

**General Terms and Conditions of Sale and Delivery  
of Gillenkirch Engineering & Sales GmbH**

- 1. Validity**
- 1.1 These General Terms and Conditions of Sale and Delivery shall only apply if our customer is an entrepreneur, legal entity under public law or special fund under public law.
- 1.2 The following terms and conditions shall apply to any and all sales, deliveries, services and offers of Gillenkirch Engineering Sales GmbH, hereinafter referred to as "Gillenkirch". Consequently, they shall also apply to any and all future transactions and business relations even if they have not been explicitly agreed again.
- 1.3 We herewith expressly contradict any and all General Terms and Conditions of Business and Purchase of our customer. The General Terms and Conditions of our customer shall not form part of the contract even if we do not contradict such General Terms and Conditions either separately or expressly.
- 2. Offer and contract conclusion**
- All offers made by Gillenkirch are without engagement, cost estimates shall not be binding. If the customer places an order with Gillenkirch, this shall always constitute a legally binding and firm offer to conclude a contract with Gillenkirch. It is left to the discretion of Gillenkirch to accept the offer in the form of an order acknowledgment. A contract shall not have been brought about until Gillenkirch has acknowledged the order in writing.
- 3. Prices and packing**
- 3.1 Value added tax shall be paid on all prices quoted in the contract documents, offers, etc. Export deliveries are quoted plus customs duties, fees and other public charges. Additional and special services shall be charged separately.
- 3.2 As far as it is necessary to pack any goods, Gillenkirch shall charge the usual costs. Packing materials shall not be taken back.
- 4. Delivery and risk of loss**
- 4.1 Any and all deliveries are effected ex works. Each dispatch of goods to the premises of the customer or to any other agreed place shall be effected at the risk of the customer. This shall also apply if free shipment has been agreed or if Gillenkirch pays the freight charges or if Gillenkirch executes the transport itself.
- 4.2 Upon delivery of the ordered goods to the forwarding agent or carrier, but upon the goods' departure from the works in Dinslaken at the latest, the risk shall in any case pass to the customer. Should either dispatch or delivery be delayed for reasons for which the customer is responsible, the risk shall pass to the customer on the day the delivery item is ready for dispatch and Gillenkirch has notified the customer accordingly.
- 4.3 The customer shall bear the costs of storage incurred after the passing of risk. In the case of storage by Gillenkirch, the storage costs shall amount to 0.25 % of the amount invoiced for the delivery items to be stored per full week of storage. The right to claim for additional storage costs or request proof of lower storage costs remains reserved.
- 5. Delivery time**
- 5.1 A delivery time is only deemed to exist if it has explicitly been agreed by contract.
- 5.2 If such delivery time has been agreed by contract, its compliance shall be subject to all commercial and technical questions having been resolved between the customer and Gillenkirch and to the customer having fulfilled all of its obligations such as, for example, production of the required documents / provision of information on its own operating procedure or making a down payment.
- 5.3 Compliance with a delivery time shall also be subject to the correct and timely availability of supplies by means of a congruent covering contract unless Gillenkirch is responsible for the delay. Gillenkirch shall notify the customer as soon as possible if delays become apparent.

- 5.4 If failure to comply with the delivery period is attributable to an event of force majeure which is beyond the control of Gillenkirch and for which Gillenkirch is not responsible and which considerably impedes or makes impossible the delivery by Gillenkirch, the delivery period shall be extended by the period of duration of such delay.

A force majeure event shall be deemed to exist in the following cases in particular: Measures taken by state authorities (whether lawful or unlawful), strike, lockout, fire, natural disasters, restriction of raw material or energy supply, complete or significant failure of IT or the IT-network, obstruction of transport routes, delay in export or import or customs clearance, pandemics, epidemics, war and armed conflicts, large-scale military mobilisation, insurrection, terrorism, sabotage and delay in delivery by subcontractors caused by such events.

Gillenkirch shall notify the customer as soon as possible of the commencement and end of any such circumstances.

- 5.6 As far as such events, as described in paragraphs 5.3 or 5.4 above, render the delivery or service difficult or impossible to fulfil and the obstruction is not only of a temporary nature, Gillenkirch shall be entitled to withdraw from the contract.
- 5.7 In the event of impediments that are of temporary duration, the periods of delivery or performance shall be extended by the period of the impediment plus an appropriate start-up period.

## 6. Partial deliveries

Gillenkirch shall be entitled to effect partial deliveries if

- 6.1 the partial delivery can be used by the customer within the framework of the contractually intended use;
- 6.2 the delivery of the remaining goods as ordered is guaranteed, and
- 6.3 the customer does not incur any significant extra or additional costs. Partial deliveries may be invoiced separately.

## 7. Payment

- 7.1 Unless otherwise agreed upon, the price shall be due for immediate payment without deduction, calculated from delivery and/or acceptance of the goods and receipt of the invoice by the customer, whichever is the latest. The same shall apply to partial performance.
- 7.2 Bills of exchange and cheques shall be accepted only after express agreement and only on account of performance. They shall count as payment as soon as they have been cashed. Any discounts, bill charges, bill of exchange taxes, etc. shall be for the account of the customer.

## 8. Exclusion of set-off and retention

The customer may set off claims of Gillenkirch only against claims that are legally effective or undisputed. This shall apply analogously to the rights of retention executed by the customer.

## 9. Reservation of ownership

- 9.1 The delivered goods (reserved goods) shall remain the property of Gillenkirch until any and all claims have been satisfied that Gillenkirch is entitled to against the customer now or in the future, i.e. including all balance debts on current account.
- 9.2 The customer shall be obliged to handle the reserved goods with care.
- 9.3 If and as far as maintenance and inspection of the reserved goods are required, the customer shall carry out such work in due time and at its own expense.
- 9.4 The customer may use the reserved goods and resell them in the ordinary course of business unless it is in arrears with payment, an insolvency petition has been filed or there is any other deficiency in its economic capacity. The customer shall, however, not be entitled to resell the reserved goods if and as far as an assignment prohibition has been agreed between the customer and its buyer with regard to the purchase money claim. The customer may not assign its purchase money claim for the purpose of collecting it by way of factoring unless the factor irrevocably undertakes to

- transfer the collected amounts directly to Gillenkirch as long as Gillenkirch has still outstanding claims against the customer.
- 9.5 The customer's claim for payment against its buyers resulting from a resale of the reserved goods as well as the customer's claims regarding the reserved goods that arise against its buyers or third parties on any other legal ground (in particular tort claims and claims for insurance benefits), i.e. including all balance debts on current account, are already now transferred to Gillenkirch to the full amount by way of security. Gillenkirch accepts the assignment.
- 9.6 The customer may, on behalf of Gillenkirch, collect such claims assigned to Gillenkirch in its own name and for its own account as long as Gillenkirch has not revoked the authority. This shall be without prejudice to the right of Gillenkirch to collect the claims itself; however, Gillenkirch shall not assert the claim itself and shall not revoke the direct debit authorization as long as the customer properly meets its payment obligations, is not in arrears with payment, has not filed an insolvency petition and has no other deficiency in its economic capacity.
- 9.7 Should Gillenkirch have tangible cause for concern that the customer did or will not properly fulfil its obligations towards Gillenkirch, the customer shall at the request of Gillenkirch disclose the assignment to its buyers, abstain from any disposition regarding the claim, give Gillenkirch all required information about the condition of the reserved goods in Gillenkirch's ownership and about the claims assigned to Gillenkirch and to deliver the documents required for the assertion of the claims assigned.
- 9.8 Processing or transformation of the reserved goods by the customer shall always take place on behalf of Gillenkirch. If the reserved goods are mingled with other things that do not belong to Gillenkirch, Gillenkirch shall acquire co-ownership of the new goods; the shares are determined by the relationship of the value that the things have at the time of processing.
- 9.9 If the reserved goods are inseparably intermixed or mingled with other things that do not belong to Gillenkirch, Gillenkirch shall acquire co-ownership of the new product in the proportion of the value of the reserved goods to the other intermixed or mingled things at the time of combination or intermixture. If the reserved goods are intermixed or mingled in such a way that the customer's item is to be seen as the main thing, the customer and Gillenkirch herewith agree that the customer shall assign proportionate co-ownership of this thing to Gillenkirch. Gillenkirch accepts the assignment.
- 9.10 The customer shall hold in custody the sole ownership or co-ownership of an item thus created on behalf of Gillenkirch.
- 9.11 In all other respects, the new thing created by processing, combination or intermixture shall be subject to the same conditions as the reserved goods.
- 9.12 The customer must neither pledge nor assign by way of security the reserved goods. In the event of attachments or any other action taken by third parties with regard to the reserved goods, the customer shall make reference to Gillenkirch's ownership and immediately notify Gillenkirch in writing to enable Gillenkirch to assert its property rights. If and as far as the third party is not in a position to reimburse the judicial and extra-judicial costs and expenses incurred by Gillenkirch in this connection, the customer shall be liable.
- 9.13 Gillenkirch shall, at the customer's request, release the securities to which it is entitled insofar as their realisable value exceeds the value of the outstanding claims against the customer by more than 10 %. Gillenkirch may select the securities to be released.
- 10. Warranty**
- 10.1 The warranty period shall be one year from delivery or, if an acceptance has been expressly agreed, from the time of acceptance. The customer shall be obliged to examine the goods and give

notice of defects pursuant to section 377 HGB.

- 10.2 At the request of Gillenkirch, the rejected goods shall be returned to Gillenkirch, freight or carriage paid. If the notice of defects is legitimate, Gillenkirch shall reimburse the usual shipping costs. This shall not apply as far as the costs increase due to the fact that the goods are located at a place other than that of the intended use.
- 10.3 The supplementary performance shall be provided at the option of Gillenkirch either by rectification of the defects or substitute delivery, provided that none of the aforementioned alternatives has become impossible.
- 10.4 If Gillenkirch is responsible for a defect, the customer may claim damages subject to the conditions of paragraph 11.
- 10.5 The warranty shall be void if the customer modifies the delivery item or has it modified by third parties without the consent of Gillenkirch, thus making the removal of defects impossible or unreasonably difficult. The customer shall in any case bear the additional costs for the removal of defects caused by such modification.
- 10.6 The right of the customer to withdraw from the contract shall be excluded. This shall not apply in the event that supplementary performance by Gillenkirch has become impossible.

## 11. Liability

The liability of Gillenkirch for damages on whatever legal ground, in particular based on impossibility of performance, default, defective or incorrect delivery, breach of contract, violation of duties during contract negotiations and tortious acts, shall be restricted – to the extent that such liability is based on fault – as follows:

- 11.1 Gillenkirch shall not be liable in the event of slight negligence unless essential contractual obligations (cardinal duties) have been violated. Essential contractual obligations shall in particular include the duty to deliver and install goods free from material defects as well as the duties of consultation, protection and care which shall allow the customer to use the

delivery item in accordance with the contract or which serve the purpose of protecting the life, body and health of the customer's personnel or the customer's property from considerable damage as well as such duties the fulfilment of which is a prerequisite for the proper performance of the contract and in which the customer trusted and was entitled to trust and the culpable non-performance of which shall jeopardize the achievement of the purpose of contract. In such cases, the liability of Gillenkirch shall be restricted to the typically occurring damage foreseeable at contract conclusion.

- 11.2 As far as Gillenkirch is liable on the merits of paragraph 11.1., the liability shall – in terms of amount – be limited to such damage that would normally and typically occur with the type of transaction involved. Gillenkirch shall not be liable for unforeseeable damage which in particular includes loss of production and loss of prospective profits.
- 11.3 The limitations of liability mentioned in paragraphs 11.1 and 11.2 above shall to the same extent apply in the event of slightly negligent violations of duties by organs, legal representatives, employees and any other legal agents of Gillenkirch and in the event of their personal liability.
- 11.4 If and as far as Gillenkirch provides technical information or acts as an adviser and such information or advice is not part of the contractually agreed scope of services owed by Gillenkirch, this shall be done free of charge and to the exclusion of any liability.
- 11.5 The above-mentioned limitations of liability shall not apply to the liability of Gillenkirch for intentional behaviour, to possibly guaranteed and/or expressly agreed characteristics, to any damage to life, body and health or according to the German Product Liability Act.

## 12. Information as to the delivery item

Any information provided by Gillenkirch as to the delivery item or its performance (e.g. weights, dimensions, consumption values, loads, tolerances, technical data, etc.) as well as any representations (e.g. drawings and illustrations) shall be understood as an

approximation only unless the use for the contractually intended purpose requires exact conformity. Such information shall not constitute any guaranteed or agreed characteristics but descriptions or identifications of the supply or service. Variations that are usual in the trade and deviations that are the result of statutory provisions or constitute technical improvements as well as the replacement of component parts by other equivalent parts shall be permissible unless they adversely affect the usability for the contractually intended purpose.

### **13. Assignment, data protection**

13.1 For an assignment of the rights resulting from the contract, the customer requires the written consent or approval of Gillenkirch.

13.2 Both parties to the contract shall observe the data protection regulations. On the part of Gillenkirch, the management of the business relations shall be supported by an electronic data processing system. Accordingly, the customer's data required for contract handling shall be collected and stored electronically. By the present Terms and Conditions, the customer shall be notified of such electronic storage.

### **14. Applicable law**

The legal relationships between the parties to the contract shall exclusively be governed by the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 (CISG) as well as the regulations of the German International Private Law shall not apply.

### **15. Place of jurisdiction**

The exclusive – including international – venue for any and all disputes arising directly or indirectly from the contractual relationship shall either be Dinslaken District Court or Duisburg Regional Court, depending on the amount in dispute.

### **16. Final provisions**

16.1 These General Terms and Conditions of Sale and Delivery and/or the contractual agreements between the

parties shall exclusively be governed by the German version. If the General Terms and Conditions and/or the contractual agreements between the parties are made known in a different language, this is merely done for convenience.

16.2 Should any individual provision of these General Terms and Conditions of Sale and Delivery or an individual contractual agreement possibly concluded in addition, which does not suffer from an obvious error, – for whatever reason – be or become void, unenforceable or incomplete in whole or in part, the contracting parties shall be obliged to - instead of the void or incomplete provision - agree on a legally effective provision which the contractual parties would have agreed with respect to the economic goals of the contract and by taking into account their mutual will from the start on if they had been aware of the voidness, unenforceability or loophole.

16.3 The written form required in these General Terms and Conditions of Sale and Delivery is of a constitutive nature. Amendments or supplements, or verbal subsidiary agreements shall always be made in writing to be effective. The written form requirement is also met by text form by means of electronic remote data transmission (e.g. email with a simple electronic signature of the person making the declaration), unless the written form is required by law.