

General Terms & Conditions for Supply of Products (May 2020)

1. Scope and Application of these Terms and Conditions

- 1.1. The present terms and conditions ("Terms and Conditions") govern the contractual relationship between Gurtec GmbH ("Gurtec"), with registered seat Gurtecstrasse 3, 38170 Schöppenstedt, Germany, and the customer ("Customer"). Unless otherwise agreed in writing, they apply to all orders placed by and contracts made with Customer.
- 1.2. Individually negotiated contract terms shall prevail over the present Terms and Conditions provided they have been set out in writing (including email or telefax).
- 1.3. Any general terms and conditions of Customer shall be inapplicable, unless otherwise agreed by both parties in writing in a specific case.

2. Order Process

- 2.1. The products to be supplied by Gurtec ("Products") are defined in specific purchase documents. Orders by Customer shall only be binding on Gurtec once and to the extent they have been confirmed by Gurtec in writing (including by email). Upon issuance of the order confirmation by Gurtec, a binding agreement regarding the supply of Products indicated therein shall be deemed to have been made. In case of discrepancies between the order and the order confirmation, the latter shall prevail.
- 2.2. Information in Gurtec's catalogues, brochures and other sales materials is preliminary and non-binding. Gurtec shall be free to accept or reject orders by Customer, regardless of previous transactions.

3. Cancellation / Modification of Orders

- 3.1. In the event of a jointly agreed cancellation of confirmed orders (completely or partially), resulting costs and liabilities shall be agreed on a case-by-case basis.
- 3.2. Technical requirements regarding the Products which are communicated by Customer prior to the confirmation of the Order will be duly considered by Gurtec. Requirements or wishes communicated after the confirmation of Orders are not legally binding, unless they are expressly confirmed by Gurtec in writing (including email or telefax).

4. Delivery / Inspection on Delivery

- 4.1. Delivery of Products purchased by Customer shall be made to the place of delivery indicated in Gurtec's order confirmation. Gurtec is responsible for determining the transport route. Unless otherwise agreed, deliveries shall be made EXW (Ex-Works) in accordance with Incoterms® 2010. The transfer of risk takes place when the goods are handed over to the freight forwarder, but at the latest when the goods leave our factory. The transfer of risk remains unaffected by any agreements regarding transport and insurance.
- 4.2. To the extent that installation and/or commissioning services are provided by Gurtec in relation with the supply of Products ("Works"), Gurtec shall make the Works available to Customer for acceptance. Unless otherwise agreed, Customer shall accept the Works within seven (7) days after they were made available if the created Works do not have any defects that preclude acceptance.

If the Works are not accepted within seven (7) days after they were made available, Gurtec is entitled to request acceptance by Customer in writing, setting a reasonable deadline. Upon expiry of this renewed deadline, the Works shall be deemed accepted.
- 4.3. Customer's rights in case of defects of the Products shall require that Customer examines the Products upon delivery without undue delay and notifies Gurtec of any defects in writing and without undue delay; hidden defects must be notified to Gurtec in writing without undue delay upon their

discovery. Acceptance tests shall only occur, if so agreed on a case-by-case basis. In such case, the relevant procedure, timing and consequences of acceptance tests shall be set out in a written document forming part of the contractual documentation.

- 4.4. Unless otherwise agreed in writing, time of delivery shall not be deemed to be an essential contractual obligation.

5. Prices and Payment Terms

- 5.1. All prices for Products quoted by Gurtec are exclusive of taxes, levies and duties (including in particular VAT and customs duties), and freight charges and packing costs in relation with the supply of Products. Such taxes, levies, duties, charges and costs shall be borne by Customer. Any third-party costs settled by Gurtec on behalf of Customer shall be invoiced by Gurtec together with the Products or services to which they relate, subject to a reasonable handling fee, and shall be fully reimbursed by Customer.
- 5.2. A price offer for Products quoted by Gurtec with respect to a specific project or transaction does not give Customer the right to obtain the same price in subsequent pricing requests and purchases of Products from Gurtec.
- 5.3. Unless otherwise agreed in writing, Gurtec's invoices are due and payable after the invoice date. Deductions from the invoice amount, whether by way of cash discount or otherwise, are not permissible.
- 5.4. Customer is only entitled to offset if its counterclaim is uncontested, ready for decision or has been finally adjudicated.
- 5.5. Customer is only entitled to assert a right of retention to the extent that its counterclaim is based on the same contract and is uncontested, ready for decision or has been finally adjudicated.

6. Payment Default / Transfer of Title

- 6.1. In the event that Customer fails to respect the agreed payment term, Customer shall automatically, i.e. without further notice, be deemed to be in default, and Gurtec shall be entitled to demand default interest in the applicable statutory amount as of the due date.
- 6.2. In the event that Customer should (i) be in default with any due amounts owed to Gurtec, or (ii) become bankrupt, enter into liquidation, receivership or any other composition scheme with creditors and there is a risk of Customer's inability to make payment, Gurtec shall have the right to cancel any open orders and/or rescind any supply contracts with Customer after the unsuccessful expiry of a reasonable grace period and demand the return of any Products, for which payment has not yet been received in full.
- 6.3. Title to Products sold to Customer shall only pass to Customer upon settlement of the entire purchase price.

7. Handling of Products

- 7.1. Customer shall ensure that the Products are used only for the purposes and in the manner for which they were designed and supplied by Gurtec.
- 7.2. Customer shall take measures to ensure that all persons likely to use or come into contact with the Products receive appropriate training and instructions, that any relevant safe working practices are adopted and complied with, that warning notices displayed on or provided with the Products are not removed or obscured, and that the Products are only used in accordance with Gurtec's instructions and warnings.
- 7.3. In the event that any claim should be brought against Gurtec by third parties due to Customer's non-compliance with this

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Clause 7, Customer shall fully indemnify and hold harmless Gurtec against any such claims.

8. Warranty for Defective Products

- 8.1. Gurtec warrants that Products sold pursuant to these Terms and Conditions shall, during the term of the Warranty Period, be in compliance with the specifications provided by Gurtec. Any other express or implied warranties or representations, including in particular any warranty or representation of merchantability, fitness for purpose, or warranty regarding the interaction of Products with equipment, software or systems of third parties, are expressly excluded, unless otherwise mutually agreed by the parties in writing (including email).
- 8.2. The liability period for defects is 12 months and begins with the delivery of the Products to the agreed delivery location. For deliveries Ex-Works, the warranty period is 15 months and begins as soon as the Products have been made available to the customer at the place specified in the order and the customer has been informed.
- 8.3. The statutory limitation period shall apply (i) to Customer's rights in case of defects concealed in bad faith or caused intentionally, (ii) if and to the extent that Gurtec has assumed a guarantee, (iii) to damage claims of Customer due to culpable damage to life, body or health, (iv) to damage claims of Customer due to any damage caused by Gurtec intentionally or by gross negligence, (v) to damage claims of Customer due to other reasons than defects of the Products, as well as (vi) to claims under the German Product Liability Act or in case of other mandatory statutory liability provisions.
- 8.4. Any non-conformity discovered by Customer during the warranty period shall promptly be notified to Gurtec in writing. Subject to such notice, Gurtec shall have the right to inspect and test the Products to which objection was made. Customer will grant Gurtec the required period of time and opportunity to exercise such right. Products which are not in conformity with the agreed specifications may be returned to Gurtec at its cost on its demand. In these cases, Gurtec shall examine the Product within a reasonable period of time. If Gurtec determines, in its sole discretion, that the relevant Product falls under the warranty pursuant to this Clause 8, Gurtec shall, at its choice, replace or repair the Product, at no cost for Customer ("**Subsequent Performance**"). In this case, Gurtec shall also cover the transportation costs back to Customer.
- 8.5. Should Customer's notification of the defect prove to be unjustified and provided Customer has realized this prior to the notification of the defect or has not realized it in a negligent manner, Customer shall be obliged to reimburse Gurtec for all costs incurred in this respect, e.g. travel expenses or shipping costs.
- 8.6. Should the Subsequent Performance fail, should such remedy be unreasonable for Customer or has Gurtec refused such remedy pursuant to Section 439 (4) German Civil Code (*Bürgerliches Gesetzbuch*; "**BGB**"), Customer may, at its option, rescind the contract in accordance with the statutory provisions or reduce the purchase price and/or claim either damages pursuant to section 9 or the reimbursement of its futile expenses.
- 8.7. Customer's warranty rights are subject to Gurtec's determination that (a) Gurtec was promptly notified in writing of the defect within the warranty period, (b) the Product was returned in a condition suitable for testing, (c) Gurtec's examination of such items discloses to its reasonable satisfaction that the Product is defective, that the defect was not caused by misuse, abuse, neglect, alteration, improper storage, transportation or handling, or a force majeure event, and (d) Customer has not attempted to repair the Product itself or to

have it repaired by any third party. The warranty does not cover damages that were caused by improper handling or storage, or by unforeseeable external factors.

- 8.8. Excluded from the liability for defects are wear parts (support and buffer rings, support disks, rubber coverings etc.) as well as the assertion of any consequential damage of any kind and lost profit.

9. Limitation of Liability

- 9.1. Gurtec's obligation to pay damages shall be limited as follows:
 - 9.1.1. For damages caused by a breach of a material contractual obligation, Gurtec shall only be liable up to the amount of the typically foreseeable damage at the time of entering into the contract, however, at most up to the respective value limit of the new goods value. Gurtec shall not be liable for damages caused by a breach of a non-material contractual obligation.
 - 9.1.2. The limitation of liability as set out above shall not apply to damages caused intentionally or by gross negligence, culpably caused personal injuries nor to any liability under the German Product Liability Act and in case of any further mandatory liability. Furthermore, it shall not apply if and to the extent Gurtec has assumed a guarantee for the corresponding order.
- 9.2. Customer shall take all reasonable measures necessary to avert and reduce damages.

10. Product Liability

If Customer sells the Products, whether unchanged or changed, whether after processing, transformation, joining, blending or mixing with other goods, Customer shall indemnify Gurtec in their internal relationship against any product liability claims of third parties if and to the extent Customer was liable for the defect leading to the liability towards third parties.

11. Intellectual Property Rights / Data

- 11.1. Customer acknowledges that all intellectual property rights relating to the Products, in particular all know-how, patent rights, design rights, copyrights and related rights, database rights and trademark rights, relating to the Products and/or the underlying technology and processes for the development, manufacturing or provision of Products (collectively "**Intellectual Property Rights**"), shall at all times remain the property of Gurtec and/or, as the case may be, of Gurtec's affiliates, and that Customer does not acquire any right, title or interest in such rights by virtue of purchasing Products from Gurtec. The Products are solely provided for Customer's use pursuant to these Terms and Conditions and the relevant order confirmation.
- 11.2. Gurtec's Intellectual Property Rights extend to data generated in connection with the use of Products, which are made available to Gurtec ("**Data**"). Customer acknowledges and agrees that Gurtec will collect, process, analyze and use such Data for internal purposes, in particular for further developing and improving Gurtec's Products and services.
- 11.3. In the event that Customer should become aware that Gurtec's Intellectual Property Rights may be infringed, it shall inform Gurtec thereof as quickly as possible and shall assist Gurtec in order for it to take the necessary measures to protect its Intellectual Property Rights.
- 11.4. Customer shall notify Gurtec promptly if it should receive notice of any demand, claim, suit or proceeding alleging that Products of Gurtec infringe any intellectual property rights of a third party.

12. Data Collection and Data Processing

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- 12.1. Gurtec shall collect and process personal data only and to the extent required under these Terms and Conditions, and/or agreements made further to them.
- 12.2. Gurtec shall ensure that the collection and processing of personal data occurs in compliance with all applicable data protection standards.

13. Confidentiality

- 13.1. Confidential information of Gurtec regarding the Products and/or the underlying technologies and software, or regarding Gurtec's terms of collaboration with Customer, or regarding operational, financial, or other business information relating to Gurtec and/or its affiliates ("**Confidential Information**") shall be kept confidential by Customer, and shall not be disclosed to any third parties without Gurtec's prior written agreement, unless specifically required by a final judgment or order by a competent governmental authority, court, tribunal, or regulatory body.
- 13.2. The obligations pursuant to this Clause 13 shall not apply to any Confidential Information which (i) has entered the public domain other than as a result of Customer's breach of its confidentiality obligations, (ii) has been lawfully received by Customer from a third party on an unrestricted basis, (iii) was known to Customer prior to disclosure by Gurtec or (iv) was independently developed by Customer.

14. Force Majeure

Gurtec shall not be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock-outs, accidents, riots, pandemics, war or civil war (whether declared or not), fire, breakdown of plant or machinery, shortage or unavailability of raw materials from a natural source of supply or embargo measures or trade sanctions ("**Force Majeure Event**"). The Party affected by a potential Force Majeure Event shall notify the other Party no later than five (5) calendar days after information about the potential Force Majeure Event has become available and liaise with the other Party in order to determine adequate mitigation measures.

15. Permits and Licenses / Compliance with Laws

- 15.1. It is Customer's sole responsibility to ensure that it disposes of the necessary permits or import licenses to import and/or use the Products. Customer shall promptly provide Gurtec with any documentation or information which Gurtec may need to obtain any export licenses, or to fulfill any other regulatory requirements.
- 15.2. Customer undertakes to comply at all times with all applicable laws and regulations concerning the use of the Products, including, but not limited to customs regulations, environmental laws, transport regulations, health and safety regulations and insurance requirements.
- 15.3. The supply of Products may be subject to specific restrictions on the export, re-export or import of technology and/or to export restrictions and trade sanctions. Customer is aware that Gurtec may be, further to such export restrictions, trade sanctions or similar regulations, under an obligation to prevent any supply of Products to specific countries or end-customers. Customer undertakes not to export, re-export or import, directly or indirectly, any such Products obtained from or provided by Gurtec without strictly complying with the applicable restrictions and obtaining the necessary licenses or approvals.

16. Applicable Law and Jurisdiction

- 16.1. These Terms and Conditions, and any transactions made further to them, shall be subject to German law, excluding the UN

- Convention on Contracts for the international Sale of Goods,
- 16.2. The exclusive place of jurisdiction for all disputes arising out of or in relation with the present Terms and Conditions, or any transactions made further to them, shall be our registered seat, in Germany.