

of GVA Leistungselektronik GmbH, Boehringer Straße 10-12, D-68307 Mannheim  
valid from: 01.12.2024

## 1. Scope of application

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- 1.1 Our following General Terms and Conditions of Sale and Delivery (hereinafter referred to as "**Terms and Conditions of Sale**") shall apply to all deliveries and services provided by us, GVA Leistungselektronik GmbH, to entrepreneurs within the meaning of Section 14 of the German Civil Code (BGB), legal entities under public law and special funds under public law (hereinafter referred to as "**Customer**").  
An entrepreneur within the meaning of Section 14 BGB is a natural or legal person or a partnership with legal capacity who, when entering into a legal transaction, is acting in the exercise of their commercial or independent professional activity.
- 1.2 Our separate General Terms and Conditions of Purchase shall apply to our purchases and orders.
- 1.3 Deviating terms and conditions of the customer which we do not expressly recognise are not binding for us, even if we do not expressly object to them. Our terms and conditions of sale shall also apply if we carry out the delivery without reservation in the knowledge of conflicting or deviating terms and conditions of the customer.
- 1.4 In the case of long-term business relationships, these Terms and Conditions of Sale in the version valid at the time of their effective inclusion in the contract negotiations or in the contract shall also apply to future offers and contracts for the sale or delivery of movable goods with the same customer, without us having to refer to them again in each individual case.

## 2. Offer, conclusion of contract and content of contract

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- 2.1 Our offers are non-binding. A contract is only concluded when we confirm the order of the customer. Our order confirmation is decisive for the content and scope of the contract.
- 2.2 Insofar as the customer provides us with drawings for the preparation of our offer, we assume when preparing the offer that the drawings provided are the final, current version of these drawing(s). However, if the customer makes changes or modifications to these drawings before receiving our offer or before the contract is concluded, the customer is obliged to inform us of this fact immediately and expressly and in a verifiable manner. Unless otherwise agreed, we shall prepare a new offer based on the then amended drawing(s).
- 2.3 Should the customer wish to make changes to the contractual products within the framework of an ongoing order and thus after the conclusion of the contract, the customer must immediately provide us with the then current drawings and bear any resulting additional costs.
- 2.4 We are authorised to make changes to the technical design, in particular with regard to the construction, of the goods and services ordered, unless this results in a significant change in function, or the customer demonstrates that the change is unacceptable for him.
- 2.5 The contract is concluded under the condition of correct and timely delivery of material ("*Selbstbelieferung*") to us. We shall notify the customer immediately, if a delivery of material ("*Selbstbelieferung*") is either incorrect or untimely. We shall not be liable in the event of defective, delayed or completely failed delivery of materials ("*Selbstbelieferung*"), unless we are responsible for this.
- 2.6 Our information on the subject matter of the delivery or service (e.g. dimensions, other values, load capacity, tolerance and technical data) as well as the representation of the same (e.g. drawings and illustrations) are only authoritative insofar as the usability for the contractually stipulated purpose does not require exact conformity. They do not constitute a guarantee or quality characteristics, but merely serve to describe or identify the delivery or service. We only assume a guarantee for the quality of an item if this has been expressly promised in our order confirmation or in our advertising.
- 2.7 Insofar as we are not obliged by individual contract to comply with specific dimensions and special tolerances, customary deviations, in particular ISO and DIN tolerances, are permissible.
- 2.8 We reserve our property rights, copyrights and other industrial property rights to all illustrations, calculations, drawings, plans and other documents produced by us. This also applies to embodied and unembodied ideas, concepts, findings, mathematical calculations, know-how and other work results. The customer may only pass these on to third parties - insofar as they are embodied - with our consent in text form, irrespective of whether we have labelled them as confidential.

- 2.9 Should a contract not be concluded following an offer from us, the customer is obliged to return the offer documents to us immediately at his own expense at our request.
- 2.10 We are entitled, at our own discretion, to commission third parties as subcontractors to fulfil all or individual contractual obligations.
- 2.11 The planning of the provision of the agreed deliveries and services shall be determined by us after consultation with the customer. If our services are provided at the location requested by the customer, we alone shall be authorised to issue instructions to our employees and subcontractors. Our employees and subcontractors shall not be integrated into the customer's operations.

### **3. Prices and terms of payment**

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- 3.1 Unless otherwise stated in the order confirmation, our prices are "ex works" (EXW, Incoterms 2020). The statutory value added tax is not included in our prices. VAT shall be shown separately on the invoice at the statutory rate applicable at the time of delivery.
- 3.2 The costs for packaging, loading, transport, despatch, insurance, customs duties, assembly and commissioning etc. shall be charged separately to the customer.
- 3.3 If partial deliveries are permissible because they have been agreed or are reasonable for the customer, we shall be entitled to issue a separate invoice for each partial delivery, which shall be payable in accordance with the above conditions.
- 3.4 If the relevant cost factors change significantly (in particular, but not exclusively, raw materials, energy) after submission of the offer or after confirmation of the order until delivery, we shall agree with the customer on an adjustment of the prices. This price adjustment shall solely compensate for the change in costs.
- 3.5 Unless otherwise stated in the order confirmation, payment must be made without any deductions within 30 days of the invoice date, but no later than 30 days after delivery or performance. The statutory regulations regarding the consequences of late payment shall apply. No discount shall be granted.
- 3.6 If despite the due date of the total invoice amount by the customer, only partial payments are made, these shall be offset against the older outstanding claims against the customer.
- 3.7 The customer shall only be entitled to set-off rights if his counterclaims have been legally established, are undisputed or have been recognised by us. The customer may only exercise a right of retention if his counterclaim is based on the same contractual relationship.
- 3.8 In the event of non-compliance with the terms of payment or in the event of circumstances which call into question the creditworthiness of the customer, we shall be entitled to demand immediate cash payment for all deliveries. In addition, we are authorised to carry out outstanding deliveries only against advance payment or provision of security or to withdraw from the contract and demand compensation. We are also entitled to prohibit the resale of the contractual products delivered under retention of title and to immediately retrieve the contractual products at the customer's expense if we have withdrawn from the contract.

### **4. Material to be procured and to be provided, delivery period and acceptance obligations**

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- 4.1 Any material to be procured or provided by the customer and made available to us for the fulfilment of the contractual deliveries and services agreed with us ("*beizustellendes Material*") shall be delivered by the customer in good time and in perfect condition at its own expense and risk with an appropriate quantity surcharge of at least 5%.
- 4.2 The commencement of our delivery and/or performance period is subject to the timely and proper fulfilment of the customer's obligations (in particular the receipt of all documents required for the execution of the order, all necessary approvals, releases, the timely clarification and approval of the plans, compliance with the agreed terms of payment, the timely receipt of an agreed down payment and the timely and defect-free provision of materials).
- 4.3 In the event of subsequent changes requested by the customer, the delivery or performance period shall be extended accordingly.
- 4.4 Delivery dates or delivery periods shall be deemed to have been met if the delivery of goods has been handed over to the forwarding agent, the carrier or any other person commissioned with the dispatch

within the agreed delivery dates or periods. If the handover to the transport person is delayed for reasons for which the customer is responsible, the delivery or performance time shall be deemed to have been met upon notification of readiness for dispatch or performance within the agreed delivery or performance time and agreed delivery dates or periods shall be extended accordingly.

- 4.5 If we are culpably in default with a delivery or service or if a delivery or service becomes impossible, except in cases of force majeure (see Clause 5.), our liability for damages shall be limited in accordance with the provisions of Clause 9 of these Terms and Conditions of Sale.
- 4.6 If the customer is in default of acceptance or culpably violates other obligations to co-operate, we shall be entitled to demand compensation for the damage incurred by us in this respect, including any additional expenses (such as storage costs incurred, warehouse rent and any insurance costs). However, there is no obligation to insure stored contractual products.
- 4.7 If the customer is in default of acceptance in whole or in part, contractual products ready for despatch may be invoiced. In addition, we shall be entitled to withdraw from the contract after the fruitless expiry of a deadline set by us. The further statutory rights to which we are entitled in the event of default of acceptance shall remain unaffected.
- 4.8 Clauses 4.6 and 4.7 shall also apply if the contractual products manufactured to fulfil a framework delivery contract are not accepted by the customer within the agreed call-off times or within the term of the contract. In this case, we shall set the customer an acceptance period determined according to the calendar and assert the above claims against the customer after the occurrence of default.

### **5. Force majeure, exemption from performance, right of cancellation**

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- 5.1 If an event or circumstance occurs which prevents or has prevented us from fulfilling one or more of our obligations under the contract because this obstacle is or was beyond our reasonable control, it could not reasonably have been foreseen at the time the contract was concluded and the effects of the obstacle could not reasonably have been avoided or overcome by us, this shall constitute a case of force majeure. For the duration of such an event or circumstance, we shall be released from our obligation to perform. In this case, we shall notify the customer of the beginning and end of such circumstances without undue delay.
- 5.2 Force majeure events include in particular
  - a) War, hostilities, attack, acts of foreign enemies, extensive military mobilisation,
  - b) civil war, riot, civil commotion, rebellion and revolution, military or other seizure of power, insurrection, acts of terrorism, sabotage or piracy,
  - c) Currency and trade restrictions, embargoes, sanctions,
  - d) lawful or unlawful official acts, compliance with laws or government orders, expropriation, confiscation of plants, requisition, nationalisation, official orders and restrictions (e.g. production restrictions, plant closures),
  - e) Epidemic, pandemic, flood, natural disaster or extreme natural event,
  - f) explosion, fire, destruction of equipment, prolonged breakdown of means of transport, telecommunications, information systems or energy,
  - g) general labour unrest such as boycotts, strikes and lockouts, slowdowns, occupation of factories and buildings, official plant closures due to massive absenteeism in the workforce (e.g. due to illness or quarantine measures).
- 5.3 Clause 5.1 shall also apply if such obstacles or circumstances to be classified as force majeure (see Clause 5.2) demonstrably occur or have occurred at our suppliers and subcontractors and we are therefore not supplied or not supplied on time.
- 5.4 If the delivery is delayed unreasonably (in particular more than one month) due to force majeure and if the obstacle to delivery cannot be overcome by reasonable efforts on our part, we shall be entitled to withdraw from the contract with regard to the quantity affected by the delivery disruption.
- 5.5 The right of cancellation shall also exist if the customer was initially notified of an extension of the delivery period.
- 5.6 The customer shall not be entitled to any claims for damages in the cases mentioned in Clause 5 above.

## 6. Transfer of risk

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- 6.1 Unless otherwise agreed, our delivery shall be ex works (EXW, Incoterms 2020).
- 6.2 At the request of the customer, we shall take out transport insurance for the delivery to protect against the usual transport risks; the costs incurred shall be borne by the customer.
- 6.3 The risk of accidental loss and accidental deterioration, even if partial deliveries are made, shall pass to the customer upon delivery to the forwarding agent, the carrier or any other person commissioned with the shipment, at the latest upon leaving the factory.
- 6.4 If delivery is delayed as a result of circumstances for which the customer is responsible, the risk shall pass to the customer from the date of notification of readiness for dispatch. In such a case, we shall, at the request of the customer, take out insurance for the contractual items to the extent requested by the customer and at the customer's expense.

## 7. Reservation of title

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- 7.1 We reserve title to the delivered goods until full fulfilment of all claims, in particular payment claims, to which we are entitled for any legal reason from the entire business relationship with the customer.
- 7.2 In the event of seizure or other interventions by third parties, the customer must inform us immediately so that we can file a suit in accordance with § 771 ZPO (German Code of Civil Procedure). If the third party is not in a position to reimburse us for the court costs of a corresponding action, the customer shall be liable for the loss incurred by us.
- 7.3 The customer is entitled to resell the delivered contractual products in the ordinary course of business; however, he hereby assigns to us all claims in the amount of the final invoice amount (including value added tax) which accrue to him from the resale against his customers or third parties, irrespective of whether the item has been resold without or after processing. We hereby accept this assignment.
- 7.4 The customer shall remain authorised to collect the assigned claims even after the assignment. Our authorisation to collect the claim ourselves remains unaffected by this. However, we undertake not to collect the claim as long as the customer fulfils his payment obligations to us from the proceeds received, is not in default of payment to us and no application for the opening of insolvency proceedings has been filed against his assets or he has not suspended his payments. As soon as we are able to collect assigned claims ourselves, the customer is obliged, at our request, to inform us of the assigned claims and their debtors, to provide all information necessary for collection, to hand over the relevant documents to us and to notify the debtors (third parties) of the assignment.
- 7.5 The customer shall be entitled to use and process/convert the contractual products in the ordinary course of business. The processing or transformation of the delivered contractual products by the customer shall always be carried out on our behalf. If delivered contractual products are processed with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the value of the delivered contractual products to the other processed items at the time of processing. In all other respects, the same shall apply to the item created by processing as to the contractual products delivered under reservation of title.
- 7.6 If the delivered contractual products are inseparably mixed with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the value of the delivered contractual product to the other mixed items at the time of mixing. If the mixing takes place in such a way that the delivered contractual products are to be regarded as the main item, it is agreed that the customer shall transfer co-ownership to us on a pro rata basis. The customer shall hold the resulting sole ownership or co-ownership for us.
- 7.7 In the event of behaviour in breach of contract for which the customer is responsible, in particular in the event of default of (timely) payment, we shall be entitled (but not obliged) to take back the contractual products delivered under retention of title and the customer shall be obliged to surrender them.
- 7.8 We undertake to release the securities to which we are entitled at the request of the customer if the realisable value of our securities exceeds the claims to be secured by more than 10%. We shall be authorized for selecting the securities to be released.
- 7.9 For the duration of the retention of title, the customer is obliged to treat the goods subject to retention of title with care, in particular to insure the goods adequately at his own expense. If maintenance and inspection work is required, the customer shall also carry this out at his own expense.

## 8. Notice period, liability for material defects (warranty) and statute of limitations

- 8.1 If the customer is a merchant under the German Commercial Code (HGB), the assertion of warranty rights presupposes that he has properly fulfilled his obligations to inspect and give notice of defects in accordance with § 377 HGB. This standard applies accordingly to entrepreneurs.  
The customer must give notice of defects immediately, but at the latest within five working days (working day in the sense of Monday to Friday with the exception of public holidays at the customer's place of business) after receipt of the contractual products, if possible in writing. The same period shall apply to hidden defects from the time of discovery. Claims for defects that are not reported in good time shall lapse.
- 8.2 Damage to or in the contractual objects that is due to
- unsuitable or improper use,
  - faulty assembly or commissioning by the customer or third parties,
  - unusually intensive wear,
  - faulty or improper handling,
  - unsuitable replacement materials,
  - defective construction work and/or
  - impermissible thermal, chemical, electrochemical or electrical influences
- do not constitute defects.  
If a defect is due to the fault of the customer, we may demand compensation for damages under the conditions specified in Clause 9.
- 8.3 In the event of a defect in the contractual products delivered, we shall, at our discretion, either rectify the defect or take back the contractual products and deliver new ones within the scope of the subsequent fulfilment to which we are entitled. We may refuse subsequent fulfilment if it is only possible with disproportionate costs or disproportionate effort.
- 8.4 Unless otherwise agreed with the Customer, the place of fulfilment for any subsequent performance to be rendered by us shall be the place of fulfilment and thus the registered office of our commercial branch in Mannheim. The Customer shall bear any additional costs arising from the fact that the contractual product has been transported to a place other than the place of fulfilment.
- 8.5 Claims for defects shall not exist in the event of only insignificant deviations of the delivered contractual products from the agreed quality (this applies in particular to unavoidable, minor deviations with regard to colour, surface and material purity), in the event of only insignificant impairment of usability or in the event of damage that has occurred after the transfer of risk as a result of incorrect or negligent handling, excessive use, etc.. If the customer or a third party makes improper changes to the contractual product, there shall be no claims for defects for these and any resulting consequences.
- 8.6 Our contractual products may be adversely affected by improper storage or installation. This is possible in particular due to the influence of inappropriate temperature, humidity, sunlight and incorrect stacking or layering. The customer is solely responsible for the proper storage and installation of the contractual products.
- 8.7 The statute of limitations for claims for defects is one year for the delivery of new contractual products to entrepreneurs.
- 8.8 The statute of limitations for claims for defects shall commence upon delivery of the contractual product at the place of fulfilment; if acceptance is required, from acceptance.
- 8.9 The period specified in Section 8.7 shall not apply to claims for damages by the customer arising from injury to life, limb or health or from intentional or grossly negligent breaches of duty by us, our legal representatives or our vicarious agents. The aforementioned period shall also not apply if we have fraudulently concealed a defect or have assumed a guarantee for the quality of the contractual products and for claims under the Product Liability Act ("*Produkthaftungsgesetz*"). In the aforementioned cases, these claims shall become time-barred in accordance with the statutory provisions. Further special statutory provisions on the statute of limitations (in particular § 438 para. 1 no. 1 and no. 2, para. 3, §§ 444, 445 b BGB) also remain unaffected.
- 8.10 In the case of replacement delivery and rectification of defects, the limitation period for the replaced or repaired contractual products shall not begin anew, even in cases of goodwill ("*Kulanz*"). If, in exceptional cases, there is an acknowledgement, this only relates to those defects that were the subject of the request for subsequent fulfilment.



### 9. Liability for damages due to culpability

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- 9.1 We shall be liable for damages - irrespective of the legal grounds, in particular for impossibility (*“Unmöglichkeit”*), delay (*“Verzug”*), defective or incorrect delivery, breach of contract, breach of obligations during contract negotiations and unauthorised action - insofar as culpability is involved in each case, only limitedly and in accordance with this Clause 9.
- 9.2 In the event of simple negligence on the part of our executive bodies, legal representatives, employees or other vicarious agents, we shall only be liable to the extent that this constitutes a breach of material contractual obligations.”  
Material contractual obligations are obligations whose fulfilment is essential for the proper performance of the contract and on whose fulfilment the customer regularly relies and may rely. These include the obligation to deliver and perform on time, the freedom of the contractual product from defects of title and such material defects that impair its functionality or usability more than just insignificantly, as well as obligations to provide advice, protection and care that are intended to enable the customer to use the contractual product in accordance with the contract or to protect the life and limb of the customer's personnel or to protect the customer's property from significant damage.
- 9.3 Insofar as we have limited liability for damages in accordance with Clause 9.2, this liability shall be limited to damages which we foresaw as a possible consequence of a breach of contract at the time of conclusion of the contract or which we should have foreseen if we had exercised due care. Indirect damage and consequential damage resulting from defects in the delivery and service are also only eligible for compensation if such damage is typically to be expected when the contractual product or service is used as intended.  
The above provisions of this Section 9.3 shall not apply in the event of intentional or grossly negligent behaviour on the part of our executive bodies or senior executives.
- 9.4 The above exclusions and limitations of liability shall apply to the same extent in favour of our executive bodies, legal representatives, employees and other vicarious agents.
- 9.5 Insofar as we merely provide technical information or act in an advisory capacity and this information or advice is not part of the contractually agreed scope of services owed by us, this is done free of charge and to the exclusion of any liability.
- 9.6 The customer may only withdraw from or terminate the contract due to a breach of duty that does not consist of a defect if we are responsible for the breach of duty. A free right of cancellation of the customer (in particular according to §§ 651, 649 BGB) is excluded. Otherwise, the statutory requirements and legal consequences shall apply.
- 9.7 The limitations of this Clause 9 shall not apply to our liability for wilful conduct, for guaranteed characteristics, for injury to life, limb or health or under the Product Liability Act (*“Produkthaftungsgesetz”*).

### 10. Industrial property rights

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- 10.1 In accordance with this Clause 10, we warrant that the goods and services to be provided by us are free from industrial property rights or copyrights of third parties. Both contracting parties shall notify the other contracting party immediately in writing if claims are asserted against it due to the infringement of such rights.
- 10.2 Should a contractual product nevertheless infringe an industrial property right or copyright of a third party, we shall, at our discretion and at our expense, either modify or replace the contractual product in such a way that the rights of third parties are no longer infringed, but the contractual product continues to fulfil the contractually agreed functions, or procure the right of use for the customer by concluding a licence agreement with the third party. If we are unable to do so within a reasonable period of time, the customer shall be entitled to withdraw from the contract or to reduce the purchase price appropriately. Any claims for damages on the part of the customer are subject to the limitations of Clause 9 of these Terms and Conditions of Sale.
- 10.3 In the event of infringements of rights by products of other manufacturers supplied by us, we shall, at our discretion, assert our claims against the manufacturers and upstream suppliers for the account of the customer or assign them to the customer. In such cases, claims against us shall only exist in accordance with this Clause 10 if the judicial enforcement of the aforementioned claims against the manufacturers and upstream suppliers was unsuccessful or has no prospect of success, e.g. due to insolvency.

- 10.4 Unless otherwise expressly agreed, we shall be exclusively entitled to industrial property rights or copyrights (in particular design rights, copyrights, rights to inventions or technical property rights to the knowledge, ideas, concepts, mathematical calculations, plans, know-how and other work results - whether embodied or unembodied -) which were/are developed by us during or on occasion of the provision of services (hereinafter referred to as "work results").
- 10.5 GVA shall grant the Customer a non-exclusive and non-transferable right to use the work results for an unlimited period of time and space, insofar as their use by the Customer is necessary to fulfil the purpose of the contract.
- 10.6 Should the customer develop a work result capable of being protected by industrial property rights which is based on our work results, the customer shall inform us of this immediately in writing. Both contracting parties shall then reach a separate agreement on the ownership and utilisation of this work result and the industrial property rights applied for and granted on it.
- 10.7 The customer shall inform us immediately and comprehensively in writing if claims are made against him on account of the work results. We shall be entitled, but not obliged, to assert claims in connection with the work results against the third party in and out of court on our own. If the customer is sued, he shall consult with us and only take legal action, in particular acknowledgements and settlements, with our consent.

## **11. Data protection**

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We will only process and store the data relating to the respective contracts in accordance with the applicable statutory provisions. The details can be found in the privacy policy available on our website.

## **12. Applicable law, place of fulfilment and place of jurisdiction**

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- 12.1 German law shall apply exclusively; the application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the conflict of laws rules applicable in Germany are excluded.
- 12.2 Unless otherwise agreed, the place of fulfilment for all obligations arising from the contracts concluded by us with the customer shall be Mannheim.
- 12.3 The following applies to our contracts with customers based in EU member states, Switzerland, Norway or Iceland: The exclusive place of jurisdiction is the District Court of Mannheim. However, we are also entitled to sue the customer at its registered office.
- 12.4 The following shall apply to our contracts with customers domiciled in countries other than EU member states, Switzerland, Norway and Iceland:  
All disputes arising out of or in connection with supplies and services provided by us shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with these Rules. The seat of arbitration shall be Mannheim. The arbitration proceedings shall be conducted in German.

## **13. Final provisions**

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- 12.1 The language of the above Terms and Conditions of Sale is German.
- 13.2 Especially, where the English language version contains German terms in brackets, these shall have the meaning under German law without recourse to English or other law. In the event of any dispute over the wording and interpretation of the English language version of the Terms of Sale, the German version and the interpretation under German law shall prevail.

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