

## Standard Sales Terms

These Standard Sales Terms shall apply to sales of machinery, equipment, components or any other products („the Product“ or „the Products“, as the case may be) by GWA Gesellschaft für Wärme- und Anlagentechnik mbH („the Seller“) to

- any private-law person pursuing a commercial or independent professional activity on the date on which a contract for any Product is concluded or
  - any public-law legal person or any public-law entity
- („the Buyer“).

### Article I General

1. The sale of any Product and any associated services (hereinafter deemed to be included in the term “Product“ where appropriate) by the Seller to the Buyer shall be subject to these Standard Sales Terms and any contract on such sale, if any, agreed between the Seller and the Buyer provided that no standard purchase terms issued by the Buyer shall be deemed to become part of any agreement on any Product sale by the Seller to the Buyer by the Buyer placing an order with the Seller or otherwise.  
Unless otherwise agreed upon between the Seller and the Buyer, a contract between the Seller and the Buyer shall be created by the Buyer placing an order for any Product with the Seller and the Seller accepting said order in writing (the “Contract“).
2. The Seller shall retain the title to and the copyrights of all samples, cost estimates, proposals, drawings or any other written, electronic, oral or other information submitted by the Seller to the Buyer in connection with or with the intention of negotiating or obtaining the contract and no such information shall be released or divulged by the Buyer to any person whatsoever.  
The Seller agrees not to release to any third party any information received from the Buyer and marked as confidential, unless the Seller has received the Buyer's consent.

### Article II Price and Payment

1. Unless otherwise agreed upon between the Seller and the Buyer, any price agreed between the Seller and the Buyer for any Product shall be deemed to be ex works inclusive of loading at the Seller's works, but exclusive of packaging or unloading, and each such price shall be deemed to be exclusive of sales tax in the Seller's country which shall be invoiced by the Seller and paid by the Buyer at the rate which may be applicable from time to time.
2. Unless otherwise agreed upon in the Contract, the price of any Product shall be paid by the Buyer to the Seller cash and without any deduction whatsoever by transfer to the bank account designated by the Seller in accordance with the following schedule:
  - One third of said price shall so be paid upon the Buyer receiving the Seller's acceptance of the Contract.
  - One third of said price shall so be paid upon notice given by the Seller to the Buyer that the essential parts of the Product are ready for shipment.
  - One third of said price shall so be paid within one (1) month from the date on which the risks associated with the Product were transferred from the Seller to the Buyer.
3. The Buyer shall not be entitled to retain any payment due and owing to the Seller or to set off any counterclaim from any payment due and owing to the Seller unless any such claim or counterclaim of the Buyer is undisputed or has been determined by a final judgment rendered by a court of competent jurisdiction.

### Article III Time for Delivery and Delays

1. Each Product shall be delivered at the time agreed between the Seller and the Buyer. The Seller shall not be obligated to deliver any Product by the time so agreed, unless all commercial and/or technical issues relating to any such Product and its delivery have been agreed upon between the Seller and the Buyer and the Buyer has performed all obligations to which the Buyer may be subject by the time so agreed for delivery such as, without limitation of the generality of the foregoing, the submission of any government agency permit, approval or the like or the payment of any moneys due and owing under the Contract. If the conditions of the preceding sentence are not satisfied, the time available to the Seller for the delivery of the Product shall be extended reasonably provided that no such extension shall apply in any case in which the Seller may be liable for any delay which may have occurred.
2. The Seller shall not be obligated to deliver any Product by the time agreed with the Buyer in the event that any goods or services which may be needed by the Seller for the Product or the delivery of the Product are not delivered to the Seller as and when due.
3. The Seller shall be deemed to have delivered the Product by the time agreed between the Seller and the Buyer if the Product has left the Seller's works by said time or if the Seller has notified the Buyer by said time that the Product is ready for shipment. If any Product requires acceptance by the Buyer, then the Product shall be deemed to have been delivered by the Seller to the Buyer on the date set for the acceptance of the Product, unless the acceptance of the Product is refused by the Buyer for cause, or, if no such date has been agreed for the acceptance of the Product by the Buyer, the date on which the Seller has notified the Buyer that the Product may be accepted by the Buyer.
4. If the shipment or the acceptance of any Product is delayed for any reason for which the Buyer may be liable, then any costs incurred due to any such delay shall be for the charge of the Buyer as of a date exactly one calendar month after the date on which the Seller has notified the Buyer that the Product is ready for shipment or acceptance, as the case may be.
5. If the Seller is unable to deliver any Product to the Buyer by the time agreed for delivery with the Buyer for any reason of force majeure or due to any labor dispute or any other event beyond the reasonable control of the Seller, the time available for the delivery of the Product by the Seller to the Buyer shall be extended reasonably provided that the Seller shall give reasonably prompt notice of the beginning and the end of any such circumstances or event.
6. The Buyer shall have the right to rescind the Contract if it becomes finally impossible for the Seller to perform the entire Contract on a date prior to the transfer of the risks associated with the Product from the Seller to the Buyer. The Buyer shall further have the right to rescind the Contract if the delivery of any part of any Product becomes impossible and the Buyer has good cause to refuse to accept part of the Product. If no such good cause exists, the Buyer shall in any such case pay to the Seller part of the price agreed for the complete Product commensurate with the part of the Product delivered by the Seller to the Buyer by the time when the performance of the remaining part of the Contract become impossible. This clause shall be subject to the provisions of Article VII, clause 2, herein below.

Notwithstanding the foregoing, the Buyer shall remain obligated to make payments fully in accordance with the Contract, if the circumstances making performance by the Seller impossible or rendering the Seller unable to fully perform the Contract occur while acceptance of the Product by the Buyer is delayed for reasons for which the Buyer may be liable or if the Buyer is solely or largely responsible for such circumstances.

7. If the delivery of any Product is delayed beyond the due date for the delivery of the Product for any reason for which the Seller may be held liable hereunder and if the Buyer incurs any loss due to any such delay, then the Buyer shall be entitled to liquidated damages for each full week of delay totaling zero decimal five percent (0.5 %) of the value of any part of the Product which cannot be used as scheduled or as provided for in the Contract provided that said liquidated damages shall be limited to five decimal zero percent (5.0 %) of said value.  
If, subject to the exemptions provided for by law, the Buyer grants the Seller in the event of any delay for which the Seller may be liable a grace period for the performance of the Contract and the Seller does not perform the Contract within said grace period, then, subject to all statutory provisions, the Buyer shall have the right to rescind the Contract.  
Any recourse of the Buyer against the Seller for late delivery under the Contract other than the recourse provided for in this Article III shall be subject to the limitations of Article VII, Section 2, herein below.

#### **Article IV      Transfer of Risk and Acceptance**

1. The risks associated with any Product delivered by the Seller to the Buyer shall be transferred to the Buyer upon the departure of said Product or any part thereof from the works of the Seller whether or not the complete Product or part of the Product leaves said works or the Seller has agreed to perform any services after the departure of the Product from said works such as, without limitation of the generality of the foregoing, the payment of transportation expenses or site delivery or site installation. If any Product re-quires acceptance by the Buyer, said risks shall be transferred from the Seller to the Buyer upon the acceptance of the Product by the Buyer provided that the inspection of the Product by the Buyer for acceptance shall be made promptly on the date notified therefor by the Seller to the Buyer and shall, if not so made, be deemed to have been made promptly upon the notice given by the Seller to the Buyer that the Product is ready for acceptance by the Buyer. The Buyer shall not have the right to refuse the acceptance of the product, unless a substantial defect or deficiency of the Product is identified during any such inspection for acceptance.
2. If any shipment or any acceptance of any Product is delayed for any reason for which the Seller may not be liable, then the risks associated with the Product shall be transferred from the Seller to the Buyer on the date on which the Seller notified the readiness of the Product for shipment or acceptance as the case may be provided that the Seller shall at the request of the Buyer agree at the expense of the Buyer any insurance coverage of the Product requested by the Buyer.
3. The Seller shall have the right to deliver the Product in parts in as far as such partial deliveries will not impose any unreasonable burden upon the Buyer.

#### **Article V Retention of Title**

1. The title to the Product shall remain vested in the Seller until all payments owed by the Buyer to the Seller under the Contract have been received by the Seller.
2. The Seller shall have the right to insure the Product the title to which is vested in the Seller at the cost of the Buyer against theft, breakage or destruction or damage by fire, flooding or other risks unless the Buyer demonstrates to the Seller that such insurance coverage has been agreed by the Buyer.
3. The Buyer shall not sell, pledge or otherwise dispose of the Product or transfer the title to the Product to any third party for security, if and as long as the title to the Product remains vested in the Seller. The Buyer shall give the Seller prompt notice of any attachment, seizure or similar proceedings relating to the Product if and as long as the title to the Product remains vested in the Seller.
4. In the event of any breach of the Contract by the Buyer such as, without limitation, any non-payment when payment is due then the Seller shall upon reasonable notice be entitled to recover the Product and the Buyer shall thereupon return the Product to the Seller provided that the enforcement of the title to the Product or the recovery of the Product shall not be deemed to be a rescission of the Contract by the Seller.
5. If bankruptcy proceedings are initiated by the Buyer or creditors of the Buyer, the Seller shall have the right to rescind the Contract and promptly to recover the Product.

#### **Article VI      Warranty**

Subject to Article VII herein below, the Seller's warranties with respect to Product defects and defects of proprietary rights relating to the Product shall be governed by the provision of this Article VI provided that the Buyer shall in the event of any such defect not be entitled to any relief other than the relief provided for in this Article VI.

##### **Product Defects**

1. Any part of the Product which may be defective due to any circumstances prior to the transfer of the risks associated with the Product from the Seller to the Buyer shall, at the discretion of the Seller, be repaired or replaced. Prompt notice of any such defect shall be given by the Buyer to the Seller. The title to any part of the Product so replaced by the Seller shall be transferred to or remain vested in the Seller.
2. The Buyer shall provide the Seller with reasonable time and opportunity, as agreed with the Seller, to repair any defect in the Product as the Seller may deem fit or to replace any defective part of the Product by delivering a substitute part to replace such defective part provided that the Seller shall not be held liable for any loss suffered if no such reasonable time and opportunity is provided to the Seller. Notwithstanding the foregoing, the Buyer shall have the right to remove any such defect itself or to have any such defect removed by any third party and shall be entitled to the reimbursement of any reasonable expenses incurred therefor, if any such removal by the Buyer or any such third party is urgently required for safety reasons or to prevent any substantial loss and the Buyer shall in any such event promptly notify the Seller of said event.
3. If it is established that the Seller is liable for any defect of the Product in accordance with the provisions of this Article VI, then out of all costs occasioned by any repair or replacement under this Article VI, the Seller shall bear the costs of any spare parts required for the removal of said defect including the costs of shipment thereof as well as the reasonable costs of the removal of any defective part

- from the Product and the installation of a substitute part for any such defective part and, if reasonable in the circumstances of the case, the costs of providing fitters and/or labor for such removal and installation work.
4. Subject to the exemptions provided for by law, the Buyer shall have the right to rescind the Contract in accordance with the provisions of law, if the Seller fails to remove any defect of the Product for which the Seller may be liable by repair or replacement within a reasonable period of time fixed by the Buyer. If any such defect is minor, the Buyer shall not be entitled to the rescission of the Contract but to a reasonable reduction in the price of the Product provided that the Buyer shall not be entitled to a reduction in the price of the Product under any circumstances other than the circumstances of this sentence.
  5. Without any limitation of the generality of the provisions of this Article VI, the Buyer shall not be entitled to the removal of any defect of the Product attributable to any of the following:
    - Use of the Product for any purpose for which the Product is not fit
    - Defective installation or commissioning of the Product by the Buyer or any third party
    - Usual wear and tear of the Product
    - Improper maintenance of the Product
    - Use of consumable not fit for the Product
    - Defective civil engineering work
    - Underground or soil not fit for the Product
    - Chemical, electrochemical or electrical effects on the product, unless attributable to the Seller
  6. If the Buyer or any third party repairs the Product incorrectly, inadequately or inappropriately, any liability of the Seller for any such repair or any effects thereof shall be excluded.

#### **Defects of Proprietary Rights**

7. If the use of the Product constitutes a breach of any copyright or other proprietary right ("Proprietary Right") of any person, then, subject to the terms and conditions of this clause 7, the Seller shall, subject to the terms of clause 8 herein below, at its cost obtain from the owner of the Proprietary Right the right for the Buyer to continue to use the Product or modify the Product reasonably acceptably to the Buyer to eliminate said breach.

If said rights of use cannot be obtained or the Product cannot be so modified at reasonable cost to the Seller or within a reasonable period of time, then the Buyer or the Seller shall have the right to rescind the Contract.

Further, under such circumstances, the Seller shall indemnify the Buyer against and save the Buyer harmless from any undisputed title of or any title enforced in court by the owner of the Proprietary Right.

8. Subject to the provisions of Article VII, clause 2, herein below, the Buyer shall be entitled to no relief for any breach of any Proprietary Right other than the relief provided for in clause 7 herein above and any such relief shall be subject to
  - the Buyer notifying the Seller promptly of any such breach or alleged breach the Buyer may become aware of,
  - the Buyer providing reasonable support to the Seller for the defense of any alleged breach of any Proprietary Right claimed by any third party or providing the Seller with a reasonable opportunity to alter the Product according to clause 7 herein above, as the case may be,
  - all defense with respect to any such Proprietary Right or alleged Proprietary Right including, but not limited to any compromise settlement, being vested in the Seller,
  - the breach or alleged breach of any Proprietary Right not being due to any specifications, instructions or the like of the Buyer and
  - the breach or alleged breach of any Proprietary Right not being due to any modification or alteration of the Product by the Buyer or the use of the Product by the Buyer for any purpose other than the purpose originally intended.

#### **Article VII Liability**

1. If due to fault on the part of the Seller in connection with any omitted or negligent performance of any arrangements agreed prior to or after the execution of the Contract or any breach of any of the Seller's obligations such as, in particular, and without limitation of the generality of the foregoing, the obligation to provide instructions for the operation and maintenance of the Product, the Buyer is unable to use the Product for the purpose contemplated in the Contract, the provisions of Article VI herein above and clause 2 of this Article VII herein below shall apply mutatis mutandis and the Buyer shall be entitled to no relief other than the relief provided for in this clause 1.
2. The liability of the Seller under the Contract for any loss other than any damage to the Product which may be incurred for any reason whatsoever shall be limited to liability for
  - any willful act, neglect or omission of the Seller or any person acting for the Seller,
  - any gross negligence on the part of any owner, officer or senior executive of the Seller,
  - any death, injury or impact on health due to fault on the part of the Seller or any person acting for the Seller,
  - any defect of the Product not revealed by the Seller to the Buyer in bad faith or warranted by the Seller to be absent from the Product and
  - any defect of the Product where the Seller is subject to liability for death, injury or loss incurred through the private use of goods or products under the German Product Liability Act.

In the event of any gross negligence or willful act, neglect or omission with respect to any breach of any material provision of the Contract, the Seller shall further be liable for any slightly negligent fault on the part of any non-executive employee of the Seller provided that any liability for any such slight negligence shall be limited to liability for any loss typical of contracts of the type of the Contract and reasonably predictable by the Seller.

Any liability of the Seller beyond the liability provided for in this clause 2 shall be excluded.

**Article VIII Limitation of Rights of the Buyer**

Any right of the Buyer against the Seller for any reason whatsoever shall expire after a period of twelve (12) months provided that any right of the Buyer on the grounds of any willful act, neglect or omission or any fraudulent deception by the Seller shall expire as provided for by law.

The commencement of the period after which any such rights will expire shall be on the date provided for by law.

**Article IX Software Use**

If the Contract requires the delivery of software by the Seller ("Software") the Buyer shall have the non-exclusive right to use the Software and the documentation thereof for the Product but shall not have the right to use Software or the documentation thereof for any machinery, plant, equipment or product other than the Product.

The Buyer shall not duplicate, copy, process, alter, modify or translate the Software or translate the Software object code into Software source code beyond the scope allowed by Section 69 et sequences of the German Copyright Act and agrees not to remove or to modify without the prior written consent at the Seller any manufacturer reference, such as but not limited to any copyright reference in the Software or the documentation thereof.

All Software rights and all rights with respect to the documentation of the Software not provided for in this Article IX including, but not limited to the rights to make copies thereof shall remain vested in the Seller or the supplier of the Software, as the case may be, and the Buyer shall not grant any sub-license with respect to any Software or any documentation thereof.

**Article X Other Provisions**

1. The Contract and these Standard Sales Terms shall exclusively be governed by and construed and interpreted in accordance with German law provided that the United Nations Convention on the International Sale of Goods shall not apply.
2. Any dispute arising out of or in connection with the Contract or these Standard Sales Terms shall, if the Buyer is a private-law person pursuing a commercial or independent professional activity or a public-law legal person or entity, exclusively be brought to the courts having jurisdiction at the registered offices of the Seller or the organizational unit of the Seller performing the Contract provided however that the Seller shall further have the right to bring action in the courts having jurisdiction at the registered offices of the Buyer.
3. The Contract shall exclusively be subject to these Standard Sales Terms and the Seller and the Buyer expressly agree that any standard terms of the Buyer, if any, shall not be applicable.
4. If any of the terms and conditions of the Contract or these Standard Sales Terms is or become ineffective, the remaining provisions of the Contract and these Standard Sales Terms shall remain in full force and effect. Any such ineffective provision shall be deemed to have been replaced by the Seller and the Buyer by an effective provision which shall have commercial, financial and economic implications which shall be as close to those of said ineffective provision as may be reasonably possible.