

GENERAL SALE CONDITIONS

1. SCOPE

- 1.1 Unless expressly agreed otherwise in writing between the contracting parties, these general terms and conditions for sales (hereinafter the "**General Sale Conditions**") shall apply to contracts entered into by Gilbarco GmbH, Ferdinand-Henze-Strasse 9, 33154 Salzkotten, Germany, in the capacity of seller (hereinafter the "**Seller**") for the delivery of goods and/or services in favour of a buyer (hereinafter the "**Buyer**").
- 1.2 Any derogation from these General Sale Conditions shall not be applied to the relationships between the parties unless expressly agreed in writing.

2. OFFERS AND ORDERS

- 2.1 Offers made directly by the Seller, although accepted by the Buyer, are not binding for the Seller until a written confirmation of the order, countersigned by the Buyer, is returned to the Seller or there has been a performance compliant with the order by the Seller. Similarly, if the Buyer has made a purchasing offer, the Seller shall not be bound until the purchasing offer has been properly confirmed in writing by the Seller, or there has been a performance compliant with the purchasing offer by the Seller.
- 2.2 Offers made by the Seller's agents are not binding for the Seller until, after a written confirmation of the order countersigned by the Buyer is returned to the Seller, the Seller confirm the offer in writing to the Buyer or there has been a performance compliant with the order by the Seller.

3. PRICES

Unless agreed otherwise in writing, prices are intended as unit price and shall apply "ex works" from the Seller's premises (EXW) (according to Incoterms 2010) exclusive of loading, taxes, customs and charges.

4. PACKAGING

- 4.1 Unless agreed otherwise in writing, prices include any packaging the Seller reserves the right to provide or not to provide at its sole discretion, except for the need to properly protect the goods during transport.
- 4.2 Lack of packaging shall never imply the awarding of discounts or allowances to the Buyer. Special full crate packaging shall be invoiced separately and its price shall be added to the sale price.

5. WEIGHTS , MEASUREMENTS AND DRAWINGS

- 5.1 All documents enclosed in our offers like illustrations, drawings, indications of weight and measurements are not definite but only estimates unless they are explicitly marked as binding. Specifications in construction drawings, foundation drawings and arrangement drawings shall only be considered as specifications, but we shall not be responsible for stability, static calculation or structural capability, unless we have the explicit task to check these aspects.
- 5.2 All drawings, user manuals, estimates of costs and other documents made available by us are subject to our property and copy rights. They shall not be revealed to third parties and only be used for the contractual purpose.
- 5.3 Cabling and electric installation has to be carried out by a certified electrical engineer and must be in accordance with all applicable laws and regulations.

6. DELIVERY

- 6.1 Unless otherwise agreed upon in writing, sale is intended as being “ex works” from the Seller’s premises (EXW) (according to Incoterms 2010). Therefore, even in case the parties agree that shipping shall totally or partially be in charge of the Seller, the latter shall act as a mandate of the Buyer, it being understood that transport shall be at the Buyer’s own expense and risk, including any expenses incurred for good stocking at carrier warehouses.
- 6.2 Terms of delivery start on whichever of the following dates is latest: (i) order confirmation date; (ii) date of receipt of all data required for delivery accomplishment. To the maximum extent permitted under the law and with the exclusion of gross negligence and wilful misconduct, in case of any delay, the Seller exclude straight away compensation for damages, as provided by article 18 below.
- 6.3 Unless otherwise agreed upon in writing, the delivery is carried out through a written communication to the Buyer (even by telex or fax), informing him that products are at its disposal; the Buyer will have a peremptory time limit of 10 days since the receipt of the communication to collect the goods, it being understood that, should the Buyer without a justified reason fail to collect or accept the goods supplied in compliance with the terms of the contract, at the contractually agreed location or on the contractually agreed date, it shall be charged with the storage charges according to the regulations and tariffs in force at the time of delivery.

7. PAYMENT

- 7.1 Unless otherwise agreed upon in writing, payments shall have to be made within the planned time limits (at the bank indicated by the Seller). Payments cannot be made to Seller’s employees or agents not owning an express written authorisation. The same rule also applies in case of payments made through drafts, transfers or direct bills, even for the purposes of judicial authority jurisdiction.
- 7.2 The Buyer is aware that failure to comply with such condition implies the duty to repeat the payment, waiving straight away any and whatever claim against the Seller itself. The Seller shall only have a right of offset or retention in the event of *res judicata* or undisputed counterclaims.
- 7.3 In case of payment by instalments, failure to pay or delayed payment of even a single instalment, will give the Seller the right to request, starting from the payment expiry date and without any need of a default action, (i) the payment of a penalty for delay equal to Euro 100.00, according to Section 341 German Civil Code (*Bürgerliches Gesetzbuch – BGB*) (ii) the interests on arrears according to Section 288 Para. 2 German Civil Code (*Bürgerliches Gesetzbuch – BGB*) and (iii) the compensation for any other suffered damage. Should the Buyer fail to pay two instalments, even non consecutive, or should it pay them late, the Seller reserves the right to resolve the contract by express termination clause pursuant to Section 323 German Civil Code (*Bürgerliches Gesetzbuch – BGB*) after demand for payment, or to request the performance of the contract through recorded delivery letter, claiming full price payment, while retaining the right to claim any compensation for damage. The Seller is authorised straight away to stop deliveries should the Buyer fail to comply with this provision.

8. WARRANTY TERMS AND CONDITIONS

- 8.1 The Seller guarantees sold goods against any manufacturing defects for twelve months from the purchasing date. This warranty only covers hardware product components and only applies to hardware products manufactured by or on behalf of the Seller and that can be identified through the mark, the trade name or the “Gilbarco” logo on them, or anyway equipped with the relevant sale invoice. The software (by the Seller or by third parties) is subject to licence contracts with the final user or to distinct warranty conditions.
- 8.2 Should any manufacturing defects be detected within the warranty period, the Seller or one of its authorised service shops shall repair/replace defective goods within the terms and under the conditions stated below, without any charge to the Buyer for the labour costs incurred to repair and/or replace the goods.

- 8.3 Replacement under warranty conditions shall only be performed if the defect is notified to the Seller within the warranty period. Procedures to request interventions under warranty conditions are subject to the following rules. In the event of an obvious defectiveness or incompleteness of the service or the supply, we are to be notified thereof in writing without delay, but at the latest within 8 days after receipt of the supply or service, and in the event of hidden deficiencies without delay but at the latest within two weeks after detection of the defect, including a precise description of the defect. At our request the defective goods are to be returned to us. Claims of the Customer on account of defectiveness or incompleteness of the delivery or service are excluded if it fails to comply with this obligation. Apart from that, German law sec. 377 HGB shall apply. Before requesting an intervention under warranty conditions the Seller encourages the user to thoroughly read the relevant operating instructions. This warranty shall not be applicable if the model indication or the serial number on the product have been modified, deleted, removed or made unreadable.
- 8.4 To the maximum extent permitted by law, expenses incurred for the transport, the packaging and the management of shipping to the Seller shall be fully borne by the Buyer. Expenses incurred for the transport, the packaging and the management of shipping to the Buyer shall be borne by the Seller.
- 8.5 The Seller reserves the right to replace defective goods or their components with new or repaired products or components. All replaced products and components shall become the property of the Seller.
- 8.6 This warranty does not cover:
- (i) the software (by the Seller or by third parties) subject to licence contracts with the final user or to distinct warranty conditions;
 - (ii) the periodic maintenance operations and the repairing or replacement of parts due to wearing or tear; e.g. glass, filters, V-belts, bulbs, hanging hardware (hoses, nozzles, hose retraction);
 - (iii) expendable items (components that are likely to request periodic replacement during the product useful life, like batteries, printer cartridges, etc.);
 - (iv) damages or defects due to inappropriate product employment, use or treatment, for purposes other than normal usage;
 - (v) damages or defects due to transport; if the transportation is not assigned to the Seller according to the agreed delivery term per section 6.1 above;
 - (vi) damages or defects due to incorrect product storage; if the storage is not assigned to the Seller according to the agreed delivery term per section 6.1 above
 - (vii) damages due to product usage under environment and operating conditions that are abnormal, or anyway do not comply with the specifications contained in the user and installation manual;
 - (viii) damages that are not duly notified in writing to the Seller according to section 8.3 above
 - (ix) damages where the Buyer has not sent back the defective parts without inappropriate delay to the Seller, in the case that this was requested by the Seller;
 - (x) damages or product changes due to:
 - I. incorrect use, including: (a) treatments causing damages or physical, style or surface alterations to the good; (b) wrong installation or use of the good for purposes other than the designed ones, or failure to follow the Seller's installation and user instructions; (c) incorrect good maintenance, not complying with the manufacturer's proper maintenance instructions, including the use of spare parts that are not genuine or indicated by the Seller; (d) good installation or use not complying with the technical or safety regulations in force;

- II. IT virus or use of the product in combinations with software not supplied with the good, or incorrect software installation;
- III. defects of the systems to which the good is connected, or into which it is incorporated, except for the products the Seller declares as specifically designed to be used in combination with its goods;
- IV. use of the good with accessories, devices and other products whose type, condition and standard are different from those prescribed by the Seller;
- V. repair operations or repair attempts by unauthorised/unqualified personnel;
- VI. good adaptations or changes made without prior written authorisation by the Seller, including: (a) good's update not complying with the specifications and functions described in the instruction manual; or (b) changes made to the good to comply with national or local technical or safety regulations in countries other than those where the good has been specifically designed and manufactured;
- VII. carelessness;
- VIII. accidental events, fires, fluids, chemicals or other substances, floods, vibrations, overheating, inadequate ventilation, over-currents, wrong input supply voltage, radiations, electrostatic discharges, including lightings, other forces and external impacts

9. RESERVATION OF TITLE

- 9.1 We keep property of the delivered products until the complete fulfilment of all present and future obligations of the Customer resulting of our business connection. In the event of a current account, the reserved goods shall be deemed as security for the claim to the account balance.
- 9.2 Until our revocation, which is admissible at any time and without any particular reason, the Customer is entitled to sell, process or recast the reserved goods within the ordinary course of business. In the event of such sale he herewith assigns to us its resulting claims of payment of the purchase price. If an assigned claim is integrated into a current account, the Customer assigns to us a part of his current account balance equivalent to the amount of this claim. Until our revocation, which is admissible at any time and without any particular reason, the Customer is entitled to collect the claims assigned to us. At our request he is obliged to notify his customers of the advance assignment and to provide us with the information and documents necessary to assert the claim.
- 9.3 Any conversion and processing of the reserved property shall be effected for us as manufacturer within the meaning of German law sect. 950 BGB, without subjecting us to any obligation. The converted/processed products shall be deemed reserved products within the meaning of these stipulations. If the reserved products are processed or inseparably mixed/combined with objects which do not belong to us, we shall acquire joint title to the new product in the proportion of the calculated value of the reserved products and the calculated value of the other products used at the moment of processing or mixing. If the reserved products are combined or inseparably mixed with other goods which do not belong to us to form a uniform object, and if this object is to be regarded as the principal object, the Customer herewith transfers co-ownership of this principal object to us on a pro rata basis, insofar as he owns this principal object. The Customer keeps safe custody of the owner's title for us together with his own title without charge.
- 9.4 The Customer hereby accepts that all products delivered by us shall only be connected with his premises for temporary use and shall not become essential part of the premises until all open accounts have been definitely settled.
- 9.5 If the value of the securities provided for us exceeds the total value of our open claims by more than 20%, at the request of the Customer we shall release corresponding securities of our choice.

- 9.6 The Customer is not entitled to make any other disposals of the reserved goods or any other assignments of the claims mentioned in clause above. In the event of a levy of execution or seizure attachment concerning the reserved goods, the Customer is obliged to make our ownership known and inform us without delay.
- 9.7 The Customer is obliged to insure the reserved goods appropriately against all usual risks, in particular fire, theft and water damage, at his own expense, to treat them carefully and store them properly
- 9.8 If the Customer is in default with payment, we are entitled to take back the reserved goods after setting a period of grace which expires without result.

10. PRODUCT-RELATED RESPONSIBILITY

Unless it provides evidence that the defect that caused the damage to people or objects already existed at sale time, the Buyer shall hold harmless and indemnify the Seller from any responsibility, damage, expense and cost the latter may be called to account for pursuant to and in accordance with the German Product Liability Act (*Produkthaftungsgesetz*) for liability related to defective products, in case the damage can anyway be ascribed to the Buyer, in particular if the latter has improperly used the good, has allowed the intervention of personnel not authorised by the Seller for good's maintenance or repair, has used spare parts without the marking artwork of the Seller, or approved by the latter, has used any products not recognised by the manufacturer (see clause 8 above), has failed to carry out good's maintenance when planned, or has failed to comply with the indications contained in the installation, user and maintenance manuals during installation, maintenance and use.

11. ACCEPTANCE OF GOODS

- 11.1 Complaints concerning the non-conformity of delivered goods with the order or the offer, and in particular complaints concerning colour, quantity, weight and so on, must be lodged by the Buyer to the Seller's without delay according to section 8.3 above. Otherwise goods are considered as definitively accepted.
- 11.2 Alleged or actual damages suffered during transport must be immediately notified to the carrier, as the Seller shall not be responsible for any of such damages.

12. CHANGE IN CIRCUMSTANCES

If, due to reasons that cannot be foreseen by a normally experienced business operator, fulfilment of the Seller's orders has become too costly for the consideration originally agreed upon, the Seller may request a revision of the contractual conditions, and, failing that, declare the contract resolved. In the latter case, the Seller shall refund any sums paid by the Buyer with interests. The right to claim compensation for damages remains unaffected.

13. ADVERTISING

- 13.1 The Seller shall not be liable to public statements made in the advertising if the Buyer is unable to prove that the statements influenced its decision to purchase or if the Seller was not and could not be expected to be aware of such statement or if the statement had already been rectified at the time the Buyer decided to make the purchase.
- 13.2 Changes made for manufacturing enhancements cannot be questioned by the Buyer. In any case drawings, pictures, photos, models, catalogues, etc., even when annexed to offers or orders, shall remain the property of the Seller, and cannot be copied, reproduced or transferred to third parties without prior written consent of the Seller.

14. CHANGE IN THE BUYER'S MEMBERSHIP INTEREST

The Seller has the right to terminate the contract or, alternatively, request the payment of all the amounts still due in case of any substantial changes in the Buyer's membership interest.

15. LIMITATION OF BUYER'S REMEDIES

To the maximum extent permitted under the law, and with the exclusion of gross negligence and wilful misconduct, the Seller shall: (i) not be liable for any indirect, incidental, consequential and/or, if applicable, punitive damage based upon breach of contract (including but not limited to breach of warranties), negligence, strict tort and/or any other legal, equitable or statutory claim and/or legal proceeding; and (ii) be solely liable for actual damages caused by a Seller's breach of contract, provided that, in this case, Seller's overall liability would not exceed the contract price of the goods furnished by the same.

16. PROPRIETARY RIGHTS

Seller shall retain all rights to designs, drawings, patterns, plans, specifications, technology, technical data and information, technical processes and business methods, whether patentable or not, arising out of or evolving as a result of Seller rendering engineering services to and designing systems and goods for Buyer's use. Buyer agrees not to enforce against Seller or customers of Seller any patent rights, the scope of which includes a system, process or business method utilizing goods or engineering services delivered hereunder by Seller and which relates to an invention, improvement, enhancement or development made by or for Buyer on a date subsequent to the date of Seller's offer hereunder.

17. HAZARDOUS MATERIALS

Buyer acknowledges that certain supplies covered by this contract may be, or become, considered as hazardous materials under various laws and regulations. Buyer agrees to familiarize itself (without reliance on Seller except as to the accuracy of special safety information actually furnished by Seller), with any hazard of such materials and their applications and the containers in which such materials are shipped. Buyer agrees to inform and train its employees and its customers as to such hazards. Buyer agrees to waive any claim against Seller and hold harmless and indemnify Seller against any claims by its employees or customers based on allegations relating to any such hazards except where such claims are based on failure to meet written specifications or the inaccuracy of specific safety information actually furnished by Seller.

18. DELAY

18.1 Delivery dates are approximate and are not guaranteed and, to the maximum extent permitted under the law, and with the exclusion of gross negligence and wilful misconduct, Seller shall not be liable for damages of any kind resulting from any delays in fulfilment, shipment or delivery of orders. Furthermore, Seller shall not be liable for any other loss, damage, cost or expense due to causes beyond its reasonable control, such as acts of God, acts of Buyer, acts of civil or military authority, fires, strikes, floods, epidemics, war, riot, delays in transportation, government restrictions or embargoes, or difficulties in obtaining necessary labour, materials, manufacturing facilities or transportation due to such causes.

18.2 In the event of a delay in delivery in excess of ninety (90) consecutive days, Buyer has the right to cancel its order as to the undelivered portion thereof without penalty.

19. CANCELLATION

Unless otherwise agreed in writing by Buyer and Seller, all cancelled orders will be subject to a 15% cancellation fee. Furthermore, Seller is entitled to ask to Buyer the reimbursement of any additional damages it may incur. Buyer may not cancel orders for non-standard goods or orders for goods which have left Seller's premises.

20. COMPLIANCE WITH LAWS/ANTI-CORRUPTION

Buyer shall comply fully with all applicable laws, rules and regulations, including without limitation those of the United States and any and all other jurisdictions globally (the "Laws") that apply to Buyer's business activities in connection with its purchase of goods from Seller. Specifically, Buyer

shall comply with all the Laws relating to anti-corruption, bribery, extortion, kickbacks, or similar matters that are applicable to Buyer's business activities in connection with this contract, including without limitation the U.S. Foreign Corrupt Practices Act, the UK Bribery Act and the Strafgesetzbuch (*German Criminal Code*) . Buyer will take no action that will cause Buyer or Seller or any of their affiliates to violate any such Laws.

21. ENTIRE AGREEMENT

Unless otherwise agreed in writing by Seller and Buyer, these General Sale Conditions constitute the entire agreement between the parties, there being no other promises, terms, conditions and/or obligations referring to the subject matter not contained herein. If any term or provision of this contract shall to any extent be invalid or unenforceable, the remainder of the contract shall not be affected thereby, and each term and provision of this contract shall continue to be valid and enforced to the fullest extent permitted by law. Any modifications hereto shall be agreed by the parties in writing.

22. GOVERNING LAW AND JURISDICTIONS

22.1 This contract shall be governed by German law, under exclusion of its conflict-of-laws provisions and the UN-Convention on Contracts for the International Sale of Goods.

22.2 For any litigation or dispute the only court having jurisdiction shall be the court of Paderborn.

23. ELECTION OF DOMICILE

For the purposes of communications and notifications, the Seller and the Buyer declare to elect domicile at their respective registered offices.

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