

GENERAL COMMERCIAL AND DELIVERY TERMS (GCDT)

1 Definitions

The following definitions are used for the purposes of these General Commercial and Delivery Terms:

- 1.1 **Manufacturer, Supplier** – the Manufacturer and Supplier is the Gestra CZ s.r.o. Company that manufactures and supplies its products or provides services related to them
- 1.2 **Product, machine** – the result of Manufacturer's production activities
- 1.3 **Delivery** – delivery of products, services or work
- 1.4 **Customer** – a physical or legal entity that enters into a business relationship with Gestra CZ s.r.o.

2 Validity

- 2.1 These Commercial Terms are the main document that determines all legal relationships between the Supplier and his Customer. Supplier's deliveries, work and offers will be performed exclusively according to these Commercial Terms. This contravenes any Customer claims to the contrary that point to their own commercial or purchase terms.
- 2.2 The Supplier can contractually agree on some other conditions, different from this document, with a Customer.
- 2.3 If in a purchase agreement different terms were agreed for a specific delivery between the Supplier and a Customer, then the terms of this delivery are governed by the terms of the purchase agreement that are different. As far as the remaining conditions this specific delivery is governed henceforth by this document (GCDT).

3 Offer, Order and Conclusion of Contract

- 3.1 Machines and products of this Manufacturer are custom made. These products are made and completed based on a contract with a Customer. Thank to this Customer requirements can be taken into account for each product.
- 3.2 Supplier offers are not binding. Prices in an offer are, unless agreed otherwise, without duties, VAT, transport, installation and other costs.
- 3.3 Unless agreed otherwise in writing with a Customer, offer validity is set for the period of one month from the date of the offer posting.
- 3.4 Customer orders must be made in writing.
- 3.5 An offer (contract) becomes effective and binding for both sides by signing of the contract or by written confirmation of the order (both versions are further specified as "Purchase Contract") or by delivery of the ordered product.
- 3.6 The following remote communication means are understood as "in writing": Fax and e-mail.
- 3.7 If an offer is made in a different currency than CZK, the Supplier reserves the right to correct offer prices in case of the exchange rate fluctuation larger than 2%. For this eventuality an offer specifies the exchange rate valid at the time of the offer creation. Unless specified otherwise in an offer, the European Central Bank exchange rate is used for the EUR currency, for other currencies the rates of the Czech National Bank are used.

4 Drawings and Technical Documentation

- 4.1 Drawings, technical documentation and all other documentation that is related to a delivered product (machine) that is provided to a Customer are exclusive property of the Supplier, and cannot be used for the purpose of production or copied, reproduced or given to a third person. If this provision is breached the Manufacturer is entitled to request damages from the culprit.
- 4.2 Weights, dimensions, technical data and other data contained in catalogues, brochures, web pages, advertising materials and price lists have informational character only. These data are not binding.
- 4.3 The Supplier declares that he manufactures and sells his products in accordance with the appropriate CSN and EN standards.
- 4.4 The Supplier supplies a User Manual, whose copy is archived at the Supplier premises, for each delivered product.
- 4.5 The Supplier archives production documentation of supplied products including purchase contracts.
- 4.6 Production and technical documentation for individual orders including User Manuals is archived for the period of 10 years.

5 Technical Conditions and Test and Quality Certificates

- 5.1 Our products are tested by special software during development.
- 5.2 Risk analyses are performed on our products according to appropriate standards and laws. Based on this the "Declaration of Conformity" is issued, and the products are marked by the CE mark. Beyond this some products are tested by TÜV and SZÚ institutions. Products (machines) are checked and tested during their production at the Supplier's premises. Unless they are large assembly units that are completed at Customer premises, our products are submitted to operational tests before shipping.
- 5.3 If Customers require other tests and certificates, then they are issued for a consideration. Requirements for such tests must be specified in an order and will be accepted within a purchase contract.

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6 Packaging

- 6.1 Products are shipped and packaged according to usual transport conditions valid for freight transport with the goal to eliminate dangers of damage or degradation of products.
- 6.2 If packaging is used then it is non-returnable, and its price is included in the product price. In case of returnable packaging this is handled in the appropriate purchase contract.
- 6.3 Large dimension products are shipped as bulk freight, secured against damage and weather influences.
- 6.4 Products shipped overseas are shipped in seagoing containers or special crates. In these cases the products are packaged and treated against aggressive climatic conditions during sea transport, hydraulic aggregates are in these cases transported without oil (with regard to sea transport regulations).

7 Delivery

- 7.1 If all Customer obligations were met (see point 7.2), a delivery date is counted from the date of purchase contract conclusion (or from the date of order confirmation), unless stated otherwise in the purchase contract. In the case of agreed advance payment the delivery term is counted from the day of receiving of the whole amount of the advance payment to the Supplier's account.
- 7.2 The prerequisite for adhering to agreed deadlines and terms is that payments from a Customer that should have been executed (even from other contracts within ongoing business relationships) or other Customer obligations are available on time or met. If this is not the case all deadlines and terms can be extended accordingly.
- 7.3 Shipping of goods from the Manufacturer's plant is going to be performed only after the Customer payment is received at the Supplier's account. This does not apply to guaranteed documentary payments.
- 7.4 The Supplier reserves the right not to supply goods until the time when all Customer obligations are met.
- 7.5 Delivery terms are met if the delivery is shipped within the delivery deadline or delivery term. They are also considered met if the delivery is announced as prepared for the shipment, but it could not be sent on time due to no fault of the Supplier.
- 7.6 If not adhering to agreed terms was caused by force majeure, i.e. operational or production defect, strike, lock-out, official instructions, theft, transport vehicle accident or some other unforeseeable and Supplier uncontrollable circumstance or a circumstance not caused by the Supplier, even on the side of subcontractors, then the Supplier is temporarily, i.e. for the time period of this circumstance and its consequences, relieved of his delivery obligations. However, the Supplier is obliged to notify the Customer about these circumstances immediately.
- 7.7 The Supplier has the right to deliver prematurely or in part.
- 7.8 If the Supplier is in arrears with a part of delivery or if a part of delivery cannot be performed, a Customer can withdraw from the contract, but only in case that this partial execution is unusable for him.
- 7.9 A contractual fine for a delay of delivery by the Supplier is applied according to a special written agreement. The contractual fine can be applied only in the case when it has been proven that the delivery delay was the Supplier's fault, and the Customer proves that the delay was the reason for damages.
- 7.10 The applied contractual fine according to the point 7.9 shall not exceed 0.2% of the delivery price for each day of delay of the delivery that was delayed with the maximum of 5% of the delivery price.
- 7.11 In the case that a Customer does not take products away the Supplier reserves the right to charge him costs related to storage up to the amount of 0.1% of the delivery price for each day of delay.
- 7.12 Standard delivery terms (Incoterms 2010): EXW Supplier's premises, unless stated otherwise in the purchase contract.
- 7.13 Customers can order installation of supplied machinery from the Supplier.
- 7.14 The installation work at the Customer's premises includes installation and commissioning of the supplied machinery. Customer requests for additional installation changes or other extra work are not a part of installation. Higher costs originating due to these additional requirements are paid by the Customer.

8 Ownership Rights

- 8.1 Delivered products remain owned by the Supplier until complete payment of the agreed price by the Customer. Customers pledge to perform all measures necessary to protect Supplier ownership.
- 8.2 If a Customer does not pay for the goods in 30 days after agreed term, and there is no other agreement, the Supplier has the right to take the delivered goods back or sell the receivable to a third person. Costs originated through taking of the goods by execution shall be paid by the Customer.

9 Payment Conditions

- 9.1 The Supplier is authorized to request reasonable adjustment of agreed prices if in the period between order confirmation and delivery term acquisition prices increase, exchange rate change, or if there are Customer requests for design changes or delivery conditions. Fixedly agreed changes and prices must be agreed on in writing. Additional change requirements agreed on orally and confirmations of their orders must the Supplier announce to the Customer in writing within 7 days. Thus announced changes become valid, unless the Customer refutes them within 7 day deadline.
- 9.2 Prices specified by the Supplier are EXW Supplier premises, unless agreed otherwise in the purchase contract (Incoterms 2010 standards).
- 9.3 Accepted ways of payment:
 - Bank transfer - payment in advance (the whole amount paid before shipping) – only in case of standard machines up to EUR 25,000.-
 - Bank transfer – 40% down payment (at ordering), balance of 60% (before shipping)
 - Bank transfer – through leasing or bank credit (provided by Customers at these institutions)
 - Bank transfer – irrevocable documentary letter of credit
 - Bank transfer – irrevocable documentary letter of credit with deferred payment
 - Different payment ways can be agreed on in the purchase contract.

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- 9.4** In the case that the Customer requires secured deal (bank guarantee, documentary letter of credit, etc.), the bank fees related to it are charged to the Customer's account.
- 9.5** If the supplier requests retention money from the customer, it will be provided at an interest rate that is set as floating, and constructed as a sum of 12M EURIBOR rate for the given period + fixed variances of 5% p.a. During the retention period, CZK currency losses according to the exchange rate will be added.
- 9.6** Payments shall be credited to the Supplier's account by the Customer without any deductions, with SHA charges applied, unless stated otherwise in the purchase contract.
- 9.7** In the case of partial deliveries the payments will be performed in accordance with the volume of partial deliveries.
- 9.8** The payment period is 14 days from the date of invoice delivery to the Customer, unless stated otherwise in the purchase contract or on the invoice.
- 9.9** The payment date specified on the invoice is not affected even in cases when after meeting delivery terms by the Supplier delivery of the products or their installation is delayed or prevented through no fault of the Supplier.
- 9.10** A payment is considered made on the day when the paid amount is credited to the Supplier's account.
- 9.11** Delay or postponement of payment on the side of a Customer authorizes the Supplier to the appropriate delay of his obligations. In case that this delay exceeds 30 days, the Supplier is entitled to withdraw from the contract.
- 9.12** In the case of delay of postponement of payment on the side of a Customer, while the products are ready to be shipped, the Supplier reserves the right to charge costs related to storage up to the amount of 0.1% of the delivery price for each day of delay. If the time of such storage exceeds 30 days, the Supplier is entitled to withdraw from the contract. In this case the advance payment already paid to the Supplier is forfeited to cover damages related to extinction of the contract. Charging of storage costs ends on the day of taking away of the products or the day of written withdrawal from the contract by the Supplier.
- 9.13** In the case that the Customer is delayed with payment, he will pay a contractual fine in the amount of 0.1% of owed amount for each day of delay starting with the day after the payment day. This provision applies to all payments on the side of the Customer.
- 9.14** Under the payment condition of advance payment the Customer is obliged to pay the whole amount of purchase contract according to advance invoice according to its payment date. In the case of delay or non-payment of such advance invoice by the Customer within the payment period, the Supplier has the right to withdraw from the purchase contract without any obligations towards the Customer after 10 days after the payment date.

10 Warranty Conditions

- 10.1** Unless specified otherwise in a Customer contract, goods are guaranteed for the period of 12 months or 2000 hours of operation. The warranty starts to run on the date of shipping from the Supplier Company or by commissioning of the machines at Customer premises. If shipping of goods or installation at Customer premises is delayed for reasons that are beyond the reach of the Supplier, the warranty is extended for the maximum of 3 months, counted from the time when the goods are ready for shipping or installation according to the acceptance notification to the Customer.
- 10.2** A condition for honoring of warranty is regular performance of prescribed periodic inspections and maintenance (specified in User Manual), and recording of them in the Maintenance control Sheet or the Warranty and Service Book.
- 10.3** Some parts are guaranteed by their Suppliers. These are specifically:
- Hydraulic aggregate and hydraulic components
 - Electrical installation and electrical components
- 10.4** The Manufacturer's warranty does not apply to defects and damages caused by:
- parts in direct contact with a workpiece
 - Normal wear of the machine caused by normal operation
 - Unauthorized interventions to the machine construction, electrical installation, hydraulic system or the machine adjustment (including software if installed)
 - Wrong setup or adjustment and bad maintenance – not adhering to instructions specified in User Manual
 - Unreasonable loads that exceed parameters set in User Manual
 - Using of the machine by unsuitable and rough handling, i.e. in variance with instructions specified in User Manual
 - Not adhering to operational regulations specified in User Manual
 - Unsuitable environment, effects of aggressive conditions (e.g. water, freezing temperatures, stone dust, etc.), defects in electrical supply, over or under voltage, drop-out of phase and incidence of lightning
 - Other causes that are beyond reach of the Manufacturer
 - And other damages
- 10.5** The Manufacturer's warranty expires by:
- Expiration of warranty period, i.e. expiration of one of the conditions specified in the point 10.1
 - If it is found that the machine is not set up or adjusted in accordance with User Manual
 - If a Customer makes changes in the machine construction or performs an unauthorized intervention to electrical installation, hydraulic system or machine adjustment (including adjustment of software if installed)
 - In the case of irregular maintenance of the machine according to User Manual, and not writing of maintenance records to the machine Maintenance Control Sheet or the Warranty and Service Book
 - In case protective seals are damaged if the Manufacturer provided the machine with them
 - If the Customer makes changes or repairs of the machine by unauthorized service or with non-original parts (i.e. part not specified in the spare parts list in User Manual)
 - In the case when the Customer does not immediately perform measures to prevent larger damages or does not allow the Manufacturer to fix the defect on time
 - Sale or lease of the machine to a third person
- 10.6** During the warranty period, the supplier is entitled to withdraw from the guarantee obligation if he or she discovers that the supplier does not operate the machine in accordance with the conditions stated for operation of the machine (as indicated in the Instructions For Use).
- 10.7** In the case when a Customer sells bought equipment still under warranty or transfers its use to a third person, the warranty is not transferred to that third person.

11 Warranty Claims and Repairs

- 11.1** The Manufacturer has the exclusive right to honor or not to honor a warranty.
- 11.2** During the warranty period and the period of contractual service a Customer is obliged to order service and spare parts from the Manufacturer.
- 11.3** Claims regarding completeness and apparent defects of delivered products must be done within 7 days from receiving of the goods by the Customer. This 7 day deadline starts to run on the day of receiving of the product that is marked on a delivery sheet or similar document.
- 11.4** A warranty can be honored only after giving a written report about the defect. This report has to contain:
- a)** Date when the defect was found
 - b)** Machine serial number
 - c)** Machine work hour reading (if the machine is equipped by this counter)
 - d)** Specification of the defect, description of the function defect
 - e)** Photo documentation of the defect (sharp, clear photographs with the resolution at least 2 MPx). This required photo documentation must contain: A photograph of readable production tag, a photograph of the work hour counter, and the photograph of the machine defect.

The Customer is obliged to send a complete report about the defect to the Supplier immediately after the defect was found (see the point 10.3). The defect report can be sent by regular mail or by e-mail to the following address: **service@gestracz.com**.

- 11.5** By sending the written defect report the Customer agrees with performance of needed repair on the machine, and pledges to pay all costs related to this service action.
- 11.6** Based on the written defect report sent by the Customer the Supplier will immediately evaluate the defect and decide whether to honor the warranty. The Manufacturer will immediately, usually within 48 hours, perform necessary steps to remove the defect or exchange parts that were affected by the defect. Then he will decide about the warranty and urgent performance of the repair according to the cause of the defect.
- 11.7** Warranty repairs are performed preferably at the Supplier's premises. If the repair needs to be performed at the Customer's premises, then the repair will be done under the following conditions.
- 11.8** Parts exchanged during the warranty belong to the Supplier. In the case when the Supplier sends a new part and the Customer performs the exchange himself, the Customer is obliged to send the exchanged part to the Supplier. If the Customer does not send the exchanged part back within 40 days, this will be considered a purchase of the spare part that will be retroactively invoiced to the Customer. Sending of a spare part back to the Supplier can be agreed differently between the Customer and the Supplier.
- 11.9** If it is necessary for the defect to be fixed by a Manufacturer's technician, the Manufacturer will inform about this the Customer, and they will agree on the nearest possible term of defect removal at the Customer's premises. Contents of this agreement are then sent to the Customer by e-mail. The Customer is informed about arrival of the technician by the Manufacturer before the technician arrives.
- 11.10** In the case of service action by a Manufacturer's technician the Customer is obliged to provide a person who will be responsible for this event that will hand over the machine for performance of the service work. After the work is finished the person responsible will accept the machine from the technician and sign the service protocol.
- 11.11** If the Customer does not provide the person responsible for handing over and accepting the performed repair, then the Customer agrees with performed work, and shall accept the service protocol that the Manufacturer will send by email immediately after the technician arrives back. The Customer thus by his non-cooperation pledges to pay for the repairs in the scope specified in the service protocol.
- 11.12** During removal of defects within the warranty period the Supplier bears only costs related to the repair or exchange of spare parts. In the case that it is found that the machine defect was caused by the fault on the side of the Customer, all costs related to the repair will be paid by the Customer.
- 11.13** If a Customer requests other machine maintenance in connection with a warranty repair, then the related extra costs will be paid by the Customer.
- 11.14** Within a warranty period the Manufacturer bears only the costs connected with the repair or exchange of defective parts (see 11.12). The Customer pays for the transport of parts. In the case that the repair requires intervention by a Manufacturer's technician at the Customer premises, the Customer will pay for the transport of the technician forward and back and his accommodation and food costs.
- 11.15** In the case of warranty claim for a defective equipment part the claim will be honored only in the case when the defective part will not be damaged by disassembly or otherwise.

12 Withdrawal for Contract, Cancellation and Changes

- 12.1** Withdrawal from contract must be performed exclusively in written form and delivered to the other contractual side.
- 12.2** Requests to change contractual conditions or product design on the side of Customers have to be performed exclusively in writing and are a subject of Supplier's approval. The form of a change is a written addition to a purchase contract. The Supplier reserves the right to charge extra costs originating from an order change between production start and the time of the change in full.
- 12.3** Cancellation or suspension of an order performed by a Customer has to be done exclusively in writing, and is a subject of Supplier's approval. The Supplier reserves the right to charge extra costs originating from an order cancellation between production start and the time of the cancellation in full. Furthermore the Supplier is entitled to request a reimbursement of further costs related to the production of undelivered products (e.g. percentage from a credit to finance production, costs for discount of bills, etc.). An order cancellation comes into effect by the settlement of originated costs in full.
- 12.4** In the case that a customer concludes a purchase contract in the amount exceeding EUR 20,000.-, and does not meet purchase contract conditions within 30 days without a written withdrawal from the contract, he shall pay the Manufacturer a contractual fine in the amount of EUR 5,000.-. This does not affect the point 12.2.
- 12.5** In the case when cancellation or withdrawal from a contract is performed by a Customer, while an advance payment has already been paid for ordered products, the advance payment shall be forfeited for the benefit of the Supplier. This does not affect the point 12.2.

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- 12.6** If a Customer does not pay within 30 days after an agreed payment date an agreed purchase price, the Supplier is entitled to sell the receivable to a third person or to withdraw from the contract and take away the product from the Customer without substitution. In this case the Customer bears costs related to this execution.
- 12.7** If an advance payment has been agreed on, then in the case of delay or non-payment of this advance invoice by the Customer on the agreed payment date, the Supplier has the right to withdraw from the purchase contract without any obligations towards the Customer after 10 days after the payment date.

13 Responsibility

- 13.1** Product deliveries are performed in accordance with these "General Terms", purchase contract conditions and warranty responsibilities. Other Customer claims and reservations that are not specified in a purchase contract are not the Supplier responsibility.
- 13.2** Products produced by the Supplier or their parts in the form of sub-deliveries are made according to the valid documentation for these products. This documentation is archived on the Supplier premises.
- 13.3** If the products are supplied to a Customer as a part of another delivery and the Supplier manufactured them based on his own development, then the sub-delivery documentation and results of his development are an exclusive property of the Supplier. A Customer does not have a right to protect it as his own intellectual property. The Supplier is entitled to treat this intellectual property as his own, and provide it to other Customers.
- 13.4** If it is not possible (e.g. due to the construction of sub-delivery) for the Supplier to perform functional operational tests, a Customer that will complete the equipment and deliver it to a final Customer, is obliged to perform a risk analysis (according to valid standards and laws), provide the products by safety and protective systems, and perform safety operational tests of the whole equipment as a set. The finished equipment must meet the appropriate EU standards and regulations. If the Customer does not perform a risk analysis and operational safety tests before handover to a final Customer, the Manufacturer (Gestra CZ) does not bear responsibility for equipment damages or bodily harm caused by operation of the delivered products.
- 13.5** The Manufacturer equips these products by parts from other contractors (e.g. electrical installations, control systems, hydraulic systems, etc.). Responsibility for their function and problems caused by defects of these parts is born by their suppliers. The equipment Manufacturer is entitled to damages demonstrably caused by defects of subcontractors' parts. These damages include travel, installation and possible loss of production costs.
- 13.6** If the Supplier orders a sub-delivery for use in his own products from external suppliers, and if he set the order parameters or supplied drawings for production of the ordered sub-delivery, then the result of this sub-delivery is a property of the Supplier, and the subcontractor does not have a right to protect it as his own intellectual property or offer this sub-delivery for sale as his own product.
- 13.7** The Supplier is responsible for provision of original spare parts.

14 Disputes and Their Resolution

- 14.1** In the case of disputes about wording of individual provisions of these Terms, the original wording in the Czech language prevails.
- 14.2** Unless specified otherwise in a contract, purchase contract and business relationship conditions are governed by the Law of the Czech Republic. In the case of doubt originated by inexact translation of a contract, the original Czech version shall be used for clarification.
- 14.3** Any disputes that will originate in connection with a purchase contract should be resolved amicably by agreement, if this is not possible then they shall be handled by the courts in the Supplier's jurisdiction.

Date of the last revision of these Terms: 1.12.2015

Bohumil Vasicek
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