

## General Terms and Conditions of Delivery

as of June 2014

### I. Scope of Application, Validity

1. These General Terms and Conditions of Delivery (hereinafter called the "Terms and Conditions") apply to all supplies of goods and services by GoGaS Goch GmbH & Co. KG (hereinafter called "GoGaS").
2. Deviating (and or supplementary) terms and conditions of business of the Customer shall not apply unless and insofar as GoGaS has expressly declared its consent to them or to parts thereof. Nor shall the supply of goods or services by GoGaS without reservation on the part of GoGaS be understood as implying any recognition of terms and conditions which deviate from or are supplementary to these Terms and Conditions.
3. Acceptance without reservation by the Customer of goods or services supplied by GoGaS shall constitute recognition of GoGaS's Terms and Conditions by the Customer.
4. In addition to these Terms and Conditions, the following shall also apply:
  - in the case of supply of goods or services within Germany, the "Allgemeine Bedingungen für die Lieferung von Maschinen für Inlandsgeschäfte, deutsch" ["General Terms and Conditions for the Supply of Machines under Domestic Contracts, German"] of the VDMA (German Engineering Federation)
  - in the case of supply of goods outside of Germany, the Orgalime terms and conditions: "General Conditions for the Supply of Mechanical, Electrical and Electronic Products" (S 2000)
  - in the case of supply of goods and services outside of Germany, the Orgalime terms and conditions: "General Conditions for the Supply and Installation of Mechanical, Electrical and Electronic Products" (SI 14)

We will be pleased to send you copies of the foregoing, free of charge, on request. In this case, please write to info@gogas.com or to GoGaS Goch GmbH & Co. KG, Zum Ihnedieck 18, 44265 Dortmund.

In case of any conflict between the aforesaid provisions, the GoGaS Terms and Conditions shall take precedence.

### II. Offers

1. Materials or documents accompanying an offer, such as illustrations, drawings, indications of weights and dimensions, may only be regarded as approximate unless they have expressly been declared by GoGaS to be binding.
2. GoGaS reserves, without limitation, all rights of title and copyright to cost quotations, drawings and other documents. Except with the express prior written consent of GoGaS, such documents may not be made accessible to any third party. The said documents must be returned to GoGaS if no order is placed. In any such case, all copies of the documents must be destroyed.

### III. Scope of Delivery, Supplementary Accords

Authoritative for the scope of supply of the goods/services is

the order confirmation of GoGaS. If no confirmation is issued in cases where GoGaS has submitted an offer which is firm on acceptance by a specified deadline and the Customer has accepted it in a timely manner, GoGaS's offer shall be authoritative.

### IV. Delivery, Prices, Delays, Customs Duties and Levies

1. Part-deliveries are permitted except where they would be unreasonable for the Customer.
2. Deliveries are effected ex works (GoGaS warehouse). Prices are quoted inclusive of loading at the works but exclusive of packing, transport and value added tax. The value added tax is shown separately in each case.
3. Delivery dates are only firm if they have been expressly agreed as such. Delivery dates are deemed to have been met if by the time of expiry of them the delivery item has left the works or has been notified as being ready for dispatch.
4. Compliance with agreed deadlines for the supply of goods/services is conditional on timely receipt by us of all documents, necessary permits or approvals and/or plans to be supplied by the Customer as well as on fulfilment of the agreed terms of payment (e.g. payments on account) and other obligations by the Customer. If these conditions are not met in good time, the agreed periods for delivery and performance shall be reasonably extended; this shall not apply if GoGaS is responsible for the delay.
5. If non-compliance with agreed periods or deadlines is due to circumstances of a force majeure nature, e.g. mobilization, war, civil commotion or similar events, e.g. strikes, lockouts etc., the agreed periods or deadlines shall be appropriately extended. The same shall also apply in the event that GoGaS itself has not been punctually or properly supplied (the following therefore applies in the case of agreed delivery dates: subject to correct and timely supply to ourselves).
6. Unless expressly agreed otherwise, payment must be made, without any deduction, as follows:

1/3 payment on account on receipt of the order confirmation,  
1/3 as soon as the Customer has been notified of readiness  
for dispatch of the main elements of the order,  
1/3 within one further month.

7. In the event of any delay, GoGaS is entitled to charge interest on arrears at the statutory rate (§288 I, II BGB)(German Civil Code). If GoGaS is able to furnish proof of having incurred higher interest charges through the delay in payment, such higher charges may also be charged for.

The following applies towards entrepreneurs (business customers):

In the event of a mutual commercial transaction, GoGaS is entitled to charge interest after due date in an amount of 4% from the time of the claim to payment falling due.

8. In the case of any justified doubts regarding the Customer's solvency, and in particular in the case of any arrears of payment (including also under other contractual relationships), GoGaS may, without prejudice to any further claims it may have, demand payment in advance or the provision of security by the Customer for any further deliveries and revoke any individually allowed periods for payment.

9. All taxes, duties, levies etc. arising in the case of deliveries outside of Germany shall be borne by the Customer.
10. Should GoGaS fall into arrears with the supply of any goods or services, the Customer may – provided he is able to show that he has sustained loss in a corresponding amount – claim compensation for each full week of delay in an amount of not more than 0.5%, or altogether not more than 5%, of the price for that part of the goods or services which could not be taken into serviceable operation on account of the delay. All other claims of the Customer to damages for delay in supply of the goods/services (including any claim to compensation in lieu of performance) are barred. This exclusion/limitation of liability shall not apply in cases of wilful intent, gross negligence or damage or injury to life, limb or health, or breach of material contractual duties through only minor negligence. In the latter case – i.e. breach of material contractual duties through only minor negligence – however, our liability towards entrepreneurs (business customers) shall, instead of the 0.5 or 5% figure stated above, be limited to the foreseeable loss or damage typical for the type of contract in question.
11. The Customer may repudiate the contract under statutory regulations only if responsibility for the delay in supply of the goods/services lies with GoGaS. The foregoing provisions shall not, however, result in any change in the burden of proof to the detriment of the Customer.
12. The Customer has a duty to declare within a reasonable period of time in response to a corresponding inquiry from GoGaS whether he wishes to repudiate the contract because of a delay in supply of the goods/services in questions due to reasons for which GoGaS is responsible or whether he continues to insist on supply.
13. If dispatch or delivery or provision of the service is delayed on the request of or due to the fault of the Customer by more than one month from the time of notice of readiness for dispatch of the goods/supply of the services, GoGaS may – besides its other rights, such as allowing a reasonable additional time and repudiating the contract, claiming damages etc. – make a storage charge in an amount of 0.5% of the price of the service or the items of delivery for each further month or part of a month. This shall be without prejudice to the right of the parties to prove that higher or only lower storage costs have been incurred.

## **V. Transfer of Risk, Acceptance and Notice of Defects**

1. Where the Customer is an entrepreneur (business customer), the risk shall be deemed to have passed at the latest on dispatch of the delivery items to the Customer; this shall apply also in cases where part-deliveries are being made or where GoGaS has agreed to assume other costs and/or provide other services, e.g. freight costs or delivery and installation/erection.
2. GoGaS will, on the Customer's request, insure the shipment against theft and breakage, transport, fire and water damage and other insurable risks at the Customer's expense.
3. Where the Customer is an entrepreneur, the following applies: If dispatch is delayed due to circumstances for which the Customer is responsible, the risk shall pass to the Customer from the day of issue of the notice of readiness for dispatch by GoGaS; GoGaS shall, however, have a duty, on the Customer's request, to take out at the Customer's expense such insurance cover as the Customer may demand (see Section V.2.).
4. The Customer may not refuse to accept goods or services on account of minor defects.
5. Where the Customer is an entrepreneur, the following applies: The statutory duties to inspect and notify of defects (§ 377 HGB [German Commercial Code]) apply without restriction. Should the Customer fail to examine the goods without delay as required by § 377 HGB or to notify a defect without delay, the goods shall be deemed approved and the Customer may no

longer assert any claims on account of the defect or a quantity shortfall. If GoGaS negotiates with the Customer about a defect which has been notified by the latter, this shall not, except through an express statement to that effect, be deemed tantamount to a tacit waiver of a defence of belated examination of the goods or of belated notice of the defect. The same shall also apply to a declaration of willingness on the part of GoGaS to remedy the defect (or actual performance of remedy). Defects must be notified in writing.

## **VI. Reservation of title**

1. GoGaS reserves title to all delivered items (hereinafter called "reserved goods") until settlement in full of all its claims on whatsoever ground they may have arisen, including future or conditional claims arising from contracts concluded at the same time or later. This shall apply even if payments are made in settlement of specifically designated claims. If any indications arise which justify an assumption of the Customer being insolvent or the Customer's insolvency being imminent, GoGaS is entitled to repudiate the contract with immediate effect and to demand release of the reserved goods to it.
2. Any processing or reworking of the reserved goods shall be deemed done on behalf of GoGaS as manufacturer within the definition of § 950 BGB [German Civil Code], without this giving rise to any obligations on the part of GoGaS. The processed goods shall then be deemed reserved goods within the definition of Section VI.1 above. In the case of processing, combining or mixing of the reserved goods with other goods by the Customer, GoGaS shall have co-title to the new item in the same proportion as that between the invoice value of the reserved goods and the invoice value of the other items involved. If the property of GoGaS is rendered extinct through combination or mixing, the Customer hereby already assigns his rights of title to the new stock or new item in a scope equivalent to the invoice value of the reserved goods and shall preserve them for GoGaS free of charge. The resulting co-title rights shall be deemed reserved goods as defined in Section VI.1 above.
3. If the reserved goods are combined by the Customer as an entrepreneur (business customer) with real property pursuant to § 946 BGB, the Customer hereby also assigns, without any further declarations being necessary, by way of security to GoGaS the claim to which he is entitled in remuneration for the joining, together with all auxiliary rights, in the same proportion as that between the value of the reserved goods and the other goods involved in combination or between the value of the reserved goods and the overall performance of the Customer at the time of combination.
4. The Customer is entitled to resell the reserved goods, to process them or combine them with other goods or otherwise install them only in the ordinary course of business and only if he is not in arrears with payment of the purchase price. Any other disposal of the reserved goods is prohibited. GoGaS must be informed immediately of any attachment or other interference with the reserved goods by third parties. All intervention costs shall be borne by Customer insofar as they are not able to be collected from the third party and die the third-party claim suit has been rightfully brought. If the Customer allows his customer to defer payment, he must reserve title to the reserved goods towards on the same terms as those on which GoGaS has reserved title to them. However, the Customer need not also reserve title in respect of claims only arising against his customer in future. Otherwise, the Customer is not authorized to resell.
5. Claims of the Customer arising from resale of the reserved goods are hereby already assigned to GoGaS. They shall serve as security in the same scope as the reserved goods themselves. The Customer is entitled and authorized to resell the reserved goods only if it is ensured that the claims thereby accruing to him are assigned to GoGaS.

6. If the reserved goods are resold together with other goods not supplied by GoGaS for an all-in price, the claim arising from resale is assigned up to the amount of the invoice value of the reserved goods resold.
  7. If the assigned claim is placed on current account, the Customer hereby already assigns a portion of the current account balance equivalent to the claim, including the closing balance on the current account, to GoGaS.
  8. The Customer is authorized, until revocation of this authority by GoGaS, to collect the assigned claim. GoGaS is entitled to revoke if the Customer fails to fulfil his payment obligations arising from the business relationship in a due and proper manner or if circumstances become known which are liable to significantly diminish the Customer's creditworthiness. If the preconditions for exercise of the right to revoke exist, the Customer has a duty, on GoGaS's request, to immediately inform GoGaS of the assigned claims and their debtors, furnish all particulars necessary for collecting the claims, release the appurtenant documents to GoGaS and notify the debtors of the assignment. GoGaS is also itself entitled to notify the debtors of the assignment. The Customer is not authorized, even by our authorization to collect, to otherwise assign the claims.
  9. If the nominal value (invoice amount of the goods or nominal amount of the collection rights) of the security existing in GoGaS's favour exceeds the total secured claims by more than 10%, GoGaS shall have a duty, on the Customer's request, to release security to that extent, the choice of the security to be released lying with GoGaS.
  10. If GoGaS asserts its reserved title, this shall only be understood as a repudiation of the contract if an express written declaration to that effect is made by GoGaS. The right of the Customer to possess the reserved goods shall cease if he fails to fulfil his obligations under this or another contract.
2. All delivered parts which prove defective will, at GoGaS's choice, be either repaired or replaced free of charge, provided and insofar as the cause of the defect already existed at the time of transfer of risk (remedy). § 476 BGB (German Code of Law) shall remain unaffected.
  3. In the case of justified defects, the Customer must allow GoGaS the opportunity to effect remedy within a reasonable period of time.
  4. If remedy fails or would be unreasonable for the orderer (§ 440 BGB [German Civil Code]) or is dispensable because
    - a) remedy is finally and conclusively refused by the supplier,
    - b) remedy was not effected by a contractually stipulated date or within a stipulated period of time and in the contract the orderer made his continued interest in performance conditional on the timeliness of performance, or
    - c) special circumstances exist which, on the interests of both parties being duly weighed, justify repudiation of the contract with immediate effect (§ 323 (2) BGB),
 the Customer shall immediately have the right either to reduce the purchase price or, at his choice, to repudiate the contract and (where applicable in addition) claim compensation in lieu of performance or to claim refund of futile expenditure.
  5. The necessary expenses incurred in connection with remedy, in particular transport, travel, labour and material costs, will be borne by GoGaS. This shall, however, not apply to any increased expenses arising due to the item having been removed after delivery to a place other than the place of delivery, except where such removal to another place is in keeping with the intended purpose of the item.
  6. If the Customer takes receipt of a defective despite having knowledge of the defect, he may only assert the claims and rights arising from the defect if he reserved the right to do so when accepting the delivery.
  7. Data contained in brochures, advertising materials, descriptions etc. relating to dimensions, weights, performance, power consumption etc. is approximate only and does not constitute a quality description. Nor does such data constitute any guarantee of quality or durability. GoGaS reserves the right to deviate from it. The same also applies to design changes.
  8. The following applies towards entrepreneurs (business customers):
 

Claims to remedy shall lapse one year from the start of the statutory limitation period; the same also applies to the right to repudiate and to claim a reduction in the price. The aforesaid period shall not apply where longer periods are mandatorily specified by law, namely under § 438 (1) No. 2 (Building Structures and Items for Building Structures), § 479 (1) (Right of Recourse) and § 634a (1) No. 2 (Defects to Building Structures) BGB, nor in the case of wilful intent, fraudulent concealment of the defect or non-fulfilment of a guarantee of quality, nor in the event of breach of a material contractual duty ("cardinal duty"). In these cases, the respective statutory limitation periods shall apply. The foregoing shall be without prejudice to the statutory provisions relating to the suspension or stay of running of periods or the recommencement of time periods.
  9. The Customer shall only have rights of recourse to GoGaS pursuant to § 478 BGB (entrepreneur's recourse) insofar as the Customer has not agreed anything with his own customer going beyond the statutory claims for defects. The scope of the right of recourse to GoGaS pursuant to § 478 (2) BGB shall further be subject to Section VIII. 1-7, 10 and Section X of these Terms and Conditions.
  10. Claims of the Customer to damages on account of a material defect shall be governed by Section X of these Terms and Conditions.

## VII. Suitability and Nature of the Goods, Compliance with Regulations, Property Rights

1. All particulars and information provided by GoGaS and relating to the nature, suitability and applicability of the goods shall not release the Customer from the duty to conduct his own tests and trials.
2. Where the Customer is an entrepreneur (business customer), he is himself responsible for compliance with all and any statutory, official or other regulations (including, but not limited to: VDMA regulations, TÜV regulations etc.) in force at the place of destination and/or use.
3. GoGaS does not warrant that the supplied products are not in breach of rights (in particular property rights) of third parties outside of Germany. It is incumbent upon the Customer himself to ensure that this is not the case. For supplies within Germany, GoGaS warrants that it has no knowledge or rights of any third party which stand in the way of use of the items.

## VIII. Warranty, Limitation Periods

GoGaS's liability for any defects in delivery is, to the exclusion of all other claims, as follows:

1. The Customer shall have no claim for defects on account of only minor deviation from the agreed quality or, where no such agreement exists, from the customary quality, or in the case of only insignificant impairment of use, or for natural wear and tear or damage occurring after the transfer of risk as a result of faulty or negligent treatment, excessive stress or strain, unsuitable operating media, deficient building work or unsuitable building land, or arising as a result of special external influences which were not foreseen under the contract, or for non-reproducible software errors. Nor shall the Customer have any claim for defects in the case of alterations or repair work performed unprofessionally by the Customer or third parties or for any consequences resulting therefrom.

11. GoGaS will refuse to take receipt of returned goods except where it has expressly agreed in advance to accept such return or where it has a duty to accept return of the goods on account of justified repudiation of the contract. If, contrary to this provision, the Customer nevertheless sends goods back to GoGaS, he will do so at his own risk and at his own expense. In any such case, GoGaS will charge a processing fee in an amount of 15% of the list price of the returned goods; any return delivery to GoGaS must always be effected „free house“ as otherwise GoGaS will additionally charge the Customer for the costs of delivery.

#### **IX. Withholding and Offsetting of Payments**

1. Where the Customer is an entrepreneur (business customer), he may only withhold payments on account of material defects which are undisputed or have been established by a court of law.
2. The Customer may make offset only with counterclaims of his own which are undisputed or have been established by a court of law.

#### **X. Damage Claims / Exclusion of Liability**

1. All claims to damages of the Customer – irrespective of their legal ground -are barred. This shall, however, not apply in the case of fraudulent concealment of a defect, non-fulfilment of a guarantee of quality, damage or injury to life, limb or health, and/or wilful or grossly negligent breach of duty on the part of GoGaS or in the case of the breach of duties without the fulfilment of which the contract cannot be properly performed and on the fulfilment of which the customer is normally entitled to rely (material contractual duties/“cardinal duties”). Nor are claims under the German Product Liability Act affected by this limitation of liability. This limitation of liability shall likewise

apply to breaches of duties by the governing and management bodies and vicarious agents of GoGaS.

2. A claim for damages on the part of entrepreneurs (business customers) for breach of material contractual duties shall, however, be limited to the loss or damage foreseeable and typical for the type of contract concerned, except in cases of liability for wilful intent or gross negligence or for damage or injury to life, limb or health.

The foregoing limitations of liability shall likewise apply to claims for refund of futile expenditure (§ 284 BGB). The foregoing provisions shall not imply any change in the burden of proof to the detriment of the Customer.

#### **XI. Miscellaneous**

1. The place of performance shall be the registered place of business of GoGaS.
2. The exclusive legal venue shall, where the Customer is a registered trader, a legal entity organized under public law or a special asset fund organized under public law, be the courts having jurisdiction for GoGaS's place of business. GoGaS shall, however, also have the right to sue the Customer at his place of business or place of performance.
3. German law shall apply. Application of the UN Convention on Contracts for the International Sale of Goods as well as the conflict of laws rules of international private law, especially the Rome I Regulation, is barred.
4. Should any of the clauses of these Terms and Conditions be wholly or partially invalid, this shall have no effect on the validity of the other clauses or the other parts of such clauses.