Gamperl & Hatlapa

General terms of sale and delivery

I. General provisions

1.) [1]These general terms of sale and delivery of Gamperl & Hatlapa GmbH as well as the GuH USA Inc. (supplier) apply exclusively towards entrepreneurs within the meaning of § 14 I BGB [German Civil Code], legal persons under public law as well as public separate estates. [2]Contrary or deviating contractual provisions are not accepted without express written consent; they are also not acknowledged by acceptance of an order without contradiction or unreserved execution of the delivery while knowing of contrary or deviating conditions of the buyer.
2.) [1]All agreements to be made with the buyer must be made in writing. [2]Any purchase order to be qualified as offer within the meaning of § 145 BGB can be accepted within 2 weeks. [3]Partial performances which are reasonable for the buyer are admissible.
3.) [1]The supplier reserves the ownership and copyrights in all illustrations, drawings, samples, cost estimates as well as all other tangible and intangible documents and information –even in electronic form. [2]They may not be made accessible to third parties without express written consent.

II. Price and payment

1.) [1]Unless otherwise agreed in writing, the prices –plus VAT to the statutory amount as of the day of invoicing - shall be ex works including loading but excluding packaging, insurance, unloading as well as freight and assembly costs. [2]What is not included in the prices are acceptance costs and test equipment provisions at the buyer.
2.) [1]Invoices become immediately due for payment. [2]The granting of cash discounts requires a special written agreement. [3]The statutory provisions apply to the default of payment of the buyer.
3.) [1]If the buyer is in default in payment, the supplier shall be entitled to claim advance payment as well as to retain goods not yet delivered or services not yet performed. [2]If the claim for payment of the supplier is endangered by insufficient capacity to perform by the buyer, the supplier may claim a reasonable advance payment or a reasonable security from the buyer. [3]Agreed delivery times are extended correspondingly. [4]After futile expiry of a period pursuant to sentence 2, the supplier shall be entitled to withdraw from the contract.
4.) [1]The buyer shall only be entitled to setoff rights if its counterclaims have been ascertained legally bindingly, if they are uncontested or acknowledged by the supplier. [2]The buyer shall only be entitled to exercise its right of retention to the extent that its counterclaim is based on the same contractual relationship.

III. Delivery time, delay in delivery

1.) [1]The start of the delivery time requires the clarification of all commercial and technical questions as well as the fulfilment of the obligations incumbent on the buyer until that time. [2]The objection of the non-performance of the contract remains reserved in other respects.
2.) [1]The adherence to the delivery time is subject to the availability of supplies and material, unless the non-delivery is at supplier' fault. [2]If the non-compliance with the delivery time is based on force majeure, industrial actions, or other events beyond the control of the supplier, the delivery time shall be reasonably prolonged.
3.) [1]Unless otherwise agreed in writing, the adherence to the delivery time towards the buyer shall be effected by sending the notification of readiness for dispatch. [2]If a formal acceptance has been agreed, the notification of readiness for acceptance shall be authoritative.
4.) [1]If the buyer is in default of acceptance or if it violates other duties to cooperate culpably, the risk of accidental loss or accidental deterioration of the delivery item shall pass to the buyer. [2]Furthermore, the buyer has to reimburse the damage incurred including possible additional expenses to supplier. [3]Further claims or rights of the supplier remain reserved.
5.) [1]The buyer may withdraw from the contract without setting a period of grace if the supplier is definitely unable to perform the entire service prior to passing of the risk. [2]In excess thereof, the buyer may withdraw from the contract if in case of a purchase order the performance of one part of the delivery becomes impossible and it has a justified interest in the rejection of the partial delivery. [3]If that is not the case, the buyer has to pay the contractual price attributable to the partial delivery. [4]The same applies in case of inability of the supplier. [5]In all other respects, section VII (liability) applies. [6]If the impossibility or the inability occurs during the default of acceptance or if the buyer is solely or by far predominantly responsible, its obligation to consideration shall continue.
6.) [1]If the supplier defaults culpably, its liability to pay damages regarding the damage caused by the default shall be restricted to a compensation for each completed week of default amounting to 0.5 %, however not more than a maximum of 5 % of the prices of such part of the total delivery which cannot be used in time or in accordance with the contract due to the delay. [2]The buyer shall only have claims in excess thereof in cases of intention, gross negligence or if a firm deal has been agreed. [3]In all cases where the liability of the supplier exceeds a compensation to the amount named in sentence 1, its liability shall be limited pursuant to section VII (liability).
7.) The buyer may only withdraw from the contract within the framework of the statutory provisions due to delayed performance of the service if the supplier is in default with its performance.

IV. Passing of the risk, acceptance

1.) 1Unless otherwise agreed in writing, the delivery shall be effected ex works and at risk of the buyer. [2]In case of the sales contract involving the dispatch of goods pursuant to § 447 BGB, the risk of accidental loss and accidental deterioration of the delivery item also passes to the buyer if the supplier takes over the costs of dispatch. [3]Without written instruction of the buyer, the supplier is free to choose of the mode of dispatch and the means of transport. [4]Transport insurances are concluded by the supplier only upon written instruction and at costs of the buyer.
2.) [1]To the extent that an acceptance has to be made, it shall be authoritative for the passing of the risk. [2]The acceptance has to be carried out immediately on the handover date, at the latest after notification of the readiness for acceptance by the supplier. [3]The buyer must not refuse the acceptance if a defect exists which is not significant.

V. Securing of the reservation of title

1.) [1]The supplier reserves the ownership in the delivery items until the fulfilment of all claims under the business relationship with the buyer to the extent that they arose prior to the time of conclusion of the contract. [2]In case of current account, the reserved property is deemed as security for the respective balance claim. [3]In case of behaviour of the buyer contrary to the contract, especially in case of default in payment, the supplier shall be entitled to take back the delivery items and to withdraw from the contract to that extent. [4]After taking back the delivery items, the supplier is authorised to their utilisation, also by means of private sale. 5The proceeds of the sale minus reasonable cost of utilisation are to be credited against the liabilities of the buyer towards the supplier.
2.) [1]For the duration of the reservation of title, the buyer is obliged to store the delivery items properly, treat them carefully and insure them at own costs against damage due to fire, water, breakage, theft and other damage sufficiently at the reinstatement value. [2]Required maintenance and inspection works are to be carried out by the buyer at own costs.
3.) [1]The buyer may neither pledge nor transfer by way of security the delivery items prior to complete payment. [2]In case of attachments or other access by third parties, the buyer has to notify the supplier immediately in writing. [3]To the extent that third parties are unable to reimburse to the supplier the costs of court or out-of-court proceedings against it, the buyer shall be liable for the loss incurred.
4.) [1]The supplier is entitled to resell the delivery item in the ordinary course of business, unless it is in default in payment. [2]Already upon conclusion of the contract, the buyer assigns to the supplier by way of security all accrued rights of the buyer against its customers or third parties from the resale; such assignment shall be effected regardless of whether the delivery item is resold without or after processing. [3]The buyer continues to be entitled to collect these claims even after the assignment. [4]The supplier is authorised to collect the claims itself, but undertakes not to carry out such collection unless the buyer is in default in payment and especially an application of opening of bankruptcy proceedings has been filed or a case of cessation of payments is given. [5]However, if that is the case, the supplier may request that the buyer notifies all claims assigned and their respective debtors, provides all information required for the collection, hands over the related documents and informs the debtor (third party) of the assignment.
5.) [1]The processing and transformation of the delivery items by the buyer is at all times carried out for the supplier. [2]If the delivery item is processed with other objects not belonging to the supplier, the supplier shall acquire the co-ownership in the new item in the proportion of its value (final invoice amount including statutory VAT) to the other processed objects at the time of processing. [3]To the item created by the processing, the same applies in all other respects than to the item supplied subject to reservation.
6.) [1]If the delivery item is combined or mixed with other objects not belonging to the supplier in such manner that they become material components of a uniform item, the supplier shall acquire the co-ownership in the new item in the proportion of the value of the delivery item (final invoice amount including statutory VAT) to the other combined or mixed objects at the time of combination or mixture. [2]If the combination or mixture is effected in such manner that the item of the buyer is to be considered as main item, it is agreed that the proportionate co-ownership is transferred to supplier by buyer upon combination/mixture. [3]The buyer holds in custody for the supplier the sole or co-ownership created in such way. [3]To the item created by the combination or mixture, the same applies in all other respects than to the item supplied subject to reservation.
7.) For securing the claims of the supplier against it, the buyer also assigns to the supplier the claims arising against a third party due to the combination of the delivery item with a property or a building.
8.) The supplier undertakes to release the securities to which it is entitled upon written request by the buyer to such extent that the marketable value of the securities exceeds the claims to be secured by more than 10 %, the choice of the securities to be released is upon the supplier.

VI. Liability for defects

1.) [1]The liability for defects of the supplier requires that the buyer met its obligations to examine and notify defects pursuant to § 377 HGB [German Commercial Code] properly. [2]The notification of defects of the buyer has to be made in writing.
2.) [1]To the extent that a defect of the delivery item is given, the supplier is entitled at its discretion to supplementary performance in form of removal of defects or the delivery of a delivery item free of defects. [2]The required expenses for the purpose of supplementary performance, especially costs of transport, way, work and material are to be borne by the supplier unless they are increased due to the fact that the delivery item was brought to another place than the place of performance by the buyer. [3]Parts replaced during the removal of defects become property of the supplier.
3.) If a repeated supplementary performance fails, the buyer shall be entitled, pursuant to the statutory regulations, to withdraw from the contract, to reduction or to damages in accordance with the provisions of section VII (liability).
4.) [1]The limitation period for claims based on defects amounts to 12 months after passing of the risk of the delivery item. [2]The statutory periods apply to defective delivery items that were used according to their usual manner of use for a building and caused its defectiveness. [3]They also apply to the extent that the supplier accepted a guarantee regarding the condition of the delivery item, in case of fraudulent concealment of a defect, in cases of injury of life, body or health as well as in case of intentional or grossly negligent violations of duties.
5.) [1]Claims based on defects do not exist in case of only insignificant deviations from the agreed condition, in case of only insignificant impairments of the usefulness, in case of inappropriate or improper use, incorrect assembly or putting into operation by the buyer or third parties, wear and tear, incorrect or careless treatment, improper maintenance, excessive strain, inappropriate operating resources, defective construction work, inappropriate foundation soil as well as chemical, electrochemical or electrical influences that are not required pursuant to the contract. [2]If changes or repair works are carried out improperly by the buyer or third parties, no claims based on defects shall exist for such changes or repair works and consequences resulting from them, either.
6.) The recourse pursuant to §§ 478, 479 BGB remains unaffected from the above provisions.

VII. Liability

1.) [1]Claims for damages against the supplier shall principally only exist if the supplier or its Erfüllungsgehilfen [persons employed by supplier in performance of its obligations] acted intentionally or in grossly negligent manner. [2]In case of a violation of duties which are material for the contract, the supplier shall also be liable in case of ordinary negligence but limited to the damage which is typical for the contract and foreseeable. [3]Liability is excluded in all other respects.
2.) [1]The regulation of clause 1.) does not apply in case of injury to life, body and health as well as to compulsory claims pursuant to the product liability law. [2]It does also not apply in case of liability for fraudulent concealment of defects as well as to the acceptance of a written guarantee.
3.) To the extent that the liability of the supplier is excluded or limited, this shall also apply to a personal liability of its staff, employees, personnel, representatives and other Erfüllungsgehilfen [persons employed in performance of its obligations] and Verrichtungsgehilfen [vicarious agents].

VIII. Use of software

1.) 1To the extent that software is comprised by the scope of delivery, the buyer is granted a non-exclusive right to use the supplied software and its related documentation for the sole use on the delivery item intended for this purpose to the legally admissible extent, especially in accordance with §§ 69a et seq. UrhG [Copyright Act]. [2]The buyer is not authorised to remove or change manufacturer information - especially copyright notes.
2.) [1]All other rights in the software and its documentation, including the copies, remain with the supplier or the supplier of the software, respectively. [2]The granting of sublicenses is not admissible.

IX. Applicable law, place of performance, place of jurisdiction

1.) Exclusively the law of the Federal Republic of Germany under exclusion of the UN Sales Convention applies.
2.) [1]Place of performance is the registered seat of the supplier. [2]If the buyer is an entrepreneur within the meaning of § 14 BGB, a legal person under public law or a public separate estate, the registered seat of the supplier shall also be exclusive place of jurisdiction. [3]However, the supplier is entitled to sue the buyer also at its registered seat.

Gamperl & Hatlapa GmbH
Am Weilachfeld 1
D - 86 561 Aresing

Stand 06/2018