



9.0 General Terms and Conditions

GU Automatic – General sales, delivery and payment terms and conditions as of January 2019

§1. General

1. Our Sales Terms and Conditions are exclusively applicable; we do not recognise contrary terms and conditions by the Buyer or terms and conditions deviating from our Sales Terms and Conditions unless they have been explicitly approved by us in writing. Our Sales Terms and Conditions shall be applicable even if we carry out delivery to the Purchaser without reservation and with the knowledge of contrary terms and conditions of the Purchaser or terms and conditions of the Purchaser deviating from our Sales Terms and Conditions.
2. All agreements made between us and the Buyer in view of performance of the present contract have been stipulated in the present contract.
3. Our Sales Terms and Conditions are only valid vis-à-vis a contractor within the meaning of § 14 BGB [German Civil Code], legal entities under public law or a special fund under public law.
4. Our Sales Terms and Conditions shall also be valid for subsequent orders. For current and future business relations the Sales Terms and Conditions shall be valid as framework terms and conditions even if not explicitly agreed upon in future.
5. In addition to the General Terms and Conditions our "Installation Guidelines", "Installation Instructions", "Product Information" as well as the technical data sheets shall be valid.

§2. Offers

1. Our offer is subject to alterations unless otherwise specified in an order confirmation.
2. Any information contained in offers or drawings, images, dimensions, weights and other performance data shall only be regarded as a guide and shall only become binding if explicitly agreed in writing. We reserve the right to implement useful or necessary amendments within the scope of general technical progress.
3. We reserve property rights and copyrights in illustrations, drawings, calculations and other documents. This is especially applicable to such written documents identified as being "confidential". Prior to their transmittal to third parties, the Buyer requires our explicit written approval.

§3. Delivery Time

1. The delivery time stated by us only starts once all dimensions and drawings have been agreed and all technical queries have been clarified and approved.
2. Compliance with our delivery obligations can only be guaranteed if the Buyer properly complies with its own obligations in a timely manner. An objection to the non-fulfilment of contract remains reserved.
3. Should the Buyer delay the approval of goods or services or violate any other cooperation duties, we may claim compensation for any damage incurred by us as a result of such action, including any additional costs.
4. Further claims remain reserved. In the case of the Buyer delaying the approval of goods or services or violating cooperation duties, the risk of accidental destruction or accidental deterioration of the delivered item shall be transferred to the customer at the time the latter became responsible for the delay or violation.
5. Any deadlines and dates stated by us in the order confirmation shall be approximate, unless a specific binding date has been explicitly specified.
6. In the case of unforeseen events (e.g. force majeure, operational breakdowns, poor weather conditions, walkouts, lockouts, late receipt of materials at our facilities or the facilities of one of our subcontractors), the delivery time is extended by the duration of the unforeseen events. The Buyer shall be excluded from raising any claims for damages or withdrawing from the contract due to such delay, unless it can be proven that we acted with gross negligence or malicious intent.

§4. Prices – payment conditions

1. Our invoices and offers exclude statutory VAT.
2. The VAT is stated separately in the invoice at the statutory rate applicable on the day the invoice is prepared.
3. Cash discount for prompt payment shall only be applied by special written agreement.
4. If more than four months have elapsed between the date of conclusion of contract and the date of performance of service, we may adjust the contractually agreed prices if the manufacturing costs or wages have changed in the meantime.
5. Unless stated otherwise in the order confirmation, we may request 30% of the order total upon technical clarification, i.e. upon presentation of the measurements and approval by the Buyer, 30% of the order total upon completion and ready for dispatch notification, 30% of the order total upon installation and 10% of the order total upon commissioning.
 - 6. Unless otherwise agreed, our payment requests shall be payable upon receipt of invoice.
7. The Buyer defaults without a reminder, if it does not comply with the payment term.
 - 8. Cheques and bills of exchange shall only become effective payment once cleared. Bills of exchange shall only be accepted upon written agreement and on account of performance and on condition that they can be discounted.
 - 9. The customer shall be solely responsible for carrying any discounting and other exchange fees.

9. The Buyer shall only be entitled to setoff rights, if its counterclaims have legal force, are undisputed or have been recognised by us. If the Buyer puts forward notices of defect, the Buyer shall be allowed to withhold payments which are in reasonable proportion to the redhibitory defects occurred. The Buyer shall be entitled to exercise a general lien insofar as his counter-claim is based upon the same contractual relationship.

10. Should the Buyer's assets decrease significantly after conclusion of contract, any services provided by us up to that point shall become payable with immediate effect.
11. The provision of further contractually agreed services or supplies may require the payment of the agreed fees or provision of corresponding securities.
12. In the case of the Buyer refusing payment or expiration of the payment period without payment having been received, we may withdraw from the contract or claim damages for non-fulfilment.
13. In addition to the confirmed prices for supplies and services, we shall add additional costs and additional travel expenses in the case of work being interrupted due to construction delays, surcharges for work performed during the night, on holidays and Sundays requested by the Buyer or its authorised representative, and other additional supplies or additional services not explicitly stated in our order confirmation.

§5. Retention of title – security

1. The objects of the deliveries (goods under retention of title) remain our property until payment of all claims against the Buyer to which we are entitled from the business relationship. Insofar as the value of all security interests of which we are entitled against the Buyer, exceeds the amount of all claims secured by more than 10%, we will release a corresponding share of the security interest on request by the Buyer.
2. During existence of the retention of title, the Buyer shall not be permitted to pledge the goods or transfer them by way of security and resale is only permitted to resellers in normal dealings and only with the proviso that the reseller receives payment from its customer or makes the reservation that transfer of title to the customer will only occur, if the customer has met its payment obligations.

3. In case of attachments, seizures or other orders or interference by third parties, the Buyer must inform us immediately so that we can institute a claim according to § 771 ZPO [German Code of Civil Procedure]. Insofar as the third party is not able to reimburse the court costs and extrajudicial costs of a claim according to § 771 ZPO [German Code of Civil Procedure] to us, the Buyer shall be liable for the loss incurred by us.

4. The Buyer is obliged to take good care of the item purchased; especially it is obliged to insure the item purchased at its own expenses sufficiently at original value against fire, water damage and theft. Insofar as maintenance and inspection work is required, the Buyer must carry out such work in time at its own expense.

5. In case of breaches of duty by the Buyer including but not limited to delay of payment, we shall be entitled to withdrawal and taking back; the Buyer is obliged to restitution. Taking back and/or exercise of the retention of title does not require rescission by the Supplier; these actions or an attachment of the goods under retention of title by us do not constitute a withdrawal from contract, unless this has explicitly been declared by us.

6. If the Buyer has resold the purchased item in the ordinary course of business, it assigns, however, to us already now all debts in the amount of the final invoice value (including value-added tax) of our claim accruing for it from resale against its customers or third parties, regardless of whether the purchased item has been resold without or after further processing. The Buyer remains authorised to collect this debt also after assignment. This shall not affect our right to collect the receivables ourselves. But we undertake not to collect the debt as long as the Buyer meets its payment obligations from the proceeds received and no lack of its financial capacity exists. But if this is the case, we can request that the Buyer informs us about the debts assigned and their debtors, gives all information necessary for collection, delivers the respective documents, and informs the debtors (third parties) of the assignment.

7. Processing or reshaping of the purchased item by the Buyer will always be made of behalf of us. If the purchased matter is processed with other objects not belonging to us, we acquire joint ownership in the new object in the ratio of the value of the purchased item (final invoice value including value-added tax) to the other processed objects at the time of processing. To the object created by processing moreover the same applies as to the purchased item delivered under retention of title.

8. If the purchased item is mixed inseparably with other objects not belonging to us, we acquire joint ownership in the new item in the ratio of the value of the purchased item (final invoice value including value-added tax) to the other mixed objects at the time of mixing. If the mixing occurs in such a way that the item of the Buyer has to be considered the main item, it is deemed to have been agreed upon that the Buyer transfers pro rata joint ownership to us. The Buyer holds in custody for us the exclusive ownership or joint ownership thus created.

§6. Risk transfer – final inspection and approval

1. If the goods supplied are not installed by us in accordance with the contract, all risks shall be If the goods supplied are not installed by us in accordance with the contract, all risks shall be transferred to the Buyer upon the goods leaving the factory (including free transports). If we install the goods supplied, the risk is transferred to the Buyer no later than upon completion of installation.
2. The Buyer shall agree to perform the final inspection and approval immediately upon completion of installation. In the case of the customer failing to perform a final inspection, approval shall be deemed to have been granted 12 days after receipt of the written notification of completion, 6 days after commissioning or upon start-up. We may request for partial services to undergo a final inspection and approval as well. At the end of each day of installation work being performed, the work shall be visually inspected and approved.

§7. Redhibitory Defects

We shall be liable for redhibitory defects as follows:

1. All such parts or services have to be reworked, newly delivered or rendered again free of charge at our option which within the statutory limitation – irrespective of the operating period – show a redhibitory defect insofar as its cause already existed at the time of passing of risk. Glass damage after approval of deliveries is excluded from warranty.
2. Claims due to redhibitory defects become barred by the statute of limitation in 12 months, unless a longer time period exists mandatorily by law. The time period starts with the passing of risk (Clause 6). If the goods are a building or an object, which according to its normal use has been used for a building, and has caused its defectiveness (building materials), the statutory provision shall apply (§ 438 section 1, no 2 BGB [German Civil Code]). Further special statutory provisions on the statute of limitation and on consumer recourse also remain unaffected.
3. The Buyer must notify obvious redhibitory defect to us promptly and within 7 days as from delivery in writing at the latest. The provision of § 377 HGB [German Commercial Code] remains unaffected.

4. First of all, we shall always be granted the possibility of subsequent performance within an adequate delay.
5. If subsequent performance fails, the Buyer may withdraw from contract – without prejudice to eventual damage claims – or reduce payment. Replacement for fruitless expenditure can only be requested by the Buyer, if we are responsible for the defect due to intent or gross negligence. Claims as a result of defects do not exist in case of only minor variation from the agreed upon quality, in case of only minor impairment of usability, in case of natural wear and tear or damages occurring after passing of risk due to wrong or negligent treatment, excessive load, inappropriate consumables or due to special external influences which are not assumed according to contract as well as in case of non-reproducible software errors. If the Buyer or third parties carry out modifications or repair work in an inappropriate manner, no claims for defects exist for it nor the resulting consequences. The same applies insofar as our specifications for handling and other instructions are not observed.
6. Claims by the Buyer for expenditure necessary for the purpose of subsequent performance including but not limited to transport, road, work and material charges are excluded to the extent that the expenditure increases because the object of delivery has subsequently been taken to another place than the establishment of the Buyer, unless this change of location corresponds to its use according to purpose.

7. Legal recourse claims by the Buyer towards us exist only insofar as the Buyer has not made any agreements with its customer beyond statutory claims due to defects.

9. To damage claims, Clause 8 applies. Further or other claims than those stipulated in this Clause or in Clause 8 for redhibitory defects are excluded.
10. If a notice of defects has been wrongly made, we are entitled to demand damages from the Buyer for the expenses incurred by us in this connection.

§8. Total Liability

1. Unless otherwise specified in the present terms and conditions including the provisions below, we shall be liable in the case of infringement of contractual and non-contractual obligations according to statutory provisions.
2. We shall be liable for damages – irrespective of the legal reason – within the scope of liability based on fault in the case of intent or gross negligence. In the case of a simple negligence, we shall be liable according to statutory provisions subject to a more lenient standard of liability (e.g. for diligence in own affairs) only a) for damages due to injury of life, body or health, b) for damages due to the not insignificant violation of a substantial contractual obligation (obligation, the fulfillment of which enables proper implementation of the contract in the first place and on the fulfillment of which the contractual partner regularly relies and may rely). But in that case, our liability for indemnification shall be limited to the foreseeable damage typically occurring.
3. The limitations of liability resulting from section 2 shall also apply in the case of breaches of duty by and/or in favour of individuals for whose fault we shall be responsible according to statutory provisions. They do not apply, insofar as we have fraudulently concealed a defect or have assumed a quality guarantee for the goods, and for claims by the Buyer according to the liability for products' law.
4. Due to a breach of duty, which is not a defect, the Buyer can only withdraw from or terminate the contract, if we are responsible for the breach of duty. A free right of cancellation of the Buyer (in particular according to §§ 650, 648 BGB (German Civil Code)) is excluded. Otherwise, the statutory prerequisites and legal consequences apply.

§9. Industrial Property Rights and Copyrights, Defective Titles

Unless otherwise agreed upon, we shall be obliged to render delivery only in the country of the place of delivery free from industrial property rights and copyrights by third parties (hereinafter called property rights). Insofar as a third party due to violation of property rights by deliveries rendered by us and used according to contract, puts forward justified claims against the Buyer, we shall be liable to the Buyer within the delay determined in Clause 7.2 as follows:

1. At our option and at our own expenses we will either obtain a right of use for the deliveries concerned, modify them in such a way that the property right will not be violated, or replace them. If this is not possible for us under adequate terms and conditions, the Buyer shall be entitled to statutory rights of withdrawal or reduction. The Buyer shall only be allowed to request indemnification for fruitless expenditure, if we are liable for intent or gross negligence. Our obligation to pay damages is governed by Clause 8.
2. The above mentioned obligations exist only insofar as the Buyer informs us immediately in writing about the claims put forward by the third party, does not recognise a violation and all defences and composition negotiations are reserved to us. If the Buyer ceases to use the delivery for reasons of damage reduction or for other important reasons, it shall be obliged to inform the third party that no acknowledgement of a violation of a property right is connected with the cessation of use.

§10. Installation Sequence

1. The Buyer shall arrange an appointment on the construction site for the clarification of all technical details and to ensure that the requests of the builder and/or architect are coordinated with the technical possibilities of our systems.
2. Upon explicit request from the builder and at the cost of the Buyer, an engineer shall inspect the situation on the construction site approximately eight days before starting installation and notify the builder of any subsequent work to be performed. Such work has to be completed before starting installation.

§11. Servicing and Repairs

1. With the acceptance of a service contract it is assumed that the equipment to be serviced meets the legal requirements and regulations.
2. Easy access to the drive system has to be provided during servicing and repairs.
3. The maintenance specifications of the manufacturer must be followed.

§12. According to Article 13 of the GDPR [General Data Protection Regulation], we inform as follows:

Responsible:
GU Automatic GmbHKarl-Schiller-Straße 12
 33397 Rietberg/Germany
 Phone: +49 5244 9075-100
 Fax: +49 5244 9075-599
 E-Mail: info@gu-automatic.de

Contact Information of the Data Protection Officer:
Data Protection Officer
GU Automatic GmbH
 c/o Gretsche-Unitas GmbH
 Baubeschläge
 Johann-Maus-Straße 3
 71254 Ditzingen/Germany
 Phone: +49 7156 301-660
 Fax: +49 7156 301-77660
 E-Mail: datenschutz@gu-u.de

1. Purposes of the processing for which the personal data are intended: constitution and execution as well as performance and termination of the contractual relationship (sale of goods and rendering of services by GU). We will use the information of direct contact persons only for contacting with respect to the contractual relationship or the purchase order.
2. Legal basis for the processing: Art. 6 section 1 (b) GDPR [General Data Protection Regulation], insofar as the data subject is a contact person of legal entities: Art. 6 section 1 (f) GDPR [Data Protection Basic Regulation].
3. Recipients or categories of recipients of the personal data: the data will only be processed by the employees of GU of the relevant departments and will not be forwarded to external third parties. In doing so we comply with the requirements of Art. 28 of the GDPR. The data is not disclosed to any other external third parties.
4. Duration for which the personal data will be stored or, if this is not possible, the criteria for the determination of such duration: we will store the data for the duration of the retention obligation under commercial and tax law.
5. Insofar as the data subject is the contact person of legal entities: the legitimate interests of the person in charge and the employer are the performance of the contractual relationship and direct communication with the person in charge internally.
6. The provision of the personal data is not prescribed by law or contract or required for contract conclusion. The data subject is not obliged to provide the personal data and the lack of provision would have no consequences. Under contractual law, only conclusion of the contract by a (verifiably) authorised person on the part of the customer is required.
7. An automated decision-making does not occur.
 The data subject is entitled to obtain information by the person in charge on the personal relating to him/her as well as to correction or cancellation or restriction of processing. We also point out the right to data transferability. This means that every person concerned has the right to receive the personal data relevant to them in a structured, well-established machine-readable format and that persons concerned have the right to transfer this data to another responsible party without any obstruction on our part. Insofar as the data subject is contact persons of legal entities: The data subject is entitled to object against processing of the personal data relating to him/her, which occurs on the basis of Art. 6, section 1 (f), at any time for reasons resulting from his/her particular situation.
 The person in charge does not process the personal data any longer unless he or she can provide mandatory reasons worthy of protection for the processing which outweigh the interests, rights and liberties of the person concerned or processing serves for asserting, exercising or defending legal claims.

The data subject is entitled to complain at the Data Protection Authority.
 The competent Supervisory Authority for Data Protection is:

Der Landesbeauftragte für den Datenschutz und Informationsfreiheit Nordrhein-Westfalen
 Postfach 20 04 44, 40102 Düsseldorf/Germany
 Kavalleriestraße 2-4, 40213 Düsseldorf/Germany
 Phone: +49 0211 384 24-0
 Fax: +49 0211 384 24-10
 E-mail: poststelle@ldi.nrw.de
 Internet: www.ldi.nrw.de

§13. Place of Performance, Venue, Governing Law

1. For all rights and duties resulting from our deliveries and services, for both parties he registered office of our company shall be considered to be the place of performance.
2. In dealings with fully qualified merchants within the meaning of the HGB [German Commercial Code] and legal persons under public law, for lawsuits for which district courts have jurisdiction in rem, the Gütersloh District Court, and for lawsuits for which county courts have jurisdiction in rem, the Bielefeld County Court shall have general jurisdiction.
3. The contractual relationship shall be governed by the law of the Federal Republic of Germany. Application of the UN Convention on Contracts for the International Sale of Goods (CISG) is excluded.
4. The data specified by the Buyer will be stored and processed by electronic data processing to the extent that this is admissible in accordance with the applicable data protection law.