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Managing Director: Dipl.-Ing. Heiko Schneider



## General Terms and Conditions of Delivery

Status: May 2020

### I. Scope of application, validity

1. These General Terms and Conditions of Supply (hereinafter referred to as "T&Cs") apply to all supplies and services of GoGaS Goch GmbH & Co. KG (hereinafter referred to as "GoGaS").
2. Any conflicting (or supplementary) General Terms and Conditions of Business of the Customer shall not apply. They shall only apply if, and to the extent that, GoGaS has explicitly stated that it is in agreement with them, or parts thereof. Also in the event that GoGaS supplies the goods and/or provides the services without reservation, that shall not constitute any acknowledgment of any T&Cs that deviate from or supplement GoGaS' T&Cs.
3. Should the Customer accept the service/supply of GoGaS without reservation, the Customer thereby also accepts the T&Cs of GoGaS.
4. In addition to these General Terms and Conditions of Business, the following shall apply by way of supplementation:
  - In the case of supplies and services within Germany: the "General Terms and Conditions concerning the Supply of Machinery for the Domestic Market, German" of the VDMA (German Machinery and Plant Manufacturing Association);
  - in the case of deliveries outside Germany, the Orgalime Terms and Conditions: "General Terms and Conditions for the Supply of Mechanical, Electrical and Electronic Products" (S 2000);
  - in the case of supplies and services outside Germany, the Orgalime Terms and Conditions: General Terms and Conditions for the Supply and Assembly of Mechanical, Electrical and Electronic Products" (SE 01).

GoGaS will, upon request, send the Customer a copy of the aforementioned, free of charge. For this purpose, the Customer may write to info@gogas.com or GoGaS Goch GmbH & Co.KG, Zum Ihnedieck 18, 44265 Dortmund.

In the case of conflicting provisions, the T&Cs of GoGaS shall take precedence.

### II. Offer

1. The documents forming part of the offer, such as illustrations, drawings and details of weights and measures, are only approximate unless they are explicitly designated binding by GoGaS.
2. GoGaS reserves all rights of ownership and copyright utilization rights in cost estimates, drawings and other documentation, without restriction. Said documentation may not be made accessible to third parties without GoGaS' explicit prior consent. Should

no order be placed, such documentation is to be returned to GoGaS. Any copies that have been made of the documentation, are, in such a case, to be destroyed.

### III. Scope of delivery, subsidiary agreements

The order confirmation issued by GoGaS shall be pertinent in regard to the scope of the delivery/services. Should no order confirmation be issued in the event of an offer being made by GoGaS with a binding acceptance deadline and such offer being accepted by the Customer by said deadline, GoGaS' offer shall be pertinent.

### IV. Delivery, prices, delay, customs duties and dues

1. Partial deliveries shall be permissible, in so far as they are acceptable to the Customer.
2. Deliveries will be made *ex works* (GoGaS' warehouse, Incoterms 2010). The prices specified are given inclusive of shipping at the factory, however exclusive of packing, transport and VAT. The VAT will always be shown separately.
3. Delivery and performance deadlines shall only be binding if this has explicitly been agreed. The delivery dates shall be deemed to have been met if the items to be delivered have left the factory or readiness for dispatch has been notified prior to their expiry.
4. Adherence to any deadlines for supplies/services agreed shall be dependent upon receiving all the documentation, as well as permits and approvals required, in particular plans, to be supplied by the Customer in good time, as well as compliance with the agreed terms of payment (e.g. down payments) and any other obligations on the part of the Customer. Should these prerequisites not be fulfilled in good time, the delivery and service deadlines agreed shall be appropriately extended. This shall not apply if the delay is the fault of GoGaS.
5. Should the failure to comply with agreed deadlines be attributable to Acts of God, e.g. mobilization, war, civil commotion, pandemics or similar events, e.g. strikes, lock-outs, etc., the agreed deadlines shall be reasonably extended. The same shall apply in the event of GoGaS not itself having received deliveries in good time or proper form (in the case of delivery dates being agreed, correct and timely delivery to GoGaS by its suppliers is accordingly a prerequisite). The statutory requirements on impossibility shall not be affected thereby.
6. Unless anything to the contrary has explicitly been agreed, payment shall be made without any deduction, viz.:

1/3 down payment following receipt of the order confirmation;  
1/3 once the Customer has been informed that the main components of the order are ready for dispatch;  
1/3 within a further month, or pursuant to Sec. 641 or (in the case of consumers) Sec. 650g German Civil Code (*BGB*).

7. GoGaS shall, in the event of default, be entitled to claim the statutory amount of default interest (Sec. 288 I, II German Civil Code (*BGB*)). Should GoGaS prove that greater loss on interest has been incurred due to the default in payment, this may be asserted.

Vis-à-vis entrepreneurs, the following shall apply:  
GoGaS shall, in the case of bilateral trade deals, be entitled to charge default interest in the amount of 4% as from the due date of the claim to payment.

8. Should there be any justified doubt about the Customer's ability to pay, in particular in the event of arrears of payment (also from other contractual relationships), GoGaS may, subject to any further claims, for further deliveries, require advance payments or securities from the Customer, as well as revoke any payment deadlines granted individually.
9. Any taxes, customs duties, dues, etc., which may be due for payment in the case of a delivery outside Germany, shall be the responsibility of the Customer.
10. The Customer shall be obliged, at GoGaS' request, to explain within a reasonable period of time whether it is withdrawing from the contract due to a delay in the delivery/service which is GoGaS' fault, or whether it insists upon the delivery.
11. Should the shipping or delivery or the provision of services be delayed by over a month following notice of dispatch/readiness for delivery, either at the Customer's request or due to culpable conduct on the part of the Customer, GoGaS shall - in addition to the further statutory and contractual rights, e.g. to be set a reasonable grace period and, if applicable, withdraw from the contract and claim damages, etc. - be entitled to charge a storage fee in the amount of 0.5% of the price of the service or the items comprising the delivery for each further month commenced. It shall be up to the contracting parties to prove any greater or lower storage costs.

## **V. Passing of risk, acceptance and notice of defects**

1. If the Customer is an entrepreneur, the following shall apply: The risk shall pass to the Customer at the latest upon dispatch of the items to be delivered, and in fact even if partial deliveries are made or GoGaS has also undertaken to fulfill or cover other obligations, e.g. the shipping costs or the transport of the items to the Customer's premises or other site or installation.
2. At the Customer's request, the consignment will be insured by GoGaS against theft, breakage, damage in transit, fire and water damage, as well as any other insurable risks, at the Customer's expense.
3. If the Customer is an entrepreneur, the following shall apply: Should shipping be delayed as a result of circumstances for which the Customer is responsible, the risk shall pass to the Customer as from the day of readiness for dispatch being notified by GoGaS. GoGaS shall, however, be obliged to arrange for any insurance policies required by the Customer, at the Customer's request and expense.
4. The Customer may not refuse to accept deliveries or

services due to insignificant defects.

5. If the Customer is an entrepreneur, the following shall apply: The statutory inspection and notification obligations (Sec. 377 German Commercial Code (*HGB*)) shall exist without limitation. Should the Customer fail, under Sec. 377 German Commercial Code (*HGB*), to inspect the goods or notify a defect immediately, the goods shall be deemed to have been approved and the Customer may no longer assert any rights due to defects or a shortfall in delivery. Should GoGaS negotiate with the Customer concerning a complaint filed by the latter, no tacit waiver of the defense of the goods having been inspected or the notification of defect filed late shall be implied thereby without an explicit indication of such. The same shall apply to any readiness for subsequent improvement of the defect declared by GoGaS (or in the case of a subsequent improvement that has actually been made). Any notices of defects shall require to be filed in writing.
6. In the case of construction work, the risk shall pass to the Customer upon acceptance (including any acceptance that is implicit or notional).

## **VI. Reservation of ownership**

1. GoGaS reserves ownership in any delivery items supplied (hereinafter referred to as "goods subject to retention of title") until such time as all claims have been met in full, irrespective of on what legal grounds, including any claims which may arise in future or conditional claims which may arise from any contracts concluded simultaneously or at a later date. This shall also apply if payments are made towards particularly designated claims. Should any evidence exist to justify the assumption that the Customer is unable to pay or that such inability on the part of the Customer to pay may be impending, GoGaS shall be entitled to withdraw from the contract without setting a deadline, and request the return of the goods subject to retention of title.
2. The goods subject to retention of title shall always be processed on behalf of GoGaS as a manufacturer within the meaning of Sec. 950 German Civil Code, without putting GoGaS under any obligation. The processed goods shall be deemed to be goods subject to retention of title within the meaning of Clause 1. In the event of the goods subject to retention of title being processed, combined or mixed with other goods by the Customer, GoGaS shall acquire co-ownership in the new item in the proportion of the invoice value of the goods subject to retention of title to the invoice value of the other goods used. Should GoGaS' ownership lapse due to the goods being combined or mixed, the Customer already now assigns the rights of ownership which it is entitled to assert in the new stock or item in the scope of the invoice value of the goods subject to retention of title, and keeps them safe for GoGaS, free of charge. The co-ownership rights which arise in this way shall be deemed goods subject to retention of title within the meaning of Clause 1.
3. Should the goods subject to retention of title be combined by the Customer, in its capacity as an entrepreneur, with properties pursuant to Sec. 946 German Civil Code (*BGB*), the Customer hereby, without any further statements being required, also, as a precaution, assigns its claim that it is entitled to assert as remuneration for the combining of the goods, complete with any ancillary rights, in the amount of the proportion of the value of the combined goods subject to retention of title to the remaining combined goods or to the value of its overall services provided

as at the date of the combining, to GoGaS.

4. The Customer shall only be entitled to sell on or process on the goods subject to retention of title, or combine them with other items or otherwise install then, within the scope of proper business operations. It is not permitted to dispose over the goods subject to retention of title in any other way. GoGaS is to be notified about any distraint or other access to the goods subject to retention of title undertaken by a third party, without delay. Any costs of intervention shall be borne by the Customer, unless they can be collected from the third party, and the third-party proceedings have justifiably been initiated. Should the Customer defer payment of the purchase price for its customer, it shall be required to retain ownership in the goods subject to retention of title on the same terms and conditions on which GoGaS has retained ownership of the delivery of the goods subject to retention of title. The Customer shall, however, not be obliged to reserve ownership in regard to the claims which will only arise vis-à-vis its customer in the future, as well. Otherwise, the Customer is not authorized to sell on the goods.
5. The Customer's claims arising from selling on the retained goods are hereby already at this point assigned to GoGaS. The aforementioned shall serve, in the same scope, to secure our claims, as do the goods subject to retention of title. The Customer shall only be entitled and authorized to sell on the goods subject to retention of title if it is ensured that the claims it is entitled to assert pass to GoGaS.
6. Should the goods subject to retention of title be sold by the Customer together with other goods, not supplied by GoGaS, at an overall price, the claim from selling on the goods shall be assigned in the amount of the invoice value of the respective goods subject to retention of title sold.
7. Should the claim assigned be incorporated into an ongoing invoice, the Customer already at this point hereby assigns to GoGaS a part of the balance, the amount of which corresponds to said claim, including the final balance from the open account relationship.
8. The Customer is authorized to collect the assigned claim until such time as said authorization may be revoked by GoGaS. GoGaS shall be authorized to revoke said authorization if the Customer does not duly comply with its payment obligations arising from the business relationship, or circumstances become known which are appropriate to considerably reduce the Customer's creditworthiness. Should the prerequisites for exercising the right of revocation exist, the Customer shall, at GoGaS' request, reveal the assigned claims and the debtors of them without delay, provide any details necessary for collecting the claims, hand over to GoGaS the associated documentation, and notify the debtor of the assignment. GoGaS shall also be entitled to notify the debtor of the assignment itself. The Customer shall not be permitted to assign the claims in all other respects, also not based on our collection authorization.
9. Should the nominal value (invoice value of the goods or the nominal value of the rights of recovery) of the securities existing for GoGaS exceed the secured claims by more than 10% overall, GoGaS shall, at the Customer's request, to that extent be obliged to release securities of its choice.
10. Should GoGaS assert a reservation of ownership, the latter shall only be considered withdrawal from the contract if this is explicitly stated by GoGaS in writing. The Customer's right to possess the goods subject to retention of title shall lapse if it does not fulfill its

obligations arising from this or any other agreement.

## **VII. Fitness for purpose and quality, compliance with regulations, intellectual property rights**

1. If the Customer is an entrepreneur, the following shall apply: Any details and information given by GoGaS on the quality, fitness for their purpose and usability of the goods shall not absolve the Customer from carrying out its own checks and tests.
2. If the Customer is an entrepreneur, it shall be responsible for observing any statutory, official and other regulations (for example, but not limited to, VDMA regulations, TÜV/Technical Inspection Association regulations, etc.) in the field of intended use and use itself.
3. GoGaS does not provide any warranty that the products supplied do not violate any rights of third parties (in particular intellectual property rights) outside Germany. This is always to be checked by the Customer itself. In regard to deliveries within Germany, GoGaS warrants that GoGaS is unaware of any rights of third parties being in conflict with the use of the items.

## **VIII. Warranty, statute of limitations**

GoGaS shall be liable for any defects in the delivery, subject to exclusion of any further claims.

1. No claims for defects shall exist in the case of only inconsiderable deviation from the agreed or - if nothing has been agreed - usual quality, in the case of only inconsiderable impairment of the usability, in the case of natural wear and tear or in the case any losses arising after the passing of risk as a result of defective or negligent treatment, excessive strain, unsuitable operating resources, defective building works, unsuitable subsoil or which may arise due to special external influences which are not a prerequisite under the agreement, as well as in the case of non-reproducible software bugs. Moreover, if the Customer or third parties undertake any alterations or carry out any repairs improperly, no claims for defects shall arise for the latter and the consequences resulting therefrom.
2. Any components supplied which display a defect are, at GoGaS' option, to be improved free of charge or new components supplied, in so far as and to the extent that the cause of the defect already existed as at the date of the passing of risk (subsequent fulfillment). Sec. 476 German Civil Code (*BGB*) shall not be affected thereby.
3. In the event of a justified notice of defects, the Customer shall give GoGaS the opportunity to carry out subsequent improvement within a reasonable period of time.
4. Should the subsequent fulfillment have failed, or be unreasonable (*cf.* Sec. 440 German Civil Code (*BGB*) or Sec. 636 German Civil Code (*BGB*)) or unnecessary for the Customer, because a) the subsequent fulfillment by GoGaS is finally rejected; b) the subsequent fulfillment was not carried out by a contractually agreed date or within an established grace period, and the Customer has, in the contract, associated the continuity of its interest in performance with the timeliness of the services; or c) special circumstances exist, which, taking into consideration the interests of both parties, justify immediate withdrawal (Sec. 323(2) German Civil Code (*BGB*)), the Customer shall be entitled to immediately reduce

the purchase price or, at its option, withdraw from the contract and (if applicable, also by way of supplementation) demand compensation for damage in lieu of performance or compensation for any expenses incurred in vain.

5. The expenses necessary for the purpose of subsequent fulfillment, in particular the costs of transport, road tolls and the costs of labor and material, shall be the responsibility of GoGaS. This shall not apply if the expenses are increased because the item was brought to a different location from the intended site of the delivery following delivery, unless its relocation is in line with the intended use of the item.
6. Should the Customer accept a defective delivery, although it recognizes the defect, it shall only be entitled to assert the claims and rights arising from said defect if it reserves the right to do so at the time of acceptance/formal acceptance.
7. The explanations concerning measurements, weights, efficiency, power requirement, etc. given in brochures, advertising materials, descriptions, etc. are approximate details and not details concerning quality. They do not substantiate any warranty in regard to quality or durability. Deviations excepted. This shall also apply to any changes in the technical design.
8. Vis-à-vis entrepreneurs, the following shall apply:

Any claims for subsequent fulfillment shall become statute-barred after one year as from the statutory commencement of the statute of limitation. The same shall apply *mutatis mutandis* to contract withdrawal and claiming a reduction in the price. Said period shall not apply in so far as the law pursuant to Secs. 438(1)(2) (Construction Works and Materials for Construction Works), 479(1) (Claim to Recourse) and 634(a)(1)(2) (Construction Defects) German Civil Code (*BGB*) mandatorily prescribes longer periods, nor in the case of intent, fraudulently concealing the defect or in the case of failure to comply with a quality guarantee or material contractual obligations (cardinal obligations) being infringed. The respective statutory periods of limitation shall then apply. The statutory provisions on the expiry suspension, inhibition and recommencement of the periods shall not be affected thereby.

9. Any claims to recourse against GoGaS on the part of the Customer pursuant to Sec. 478 German Civil Code (*BGB*) (Recourse of the Entrepreneur) shall only exist in so far as the Customer has not entered into any agreements with its customer that extend beyond the statutory claims for defects. In regard to the scope of the claim for recourse against GoGaS pursuant to Sec. 478(2) German Civil Code (*BGB*), No. VIII. 1-7, 11 and No. X. shall moreover apply *mutatis mutandis*.
10. Any claim for compensation for damage on the part of the Customer due to a defect in quality shall be governed by Clause X.
11. For work performed, the above provisions shall apply accordingly - in so far as they are applicable to work performed.
12. GoGaS essentially rejects returned goods, unless GoGaS has previously explicitly declared its agreement or is obliged to accept the goods due to a justified withdrawal. Should the Customer return the goods to GoGaS contrary to this provision, this shall be at the Customer's own risk and expense. GoGaS shall, in such cases, charge 15% of the list price of the returned goods as a handling fee, in regard to which any return delivery to GoGaS shall always be free of charge to GoGaS, as GoGaS will otherwise have to additionally charge the Customer the costs of the delivery. It shall

be up to the Customer to prove that no handling costs, or lower handling costs, have been incurred to GoGaS.

#### **IX. Withholding payment and offsetting**

1. If the customer is an entrepreneur, it shall only be entitled to withhold payments based on any undisputed or judicially established defects in quality.
2. The Customer shall only be entitled to offset any such claims with undisputed or judicially established counterclaims.

#### **X. Compensation for damage/Exclusion of liability**

1. Any claims for compensation for damage on the part of the Customer - on whatever legal grounds - shall be excluded. This shall not apply in the case of fraudulent concealment of a defect, non-compliance with a quality guarantee, in the case of injury to life, the body or the health and/or in the case of intentional or grossly negligent breach of duty by GoGaS, or in the case of obligations being infringed, the fulfillment of which enables the due execution of the contract in the first place, and adherence to which the Customer may usually trust (material contractual obligations/cardinal obligations). Any claims under the Product Liability Act are not affected by said limitation of liability, either. Said limitation of liability shall similarly apply to any breaches of duty through GoGaS' governing bodies and vicarious agents.
2. The claim for compensation for damage for the infringement of material contractual obligations shall, however, be limited to the contractually typical, foreseeable damage, unless intent or gross negligence exists or GoGaS is liable due to injury to life, the body or the health.
3. The above limitations of liability shall similarly apply to any claims for compensation of expenses laid out in vain (Sec. 284 German Civil Code (*BGB*)). Any change in the burden of proof to the detriment of the Customer shall not be associated with the above provisions.

#### **XI. Miscellaneous provisions**

1. The place of performance shall be GoGaS' registered office.
2. In so far as the customer is an entrepreneur, legal person under public law or special public law funds, the exclusive place of jurisdiction shall be the location of GoGaS' registered office.
3. German law shall apply, subject to exclusion of the UN Convention on the International Sale of Goods and the conflicts of law provisions of international private law, in particular the Rome I Regulation.
4. Should any individual clauses of these General Terms and Conditions of Supply be invalid, in whole or in part, that shall not affect the validity of the remaining clauses or the remaining parts of such clauses.