

# General terms of purchasing

## GSS GmbH General Terms and Conditions of Purchase

- valid as of 1 October 2017 -

### 1. Scope, Conclusion of Contracts

1.1. Except where otherwise agreed in writing, the following General Terms and Conditions of Purchase of Global Systems Solutions GmbH (hereinafter referred to as “GSS GmbH”) are to be regarded as the contract content.

1.2. These General Terms and Conditions of Purchase shall govern all future business relations, even if not expressly agreed upon again.

1.3. General Terms and Conditions of GSS GmbH’s supplier (hereinafter referred to as “Contract Partner”) are not to be regarded as content of this contract, even if not expressly objected to by GSS GmbH. Insofar as the General Terms and Conditions of the Contract Partner fail to coincide with the following General Terms and Conditions of Purchase, the Contract Partner must notify GSS GmbH in good time before the conclusion of the contract expressly and in writing that the General Terms and Conditions of Purchase of GSS GmbH are not acceptable. Should it fail to do so, the Contract Partner waives its right to assert its contradicting Terms and Conditions.

1.4. All offers and services by GSS GmbH are addressed only to merchants acting within their business in accordance with the German Commercial Code (*Handelsgesetzbuch*, “HGB”), to corporate bodies organized under public law (*juristische Personen des öffentlichen Rechts*) or special assets under public law (*öffentlich-rechtliche Sondervermögen*).

1.5. Except where otherwise agreed in writing, the Contract Partner is obligated to accept GSS GmbH’s order in writing, via fax or email within a reasonable deadline period, at the latest, however, within a deadline period of five (5) working days. If GSS GmbH’s order is not accepted within the specified deadline period, GSS GmbH is entitled to withdraw the order. Receipt by GSS GmbH is decisive for determining if the offer was accepted in due time.

1.6. Orders issued by GSS GmbH must be made in writing, via fax or email in order to be legally binding; orders issued in writing or via fax must be signed. This does not apply to orders issued automatically from GSS GmbH that have an order value of no more than net EUR 5,000.00, which are valid without signature and can also be executed via data transmission. Orders issued verbally require written confirmation or confirmation via fax or email from the Contract Partner.

1.7. Conclusion of contracts and other agreements become binding only if GSS GmbH accepts the Contract Partner’s offer or if GSS GmbH’s order is accepted unconditionally by the Contract Partner.

### 2. Compliance with Regulations

2.1. The Contract Partner undertakes to comply with all relevant statutory provisions, the regulations of the supervisory bodies, the employees' insurance liability insurance associations, and the existing requirements and directives regarding implementation, occupational safety, product safety, fire and environmental protection (e.g. EC directives, ordinances on working materials and workplaces) as well as industry standards. Upon request, the Contract Partner makes all information and documents regarding the delivery items available to GSS GmbH immediately as required by GSS GmbH to comply with statutory requirements.

2.2. The Contract Partner complies with the relevant regulations on hazardous goods. The Contract Partner provides GSS GmbH with an overview of all hazardous goods and substances that are used to fulfil the individual contract. The Contract Partner maintains the relevant safety data sheets and sends copies of these to GSS GmbH upon request.

2.3. In conjunction with these General Terms and Conditions of Purchase, the Contract Partner complies with the relevant current valid guidelines of GSS GmbH (particularly for third-party companies or visitors to the respective locations, for example). The Contract Partner is responsible for informing itself about the applicable provisions.

2.4. The relevant current valid guidelines of GSS GmbH can be reviewed at [www.gss-global.com](http://www.gss-global.com)

### **3. Execution of the Order**

3.1. GSS GmbH will specifically regulate the execution of the order. The specific features are stipulated in the service descriptions, which are an integral part of the individual contract attached as an appendix. The services ordered in the context of the order issued by GSS GmbH (such as the delivery of goods, the manufacture, delivery and assembly of works or works services as well as consulting services) are to be performed by the Contract Partner in a flawless and professional manner in accordance with the designs, documents and instructions provided by GSS GmbH. They will be executed conscientiously by the Contract Partner and correspond with the most recently acknowledged developments in science and technology.

3.2. If the order is not based on a service description or other similar documentation, the performance of services by the Contract Partner will be separately agreed upon by the parties, if applicable, also verbally.

3.3. In connection with the delivery, the Contract Partner provides GSS GmbH with appropriate installation, instruction and maintenance manuals as well as relevant material safety data sheets. These documents must contain all specific warning notices and/or instructions in German and English as well as in the language stipulated in the delivery agreement, if any.

3.4. The Contract Partner ensures that a responsible contact person is available at all times to GSS GmbH who is authorised to make any necessary decisions for the Contract Partner and who shall coordinate alignment between the Contract Partner and GSS GmbH. GSS GmbH is entitled to obtain information at any time about the contractual execution of the service. Upon request, the Contract Partner appropriately informs GSS GmbH in particular about the status of the work as well as all circumstance that could be considered significant for GSS GmbH.

3.5. Prior to accepting the offer, the Contract Partner analyses and reviews the specification of the delivery item. The Contract Partner confirms that the specification is suitable and appropriate in order to produce the delivery item in line with the individual contract.

3.6. With regard to the manufacture of delivery items, the Contract Partner must conduct at least a plausibility test on the measurements provided by GSS GmbH. Upon special request from GSS GmbH, the Contract Partner takes measurements and provides GSS GmbH with an illustration of the relevant measurements.

3.7. Furthermore, the Contract Partner must provide information in its offer about possible limitations to the product quality (particularly also about any standard wear, if applicable).

3.8. The Contract Partner ensures that the delivery is made to the agreed destination. In general, the Contract Partner bears the shipping costs, unless the parties have agreed upon delivery subject to charge in writing. The respective destination is also the place of performance (*Bringschuld*). The risk of accidental loss or accidental deterioration of the delivery item passes to GSS GmbH upon proper and complete delivery to the designated destination at no cost to GSS GmbH (*Lieferung frei Haus*).

3.9. The Contract Partner undertakes to pack, label and load the delivery items for transport in a way that ensures the integrity of the delivery during loading, unloading and transport. Packaging, repackaging, packaging materials and goods carriers may not contain any hazardous substances and must be recyclable unless a take-back agreement or take-back system exists. All relevant laws and regulations applicable to the transport must be complied with.

3.10. The Contract Partner obtains immediately all documents in full and other information that is necessary according to customs regulations or other laws and regulations, in particular drawback documents, evidence of origin as well as all other information that refers to the origin of the goods and materials that are contained in the goods in terms of commercial or preferential law. If required for customs purposes, the Contract Partner issues a commercial invoice in duplicate.

3.11. The Contract Partner complies with the delivery dates agreed in the individual contract. This is essential for the fulfilment of the individual contract. GSS GmbH is not obligated to accept delivery items that are delivered before the agreed delivery date. The Contract Partner bears the risk of loss or damage to delivery items that are delivered before the agreed delivery date. GSS GmbH is entitled to send back excessive deliveries at the Contract Partner's risk and cost, which includes all packaging, processing, sorting and transport costs.

3.12. GSS GmbH may postpone delivery dates based on delivery calls for up to two (2) months. This does not entitle the Contract Partner to change the prices, or to reimbursement or compensation.

3.13. Either together with the delivery, or if the delivery items are to be assembled by the Contract Partner, the Contract Partner transfers a respective delivery confirmation immediately after delivery of the product that contains the order number and article number stated on GSS GmbH's order, the exact description of the delivery item, the amount and weight (gross and net).

3.14. If possible based on the nature of the delivery item, the Contract Partner specifies test intervals for the technical assessment of the delivery item's operational safety; this will be provided to GSS GmbH with documentation for the parts to be assessed or serviced during installation at the latest. Upon request, the Contract Partner provides GSS GmbH with an offer for safety checks or maintenance work.

3.15. If the Contract Partner becomes aware of defects related to GSS GmbH's items, GSS GmbH must be informed of this immediately. This is particularly applicable if safety defects are involved. The Contract Partner will appropriately instruct the staff assigned by the Contract Partner and monitor compliance with this obligation.

3.16. The specific features of the execution of the order are coordinated by the responsible contact person for the Contract Partner and an employee of GSS GmbH before the respective service is performed. Employees assigned by the Contract Partner to execute the order are instructed in conjunction with the coordination conducted by the responsible contact person of the Contract Partner.

3.17. The Contract Partner performs its services with the corresponding use of materials under its own responsibility, with its own personnel, by its own means of occupational safety materials and machines. In order to fulfil the contractual services, the Contract Partner may make use of subcontractors. However, prior express written consent from GSS GmbH is required for the use of subcontractors. Any consent from GSS GmbH is contingent upon precautionary assignment of claims for performance against the subcontractor. The Contract Partner remains responsible for the proper performance of the contractual services for GSS GmbH in any case.

3.18. GSS GmbH is entitled to request changes at any time to the delivery items, designs, specifications, logistics processes (such as packaging and shipping) of an individual contract. As a general rule, the Contract Partner shall present the consequences of such a change in terms of price and delivery date by providing a calculation and, if required, additional necessary documentation within two (2) weeks of notification of the request for change. If such a change requires an adjustment in terms of price or delivery dates, the contract partners shall agree upon an appropriate amendment of the individual contract.

3.19. The Contract Partner may not replace materials or change the place of manufacture, production process or the specification of the goods without prior written consent from GSS GmbH. GSS GmbH will only refuse such consent based on legitimate reasons.

## **4 Personnel**

### **4.1. General Provisions**

a) The Contract Partner selects the personnel assigned to fulfil the contractual performance with due care. The Contract Partner ensures that the selected employees are reliable and suitable for the intended services. Furthermore, the Contract Partner ensures that the employees are committed to performing their work with professional due diligence and monitors compliance with their duties.

b) The personnel selected by the Contract Partner must always have the necessary technical expertise as well as sufficient professional experience to perform the contractual services. Furthermore, the Contract Partner ensures that no legal regulations and/or provisions

oppose the assignment of the respective personnel and that the applicable occupational safety and accident prevention regulations are complied with.

c) There are also services that are objects of the individual contracts that must be performed by a qualified electrician. The relevant regulations for the use of qualified electricians also apply. The Contract Partner ensures that the qualified electrician performing the work is aware of the applicable regulations. With regard to services that require a specific professional training in order to be performed pursuant to relevant regulations (e.g. welding, use of forklifts), the Contract Partner must ensure that the employee performing the task holds the necessary professional expertise and certification.

d) If GSS GmbH reasonably assumes that the conduct or qualification of the personnel assigned by the Contract Partner does not correspond with the provisions in this section, and informs the Contract Partner of this, the Contract Partner undertakes measures that it considers reasonable and necessary to address the problem.

e) For security reasons, GSS GmbH must issue prior written consent regarding the assignment of the Contract Partner's personnel to GSS GmbH's locations. Upon request by GSS GmbH, the Contract Partner provides GSS GmbH with a list of the personnel assigned by the Contract Partner before each assignment/contract. In particular, the list must include the following information: last name, first name, date of birth, profession, nationality. GSS GmbH is only entitled to refuse approval of a person suggested for the assignment based on good cause. A good cause exists, in particular, if there is considerable concern with regard to the qualification, suitability or trustworthiness of a person to be assigned or other legitimate security concerns.

f) For security reasons, interventions on parts of the building systems (e.g. air conditioning, sanitary, sound insulation/electric, telecommunications and smoke extraction systems) require prior express written consent from GSS GmbH in the individual contract, if any, or in a separately issued approval; these interventions may only be performed by itself or by companies it selects and hires for such purposes. In case of doubt in individual cases, the Contract Partner should enquire with GSS GmbH in writing if its activity is considered an intervention on parts of the building systems.

g) The Contract Partner ensures that its employees inform themselves about the relevant accident prevention and safety provisions before performing services on site at GSS GmbH's locations or the Contract Partner will distribute this information to the employees itself and is obligated to ensuring compliance with these provisions. In particular, the Contract Partner ensures that its employees adhere to all instructions issued by authorised persons at GSS GmbH that are given in connection with the safety and regulatory provisions at GSS GmbH's locations.

h) The Contract Partner retains the unrestricted right to instruct and manage all employees assigned by the Contract Partner to work at GSS GmbH's premises. The Contract Partner particularly has the right to

- make decisions regarding the selection and number of assigned employees;
- determine working hours and overtime;
- grant vacation and leisure time;

to conduct work inspections and to monitor the proper performance of operations.

#### 4.2. No Transfer of Personnel, No Employee Leasing

a) The contract partners agree that during the term of the individual contract or thereafter, no transfer of undertakings within the meaning of Directive 2001/23/EC of the European Parliament and the Council on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses and national implementation, e.g. in § 613a of the German Civil Code (BGB) and no employee leasing will be conducted.

b) Except where otherwise expressly agreed between the contract partners, if legally permissible the contract partners undertake appropriate efforts to avoid a transfer of undertakings or employee leasing and to prevent a transfer of personnel of the Contract Partner to GSS GmbH on the basis of the German Civil Code (BGB) or in any other way and to prevent employee leasing.

c) The Contract Partner indemnifies and holds harmless GSS GmbH from any losses, liability, costs, claims and expenditures that are claimed against GSS GmbH or any subsequent service provider, either before or after this agreement ends, by the Contract Partner's employees based on the assertion that they should be treated as employees of GSS GmbH or, depending on the circumstances, of a subsequent service provider. GSS GmbH will undertake all necessary measures to mitigate the financial commitments of the Contract Partner. In particular, GSS GmbH will undertake all reasonable measures required to end the employment relationships as soon as possible. In addition, GSS GmbH ensures that any subsequent service provider undertakes all reasonable measures required to end the employment relationships as soon as possible. GSS GmbH informs the Contract Partner immediately about any possible claims within the meaning of this section and comes to agreement with the Contract Partner regarding strategy and content of any agreement.

### **5. Documents, Ownership and Rights of GSS GmbH**

5.1. Calculations, illustrations, plans, tender documentation, profiles of requirements, requirements specification, designs, other documents and other data carriers such as models and other materials, e.g. tools, remain the property of GSS GmbH and are transferred only temporarily to the Contract Partner. These items must be clearly labelled as the property of GSS GmbH. They must be stored safely and separately from the Contract Partner's property. The Contract Partner maintains these items in good condition at its own cost and replaces them, if necessary. The Contract Partner bears the risk for these items as long as they are in its custody or under its control. The Contract Partner insures these items at its own cost and to an extent that covers the cost of replacement if the items are lost. The Contract Partner hereby assigns all payment claims against the insurer to GSS GmbH, and GSS GmbH accepts this assignment. The Contract Partner handles these items with caution and care. After the individual contract ends, the items are to be returned immediately to GSS GmbH and no copies are to be made of any kind; at the request of GSS GmbH, the Contract Partner will destroy the items.

5.2. GSS GmbH remains owner of existing and future copyright and other property rights to its items and documents (in particular, patent, utility and trademark rights, etc.), including their processing, amendment and further development. The proprietorship includes in

particular all expertise, resource and development reports, suggestions, ideas, drafts, arrangements, samples, models, concepts, etc.

5.3. GSS GmbH hereby grants the Contract Partner a simple, non-transferrable right to use the intellectual property of GSS GmbH for the duration of the relevant service to be fulfilled in accordance with the contract, as far as this is necessary to perform the contractual services for GSS GmbH.

5.4. Items and rights owned by GSS GmbH may only be used for the purpose stipulated in the contract. They may not be reproduced, in part or in whole, by way of photocopies, microfilming, electronic storage or any other process, unless this is necessary to execute the contract. Processing or changing is only permissible if this is required to perform the contractual services. Issuing sub-licences or enabling access or use by third parties is excluded subject to an express written individual agreement to be concluded on a case-by-case basis.

5.5. For the purpose of executing the agreement, the models, fixtures, and other materials, in particular tools, created by the Contract Partner for GSS GmbH become the property of GSS GmbH upon creation. These items are to be surrendered to GSS GmbH after the individual contract is executed or ends and no copies are to be made of any kind.

## **6. Duty to Cooperate of GSS GmbH**

6.1. GSS GmbH provides the documents necessary to perform the service and transfers the information necessary for fulfilment of the agreement by the Contract Partner.

6.2. GSS GmbH is entitled to allow third parties to fulfil its duties to cooperate.

6.3. If cooperation is not provided by GSS GmbH as stipulated in the schedules, if any, as agreed upon by the contractual partners, the Contract Partner informs GSS GmbH in due time about the cooperation required so that the agreed provision of services is not endangered. If, according to the Contract Partner's opinion, GSS GmbH does not provide cooperation properly or in due time, the Contract Partner will inform GSS GmbH of this.

6.4. The Contract Partner will inform GSS GmbH immediately if cooperative services or information of GSS GmbH is incorrect, incomplete or contradictory and the Contract Partner recognises this or should have recognised this. As far as possible with reasonable effort, the Contract Partner also informs GSS GmbH in writing at the same time of the identifiable consequences and waits until the information has been corrected before undertaking further measures. GSS GmbH will issue the corrected information immediately. The Contract Partner is not obligated to further inspect and check the cooperative services or information of GSS GmbH beyond that which is necessary for the performance of the contractual services.

6.5. If, despite appropriate requests from the Contract Partner, GSS GmbH does not fulfil its duties to cooperate at all, in due time or in full, and if GSS GmbH is responsible for this, the service deadlines and dates affected by the delay are reasonably postponed, if and to the extent that they cannot be complied with as a result of the delay.

6.6. The Contract Partner must make every effort that can be reasonably expected to compensate for performance disruptions that arise as a result of non-fulfilment of duties to cooperate or supply by GSS GmbH. In particular, the Contract Partner will offer to support

GSS GmbH with the performance of the duties to cooperate or supply, as far as possible. The Contract Partner will notify GSS GmbH in writing in advance if it intends to assign additional personnel for this purpose and if this will result in additional costs for GSS GmbH. As far as the Contract Partner is partly responsible for the disruption of services in that it did not make a reasonable effort to prevent the hindrance to the provision of contractual services, the Contract Partner remains responsible for the service disruption despite the improper fulfilment of the duties to cooperate and supply.

6.7. If the Contract Partner requests a service from GSS GmbH that goes beyond the cooperation owed by GSS GmbH, GSS GmbH can assume this duty as its own obligation to cooperate instead of the Contract Partner; remuneration for the performance is reduced accordingly. The Contract Partner is obligated to check this amount from GSS GmbH, and if necessary, correct and accept it. The contractual and legal claims of GSS GmbH remain unaffected.

## **7. Third-party Rights and Licences**

7.1. The Contract Partner is responsible for ensuring that the Contract Partner is the exclusive owner of the rendered service, which is free of third-party rights (e.g. copyright, licence, patent and other property rights) and legally and contractually compliant.

7.2. If third parties assert a claim against GSS GmbH based on possible legal infringements associated with the Contract Partner's service, the Contract Partner undertakes to indemnify and hold harmless GSS GmbH from any liability and to reimburse GSS GmbH for the costs that arise related to the possible legal infringement. The obligation to indemnify includes the commitment to exempt GSS GmbH in full from legal defence costs (e.g. court and attorney fees).

7.3. If the Contract Partner's industrial property rights are necessary for use of the delivery item by GSS GmbH, the Contract Partner hereby grants GSS GmbH the unrestricted right in terms of time and geographic location, which is irrevocable and free of charge, to repair, sell, or use the delivery item itself or with regard to third parties.

7.4. If standard software is the object of the individual contract, the Contract Partner grants GSS GmbH a free non-transferrable right of use.

7.5. If the individual contract includes development work, which is commissioned and paid for by GSS GmbH, whether by means of a one-time payment or in instalments based on unit price, GSS GmbH acquires the exclusive rights to all results of development work. GSS GmbH receives the unrestricted right in terms of time and geographic location, which is irrevocable, to all property rights on which the results of development work are based or the rights required by GSS GmbH to use the results of development work, including the right to grant sub-licences.

## **8. Delays**

8.1. The Contract Partner undertakes to adhere to the specified delivery period. Designated delivery dates/deadlines refer to the time at which the service is performed in full at the agreed destination.



8.2. The Contract Partner is responsible for a delay in delivery if it does not render its services by the agreed dates, unless the reasons for the delay are attributable to GSS GmbH or force majeure.

8.3. The Contract Partner must notify GSS GmbH of any foreseeable delivery or performance delays immediately after becoming aware of such, at the latest when the specified delivery and performance period is exceeded.

8.4. In the event of delay, regardless of the legal consequences of delay, GSS GmbH is entitled to request a contractual penalty in the amount of 0.2 % of the contract value for each calendar day on which the performance of the Contract Partner is delayed. Overall, the total of the contractual penalty to be paid based on this provision may amount to no more than 5 % of the contract value of the affected individual contract. If GSS GmbH is subjected to a higher contractual penalty by its customers, this higher contractual penalty is to be paid by the Contract Partner. In deviation from § 341 Para. 3 BGB, the penalty can be asserted by GSS GmbH until the final payment. This does not apply if GSS GmbH did not reserve the contractual penalty at the time of acceptance despite express written request by the Contract Partner. Contractual penalties are offset against claims for compensation.

## **9. Force Majeure**

9.1. Events of force majeure include events that – even if foreseeable – cannot be influenced by the contractual partners and the consequences of these events on the fulfilment of the agreement cannot be prevented through reasonable efforts, such as fire, flood, storm, earthquake and other natural events, strike, lockout and war. The fulfilment of the affected individual contract is postponed for the duration of the respective event. The Contract Partner must inform GSS GmbH in writing immediately about this type of event, at the latest within three (3) days.

9.2. If events of force majeure last longer than two (2) weeks or result in a permanent inability to provide the services, the contractual partners are entitled to terminate the individual contract. Statutory termination rights of GSS GmbH in its role as a purchaser of work services remain unaffected.

## **10. Prices and Payment Terms**

10.1. The prices for the Contract Partner's services are specified in the service description or in the individual contract. Except where otherwise agreed in writing in the individual contract, the prices listed in an individual contract are fixed prices and represent the total price for manufacture and delivery. The prices include in particular all services, which are necessary in the context of fulfilling the services described in these General Terms and Conditions of Purchase or in the individual orders, and include all taxes, duties, packaging and transport costs, insurance and statutory VAT. Unless GSS GmbH has issued express prior consent in writing, the Contract Partner is not entitled to adjust prices or request additional costs of any kind.

10.2. The invoice is prepared in a way that is capable of being checked and in particular also enables clear allocation and control of the costs. Except where otherwise agreed in writing in the individual contract, remuneration due to the Contract Partner is payable within thirty (30) days after complete rendering of services in accordance with the contract and receipt of an invoice capable of being checked with 3 % discount.

10.3. Partial payments are only to be paid by GSS GmbH if this was agreed in the service description that is attached as an appendix, or this is separately and expressly agreed in writing. Any partial payments of GSS GmbH do not constitute recognition of contractually compliant services.

## **11. Set-off, Right of Retention**

11.1. The Contract Partner has the right to withhold payments or to set off payment with counterclaims only to the extent that its counterclaims have been declared legally binding, are uncontested or recognized by GSS GmbH. Furthermore, the Contract Partner is entitled to exercise a right to withhold only to the extent that its counterclaim is based on the same contractual relationship.

11.2. GSS GmbH has the right to offset with its claims based on further contractual agreements with the Contract Partner in addition to its statutory rights to set-off.

## **12. Retention of Title and Lien**

The items of GSS GmbH remain its property at all times. The Contract Partner does not hold a right of lien or right of retention to the goods or other assets under its control based on any claims, due or not yet due, to which the Contract Partner is entitled arising from its services. The Contract Partner will conduct any processing, mixing or combining (further processing) of provided items for GSS GmbH. The same applies to further processing of delivered goods by GSS GmbH, so that GSS GmbH is considered the manufacturer and becomes owner of the product at the latest upon further processing according to legal requirements.

## **13. Delivery / Acceptance**

13.1. Following delivery or creation and assembly or installation of the respective delivery item, the Contract Partner conducts an appropriate check of the rendered services. Acceptance is not applicable, unless GSS GmbH requests acceptance, which is then to be performed according to the following provisions:

13.2. The Contract Partner announces that the completed and assembled or installed delivery item is ready for acceptance on the agreed date (“announcement”). This announcement is subject to the condition that the Contract Partner has assembled or installed the delivery item in accordance with the contract.

13.3. Partial acceptance does not take place.

13.4. The acceptance is subject to an inspection, which is to be conducted within ten (10) working day of announcement of completion, assembly and functionality in the presence of the Contract Partner and GSS GmbH.

13.5. An acceptance protocol will be created in which any defects that may have arisen are described (hereinafter also referred to as “errors”).

13.6. GSS GmbH declares acceptance if the assembly or installation does not appear to have any errors. Errors are declared as such in the acceptance declaration and remedied by the Contract Partner immediately, unless a deadline for remedy has been agreed upon.

13.7. Acceptance must take place formally. Acceptance is also deemed issued if GSS GmbH does not declare acceptance within ten (10) working days after completion, assembly and functionality, although it is obligated to do so. § 641a BGB remains unaffected.

## **14. Liability for Defects**

14.1. As far as legally applicable, GSS GmbH is obligated to inspect the delivered items immediately following delivery to ensure that the agreed upon quantity has been delivered and/or if other obvious defects exist. Any complaints regarding obvious defects are deemed to have been made in due time if they are received by the Contract Partner within a period of two (2) weeks after transfer of the delivery item. GSS GmbH must issue complaints involving hidden defects within a deadline of two (2) weeks after discovery of the defect.

14.2. The Contract Partner guarantees that its services are free of defects. It guarantees in particular that the delivery item corresponds with the specification and with the standard of quality agreed in contract. If the Contract Partner is responsible for the construction, the Contract Partner also guarantees that the construction is free of error and that the delivery item is suitable for the purpose stipulated in the contract.

14.3. GSS GmbH is entitled without restriction to the statutory warranty rights. In particular, GSS GmbH is entitled at its own discretion to remedy of the defect, to delivery of an item free of defects, or to request payment of compensation. The Contract Partner is liable for measures aimed at risk prevention (recalls), as far as it is legally obligated to do so.

14.4. In accordance with the legal requirements, the Contract Partner is particularly liable for ensuring that the service has the agreed characteristics at the time of transfer of risk to GSS GmbH. In any case, the specific service descriptions that are the objects of the individual contracts, in particular through designation or reference in GSS GmbH's order, or are included in the individual contract in the same manner as these General Terms and Conditions of Purchase, shall be considered agreements on characteristics. In this context, it is immaterial whether the service description originates from GSS GmbH, the seller or the manufacturer.

14.5. In deviation from § 442 Para. 1 Sentence 2 BGB, GSS GmbH is also entitled without restriction to assert claims for defects, if the defect remains unknown to GSS GmbH at the time the contract is concluded as a result of gross negligence.

14.6. GSS GmbH is entitled to conduct measures to remedy the defect at the cost of the Contract Partner, to arrange for third parties to do so, or to procure a replacement itself, if the Contract Partner does not comply with the written request to remedy the defect within a reasonable deadline set by GSS GmbH, or if an application to open insolvency proceedings against the assets of the Contract Partner is filed. This also applies – also without the need to issue a prior request— to urgent cases involving a threat to operational safety or excessively extensive damage, if it is no longer possible to notify the Contract Partner about the defect and the threat of damage due to the particular urgency of the case and to set a deadline for the Contract Partner to provide support.

14.7. GSS GmbH is entitled to remedy minor defects immediately at the cost of the Contract Partner or to have them remedied.

14.8. In the event of imminent danger, GSS GmbH is entitled to remedy the defect itself or have the defect remedied at the cost of the Contract Partner after appropriate notification has been issued to the Contract Partner.

14.9. In the event that GSS GmbH's customers are entitled to conduct measures to remedy the defect themselves, or arrange for measures to be conducted, without issuing a deadline at the cost of GSS GmbH, e.g. because the delivery is made after commencement of default and the customer has an interest in immediate remedy of the defect to avoid its own default, the Contract Partner must reimburse these costs to GSS GmbH unless the Contract Partner is not responsible for the delay.

14.10. In the cases stated above in sections (6) to (9), the Contract Partner must be notified immediately. GSS GmbH sends a report to the Contract Partner regarding the type and scope of the defect and the works performed.

14.11. GSS GmbH is entitled to request that the Contract Partner indemnify and hold harmless GSS GmbH from all claims of customers, if and to the extent that the Contract Partner is responsible for the liability-based cause based on its service. With regard to indemnification from claims for compensation against GSS GmbH beyond the scope of liability according to the German Product Liability Act, this only applies if and to the extent that the Contract Partner is responsible for the cause.

14.12. Where any claims against the Contract Partner are dependent upon conditions in the Contractor Partner's sole sphere of risk or responsibility, the Contract Partner bears the burden of proof for the non-existence of such conditions for the claim.

14.13. The above-described claims of GSS GmbH expire within thirty-six (36) months following notification of the defect unless a longer limitation period for claims regarding defects is provided in the applicable statutory provisions.

14.14. If GSS GmbH is subjected to longer limitation periods by its customers or a later start date for a limitation period, this longer limitation period or the later start date for the limitation period is decisive.

14.15. The approval of a development by GSS GmbH neither excludes nor limits warranty and product liability claims.

## **15. Guarantee**

15.1. In addition to its liability for defects, the Contract Partner assumes a guarantee for a period of twenty-four (24) months ensuring that the service is free of material defects and contains the agreed upon features.

15.2. The guarantee stated above commences upon transfer of the delivery item or performance of the service.

## **16. Audit**

16.1. GSS GmbH is entitled to inspect and audit the Contract Partner's manufacturing process on site at any reasonable time as far as practicable following prior notification.

16.2. The Contract Partner ensures that GSS GmbH is entitled to inspect and audit with regard to its assistants in performance and subcontractors.

## **17. Liability of GSS GmbH**

The following regulations shall apply to the liability of GSS GmbH as well as liability for GSS GmbH's employees, assistants in performance, and vicarious agents – irrespective of reason:

17.1. GSS GmbH's liability for damages is limited as follows:

a) In the case of a simple negligent breach of essential obligations (i.e. essential obligations for which GSS GmbH owes performance and which are significant for the attainment of the contractual objectives or with which GSS GmbH is obligated to comply and a breach of such compliance could endanger the attainment of the contractual objectives), the liability of GSS GmbH shall be limited to such losses which would be typically foreseeable at the time of the conclusion of the contract;

b) GSS GmbH shall not be liable for a simple negligent breach of non-essential obligations.

17.2. The previous liability exclusions, restrictions, and limitations shall not apply to claims based on the Product Liability Act as well as to compensation for damages to life, body or health.

17.3. Claims for damages against GSS GmbH shall be subject to a limitation period of one (1) year, beginning with the start of the statutory period of limitations. The aforementioned shall not be applicable to claims based on the Product Liability Act as well as to compensation for damages to life, body or health and to intentional or grossly negligent breach of duty, which are subject to statutory limitation.

17.4. GSS GmbH assumes no liability towards the Contract Partner or third parties insofar as the damage is attributable to the fault of the Contract Partner or the Contract Partner's assistants in performance or vicarious agents. In these cases, GSS GmbH particularly assumes no liability for damages arising from violations of public law protective regulations or from violations of the applicable directives and instructions. The Contract Partner is to inform itself independently about this matter. The Contract Partner's comparative negligence shall be imputed to the Contract Partner.

17.5. With regard to services free of charge, GSS GmbH is only responsible for the degree of care that it applies to its own matters.

17.6. Should claims for damages be lodged, then they must be legally filed within six (6) months after a written dismissal by GSS GmbH. Subsequent assertion of claims is excluded unless independent evidence proceedings (*Selbständiges Beweisverfahren*) have been initiated within the deadline period. The aforementioned shall not be applicable to claims based on the Product Liability Act as well as to compensation for damages to life, body or health and to intentional or grossly negligent breach of duty, which are subject to statutory limitation.

## **18. Liability Insurance**

18.1. The Contract Partner concludes the industry-standard global insurance protection with an efficient insurer (in particular, third party liability (*Betriebshaftpflicht*), product liability and recall insurances) that each covers damages to the property of GSS GmbH, its customers or third parties up to a reasonable amount. The Contract Partner's employees must be insured against work-related accidents. The Contract Partner provides evidence to GSS GmbH at the conclusion of the contract that it holds this type of liability insurance.

18.2. The Contract Partner will maintain this insurance protection until the individual contract ends, and at least until the limitation period expires for claims related to defects or other compensation claims. If the Contract Partner does not fulfil this obligation, GSS GmbH is entitled to withdraw from the contract or to terminate without notice period following failure to adhere to a reasonable deadline. Further claims of GSS GmbH, in particular claims for compensation, remain unaffected.

## **19. Confidentiality, Business Information**

19.1. The Contract Partner is obligated to treat with confidentiality all information that is designated confidential or information of GSS GmbH that is clearly of a confidential nature (hereinafter referred to as "confidential information"), to refrain from making copies of such information and from allowing third parties access to same, unless this is necessary to fulfil obligations resulting from the order or from these General Terms and Conditions of Purchase. The Contract Partner is obligated in particular to maintain strict confidentiality with regard to calculations, illustrations, plans, tender documentation, profiles of requirements, requirements specification, designs, other documents and other data carriers such as models and other materials. These may be disclosed to third parties and/or used for the Contract Partner's own purposes, which are content of the individual contract or these General Terms and Conditions of Purchase, only with express and written approval from GSS GmbH. The Contract Partner may disclose the contractual relationship with GSS GmbH only with written consent from GSS GmbH.

19.2. This obligation shall not apply to information which is in the public realm, or which the Contract Partner has previously received through legal means, or which has come into existence independently of this contract, or in cases in which the Contract Partner is subject to disclosure requirements or requested to provide information by courts or governmental authorities. The confidentiality obligations stated above retain their validity unlimited in time, for the duration of this contract and afterwards, and shall be explicitly imposed in writing on any third parties (including but not limited to employees) having access to confidential information.

19.3. The Contract Partner is obliged to store with due care all documentation, files and other forms of Confidential Information which is received from GSS GmbH.

## **20. Data Protection and Data Security**

20.1. The Contract Partner is responsible for ensuring that all persons assigned by the Contract Partner with fulfilling or processing the individual contract, and/or the service description or these General Terms and Conditions of Purchase, adhere to the legal requirements on data protection and data security. The necessary obligation to observe data secrecy pursuant to German data protection law shall be carried out at the latest before the initial start of operations and proof of such will be provided to GSS GmbH upon request. The Contract Partner agrees that personal data, which was made available to GSS GmbH within

the context of the business relationship, is stored and automatically processed in the IT systems of GSS GmbH.

20.2. In the event that the Contract Partner collects, processes or uses personal data in the course of order data processing as instructed by GSS GmbH (§ 11 of the German Data Protection Act, “*BDSG*”) for the purpose of fulfilling the contractual services, or if the Contract Partner conducts the “inspection or maintenance of automated procedures or data processing systems” for GSS GmbH within the meaning of § 11 Para. 5 *BDSG*, the contract partners will conclude an “Agreement regarding Order Data Processing” in accordance with § 11 *BDSG*, which GSS GmbH will make available to the Contract Partner.

## **21. Termination, Withdrawal**

21.1. GSS GmbH is entitled to terminate the individual contract pursuant to § 649 *BGB*. Except where otherwise agreed, in the case of termination, the Contract Partner is entitled to the statutory rights based on this provision; however, the Contract Partner is obligated to clearly explain the claimed remuneration in a transparent manner taking into account expenditures saved as a result of the termination. Furthermore, the Contract Partner is obligated to specify which partial services it views as completed and initiated services. Upon request, the Contract Partner supports GSS GmbH in a reasonable manner in exchange for reasonable remuneration so that GSS GmbH or a third party can complete the ordered service, as far as this is not unreasonable for the Contract Partner. The support service is considered “topping-up orders” within the meaning of § 649 *BGB*, unless this is unreasonable for the Contract Partner.

21.2. The right to extraordinary termination of the individual contract based on good cause as well as the statutory right to withdraw from the individual contract remain unaffected.

21.3. Both termination and withdrawal must be made in writing in order to be valid.

## **22. Service and Replacement Parts**

22.1. With regard to production material, the Contract Partner ensures GSS GmbH’s need for replacement parts during serial delivery and for fifteen (15) years after serial delivery ends. The price is the agreed current production price stipulated in the individual contract that is valid for the term of the individual contract. After the individual contract ends, the price is agreed upon in the context of orders issued.

22.2. With regard to delivery items that are not production material, the Contract Partner ensures GSS GmbH’s need for replacement parts at standard market prices for the duration of at least fifteen (15) years, which commences on the date of the first delivery.

22.3. Upon request by GSS GmbH, service literature and additional necessary material will be made available free of charge.

## **23. Contract Partner’s Tools**

23.1. The Contract Partner grants GSS GmbH a purchase right for tools that are necessary to produce the specific delivery items of GSS GmbH. This also includes all accessories, such as patterns, matrices, measurement instruments, fixtures, forms, samples and connected software, drawings and other associated documentation that are required to produce the

delivery item. If GSS GmbH exercises its right to purchase, the price is calculated based on the original cost of acquisition less depreciation for wear and, if applicable, other depreciation conducted until the tool is transferred following exercise of the purchase right option. Depreciation for wear is only taken into consideration if the Contract Partner received compensation for this depreciation via the unit price. Under no circumstances may the purchase price exceed the market value (replacement costs for a similar used tool) at the time that the purchase right is exercised. There is no right to purchase if the Contract Partner requires the tool for production of its other standard products.

23.2. The Contract Partner equips GSS GmbH with all information that GSS GmbH requires for installation, assembly and use of this tool. Subject to industrial property right of the Contract Partner, GSS GmbH is entitled to use and publish this information without restriction. Construction and production information that are subject to an intellectual property right of the Contract Partner may only be used by GSS GmbH for its own purposes.

## **24. Final Provisions**

24.1. The Contract Partner may not – subject to the assignment of debt according to § 354a of the German Commercial Code (*HGB*) – transfer individual rights of this contract or the contract as a whole to third parties unless GSS GmbH expressly agrees to such in writing.

24.2. Should a party choose not to exercise one of its rights under this contract, this shall not be considered as a waiver of that right, unless the party that possesses the right informs the other party explicitly and in writing of such a waiver.

24.3. The place of performance shall be the registered seat of GSS GmbH. Insofar as the Contract Partner is a merchant as defined by the German Commercial Code (*HGB*), a corporate body organized under public law (*juristische Personen des öffentlichen Rechts*), or a special fund under public law (*öffentlich-rechtliches Sondervermögen*), the exclusive place of jurisdiction for all disputes (including check proceedings, summary bill enforcement procedures and proceeding restricted to documentary evidence) directly or indirectly arising from the contractual relationship is the registered seat of GSS GmbH. The same applies to judicial collection procedures as well as to persons who have no general place of jurisdiction in Germany, as well as to persons who have moved their place of residence or usual whereabouts abroad since conclusion of the contract, or whose place of residence or usual whereabouts is unknown at the time the action is filed. In addition, GSS GmbH is entitled to file suit at the statutory venue.

24.4. All agreements and legal acts of the contract partners in the context of these General Terms and Conditions of Purchase are subject to the laws of the Federal Republic of Germany excluding the conflict of law provisions. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

24.5. These General Terms and Conditions of Purchase are provided in German and English. Legally binding is solely the German language version of these General Terms and Conditions.

24.6. Oral side-agreements are not valid. Deviating or supplementary conditions as well as modifications of this contract, including this written requirement clause, are only valid if agreed upon in writing and expressly marked as a modification or supplement.



24.7. Should one or more provisions of these General Terms and Conditions of Purchase not satisfy the legal requirements the validity of the remaining provisions shall remain unaffected.