

GFR - Gesellschaft für Regelungstechnik und Energieeinsparung mbH

General Terms and Conditions of Delivery for Export Business

For use in legal transactions of the GFR - Gesellschaft für Regelungstechnik und Energieeinsparung mbH (GFR) with entrepreneurs, public law legal entities and public law special funds (customer).

1. General Provisions

- 1.1 Only the following Terms and Conditions shall govern GFR's deliveries. Terms and conditions opposing or deviating from GFR's Terms and Conditions shall not apply unless GFR has expressly approved the application thereof. The following conditions shall also apply if, notwithstanding GFR's knowledge of terms and conditions of the customer opposing or deviating from GFR's Terms and Conditions, GFR unconditionally performs delivery to the customer.
- 1.2 Oral agreements before or at the time when the contract was concluded shall require written confirmation by GFR to be effective.
- 1.3 If the customer fails to accept GFR's quotation within two weeks of receipt thereof, GFR shall be entitled to cancel.
- 1.4 Cost estimates are not binding and subject to charge except as otherwise expressly agreed.
- 1.5 These Terms and Conditions shall also govern all future deliveries to the customer pending the entry into effect of GFR's new terms and conditions of delivery.

2. Prices

- 2.1 Invoices shall be calculated on the basis of the list prices in effect on the date of delivery plus value-added tax. Value added tax will not be charged in those cases where the conditions have been met for export shipments to be exempted from such tax.
- 2.2 In the absence of any special agreement, prices shall be deemed to be FCA (Incoterms 2010) excluding packaging.
- 2.3 GFR reserves the right to adjust GFR's prices appropriately in the event of cost reductions or increases incurred after the contract has been entered into, in particular in case of wage cost changes, for instance due to collective bargaining agreements, or changes in the price of materials.

3. Delivery, Delivery Dates, Default

- 3.1 The precondition for the commencement of and compliance with delivery dates agreed upon is that the collaboration duties shall have been performed by the customer, in particular the timely delivery of the entire materials, documentation, approvals, examinations and clearances to be provided by the customer and the compliance with payment terms agreed upon. If these preconditions are not duly met in good time, the delivery dates shall be reasonably extended; this shall not apply if the supplier is solely responsible for the delay.
- 3.2 If non-compliance with the delivery date is due to force majeure or to other disturbances beyond GFR's control e.g. war, terrorist attacks, import or export restrictions, labor disputes (e.g. strikes and lockouts), including such disturbances affecting subcontractors, the delivery dates agreed upon shall be extended appropriately.

- 3.3 If GFR is in default with GFR's delivery, the customer shall declare upon GFR's request and within a reasonable period of time whether it insists upon performance of delivery or asserts its other statutory rights.
- 3.4 In case of delayed delivery, the customer may rescind the contract within the framework of statutory provisions only insofar as GFR is responsible for the delay.
- 3.5 Clause 9 applies to claims to damages by the customer on account of delayed delivery.
- 3.6 If a customer is in default of acceptance or if a customer culpably violates its collaboration duties or if at the customer's request, shipment or delivery of the goods is delayed for longer than one month after notification that the goods are ready for shipment, the customer can be charged for storage an amount of 0.5 % of the price of the products for delivery for each calendar month of storage commenced, but not exceeding an aggregate amount of 5 % of the price of the products for delivery. The contracting parties reserve the right to prove higher or lower storage costs. The right to raise further claims on account of a delayed acceptance shall remain unaffected hereby.
- 3.7 Part shipments and corresponding invoices are admissible unless this is an unreasonable hardship for the customer.

4. Transfer of Risk

- 4.1 Delivery is effected FCA (Incoterms 2010) except as expressly otherwise agreed.
- 4.2 At the customer's request and cost GFR shall insure shipments against customary transport risks.

5. Complaints and Notification of Defects

- 5.1 The customer must notify GFR in writing immediately, no later than 15 days after receipt of the goods, of any recognizable defects. Adhesive labels on the boxes, labels showing the contents and the control slips enclosed with the shipment shall be submitted to GFR together with the notification of the defect. Any other defects must be notified by the customer in writing immediately after discovery thereof. The date of receipt by GFR of notification of a defect shall determine whether or not notification is in good time.
- 5.2 If the notification of a defect is unjustified GFR shall be entitled to demand compensation from the customer for any expenses GFR has incurred unless the customer can prove that it is not at fault regarding the unjustified notification of a defect.
- 5.3 Claims on account of defects shall be excluded if the notification of the defect is not received in good time.

6. Taking Delivery

The customer may not refuse to take delivery on account of minor defects.

7. Defects/Defects of Title

7.1 Claims on account of defects shall become time-barred after a period of 12 months. The foregoing provision shall not apply insofar as longer time bar periods are prescribed by statute pursuant to Section 438 para 1 (2) (building constructions and goods for building constructions), Section 479 para 1 (claim to recourse) and Section 634a (construction defects) German Civil Code [BGB].

7.2 The time bar period for defects commences as follows:
 a) in case of products for vehicle and engine equipment on the date on which the product is put into use, i.e. in case of original equipment on the date of first registration of the vehicle and in other cases upon installation, but no later than 6 months after delivery of the product (date of transfer of risk);
 b) in all other cases upon delivery of the product (date of transfer of risk).

7.3 If a defect arises during the time bar period the cause of which already existed on the date of transfer of risk, GFR may affect subsequent performance at GFR's discretion either by remedying the defect or delivering a defect-free product.

7.4 The time bar does not start to run again as a result of the subsequent performance.

7.5 If subsequent performance should be abortive, the customer may, without prejudice to any claims to damages, rescind the contract or reduce the amount of payment in accordance with statutory provisions.

7.6 Claims by the customer on account of expenditure required for the purpose of subsequent performance, in particular costs of transport, transportation, labor and materials, shall be governed by statutory provisions. They shall, however, be excluded insofar as such expenditure is increased due to the fact that the product delivered was subsequently taken to a place other than the branch operation of the customer unless such removal is in accordance with the designated use of the product.

7.7 Claims on account of defects do not exist in case of merely inconsiderable deviation from the quality agreed upon or in case of only minor impairment to the use of the product.

7.8 The following are not deemed to be defects:
 - ordinary wear and tear;
 - characteristics of the product and damage caused after the date of transfer of risk due to improper handling, storage or erection, non-compliance with installation or handling regulations or to excessive strain or use;
 - characteristics of the product or damage caused by force majeure, special external circumstances not foreseen under the terms of the contract or due to the use of the product beyond normal use or the use provided for under the terms of the contract;
 - non-reproducible software errors.

Claims on account of defects do not exist if the product is modified by third parties or due to the installation of parts manufactured by third parties unless the defect has no causal connection with the modification.

GFR assumes no liability for the quality of the product based on the design or choice of material insofar as the customer stipulated the design or material.

7.9 Claims to recourse against GFR by the customer shall only exist insofar as the customer has not reached any agreements with its customer which are more far-reaching than statutory claims on account of defects, for instance accommodation agreements.

7.10 Claims on account of defects including claims to recourse by the customer shall be excluded insofar as the customer has had the defect remedied by a specialized workshop/service station not authorized by GFR.

7.11 Clauses 7.3, 7.6, 7.7 shall not apply insofar as GFR's product was proved to be sold by the customer or customer of the customer to a consumer without being processed or installed into another product.

7.12 GFR's obligation to pay damages and to compensate for abortive expenditure within the meaning of Section 284 BGB on account of defects shall be governed by clause 9 in all other respects. Any further-reaching claims or claims by the customer on account of defects other than those covered by this clause 7 are excluded.

7.13 The provisions of this clause 7 shall apply mutatis mutandis to defects of title which are not constituted by the infringement of third party industrial property rights.

8. Industrial Property Rights and Copyright

8.1 GFR shall not be liable for claims arising from an infringement of third party intellectual or industrial property rights or copyright (hereinafter: industrial property right) if the industrial property right is or was owned by the customer or by an enterprise in which the customer holds, directly or indirectly, a majority of the shares or voting rights.

8.2 GFR shall not be liable for claims arising from an infringement of third party industrial property rights unless at least one industrial property right from the property right family has been published either by the European Patent Office or in one of the following countries: Federal Republic of Germany, France, Great Britain, Austria or the USA.

8.3 The customer must notify GFR immediately of (alleged) infringements of industrial property rights and of risks of infringement in this respect which become known and, at GFR's request, insofar as possible, allow GFR to conduct the litigation (including non-judicial proceedings).

8.4 GFR are entitled, at GFR's discretion, to obtain a right of use for a product infringing an industrial property right, to modify it so that it no longer infringes the industrial property right or to replace it by an equivalent substitute product which no longer infringes the industrial property right. If this is not possible subject to reasonable conditions or within a reasonable period of time, the customer shall, insofar as the customer allowed GFR to carry out a modification, be entitled to the statutory rights of rescission. Subject to the aforementioned preconditions GFR too shall have a right of rescission. The ruling set forth in clause 7.9 shall apply accordingly. GFR reserves the right to carry out the action at GFR's disposal under the terms of sentence one of this clause 8.4 even if the infringement of the industrial property right has not been ruled on by a court of law with res judicata effect or recognized by GFR.

8.5 Claims by the customer are excluded insofar as the customer is responsible for the infringement of the industrial property right or if the customer has not supported GFR to a reasonable extent in the defense against claims by third parties.

8.6 Claims by the customer are also excluded if the products were manufactured in accordance with the specifications or instructions of the customer or if the (alleged) infringement of the industrial property right ensues from the use in conjunction with another product not stemming from us or if the products are used in a manner which GFR was unable to foresee.

8.7 GFR's obligation to pay damages in case of infringements of industrial property rights is governed by clause 9 in all other respects.

8.8 Clauses 7.1 and 7.2 apply mutatis mutandis to the time bar for claims based on infringements of industrial property rights.

8.9 Further-reaching claims or claims other than those claims of the customer governed by this clause 8 on account of an infringement of third party industrial property rights are excluded.

9. Claims to Damages

9.1 GFR is liable to pay damages and compensation of abortive expenditure within the meaning of Section 284 BGB (hereinafter referred to as damages) on account of a violation of contractual and non-contractual obligations only in case of

- (i) intent or gross negligence,
- (ii) in case of negligent or deliberate fatal injury, physical injury or injury to health,
- (iii) on account of assuming a quality guarantee,
- (iv) in case of a negligent or deliberate breach of material contractual duties,
- (v) on account of compulsory statutory liability pursuant to the German Product Liability Act or
- (vi) on account of any other compulsory liability.

9.2 The damages for a breach of material contractual duties are, however, limited to foreseeable damage, typical for the type of contract, except in the event of intent or gross negligence or on account of fatal injury, physical injury or injury to health or on account of assuming a quality guarantee.

9.3 Liability for damages exceeding that provided for in clause 9 is excluded irrespective of the legal nature of the claim raised. This applies in particular to claims for damages arising from *culpa in contrahendo* (fault arising in conclusion of a contract), on account of other breaches of duty and to tort claims for compensation of property damage pursuant to Sec 823 BGB.

9.4 Insofar as liability for damages is excluded with respect to us, this also applies to the personal liability for damages of our employees, representatives and of persons engaged by us in performance of our obligations.

10. Retention of Title

10.1 GFR retains title to the products delivered pending full performance of all claims to which GFR is entitled on the basis of the business relationship now and in future.

10.2 The customer is entitled to process GFR's products or connect them with other products within the due course of the customer's business. By way of security for GFR's claims set forth in clause 10.1 above GFR shall acquire joint ownership in the products created as a result of such processing or connection. The customer hereby transfers such joint ownership to GFR now already. As an ancillary contractual obligation the customer shall store free of charge the goods to which GFR has retained title. The amount of GFR's joint ownership share shall be determined by the ratio between the value of GFR's product (calculated in accordance with the final invoice amount including VAT) and the value of the product created by processing or connection at the time of such processing or connection.

10.3 The customer shall be entitled to sell the products in the normal course of business against cash payment or subject to retention of title. The customer assigns to GFR now already all claims in full together with all ancillary rights to which the customer is entitled from the further sale of GFR's product, irrespective of whether

GFR's product has been further processed or not. The assigned claims act as security for GFR's claims set forth in clause 10.1 above. The customer is entitled to collect the claims assigned. GFR may revoke the rights of the customer as set forth in this clause 10.3 if the customer fails to duly comply with its contractual duties with respect to GFR, is in default of payment, suspends its payments or if the customer files for insolvency proceedings or similar proceedings to be instituted with respect to its assets for debt settlement. We may also revoke the rights of the customer pursuant to this clause 10.3 if the customer's asset position should deteriorate materially or threaten to deteriorate or if the customer is insolvent or over indebted.

10.4 At GFR's request the customer shall advise GFR immediately in writing of the parties to whom the products to which GFR has retained title or joint title have been sold and of the claims to which the customer is entitled on the basis of such sale and shall issue to GFR deeds officially authenticated at the customer's expense relating to the assignment of the claims.

10.5 The customer is not entitled to effect any other disposals of the products to which GFR has retained title or joint title or of the claims assigned to GFR. The customer must notify GFR immediately of any attachments of or other impairments to the rights of products or claims belonging to GFR either in whole or in part. The customer shall bear the entire costs which have to be expended in order to cancel the attachment of GFR's retained property or security by third parties and to re-create the product insofar as it is impossible to retrieve it from the third parties.

10.6 In case of default in payment or any other culpable violation of material contractual obligations by the customer GFR has the right to demand the return of products to which GFR has retained title or in which GFR holds an equitable lien. If GFR makes use of such right, this shall only constitute rescission of the contract if GFR expressly declares that the contract is being rescinded.

10.7 If the customer files a petition for insolvency proceedings to be commenced GFR is entitled to rescind the contract and demand the immediate return of the goods delivered.

10.8 If the value of the security existing for GFR exceeds the amount of or claims by a total of over 10%, GFR shall release security to this extent at GFR's discretion at the customer's request.

11. Cancellation

11.1 In the event of the customer's acting in breach of contract, in particular in case of default of payment, GFR has the right, notwithstanding our other contractual and statutory rights, to withdraw from the contract after expiry of a reasonable extended deadline.

11.2 GFR has the right to withdraw from the contract without setting an extended deadline if the customer suspends its payments or if the customer files for insolvency proceedings or similar proceedings to be instituted with respect to its assets for debt settlement.

11.3 GFR is also entitled to withdraw from the contract without setting an extended deadline if:

- (i) the customer's asset position should deteriorate materially or threaten to deteriorate and, as a result, the performance of a payment obligation to us is jeopardized, or
- (ii) if the customer is insolvent or over indebted.

11.4 After declaration of such withdrawal, the customer shall immediately grant us or our agents access to the

products to which we have retained title and surrender them. After respective notification in good time GFR may also otherwise market the products to which GFR has retained title in order to satisfy our due claims against the customer.

11.5 Statutory rights and claims shall not be restricted by the provisions contained in this clause 11.

12. Confidentiality

12.1 All of the business and technical information stemming from GFR (including characteristics which can be deduced from goods or software delivered and other knowledge or experience) shall be kept secret with respect to third parties if and as long as such information is not proven to be public knowledge or determined by GFR to be resold by the customer and it may only be made available to those people within the customer's own operation who necessarily have to be included in the use thereof and who are also committed to secrecy; the information shall remain GFR's exclusive property. Without GFR's prior written consent such information may not be duplicated or commercially used. At GFR's request all information stemming from GFR (including, if applicable, any copies or duplicates prepared) and goods made available on loan must be returned to GFR immediately in full or destroyed and a proof of the destruction sent to GFR.

12.2 GFR reserves all rights to the information mentioned in clause 11.1 above (including copyright and the right to file applications for industrial property rights such as patents, utility models, semiconductor protection etc.).

13. Payment Terms

13.1 Except as otherwise agreed in writing, payment shall be effected on pre-payment without any deductions whatsoever. GFR may also agree to deviating payment terms (e.g. delivery on open invoice) depending on the customer's credit rating provided by credit agencies (e.g. D&B) or other corresponding institutes.

13.2 GFR is entitled to offset payments made against the oldest claim due.

13.3 In case of delayed payment GFR is entitled to charge default interest amounting to 9% per anno above the base interest rate. The right to assert a claim on account of further damage is not excluded.

13.4 Payment by bill of exchange is only admissible following prior agreement with GFR. GFR only accepts bills of exchange and checks on account of performance and they shall not be deemed to constitute payment until honored.

13.5 If the customer is in arrears with payments GFR shall be entitled to demand immediate cash payment of all claims arising from the business relationship which are due and against which there is no defense. This right shall not be barred by a deferral of payment or by the acceptance of bills of exchange or checks.

13.6 The customer shall only have the right to withhold payments or to offset counter claims insofar as the customer's counter claims are undisputed or ruled with res judicata effect by a court of law.

14. Export control Provisions

14.1 All products either were exported from the United States or otherwise are subject to United States export control regulations and/or sanctions lists and regulations. The applicable United States export control and economic sanctions laws and regulations include United States export control laws such as the Export Administration Regulations, United States sanctions programs that are or may be maintained by the United States Government,

and restrictions on transactions with designated entities and persons such as the Specially Designated Nationals and Blocked Persons List, the Entity List, the Denied Persons List, and the Unverified List.

14.2 The customer is not allowed to sell or distribute PRODUCTS, directly or indirectly to countries which are embargoed or restricted under export control and/or economic sanction laws and regulations. As an example, under applicable United States export control laws and regulations in effect as of the commencement of the initial period (see Section 6 below), the customer shall not sell or distribute products or services, directly or indirectly to Cuba, Iran, North Korea, Sudan, or Syria, with the foregoing prohibition including no sale to any person within the Territory for resale or transfer to Cuba, Iran, North Korea, Sudan or Syria.

14.3 GFR's responsibility for delivery is limited to the delivery of the products of the customer. GFR will not be responsible for obtaining any export licenses or re-export licenses which may be required for any subsequent sale or transfer of the products to authorized destinations.

14.4 The sale, resale and all export, re-export or transfer of the products by the customer must be in compliance with the United States export control and economic sanction laws and regulations, and also must comply with the applicable German and European Community export control and economic sanction laws and regulations, as all such laws and regulations may be amended from time to time. Distributor is solely responsible for having and maintaining its own knowledge and awareness of all such laws and regulations. The customer shall be solely responsible for any diversion of the products which is contrary to the United States laws and regulations and applicable German and European Union laws and regulations.

15. Miscellaneous

15.1 If one of the provisions of these Terms and Conditions and the further contracts reached should be or become ineffective, this shall not affect the validity of the remainder of the Terms and Conditions. The contracting parties are obliged to replace the ineffective provision by a ruling approximating most closely the economic success intended by the ineffective provision.

15.2 The courts of Bielefeld, Germany or at GFR discretion, if the customer is,

- a registered merchant or
- has no general domestic place of jurisdiction or
- has moved its domicile or normal place of abode abroad after entering into the contract or if its domicile or normal place of abode is unknown, the courts with jurisdiction at the registered office of the operating facility carrying out the order, shall have jurisdiction and venue. GFR is also entitled to take legal action at the court having jurisdiction at the registered office or a branch office of the customer.

15.3 All legal relationships between GFR and the customer shall be exclusively bound by and construed in accordance with the laws of the Federal Republic of Germany excluding the rules on the conflict of laws and the United Nations Convention on the International Sale of Goods (CISG).