

# Terms and Conditions of Sale (export orders) of Garbuio SpA

**April 2021**

## **1. Preamble**

Agreements between us and yourself shall be exclusively concluded on the following terms and conditions. Acceptance of an order will not imply acceptance of different contract purchase conditions.

## **2. Conclusion of contract, export control**

**2.1** Any agreements between us must be in writing in order to be effective.

**2.2** Our confirmation of order must be issued in writing. If it contains minor modifications or additions compared to your order, you will be deemed to be in agreement therewith unless you object in writing within 4 weeks of receipt.

**2.3** Information contained in catalogues, circulars, price lists, etc. only becomes part of the contract if we expressly refer to it in writing.

**2.4** You acknowledge that the supply of the items may be subject to domestic and/or foreign statutory provisions and regulations regarding export control including economic sanctions and embargos (hereinafter collectively referred to as "Export Control Regulations"). These Export Control Regulations may change from time to time and are applicable according to the wording valid at the relevant time. Both Parties will adhere to all such Export Control Regulations and cooperate with the competent authorities accordingly. The Parties shall not take any action which would be in breach of the Export Control Regulations.

**2.5** Our offers are non-binding and subject to an assessment of the final configuration of the items to be delivered with respect to the applicable Export Control Regulations as well as the feasibility of the related banking and financial services.

**2.6** If applicable, the delivered items may not be sold, supplied, leased or otherwise transferred nor may these items be used for a purpose other than that agreed upon without a necessary export or re-export permit from the competent authorities. We will use our best efforts to receive the required export permits and provide you with a copy of the export permit for your information on request.

**2.7** We have the right at any time to revoke our offers or to withdraw from the contract exempt from any charges and without incurring any liability for us, if

**2.7.1** the required export permits or re-export permits cannot be obtained or cannot be obtained within a reasonable time or, if once granted, are/is thereafter revoked or modified by the competent authorities;

**2.7.2** you, despite a request, provide either none or insufficient information about the final destination or the end use of the items to be delivered;

**2.7.3** we obtain knowledge of an unintended end use or of any previously unknown person involved in the business and thereafter cannot perform the contract due to any Export Control Regulations; or

**2.7.4** a possibly illegal or unlicensed export or infringement of applicable Export Control Regulations cannot be fully ruled out or a fundamental change in the appraisal of the commercial risks attached to the business occurs due to any listing of yourself, your affiliates, your owners or other persons involved on your part in the business on either the consolidated EU or US screening list.

**2.8** You assure us that, prior to conclusion of the contract, you have informed us of any and all statutory, official or other requirements which are mandatory for implementation of the contract in your home country.

## **3. Intellectual property**

**3.1** Plans, software and other documents will remain our property. They shall be used only to the extent permitted by ourselves and must not be modified, reproduced or made available to third parties.

The latest version of our 'Terms of Software Use' will also apply.

**3.2** Where delivered items or parts thereof are protected by industrial property rights or copyrights, we shall grant you a non-exclusive and non-transferable right to use the same within your company in conformity with the contract. Otherwise, the rights of use will remain with us and/or the manufacturer. Reproductions or adaptations will require our prior consent in writing.

**3.3** Business or brand names and other identifying marks on the items supplied by us must not be removed or modified.

## **4. Delivery date**

**4.1** An agreed delivery period will begin as soon as the contract has been concluded, all official formalities have been completed, all the technical information required to process the order is available, agreed prepayments have been made, and agreed security for payment has been provided.

The delivery period shall be deemed met if you receive advice from us within that period that we are ready to ship.

**4.2** If items to be delivered have to be run in at our works and if you do not make the necessary test materials available to us on schedule and free of charge after we have requisitioned them well in advance (unless agreed otherwise, on basis DAP

our works in Treviso, Italy in conformity with the latest version of Incoterms), we are entitled to purchase the missing test materials ourselves and to invoice you for them. Any delay which we incur as a result of the failure to provide the test material in time or due to the need to purchase replacement test material shall result in the delivery period being at least extended accordingly. Costs incurred thereby will be borne by yourselves. Furthermore we reserve the right to charge you for the higher expenditure incurred during commissioning on-site, if necessary.

**4.3** Compliance with the delivery period will be dependent on performance of your contractual obligations, in particular compliance with the terms of payment.

If modifications to the items to be delivered are agreed at your request after the contract has been concluded, the delivery period may be extended accordingly.

**4.4** In the event of delay in delivery you will have the right to withdraw from the contract only if we are solely responsible for such delay, if the delay in delivery exceeds the period of 3 months and if you grant us a reasonable grace period and expressly state at the same time that you refuse to accept performance of the contract after expiry of that period, and if we do not then effect performance within the grace period set.

**4.5** If the delay in delivery in full or in part is our fault, you may demand liquidated damages for the damage demonstrably suffered by you as a result of delayed performance. For each full week of delay these will be 0.2%, up to a maximum of 5%, of the value of that part of the total delivery which cannot be used on time or in conformity with the contract as a result of the delay. There will be no entitlement to liquidated damages for the first 2 weeks of delay.

No further claims for compensation will be allowed on the basis of a delay for which we are responsible, subject to Clause 8.2.

## **5. Passage of risk and Terms of Delivery**

**5.1** Unless otherwise agreed in the contract the delivery terms will be FCA our works in Treviso, Italy (in conformity with the latest version of Incoterms).

Partial deliveries will be allowable.

If partial deliveries are carried out, or if we wholly or partly assume responsibility for or arrange other services, e.g. transport costs and insurance, or installation, as per your order, the risk of each partial delivery shall pass to you in accordance with the agreed Incoterms clause. From this point on, you are therefore obliged to insure the contract value of each delivery or partial delivery against all risks until the final acceptance of the delivered items, if this has to be certified, in any case until we have received full payment of the value of the contract. We reserve the right to request from you appropriate evidence of this insurance.

Irrespective of any formal acceptance procedure, the delivery will be deemed accepted if you avail yourself of, or otherwise use, the delivered items over a period of 4 weeks.

Packing shall be provided in accordance with the contractually agreed shipment method and will be

separately invoiced by us. Packaging is not returnable.

**5.2** If you do not immediately accept the delivery on the agreed delivery date after we have notified you of our readiness to ship, we will be entitled to store and insure the items declared ready for delivery at your risk and expense. You will bear any costs incurred through the delay in acceptance. Non-acceptance of the delivery will not exempt you from your obligation to pay the purchase price. After expiry of a reasonable time set by us, we will, in this event, also be entitled to otherwise dispose of the items concerned and then to resupply you within a reasonable period.

**5.3** Delivered items are to be received by you, notwithstanding the rights referred to in Clause 7. This will not apply if these items obviously have significant defects.

**5.4** If delivery in full or in part finally becomes impossible for us prior to the passage of risk, you will have the right to rescind the contract. If such impossibility occurs during the delay in your acceptance, or is your fault, you will still be bound by your contractual obligations.

## **6. Machine and plant safety**

Machines, plant and the like delivered by us will conform to the statutory safety and accident prevention regulations in force in Italy unless we have agreed otherwise. Such items shall be installed and operated only by skilled staff in accordance with our documentation.

## **7. Warranty**

We warrant the merchantable quality and title of the delivered items, including any features promised, to the exclusion of further claims, subject to Clause 8.2 as follows:

### **Defects of quality**

**7.1** We warrant that the material, construction and design are free from defects.

**7.2** The warranty period will be 12 months for delivered items utilised one-shift operations and will commence with commissioning, or with your acceptance of the delivered item where provision is made for this (for spare parts upon delivery). The warranty period will, however, run for a maximum of 18 months after we have notified you of our readiness to ship. For multiple-shift operations the warranty period will be reduced accordingly and will in any event be limited to 2,100 hours of operation.

**7.3** We will correct defects which occur and are reported to us in writing within the warranty period free of charge, either by making replacement deliveries (on DAP basis in conformity with the latest version of Incoterms) or by duly rectifying the defects at the place of destination, at our discretion.

Defective parts will become our property once they are replaced, and are to be returned to us at our request immediately after replacement.

**7.4** The following circumstances will not be covered by our warranty:

**7.4.1** if you fail to notify us of the defect immediately in writing or fail to provide us with reasonable assistance to enable us to correct the defect, or

**7.4.2** where defects have been caused after the passage of risk due to improper transportation or storage of the delivered items, or

**7.4.3** where defects have been caused by improper operation or treatment of the delivered items, by failure to comply with the operating instructions, operating conditions or service and maintenance intervals, by natural wear and tear (e.g. consumables), or by the use of non-specified materials or replacement materials, or

**7.4.4** if, without our consent, modifications or repairs are made to the delivered items, or the spares used are not supplied by us, or

**7.4.5** if the delivered items have not been installed or commissioned by our staff, unless there is a written agreement to the contrary, or the defects are not demonstrably in the material, construction or design.

With the machine and/or certain delivery items you will receive a service logbook to record your compliance with our warranty conditions. The maintenances shall be carried out and certified by a technician trained/certified by us.

**7.5** If at any time you default on performance of your contractual obligations towards us, we will be entitled to refuse to honour warranty claims. The warranty period stipulated under Clause 7.2 will not be extended for this reason.

**7.6** If, despite a reasonable time limit and an additional extension if necessary, we culpably fail to meet our obligation to rectify a defect we have a duty to correct, you will be entitled to have the defect duly remedied at our expense with all due care after you have notified us in writing.

You are always obliged to take all necessary measures to minimize losses immediately.

**7.7** If, in the event of a defective delivery, it proves impossible or economically not viable to rectify such defects, or if repeated attempts to do so should ultimately fail, you will have the right to cancel the contract only where agreement is not reached on a reasonable reduction in the purchase price.

**7.8** If the contract is cancelled, all further claims will be excluded, subject to Clause 8.

**7.9** If the delivered items cannot be used in conformity with the contract and we are at fault through having given the wrong advice or having failed to fulfil our secondary obligations, the provisions of this Clause 7 (Defects of quality) will apply accordingly.

#### **Defects of title**

**7.10** If use of the delivered items within the periods referred to in Clause 7.2 leads to the infringement of industrial property rights or copyrights in your home country, we will either obtain the right of continued use for you or we will modify the delivered items to prevent continued infringement of the industrial property right or copyright, at our discretion.

If this is not possible under economically viable conditions, we will take the delivered items back and refund the contract price less an amount to take account of the utilization and the level of preservation of the delivered items.

We will also indemnify you against claims by the

owners of the industrial property rights or copyrights concerned, where such claims are undisputed or upheld in a non-appealable judgment.

**7.11** Subject to Clause 8.2, the above undertakings will be final in the event of industrial property right or copyright infringement.

They will apply only if

- you inform us immediately of the industrial property right or copyright infringement claims,
- you provide us with reasonable assistance to counter these claims and enable us, where appropriate, to make the modifications referred to in Clause 7.10,
- we reserve the right to take any action to counter these claims, including the right to settle out of court,
- the delivered items have not been manufactured or modified in accordance with your instructions, and
- the infringement did not occur because you altered the delivered items independently or used it in violation of the contract.

#### **8. Limitation of liability**

**8.1** Subject to binding statutory requirements, we shall be liable for personal injury and damage to property in so far as damages are paid by our liability insurer within the limits of the sums insured and the terms of our insurance policy. We shall supply you with evidence of the extent of our liability insurance on request.

**8.2** You will not be entitled to make claims other than those referred to in Clauses 4, 5.4, 7 and 8.1, except in cases of willful intent or gross negligence on the part of our company management or one of our senior staff. In the event of gross negligence on the part of our senior staff, our liability will be restricted to a maximum of 10% of the delivery value.

In particular, you will have no claims for compensation for indirect or consequential damage not caused to the delivered items themselves (e.g. loss of production or loss of profit).

**8.3** We will not be liable for the suitability of the premises, building or facilities for the installation and operation of the items supplied.

#### **9. Prices, taxes**

**9.1** Our prices will apply to delivery unpacked Ex Works. If the place of delivery is within Italy value added tax ("VAT") shall be charged at the prevailing statutory rate. This will also apply to agreed advance payments.

**9.2** If, in exceptional circumstances, the agreed price should be in a foreign currency and the exchange rate should alter, we reserve the right to adjust the price up to the time we receive the purchase price.

**9.3** If a price is not agreed for a delivery, we shall invoice you at our list price as valid on the date of delivery.

**9.4** Modifications to the delivered items which are to be undertaken at your request by us following conclusion of the contract shall only be binding on us upon prior written agreement. You will bear all the

costs incurred thereby.

**9.5** If you withdraw from the contract prior to delivery, our claim for damages shall be determined in accordance with Section 377 of the Swiss Law of Obligations using the deduction method, i.e. the agreed purchase price shall be reduced by expenditures saved by us.

**9.6** The cost incurred in payment transactions will be borne by each Party.

**9.7** Costs which we incur due to late return of bank guarantee/surety documents will be reimbursed by yourselves.

**9.8** Any additional costs incurred at home and abroad which are not covered by the agreed Incoterms clause (in conformity with the latest version of Incoterms), such as inspection costs, consulate and certification fees incurred in connection with the delivery are to be borne by you. The same applies to taxes accrued outside Italy.

**9.9** For the application of VAT we will use the VAT number made known to us during the initial contact, unless you provide us with a different VAT number for the individual case. You are obliged to indemnify us from any and all claims and damages resulting from your provision of any incorrect VAT number.

**9.10** You shall inform us in writing and in due time prior to the expiration of the statutory registration period about your notifications to the tax authorities based on the Directive 2018/822/EU ("DAC 6") and its domestic implementation, including the applicable registration number, to the extent they relate to the contractual relationship with us.

## **10. Terms of payment**

**10.1** The purchase price and additional costs, e.g. for packing and freight, are payable to us without deduction within 14 days of the invoice date. Any payments, including those involving bills of exchange, will be deemed to have been effected when we can dispose of the payments without reservation.

**10.2** You will have the right to withhold payment or to set payments off against counterclaims only as far as your counterclaims are undisputed or upheld in a non-appealable judgment.

**10.3** If you are in default vis-à-vis ourselves, we will be entitled to defer performance of our own contractual obligations until we have received the overdue payments; in particular, we will be entitled to retain all or part of the delivered items.

**10.4** We will charge interest at 5 percent points per annum above the prevailing European Central Bank base rate for failure to observe agreed payment dates.

**10.5** If you default on due payments and fail to make payment even after a grace period has been set, or if you are otherwise in serious breach of contract, we shall be entitled to rescind the contract and demand compensation.

You will then be obliged to return the delivered items to us immediately at our request, free of charge to ourselves and at your risk.

## **11. Retention of title**

**11.1** Any items to be delivered and any delivered

items will remain our property until the purchase price and additional costs have been paid in full.

**11.2** While the delivered items are subject to retention of title, you must not remove the items from the installation location, sell, hire, lease, lend or pledge them, nor must you transfer ownership for surety or other purposes or otherwise dispose of them to third parties.

You will assist us in measures to safeguard and, where appropriate, assert our right to retention of title. You will inform us immediately if third parties assert rights to the items to be delivered or delivered items or dispose of them.

**11.3** For the duration of our retention of title, we shall be entitled to insure the items to be delivered or the delivered items at your expense against theft, breakage, transit, fire, water or other damage unless you can provide evidence that you have taken out insurance yourselves.

**11.4** If you default on payment or are otherwise in serious breach of contract, we shall be entitled to take the delivered items back. If we take the delivered items back and/or seize them, this will not constitute rescission of the contract.

**11.5** The transfer of title will not affect the passage of risk provisions in Clause 5.

## **12. Force majeure**

**12.1** Either Party will be entitled to suspend or refuse to fulfil its contractual obligations including potential warranty obligations where and for as long as this is prevented or is not economically viable as a result of force majeure circumstances. Force majeure means circumstances beyond the control of the affected Party and which cannot reasonably be foreseen, avoided or surmounted by the affected Party, including without limitation the following events: strikes, lockouts, natural disasters, fire, earthquake, war (declared or undeclared), terroristic or political acts of force, contagious diseases, epidemics/pandemics, mobilisation, revolt, unjustified seizure or distraint, embargo, energy supply restrictions, concrete travel warnings of the competent authorities, i.e. of the Department of Foreign Affairs, to leave countries or regions at the respective place of destination or not to enter these, and faults and delays among sub-suppliers for one of these reasons.

**12.2** A circumstance referred to in Clause 12.1 and occurring prior to conclusion of the contract will entitle a Party to refuse to perform the contract only (i) if the circumstance has proven repercussions for performance and (ii) if that Party neither knew nor should have known about this circumstance at the time the contract was concluded.

**12.3** The Party wishing to invoke force majeure will inform the other Party immediately of the start and end of such force majeure circumstances.

**12.4** If a delay in delivery of the items or in our performance is caused by force majeure circumstances, the time for delivery or performance shall be extended by a period which is reasonable having regard to all circumstances of the case, including the time required by us for demobilization and remobilization.

**12.5** If you are hindered by force majeure from performing the contract, you will indemnify us for the costs we have incurred in protecting the ordered item.

**12.6** Each Party will have the right to withdraw from the contract in writing if performance of the contract is prevented for more than 6 months as a result of force majeure under this Clause.

**13. Court of arbitration, applicable law**

**13.1** Any disputes arising out of and in connection with our contractual relationship shall be finally settled under the rules of arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules. The arbitration language shall be English.

The court of arbitration will be in Zurich, Switzerland.

**13.2** The contract will be subject to Swiss law, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

Garbuio SpA

