

## General Terms and Conditions (international) of GARGIULO GmbH

### § 1 AREA OF APPLICABILITY, GENERAL

1. These General Terms and Conditions (GTC (international)) of GARGIULO GmbH apply to all business transactions involving the supply of goods to customers by GARGIULO GmbH, Daimlerstraße 21, 72147 Nehren, Germany (hereinafter abbreviated to: "GARGIULO" or "we"), insofar as the Customer does not have their relevant subsidiary in Germany.
2. The area of applicability of these GTC (international) is limited to contracts with entrepreneurs, legal entities under public law and special estates under public law. These GTC are applicable to transactions with consumers under § 13 BGB (German Civil Code).
3. These GTC (international) are solely applicable. The incorporation of opposing or supplementary conditions or customer terms that deviate from our GTC (international) is rejected herewith. Nor are the latter applied if we supply the Customer in the knowledge of the Customer's deviating terms or without express objection to them.
4. Individual agreements with the Customer arrived at in specific cases (including ancillary agreements, supplements and amendments) always have priority over these GTC (international). A written contract or our written confirmation is always required to specify the content of such agreements.
5. These GTC (international) also apply to future transactions between GARGIULO and the Customer without renewed incorporation being required.
6. Legally relevant declarations and notifications to be issued by the Customer vis-à-vis ourselves (e.g. deadlines, notifications of defects, etc.), must be submitted in writing in order to be effective.
7. Rights to which GARGIULO is entitled by law or based on other agreements beyond these GTC (international) remain unaffected.

### § 2 CONCLUSION OF THE CONTRACT

1. Insofar as nothing to the contrary is expressly specified, our offers are non-binding and subject to alteration. This also applies if we have made catalogues, technical documentations or other product descriptions available to the Customer, including those in electronic form. We shall be entitled to carry out prior sales.
2. The contract does not come into effect until we have issued our written order confirmation according to Section 3 or, on service provision, according to Section 4.
3. We are entitled to accept an offer submitted by the Customer by means of order confirmation within ten working days of receipt of the offer.
4. Contract conclusion is effective by our provision of service if we begin service provision within ten working days of receipt of the Customer offer and the Customer is informed of this.

### § 3 RIGHTS TO OUR DOCUMENTS, CUSTOMER ASSURANCES

1. Offers, cost quotations and other documents shall remain our property and may only be made available to third parties with our prior agreement.
2. All rights in respect of samples, devices, work tools, drawings, drafts and plans created by us, in particular patent rights, copyright and inventor rights, shall belong exclusively to us.
3. If we make such aforementioned items or documents available, this shall not involve any transfer or granting of rights (usage licence) to the Customer.
4. The Customer confirms that documents they provide to us are not in breach of third-party rights. The Customer is responsible for ensuring that documents which they make available to us, in particular drawings, plans etc. are dimensionally accurate, allow calculation of the contractually agreed service and are factually correct. For the purpose of implementing the contract, the Customer grants us free right of usage to the documents they provide to us.

### § 4 CONTRACT CONTENT, ADJUSTMENT OF CONTRACTUALLY AGREED SERVICES, LEGAL DEFECTS

1. The contractually agreed service shall be determined by the agreement arrived at, in particular the order confirmation.
2. Technical specifications of our products, such as weight and measurement details, performance and characteristic descriptions, as well as images, drawings and other documents shall not represent any quality guarantee. The agreement of a warranty or acceptance of a procurement risk must be issued in writing to be effective.
3. The contractually agreed service is free of legal defects insofar as a third-party cannot assert claims vis-à-vis the Customer on the territory of the Federal Republic of Germany. GARGIULO is only required to ensure exemption from third-party rights in relation to other countries if we have confirmed this in writing.
4. Changes to the product following conclusion of the contract shall be permitted, providing these are due to technical reasons or are customary in the trade and are reasonable for the Customer.

### § 5 PRICES, PAYMENT

1. The respective price lists valid at the time of contract conclusion shall apply unless an express agreement to the contrary concerning the price was concluded.
2. All prices shall be net prices and shall be subject to the respectively applicable value added tax at the time of delivery.
3. Subject to any deviating agreement in individual cases, all prices are FCA (Incoterms 2010 FCA GARGIULO, Nehren, Germany).
4. Any costs incurred, in particular for payment handling, transport, import and export custom duties and fees shall be borne by the Customer.
5. Subject to any deviating agreement, payments are due within 30 calendar days upon transfer of risk/service provision on net terms. The date of receipt of the payment by us shall be decisive when considering whether the payment has been made on time. Payments are to be made at the registered offices of GARGIULO in Nehren. The cost and risk of payment shall be borne by the Customer.
6. Discounts require a separate agreement in each individual case.
7. Acceptance of cheques and bills of exchange requires an express written agreement.
8. Should we have agreed to partial payment on the basis of a special agreement and should the Customer enter arrears in respect of the payment of a partial amount, the full amount or the full remaining remount shall become immediately due.

### § 6 SERVICE DEADLINE, FORCE MAJEURE, SELF-SUPPLY RESERVATION AND TRANSFER OF RISK

1. The delivery time shall be in accordance with the written order confirmation. Should a delivery time not be expressly stated as being binding, this shall only be an approximate statement.
2. The delivery time shall commence on dispatch of the order confirmation, but not prior to the necessary documents such as drawings and permits etc. having been made available to us by the Customer.
3. In case of an agreed advance payment, the delivery time shall not start to run prior to provision of the advance payment.
4. The delivery period shall be extended accordingly in the event of force majeure. This does not include cases in which the existence of force majeure and its duration do not impact on the period of service provision. In calculating the appropriate extension of the service provision period, the duration of the obstacle and an appropriate run-up time shall be taken into account. Unforeseeable events at the time of contract conclusion such as energy and raw material shortage, strikes, official measures, terrorist attacks and war shall also be deemed cases of force majeure. GARGIULO shall inform the Customer without delay of the existence of force majeure and its anticipated duration. If the state of force

majeure lasts without interruption for more than three months or if the delivery date is extended due to a series of cases of force majeure by more than four months, both the Customer and GARGIULO are entitled to cancel the contract. In the event of force majeure, any claims for damages or other claims are ruled out. The obligation to provide consideration shall no longer apply, advance payments already made shall be reimbursed. The provisions of this section shall apply in the same way if the circumstances occur to a subcontractor and impact on the supply to GARGIULO.

5. The delivery time shall be subject to full and timely provision by our suppliers (self-supply reservation). This shall not apply if the contractual agreement clearly specifies that we accept any procurement risk or if a case of unlimited indeterminate obligation applies. Furthermore, our obligation to deliver based on the self-supply reservation shall not cease to apply if we have not concluded a congruent hedging transaction with our suppliers with regard to the service to be provided to the customer, or if we have culpably brought about the non-fulfilment of this congruent hedging transaction ourselves. GARGIULO shall inform the customer without delay if the service of the congruent hedging transaction is not available.
6. Damage claims as a result of non-adherence to the deadline for service provision are based on § 11.

## § 7 DELIVERY AND TRANSFER OF RISK

1. Deliveries shall take place free carrier in accordance with Incoterms 2010 FCA Nehren.
2. We shall be entitled to provide partial deliveries, providing no unreasonable disadvantages are caused to the Customer as a result.
3. The risk of possible destruction shall be transferred on handover to the Customer, their carrier or a third party designated by the Customer.
4. Should the Customer or a named assisting person not take possession of the goods which have been declared as being ready for delivery, the risk of possible destruction shall be transferred to the Customer on non-acceptance of the goods following the declared readiness for dispatch.

## § 8 ACCEPTANCE DEFAULT

1. Should the Customer not accept the goods on time or be in default of acceptance in any other way, they shall be obliged to pay an amount of 0.5% of the order value or the value of the partial delivery per commenced week. However, the liability shall be limited to a maximum of 5% of the order value or 5% of the value of the partial delivery. The onus is on the Customer to provide evidence of lower losses or no losses; the onus is on GARGIULO to provide evidence of higher losses.

## § 9 DEFECT COMPLAINTS

1. It is up to the Customer to inspect goods received for defects within seven days of the transfer of risk.
2. If a defect is discovered, a complaint is to be submitted within three working days of actual discovery. This applies regardless of whether this occurs during inspection according to Section 1 or at a later stage.
3. Any defects discovered shall be reported to us in text form at least. The complaint shall include a detailed description which illustrates the assumed causes and the effects. On request we are to be provided with suitable documentation material, especially in the form of photographs.
4. If the Customer does not meet their inspection and complaint obligation, the service shall be deemed to be approved and the Customer shall not be entitled to warranty rights. This does not apply if we have fraudulently concealed the defect or the exclusion would be incompatible with the provisions of a warranty.
5. The Customer is obliged to bear GARGIULO's costs incurred as a result of a culpably initiated unjustified defect complaint.

## § 10 WARRANTY

1. In the event of inadequate fulfilment on the part of GARGIULO, i.e. the failure of actual service provision to comply with the contractually agreed service (deficiency), the Customer's claims are based on the following provisions.
2. Initially, the Customer is only entitled to require GARGIULO to eliminate inadequate performance (correction of defects) within ten working days. It is up to GARGIULO to select the type of correction of defects used by GARGIULO to eliminate the inadequate performance, essentially rectification or replacement delivery. For the purpose of the correction of defects, the Customer shall grant GARGIULO or third parties contracted by GARGIULO access to the goods and also support any measures which may become necessary and advisable. GARGIULO shall bear any expenses required in connection with the correction of defects. GARGIULO shall not bear any expenses incurred by the goods having to be taken to a different place than that originally intended.
3. If GARGIULO does not correct the defects before the deadline or if the type of defect correction chosen by GARGIULO does not lead to freedom from defects, the Customer is entitled to reduce the purchase price.
4. The Customer is only entitled to cancel the contract if:
  - a) there is a significant breach of contract and
  - b) the correction of defects was not carried out before the appropriate deadline or did not lead to freedom from defects.

Letter (b) does not have to be met for cancellation of the contract if the correction of defects is unreasonable for the Customer due to the circumstances of the individual case or else would obviously remain unsuccessfully.

5. The Customer is also entitled to cancel the contract if GARGIULO does not provide the service in the event of non-adherence to the supply deadline in spite of the fact that an additional deadline was set, which in generally should not be longer than two weeks.
6. The Customer is obliged to assert claims under Section 2 – 5 within an appropriate period of time. The Customer shall call upon GARGIULO to take action in writing.
7. If the non-performance or inadequate performance only applies to part of a delivery, the claims under Section 2 and 3 only apply in reference to the part affected by the non-performance or inadequate performance. Cancellation of the entire contract (Section 4 and 5) can only be declared in such an instance if the incompleteness of the supply or only partial contractual supply constitutes of itself a significant breach of contract.
8. Warranty claims – with the exception of damage claims – are subject to a time limitation of 12 months of the transfer of risk. This does not apply in the case of fraudulently concealed effects or other compulsory statutory regulations.
9. The above claims due to inadequate fulfilment are ruled out if based on improper handling by the customer or failure to adhere to the instructions for use. Section 4 b) and Section 4 Sentence 2 apply accordingly to the assertion of damage claims due to deficiency.

## § 11 LIABILITY

1. GARGIULO is liable under statutory provisions in the event of a culpable breach of obligations in the event of all damages arising from injury to life, body or health.
2. GARGIULO is liable under statutory provisions in the event of culpable breach of essential contractual obligations. However, this liability is limited to foreseeable damages typical of the contract concerned where GARGIULO is in breach of essential contractual obligations with wilful intent or in gross negligence. Obligations essential to the contract are those which are absolutely necessary to achieving the purpose associated with the contract and on whose fulfilment the customer may rely.
3. GARGIULO is liable for grossly negligent and wilful breach of non-essential contractual obligations.
4. Liability under Section 3 is limited to three times the order value in question in the event of grossly negligent breach of obligations, though no more than EUR 5,000,000.00. In view of the latter provision, GARGIULO recommends taking out additional insurance.
5. GARGIULO is liable under the provisions of applicable product liability law.

6. In the event of a contractual warranty being agreed on, GARGIULO is liability according to the warranty declaration.
7. Otherwise liability is excluded.
8. Insofar as our liability is limited or excluded according to the above sections, this also applies to the liability of our legal representatives and vicarious agents, including our employees and staff members.

## **§ 12 NON-DISCLOSURE**

1. The parties hereby agree secrecy in respect of all economic and technical details, in particular know-how, drawings, samples etc. which are disclosed to them within the framework of the business relationship.
2. The agreement in accordance with § 12 Section 1 shall not apply if the details have become obvious.
3. The parties shall be obliged to impose the non-disclosure obligation in accordance with § 12 Section 1 on their employees and third parties, in particular suppliers and sales partners.
4. The obligation to maintain secrecy shall continue to exist following termination of this business relationship.

## **§ 13 OFFSET AND RIGHT OF RETENTION**

1. The Customer shall only be entitled to offset undisputed claims or claims which have been legally recognised.
2. The Customer shall only be entitled to exercise the right of retention, provided that this concerns an undisputed counterclaim or a counterclaim which has been legally recognised.

## **§ 14 RESERVATION OF OWNERSHIP**

1. Until full payment of all claims under the business relationship, the products shall remain our property (goods subject to reservation of ownership). In cases of current accounts the retained property shall be deemed to be collateral for the claim to the balance of the account in our favour.
2. The Customer shall be entitled to dispose of the goods which are subject to reservation of ownership in the course of proper business dealings. Pledges or transfers by way of security are not permissible.
3. The Customer shall be obliged to treat carefully the goods which are subject to reservation of ownership.
4. The Customer shall be obliged to sufficiently insure the goods which are subject to reservation of ownership to the replacement value against fire and water damage and theft at his own expense. At our request, the Customer shall provide proof concerning conclusion of the insurance policy.
5. The Customer shall always carry out the processing or reshaping of the goods which are subject to reservation of ownership for us. Should the goods which are subject to reservation of ownership be processed with objects which do not belong to us in order to create a new item, we shall acquire co-ownership in respect of the said new item. Our right of ownership in respect of the new item shall be calculated by the relationship of the value of the goods which are subject to reservation of ownership to the value of the other processed objects at the time of processing.
6. Otherwise, the same regulations shall apply to our ownership in accordance with § 14 Section 5 as to the goods which are subject to reservation of ownership in accordance with § 14 Section 1.
7. Should the goods which are subject to reservation of ownership be connected or mixed with other objects in order to form a single item and should one of the other items be deemed to be a principal constituent, we shall be entitled to pro-rata co-ownership in respect of the item which comes into existence. The co-ownership shall be calculated in accordance with the relationship of the value of the goods which are subject to reservation of ownership to the value of the other connected or mixed items at the time of connection or mixing. The Customer already assigns this co-ownership to us at the present time, at the same time granting joint possession, whereby we already accept this assignment.
8. Claims against third parties to which the Customer is entitled due to use of the goods which are subject to reservation of ownership are now hereby being

assigned to us by the Customer for security with all ancillary rights. This shall apply regardless of whether the use is present in the course of selling on, processing, connection, mixing or remodelling. We hereby accept the assignment.

9. The Customer shall be obliged to retain ownership in relation to his consumers until full payment of the purchase price.
10. The Customer shall be authorised to collect, on our behalf, the resulting claims until revocation on our part or until suspension of payment to us.
11. We shall only carry out a revocation of the collection authorisation (§ 14 Section 1) if the Customer is in payment default, the asset position of the Customer deteriorates or an application for the opening of insolvency proceedings is lodged against the assets of the Customer.
12. In case of the revocation of the collection authority, the Customer shall notify us of the necessary details in order to collect the claims.
13. The Customer must provide us with immediate written notification of third party attacks against the goods which are subject to reservation of ownership or against items in respect of which we have (co-) ownership, in particular enforcement measures as well as of third party attacks against our claims. The Customer must provide us with the documents which are necessary in order to assert our rights.
14. At the request of the Customer, we shall be obliged, according to our choice, to release the securities to which we are entitled to the extent that the value of our securities exceeds the claims to be secured by more than 10%.
15. Should the goods be taken abroad, the parties shall be obliged to conclude an agreement which, in respect of effectiveness, imposed the same rights and obligations on the parties.

## **§ 15 PLACE OF JURISDICTION, CHOICE OF LAW**

1. The sole place of jurisdiction is the court responsible for the administrative headquarters of GARGIULO in Nehren, Germany.
2. GARGIULO shall also be entitled to bring a lawsuit against the Customer at their general place of jurisdiction.
3. If the Customer's subsidiary relevant to the respective service provision is located outside the European Union and outside the states of Switzerland, Norway and Iceland, all disputes between GARGIULO and the Customer shall be decided according to the arbitration code of the German Arbitration Institute (DIS) without possibility of recourse to legal action. The place of the arbitration procedure is Stuttgart. The number of arbitrators is three. The language of the arbitration procedure is German.
4. The law of the Federal Republic of Germany applies.

## **§ 16 WRITTEN FORM CLAUSE**

1. All amendments and supplements to these GTC (international) and the waiving of their validity must be made in writing to be effective. This also applies to any potential waiving of the written form requirement.

## **§ 17 SEVERABILITY CLAUSE**

1. If one or more of the provisions of this GTC (international) or parts of a provision are invalid, this does not affect the validity of the other provisions or that of the contract as a whole.
2. Section 1 shall apply accordingly in the event of a loophole.