

General terms of trade of Gigatherm AG

1 General

- 1.1 These General terms of sale and delivery are binding when declared applicable in the offer or in the confirmation of order. Other terms drawn up by the party placing the order (hereinafter referred to as "the CUSTOMER") are valid only insofar as they have been accepted by GIGATHERM AG (hereinafter referred to as "GIGATHERM") expressly and in writing.
- 1.2 All agreements and legally relevant declarations by the contracting parties are valid only in written form.
- 1.3 Alterations and additional agreements are valid only when confirmed by GIGATHERM in writing.

2 Offers and conclusion of agreement

- 2.1 The agreement is deemed to have been concluded if on receipt of an order GIGATHERM has confirmed acceptance thereof in writing. The same applies in respect of amendments of orders and additions to orders.
- 2.2 Offers containing no acceptance deadline are not binding. Tacit acceptance is excluded.
- 2.3 Improvements to and alterations of the execution or design of goods are expressly reserved.
- 2.4 Offers and cost estimates as well as drawings or other offer documents remain the property of GIGATHERM. Exploitation rights under copyright law belong solely to GIGATHERM. Such documents may be neither reproduced nor passed on to other parties without the consent of GIGATHERM and must be returned to GIGATHERM on first request.

3 Scope of delivery

- 3.1 Scope and execution of delivery and performance are as defined by the confirmation of order. Materials or services not contained therein will be charged for in addition.
- 3.2 Changes as against confirmation of order may be made by GIGATHERM where these constitute an improvement and do not lead to a price increase.
- 3.3 Specified delivery periods and delivery deadlines are deemed to be only approximate where not expressly confirmed in writing as fixed deadlines. Partial deliveries and partial performance of services by GIGATHERM are admissible. In the event of non-delivery or incorrect or delayed delivery by its suppliers, GIGATHERM is entitled to withdraw from the agreement or to extend or postpone delivery periods and delivery deadlines accordingly, notifying the CUSTOMER thereof without delay.
- 3.4 Delivery and dispatch take place for the CUSTOMER's account and risk. That risk passes to the CUSTOMER as soon as the goods have left the GIGATHERM warehouse. In the absence of a specific agreement, the disposal of the goods at the registered office of GIGATHERM is deemed to supply of goods.
- 3.5 Orders received by telephone are executed without guarantee at the risk of the CUSTOMER. Obvious errors and spelling or arithmetical mistakes are not binding upon GIGATHERM.

4 Plans and technical documents

- 4.1 Unless agreed otherwise, brochures, catalogues, drawings, and price lists are not binding. Details given in technical documentation are binding only where they carry an express promise.
- 4.2 Each contracting party reserves all rights to plans and technical documents handed over to the other. The receiving party acknowledges such rights and will not without prior written authorization by the other party make the documents available in whole or in part to other parties or make use of them for any purpose other than that for which they were handed over to it.

5 Regulations in target country

- 5.1 When placing its order (if not before) the CUSTOMER shall advise GIGATHERM of any legal, official, and other regulations and standards which refer to the execution of deliveries and performance of services, to its operation, and to the prevention of sickness and accident.

6 Prices

- 6.1 Unless agreed otherwise, GIGATHERM's prices are deemed net, ex works, denominated in Swiss francs (CHF), and exclusive of packing, transport, insurance, tax contributions required by law (e.g. VAT and LSWA or distance-related heavy vehicle fee), customs duties, assembling, installation, and commissioning. Such costs shall be borne by the CUSTOMER, unless agreed otherwise.
- 6.2 If between conclusion of an agreement and delivery/acceptance the costs on which calculation is based increase as a result of the CUSTOMER's actions, GIGATHERM is entitled to correct accordingly the prices specified in the confirmation of order until final execution of this order.
- 6.3 All price data issued by GIGATHERM are subject to change.

7 Terms of payment

- 7.1 The period of payment for customers in Switzerland is 10 days net from date of invoice, unless agreed otherwise. As regards deliveries in other countries, except as otherwise provided payment is made in advance or against an irrevocable, guaranteed letter of credit payable on sight and capable of being paid out at the bank confirmed. All commission fees and charges shall be borne by the CUSTOMER.
- 7.2 Payments shall be made by the CUSTOMER at the domicile of GIGATHERM in Swiss francs (CHF) without deduction of discount, expenses, taxes, and fees of any kind whatsoever. Other terms of payment will be agreed specifically in writing.
- 7.3 In the event of delay of payment, GIGATHERM reserves the right to suspend projected deliveries immediately and is entitled to charge default interest at the rate of 6 per cent per annum.
- 7.4 The CUSTOMER may not withhold payments in the event of unacknowledged complaints or counter claims that are not legally ascertained. Payments shall be made even where non-essential parts are missing though do not, as a result, render use of the delivery impossible or where repair work on the delivery is required.
- 7.5 Minimum invoice value shall be CHF 100.-- net.

8 Reservation of title

- 8.1 GIGATHERM retains ownership of the delivery until payment has been made in full. The CUSTOMER is obliged to take the necessary measures to protect the goods owned by GIGATHERM.
- 8.2 Even without the collaboration of the CUSTOMER, GIGATHERM is entitled to have the reservation of title entered in the appropriate register.

9 Delivery period

- 9.1 Delivery period begins with acceptance of the order by GIGATHERM and after complete clarification of technical matters and after receipt of an agreed advance payment.
- 9.2 Delivery period will be extended by an appropriate length of time:
 - if the information required for performance of the order fail to reach GIGATHERM in due time or if the CUSTOMER subsequently alters them;

- if the time limits for payment are not met, letters of credit are opened too late, or any import permits required fail to reach GIGATHERM in due time;
- if obstacles arise which could not have been avoided by GIGATHERM even if all due care had been exercised, irrespective of whether these occur at GIGATHERM, at the CUSTOMER, or at a third party. Such obstacles are products of *force majeure*, examples being epidemics, mobilisation, war, rebellion, major operational breakdowns, accidents, labour conflicts, delayed or non-occurring delivery of the necessary raw materials and/or semi-finished or finished articles, faults affecting important workpieces, official actions or omissions, natural phenomenon's.

10 Late delivery

10.1 Subject to special agreement in writing, the CUSTOMER has no rights or claims due to delayed delivery or services

11 Delivery, transport, and insurance

11.1 Products are packed by GIGATHERM with care. Packing is invoiced to the CUSTOMER at cost price.

11.2 Special wishes regarding dispatch and insurance must be communicated to GIGATHERM in due time. Transport is effected for account and risk of the CUSTOMER. Complaints in connection with transport shall be directed by the CUSTOMER to the most recent carrier immediately upon the CUSTOMER's receipt of the delivery or of the carriage documents.

11.3 The CUSTOMER shall be responsible for the insurance against losses of any kind whatsoever. Even if such insurance has to be signed by GIGATHERM it shall be borne by the CUSTOMER.

11.4 Where the goods are fetched by the CUSTOMER from the works or are dispatched by GIGATHERM using a carrier or other third party working for GIGATHERM, use and risk pass to the CUSTOMER with the departure of the consignment from the GIGATHERM works. Where transportation and unloading are effected by GIGATHERM, use and risk pass to the CUSTOMER with the unloading of the goods at the site. If unloading of goods that have been transported by GIGATHERM is effected by the CUSTOMER's employees and/or equipment or by third parties acting on the instructions of the CUSTOMER, use and risk pass to the CUSTOMER upon arrival of the transport vehicle at the place of delivery.

12 Inspection and acceptance of delivery

12.1 The CUSTOMER is obliged to inspect the goods for possible defects of quality or quantity immediately and to give notice of such deviation in writing without delay. Any claims of the CUSTOMER are excluded if the complaint fails to reach GIGATHERM in written form within five working days following delivery. Legal regulation for hidden defects remains reserved.

13 Warranty and liability

13.1 GIGATHERM guarantees that products delivered are free from manufacturing and materials defects.

13.2 The following points apply solely if no other written agreements have been concluded with the CUSTOMER.

13.3 The only characteristics guaranteed are those expressly described as such in the confirmation of order. The warranty shall expire at the end of the warranty period.

13.4 Should the products be defective, GIGATHERM makes the following undertaking for the duration of the warranty period of 12 months following either delivery or notification of readiness to dispatch: unless agreed otherwise, GIGATHERM will remedy the defects or replace the products at its own option.

13.5 If after three attempted improvements a defect within the meaning of article 13.4 is not remedied by GIGATHERM within a reasonable period by means of a substitute delivery or correction of the fault, the CUSTOMER may demand a reduction in the purchase price or cancellation of the agreement.

13.6 The guarantee expires prematurely if the CUSTOMER or some other party carries out improper alterations or repairs or if, should a defect have become apparent, the CUSTOMER does not immediately take all appropriate measures to minimise the damage and give GIGATHERM an opportunity to correct the deficiency.

13.7 Damages are excluded from GIGATHERM's provision of warranty and liability if such damages have not verifiably occurred as a result of poor materials, incorrect construction, inadequate execution, or some other reason for which GIGATHERM cannot be held responsible.

13.8 On grounds of defective materials, construction, or execution as well as on grounds of promised characteristics being absent, the CUSTOMER has no rights and claims beyond those expressly mentioned in articles 13.4 and 13.5. In particular no compensation (e.g. for loss of output) is due.

13.9 All instances of breaches of contract and their legal consequences and all claims of the CUSTOMER, irrespective of the legal grounds on which such claims are based, are governed conclusively by these terms of trade. In particular all claims not expressly mentioned here, claims for compensation, reduction, cancellation of agreement, or withdrawal from agreement, are excluded. Any liability for consequential damages is also excluded. Insofar as no gross negligence or intent can be proved against GIGATHERM, no claims for compensation arising out of positive breach of contract or in respect of injuries not incurred by the object of delivery itself accrue to the CUSTOMER.

14 Transfer and place of performance

14.1 Until the CUSTOMER has paid in full it may transfer to another party/other parties such rights as it has acquired vis-a-vis GIGATHERM only following prior written agreement with GIGATHERM.

14.2 Place of performance is CH-9230 Flawil SG

15 Right of the manufacturer

15.1 GIGATHERM may withdraw from the agreement wholly or in part if the CUSTOMER's economic circumstances deteriorate significantly.

15.2 GIGATHERM is entitled to offset with and against due, undue, and future debts.

16 Law applicable

16.1 Swiss law obtains, disbarring the United Nations Convention on Contracts for the International Sale of Goods (CISG; *Wiener Kaufrechtsabkommen*).

16.2 Any invalidity or nullity of individual parts of these terms of trade does not render the terms as a whole or the valid parts thereof invalid or null and void. The parties undertake that, in such an event, they will replace the ineffective provision by an effective one having the equivalent meaning and serving the equivalent purpose.

17 Place of jurisdiction

It is expressly agreed that the place of jurisdiction shall be the registered office of GIGATHERM, CH-9230 Flawil SG

However, GIGATHERM may also assert its rights at the place where the CUSTOMER has its domicile or before any other competent authority, with Swiss law remaining solely applicable.