

## General terms of service and assembly

### I. General provisions

1.) <sup>1</sup>Towards entrepreneurs within the meaning of § 14 I BGB [German Civil Code], legal persons under public law as well as public separate estates, exclusively these general terms of service and assembly together with the supplementary general terms of sale of Gamperl & Hatlapa GmbH as well as the GuH USA Inc. apply to all maintenance, assembly, repair and service works including deliveries of replacement parts of all kinds. <sup>2</sup>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 services while knowing of contrary or deviating conditions of the principal (PR).

2.) <sup>1</sup>All agreements to be made with the PR must be made in writing. <sup>2</sup>Any placement of an order to be qualified as offer within the meaning of § 145 BGB can be accepted within 2 weeks. <sup>3</sup>Partial performances which are reasonable for the PR are admissible.

3.) If required for the performance of the service of CO, the placement of the order includes at the same time the permission to test drives and test deployments of the object of the service.

### II. Principal' duties to cooperate

1.) <sup>1</sup>For the purpose of performing the service by CO, the PR is obliged to cooperate free of costs, unless otherwise agreed in writing. <sup>2</sup>The required duties to cooperate of PR constitute material contractual duties for PR.

2.) The documents and information required for the performance of the services, but especially description of faults, test data and the like are to be provided in due time to CO.

3.) <sup>1</sup>If the performance of the service does not take place at the registered seat of CO, the employees of CO are to be accompanied to the object of the service by a competent person of PR who is familiar with the place. PR has to ensure proper work conditions as well as sufficient protection of the employees and items deployed by CO. <sup>2</sup>A sufficient number of suitable auxiliary workers is also to be provided by PR. <sup>3</sup>Theft-proof rooms for storing the work equipment of PR and heatable break rooms for the employees of CO, energy (lighting and operating force) and water as well as the required materials and operating resources required for the purpose of testing and/or adjusting the object of the service are also to be provided.

4.) <sup>1</sup>The employees of CO are to be informed and instructed, if need be, by PR regarding safety regulations to be observed additionally at the place of performance of the service. <sup>2</sup>Violations are to be notified to CO by PR immediately.

5.) <sup>1</sup>If PR does not fulfil its required duty to cooperate despite request, CO shall be entitled, but not obliged, to carry out necessary actions itself or have such actions carried out by third parties instead of the PR and at costs of PR. <sup>2</sup>The statutory rights and claims of CO resulting from the violation of the required duty to cooperate remain unaffected in other respects, especially the assertion of the additional costs resulting from the impairment.

6.) <sup>1</sup>The disposal of used parts and other objects is incumbent on PR. <sup>2</sup>A disposal by CO is effected for PR and at its costs.

### III. Periods and dates

1.) <sup>1</sup>Indications of dates and periods are non-binding unless expressly designated as being binding by CO. Binding periods and dates require the fulfilment of all cooperation activities incumbent on PR pursuant to clause II. <sup>2</sup>The objection of the non-performance of the contract remains reserved in other respects.

2.) <sup>1</sup>The adherence to dates and periods is subject to the availability of supplies and material, unless the non-delivery is at CO' fault. <sup>2</sup>If the non-compliance with periods and dates is based on force majeure, industrial actions, instructions or changes of the service of PR or other events beyond the control of the supplier, the delivery time shall be reasonably prolonged.

3.) <sup>1</sup>If PR is in default of acceptance or if it violates other duties to cooperate culpably, the risk of accidental loss or accidental deterioration of the service of CO shall pass to PR. <sup>2</sup>Furthermore, PR has to reimburse the damage incurred including possible additional expenses to CO. <sup>3</sup>Further claims or rights of CO remain reserved.

4.) <sup>1</sup>PR 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. <sup>2</sup>In excess thereof, PR may withdraw from the contract if the performance of one part of the service becomes impossible and it has a justified interest in the rejection of the partial performance. <sup>3</sup>If that is not the case, PR has to pay the contractual price attributable to the partial performance. <sup>4</sup>The same applies in case of inability of CO. <sup>5</sup>In all other respects, section VIII (liability) applies. <sup>6</sup>If the impossibility or the inability occurs during the default of acceptance or if PR is solely or by far predominantly responsible, its obligation to consideration shall continue.

5.) <sup>1</sup>If CO 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 performance which cannot be used in time or in accordance with the contract due to the delay. <sup>2</sup>PR shall only have claims in excess thereof in cases of intention, gross negligence or if a firm deal has been agreed. <sup>3</sup>In all cases where the liability of CO exceeds a compensation to the amount named in sentence 1, its liability shall be limited pursuant to section VIII (liability).

6.) PR may only withdraw from the contract within the framework of the statutory provisions due to delayed performance of the service if CO is in default with its performance.

### IV. Bearing the risk, transport, acceptance

1.) <sup>1</sup>The risk of accidental loss and accidental deterioration of the objects of the service left to CO for the purpose of performing the service remains with PR. An insurance against fire, theft, damage during transport and storage is only effected upon request and at costs of PR.

2.) <sup>1</sup>Even if the transport of the object of the service is taken over by CO, this shall take place at risk and for account of PR. <sup>2</sup>This applies also in case of transport with vehicles of CO.

3.) <sup>1</sup>PR has to accept the service of CO immediately, however at the latest within 2 weeks after notification of completion of CO. <sup>2</sup>Also the invoicing of CO is deemed as notification of completion. <sup>3</sup>The service of CO shall be deemed as accepted if PR does not notify defects within 2 weeks after notification of completion which would entitle to refusal of acceptance. <sup>4</sup>Furthermore, the payment of the invoice of CO without reservation is deemed as acceptance. <sup>5</sup>The assertion of a contractual penalty forfeited by CO pursuant to the contract requires a corresponding written reservation upon acceptance of PR.

### V. Remuneration and payment

1.) <sup>1</sup>Unless deviating agreements –such as the agreement of a lump-sum price –have been made in writing, the remuneration of CO is made pursuant to the price lists of CO valid on the day of performance of the service plus VAT to the statutory amount as of the day of invoicing. <sup>2</sup>The current price lists may be inspected at CO' and are provided to PR upon request.

2.) <sup>1</sup>Required services of third parties are charged to PR at the net purchasing price plus a premium of 15 %. <sup>2</sup>Waiting times beyond the control of CO will be charged like working times.

3.) <sup>1</sup>An estimate of the expected remuneration by CO prior to performance of the service constitutes a non-binding cost estimate. <sup>2</sup>A cost estimate has to be effected in writing and is to be designated as cost estimate. <sup>3</sup>Unless otherwise agreed in writing, a cost estimate is effected without warranty for correctness. <sup>4</sup>If a significant exceeding of the cost estimate or the cost limits set by PR is recognisable, CO will inform PR immediately.

4.) <sup>1</sup>CO may request an advance payment. <sup>2</sup>Partial invoices may be issued for services performed.

5.) <sup>1</sup>Invoices become immediately due for payment. <sup>2</sup>The granting of cash discounts requires a special written agreement. <sup>3</sup>The statutory provisions apply to the default of payment of PR.

6.) <sup>1</sup>If PR is in default with payment, CO shall be entitled to claim advance payment as well as to retain services not yet performed. <sup>2</sup>If the claim for payment of CO is endangered by insufficient capacity to perform by PR, CO may claim a reasonable advance payment or a reasonable security from PR. <sup>3</sup>Agreed periods for performance are extended correspondingly. <sup>4</sup>After futile expiry of a period pursuant to sentence 2, CO shall be entitled to withdraw from the contract.

7.) <sup>1</sup>PR shall only be entitled to setoff rights if its counterclaims have been ascertained legally bindingly, if they are uncontested or acknowledged by CO. <sup>2</sup>PR shall only be entitled to exercise its right of retention to the extent that its counterclaim is based on the same contractual relationship.

### VI. Reservation of title, lien

1.) <sup>1</sup>In case of installing replacement or accessory parts in the object of the service, CO acquires the co-ownership in the other items in the proportion of the value of the installed parts (list price plus VAT) to the value of the objects of the service (market value plus VAT) directly prior to combination or mixture. <sup>2</sup>If the combination or mixture is effected in such manner that the object of the service is to be considered as main item, the proportionate co-ownership will be transferred to CO by PR upon combination/mixture.

2.) <sup>1</sup>CO acquires a lien on the object of the service of PR for the services performed. <sup>2</sup>The lien extends also to former services of the CO relating to the object of the service. <sup>3</sup>Other claims under the business relationship shall only be subject to the lien to the extent that the claims are uncontested, acknowledged by PR or have been ascertained legally bindingly.

3.) <sup>1</sup>If a lien pursuant to paragraph 2.) does not arise due to the

fact that PR is not the owner of the object of the service, PR shall assign the claim to or the expectancy of the transfer of title to CO. <sup>2</sup>In addition, CO will be authorised –but not obliged –to meet claims of third parties for PR for the purpose of transfer of ownership.

### VII. Liability for defects

1.) The notification of a defect of the service of CO has to be made in writing by PR.

2.) <sup>1</sup>To the extent that a defect of the service is given, CO is entitled at its discretion to supplementary performance in form of removal of defects or the performance of a service free of defects. <sup>2</sup>The required expenses for the purpose of supplementary performance, especially costs of transport, way, work and material are to be borne by CO unless they are increased due to the fact that the object of the service was brought to another place than the place of performance by PR. <sup>3</sup>Parts replaced during the removal of defects become property of CO.

3.) If a repeated supplementary performance fails, PR 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.) <sup>1</sup>The limitation period for claims based on defects amounts to 12 months after acceptance. <sup>2</sup>The statutory periods apply to defective services that were used according to their usual manner of use for a building and caused its defectiveness. <sup>3</sup>They also apply to the extent that CO accepted a guarantee regarding the condition of the service, 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.) <sup>1</sup>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 only inappropriate or improper use, incorrect putting into operation by PR 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. <sup>2</sup>If changes or repair works are carried out improperly by PR or third parties, no claims based on defects shall exist for such changes or repair works and consequences resulting from them, either.

6.) <sup>1</sup>The recourse pursuant to §§ 478, 479 BGB remains unaffected from the above provisions.

### VIII. Liability

1.) <sup>1</sup>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. <sup>2</sup>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. <sup>3</sup>Liability is excluded in all other respects.

2.) <sup>1</sup>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. <sup>2</sup>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].

### 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.) <sup>1</sup>The registered seat of CO shall be the place of performance, unless otherwise agreed in writing. <sup>2</sup>If PR is an entrepreneur within the meaning of § 14 BGB, a legal person under public law or a public separate estate, the registered seat of CO shall also be exclusive place of jurisdiction. <sup>3</sup>However, CO is entitled to sue PR also at its registered seat.