

## **General Terms and Conditions of**

**GFD –Gesellschaft für Dichtungstechnik mbH, Hofwiesenstr. 7, D-74336 Brackenheim  
Sales and delivery conditions, position at 2007/04**

### ***1. General***

a. The following conditions are the content of all contracts concluded between GFD – Gesellschaft für Dichtungstechnik mbH (hereinafter referred to as GFD) and a buyer. These also apply for all further business, if GFD does not expressly refer to them in later contracts, unless the customer is not a merchant within the meaning of the German Commercial Code ( HGB ). General business conditions of the buyer do not apply to GFD, even though GFD has not expressly contradicted them. The customer recognizes these conditions expressly by placing of orders or acceptance of delivery.

b. Different provisions or agreements to the agreements made herewith have to be confirmed expressly in writing by GFD to be valid. In addition to this all alterations require writing; this also applies to the alteration of this clause.

c. GFD is entitled at any time to alterate or supplement these conditions. The actual drafting is linked under <http://www.seals.de>.

d. Customers are informed about any alterations. The new conditions become valid, if the buyer does not contradict to the altered conditions within a four-week period. The validity then applies to future and consisting contracts.

### ***2. Delivery deadline***

a. The period for delivery begins with the dispatch of the confirmation of order, but not before the provision of any documents, approvals and clearances to be furnished if necessary by the customer and before the receipt of any agreed down payment.

b. The delivery deadline is complied with, if by the expiry of the period for delivery readiness for dispatch has been notified or the item for delivery has left the factory.

c. The period for delivery is extended in the case of action in the context of industrial disputes, in particular strikes and lock-outs as well as the occurrence of unforeseeable obstacles, which are beyond the control of GFD, e.g. breakdowns, delays in the delivery of essential materials, in so far as such obstacles demonstrably have a considerable influence on the delivery of the item (Force Majeure). This also applies, if the circumstances arise with sub-contractors. The period for delivery is extended according to the duration of such action and obstacles. GFD is also not to answer for the above mentioned circumstances, if they arise during an already existing delay. The beginning and end of such obstacles are in serious cases to be notified by GFD to the buyer.

d. In the case of orders, in which several deliveries are agreed (multiple delivery contract), one defective or late delivery is without influence on further deliveries under the contract. Partial shipments permitted.

e. If the seller culpably exceeds the delivery deadlines, he comes into default only if the buyer requests him to deliver again, setting a reasonable deadline. The buyer can claim compensation for damage caused by default, in so far as the legal pre-conditions exist. If the buyer is a user within the meaning of § 13 of the German Civil Code (BGB), this claim is confined in the case of slight negligence to 5% of the agreed purchase price. If the buyer is a merchant, a legal person under private law or public law or a public law special fund, claims for compensation for damage caused by default are excluded. If the buyer also wishes to withdraw from the contract and/or demand compensation for damages instead of the service, he must first of all set a reasonable delivery deadline to GFD. If the buyer wishes to make a claim for compensation for damages instead of the service, the restrictions under No. 9 B apply. If the delivery is by chance impossible for the seller, while he is in default, he is liable with the above-mentioned agreed limitations on liability. The seller is not liable, if the damage would have occurred even with delivery on time.

### ***3. Extent of delivery***

a. The extent of delivery will be determined by written confirmation of order by GFD. Over ore less-shipments +/- 10 % in quantities are permitted.

b. Changes in construction or form, which are attributable to technology or to requirements of the legislature, are subject to reservation during the delivery period, in so far as the item for delivery is not considerably changed and the changes are reasonable for the buyer.

### ***4. Annulment costs***

If the buyer unjustifiably withdraws from an order that has been issued, GFD can claim 10% of the sales price for the costs arising from the processing of the order and for the loss of profit irrespective of the possibility of claiming higher actual damages. The buyer reserves the right to prove less damage.

### ***5. Packing and dispatch***

Packing materials become the property of the buyer and will be charged by GFD. Postage and packing expenses are charged for separately. The choice of type of dispatch will take place by GFD after due consideration.

### ***6. Protective rights and tools***

a. GFD reserves proprietary rights and copyrights to preliminary estimates of costs, drafts, drawings and other documents. These documents may be made available to third parties only after the issue of the written approval by GFD.

b. In so far as items are produced in accordance with drawings, models, samples or other documents, which are handed over to GFD by the buyer, the customer takes over the guarantee that protective rights of third parties are not infringed.

c. Tools that are produced by GFD to manufacture the item for delivery remain the property of GFD. This applies even if the customer has taken over pro rata costs or the whole costs for the production of the tool. The retention period for such tools shall be at the discretion of GFD.

d. For shipments of GFD goods, also in processed form, in foreign countries, the purchaser discharges GFD from all claims of third parties which may arise by infringement of industrial rights.

#### **7. Acceptance and passing of the risk**

a. The buyer is obliged to accept the item for delivery unless he is temporarily prevented from accepting it through no fault of his own. In the absence of an agreement to the contrary handover takes place in Brackenheim.

b. If the buyer does not accept the item for delivery, the seller can make use of his legal rights.

c. The risk passes over to the buyer with acceptance of the item for delivery. If the buyer declares that he will not accept the item for delivery, the risk of a chance loss or a chance deterioration of the item for delivery passes over to the buyer at the time of the refusal.

d. If it is agreed that delivery will take place through GFD, the risk passes over to the buyer with the handover of the item to the forwarding agent. At the written request of the buyer the goods will be insured against breakage and transport and fire damage.

e. In the case of the contract with a user (within the meaning of § 13 of the German Civil Code) the risk of chance loss and chance deterioration of the item passes over to the buyer on handover.

f. Return shipments needs in all cases our agreement in advance.

#### **8. Price changes**

Price changes are permissible, if there are more than four months between the conclusion of the contract and the agreed delivery deadline. If wages, costs of materials or market cost prices rise thereafter until the manufacture of the supply, GFD is entitled to increase the price reasonably according to the cost increases. The buyer is entitled to withdraw only if the price increase exceeds the rise in the general cost of living between ordering and delivery, not just immaterially. If the buyer is a merchant, a legal person under public law or a public law special fund, price changes in accordance with the above-mentioned rule are permissible, if there are more than six weeks between the conclusion of the contract and the agreed delivery deadline.

#### **9. Guarantee**

GFD takes over liability in the following way for defects encountered with the delivered products:

a. During a period of 12 months from the risk being passed over, the buyer has a claim to further work in fulfilment of the contract (correction or replacement). In the choice of guarantee law, the buyer has to comply with the principle of proportionality. In the case of correction, the manufacturer is obliged to repay all expenses required for the purpose of removing the shortcoming, in so far as the costs are not increased as a result of the item purchased being brought to a place other than the place of performance. Expenses are in particular transport, travelling, work and material costs. If the further work in fulfilment of the contract does not lead to success or is disproportionate, the buyer can withdraw from the contract or reduce the purchase price. The right to withdraw or to reduce can be claimed by the purchaser only in so far as he has unsuccessfully requested the seller, setting a reasonable deadline, to correct the defect. In the case of a contract with a final user ( §13 BGB ) the statutory regulations valid from 1.1.2002 will apply.

b. The buyer can claim compensation for damages only in so far as these are based on fraud, intent or gross negligence. The buyer must first of all have unsuccessfully given GFD a deadline of 25 working days for further work in fulfilment of the contract. If GFD is accused of a grossly negligent breach of contract, liability exists only in the case of breach of essential obligations and it is confined to the foreseeable, typically occurring damages; to this extent GFD is not liable for damages that have not arisen in regard to the item for delivery. Otherwise the obligation to pay compensation for damages is excluded.

c. Natural wear and tear is in any case excluded from the guarantee. The same applies in the case of irrelevant deviations from the agreed quality or damages, which arise, after the passing over of risk, as a result of faulty or negligent handling or special external influences, which were not foreseen in the contract. In addition to this also belongs another use of the item for delivery as intended or sampled, overstrain by faulty operating conditions, such as overheating, soiling, dry-running or similar, use of inappropriate lubricants, anticorrosive agents and such things, faulty countersurfaces or connections. In the event of a shortcoming based on faulty assembly, GFD is bound by the guarantee only if the assembly or the insertion of the item sold was carried out competently. The buyer has to set forth and prove the competent execution of the assembly.

d. Damages that arise as a result of insufficient or incorrect information on the buyer's operating conditions, as a result of incompetent handling or insertion of the item ordered, as a result of excessive demand or as a result of the fact that the buyer or a third party instructed by him undertakes changes or repairs to the item ordered, without the approval of GFD, are excluded from the guarantee.

e. If GFD delivers on the basis of a sample, GFD guarantees exclusively for the qualitative and dimensional characteristics of the sample, which has been provided by the buyer. The exclusion of liability also applies particularly for oral and written advice of GFD. The buyer is not relieved from proving the applicability for the intended purpose.

#### **10. Recourse**

The customer has the possibility of having recourse, in so far as within the context of his trade he sells the item to a user (§13 BGB) and if the shortcoming can be proven to be connected with the supplier's product. The buyer can moreover claim reimbursement of expenses, which he has had to bear in relation to the user, if the shortcoming claimed by the user was already present at the passing on of the risk to the buyer. Recourse is possible only in so far as the buyer has not reached any agreement with his consumer going beyond the legal guarantee claims. The buyer cannot, in the context of company recourse, claim any compensation for damages.

### **11. Reservation of Property rights**

- a. GFD reserves the ownership of the item for delivery until payment therefore has been effective.
- b. In the case of conduct by the buyer in breach of contract, in particular in the case of delay in payment, GFD is entitled to take back the goods after notice is given and the buyer is obliged to hand them over.
- c. The assertion of the reservation as to ownership, as well as the distraint on the item for delivery by GFD do not count as withdrawal from the contract, if the statutory provisions require something else or this is expressly declared by GFD. In the case of application with regard to businessmen, a legal person under public law or a public law special fund the following applies in addition:
- d. The buyer is entitled to sell the items delivered in the proper course of business; he now already, however, transfers to GFD all claims to the amount of the sales price agreed between GFD and the buyer (including value added tax), which accrue to the buyer from further disposal, and indeed irrespective of whether the items delivered are sold further without or after processing. GFD accepts the transfer. The buyer is empowered to collect these claims after they are transferred. The authority of GFD to collect the claims itself is not affected by this, but GFD undertakes not to collect the claims, as long as the buyer properly meets his payment obligations and is not in default of payment. If this is nevertheless the case, GFD can demand that the buyer make known the transferred claims and their debtor, give all details required for collection, hand over the relevant documents and to inform the debtors (third parties) of the transfer.
- e. The processing or transformation of the goods by the buyer will always be carried out for GFD. If the items delivered are processed with other items not belonging to GFD, GFD acquires the co-ownership of the new item in proportion to the value of the items delivered compared with the other items processed at the time of processing.
- f. If the items delivered are mixed with other items not belonging to GFD, GFD acquires the co-ownership of the new item in proportion to the value of the items delivered compared with the other items mixed. The buyer keeps the co-ownership for GFD.
- g. The buyer may not pledge the items delivered as collateral, nor transfer ownership of them as security. In the case of pledges and seizure or other orders by third parties, as well as the initiation of bankruptcy or composition proceedings on the buyer's property, the buyer has to notify GFD about it without delay and make all the information and documents available to GFD, which are necessary for safeguarding its rights. The attention of bailiffs or a third party has to be drawn to the ownership of GFD.
- h. GFD undertakes to release the securities due to GFD, in so far as, at the buyer's request, their value exceeds the secured claims by more than 20%, provided they have not already been settled.

### **12. Liability in tort**

Claims for compensation for damages in tort are excluded, unless the damage was caused deliberately or through gross negligence. This also applies in the case of action by vicarious agents and employees of GFD.

### **13. Payment conditions**

- a. The purchase price and the remuneration for subsidiary services are to be settled within 30 days from the date of the invoice without deduction. Except other conditions are confirmed by a written agreement.
- b. Cheques and bills of exchange are valid as payment only after clearance. The acceptance of bills of exchange always requires a prior written agreement with GFD. In the case of acceptance of bills of exchange the bank discount and collection expenses are calculated. They are to be paid immediately in cash.
- c. GFD calculates interest for late payment at 8% per annum above the relevant basic rate of interest in accordance with § 247 of the German Civil Code. In the case of contracts with a user within the meaning of § 13 of the German Civil Code, the rate of interest is 5%. It is to be made higher or lower, if GFD demonstrates a burden with a higher rate of interest or if the buyer demonstrates a lower burden. A reservation is maintained with regard to proof of further damage due to delay.
- d. If the buyer is a merchant, a legal person under public law or a public law special fund, the holding back of payments because of any counterclaim by the buyer not recognised by GFD is not admissible, just as setting off against such claims is not.

### **14. Place of implementation and jurisdiction**

- a. The place of implementation and jurisdiction is Brackenheim.
- b. In all disputes arising from this contractual relationship, if the buyer is a merchant, a legal person under public law or a public law special fund, a complaint has to be submitted at the District Court (Amtsgericht) in Brackenheim or at the Regional Court (Landgericht) in Heilbronn. GFD is also entitled to lodge a complaint at the customer's headquarters.
- c. Exclusively German law applies, to the exclusion of the law on the international purchase of movable objects (CISG), even if the customer has his firm's location abroad.

### **15. Other matters**

- a. Transfers of the customer's rights and obligations arising from the contract concluded with GFD require the written approval of GFD to be effective.
- b. If a provision is or becomes null and void, the validity of the other provisions is not affected by this.