

Preamble

1. These General Terms and Conditions of Delivery and Payment (“GTC”) shall apply to all goods and services (hereinafter collectively known as “deliverables”) that GVA Leistungselektronik GmbH (“GVA”) provides entrepreneurs as defined in section 310 (1) of the German Civil Code (BGB) (“client”). Divergent conditions of the client especially his terms of sale or general terms and conditions shall also not apply if GVA does not expressly object to their application and unreservedly provides deliverables while being aware of conflicting or divergent conditions of the client.
2. The client’s acceptance of a deliverable provided by GVA is enough to signify the client’s consent to the application of this AGB.
3. The GTC shall also apply to all future transactions of GVA with the client.
4. Oral collateral agreements have not been entered into. All contractual amendments must be made in writing. Any modification of this provision must also be made in writing.

I. Offer and scope of delivery

1. The offers of GVA are always non-binding.
2. GVA’s written acknowledgement of order shall determine the scope of delivery.
3. Protective equipment shall only be provided to the extent that is expressly agreed in each individual case.
4. The client is obligated to treat as confidential all information that he receives from GVA. This particularly applies to technical and business information; business plans; commercial and financial information; designs and documents, be they in oral or written form or in form of products or product samples (hereinafter: “confidential information”). The client is obligated not to allow third parties access to the information, to prevent the access of third parties to it and to use the confidential information within the scope of the purpose of each contractual relationship. The client is obligated to treat the confidential information that came to his knowledge during the contractual relationship with the same diligence as he would his own confidential information, but at least with the diligence of a prudent businessman.
 - 4.1. This confidentiality obligation shall not apply to information
 - a) that the client was already aware of or was in his possession before GVA discloses same;
 - b) that the client received from a third party without the third party having acquired or forwarded the information in breach of a confidentiality obligation;
 - c) that are public knowledge not resulting from a breach of the confidentiality obligations from the contractual relationship between the parties;
 - d) provided GVA gives prior written permission to disclose said information; or
 - e) provided it must be released in line with statutory obligations or as a result of a judicial ruling.The client shall bear the burden of proof for the existence of these exceptions.

- 4.2. The client is obligated to only communicate confidential information to the employees who need it to fulfil the obligations from the contractual relationship between the parties. To the extent permitted by law, the client shall impose a confidentiality obligation on his employees – even beyond the duration of the employment relationship.
5. GVA reserves the right to make design changes to the delivery item/s.
6. If a contract does not materialise, the client is obligated, at GVA's request, to promptly release the offer documents to GVA at his own expense.
7. GVA is entitled to commission third parties as subcontractors for the fulfilment of all or some contractual obligations.
8. Planning task fulfilment shall be specified by GVA. To the extent that performance shall also occur at the client's location, GVA shall have sole authority to instruct its staff. The employees and subcontractors of GVA shall not be integrated into the company of the client. The employees and subcontractors mobilised by GVA shall not be subject to any directives of the client in carrying out their duties.
9. If not otherwise stipulated in the offer documents, GVA shall exclusively deliver ex works (INCOTERMS 2010).

II. Delivery period

1. The delivery period begins with GVA dispatching the acknowledgment of order. Compliance with the delivery period requires the timely receipt of all documents to be delivered by the purchaser, all necessary authorisations, clearances, the timely clarification and authorisation of the plans, compliance with the agreed payment terms and other obligations as well as the timely receipt of the agreed advance. If these requirements are not fulfilled on time, the delivery period shall be extended accordingly.
2. The delivery period is complied with if the delivery items have left the GVA factory before the agreed delivery deadline. If delivery is delayed due to the fault of the purchaser, the delivery period shall be deemed complied with upon notification of readiness for dispatch within the agreed delivery period.
3. If non-compliance with the delivery period can be traced back to force majeure, especially mobilisation, war, riots, strikes or lockout at GVA or other circumstances that, in accordance with general principles of law, are not the fault of GVA, the delivery period shall be extended appropriately. The aforementioned circumstances are also not the fault of GVA if they occur during an already existing default. In important cases, GVA shall notify the purchaser of the beginning and end of such hindrances as soon as possible.
4. If dispatch or delivery is delayed at the purchaser's request, the expenses arising from storage, however not less than half a percent of the net value of the delivery item in question, can be charged to the purchaser for each month commenced, if storage occurs in the factory of GVA. The storage costs thus incurred shall be limited to 5% of the net order value, except evidence of higher costs is provided by GVA. After the setting and unsuccessful expiration of an appropriate deadline, GVA is entitled to otherwise dispose of the delivery item and supply the purchaser within a fair, extended period.
5. Compliance with the delivery deadline requires the fulfilment of the contractual obligations of the purchaser.
6. If the purchaser does not accept the delivery at the contractually agreed time, he nevertheless has to make the payments dependent on the delivery at the agreed due dates as though the delivery occurred as agreed upon.

III. Prices

1. The prices of GVA are all quoted plus the respective VAT and apply to delivery ex works excluding loading, packaging, installation and commissioning and all other fees.
2. Upon proof by GVA, the client must reimburse GVA at the applicable hourly rates for such services that become necessary due to wait times or changes to the scope of service attributable to the client.
3. If nothing different arises from the contract of the parties, GVA invoices are due for payment without deduction within 10 days after the issue date of the invoice. A discount shall not be granted. The client is obligated to make payments at his expense and risk.
4. Payment dates are complied with if the amount to be paid is available to GVA at the due date. Checks and bills of exchange are accepted only as conditional payment.
5. Instalments shall first offset outstanding, older claims of GVA against the client.

IV. Retention of title

1. GVA reserves the right of ownership to the delivery items till the fulfilment of all legitimate claims against the purchaser. A pledge or a chattel mortgage is hitherto prohibited and resale to resellers is only permitted in the regular course of business under the condition that the reseller receives payments from his clients. The purchaser shall bear any costs of enforcing the right of ownership.
2. In case of a seizure, confiscation or other dispositions by a third party, the purchaser is obligated to promptly notify GVA of this.
3. In case of a permissible sale, the proceeds of sale shall take the place of the delivery items, to which GVA retains title up to the amount of our total claim. Invoice amounts thus received by the purchaser are to be paid to GVA immediately.
4. The client is not permitted to transfer the claims from the resale to third parties.
5. GVA can withdraw the authorisation for resale and collection of the claims transferred to GVA in case the client defaults on or stops to make payments as well as in case of an application to commence insolvency proceedings or in other cases of impaired creditworthiness and trustworthiness of the client that risk the fulfilment of the claims to which GVA is entitled ("enforcement event"). If the authorization to collect claims is withdrawn, the client is obligated to immediately inform his buyers of the assignment of claims to GVA and to transfer to GVA all information and documents required for collection.
6. GVA is entitled to insure the delivery items, at the purchaser's expense, against theft, breakage, fire, water and other damage, provided the purchaser has not demonstrably taken out the insurance policy himself. Due to GVA retaining title, GVA is entitled to repossession after a reminder, if the purchaser's behaviour is in breach of contract especially in case of payment default and the manufacturer is obliged to surrender the items. The exercise of the right of retention by GVA shall not be deemed as termination of the contract.
7. GVA retains all rights to offers, drawings and circuit diagrams. These documents must not be passed on to third parties. In case of a breach, GVA has the right to take legal action against the party responsible.

V. Transfer of risk and acceptance

1. Risk shall be transferred to the purchaser with the dispatch of the delivery even if partial deliveries shall occur or GVA is under contractual obligation to assume other services such as shipping costs, transportation or installation of the delivery item.

For an “ex works” sale, GVA must notify the purchaser in writing of the time the delivery item/s must be received.

This notification must take place early enough for the purchaser to be able to take the normally required measures.

At the purchaser’s request and at his expense, the shipment shall be insured by GVA against damage from theft, transport, fire and water as well as other insurable risks.
2. If shipping is delayed due to circumstances, for which the purchaser is to blame, risk shall thus pass on to the purchaser starting from the day of readiness for dispatch. However, GVA is obliged, at the purchaser’s request and expense, to take the insurance cover requested by the purchaser.
3. Irrespective of the rights granted him by GVA in section VIII of these terms and conditions, delivered items must be accepted by the purchaser even if they have insignificant defects.
4. Partial deliveries are permitted.

VI. Documentation

1. The documentation of the scope of delivery and service shall adhere to the specifications stipulated in the offer description or in the agreed specification sheet. Provided nothing else is agreed, the documentation shall contain operating and maintenance instructions and safety tips. The documentation shall be handed over to the client at his request on an appropriate data media and in paper form (DIN A4). The documentation shall comply with the current standards and specifications applicable to the item supplied by GVA. The client is obliged, at GVA’s request, to provide the information and documents necessary for creating the documentation.
2. If provisions of the client form the basis of a contract, these provisions of the client shall be applicable only if and to the extent that they are expressly recognised by GVA in writing. Despite an express reference to them in the contract, these provisions of the client shall apply, in case of doubt, only to the extent that they refer to material releases, implementation provisions or documentation specifications and these provisions of the client are within the scope of the usual.

VII. Liability for defects of the delivery

For defects to the delivery items, to which the absence of expressly guaranteed features belongs, GVA shall be liable for a period of 6 months (warranty period) from the shipment of the delivery item or from the notification of dispatch readiness excluding other claims irrespective of point 7 of this section VII as follows:

1. All such parts, which prove unusable or not insignificantly impaired in their usability within the warranty period especially due to faulty design or defective construction, are to be repaired or re-delivered free of charge based on GVA’s choice and at its reasonably exercised discretion. The discovery of such defects must be promptly communicated to GVA. Parts replaced by GVA

shall become the property of GVA. If the remedial action is disproportionate, GVA is entitled to reduce the purchase price as appropriate. The liability of GVA for any third-party products is limited to the transfer of liability claims that GVA has against the supplier.

2. No guarantee is given for damage that resulted from the following reasons:

- improper or incorrect use,
- incorrect assembly or commissioning by the purchaser or third parties.
- wear and tear,
- incorrect or negligent handling,
- unsuitable equipment,
- unsuitable replacement materials,
- defective building work,
- chemical, electrochemical or electric influences

each provided that they are not traceable to a fault of GVA's.

3. The purchaser, after prior written agreement, must give GVA the time and opportunity required to carry out all repairs and replacement deliveries that appear necessary at its reasonably exercised discretion, otherwise GVA shall be exempt from liability for defects.

4. Of the costs directly arising from the repair or replacement delivery, GVA shall bear - insofar as the complaint proves to be well-founded - the costs of the replacement part including that of shipment and the fair costs of removal and installation; furthermore, if this can be justifiably demanded depending on the case in question, the costs of the necessary provision of installers and assistants by GVA. Otherwise, the purchaser shall bear the costs.

5. The warranty period for the replacement part and the repair is 3 months from the end of the repair. However, it shall at least run till the expiry of the original warranty period for the delivery item. The period for the liability for defects on the entire delivery item shall be extended by the duration of the business interruption caused by the improvement work.

6. Modifications and repair work improperly carried out by the purchaser or third parties without prior approval from GVA shall nullify the liability for the resulting consequences.

7. GVA shall be liable for any injury to life, limb or health resulting from a negligent breach of duty on the part of GVA or a wilful or negligent breach of duty of the legal representatives or agents of GVA, however, only to the statutory extent. GVA shall be liable for other damage, also for grossly negligent breach of duty or a wilful or grossly negligent breach of duty of the legal representatives or agents of GVA. In cases where GVA violates a cardinal obligation (material contractual obligation, especially principal contractual obligations existing in a relationship of mutuality), liability shall be limited to the foreseeable damage typical of the contract. Otherwise GVA is exempted from liability. Furthermore, non-liability shall not apply to the absence of expressly guaranteed features if the purpose of the guarantee was to protect the purchaser from damage that did not occur on the delivery item itself.

VIII. Right of the purchaser to withdrawal, rescission and other liability of the supplier

1. The purchaser can withdraw from the contract if the entire contractually guaranteed performance becomes impossible for GVA before the transfer of risk. The purchaser can also withdraw from the contract if, in the case of ordering similar items, it becomes impossible to

execute a part of the delivery in terms of quantity and he has a legitimate interest in rejecting a partial delivery. If this is not the case, the purchaser can reduce the consideration accordingly.

2. If impossibility sets in during acceptance default or through the fault of the purchaser, he shall remain liable for consideration.
3. Furthermore, the purchaser has the right to substitute performance, as far as GVA has not complied with a suitable, specified deadline for remedial action.
4. GVA shall be discharged from responsibility through the following circumstances, if they occur after the conclusion of the contract and stand in the way of contractual performance:

labour disputes and all circumstances independent of the will of the party, such as fire, mobilisation, confiscation, prohibition of foreign exchange transfer, riots, and the absence of means of transport.
5. Unless otherwise expressly provided, GVA shall have exclusive intellectual property rights, especially rights to registered designs, copyrights, rights to inventions or technical intellectual property rights to the findings, ideas, concepts, mathematical calculations, plans, know-how, and other work products – whether embodied or not embodied – which GVA develops during or occasionally after performance, (hereinafter referred to as “work products”).
6. GVA grants the client a non-exclusive and non-transferrable, temporally and spatially indefinite right of use to the work products, as long as their use by the customer is necessary for achieving the purpose of the contract.
7. Should the client develop a patentable work product based on the work products of GVA, the client shall promptly inform GVA of this in writing. As part of a separate agreement, the client and GVA shall then reach an agreement on the ownership and use of this work product and the property rights registered and granted hereupon.
8. The client shall immediately and comprehensively notify GVA in writing if claims are being asserted against him due to the work products. GVA is entitled but not obligated to solely assert claims in connection with the work products against the third party in and out of court. If the client is sued, he shall come to an agreement with GVA and shall conduct legal proceedings especially acknowledgments and settlements only with the consent of GVA.

IX. Binding force of the contract

1. The contractual relationship between GVA and the client is subject to the law of the Federal Republic of Germany. UN sales law (United Nations Convention on Contracts for the International Sale of Goods (CISG) of 11/04/1980) shall not be applicable.
2. Should individual provisions of this be or become totally or partially incorrect or invalid, the validity of the remaining provisions shall not be affected. GVA and the client hereby undertake, in place of the void or invalid provision, to reach an agreement that most closely matches this provision legally and economically and that they would reasonably have reached if they had considered the nullity or invalidity of the affected provision at the conclusion of the contract.
3. In case of doubt, the German version of all contractual provisions shall be authoritative.

X. Privacy clause

The processing of personal data that is protected pursuant to the General Data Protection Regulation (= GDPR) is permitted if the data subject or another statutory provision allows it or

the data subject consents. With the request to submit an offer, the data subject consents to the processing of personal data that comes into consideration, except he objects in writing within 10 working days of GVA submitting the offer.

For the data subjects in question, we shall particularly draw their attention to the intended meaning of a missing objection at the commencement of said deadline.

XI. Legal venue

1. The sole legal venue for all disputes arising from the contractual relationship is Mannheim.
2. GVA is also entitled to sue at the purchaser's location.
3. German law with the exception of UN sales law shall apply to the contractual relationships between GVA and the purchaser.

With the coming into force of these terms and conditions of sale, delivery, and installation, earlier versions shall lose their validity.