

## **General Terms and Conditions of Purchase gabo Systemtechnik GmbH**

### **I. Scope of Application**

1. The following General Terms and Conditions of Procurement ("GTCP") shall apply exclusively to all orders/contracts of gabo Systemtechnik GmbH, Am Schaidweg 7, 94559 Niederwinkling, Federal Republic of Germany ("gabo"). The GTCP shall only apply if the contractor, service provider or Supplier ("Supplier") is an entrepreneur (Section 14 of the German Civil Code ("BGB")), a legal entity under public law or a special fund under public law.
2. These GTCP shall apply exclusively. Deviating, conflicting or additional general terms and conditions of Supplier shall only become part of the contract if and to the extent that gabo has expressly agreed to their validity in writing and with express reference to them. This requirement of consent shall apply in any case, for example even if Supplier refers to its general terms and conditions in the order confirmation or on other documents and gabo does not expressly object to this or accepts Supplier's performance without reservation.
3. The GTCP shall apply in particular to contracts for the sale and/or delivery of movable goods ("Goods"), irrespective of whether Supplier manufactures the Goods itself or purchases them from third parties (Sections 433, 650 BGB). Unless otherwise agreed, the GTCP in the version valid at the time of gabo's order shall also apply as a framework agreement for similar future contracts without gabo having to refer to the GTCP again in each individual case. gabo reserves the right to amend these GTCP at any time. Supplier shall be notified of any changes to the GTCP with a reasonable notice period before they come into force. The amended GTCP shall apply to all future contracts between gabo and Supplier after such notice period.
4. Legally relevant declarations and notifications shall be made in writing within the meaning of Section 126 BGB. The electronic exchange of copies of handwritten and signed documents shall be sufficient. Simple e-mails shall not be sufficient. Furthermore, "in writing" in these GTCP means in text form in accordance with Section 126b BGB. Statutory formal requirements and further evidence, in particular in the event of doubts about the legitimacy of the declaring party, shall remain unaffected. All notifications, declarations, notifications etc. shall be made exclusively in German or English.
5. Supplier accepts these GTCP by executing the order or contract.
6. Supplier shall provide all agreed deliveries and services professionally, punctually and in accordance with the statutory provisions and contractual agreements. In doing so, Supplier shall always apply the standard of care to be applied by experts and shall in any case exercise the objectively required care.
7. Supplier is not authorized to legally represent. No relationship under company or employment law is established between gabo and Supplier.

### **II. Placing of Orders**

1. gabo's order shall be deemed binding at the earlier of gabo's submission or confirmation. However, if gabo indicates this on the order document, no handwritten signature shall be required for the order to be valid. Supplier shall notify gabo of obvious errors (e.g. typing and calculation errors) and incompleteness of the order, including the order documents, for the purpose of correction or completion before acceptance; otherwise, the contract shall be deemed not to have been concluded. Verbal ancillary agreements to the order/commission shall be recorded in writing.
2. Supplier shall confirm the order to gabo in writing and without changes within a period of 7 calendar days or to execute the order without reservation by dispatching the Goods ("Acceptance"); otherwise gabo shall not be bound by the order, unless a binding period in accordance with clause II.1 has not yet expired.
3. Delayed or amended Acceptance shall be deemed a new offer and shall require gabo's acceptance.
4. gabo may withdraw from the contract at any time by written declaration stating the reason if (a) due to circumstances occurring after conclusion of the contract for which Supplier is responsible (e.g. failure to comply with legal requirements) the ordered goods can no longer be used in gabo's business operations due or can only be used at considerable expense or (b) Supplier's financial situation

deteriorates after conclusion of the contract to such an extent that delivery in accordance with the contract cannot be reasonably expected.

5. Supplier's offers shall be made free of charge and shall be binding; cost estimates shall only be remunerated by gabo if pre-agreed in writing. To the extent Supplier prepares offers or project documents, brochures, presentations or similar prior to conclusion of the contract or attends visits, meetings or other appointments at gabo's premises, these shall not be remunerated by gabo.
6. All information including drawings and other documents which gabo requires for the installation, operation, maintenance or repair of Goods shall be made available to gabo by Supplier free of charge, reasonably in advance and without additional request by gabo. Section 434 para. 2 BGB shall remain unaffected.
7. Drawings, drafts etc. made by Supplier for gabo according to special specifications shall be the unrestricted property of gabo without additional remuneration, irrespective of whether they remain in Supplier's possession. Declarations to the contrary by Supplier, e.g. on documents handed over to gabo, shall not be binding.
8. Separate agreements as well as amendments and supplements thereto in connection with an order shall only be binding if issued or confirmed by gabo in writing.
9. All order data specified by gabo which are necessary for the proper processing of the order shall be indicated on all documents relating to the order. In particular, the order identification of gabo (date of order/commission and number) as well as the material designation and number assigned or communicated by gabo shall be indicated.

### **III. Change Requests and Changes to Goods or Services**

1. gabo may request changes, additions and extensions to the contractual services or Goods at any time ("Change Request"). Supplier may object to a Change Request within 2 weeks after receipt of the change request, provided the Change Request's implementation is unreasonable for Supplier.
2. Supplier shall submit to gabo a calculation of the expenses necessary for the implementation of a Change Request, which shall take into account the effects of the change on performance dates, remuneration and resources used. In case Supplier incurs additional expenses due to changes, Supplier may demand an appropriate adjustment of the performance dates and remuneration.
3. gabo and Supplier shall agree in writing on the implementation of a Change Request, including the resulting consequences for performance dates and Supplier's remuneration ("Change"). The relevant Change shall only become effective upon written agreement. However, Supplier shall, if reasonable and possible given its operational and personnel possibilities, immediately begin with the implementation even before such Change has been agreed.
4. If no agreement is reached on a Change, gabo may extraordinarily terminate the contract for the specific service or Good which is subject to the Change Request provided it is unreasonable for gabo to adhere to such contract without the Change Request.

### **IV. Material Provided and Ownership**

1. gabo's obligation to provide materials, tools, samples, specifications, plans, drawings or other objects (together: "Materials") shall require a separate agreement. In case of Materials provided, gabo shall retain ownership and all industrial property rights of and to such Materials. Supplier may only use Materials provided for the duration and purposes of the supply relationship and shall be returned to gabo in full and without retention of copies - regardless of the storage medium - upon termination. Specifications and Materials marked as confidential are gabo's business secrets. Supplier shall check that the Materials provided are complete and free of defects and shall notify gabo immediately of (i) recognizable defects and incompleteness and (ii) defects and incompleteness in each case as soon as they become apparent.
2. Supplier shall expressly mark provided Materials as gabo's property and store them separately from identical or similar objects until the processing stage. Supplier shall immediately (i) object to all measures by third parties that jeopardize ownership of the Materials provided and (ii) inform gabo of this. Provided Materials shall be handled

carefully by Supplier, stored properly and insured appropriately against loss and damage and, in the case of tools and machines provided, regularly maintained and repaired in accordance with the manufacturer's specifications.

**3.** Supplier shall not process defective Materials provided. In case of a quality assurance agreement between gabo and Supplier, this shall be observed. Any deviations in quality or quantity of the Materials provided shall be reported to gabo immediately. Supplier is liable for any damage incurred by gabo due to a breach of these obligations. Supplier's right to prove that deviations in quality or quantity of the Materials provided were not recognizable to Supplier, that Material provided was not the cause of a defect or that gabo did not suffer any damage remains unaffected.

**4.** Until revocation by gabo in accordance with clause IV.3, Supplier may process Materials provided for the production of the Goods ordered by gabo. The processing of Materials provided is carried out in the name and for the account of gabo as the manufacturer. gabo acquires direct ownership of the product created with the Materials provided or - if the processing is carried out using items from several owners or the value of the processed item is higher than the value of the materials provided by gabo - fractional ownership of the resulting product in the ratio of the value of the Materials provided or other items to the value of the resulting product. If the Materials provided are combined or inseparably mixed with other items to form a single item, and if one of the other items is to be regarded as the main item, Supplier shall transfer co-ownership of the single item to gabo on a pro rata basis in the ratio specified in clause IV.5 sentence 3, to the extent Supplier is owner of such main item.

**5.** Clause IV.1, sentences 2-4 and clauses IV.2, 3 shall apply accordingly to tools or machines that gabo has paid for.

#### **V. Prices and Terms of Payment**

**1.** The prices listed in the order shall apply for the entire term of the order, even if the delivery date is postponed. Unless stated separately all prices shall include statutory value added tax. In addition, prices, remuneration and other monetary amounts are to be understood in euros, unless another currency has been agreed.

**2.** Price increases shall require express written agreement to be effective.

**3.** Unless otherwise agreed in individual cases, the price shall include all services and ancillary services of Supplier (e.g. assembly, installation) as well as all ancillary costs (e.g. proper packaging, transportation costs including any transport and liability insurance, customs duties). If, according to the agreement made, the price does not include packaging and the remuneration for the packaging - which is not only provided on loan - is not expressly determined, this shall be charged at the proven cost price.

**4.** Any of Supplier's services, outlays or expenses not expressly agreed in the contract shall not be remunerated or reimbursed separately by gabo.

**5.** All invoices of Supplier shall contain at least the following individual details: (i) Supplier's name/company name, full address and account information, (ii) gabo's name/company name and full address, (iii) name of the responsible contact person at gabo (indicated on gabo's order), (iv) date and number of the order, (v) remuneration (net), (vi) statutory value added tax (if applicable) together with the applicable tax rate, (vii) total invoice amount and (viii) all information and details (invoice requirements) which may be required under the statutory provisions on value added tax, in particular Supplier's and gabo's VAT identification numbers, invoice number, invoice date and time of performance or performance period.

**6.** Supplier's invoices of for the delivery of regular Goods in addition to the individual details specified in Clause V.5 shall contain at least the following individual details: (i) description of Goods, article number (SKU) and delivery quantity of each individual Good, (ii) delivery address and delivery date and (iii) customs tariff number (if applicable). This shall also apply if Supplier provides additional services in addition to the delivery of such Goods.

**7.** Supplier's invoices for rendering of services other than delivery of Goods in addition to the details specified in Clause V.5 shall contain at least the following details: (i) type and content of the invoiced service, (ii) date and/or period of performance, (iii) remuneration or other remuneration for the service, and (iv) expenses and outlays of

Supplier including enclosure of corresponding documents and receipts, if agreed.

**8.** Invoices which do not contain the minimum information specified in Clauses V.5 to 7 may be rejected by gabo and returned to Supplier. gabo reserves the right to withhold payment until receipt of a proper invoice.

**9.** All payments shall be made in Euro and, unless otherwise agreed, non-cash.

**10.** Payment shall not constitute an acknowledgement that the deliveries of Goods or services rendered are complete and free of defects and has no influence on the assertion of complaints and warranty claims.

**11.** The price agreed shall be due for payment within 60 calendar days of (i) complete delivery and performance (including any agreed acceptance) and (ii) receipt of a proper invoice. If gabo makes payment within 10 calendar days, Supplier shall grant a 3% discount on the invoice's net amount. If gabo makes payment within 30 calendar days, Supplier shall grant a 2% discount on the invoice's net amount. In case of direct debit by Supplier, Supplier shall grant gabo a 4% discount on the invoice's net amount. In the case of bank transfer, payment shall be deemed to have been made on time if gabo's transfer order is received by gabo's bank before expiry of the payment deadline; gabo shall not be responsible for delays caused by the banks involved in the payment process.

**12.** In the event of delivery of Goods or service rendered not in accordance with the contract, in particular in the event of defective, delayed or incomplete delivery of Goods or service rendered, gabo may withhold payments until the delivery or service is in accordance with the contract. Any retention or set-off by gabo against claims of Supplier shall not result in the loss of rebates, discounts and similar payment benefits granted by Supplier. Other statutory and contractual rights in favor of gabo shall remain unaffected.

**13.** gabo shall not owe any interest on arrears. The statutory provisions shall apply to default of payment, whereby gabo shall only owe default interest in the amount of 5% above the base interest rate (Section 247 BGB) in the event of default of payment.

#### **VI. Delivery Time**

**1.** The delivery dates/completion dates agreed shall be strictly adhered to. Early delivery without gabo's prior written consent shall not be permitted. If the delivery time is not specified in the order and has not been agreed otherwise, it shall be 2 weeks from the conclusion of the contract. Supplier shall inform gabo immediately in writing if Supplier is likely to be unable to meet delivery times agreed - for whatever reason. gabo's claims arising from and in connection with the following Clauses VI.3 and 4 shall remain unaffected.

**2.** Postponements require a new, binding appointment agreement in writing by the contracting parties involved.

**3.** If Supplier is in default with the Goods/services, gabo may exercise its statutory rights - in particular withdrawal and compensation. Withdrawal from the contract shall be possible irrespective of Supplier's fault. Supplier may only invoke the absence of necessary documents or information to be supplied by gabo if Supplier has not received them within a reasonable period of time despite a written reminder. The provisions in Clause VI.4 shall remain unaffected.

**4.** If Supplier is in default, gabo may - in addition to further statutory claims - demand lump-sum compensation for the damage caused by default in the amount of 0.25% of the net price of the Goods/services delayed per completed working day (Monday to Friday at gabo's registered office), but not more than 5% of the net price of the Goods/services delayed in total. gabo reserves the right to prove that higher damages have been incurred. Supplier reserves the right to prove that no damage or only minor damage has been incurred.

**5.** gabo may declare the reservation of an agreed and forfeited contractual penalty to Supplier in amendment of Section 341 para. 3 BGB until the due date of the final invoice, but at the latest until the final payment.

**6.** Supplier may only invoke a delay in delivery due to force majeure if and to the extent it has informed gabo of this immediately.

#### **VII. Delivery and Performance**

**1.** Supplier shall not be entitled to make partial deliveries without the gabo's prior written consent.

2. Supplier shall notify gabo of all deliveries of Goods and services to be rendered in good time, at the latest 3 working days prior to dispatch, by means of a (dispatch) notice stating the type, quantity and, if applicable, the (net) weight in detail. In all shipping and order documents and in related correspondence, in particular in dispatch notes, consignment notes and invoices, Supplier shall state the respective order details in accordance with Clause VII.7.

3. gabo's unconditional receipt or acceptance of deliveries of Goods or services rendered shall not constitute a waiver of statutory or contractual claims of gabo due to delays in delivery or performance.

4. Delivery shall be made within Germany "free domicile" to the place specified in the order. In the absence of a specification of the place of destination or other agreement with Supplier, delivery shall be made to gabo's place of business. The respective place of destination shall also be the place of performance for the delivery and any subsequent performance (obligation to deliver). gabo shall only bear the costs of transportation insurance taken out by Supplier if this has been agreed in writing in advance.

5. The risk of accidental loss and accidental deterioration of the goods shall pass to gabo upon handover at the place of performance. If acceptance has been agreed, this shall be decisive for the transfer of risk. The statutory provisions of the law on contracts for work shall also apply accordingly in the event of acceptance. Any contractually agreed proof of performance and acceptance shall be carried out free of charge for gabo and recorded in writing by both parties.

6. All Goods shall be transported and delivered packaged if their nature requires packaging during transportation. The packaging shall comply with all statutory and contractually agreed product packaging and transportation regulations, in particular transportation safety as appropriate for the respective mode of transportation.

7. In addition to the delivery address, the order details (order number, order date, delivery point, if applicable the name of the recipient and the material designation and number assigned or communicated by gabo) shall always be stated in the transport documents. If subcontractors are used, they shall indicate Supplier as their principal in correspondence and freight documents, stating the order data. The unit weight shall be clearly visible and permanently affixed to loading units of 1 t or more. The delivery shall be accompanied by a delivery bill stating the date (issue and dispatch), content of the delivery (article number and quantity) and gabo order identifier (date and number). If the delivery bill is missing or incomplete, gabo shall not be responsible for any resulting delays in processing and payment. A corresponding dispatch note with the same content shall be sent to gabo separately from the delivery bill.

8. The statutory provisions shall apply in case of gabo's delay. However, Supplier shall expressly offer Goods/service to gabo if a specific or determinable calendar time has been agreed for an action or cooperation of gabo (e.g. provision of material). If gabo is in default of acceptance, Supplier shall be entitled to demand compensation for its additional expenses in accordance with the statutory provisions (Section 304 BGB). If the contract relates to a non-fungible Good to be manufactured by Supplier (individual production), Supplier shall only be entitled to further rights if gabo is obliged to cooperate and is responsible for the failure to cooperate.

9. If a delivery arrives at its destination in damaged packaging, gabo shall be entitled to reject the delivery in its entirety without checking the contents. The costs of any return shipment shall be borne by Supplier. The same shall apply if a delivery in damaged packaging is handed over to gabo or to the carrier designated by gabo, if such type of delivery has been contractually agreed.

10. Supplier shall be responsible for the disposal of all packaging materials in compliance with all applicable statutory regulations under national or EU law as amended from time to time. Supplier shall be responsible for being part of a suitable disposal system. Upon request of gabo, Supplier shall immediately provide suitable and current proof of participation in a suitable disposal system.

11. If Supplier is not part of a suitable disposal system or does not provide the corresponding proof, gabo may, at its discretion, assert the rights pursuant to Clause X.12 or, until the conclusion of a corresponding contract or receipt of corresponding proof, require Supplier to proportionally share all costs incurred for the collection, sorting, storage, disposal and recycling of the transport packaging material. The same shall apply in the event of withdrawal from a disposal system, of which Supplier shall notify gabo immediately in writing.

12. At gabo's request and discretion, Supplier shall take back the packaging at its own expense or bear the costs of the disposal of the transport packaging material by gabo against proof and in an appropriate amount. If Supplier's Goods/services generate waste as defined by waste legislation, Supplier shall recycle or dispose of the waste - unless otherwise agreed in writing - at its own expense in accordance with the provisions of waste legislation. Ownership, risk and responsibility under waste law shall pass to Supplier at the time the waste is generated.

13. The following shall apply to work performances: Supplier shall notify gabo of the readiness for acceptance of the work performances at least 10 working days prior to the planned acceptance, unless the type, scope or complexity of the work performance requires a longer notification period. gabo shall be entitled to inspect the functionality of the services released by Supplier for acceptance free of charge within 20 working days after receipt of Supplier's respective notification, unless the type, scope or complexity of the work performance requires a longer inspection period. The acceptance of work performances shall be made in writing. Partial acceptance and fictitious acceptance shall be excluded. This shall also apply if gabo uses the work without having previously declared acceptance. Any costs of acceptance shall be borne by Supplier.

#### **VIII. Data and Information**

1. Supplier shall provide gabo in good time prior to delivery with all necessary product information in its current version, e.g. safety data sheets, processing instructions, labeling regulations, environmental compatibility documentation, assembly instructions, instructions for use, occupational safety measures, approvals and CE declarations of conformity - in particular to the extent required in accordance with Art. 31 Regulation (EC) No. 1907/2006 concerning the Registration, Evaluation, Authorization and Restriction of Chemicals (REACH) and the information required in accordance with Art. 32, 33 REACH.

2. To the extent required for distribution within the EEA or Switzerland, gabo shall be entitled to produce translations of necessary product information into the national languages and provide third parties with such translations.

3. Supplier warrants that the Goods do not contain any gold, tin, tantalum, tungsten or compounds of these substances originating from the Democratic Republic of Congo or neighboring countries of the Democratic Republic of Congo. Upon request, Supplier shall provide gabo with information on the origin of the said substances and/or compounds.

#### **IX. Retention of Title**

1. Ownership and the right of disposal shall pass to gabo upon handover of the Goods/performance results, even if direct delivery is made to gabo's customers.

2. A simple, prolonged, extended or other retention of title by Supplier is excluded. gabo shall be entitled to process goods delivered, to integrate them into other products, to sell them or to dispose of them in any other way without Supplier's consent.

#### **X. Warranty**

1. gabo's rights in the event of material defects and defects of title of the Goods (including incorrect delivery, limitation on quantities not delivered, as well as improper assembly/installation or defective product information) and in the event of other breaches of duty by Supplier shall be governed by the statutory provisions and the provisions set out in Clauses X. to XIII below.

2. Those product descriptions which - in particular by designation or reference in the order - are the subject matter of the respective contract or have been included in the contract in the same way as these GTCP shall be deemed to be an agreement on the quality. It shall be irrelevant whether the product description originates from gabo, Supplier or the manufacturer.

3. Supplier warrants that the Goods/services fully comply with the state of the art and statutory provisions. This includes in particular the valid recognized rules of science and technology, applicable technical regulations and standards (e.g. DIN, EN, ISO, VDE) as well as the applicable occupational safety and accident prevention and emission control regulations relating to the respective Goods/services.

4. If a defect becomes apparent within the warranty period, it shall be assumed that it was already present at the time of transfer of risk.



5. Without prejudice to any further claims of gabo, in the event of weight deviations, the weight determined by gabo at the time of inspection of the Goods shall apply, unless Supplier proves that the weight calculated by Supplier was correctly determined at the time of the passing of risk according to a generally recognized method. This Clause X.5 shall also apply accordingly to quantities.

6. The statutory provisions (Sections 377, 381 HGB [German Commercial Code]) shall apply to the commercial obligation to inspect and give notice of defects, subject to the following provisos: gabo's obligation to inspect, unless otherwise provided for below, shall be limited to defects which become apparent during external inspection of the Goods taking into account the delivery documents (e.g. transport damage, incorrect delivery and limited quantity) or which are recognizable during quality control by random sampling. If acceptance has been agreed, there shall be no such obligation to inspect. Otherwise, it shall depend on the extent to which an inspection is feasible in the ordinary course of business, taking into account the circumstances of the individual case. gabo's obligation to give notice of defects discovered later (hidden defects) shall remain unaffected. Notwithstanding gabo's duty to inspect, gabo's complaint (notification of defects) shall in any case be deemed to be immediate and timely if it is sent within 2 weeks of discovery in the case of hidden defects.

7. In addition to gabo, gabo's customers shall be entitled to assert defects in the delivery of Goods or services rendered directly against Supplier. Supplier shall investigate such notices of defects, inform gabo immediately and remedy the defects. In such cases, any suspension of the limitation periods shall also apply in favor of gabo.

8. If gabo discovers obvious defects in parts of the Goods during the inspection, according to which parts of the delivery do not comply with the legal or contractual requirements, gabo may reject the entire delivery.

9. Subsequent performance shall also include the removal of the defective Goods and reinstallation of the defect-free Goods, provided that the Goods were installed in another item or attached to another item in accordance with their nature and intended use before the defect was discovered; gabo's statutory claim for reimbursement of corresponding expenses (removal and installation costs) shall remain unaffected. gabo's liability for damages in the event of an unjustified request to remedy defects shall remain unaffected; in this respect, however, gabo shall only be liable if gabo or the complaining customer has recognized or grossly negligently failed to recognize that there was no defect.

10. Notwithstanding the statutory rights of gabo and the provisions in the above Clause X.9, the following shall apply: If Supplier fails to fulfill its obligation of subsequent performance - at the discretion of gabo by remedying the defect (subsequent improvement) or by delivering a defect-free item (replacement delivery) - within a reasonable period of time set by gabo, gabo may remedy the defect itself or have it remedied by a third party and demand compensation from Supplier for the necessary expenses including a corresponding advance payment. If the subsequent performance by Supplier has failed or is unreasonable for gabo (e.g. due to particular urgency, endangerment of operational safety or imminent occurrence of disproportionate damage), no deadline need be set; gabo shall inform Supplier of such circumstances immediately, if possible in advance. Supplier shall be entitled to a maximum of 2 attempts at subsequent performance.

11. In deviation from the above, the following shall apply to work performances: Supplier shall remedy defects in the work performances by subsequent performance, at gabo's discretion either by rectification or by replacement delivery. If the rectification of the same defect fails several times (at least three times) and if gabo cannot reasonably be expected to wait any longer, gabo may withdraw from the contract or reduce the agreed remuneration after expiry of a reasonable grace period and threat of refusal. In addition, gabo may demand compensation for damages or reimbursement of any futile expenses within as based on statutory provisions. gabo's right to self-performance pursuant to Sections 634 No. 2, 637 BGB shall remain unaffected.

12. gabo and gabo's customers shall be entitled to demand compensation from Supplier for reasonable expenses incurred in connection with the subsequent performance, in particular transport, travel, labor and material costs.

13. Otherwise, in the event of a material defect or defect of title, gabo shall be entitled to reduce the purchase price or to withdraw from the contract in accordance with statutory provisions. In addition, gabo

shall be entitled to compensation for damages and expenses in accordance with the statutory provisions.

14. Unconditional acceptance of deliveries of Goods or services rendered, their temporary use as well as the payment of prices, remuneration or other sums of money shall not affect any gabo's rights (no waiver or loss of rights) and, where applicable, shall not constitute acceptance.

#### **XI. Supplier Recourse**

1. In addition to the claims for defects, gabo shall be entitled without restriction to claims for expenses and recourse within a supply chain (supplier recourse pursuant to Sections 478, 445a, 445b or Sections 445c, 327 para. 5, 327u BGB). In particular, gabo shall be entitled to demand exactly the type of subsequent performance (rectification or replacement delivery) from Supplier which gabo owes its customer in the individual case; in case of goods with digital elements or other digital content, this shall also apply with regard to the provision of necessary updates. gabo's statutory election right (Section 439 (1) BGB) shall remain unaffected.

2. Before gabo recognizes or fulfils a claim for defects asserted by its customers (including reimbursement of expenses pursuant to Sections 445a para. 1, 439 para. 2, 3, 6 sentence 2, 475 para. 4 BGB), gabo shall notify Supplier and, briefly explaining the facts of the case, request a written statement. If a substantiated statement is not made within a reasonable period of time and if no amicable solution is reached, the claim for defects actually granted by gabo shall be deemed to be owed to its customer. In this case, Supplier shall be responsible for providing evidence to the contrary.

3. gabo's claims arising from Supplier recourse shall also apply if the defective goods have been combined with another product or further processed in any other way by gabo, gabo's customers or a third party, e.g. by installation, attachment or installation.

#### **XII. Liability and Compensation**

1. Unless otherwise provided for in these GTCP, Supplier shall be liable in accordance with the general statutory provisions. Supplier shall indemnify gabo against all claims for damages by third parties which are based on defects or damage to the delivery of Goods or services rendered of Supplier and the causes of which are not within the sphere of control and organization of gabo.

2. gabo, its legal representatives and employees of gabo shall only be liable, irrespective of the legal grounds, for gross negligence, intent or in case of a breach of a material obligation which is of essential importance for the achievement of the purpose of the contract on which Supplier could reasonably rely (cardinal obligations). In the event of a breach of cardinal obligations due to simple negligence, gabo's liability for damages and reimbursement of expenses shall be limited to the foreseeable damage typical of the contract. The limitations and exclusions of liability pursuant to this clause XII.2 shall not apply if and to the extent gabo is for the injury to life, limb or health or for damage to privately used items pursuant to the Product Liability Act or for breach on other mandatory legal provisions. Any further liability of gabo shall be excluded.

3. If and to the extent that Supplier has been proven to have entered into an agreement or concerted practice with respect to Goods purchased by gabo which constitutes a prohibited and non-exempt restriction of competition, Supplier shall pay 10% of the net price of the Goods so affected and purchased from gabo as liquidated damages to gabo. gabo's right to prove and claim higher damages and Supplier's right of to prove and claim lower damages shall remain unaffected.

#### **XIII. Product Liability**

1. Provided Supplier is responsible for product damage, Supplier shall indemnify gabo against all third parties' claims to the extent that the cause lies within Supplier's sphere of control and organization and Supplier liable in relation to third parties.

2. Within the scope of its indemnification obligation, Supplier shall reimburse gabo expenses pursuant to Sections 683, 670 BGB which arise from or in connection with a claim by third parties, including recall actions carried out by gabo. To the extent possible and reasonable, gabo shall inform Supplier of the content and scope of recall measures and give Supplier the opportunity to comment. Any additional statutory provisions shall remain unaffected.

3. Supplier shall have a liability insurance and a product liability insurance with a lump sum coverage of at least EUR 10 million for the liability insurance and EUR 10 million for the product liability insurance per personal injury/property damage and shall maintain it for the duration of the contractual relationship including warranty and limitation period. Upon request, Supplier shall provide gabo with a copy of the liability / product liability insurance. Supplier's insurance obligations under this Clause XIII.3 shall apply without prejudice to all of gabo's statutory and contractual rights.

#### **XIV. Offsetting, Retention and Assignment**

1. gabo's rights of set-off and retention as well as the defense of non-performance of the contract shall exist to the extent permitted by law. In particular, gabo may withhold due payments as long as gabo is still entitled to claims against Supplier arising from incomplete or defective services or Goods.
2. Supplier may only exercise a right of set-off on the basis of legally established or undisputed counterclaims.
3. Supplier may only exercise a right of retention if its counterclaim is based on the same contract as the claim asserted by gabo.
4. Supplier may only assign its claims arising from the contractual relationship with DPT to third parties with gabo's written consent. Section 354 a HGB shall remain unaffected.

#### **XV Industrial property rights**

1. Supplier warrants that the Goods together with any documentation do not infringe third parties' intellectual property rights (in particular patent, copyright, trademark or other intellectual property rights) in countries of the EEA and Switzerland and that gabo is entitled to produce documentation in accordance with Clause VIII.2. The freedom from third-party rights shall also apply to parts which Supplier has obtained from third parties.
2. Supplier shall indemnify gabo against all claims due to such an infringement of third parties' intellectual property rights and to reimburse gabo for all necessary expenses (including court and reasonable legal costs) in connection with such claims. This shall not apply if Supplier proves that it is neither responsible for the infringement of intellectual property rights nor should have been aware of it at the time of delivery if it had exercised due commercial care. gabo shall enter into agreements with the third party asserting an infringement of intellectual property rights - without Supplier's consent - at Supplier's expense.
3. Any additional statutory claims by gabo due to defects of title of the Goods shall remain unaffected.

#### **XVI. Spare Parts**

1. Supplier shall keep spare parts for the goods delivered to gabo for a period of 10 years after the last delivery of the respective good.
2. If Supplier intends to discontinue the production of goods or spare parts for this purpose with or after the expiry of the period specified in Clause XVI.1 above, it shall notify gabo of this with a reasonable lead time. In this case, gabo may place a final order for the goods and/or spare parts to a reasonable extent, which Supplier shall fulfill.

#### **XVII. Premises and Safety**

When entering and driving on gabo's premises, the safety instructions of gabo's specialist personnel shall be followed. Furthermore, Supplier shall inform itself about the operating regulations applicable on site (e.g. safety regulations and house rules), comply with them and oblige its personnel to comply with them.

#### **XVIII. Data Protection**

Personal data received relating to the business relationship or in connection with it, regardless of whether they originate from Supplier itself or from third parties, are processed in accordance with the Federal Data Protection Act and the GDPR. Further information on the purpose and scope of the data processed by gabo can be found at <https://www.gabocom.de/privacy-policy>.

#### **XIX. Statutes of Limitation**

1. Claims shall become time-barred in accordance with the statutory provisions, unless otherwise stipulated below.
2. Notwithstanding Section 438 para. 1 no. 3 BGB, the general limitation period for claims for defects shall be 3 years from the transfer of risk. If acceptance has been agreed or is obligatory, the limitation

period shall commence upon acceptance. The 3-year limitation period shall also apply accordingly to claims arising from defects of title, under the proviso that the statutory limitation period for third-party claims in rem (Section 438 (1) No. 1 BGB) shall remain unaffected. Furthermore, claims arising from defects of title shall in no case become time-barred as long as the third party is still able to assert the right against gabo - in particular in the absence of a limitation period.

3. The limitation periods of the law on the sale of goods, including the extension stated above, shall apply - to the extent permitted by law - to all contractual claims for defects. To the extent gabo is also entitled to non-contractual claims for damages due to a defect, the regular statutory limitation period shall apply (Sections 195, 199 BGB), unless the application of the limitation periods of the law on the sale of goods leads to a longer limitation period in individual cases.

4. In addition to suspension of the limitation period provided for by law, the limitation period for claims and rights in the event of defects shall also be suspended during the period between notification and rectification of a defect.

#### **XX. Compliance with Laws and Right of Termination**

1. Supplier shall comply with the applicable statutory provisions in connection with the contractual relationship. This shall apply in particular to anti-corruption and money laundering laws as well as antitrust, labor, environmental and human rights regulations and provisions of minimum labor remuneration.
2. Supplier shall ensure that the goods delivered by Supplier shall comply with all relevant requirements for placing such goods on the market in the EEA and Switzerland. Supplier shall prove conformity of the goods to gabo upon gabo's request by submitting suitable documents - in particular those mentioned in Clause VIII.1.
3. Supplier shall make reasonable efforts to ensure compliance by its subcontractors with the obligations under these Clauses XX.1 and 2.
4. Supplier shall ensure compliance with Regulation (EU) 2016/679 (General Data Protection Regulation) and other legal requirements applicable in the specific case for the processing of personal data as well as compliance with these requirements by the persons employed by Supplier during the negotiation, execution and termination of the contract concluded with gabo. In particular, Supplier shall take sufficient technical and organizational measures (Art. 32 GDPR) to ensure a level of protection of personal data appropriate to the risk.
5. To the extent Supplier comes into contact with personal data of gabo (in particular of employees or contractual partners) as intended in the course of the provision of the contractual relationship with gabo, Supplier shall - to the extent this is necessary in accordance with the applicable data protection laws - conclude an agreement with gabo on processing (Art. 28 GDPR) or an agreement on joint responsibility (Art. 26 GDPR).
6. To the extent that gabo is subject to contractual or directly mandatory statutory provisions on due diligence obligations in the supply chain, Supplier shall also comply with such provisions and, if requested by gabo, shall provide evidence of such compliance. gabo shall immediately notify Supplier of any such obligation.
7. gabo may terminate the contract in whole or in part if Supplier culpably breaches its obligations under this clause XX and fails to comply with them within a reasonable period of time set by gabo or if Supplier intentionally or grossly negligently breaches the data protection obligations which Supplier has to adhere to.

#### **XXI Confidentiality**

1. Supplier shall keep the conditions of the order and all information and documents made available for this purpose (with the exception of publicly accessible information) secret, protect them with appropriate measures against inspection by third parties and use them only for the execution of the order and return them to gabo immediately upon request after completion of inquiries or after processing of orders.
2. Supplier may not refer to the business relationship with gabo in advertising material, brochures etc. and may not exhibit specific Goods manufactured for gabo according to gabo's specifications without gabo's prior written consent.

#### **XXII. Venue and Choice of Law**

1. Exclusive - also international - venue for all disputes arising between Supplier and gabo from or in connection with the contractual relationship shall be Rosenheim, Federal Republic of Germany,

provided that Supplier is a merchant within the meaning of HGB, a legal entity under public law or a special fund under public law or its registered office is located outside the Federal Republic of Germany. Notwithstanding the foregoing, in all cases gabo may also take legal action at the place of performance of the delivery obligation in accordance with these GTCP or by individual agreement with Supplier or at Supplier's general place of jurisdiction. Overriding statutory provisions, in particular regarding exclusive jurisdiction, shall remain unaffected.

**2.** These GTCP and the contractual relationship between gabo and Supplier shall be governed exclusively by the laws of the Federal Republic of Germany, excluding its provisions on international private law and excluding international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods.

### **XIII. Miscellaneous**

**1.** Should any of the provisions of these GTCP be or become wholly or partially impracticable, unenforceable, invalid or void, the remaining provisions shall remain in force.

**2.** References to statutory provisions are for clarification only. Even without such clarification, the statutory provisions shall apply unless they are expressly amended or excluded by these GTCP.

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