

GLAUNACH GMBH TERMS AND CONDITIONS OF SALE

I. Offer and Contract

No offer or contract shall be binding upon Glaunach GmbH (the "Seller") except by issuance of the Seller's printed acknowledgment form. Acceptance by Seller of buyer's (the "Buyer") order is expressly made conditional on assent of these terms and conditions (the "Terms and Conditions"), either by written acknowledgment or by conduct of Buyer that recognizes the existence of a contract with respect to the products and services (hereinafter together referred to as the "Products") described on Seller's acknowledgment form. Failure of Seller to object to conditions contained in any other writing or other communication from Buyer shall not be construed as a waiver of these Terms and Conditions nor acceptance of any such other provisions. These Terms and Conditions also serve as notice of Seller's objection to and rejection of any terms and conditions of purchase or sale included in Buyer's order or other writing that are different from or additional to these Terms and Conditions. Paragraph headings herein are for convenience only and are not to be considered in interpreting any of the provisions herein.

II. Quotations

Seller's quotations and tenders are subject to change and Products are subject to availability at any time prior to Seller's acceptance of Buyer's order as set forth in paragraph I. Fixed prices must be expressly confirmed as such by Seller in writing.

III. Samples and Catalogues

Any figures, measurements, specifications, statements, descriptions, illustrations, photographs, drawings, or any other matters contained in the Seller's brochures, drawings, catalogs, price lists, or advertising literature, or any samples provided to Buyer by Seller are not guaranteed to be accurate and are intended merely to represent a general description or depiction of the Products and shall not form part of any contract or agreement between the Seller and the Buyer, unless expressly specified and incorporated into any contract or agreement between the Parties in writing.

IV. Delivery and Risk of Loss and Licenses

1. Delivery of the Products to a common carrier at Seller's principal place of business or at any other loading point specified by Seller, shall constitute delivery to Buyer ("Delivery"), and regardless of shipping terms or freight payment, all risk of loss or damage in transit shall upon Delivery, shift to Buyer. If Buyer is responsible for any shipment delay, Seller's written notification to Buyer that the Products ordered hereunder are ready for shipping shall constitute Delivery to Buyer, and all further risk of loss or damage as well as all costs for handling, transportation and storage shall be borne by Buyer.

2. Seller shall not be liable for any damages as a result of any delay or failure to deliver due to any cause beyond Seller's reasonable control, including without limitation, any act of God, act or failure to act of Buyer, embargo or other governmental act, regulation or request, fire, accident, strike, slowdown, war, riot, delay in transportation or inability to obtain necessary labor, materials or manufacturing facilities.

3. The parties agree to partial delivery.

4. It is Buyer's sole responsibility to pay for and to obtain any governmental or other licenses, certificates, or documentation as may be required.

V. Storage

If the Products are not shipped within 60 days after notification to the Buyer that they are ready for shipping, for any reason beyond Seller's reasonable control, including the Buyer's failure to give shipping instructions, Seller may store such Products at the Buyer's sole risk in a warehouse or other storage facility or upon Seller's premises and the Buyer shall pay all handling, transportation, insurance, and storage costs at the prevailing commercial rates.

VI. Force Majeure

1. In the event that any circumstance beyond the control of the parties hereto ("Force Majeure") and in particular without prejudice to the foregoing, acts of God or the public enemy, fire, explosion, earthquake, lightning, storm, hurricane, failure of public services, perils of the sea, flood, drought, war, riots, sabotage, accident, embargo, government priority, shortage or failure of supply of materials or equipment from normal sources for manufacture of the Products, labor disputes, or strikes, in consequence of which Seller is prevented, impeded, or suffers interference with the Delivery of, or the Buyer is prevented, impeded, or suffers interference with the acceptance of the Products, then neither Seller nor Buyer shall have any claim against the other for any direct or indirect or consequential loss, injury, or damage, which shall include, but not be limited to, any loss of trade or profit, which may be caused or sustained by either party or any third party. However, the affected party shall promptly upon the occurrence of any such cause so inform the other party in writing, stating such cause has delayed or prevented its performance hereunder and thereafter such affected party shall take all actions within its power to comply with the terms of any contract and these Terms and Conditions as fully and promptly as possible.

2. If either party is unable to perform its respective obligations under this Agreement for a continuous period of 60 days by reason of Force Majeure then both parties, in utmost good faith, shall enter into discussions with a view to agreeing on such adjustments as may be mutually acceptable to continue the operation of any contract and these Terms and Conditions. If the parties cannot mutually agree on the continuation of any contract and these Terms and Conditions, either party may terminate any contract or agreement between the parties. Termination will be without prejudice to the rights and obligations accrued to the date of termination.

VII. Products

Seller reserves the right to modify, make minor design changes, and/or discontinue Products at any time and without prior notice. Seller will ship Products that have the same or similar functionality and performance of the Products ordered, but changes, including but not limited to changes with regard to measurements and weight, due to technical requirements between what is shipped and what is described in specification sheets, catalogs, or the like, are possible.

VIII. Prices and Payment

1. Prices are quoted FCA Seller's principal place of business in Austria or the location of shipment, whichever is applicable unless otherwise agreed upon in writing.

2. The quoted price of the Products does not include duty, tariffs, taxes, freight costs, packaging, insurance, or similar charges, which shall be borne by Buyer, unless otherwise agreed upon in writing. All prices are subject to change prior to Seller's issuance of an acknowledgment. For all prices and Products Seller reserves the right to make adjustments due to changing market conditions, product discontinuation, or other extenuating circumstances.

3. Buyer is responsible for specifying packaging and insurance requirements and to cover all costs associated therewith.

4. Buyer shall be responsible for any insurance and shipping charges of domestic and international shipments of the Products and Buyer shall reimburse Seller for any such charges paid by Seller, unless otherwise agreed upon in writing.

5. Unless otherwise specified on the face hereof, the terms of payment of the total invoice price for the Products and/or Repairs ordered hereunder shall be within thirty (30) days after Delivery. In case of partial Delivery ("Partial Delivery"), Seller may invoice Buyer and Buyer shall make payment for the value of such Partial Delivery within ten (10) days of such partial Delivery. In the event the Parties agree to an initial down payment, such down payment must be paid in full within eight (8) days of the issuance of Seller's printed acknowledgment form.

6. Overdue amounts shall bear a delinquency charge of interest at eighteen percent (18%) per annum or the maximum rate permitted by law.

7. Buyer shall have no right of set-off with alleged counter-claims. Any assignment of Buyer's counter-claims to a third party without Seller's prior written consent shall be void.

8. Buyer agrees to reimburse Seller for any costs and expenses (including reasonable attorneys' fees) in connection with the collection of any amounts owed to Seller under this contract.

9. If the Parties agreed to a delivery period of more than 6 months, Seller may charge Buyer and Buyer agrees to pay to Seller for any increases in costs, including but not limited to increase of costs for material, manufacture, assembly, workmanship, and delivery, due to the extended delivery period. In such case, the Parties agree that the price for the Products shall be the price determined by Seller on the day of shipment.

10. Where Products are made to the Buyer's own specifications, patterns, or designs and such specifications, patterns, or designs, prove to be inaccurate or otherwise unsuitable for the manufacture of the Products, the Seller may charge the Buyer and the Buyer shall be responsible for payment of any additional costs incurred by the Seller in correcting or modifying or otherwise adjusting the Products to meet the actual requirements of the Buyer.

IX. Taxes and Other Charges

Any manufacturer's tax, occupation tax, use tax, sales tax, excise tax, duty, custom, inspection or testing fee or charge of any nature whatsoever imposed by any governmental authority, domestic or foreign, on or measured by the transaction between Seller and Buyer shall be paid by Buyer in addition to the price quoted or invoiced. In the event that Seller is required to pay any such tax, fee, or charge, Buyer shall reimburse Seller therefore unless otherwise agreed upon in writing.

X. Limited Warranties

1. Seller warrants that the Products shall be free from defects in material and workmanship for a period of twelve (12) months from the date of Delivery. Seller's obligations under the aforesaid warranty shall be expressly limited to repairing, replacing, or discounting the Products, which if properly used and maintained, prove defective in material or workmanship.

Such repair, replacement, or discount shall be Seller's sole obligation and Buyer's sole remedy hereunder and shall be conditioned upon a) Buyer's inspection of the Products within eight (8) days of receipt by Buyer, or b) Seller's receipt of written notice of any alleged defect within eight (8) days after its discovery, if such defect was not observable upon reasonable inspection within eight (8) days of delivery. Any Product repaired or replaced pursuant to this warranty will continue to be warranted for the remainder of the original warranty period. Upon Seller's request, Buyer shall promptly provide, at no cost to Seller, samples and other evidence of, and shall allow Seller's representatives access to, the alleged defective Products. If applicable, it shall be in Seller's sole discretion to determine whether to repair, replace, or discount the Products.

Claiming an alleged defect does not relieve Buyer of any of its payment obligation to Seller.

Buyer must not return any alleged defective Products without Seller's prior written consent. Buyer agrees to reimburse Seller for all costs and expenses associated with any return of Products unauthorized by Seller. Receipt or inspection of returned Products by Seller shall not be deemed admission of any alleged defect.

2. Seller's obligations under subsection 1 of this paragraph X shall not apply to any part of the Products sold hereunder, which have been damaged due to negligent or faulty use, alteration, maintenance, storage, or handling by Buyer or which have been damaged by Buyer or any other third party after Delivery.

3. Buyer waives any right to assert any claim against Seller arising from any defects in material or workmanship of Products sold hereunder, which would have been observable on reasonable inspection or testing within eight (8) days of Delivery.

4. Any suggestions by Seller or Seller's agents regarding use, application, or suitability of the Products shall not be construed as an express warranty unless confirmed to be such in writing by Seller.

5. THE WARRANTY EXPRESSED HEREIN SHALL BE IN LIEU OF ANY OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, APPLICATION OR USE, OR ANY EXPRESS OR IMPLIED WARRANTY FOR DESIGN, INCLUDING BUT NOT LIMITED TO BUYER'S DESIGNS OR SPECIFICATIONS, AND IS IN LIEU OF ANY AND ALL OTHER OBLIGATIONS OR LIABILITY ON SELLER'S PART.

XI. Limitation of Liability

1. Except as otherwise agreed in writing, Seller's liability with respect to the Products shall be limited to the warranty provided in paragraph X hereof, and shall, in any way, be limited to the purchase price.

2. SELLER SHALL NOT BE SUBJECT TO ANY OTHER OBLIGATIONS OR LIABILITIES, WHETHER ARISING OUT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHER THEORIES OF LAW, WITH RESPECT TO THE PRODUCTS SOLD, BY SELLER, OR UNDERTAKINGS, ACTS OR OMISSIONS RELATING THERETO. UNDER NO CIRCUMSTANCES WILL SELLER BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR FOR ANY OTHER LOSS, DAMAGE OR EXPENSE OF ANY KIND, INCLUDING LOSS OF PROFITS, ARISING IN CONNECTION WITH THE CONTRACT OR WITH THE USE OR LIABILITY TO USE SELLER'S PRODUCTS FURNISHED UNDER THIS CONTRACT. SELLER'S SOLE LIABILITY AND BUYER'S SOLE REMEDY IS LIMITED TO EITHER

(1) REPAIR OR REPLACEMENT OF DEFECTIVE PRODUCTS, AND/OR

(2) AT SELLER'S OPTION, DISCOUNT OF PURCHASE PRICE.

3. Without limiting the generality of the foregoing Seller specifically disclaims any liability for property or personal injury damages, penalties, special or punitive damages, damages for lost profits or revenues, loss of use of the Products, or any associated equipment, cost of capital, cost of repairs to the Products subject to Seller's warranty performed by persons other than Seller without Seller's prior written consent, cost of substitute Products, facilities or services, down-time or slow-down costs or for any other types of economic loss, and for claims of Buyer's customers or any third party for any such damages. Seller disclaims any liability for any claim, whether in contract or in tort, which arose more than one (1) year prior to the initiation of arbitration or litigation by Buyer against Seller.

XII. Security Interest

BUYER HEREBY GRANTS TO SELLER A SECURITY INTEREST IN THE PRODUCTS SOLD HEREUNDER TO SECURE PAYMENT OF THE PURCHASE PRICE OF SUCH PRODUCTS AND AGREES, AND APPOINTS SELLER ITS AGENT, TO TAKE ALL SUCH ACTION AND TO EXECUTE ALL SUCH DOCUMENTS AND INSTRUMENTS AS MAY BE NECESSARY OR REASONABLY REQUESTED BY SELLER TO PERFECT AND CONTINUE SELLER'S SECURITY INTEREST HEREUNDER.

XIII. Severability

If at any time any one or more of the provisions of these Terms and Conditions become invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions of these Terms and Conditions shall not be in any way impaired.

XIV. Arbitration

All disputes arising under this Contract shall be settled by final and binding arbitration in the City of Chicago, Illinois in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect. The parties agree on the selection of a single arbitrator, but in the event that they cannot agree or upon the request of either party, each party shall select an arbitrator and the two selected arbitrators shall select a third arbitrator. Each party shall be responsible for its costs of the arbitration. The award by the arbitrator or arbitrators shall be final and judgment upon the award rendered may be entered in any court having jurisdiction thereof.

XV. Governing Law

THESE TERMS AND CONDITIONS AND ANY SALES HEREUNDER SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF ILLINOIS, WITHOUT REGARD TO ITS CONFLICTS OF LAW RULES. THE APPLICATION OF THE PROVISIONS OF THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS IS HEREBY EXPRESSLY EXCLUDED.

XVI. Complete Agreement

These Terms and Conditions of Sale and Seller's acceptance form constitute the complete and exclusive statement of the agreement between the parties hereto. It supersedes all prior written and oral statements, including prior representations, statements, conditions, or warranties. These Terms and Conditions may not be amended or altered without the written consent of the Seller.