

# GENERAL DELIVERY CONDITIONS OF GSE B.V.

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## Article 1 – General

These General Delivery Conditions are applicable to all offers made by GSE and agreements concluded with Clients, including associated agreements, and to all other legal relationships arising between GSE and the Client as a result of the performance of these agreements concluded between GSE and the Client, insofar as these are not explicitly deviated from in writing. The applicability of the general terms and conditions of the Client is expressly excluded.

## Article 2 – Definitions

In these General Delivery Conditions, the following terms are understood to mean:

Client: those to whom GSE makes an offer or with whom GSE concludes an agreement for the delivery of Products by GSE.

Equipment: machines, installations, apparatuses and other moveable property, as well as components thereof and therefor.

Service or Services: Assembly Activities, Start-up Activities, Supervision, Revision, Paid Consulting and/or Service Activities.

Products: Equipment and/or Services.

Assembly Activities: all activities outside the GSE factories (including all preparations and inspections at the place of assembly) concerning the erection of Equipment at the location specified by the Client, up to the trial run.

Start-up Activities: all activities from the start of the trial run of Equipment up until the moment of acceptance by the Client as defined in Article 10.3.

Supervision: the giving of instructions and advice concerning the services performed by third parties, including the Client, on behalf of the Client and for which third party services GSE is not responsible.

Revision: repair and/or improvement of Equipment at the request of the Client not in the scope of guarantee activities.

Paid Consulting: consulting carried out by GSE at the request of the Client that is independently specified in the offer or agreement and for which a separate invoice is sent. Service Activities: all activities outside the GSE factories and not falling under Assembly Activities, Start-up Activities, Supervision, Revision and/or Paid Consulting.

## Article 3 – Offers and agreements

3.1 All offers of GSE are without engagement. The agreement is concluded on the day that the written agreement is signed by both parties, or on the day the written order confirmation is sent by GSE, respectively.

3.2 Depictions and drawings provided that are not explicitly referred to in the offer or agreement are not binding. Depictions and drawings provided remain at all times the property of GSE. The recipient is responsible for ensuring that these depictions and drawings are not copied and/or made available to or inspected by third parties. GSE is not obliged to provide detailed drawings.

3.3 Weights, measures, capacities, prices, yields and other data incorporated into catalogues, prospectuses, circulars, advertisements, figures, price lists and the like have the character of indications. Should samples or test results have been shown or provided by GSE for the concluding of the agreement, then these shall be regarded to have been shown or provided only by way of indication.

3.4 The Client must determine for itself whether the Products are appropriate for the purpose for which it wishes to employ them. Advice provided by GSE in the context of the delivery of the Products shall not lead to any liability of GSE, unless this advice is to be regarded as Paid Consulting.

3.5 GSE reserves the right to change construction and execution of its Equipment if, in its judgement, this is reasonably non-detrimental to the quality.

3.6 All intellectual and industrial property rights arising from the performance of the agreement shall fall entirely to GSE, and GSE is authorised to register such rights in its name if necessary.

## Article 4 – Price and payment

4.1 The prices given by GSE are exclusive of turnover tax and other governmental taxes.

4.2 All payments must be made in full in the currency agreed upon, without any deduction, deferment or set off, to the bank account to be specified by GSE on the invoice. GSE is at all times authorised to require payment securities from the Client. Unless GSE determines otherwise, payments made by the Client extend in the first instance to settlement of all interest and costs incurred, and secondarily to the longest outstanding invoices, even if the Client indicates that the payment concerns a later invoice.

4.3 For overdue payments, the Client is charged the refinancing interest rate of the European Central Bank plus 8 percent, as well as the full amount of the judicial and extra-judicial costs actually incurred in connection with collection, without any notice of default being required.

4.4 If one or more cost components undergo an increase after the date of concluding the agreement – whether or not this takes place as a result of foreseeable circumstances or as a result of altered governmental regulations – then GSE is authorised to increase the agreed-upon price accordingly.

4.5 The agreement includes GSE's authorisation to independently invoice additional work performed at the request of the Client, as soon as the amount to be invoiced is known.

4.6 If the Client does not meet its payment obligations or obligation to provide security, or does not do so satisfactorily or in a timely manner, as well as in the case of bankruptcy, (provisional) suspension of payments (or a

comparable situation in the country of the Client's place of business), closure or liquidation of its company, GSE has the right to immediately claim all amounts due.

4.7 Unless otherwise agreed, for the sale of Equipment, one-third portion of the price must be paid upon order and two-thirds upon notification that the Equipment is ready for shipping, and for providing Services, the invoice sent by GSE must be paid within 30 days after the date of invoice.

4.8 For the rendering of Services, if no fixed price is agreed upon GSE may in any case invoice the following costs:

- time spent (including travel time) on the basis of its time accounting, at the rates applicable on the day of performance of the Services and daily wages as specified in the offer;

- travel and accommodation expenses in the broadest sense of the word, including visa and insurance expenses associated with travel expenses;

- costs of the materials to be used and/or processed and their storage;

- costs relating to telephone, telefax, telegrams, telex, messages, postage, and the like;

- other incurred costs.

4.9 If security for the payment for Equipment has been provided by a bank or another third party and shipping of the Equipment cannot take place due to force majeure on the part of GSE or circumstances attributable to the Client, GSE may have the unpaid portion of the sale price disbursed by the bank or other third party against submission of proof from the depository that it has warehoused the Equipment. The warehousing takes place at the expense and risk of the Client. The day on which the Equipment is warehoused by GSE shall be regarded as the date of shipment.

## Article 5 – Delivery

5.1 The Equipment is delivered Ex Works according to the Incoterms applicable on the day of offer. Partial deliveries are permitted.

5.2 The agreed delivery period begins on the day that the agreement is concluded, all information necessary for the work has been received by GSE, agreed deposits have been made by the Client and agreed payment securities have been provided. The agreed delivery period is not a deadline; in the case of late delivery, the Client must notify GSE of default in writing, with due observance of a reasonable time frame.

5.3 A contractual penalty or liquidated damages imposed on exceeding the agreed term of delivery is considered to be the sole and complete settlement of the consequences of late delivery. Such a penalty or liquidated damages shall under no circumstances be incurred if the exceeding of the delivery term is the result of force majeure as described in Article 14, or is partly caused by the Client.

## Article 6 – Provisions / data

6.1 The following facilities and data shall be made available by the Client in a timely manner, in consultation with and at no cost to GSE:

6.1.1 a suitable workplace as close as possible to the location where the Services are to be performed;

6.1.2 the supporting personnel regarded by GSE as necessary for the performance of the work, having the professional competence to be stipulated by GSE, such as welders, fitters, electricians and, if necessary, bricklayers, carpenters and other professionals;

6.1.3 a) the buildings in a fit state for assembly to begin, foundations, lines for (process) water, steam, gas, oil, electric, condensation, (compressed) air and cooling and other lines, at the location of the activities and the presence in good condition of the Equipment to be assembled;

b) all the electrical and plumbing work, hoisting, demolition, groundwork, brickwork, carpentry, foundation laying, painting and the like, insofar as this work does not comprise an integral part of the Products to be delivered by GSE;

c) the supporting aids regarded by GSE as necessary for the performance of the work, such as lifting tackle, welding tools and grinding machinery, oils and greases, cleansers and sealants, gas and oxygen, water and steam, electricity and compressed air, heating and lighting, insulation and ready-to-use scaffolding, transportation means, roadways required for transport, etc.;

d) a dry space secured from theft for the storage of the Equipment, tools, etc. in the immediate area of the location of the activities as well as the timely transport of Equipment etc. conveyed to this location;

e) a space suitable for GSE's employees and subcontractors, secured against theft and heated, with lighting and washroom facilities as well as first aid and all measures necessary for the protection of persons and objects at the location of the activities;

f) the legally prescribed safety regulations, insofar as significant for the work and the materials required for the work. The Client shall inform GSE's employees and subcontractors of these regulations in a timely manner. In case of violation of these regulations, the Client shall inform GSE of the violation;

g) work permits and/or other permits such as any permits legally required for the performance of overtime work in case work must be carried out by GSE's employees or subcontractors outside of the normal working hours applicable for the Client's company, as well as for the presence of a representative of the Client;

h) information on local taxes relevant to the activities to be performed by GSE for the Client;

i) in case of illness of or accident involving GSE's employees or subcontractors, the best care available in the country of performance of the activities, as well as any costs of replacement of personnel disabled on the job, insofar as these costs are not covered otherwise;

j) all raw materials and other materials necessary for the start-up and testing of Equipment or the performance of Services.

6.1.4. the necessary documents, such as an approved layout, drawings and other required data and permits necessary for the commencement and performance of the activities.

## Article 7 – Governmental regulations / safety

The fulfilment of many regulations concerning safety and working conditions is influenced by factors over which GSE has little or no influence, such as the location of the Equipment, air humidity, layout, acoustics, materials used in the process, process procedures, safety procedures, maintenance, training and guidance of the production and the like. In this connection, GSE does not guarantee that the Equipment placed meets all locally applicable regulations concerning safety and working conditions. The Client is responsible for having the Equipment inspected by the local supervisory authorities for safety and working conditions before start-up.

## Article 8 – Software

8.1 If the Equipment sold or the Services provided partly includes software, including computer and operating system software and the associated documentation, then GSE grants the Client a non-exclusive, non-transferrable right to use this software in the manner prescribed in combination with the Equipment for which the software is delivered, without prejudice to the right to alienate this usage right under the same conditions in combination with the Equipment.

8.2 The ownership and all rights of industrial and intellectual property over the software at all times remains with GSE or the supplier to whom GSE has granted the right to provide the software to the Client. The Client recognises these rights. Any copyright indications may not be removed by the Client. The Client is aware that the software contains confidential information and trade secrets belonging to GSE or the supplier and shall ensure that the software is kept secret and not disclosed to third parties. GSE is free to take technical measures towards protecting the rights of GSE or third parties on the software.

8.3 The Client may make a maximum of two copies of the software for backup purposes, which must be affixed with the same GSE labels and identification as the original material.

8.4 The Client is not authorised to change, decompile, analyse or copy (other than as specified in Article 8.3) the software, and/or hand over the software to third parties.

8.5 The source code of the software will not be made available to the Client.

8.6 With the exception of the provisions of Articles 11.2, 11.3 and 11.4, GSE shall remedy to the best of its ability all faults in the software for a period of 90 days after delivery Ex Works, by which such faults are defined as reproducible aberrations with respect to the software specifications provided by GSE that were present at the moment of release and which substantially impair the use of the Equipment. GSE does not guarantee that the software is fault-free.

8.7 GSE is not liable for damage as a result of the loss of electronic data.

## Article 9 – Ownership

9.1 The ownership of the Equipment only transfers to the Client when the Client has fully fulfilled all its obligations from all agreements concluded with GSE for the delivery of Products.

9.2 As long as the ownership of the Equipment has not been transferred to the Client, the Client is not authorised to alienate, encumber, pledge, or otherwise allow the Equipment to come under the power of third parties.

9.3 As long as the retention of title applies, GSE shall be authorised to have unhindered access to the Equipment. The Client shall grant all co-operation to GSE in allowing GSE to exercise the retention of title as defined under Article 9.1 by retrieving the Equipment, including any required disassembly.

9.4 If any third party wishes to establish or claims any right on the Equipment delivered under retention of title, the Client is obliged to inform GSE of this fact as quickly as may reasonably be expected.

9.5 At GSE's first request, the Client undertakes to:

9.5.1 Insure and keep insured the Equipment delivered under retention of title against all forms of damage as well as against theft, and make the insurance policy available for inspection;

9.5.2 Pledge to GSE all of the Client's insurance claims concerning the Equipment delivered under retention of title and claims the Client acquires vis-à-vis its customers from the onward sale of Equipment delivered by GSE under retention of title;

9.5.3 To mark the Equipment delivered under retention of title to be the property of GSE;

9.5.4 Otherwise co-operate with any reasonable measures GSE wishes to take for the protection of its proprietary right over the Equipment and which would not unreasonably hinder the Client in its normal course of business.

9.6 If, in deviation of the provisions under Article 19 of these General Delivery Conditions, Dutch law does not apply or only partially applies to this retention of title and the applicable law does not allow for a retention of title in accordance with this Article 9 of these General Delivery Conditions, GSE shall receive the benefit of all other rights that the applicable law does allow GSE to retain, above and beyond any other of the Equipment's title owners. The Client hereby grants GSE irrevocable authorisation to do whatever is necessary, and sign whatever documents are necessary, on behalf of the Client, to establish these other

rights and shall provide the necessary co-operation to do so insofar as required.

#### **Article 10 – Transfer of risk, final testing, acceptance**

10.1 The risk for the Equipment transfers to the Client according to the applicable Incoterm. If GSE carries out activities on the Client's existing Equipment, this Equipment remains at all times for the risk of the Client.

10.2 If final testing has been explicitly agreed upon, the Client is entitled to be present during final testing. GSE is obliged to inform the Client in a timely manner when the final testing shall take place in order to give the Client the opportunity to be present, or to be represented by specially authorised personnel or third parties. In accordance with GSE's instructions, the agreed properties of the Products provided shall be tested in the final testing. Should the Client or its authorised agent not be present at the final testing, GSE shall make a final testing report available, which the Client shall not be able to dispute. In case of faults that do not substantially impair the functioning of the Products, the final testing shall nonetheless be regarded as successfully concluded. GSE is obliged to remedy these faults within a reasonable time frame. Should the final testing not be successfully concluded, GSE shall be given the opportunity to remedy the observed faults and a new final testing shall be held within a reasonable time frame.

10.3 Products shall be regarded as accepted by the Client upon the first of the following:

- if no final testing as defined in Article 10.2 has been agreed upon, at the moment that the delivery (in accordance with the applicable Incoterm) of the Equipment has taken place and/or GSE has informed the Client that the performance of the Service has been completed, or;
- if final testing as defined in Article 10.2 has been agreed upon, at the moment that the final testing is successfully concluded, or the moment that the Products are used by the Client, whichever is earlier. If no final testing has taken place within a time frame of one month after GSE has informed the Client that the final testing can be performed, due to causes beyond the responsibility of GSE, the Client shall be deemed to have accepted the Products from that moment.

#### **Article 11 – Guarantee**

11.1 GSE does not give any guarantee (explicit or implicit) other than as specifically described in the agreement or these General Delivery Conditions. This guarantee applies only to the Client.

11.2 The guarantee period for the Equipment and related Services is 6 months, assuming 10 running hours per twenty-four hour period and a five-day workweek. The guarantee period begins from the acceptance as defined in Article 10.3, or, should the term specified hereafter expire earlier, 8 months after the notification that the Equipment is ready for shipping. If the Equipment runs for more hours than indicated above, the guarantee period shall be reduced pro rata. The guarantee period for Services not related to the sale of Equipment is 6 months after acceptance as defined in Article 10.3, assuming 10 running hours per twenty-four hour period and a five-day workweek. If the Equipment is run for more hours, the guarantee period shall be reduced pro rata.

11.3 During the guarantee period, regarding Equipment GSE exclusively guarantees the soundness of (a) the construction it has designed, (b) the execution of the said construction by GSE, and (c) the materials applied to the Equipment delivered by GSE. GSE shall remedy faults falling under this guarantee free of charge, by repair or replacement of the faulty Equipment, whether or not at the Client's location, or by providing replacement Equipment Ex Works, all at GSE's discretion. All costs beyond the obligation described in the previous sentence, including but not limited to transportation costs, travel and accommodation expenses, labour costs, costs of disassembly and re-assembly, shall be at the expense and risk of the Client. No guarantee is given on wear and tear parts and materials consumed.

11.4 During the guarantee period, regarding Services GSE guarantees exclusively that the Services have been performed competently. If a Service has not been performed competently, GSE shall perform this Service again free of charge.

11.5 The guarantee provisions are only applicable if:

- a. the Client's payment obligations have been fulfilled;
- b. the operation and maintenance instructions and any other instructions provided by GSE have been followed;
- c. the Products have not been assembled and/or disassembled and/or repaired and/or started up and/or changed by the Client or a third party, without the written permission of GSE;
- d. the fault does not relate to normal wear and tear;
- e. the Products have not been misused, or the fault is not the result of following governmental regulations or Client instructions;
- f. guarantee claims are made to GSE in writing within an appropriate time after the discovery of any fault, and no later than within 7 days of the expiry of the guarantee period, and including documentation giving evidence of the validity of the guarantee claim.
- g. GSE has received compensation for the Product in question;
- h. there have been no acts or omissions by or due to negligence of persons made available to GSE by the Client.

11.6 If GSE replaces Equipment in the performance of its guarantee obligation, the removed Equipment immediately becomes the property of GSE and shall be made accessible to GSE.

11.7 After acceptance in accordance with Article 10.3 of these General Delivery Conditions, GSE's liability regarding its obligation to fulfil the Agreement is limited to

fulfilment of the guarantee obligations as specified in Article 11 of these General Delivery Conditions.

#### **Article 12 – Liability for Damage**

12.1 GSE accepts no liability whatsoever for damage arising from, relating to or in connection with:

- loss of profit;
  - decrease in revenue;
  - loss of turnover or production;
  - stoppage or delay of production processes;
  - full or partial damage or loss of Equipment delivered by GSE and of Equipment manufactured, processed and or treated by Equipment delivered by or through GSE (without prejudice to the provisions of Article 11);
  - diminution in value of Products;
  - repossession of Equipment;
  - adverse effect on goodwill and/or reputation and/or trademarks;
  - the delivery of Products for which GSE has not received compensation;
  - actions or omissions of or on account of persons made available to GSE by the Client, whether or not these persons were acting on GSE's instructions, save insofar as the damage for which liability is not otherwise excluded is the result of faulty instructions by GSE;
  - costs of cleaning;
  - net assets loss;
- and regardless of whether the damage occurs to the Client or a third party. The above exclusion of liability does not apply if and insofar as intent or wilful recklessness concerning the cause of the damage can be ascribed to a person charged by GSE with the management of GSE's organisation.

12.2 Insofar as liability is not excluded and without prejudice to the provisions of Article 5.3 and in the concluding sentence of Article 12.1, GSE's liability for damage is limited to a maximum of 50% of the contract sum or a maximum of EURO 450,000.00 if this latter amount is lower than the former maximum amount.

12.3 A claim for damages expires if the Client does not inform GSE, within one month after the relevant facts have arisen, of the grounds that give or could give cause for compensation, and that it holds GSE liable giving notice of all relevant data. If the Client has notified GSE and held GSE liable in observance of the provisions of the previous sentence, the claim for damages nonetheless expires unless the Client institutes a claim against GSE before the competent authority within six months after notification.

12.4 The limitation of liability set out in these General Terms and Conditions is deemed to be stipulated in part on behalf of third parties involved with GSE for the delivery of the Product.

#### **Article 13 – Indemnification**

The Client indemnifies GSE against all claims from a third party against GSE for damages that this third party suffers or claims to suffer (partly) as a result of the use or application of Products provided to the Client by GSE. The Client is not, however, bound to this indemnification if and insofar it demonstrates that GSE should be liable to the Client for the damage, if the Client itself could claim the damages from GSE.

#### **Article 14 – Force majeure**

14.1 Force majeure shall be understood to include all circumstances impeding the fulfilment, whether in a timely fashion or not, of the agreement, and which cannot be ascribed to the party invoking force majeure. In any case, this includes strikes, lockouts, casting flaws, acts by the higher authorities, states of war and siege, fire, natural disasters, epidemics and lack of raw materials and/or labour force necessary for the delivery of Products, transportation problems in GSE's transportation of the Products and problems in the electronic sending or receipt of messages and data. Force majeure as described above experienced by suppliers or other third parties on which GSE is dependent shall likewise be seen as force majeure for GSE.

14.2 Force majeure must be reported by the party invoking force majeure within 14 days after it occurs. If the Client invokes force majeure, GSE is authorised to recover extra costs from the Client, including but not limited to waiting periods and extra travel and accommodation costs. If the force majeure ends, this must be immediately reported in writing to the other party by the party invoking force majeure.

14.3 During force majeure, the delivery and other obligations of both parties are suspended. If the period of force majeure lasts longer than 6 months, either party is authorised to dissolve the agreement in whole or in part without resulting in an obligation for compensation of damage.

14.4 If GSE has already partially performed, whether by fabrication or partial delivery of products, it is entitled to reasonable compensation for the costs of this performance incurred up until the moment of commencement of the force majeure.

14.5 If GSE cannot deliver in a timely manner due to force majeure on its part, GSE shall ensure that the Products are warehoused at the expense and the risk of the Client, notwithstanding the obligation of timely fulfilment of outstanding payment terms by the Client.

#### **Article 15 – Complete components obtained by GSE from third parties, prescribed sub-contractors and Equipment**

15.1 For complete components obtained by GSE from third parties and which GSE forwards as complete components and/or builds in without alteration, the delivery conditions of the third party apply if and insofar as they contain more restrictive limitations than indicated in these

General Delivery Conditions of GSE, and if these more restrictive limitations are reported to the Client.

15.2 If the Client prescribes that GSE employ particular Equipment or particular suppliers, this shall be at the risk of the Client. GSE is not liable if it appears that this Equipment is inadequate or if these suppliers cannot perform their duties in a timely manner or according to standards.

#### **Article 16 – Suspension**

Without prejudice to its other rights, GSE is authorised to suspend its obligations (including the delivery term) under the agreement if the Client does not fulfil one or more obligations under the agreement, or does not do so in a timely manner, or in the case of force majeure. If GSE invokes its right to suspend performance, GSE is authorised to impose a terminal reinstatement term on the Client after which GSE is authorised to dissolve the agreement in whole or in part without further obligation for damages, without prejudice to its other rights.

#### **Article 17 – Dissolution**

Without prejudice to the provisions in Article 14.3, the Client is only authorised to dissolve the agreement in whole or in part if, despite repeated notice of default in which a reasonable time frame for remedy of the unfulfilled obligation is given each time, GSE remains in default of an essential obligation of the agreement and the Client suffers demonstrable damage from this default. The Client's right to claim dissolution in judicial and extra-judicial proceedings expires six months after the facts that give or may give grounds for dissolution have arisen.

#### **Article 18 – Final provisions**

18.1 GSE is authorised to employ third parties in the performance of its obligations.

18.2 The Client is not authorised to transfer its rights and obligations arising from the agreement to third parties in any way whatsoever, without written permission from GSE.

18.3 The headings above each Article serve only as general indications of the content of the relevant Article.

18.4 If any article of these General Delivery Conditions is shown to be invalid, voidable or otherwise non-binding, it shall be replaced by an article approximating the nature and scope of the invalid, voidable or otherwise non-binding article as much as possible.

18.5 After termination, dissolution or nullification of the agreement for whatever reason, these General Delivery Terms continue to apply insofar as they have independent significance and/or insofar as required for the regulation of the consequences of the termination, dissolution or nullification, including but not limited to the provisions concerning secrecy, delivery, penalty clauses, liability, legal jurisdiction and applicable law.

#### **Article 19 – Applicable law and disputes**

19.1 Dutch law is exclusively applicable to all offers made and/or agreements concluded by GSE, including associated agreements, and all disputes arising from same. The applicability of the United Nations Convention on the International Sale of Goods (CISG) of 11 April 1980 (Bulletin of Treaties 1981, number 184, and 1986, number 61) is excluded.

19.2 All disputes arising as a result of the offers made and/or agreements concluded by GSE, including associated agreements, shall be arbitrated according to the rules of the Netherlands Arbitration Institute (Nederlands Arbitrage Instituut) in Rotterdam, the Netherlands. The location of arbitration shall be Rotterdam, the Netherlands. GSE is further authorised to institute proceedings against the Client in the country of the Client's establishment or place of business, or in the country where the Equipment is located.