



## General Terms and Conditions (Rev. 12/2021)

### Preamble

These General Terms and Conditions (GTCs) of GTech Automatisierungstechnik GmbH (hereinafter the Contractor) apply to all goods and services of all kinds to be provided by the Contractor unless explicitly agreed otherwise in writing by the parties to the contract in individual cases.

Any terms of the customer (hereinafter the Customer) that conflict with or deviate from these Terms and Conditions shall be considered acknowledged only if the Contractor has explicitly agreed to their validity; in particular, any activities by the Contractor in fulfillment of the contract shall not be considered acceptance of deviating contractual terms.

### 1. Offers, conclusion of contract

- 1.1. Offers by the Contractor are subject to change.
- 1.2. Offers or orders by the Customer shall be accepted by the Contractor only through a written order confirmation or delivery of the purchased item or through provision of the service.
- 1.3. Any verbal side agreements or changes to the contract must be confirmed by the Contractor in writing in order to be valid.
- 1.4. Cost estimates by the Contractor are fundamentally created without any guarantee of completeness or correctness.

### 2. Reservation of title

- 2.1. All goods, services and data carriers as well as software, as well as the utilized accessories, spare and replacement parts, shall remain the property of the Contractor until payment is rendered in full by the Customer, even if the items to be delivered or manufactured are resold, modified, worked or processed, or combined with other items.
- 2.2. Resale is only permissible if this is announced to the Contractor in a timely manner in advance, together with the name and exact address of the buyer, and if the Contractor has agreed to the sale. If the Contractor agrees, the purchase price claim is hereby assigned to the Contractor in advance.

### 3. Prices, fees

- 3.1. The prices named in the Contractor's offers apply on the condition that the underlying contract data used in the tendering remains the same. The prices established by the Contractor in the order confirmation shall apply.
- 3.2. Price information is subject to the applicable statutory value added tax, ex stock. All packaging, transport, loading and shipping costs as well as customs and insurance shall be borne by the Customer.
- 3.3. Any service requested by the Customer that was not covered by the original order shall be subject to an appropriate fee.
- 3.4. The Customer shall ensure technically and environmentally appropriate disposal of waste material. If the Contractor is contracted separately to perform this service, the Customer shall provide additional appropriate compensation within the agreed scope if no fee agreement has been established.

### 4. Payment

- 4.1. Unless explicitly agreed otherwise in writing, one-third of the fee shall be payable upon conclusion of contract; one-third at the halfway point of the delivery period; and the remainder after delivery or readiness for pickup.
- 4.2. The entitlement to deduct a discount requires an explicit written agreement.
- 4.3. If the Customer's asset situation deteriorates, the Contractor is entitled to invoice the agreed fee or purchase price immediately and to perform the remainder of the order only in exchange for payment in advance.
- 4.4. If the Customer is in default with payments for other contracts with us, we are entitled to suspend fulfillment of our obligations from this contract until such payments have been fulfilled by the Customer.
- 4.5. If the payment deadline is not met, any compensation already provided (rebates, discounts, etc.) shall lapse and shall be offset against the invoice.
- 4.6. In the event of a culpable payment default, the Customer hereby agrees to pay any fees incurred for warnings as necessary and appropriate for the collection process, where this is reasonable in proportion to the relevant claim.

### 5. Provision of service

- 5.1. Objectively justified, minor changes in our provision of service that are reasonable for the Customer are considered to be approved in advance.
- 5.2. If, regardless of reason, the order is modified or supplemented after it has been placed, the delivery/performance period shall be extended by an appropriate amount of time; a fee increase is also possible.
- 5.3. If the Customer wishes services to be provided within a shorter period of time, this shall be considered a change in the contract and may result in extra hours and/or additional costs due to the accelerated material procurement, and the fee shall increase appropriately in proportion to the necessary additional effort.



## **6. Duties of the Customer**

- 6.1. For installations by the Contractor, the Customer must ensure that work begins as soon as the Contractor's installation personnel arrive.
- 6.2. The Customer is liable for ensuring that the necessary technical conditions are fulfilled for the work to be performed or the purchased item, and that its technical facilities such as supply lines, wiring, networks and the like are in technically fault-free and operation-ready condition as well as being compatible with the Contractor's work to be performed or the purchased items. The Contractor is entitled but not obligated to inspect these facilities for an additional fee.
- 6.3. There is no duty to inspect, warn or provide clarification with regard to any documents, information or instructions provided by the Customer, and any liability by the Contractor in this regard is hereby excluded.
- 6.4. The order shall be placed regardless of any necessary official permits and approvals that the Customer must obtain. The Customer shall inform the Contractor in writing of any approvals that are granted or refused.

## **7. Warranty**

- 7.1. The Contractor shall provide a warranty for 12 months following approval (according to the approval protocol) or for 24 months after delivery, whichever occurs first, and only if the Customer completes the maintenance required by the maintenance plan. The warranty excludes defects due to wear and tear.
- 7.2. Unless otherwise agreed (e.g. formal acceptance), the time of the handover shall be the time of completion, at the latest when the Customer accepts the authority to dispose of the service or refuses to accept it without providing an explanation. On the date when the Customer is notified of completion, the service shall be considered within the Customer's authority of disposal unless there is a legitimate refusal of acceptance.
- 7.3. The Customer can only invoke this warranty if it notifies the Contractor of the discovered defects in writing without delay, by way of a defect complaint. Verbal, telephonic or delayed defect complaints and objections shall not be considered. The defect complaint shall describe the defects in sufficient detail to evaluate the defects and their cause. Once an agreed acceptance has been carried out, complaints can no longer be made for defects that were apparent at the time of acceptance.
- 7.4. The Customer shall always be responsible for proving that the defect was already present at the time of the handover.
- 7.5. If defect claims by the Customer are not justified, the Customer shall reimburse the Contractor for any expenses incurred while determining the freedom from defects or during fault rectification.
- 7.6. The Contractor is entitled to perform or engage the performance of any inspection it deems necessary, even if this renders the goods or workpieces unusable. In the event that the inspection shows that the Contractor is not responsible for any defects, the Customer shall bear the costs of the inspection in exchange for an appropriate fee.
- 7.7. A warranty is excluded if the technical facilities, such as supply lines, wiring, networks and the like are not in technically fault-free and operation-ready condition or are not compatible with works or purchased items to be produced by the Contractor.
- 7.8. The warranty shall lapse immediately if the Customer or a third party makes changes or repairs to the deliveries or supported systems and if the fault is caused by this. The Customer is responsible for furnishing proof that the claimed defect was not caused by such manipulation(s). The Contractor shall bear the costs of any defect rectification performed by the Customer only if the Contractor has agreed to this in writing.
- 7.9. No warranty claims apply in the case of defects caused by improper handling or overuse, or if statutory requirements or operating and installation requirements from the Contractor are not followed; where the delivery item was produced on the basis of the Customer's specifications and the defect resulted from these specifications and/or drawings; or in the case of faulty installation and/or start of operations by the Customer or third parties, in the case of natural wear and tear, transport damage, improper storage, operating conditions that interfere with function (e.g. inadequate power supply), in the case of chemical, electrochemical, or electrical influences, in the case of omitted necessary servicing, or in the case of poor maintenance.
- 7.10. The Customer can initially only request an improvement/repair within an appropriate period, and can then request replacement of the item/work after two unsuccessful repair attempts; the Customer can request immediate compensation only if both of these options are impossible or are associated with unreasonable cost or effort for the Contractor.

## **8. Acceptance of goods and/or services**

- 8.1. The order is considered fulfilled upon final acceptance of the scope of delivery and services. If the Customer or its authorized representative is not present at the time of acceptance despite timely notification by the Contractor or has already begun to use the system, or if acceptance of the goods or services is delayed through no fault of the Contractor, the subject of the contract is considered to be accepted as fault-free 2 weeks after the agreed acceptance date.
- 8.2. Final acceptance means acceptance and acknowledgement of the subject of the contract as largely in compliance with the contract. It represents the final step in demonstrating fulfillment of the agreed functions (availability and cycle time) within an established period. It is performed after a successfully completed test run / operational handover. Final acceptance is provided by the project team on the Customer's side, and by the project manager on the Contractor's side. The Contractor shall be provided with technically and linguistically proficient service personnel free of charge, along with production parts (see 7.7).
- 8.3. The Customer is not entitled to refuse final acceptance due to defects that do not significantly impair the operation of the system or that were not caused solely by the Contractor. Significant defects shall be rectified within an appropriate period. The overall result, which can also include insignificant defects and their rectification period, shall be summarized in a final acceptance protocol that is approved by being undersigned by both parties.
- 8.4. If the Customer desires a preliminary acceptance procedure, this shall be agreed explicitly in writing with the Contractor upon conclusion of contract. Unless otherwise established, preliminary acceptance shall take place at the production site and/or at



a location to be determined by the Contractor, during normal working hours. This includes a test run that does not yet need to provide contractual fulfillment with regard to availability. The Contractor shall be provided with production parts for this purpose free of charge, see 7.7. A preliminary acceptance protocol shall be completed for the preliminary acceptance.

- 8.5. If no preliminary acceptance is desired or if the Customer's participation in terms of providing personnel and materials is not needed, the contractual item is considered to be accepted on a preliminary basis, and the Customer agrees to accept the contractual item.
- 8.6. In the event that no acceptance procedure has been agreed, the goods or services shall be considered accepted by the Customer unless the Customer submits a written defect complaint to the Contractor immediately following delivery of the goods or performance of the service.
- 8.7. For the preliminary and final acceptance, the Contractor shall be provided with a sufficient quantity of production parts free of charge. These parts must be of a quality that corresponds to the drawings, must fall within the drawing tolerances, and must be executed according to the change status at the time when the contract takes effect as well as being series parts; they must also be provided by the Customer in a timely manner, free of charge for the Contractor. The provided sample and/or provided parts can sustain damage, and have scrap value – this is considered accepted by the Customer.

#### **9. Deadlines and dates for delivery and performance**

- 9.1. Delivery and performance deadlines are not binding unless they have been explicitly agreed in writing as binding.
- 9.2. If the Contractor is prevented from fulfilling its duties due to the occurrence of circumstances that were unforeseeable or were not caused by the Contractor, such as operational disruptions, sovereign measures and interventions, energy supply problems, the loss of a hard-to-replace supplier, strike, blockage of traffic routes, delays in customs clearance, or force majeure, the delivery and/or performance period shall be extended appropriately. Here it is not significant whether the circumstances affected the Contractor itself or one of its suppliers or subcontractors.
- 9.3. In the case of force majeure, strike, delays by the Contractor's supplier that are not foreseeable and were not caused by the Contractor, or other comparable circumstances outside the Contractor's control, deadlines and dates shall be postponed by the duration of the corresponding event. This shall not affect the Customer's right to withdraw from the contract in the event of delays that make it unreasonable to remain bound by the contract.
- 9.4. If contract fulfillment becomes impossible due to reasons for which the Contractor is not responsible, the Contractor shall be released from its contractual duties.
- 9.5. The Contractor is entitled to offset an appropriate invoice amount for each month or partial month of the delayed performance to cover the necessary storage of materials, equipment, etc., at its facility; the Customer's duty to provide payment and acceptance remains unaffected hereby.
- 9.6. When withdrawing from the contract due to default, the Customer shall establish a grace period by way of a registered letter, together with a warning about the withdrawal.

#### **10. Assumption of risk**

- 10.1. Risk shall be transferred to the Customer as soon as the Contractor has the contractual item, material, or work ready for pickup from the plant or warehouse; delivers the item itself; or hands it over to a transport company.
- 10.2. The Customer shall conclude adequate insurance to cover this risk. The Contractor hereby agrees to conclude transport insurance at the Customer's expense upon written request by the Customer. The Customer shall approve all customary shipping methods.

#### **11. Limitation of liability, damage compensation**

- 11.1. The Contractor's liability for damages, with the exception of personal injury, shall be limited to cases of intent and blatant gross negligence. The burden of proof regarding the existence of such conduct shall lie with the Customer. Where legally permissible, this particularly also excludes all compensation for pure financial losses, indirect damage and losses, and/or consequential damage of all kinds as well as lost profits.
- 11.2. In general, the Contractor's liability is limited to typically foreseeable damage, and the value is limited by the value of the (partial) delivery as well as any liability insurance concluded by the Contractor.
- 11.3. Damage compensation claims shall lapse six months after discovery of damages and of the damaging party, but in any case two years after the transfer of risk, and shall be asserted in court in the case of any other expiration. If an order is prepared on the basis of design specifications, drawings, or models from the Customer, the Contractor's liability shall not extend to the correctness of the construction; rather, it shall only include execution of the design according to the Customer's specifications. In the event of a breach of third-party rights, the Customer shall indemnify and hold the Contractor harmless.
- 11.4. These liability limitations and/or exclusions also include claims against employees, representatives, and vicarious agents of the Contractor resulting from any damage that these parties cause to the Customer outside the scope of a contract between themselves and the Customer.

#### **12. Confidentiality and industrial property rights**

- 12.1. Both parties to the contract shall maintain confidentiality regarding the data and information obtained in the context of order fulfillment.
- 12.2. All of the Contractor's expertise from the offer and project documentation, particularly offers, plans, sketches, technical documents, layouts, etc., shall remain the intellectual property of the Contractor and cannot be reproduced, commercially utilized, or made available to third parties without the permission of the Contractor.



- 12.3. For delivery items that we produce according to documents from the Customer (construction specifications, drawings, models or other specifications, etc.), the Customer shall exclusively warrant that the production of these delivery items does not violate any third-party property rights.
- 12.4. If third-party property rights are nonetheless asserted, the Contractor is entitled to cease production of the delivery items at the Customer's risk until the third-party rights have been clarified, unless such claims are clearly illegitimate.
- 12.5. The Customer shall indemnify and hold the Contractor harmless in this regard.
- 12.6. The Contractor is entitled to request appropriate advance payments from the Customer for any legal costs. Likewise, the Contractor can request compensation from the Customer for any necessary and useful costs that it incurs.

### **13. Software**

- 13.1. All delivered software applications such as PLC programs, visualizations, special programs in high-level languages and the like shall remain the property of the Contractor, and shall be provided to the Customer in license form only for the specifically ordered system. Any change to delivered software products without written permission shall release the Contractor from any liability for the warranty and damage compensation after the change date.
- 13.2. Without prior written permission from the Contractor, the Customer – where all other claims are excluded – is not entitled to reproduce or modify the software, make it available to third parties, or use it for purposes other than those that were explicitly agreed. This particularly applies to the source code.

### **14. Cancellation, project interruptions**

- 14.1. In the event that the Customer cancels the contract, any goods or services already provided shall be settled with the Contractor according to the contract, and paid upon invoicing. This applies even if the goods or services have not yet been taken over by the Customer, as well as to any preparatory activities performed by the Contractor.
- 14.2. At the time when the offer was created, it was assumed that the order could be executed without interruption. In the event that order and/or service fulfillment is interrupted through no fault of the Contractor, the expended working time for necessary travel by personnel to and from the site and/or for transport of assembly materials during each interruption shall be compensated at cost and invoiced to the Customer.

### **15. Data protection**

- 15.1. The Customer hereby acknowledges and explicitly agrees that the data specified in the contract regarding the Customer shall be stored and processed for our accounting purposes and for customer records. This data shall be used to fulfill statutory requirements and to process payment transactions. Furthermore, the Customer hereby agrees to the electronic collection and analysis of quality assessments and/or questionnaires.
- 15.2. The Customer's data shall not be shared with third parties except where necessary for contract execution. The Contractor's contractual partners have also been instructed about the data protection provisions and correspondingly obligated.
- 15.3. The Customer consents to receive information about the Contractor's products and services by email or phone as well. This consent can be revoked by the Customer at any time in writing.
- 15.4. The Customer hereby grants revocable consent (revocable exclusively in writing and/or by email) for its specified personal data (particularly email address and phone number) to be shared with cooperation partners and/or group companies, and used by these for the purpose of transferring informational materials. This declaration of consent can be revoked at any time by way of an email to the Contractor in any form. The Contractor shall forward the revocation to the relevant cooperation partner without delay so that it can be implemented.

### **16. Compliance**

- 16.1. The Customer hereby irrevocably agrees to comply with all applicable legal provisions, particularly those intended to prevent money laundering and regarding export controls and trade sanctions, and not to request, offer, or provide any inappropriate payments or other advantages for personal use or for the benefit of third parties (anti-corruption).
- 16.2. In the event of a breach of these compliance duties, the Contractor is entitled to terminate the contract with immediate effect and to invoice all outstanding amounts, and/or to retain any previously received payments and offset them against previously performed services. Furthermore, the Customer shall comprehensively indemnify and hold the Contractor harmless in the event of a breach of these compliance duties.

### **17. Force majeure**

- 17.1. "Force majeure" means the occurrence of an event or circumstance that prevents one party from fulfilling one or more of their contractual duties if and to the extent that the party affected by the hindrance can prove that: (a) the hindrance is outside of its reasonable control; and (b) it was not reasonably foreseeable at the time when the contract was concluded; and (c) the effects of the hindrance could not reasonably have been avoided or overcome by the affected party.
- 17.2. Until proven otherwise, the following events affecting one party shall be assumed to fulfill the requirements under Paragraph 1 (a) and (b) pursuant to Paragraph 1 of this clause; (i) war (declared or undeclared), hostility, attack, activities by foreign enemies, extensive military mobilization; (ii) civil war, unrest, rebellion and revolution, military or other seizure of power, uprising, acts of terrorism, sabotage or piracy; (iii) currency and trade restrictions, embargo, sanctions; (iv) legal or illegal official acts, compliance with laws or government orders, expropriation, seizure of works, requisition, nationalization; (v) plague, epidemic, natural disaster or extreme natural phenomenon; (vi) explosion, fire, destruction of equipment, long-term disruption of means of transport, telecommunications, information systems or energy; (vii) general labor unrest such as boycott, strike or lockout, slowdown strike, occupation of factories and buildings.



17.3. If a party successfully invokes this clause, the party shall be released from its duty to fulfill its contractual obligations as of the time when the hindrance renders its service performance impossible, and shall be released from all liability for damage or any other contractual legal remedy due to breach of contract as long as notification is made without delay. If notification is not made without delay, the release shall take effect as of the time when the notification reaches the other party. If the effect of the asserted hindrance or event is temporary, the consequences described above shall apply only for as long as the asserted hindrance prevents the affected party from fulfilling the contract. If the length of the asserted hindrance means that the parties are significantly deprived of what they legitimately expected to receive on the basis of the contract, each party is entitled to terminate the contract within an appropriate period by notifying the other party of this. Unless otherwise agreed, the parties hereby explicitly agree that the contract can be terminated by either party if the length of the hindrance exceeds 120 days.

**18. General**

18.1. Severability clause

If individual parts of these GTCs should be invalid, this shall not affect the validity of the other parts. The Customer as well as the Contractor hereby jointly agree in advance – subject to the rules of good faith for contracting parties – to establish a replacement provision that as closely as possible approximates the economic effect of the invalid provision.

18.2. Law and place of jurisdiction

Austrian law applies. The UN Sales Convention is excluded.

The place of fulfillment is the Contractor's registered place of business.

The place of jurisdiction for all disputes arising from the contractual relationship or future contracts between the Contractor and the Customer shall be the local court responsible for the Contractor's registered place of business as long as the Customer's company headquarters or address is within the European Union, in Switzerland, or in Liechtenstein.

If the Customer's company headquarters or address is outside the abovementioned region, all disputes arising from or in conjunction with a contract with the Contractor shall be definitively decided according to the arbitration rules of the International Chamber of Commerce (ICC) by one or more arbitrators appointed according to these rules. In these cases, the place of arbitration is Linz, Austria; the language of arbitration is German or English, in cases where the contract is written in English.

The Customer shall notify the Contractor without delay, in writing, of any changes in name, company name, address, legal form or other relevant information.