GÜHRING

General Conditions of Sale of GÜHRING KG as per August 2013

Article 1. General, scope

(1) Our Terms of Sale shall apply exclusively; we do not recognise any terms of the purchaser which are contrary to, or diverge from, our Terms of Sale, unless we had explicitly agreed to their applicability in writing. Our Terms of Sale shall apply even if we execute without reservation the delivery to the purchaser while being aware of terms of the purchaser which are contrary to, or diverge from, our Terms of Sale.

(2) These Terms of Sale shall apply to all future transactions with the purchaser, insofar as these are legal transactions of a related kind.

(3) All agreements which are made between us and the purchaser for the purpose of executing this contract are stipulated in written form in this contract. Any supplements, alterations or subsidiary agreements must be confirmed in writing in order to be effective.

(4) Our Terms of Sale shall apply vis-à-vis companies as defined by Section 310 (1), German Civil Code (BGB).

(5) Our written order confirmation shall be authoritative for the scope of the performance.

Article 2. Offer, offer documents

(1) Provided that they contain nothing explicitly to the contrary, our offers are subject to change and non-binding. The order by the purchaser is a binding offer. This offer can be accepted by us within a period of two weeks.

(2) In the interests of technical progress, we reserve the right to make alterations to construction and form up until the delivery, although the interests of the purchaser may not be adversely affected by this in any unreasonable way.

(3) We reserve rights of ownership and copyright to illustrations, drawings, calculations and other documents and models. This shall also apply to written documents which are designated as 'confidential'. The purchaser shall require our express written consent before forwarding these to third parties. The measurements and structural dimensions of the standard tools listed in the documents shall correspond to the standards that prevailed at the time of the order. If we do not accept the purchaser's order within the period specified in Article 2 (1), these documents must be returned to us without undue delay.

(4) If documents (e.g. drawings, models, patterns, etc.) have to be provided by the purchaser, the purchaser shall guarantee that our use of these documents or of working documents drawn up by the purchaser will not infringe any proprietary rights of third parties. Should rights of third parties nevertheless be affected, the purchaser must exempt us from all claims in the internal relationship. Provided that there are no specific grounds for doing so, we shall have no obligation to examine the documents provided by the purchaser in respect of freedom from rights.

(5) If special tools are ordered, the order quantity may be exceeded or fallen short of by approx. 10 %, but at least by 2 units. The quantity delivered shall be charged.

(6) Returns or replacements shall be possible only after prior consultation and within 30 days. The returns must be accompanied by the appropriate documents (including order number, invoice number, delivery date, reason for the return, and return authorisation). Returns and replacements can be accepted only if the products in question are in stock, if the articles are in faultless condition (new condition) and if the return consignment was already paid in advance. In this case, we can charge a handling fee amounting to 20 % of the merchandise value. The minimum handling fee for all returns or replacements shall be € 35.00. Returns and replacements shall be precluded for special products.

Article 3. Prices, terms of payment

(1) If nothing to the contrary is included in the in the order confirmation, our prices shall apply 'ex works', excluding packaging; this shall be charged separately, as shall any freight that is desired. We shall not take back any transport packaging or other packaging in accordance with the packaging regulations; these shall become the property of the purchaser.

(2) The statutory rate of value-added tax is not included in our prices; it shall be stated separately in the invoice on the invoice issue date.

(3) If the purchase price is calculated in a foreign currency, the purchaser shall bear the risk of the foreign currency against the euro from the time when the contract is concluded until payment.

(4) Our invoices shall be due within 30 days of the invoice date. In the event of payment within 14 days of the invoice date, we grant a 2 % cash discount. Payments shall not be deemed made until they have been credited unconditionally to one of our accounts. Bills and cheques shall be accepted only on account of performance and only by prior arrangement. Any expenses associated with this or other payment methods shall be borne by the purchaser.

(5) If the purchaser fails to pay within the payment period, we shall be entitled to demand commercial maturity interest eight percentage points above the ECB's base rate. We reserve the right to assert higher claims for damage caused by default.

(6) In the event of a significant deterioration in the purchaser's financial position after the contract has been concluded (institution of insolvency proceedings, rejection of insolvency proceedings for lack of assets, deterioration in his asset level becoming known), we can withhold the delivery until the purchaser has paid, or provided appropriate collateral for the claim. If cheques submitted by the purchaser are not redeemed or bills submitted by him meet with protest, the above shall apply mutatis mutandis. If the purchaser furnishes no collateral within two weeks of being requested by us to do so, or if he declares himself unwilling to pay stage by stage during the same period, we shall be at liberty to rescind the contract. In these cases, as with cessation of payment or insolvency of the purchaser, payment shall be due immediately.

(7) The purchaser shall have offsetting rights only if his counterclaims have been established with legal force, are undisputed or have been acknowledged by us. In addition, he shall be authorised to exercise a right of retention only to the extent that his counterclaim is based on the same contractual relationship, this was affirmed in writing, or it was established with legal force. The commercial right of retention in accordance with Section 369, German Commercial Code (HGB) shall be excluded.

(8) If no agreement to fix prices was made, the right shall be reserved to alter prices as appropriate on grounds of changed wage and salary costs, material costs and selling costs for deliveries which ensue four or more weeks after the contract is concluded.

Article 4. Delivery period

(1) The commencement of the delivery period that we specify shall require the clarification of all technical and commercial questions. Thereafter, the delivery periods shall be indicated as precisely as possible to the best of our knowledge.

(2) Adherence to our delivery obligation, which begins when the order confirmation is received by the purchaser, shall continue to presup-

pose the timely and proper fulfilment of the purchaser's obligations (procurement of documents and authorisations, approvals, receipt of agreed advance payment, etc.). The objection of non-fulfilled contract shall be reserved. The delivery period shall be deemed to be complied with when the delivery item has left the plant by the time of its expiration or notification has been given that it is ready for delivery.

(3) The delivery period shall be prolonged as appropriate in the event of measures taken during labour disputes, particularly strikes and lockouts, and of unforeseen obstacles beyond our influence provided that such obstacles demonstratively have a significant influence on the production or delivery of the delivered item, and force majeure. If these circumstances affect a subcontractor of ours, the above shall apply mutatis mutandis. The same shall apply if the aforementioned circumstances come into being during a delay which is already taking place. In important cases, we shall inform the purchaser as quickly as possible about the start and likely end of obstacles of this kind. If these obstacles persist for longer than four months or if they make it permanently impossible for us to render our performance, we shall be entitled to rescind the contract either wholly or partly. The purchaser shall have no entitlement to compensation in the event of such a rescission.

(4) The purchaser may not reject partial deliveries. If payment for a partial delivery is delayed, we can suspend the remainder of the order.

(5) Even if they have insignificant defects, delivered items must be received by the purchaser, irrespective of all rights arising from Article 6.

(6) If the purchaser delays his acceptance of the items or culpably infringes other duties to cooperate, we shall be entitled to demand that any loss or damage that we suffer as a result be compensated for, including any additional expenses. We reserve the right to assert further-reaching claims.

(7) If delivery on call is agreed, we shall be entitled to deliver and charge for the finished goods after 12 months at the latest, even if the call from the purchaser has not yet been made. If the shipment is delayed by the purchaser, he shall be charged for the costs incurred in storage starting one month after notification of readiness for delivery, but no less than 0.5 % of the invoice amount for each month, if the purchaser does not prove that costs have been incurred either not at all or not in this amount. If we set a reasonable notice period which then expires fruitlessly, we shall have the right to dispose of the delivered item some other way or to deliver to the purchaser with an appropriately prolonged time period.

(8) If the prerequisites of paras. (4), (6) and (7) are fulfilled, the risk of unintended destruction or deterioration of the purchased item shall be transferred to the purchaser at the time when he has defaulted on acceptance or payment.

(9) We shall be liable under the statutory provisions, insofar as the underlying contract of purchase and sale is business to be settled on a fixed date as defined by Section 286 (2) (4) BGB or Section 376 HGB. We shall likewise be liable under the statutory provisions if, as a consequence of a delay in delivery for which we were responsible, the purchaser is entitled to assert that he no longer has an interest in continuing to fulfil the contract.

(10) Furthermore, we shall be liable under the statutory provisions insofar as the delay in delivery results from an intentional or grossly negligent contractual violation for which we are responsible; any fault of our representatives or vicarious agents must be attributed to us. Insofar as the delay in delivery is not based on an intentional contractual violation for which we are responsible, our liability for compensation shall be restricted to the foreseeable loss/damage that typically occurs.

(11) We are also liable under the statutory provisions insofar as the delay in delivery for which we are responsible results from the culpable violation of a significant contractual obligation; in this case, our liability for compensation shall be restricted to the foreseeable loss/damage that typically occurs.

(12) If we are required to deliver abroad, offers and order confirmations shall be made only under the condition precedent that any export licences which may be required are issued by the competent authorities.

Article 5. Transfer of risk

(1) If the order confirmation contains nothing to the contrary, delivery 'ex works' shall be agreed.

(2) If desired by the purchaser, we shall have the delivery covered by a transport insurance policy; any costs thereby incurred shall be borne by the purchaser.

(3) The risk shall at all events be transferred to the purchaser when the goods leave our factory or the purchaser is notified of their readiness for delivery. This shall also apply in the event of partial deliveries and/or consignment of the goods at the request and expense of the purchaser.

Article 6. Liability for defects

(1) Any claims for defects by the purchaser require that the purchaser has properly fulfilled his examination and notification obligations in accordance with Section 377, HGB.
We must be given written notification of defects without delay. The purchaser must submit every notification of defects, including detailed information about the claimed individual defects, in writing.

(2) If there is a defect in the goods for purchase and this defect is complained about within the prescribed period, we shall have the choice of whether to provide supplementary performance by rectifying the defect, or to deliver a new item free of defects. If we rectify the defects, we shall be obliged to bear all of the expenses necessitated by the rectification of the defect, especially transport, road usage costs, labour and material costs, insofar as these are not increased by the item for purchase being taken to a destination other than the place of fulfilment. Replaced parts shall pass into our ownership.

(3) If the subsequent performance is unsuccessful or if we refuse to carry it out, the purchaser shall be entitled to choose whether to demand that the contract be rescinded or the price reduced.

(4) Claims for defects shall have no applicability if usability is impaired only insignificantly, or in the event of natural wear and tear. The same shall apply in the event of defects which come about after the transfer of risk as a result of faulty or negligent handling, excessive strain, faulty assembly or unsuitable supplies. Claims which come about as a result of faulty building work, climatic influence, electrical, chemical or physical effects, or as a result of special external influences which are not prerequisites according to the contract and for which we are not responsible, shall not be compensated for by us. If repair work or alterations are carried out improperly by the purchaser or third parties, or without our prior approval, there shall be no claims for defects on grounds of this work or its consequences.
The purchaser must accept deviations of quality, quantity, weight or other factors which are customary in the trade. This shall also apply when he makes reference to patterns, brochures, drawings or illustrations when placing the order and these were not explicitly designated as binding.

(5) We shall be liable under the statutory provisions insofar as the purchaser asserts compensation claims based on intent or gross negligence, including intent or gross negligence on the part of our representatives or vicarious agents. If we are not proven to have committed an intentional breach of the contract, liability for compensation shall be restricted to the foreseeable loss or damage that typically occurs.

(6) We shall be liable under the statutory provisions insofar as we culpably infringe a significant contractual obligation (cardinal obligation); in this case, however, liability for compensation shall be restricted to the foreseeable loss or damage that typically occurs.

(7) Insofar as the purchaser is entitled to compensation for loss or damage rather than performance, our liability, also within the scope of para. (3), shall be restricted to compensating for the foreseeable loss or damage that typically occurs.

(8) Indirect damage and consequential damage resulting from defects in the delivered item are in other respects indemnifiable only if such damage can typically be expected if the delivered item is used for its intended purpose.

(9) The purchaser must vouch for the correctness of his documents and information. He must make sure that they are dimensionally accurate and correspond to the actual conditions. Should this not be the case, the additional expenses thereby incurred must be borne by the purchaser.
We shall not be liable for claims of third parties if these came into being as a result of instructions or specifications provided by the purchaser.
The purchaser shall assume the warranty vis-à-vis ourselves that the production and delivery of the contractual products manufactured in accordance with the purchaser's instructions and specifications do not violate proprietary rights of third parties.

If we are not liable under the aforementioned paragraphs, the purchaser shall exempt us from all claims by third parties.
We shall be liable for defects in material delivered by the purchaser only if we should have recognised the defect by applying due diligence.

(10) Liability on grounds of culpable loss of life, bodily injury or damage to health shall remain unaffected; this shall also apply to mandatory liability in accordance with the German Product Liability Act (ProdHaftG).

(11) Insofar as nothing to the contrary is stipulated above, liability shall be excluded.

(12) The limitation period for claims for defects is 12 months, calculated from the transfer of risk.

(13) The limitation period in the case of delivery recourse in accordance with Sections 438 (1) (2), 479 (1) and Section 634 a, BGB, shall remain unaffected; this shall be five years, calculated as from the handover of the defective item.

(14) In all cases where notifications of risk are submitted, the purchaser must give us the opportunity to inspect the goods being complained about.
The purchaser is obliged to notify us in writing without undue delay about any damage as defined by the above liability rules so that we are informed at the earliest possible stage and, if required, can engage in damage limitation together with the purchaser.

(15) Our consent must be obtained before any goods are returned.

(16) In the event of unjustified notifications of defect which lead to extensive subsequent checks, any checking costs can be charged to the purchaser.

(17) If our side gives advice or recommendations, this shall be done without any obligation to do so and to the exclusion of any liability, provided that these are not part of the scope of performance incumbent upon us under the contract.

Article 7. Joint and several liability

(1) Liability for compensation which exceeds that which is provided for in Article 6 shall – irrespective of the legal form of the claim being asserted – be excluded. This shall apply in particular to compensation claims arising from faults in the conclusion of the contract, or resulting from other breaches of obligations or tortious claims for compensation for damage to property in accordance with Section 823 BGB.

(2) Insofar as the liability for compensation is excluded or restricted vis-à-vis ourselves, this shall also apply in respect of the personal liability for compensation on the part of our blue-collar and white-collar employees, associates, representatives and vicarious agents.

Article 8. Securing title retention

(1) We shall retain the title to the delivered item until all of our claims against the purchaser arising from the commercial relationship, including claims arising in the future from contracts concluded at the same time or subsequently, have been settled. In the event of behaviour in breach of the contract by the purchaser, especially default on payment, we shall be entitled to take back the item for purchase. In this case, the purchaser shall be obliged to assign any claims for surrender against third parties to us. Our taking back of the item for purchase shall not constitute a rescission of the contract, unless we had expressly declared this in writing. If the goods are still on the purchaser's premises, the purchaser shall allow us irrevocably to enter the rooms where our property is held so that we can take it back. In addition, the purchaser shall allow us irrevocably to enter those rooms where our property is stored at any time for inspection purposes. Our seizure of the item for purchase shall always constitute a rescission of the contract. We shall be authorised to realise the item for purchase after we have taken it back, and the realisation proceeds must be set off against the liabilities of the purchaser – less reasonable realisation costs.

(2) The purchaser is obliged to handle the item for purchase with care; in particular, he is obliged to insure it adequately against fire, water and theft damage at his own expense for its value as new. If maintenance and inspection work is required, the purchaser must carry this out in good time at his own expense. The purchaser shall hold the (co-) property for us free of charge.

(3) In the event of seizures, damage, loss or other interventions of third parties, the purchaser must notify us in writing without undue delay. Insofar as the third party is not in a position to reimburse us the costs incurred in and out of court during legal action in accordance with Section 771, German Code of Civil Procedure (ZPO), the purchaser shall be liable for any shortfall that we incur.

(4) The purchaser shall be entitled to resell the item for purchase in the proper course of business; he shall hereby, however, assign to us all claims in the amount of the final invoice sum (including VAT) of our account receivable along with all ancillary rights that accrue to him from the reselling against his buyers or third parties, irrespective of whether the item for purchase was resold without or after further processing. This shall also apply to the purchaser's agreement with a buyer or third parties on a current account. We shall accept the assignment. He must pay us the receivables collected for us immediately insofar as the receivable is due. The purchaser shall remain entitled to collect this receivable even after the assignment. Our authorisation to collect the receivable ourselves shall remain unaffected by this. We undertake, however, to not to collect the receivable for as long as the purchaser fulfils his payment obligations from the revenues collected, does not default on payment and, in particular, no insolvency proceedings have been instituted and there has been no discontinuation of payment. Should this be the case, however, we can demand that the purchaser discloses the assigned receivables and their debtors to us, provides all the information necessary for their collection, hands over the associated documents and notifies the debtors (third parties) of the assignment.

(5) Any manufacturing and processing, or alteration, of the item for purchase carried out by the purchaser shall always be for us. In this case, the expectancy of the purchaser with regard to the item for purchase or the altered item shall continue to apply. If the item for purchase is processed along with other items that do not belong to us, we shall acquire the co-ownership of the new item in the ratio of the value of the item for purchase (final invoice amount, including VAT) to the other processed items at the time of processing. The item brought about by the processing shall be governed by the same principles as the item for purchase that is delivered with reservations.

(6) If the item for purchase is mixed inseparably with other items that do not belong to us, we shall acquire the co-ownership of the new item in the ratio of the value of the item for purchase (final invoice amount, including VAT) to the other mixed items at the time of mixing. If the mixing is carried out in such a way that the purchaser's item must be regarded as the main item, it shall be deemed agreed that the purchaser shall assign pro rata co-ownership to us. The purchaser shall hold the sole ownership or co-ownership that arose in this way in safekeeping for us.

(7) The purchaser shall also assign to us the claims for securing our claims against him which accrue from the linkage of the item for purchase with a property against a third party.

(8) We undertake to release the collateral to which we are entitled at the request of the purchaser insofar as the recoverable value of our collateral exceeds the receivables to be secured by more than 10 %; choosing the collateral to be released shall be incumbent upon us.

(9) The purchaser may neither pledge our property nor assign it by way of security without our consent.

(10) We are entitled to insure the delivered item at the purchaser's expense against theft, fire and water damage, and other damage if the purchaser has not demonstrably taken out an appropriate insurance policy himself.

Article 9. Assistance from the purchaser

The purchaser is obliged to assist at his own expense with the execution of the performance. In particular, he must:

a) provide suitable roads and paths for the delivery of the assembly parts and crane trucks;

b) provide the necessary dry, lockable, theft-proof rooms for storing the tools and recreation rooms for the assembling personnel;

c) protect the assembly site and the materials from damaging influences of all kinds;

d) provide special clothing in the event of steams, gases, acids, fuel-laden air, etc. which are damaging to health. The same shall apply for protective clothing or protective equipment which becomes necessary on the assembly site as a result of special circumstances and is not typical of our industry. In addition, the assembling personnel must be given instruction about the safety regulations which are important for assembly work;

e) ensure immediate medical care if any of our assembling personnel falls ill or is injured and then inform us without undue delay;

f) obtain in good time – if the operational site is outside the Federal Republic of Germany – the necessary authorisation for the assembling personnel to enter the country in question and any work permits that may be required; procure us mandatory official and other authorisations for the taking out and erection of plant and machinery; instruct our assembling personnel about all the obligations (reporting, etc.) vis-à-vis the local public authorities and about the existing safety regulations; help our personnel deal with the authorities and help them obtain all the certifications that guarantee them freedom of movement in the country and the possibility of travelling home at any time with their possessions.

Article 10. Place of jurisdiction, place of fulfilment

(1) Insofar as the purchaser is a merchant, our place of business shall be the place of jurisdiction; we are, however, also entitled to file an action against the purchaser at the court of his domicile.
(2) The law of the Federal Republic of Germany shall apply; the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.
(3) If the order confirmation contains nothing to the contrary, our place of business shall be the place of fulfilment.
(4) It is pointed out to the customer that, where applicable, personal data is stored and processed at our company and at our associated companies in accordance with the regulations stipulated by the BDSG. Furthermore, we are entitled to transfer selected debtor data to connected data pools for the purpose of checking creditworthiness.