consignment leaves the warehouse of GATTAquant or of a warehouse maintained by GATTAquant. This also applies in case of partial deliveries or in case GATTAquant has undertaken further services (such as shipment).

(6) Should the customer be in default of acceptance or negligently violates any other cooperation obligation, if e.g. dispatch or delivery of the goods be delayed by circumstances lying within the sphere of responsibility of the customer, GATTAquant shall be entitled to claim damages, including any additional expenses. In case of storage by GATTAquant, warehouse charges shall be calculated with 0.25% of the invoiced price of the stored goods for each completed week. In case of default the risk of accidental deterioration, loss and destruction shall pass to the customer.

#### **§ 4 Prices & Payment**

(1) The prices quoted in the order confirmation shall solely apply. Additional services will be invoiced separately.

(2) Prices quoted shall apply – unless agreed otherwise – ex works including normal packaging costs but excluding value-added tax (VAT). The customer shall bear all additional freight costs, packing costs in excess of standard packing, public fees (including withholding taxes) and duties.

(3) Payment shall be made in full within 30 days from the date of the invoice. Payment shall be considered to have been made on the day the payable sum is received. Bills of exchange and cheques shall not be deemed payment until after they have been honored and will be accepted without any obligation to make timely presentation and timely protest. Immediately upon default of payment –or from the due date if you are a businessman within the meaning of the German Commercial Code (HGB)– GATTAquant is entitled to demand default interest of 8 (5 in case the customer is a consumer) percentage points above the base lending rate p.a. GATTAquant reserves the right to claim a higher actual damage.

(4) GATTAquant reserves its right to alter the prices, in case an increase of costs, in particular based on collective wage agreements or changes in material prices, have occurred. In case of an increase of the price by more than 25% of the agreed contract price, the customer is entitled to withdraw from the contract.

(5) To the extent that part deliveries can be used on their own (Section 3 subsection 6), they shall be considered as independent deliveries in respect of the due date of payment.

(6) Any receivables shall be immediately payable in the event of a default in payment, a notice given in protest against a bill of exchange or suspension of the customer's payments, independent of the term of the bills of exchange, which may have already been accepted.

(7) The customer is only entitled to offset amounts if his counterclaim has been legally established, uncontested or is recognised by GATTAquant. The customer shall have no right to re-debit or retain monies unless this is based on the same contractual relationship.

(8) Payments are regarded as having been made on the day that these sums are at the disposal of GATTAquant.

(9) If after formation of a contract facts become known, which are apt to substantially reduce the creditworthiness of the customer or if a significant deterioration of the financial situation of the customer otherwise becomes apparent, which may impair payment of a claim of GATTAquant by the customer based on the respective contractual relation, GATTAquant shall be entitled at its discretion – as the case may be, after setting a reasonable deadline – to demand advance payment or provision of security and, should the customer definitively refuse to meet the terms of the contract and/or to provide security or upon the fixation of a period of time shall not perform its obligation and/or provide security, to terminate the contract. In case of manufacture of specific items (custom-tailored items), GATTAquant may declare rescission promptly. The statutory provisions regulating dispensability of setting a deadline remain unaffected.

#### **§ 5 Retention of Title**

(1) GATTAquant shall retain title to the goods until all present and future claims against the customer to which GATTAquant is entitled as a result of mutual business have been settled (reserved goods).

(2) The customer shall store the reserved goods in a proper manner and insure them sufficiently at his own expense.

(3) The customer shall be entitled to resale of the reserved goods only within the scope of its ordinary course of business, as long as the customer is not in default of payment. The customer shall be prohibited from transferring ownership by way of security, pledging, or otherwise disposing of the reserved goods in any manner, which thwarts or impedes the reservation of title in functioning as security. Should third parties attach reserved goods in the customer's possession or in case of other interferences by third parties, the customer shall inform such third parties of GATTAquant' retention of title, and shall inform GATTAquant in writing of the attachment enclosing the order of attachment and a statutory declaration which declares that the goods attached are identical with the reserved goods supplied. The customer shall bear any costs arising from attempts to prevent attachments by third parties in the event that proceedings are successful and in the event that attempts to enforce the judgment on the third parties in question are not successful.

(4) In the event of resale or leasing of the reserved goods, the customer assigns to GATTAquant in advance and by way of security its claims against its customers arising from this resale or leasing. GATTAquant accepts such transfer and assignment. Should the reserved goods be resold or leased together with goods from

other suppliers and should an overall invoice be issued for both types of goods, the customer shall assign to GATTAquant that portion of the total price charged and/or of the total rental fee corresponding to the reserved goods included in the overall invoice. The customer shall be entitled next to GATTAquant to collect claims arising from resale and leasing, which have been assigned to GATTAquant. GATTAquant undertakes not to collect the claims as long as the customer complies with its payment obligations, no event of a substantial deterioration in its financial position occurs and there is no other deficiency as regards the customer's capacity/solvency.

(5) In the event of default by the customer in making payment to GATTAquant, dishonouring of promissory notes or cheques based on the customer's fault, suspension of payments, excessive indebtedness, or should his assets be the subject of insolvency proceedings, or should the institution of such proceedings be refused for insufficiency of assets, the entire balance of his debts shall become payable, including promissory notes with later maturities. In this event, the customer shall, at the request of GATTAquant, provide GATTAquant with a list of all goods still in his possession which are subject to retention of title, and a list of debts assigned to GATTAquant, which list shall include names and addresses of debtors and the amount of the debts and provide all other information required by GATTAquant in order to assert the claims. Should the conditions described above apply, the customer shall, upon request of GATTAquant, inform the debtors of the assignment of the debt to GATTAquant. GATTAquant shall be entitled to bring about the notification of such third party debtors itself. GATTAquant shall also be entitled to repossess the goods subject to its retention of title with a view to utilization or discharging the balance of the debts. The customer shall be obliged to procure possession of the goods for GATTAquant or to allow the authorized representative of GATTAquant access to the business premises during normal business hours. The demand for return or the seizure of the goods shall not constitute termination of the contract.

(6) The customer shall not be authorized to dispose of the assigned claims by other means, e.g. by assignment to third parties (in particular to financial institutions), without prior written consent of GATTAquant.

(7) Any modification or processing of the reserved goods affected by the customer on behalf of GATTAquant shall not give rise to any obligations for GATTAquant. In the event of processing, combination, or mixing of the goods with other non-GATTAquant goods, GATTAquant shall be entitled to the resulting fractional share of co-ownership of the new item, in accordance with the ratio between the value of GATTAquant goods (invoiced price

including VAT) and that of the other goods processed at the time of processing, combination, or mixing. Furthermore, the same provisions shall apply to any new item created through processing, combination or mixing as to the reserved goods.

(8) Should the proposed retention of title not be legally effective in the territory in which the goods are located, GATTAquant and the customer already now undertake to agree on a provision in compliance with the applicable laws that best reflects the character of the right of retention of title. Where special requirements are necessary to meet these stipulations, the customer already agrees to ensure that these requirements are met at his own cost.

(9) If GATTAquant claims retention of title, this shall only be understood as rescind of the contract if expressly stated so by GATTAquant in writing. The customer's right to possess goods under retention of title shall be null and void if he fails to meet his contractual obligations.

## **§ 6 Warranty**

(1) Where a declaration by GATTAquant exists that has been designated as a description of a service or product, this description conclusively and completely specifies the characteristics and qualities of the supplied product or service.

(2) Specifications of GATTAquant goods, especially pictures, drawings, data about weight, measure and capacity contained in offers and brochures are to be considered as average data. Such specifications and data shall in no way constitute a quality warranty but merely a description or labelling of the goods.

(3) Unless limits for variations have expressly been agreed in the order confirmation, such variation shall be admissible that are customary within the trade.

(4) All safety precautions that are necessary due to special circumstances in the establishment of the customer shall, in principle, be made by the customer at his own expense.

(5) The goods delivered by GATTAquant, subject to any express agreement in individual cases, are not suitable and intended for use in especially sensitive areas (e.g. nuclear power plants and critical medical areas).

(6) The goods claimed to be defective shall be returned to GATTAquant for examination in their original or equivalent packaging. GATTAquant shall remedy defects if the warranty claim is valid and within the warranty period. It is at GATTAquants discretion whether

GATTAquant remedy the defect by repair or replacement.

(7) Warranty claims of the customer require that the customer has complied with its obligation to examine and give notice of defects (Section 377 German Commercial Code, HGB). Any complaints regarding incomplete, false or defective deliveries are to be reported in writing immediately after delivery. Hidden defects are to be reported in writing after these have been detected. Notice is deemed to be made in due time if given within 10 days after delivery or detection, as the case may be. The punctual dispatch of the notice suffices to comply with the time limit.

(8) Any expenses incurred in connection with the examination and subsequent fulfilment, in particular costs for transportation, infrastructure, personnel and material (not covered: costs for disassembly and reassembly) are borne by GATTAquant, if a defect in fact exists. In any other cases these costs are borne by the customer and GATTAquant may claim reimbursement from the customer, as the case may be.

(9) GATTAquant shall be entitled to refuse to remedy defects in accordance with GATTAquant statutory rights. GATTAquant may refuse to remedy defects if the Customer has not complied with the request of GATTAquant to return the goods claimed to be defective.

(10) If GATTAquant maliciously withhold disclosure of a defect or give a quality warranty in accordance with section 444 of the German Civil Code (a representation by the seller that the goods will have certain qualities at the time the risk passes and acceptance by seller of strict liability in the event that they do not), the customer's rights shall be governed exclusively by the statutory provisions.

(11) The customer shall be entitled to rescind the contract or reduce the contract price in accordance with his statutory rights, however, the customer shall not be entitled to rescind the contract or to reduce the contract price, unless the customer has previously given GATTAquant twice a reasonable period to remedy the defect which GATTAquant have failed to observe, unless setting of such a period to remedy defects is dispensable. In the event of rescission, customer shall be liable for any intentional or negligent actions that cause destruction or loss of the goods as well as for failure to derive benefits from the goods.

(12) GATTAquant shall not accept any liability for defects in the goods supplied if they are caused by normal wear and tear. The customer shall have no rights

against GATTAquant in respect of defects in goods sold as lower-class or used goods.

(13) Any warranty shall be void if operating or maintenance instructions are not observed, if changes are made to deliveries or services, if parts are replaced or materials used that are not in accordance with the original product specifications of GATTAquant, unless the customer can show that the defect in question resulted from another cause.

(14) Provided that the customer is a businessman, the customer shall be obliged to notify defects to GATTAquant in writing or via fax.

### **§ 7 Property Rights, Copyrights**

(1) In the event of claims against the customer because of breach of an industrial property right or a copyright in using deliveries or services of GATTAquant in accordance with the contractually defined manner, GATTAquant shall be responsible to obtain the right for the customer to continue using such deliveries or services, provided that the customer gives immediate written notice of such third-party claims and GATTAquant rights to take all appropriate defensive and out-of-court actions are reserved. If, despite such actions, it proves impossible to continue using the deliveries or services of GATTAquant under reasonable economic conditions, it shall be understood as agreed that GATTAquant may, at GATTAquants discretion, modify or replace the particular delivery or service for removal of a legal deficiency, or take back such delivery or service with refunding of the sales price previously paid to GATTAquant less a certain deduction to account for the age of the delivery or service in question.

(2) The customer shall have no further claims alleging infringement of industrial property or copyrights provided GATTAquant have neither violated essential contractual duties nor intentionally or grossly negligently breached contractual duties. GATTAquant shall have no obligations in accordance with section 1 in case breaches of rights are caused by exploiting the deliveries or services of GATTAquant in any other manner than contractually defined or by operating these together with any other than GATTAquants own deliveries or services.

### **§ 8 Liability**

(1) To the extent not regulated otherwise in these GTC, GATTAquant may only be held liable pursuant to the applicable statutory provisions in case of a contractual or non-contractual breach of its duties.

(2) GATTAquant is liable to pay damages - regardless of their legal basis - only in case of intent or gross

negligence. However, for damages caused by the grossly negligent conduct of any vicarious agents of GATTAquant, the liability shall be limited to those damages which are typically to be expected. In any case of simple negligence, GATTAquant shall be liable only for

- a) damage to life, personal injury or health;
- b) damage based on the breach of a material contractual duty (obligation which makes the proper implementation of the contract possible in the first place and the observance of which the customer may regularly rely on); in this case the liability is however limited to the foreseeable, typically occurring damages.

(3) The limitations stipulated in Item 2 shall not apply in case GATTAquant has fraudulently concealed a defect or has assumed a guarantee for the properties of the item. The same applies to a liability under the German Product Liability Act.

(4) The liability of GATTAquant for software supplied by GATTAquant shall be limited to liability for losses or alteration of data caused by the program; however, GATTAquant shall not be liable for any losses or alteration of data which could have been avoided by the customer's compliance with its duty to secure such data at appropriate intervals and at least once per day.

(5) We expressly point out that the products of GATTAquant GmbH are for research purposes only and are not suitable for use under medical or diagnostic purposes or applications.

### **§ 9 Software Rights**

(1) Software programs will fully remain property of GATTAquant. No program, documentation or subsequent upgrade thereof may be disclosed to any third party, unless with GATTAquant prior written consent, nor may they be copied or otherwise duplicated, even for the customer's internal needs apart from a single back-up copy for safety purposes.

(2) The customer is granted a non-exclusive, non-assignable right to use the software, including any related documentation and updates, for no other purpose than that of operating the product, for which such software is intended. For programs and documentation created and delivered at the customer's request, GATTAquant shall grant that customer single end user licenses for non-exclusive non-assignable exploitation.

(3) Typically, no source programs are provided. This shall require a special written agreement in each particular case.

### **§ 10 Confidentiality**

(1) Unless otherwise expressly stipulated in writing, no information provided to GATTAquant in connection with orders shall be regarded as confidential, unless their confidential nature is obvious.

(2) GATTAquant point out that personal data in relation to the contractual relationship of GATTAquant may be stored.

### **§ 11 Assignment of Claims**

(1) Claims arising from the contractual relationship between the customer and GATTAquant and all claims against the damaging party or its insurer arising from the loss of or damage to reserved goods may only be assigned to third parties with prior written permission of GATTAquant.

(2) Any claims held against GATTAquant may not be assigned to third parties. Section 354a of the German Commercial Code (HGB) shall remain unaffected.

### **§ 12 Data Protection**

(1) Data collected from the customer will only be collected, processed and used to the extent required for the conclusion and performance of the underlying sales/delivery agreement and/or any further agreements between GATTAquant and the customer.

### **§ 13 Applicable Law and Place of Jurisdiction**

(1) These GTC as well as all contracts concluded based on these terms are subject to German law. The applicability of the United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 (UN Sales Convention, CISG) is explicitly excluded.

(2) For all disputes Braunschweig shall be the agreed place of jurisdiction for merchants, legal persons under public law, and separate public estates. This shall also apply in the event that the customer's legal residence or habitual place of residence is unknown, is located abroad, or has been transferred abroad. GATTAquant is also entitled to file a lawsuit at the general place of jurisdiction of the customer.

(3) Should any of the clauses of these Terms and Conditions be wholly or partially invalid or void, the validity of the remaining clauses or parts thereof shall not be affected.

Braunschweig, September 2014