

General Terms and Conditions of Purchase of Gautschi Engineering GmbH (hereinafter referred to as the "Buyer")

I. General – Scope of Application

1. These Standard Terms and Conditions of Purchasing shall govern exclusively. Provisions that conflict with or deviate from the Supplier's purchasing terms shall not be acknowledged unless the Buyer has expressly agreed in writing to such provisions. These Standard Terms and Conditions shall also apply if the Buyer is aware of conflicting or deviating terms and conditions of the Supplier and accepts the Supplier's delivery without reservations.
2. These Standard Terms and Conditions of Purchasing shall also apply to all future orders, without any additional special agreement.
3. All agreements made between the Buyer and the Supplier shall be memorialized in writing in the contract entered into in accordance with these Standard Terms and Conditions of purchasing. Any verbal ancillary agreements shall be invalid.
4. The Supplier is informed that data collected in connection with the contract entered into in accordance with these Standard Terms and Conditions of Purchasing will be stored and processed.
5. The supplier shall be the exclusive contract partner. The assignment of contractual duties to third parties shall be permissible only with the Buyer's prior written consent.

II. Offer - Offer Documents - Conclusion of Agreement

1. The preparation of an offer shall generally be based on these Standard Terms and Conditions of Purchasing. The offer shall be freely revocable and the bidder shall bear the costs. In the offer, the bidder shall adhere precisely to the quantity and quality stated in the inquiry and shall expressly refer any deviation therefrom.
2. All orders shall be made in writing. Orders shall be made exclusively on the basis of these Standard Terms and Conditions of Purchasing.
3. The Supplier shall accept the order within two weeks by sending back the signed copy.

III. Prices – Terms of Payment

1. The prices set forth in the order shall be binding.
2. Invoices shall be sent to the Buyer in duplicate (original and one copy) following shipment setting forth reference number and order number.
3. Invoices may be processed only if the order number, reference number and order date set forth in the order are stated. The Supplier shall be held liable for all consequences arising from non-compliance with this obligation unless the Supplier provides proof that it is not responsible for such consequences.
4. The Buyer shall have rights of set-off and retention to the extent permitted by law.

IV. Delivery and Transfer of Title

1. Contractually stipulated delivery dates and deadlines shall be binding. Receipt of the delivered item at the place of delivery set forth in the order shall govern.
2. The Supplier shall immediately inform the Buyer in writing in the event circumstances arise or it becomes aware of circumstances that could result in non-compliance with a stipulated delivery date. In addition to stating the reasons for the delay in delivery, the Supplier shall also state in writing the expected duration of such delay.

3. The Supplier shall provide the exact order number, reference number and order date on all shipping documents. Should the Supplier fail to do so, the Buyer shall not be held liable for delays in processing.

4. In the event of a delay in delivery for which the Supplier is responsible, the Buyer may demand a penalty of 1.0% for each completed week but no more than 10.0% of the total delivery volume. Additional statutory claims (revocation or compensatory damages for non-performance) shall remain unaffected thereby. The Supplier may provide proof to the Buyer that no or significantly lower damages arose as a result of the delay.

5. Direct title in the delivery item shall pass to the Buyer at the moment of delivery.

6. Until full surrender of the delivery item, the Supplier shall bear the risk of loss, accidental loss or damage.

V. Warranty

1. The warranty period shall be 24 months. Such period shall commence upon receipt of the delivery item at the place of delivery stipulated in the order. With regard to substitute deliveries of defect correction, the warranty period begins anew for parts affected by the correction of defects.

2. With regard to delivered parts which could not remain in operation during the examination of the defect and/or correction of the defect, the current warranty period shall be extended by the period for operation ceased.

3. The Buyer shall inspect the delivery item within ten days following receipt by the Supplier at the place of delivery stipulated in the order, provided that such inspection is expedient according to the ordinary course of business and should a defect be found, the Buyer shall inform the Supplier in writing within such period. Should the defect not have been ascertainable during inspection, the Supplier shall be informed within ten days following the discovery thereof.

4. The period of limitations for warranty claims shall begin to run upon the reporting of defects, provided that the relevant defects are reported within the agreed warranty period.

5. The Buyer shall be entitled to full statutory warranty claims. Should a defect arise for which the Supplier is responsible, the Buyer may, at its choice, demand correction of the defect or substitute delivery. All costs necessary for the purpose of correction of the defect or substitute delivery, in particular transportation, travel, work and material costs, shall be borne by the Supplier.

6. In the event of the Supplier failing to comply with the request for removal of a defect within an appropriate period set by the Purchaser, or in the event of the removal of a defects failing, despite sufficient opportunity for repair, the Purchaser shall be entitled to carry out the removal of the defects himself, or to have it removed by a third party, at the expense of the Supplier.

The same shall apply if the removal of a defect is delayed unreasonably or if doubts exist regarding the chances of success. There is no requirement for a request to remove a defect, prior to the substitute work of the Purchaser at the expense of the Supplier, if there is a need for particular urgency or in the event of imminent danger.

Gautschi Engineering GmbH Andhauserstrasse 52 8572 Berg (TG) Switzerland	Phone: +41 71 666 66 – 66 Fax: +41 71 666 66 – 77 e-mail: info@gautschi.cc Homepage: www.gautschi.cc	Landesbank Baden-Württemberg IBAN: DE50600501010001506730 SWIFT-Code: SOLADEST600	VAT-n°.: CHE-104.515.700 HR: CHE-104.515.700	Managing Directors: Robert Schmidt Dr. Udo Weillerscheidt
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VIII Confidentiality

7. The Purchaser shall be entitled to claims for compensation for damages, incurred outside of the delivered item as a result of a defect to the delivered item, in the statutory scope, if the Supplier is responsible for intentional or grossly negligent conduct or for a culpable violation of a fundamental contractual obligation.

Claims for compensation for damages are likewise not excluded even if and so far as the Supplier has cover within the scope of the third-party liability or product liability insurance taken out by him. Apart from the foregoing, claims for compensation for damages are excluded.

The right to compensatory damages for non-performance is expressly reserved.

6. In the event that the Supplier does not comply with a demand for defect correction within a reasonable period as set by the Buyer or should the defect correction be unsuccessful despite sufficient opportunity to remedy the defect, the Buyer may, at the Supplier's expense, correct the defect itself or cause a third party to do so. The same rule shall apply if the defect correction prior to the Buyer's substitute performance at the Supplier's cost shall not be necessary in the event of urgency or imminent danger.

7. In the event the Supplier acted intentionally or negligently or culpably breached a material contractual duty, the Buyer shall be entitled to statutory compensation for damage caused by defects in the delivered item not connected with delivery. Compensatory damages claims shall not be barred even if and to the extent the Supplier is covered by a liability insurance of product-liability insurance policy taken out by it. Compensatory damage claims shall be barred in all other cases.

VI Product Liability

1. To the extent the Supplier is responsible for a product defect; the Supplier shall indemnify the Buyer against third party compensatory damages claims at the Buyer's first demand to the extent to which the cause falls within the Supplier's area of control and organization.

2. Within this context, the Supplier shall also reimburse any expenses arising from or in connection with a recall operation conducted by the Buyer. The Buyer shall inform the Supplier, to the extent possible and reasonable, of the nature and scope of any recall operation to be conducted and shall allow the Supplier the opportunity to express its opinion.

3. The Supplier agrees to maintain a product-liability insurance policy with a blanket coverage of CHF 5 million per personal injury/property damage event. In the event that the Buyer is entitled to further compensatory damage claims, such claims shall remain unaffected thereby.

VII Industrial Property Rights

1. The Supplier warrants that in connection with its delivery and in the event of use of the delivered item in accordance with the agreement, there will be no infringement of third party rights, trademark rights within the territory of the European Union and Switzerland, or other third party industrial property rights and industrial property rights applications within the Federal Republic of Germany, Switzerland or in the country in which the delivered items is to be used according to the contractual provisions.

2. The Supplier shall, at the first written demand, indemnify the Buyer and its purchasers against all third party claims that arise from the use of such industrial property rights.

3. The Supplier's duty to indemnify shall be include all expenses that necessarily arise from or in connection with third party claims.

4. The contracting parties shall immediately inform the other party of risks of infringement which become known and of alleged cases of infringement, and shall provide the other party with the opportunity to counteract the respective claims by mutual agreement.

1. The Buyer shall retain exclusive title in all plans, documents, copies, drawings, calculations and any other documents of the Buyer which refer to industrial and commercial know-how.

2. Such documents shall be utilized solely for the purpose of processing the order; the documents shall be returned unsolicited following the processing of the order. Any right of retention shall be excluded.

3. Such documents shall be kept strictly confidential vis-à-vis third parties, unless dissemination thereof has not been approved in writing by the Buyer as an exception.

The duty of confidentiality shall remain even after the conclusion of the agreement as entered into in accordance with these Standard Terms and Conditions of Purchasing. The duty of confidentiality shall expire if and to the extent the knowledge contained in the delivered copies, drawings, calculations and all other documents has become part of the public domain without a breach of contract by the Supplier being the cause thereof.

4. The supplier shall appropriately cause its personnel as well as third parties to whom the Supplier has assigned the fulfilment of contractual duties with the Buyer's approval to keep confidential the documents listed in paragraphs 1-3 during and following the conclusion of the agreement as entered in accordance with these Standard Terms and Conditions of Purchasing.

5. The Buyer also agrees to keep strictly confidential copies, drawings, calculations and all other documents of the Supplier vis-à-vis third parties, unless disclosure to third parties is necessary within the context of the delivered item's resale.

IX Assignment

The Supplier may not assign, pledge or have third parties collect its claims against the Buyer without the Buyer's prior consent. This shall not apply to the advance assignment of purchase price claims within the context of an extended retention of title customary within the industry.

X Choice of Law/Place of Performance/Forum

1. The laws of Switzerland shall exclusively govern any and all disputes in connection with the conclusion of interpretation of the agreement entered into in accordance with these Standard Terms and Conditions of Purchasing, concerning its formation of any other disputes arising from the contractual relationship. UN laws on the sale of goods shall not apply.

2. Unless the parties agree otherwise in writing, place of performance shall be the Buyer's registered office. 3. Should one or more of the provisions of these Standard Terms and Conditions of Purchasing be invalid or void, the validity of the remaining provisions shall remain unaffected thereby. The contracting parties agree to immediately agree to a provision that most closely reflects or approximates the commercial intent of the invalid provision.

4. Forum shall be the Buyer's registered office. The Buyer may also sue the Supplier at its domicile and place of business.

Gautschi Engineering GmbH Andhauserstrasse 52 8572 Berg (TG) Switzerland	Phone: +41 71 666 66 – 66 Fax: +41 71 666 66 – 77 e-mail: info@gautschi.cc Homepage: www.gautschi.cc	Landesbank Baden-Württemberg IBAN: DE50600501010001506730 SWIFT-Code: SOLADEST600	VAT-n°.: CHE-104.515.700 HR: CHE-104.515.700	Managing Directors: Robert Schmidt Dr. Udo Weillerscheidt
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GENERAL CONDITIONS OF SALE AND DELIVERY

I. Scope

All proposals, order acknowledgments, sales contracts, deliveries and services supplied by GAUTSCHI are performed exclusively on the basis of these terms and conditions. These terms and conditions also apply to all future legal transactions even if they have not been expressly agreed to. Contradictory terms or customers' terms and conditions that deviate from these general terms and conditions are not applicable and will not be recognized by GAUTSCHI unless expressly confirmed by GAUTSCHI in writing. Fulfillment of a contract by GAUTSCHI does not imply agreement to terms and conditions that deviate from these terms and conditions.

II. Nature and object of the contract

The scope of supply consists only of GAUTSCHI's supplies and services specified in the proposal or contract. Unless explicitly agreed otherwise, the following items are excluded:

- equipment foundations and anker bolts
- cable trenches or all piping for supplies, connections and disposal, including connecting cables outside the scope of supply, installation and covering of the like, as well as all associated provisions and safety appliances
- charging buckets, frames and racks
- tools, accessories, consumables and utilities, including connections required for installation, commissioning and operation
- transportation, lifting and handling equipment
- training of operating and maintenance personnel
- installation, commissioning and start-up services
- goods or services relating to standards, regulations, fees or taxes applicable in the country of destination.

III. Prices

Prices quoted in the proposal submitted by GAUTSCHI, in the order placed by the customer, and in the order acknowledgment sent by GAUTSCHI or in the contract do not include any supplies or services that are not specifically mentioned, especially those relating to standards, special regulations, fees and taxes in the country of destination. Any services included (installation supervision, commissioning, etc.) are based on the contractually agreed upon schedule. If the schedule is delayed or postponed for reasons beyond GAUTSCHI's sole control, additional costs incurred in implementing these services will be invoiced according to the GAUTSCHI site service rates in force at the time. If the contractually agreed upon time schedule is delayed by more than one month because of reasons beyond GAUTSCHI's sole control, GAUTSCHI is entitled to adjust the contractually agreed upon prices accordingly.

IV. Payment

Payment for supplies and services (pro rata payments in the case of partial deliveries of items or elements independent from each other) is to be made by the methods and dates specified in the order acknowledgment or contract. Payments are deemed paid when they have been credited to GAUTSCHI's bank account. Regardless of payment method, all transfer risk must be borne by the Buyer. Bank fees due in the Buyer's country or in any third country will be borne by the Buyer. Bank fees incurred in the Seller's country will be borne by GAUTSCHI. Payment must be made net, without deduction of any taxes, duties, etc. If payment upon acceptance has been contractually agreed to, the Buyer is to pay such installment within one month at the latest from the acceptance date agreed to in the contract in case acceptance is delayed for reasons beyond GAUTSCHI's sole control. The interest rate for delayed payment is to be agreed upon between the contracting parties. If no agreement is reached, then the interest rate specified in Article 104 of the Swiss Code of Obligations (OR) will apply. The Buyer may not suspend payments of the purchase price nor delay payments beyond the dates agreed upon.

In accordance with applicable law, goods remain the property of GAUTSCHI until the purchase price or cost of professional services has been paid in full without reservation.

If the retention of ownership clause is not permissible or does not apply or is not practicable at the location of the goods supplied, GAUTSCHI is entitled to apply other rights to the goods delivered, and as a result GAUTSCHI can exercise all rights of this type. The Buyer is obliged to comply with the rights exercised by GAUTSCHI in place of retention of ownership.

Rights of use for application software will be transferred to the Buyer after final payment has been received.

V. Delivery and completion period

The time period starts running from the day the contract is signed or the order acknowledgment is submitted by GAUTSCHI. In any case, the start of the time period will be reset to the date the supplier received the down payment agreed upon when signing the contract or the date on which the Buyer provides technical information on installation, which may not be specified in the contract.

Unless otherwise agreed, delivery is specified as being Ex-Works and takes effect from dispatch to the Buyer or carrier, even in cases where the price agreed to includes transport and where GAUTSCHI organizes transport. The time period is calculated on the basis of working days, not including public holidays and annual factory shutdowns. Time is not of the essence and can be extended within reason if the Buyer cannot fulfill, within the available time, its contractual obligations, in particular:

- if payment has not been made according to the terms of the contract or the contractually agreed guarantee (letter of credit, bank guarantee, etc.) has not been arranged in time
- if the Buyer does not supply the necessary information in time to ensure satisfactory supply or if it does not approve, within a reasonable time, the drawings, plans or other documents submitted to it for approval

Gautschi Engineering GmbH Andhauserstrasse 52 8572 Berg (TG) Switzerland	Phone: +41 71 666 66 – 66 Fax: +41 71 666 66 – 77 e-mail: info@gautschi.cc Homepage: www.gautschi.cc	Landesbank Baden-Württemberg IBAN: DE50600501010001506730 SWIFT-Code: SOLADEST600	VAT-n°.: CHE-104.515.700 HR: CHE-104.515.700	Managing Directors: Robert Schmidt Dr. Udo Weilerscheidt	
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- if items in the Buyer's scope of supply are not made available in the required or agreed upon time, or
- in case the Buyer does not fulfill its contractually agreed upon obligations concerning assistance and services on time.

If the materials made available to the Buyer cannot be delivered for reasons beyond GAUTSCHI's sole control, delivery is said to be rightfully effected from the moment notice of availability is made.

However, the payment terms are still applicable. In this case, all charges for storage, maintenance, security and insurance will be charged to the account of the Buyer.

The time period is automatically extended when completion is delayed because of reasons beyond GAUTSCHI's sole control, such as those resulting from industrial actions (e.g., strikes and lockouts) or failure of means of transportation, government action, embargo, customs, and economic or energy industry actions. This also applies when subcontractors are affected. If such actions last for longer than six months, the Buyer is obliged to pay for the goods produced and services provided thus far, as a proportion of the sales price, when GAUTSCHI submits an invoice.

VI. Transportation and transfer of risk

In the absence of specific instructions from the Buyer within a reasonable time, the scope of supply is to be dispatched either packed or unpacked, as per GAUTSCHI's decision.

The latest version of Incoterms (e.g., CIF, FOB) published by the International Chamber of Commerce shall apply.

In any case the risk of goods is transferred according to applicable Incoterms.

Partial consignments are permitted unless otherwise agreed.

VII. Technical data and drawings

Weights, dimensions, consumption figures, production capacities, and in general all technical data in GAUTSCHI's documents are considered representative values only and are not binding. GAUTSCHI reserves the right—and the Buyer hereby agrees—to modify the scope of supply at any time or to provide alternative materials to improve the equipment or its function.

The Buyer expressly undertakes to use drawings and technical information provided by GAUTSCHI strictly in accordance with the terms of the contract. Any unauthorized reproduction or reverse engineering is strictly forbidden. This applies during the bid stage and remains in effect after cessation of the legal relationship. Under no circumstances is the Buyer authorized to allow a third party access to drawings and technical information relating to the equipment or installation (which remain GAUTSCHI's exclusive property), nor can the Buyer reproduce such drawings or documents without prior written permission from GAUTSCHI. GAUTSCHI know-how and all related knowledge forms the basis of business of companies providing industrial supplies and services like GAUTSCHI; it is legally protected worldwide and its violation triggers injunctive relief and compensation of damages in all countries.

VIII. Installation and commissioning

The Buyer is expected to professionally cooperate with GAUTSCHI during installation and commissioning of the equipment.

If the scope of supply and services includes installation on site, the Buyer is expected to examine the equipment upon arrival at the site as to whether it is complete and in good condition and to transport it at its expense to its destination (unless otherwise agreed) or to store it in a covered and well-sheltered area so that it is maintained in good condition until its installation.

Maintenance, security and insurance against fire, accident, theft, etc., are to be provided by the Buyer as part of its risk. The Buyer must ensure that all materials are handed over to GAUTSCHI personnel in good condition.

It is explicitly understood that work cannot be carried out in unsanitary or dangerous locations and that GAUTSCHI personnel are to be provided with suitable accommodations and food free of charge and medical assistance on site.

At GAUTSCHI's request, the Buyer will provide materials, means of transportation, tools, energy and power sources, operating liquids of any kind, and personnel free of charge, even if this was not stipulated in the contract.

If the Buyer is responsible for installation and GAUTSCHI supplies supervision only, the cost and risk of the installation work are to be borne by the Buyer.

GAUTSCHI personnel are properly insured by GAUTSCHI. Travel and working hours, room and board, and travel and miscellaneous expenses for work will be invoiced by GAUTSCHI as agreed and are to be paid by the Buyer, including all taxes, duties and other fees in the country of destination.

GAUTSCHI personnel are not authorized to make any binding agreements without written confirmation.

IX. Acceptance

If expressly requested by the Buyer, acceptance testing will take place within 10 days of the end of commissioning, or when readiness for acceptance has been declared, depending on the terms and conditions established at the time of signing the contract. If acceptance has not been stipulated, or if it cannot take place for reasons beyond GAUTSCHI's sole control, the facility will be deemed accepted at the end of commissioning, without reservation, and will be subject to warranty, according to the terms of the following paragraphs. Costs for technical personnel involved in the acceptance are to be borne in full by the Buyer, regardless of where acceptance takes place. The same applies to costs resulting from the use of materials during acceptance testing (energy, products, etc.). Acceptance is to be effected from the time that the agreed upon production capacity has been proven. Minor defects that do not influence the performance of the facility do not present sufficient reason to refuse acceptance of the facility.

The Buyer is not permitted to start up the facility, even for preliminary testing, until acceptance has been completed. If the Buyer operates the facility in spite of this, it is at the Buyer's own risk, and the facility is automatically deemed to have been accepted, and all contractual obligations of the Buyer connected with the facility become due.

If a facility consists of several individual subfacilities, the end of commissioning or acceptance is deemed according to progress on site, and the contractual obligations of the Buyer (e.g., payment on acceptance) are due in proportion to the facility as a whole as each subfacility is commissioned and accepted.

Gautschi Engineering GmbH Andhauserstrasse 52 8572 Berg (TG) Switzerland	Phone: +41 71 666 66 – 66 Fax: +41 71 666 66 – 77 e-mail: info@gautschi.cc Homepage: www.gautschi.cc	Landesbank Baden-Württemberg IBAN: DE50600501010001506730 SWIFT-Code: SOLADEST600	VAT-n°.: CHE-104.515.700 HR: CHE-104.515.700	Managing Directors: Robert Schmidt Dr. Udo Weilerscheidt	
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X. Performance test

GAUTSCHI must prove during the acceptance testing that the performance agreed upon can be obtained. If this proof is given, the Buyer cannot demand further tests.

XI. Product warranty

a) The warranty period will be as follows:

1. Six months in the case of continuous use (seven days a week, 24 hours a day).
2. Twelve months, in case of an eight-hour shift, excluding those components subject to high thermal stress.
3. Components subject to wear and tear as indicated in the contract or proposal are excluded from the warranty. If such components have not been itemized in the contract or proposal, they are considered parts subject to wear and tear recognized as such in industrial practice.

The warranty does not cover damage to equipment or parts because of misuse or negligence or to uses not covered by the contract. Notice of faulty components should be given immediately to GAUTSCHI in writing otherwise all claims for damages and warranty expire as follows:

- obvious defects: no later than 14 days from receipt of consignment
- latent defects: no later than 14 days from discovery of the defect.

If the defect is owing to poor workmanship, faulty material or design, defective parts will be repaired free of charge or replaced at GAUTSCHI's discretion. Defective components that have been replaced are to be returned to GAUTSCHI and become GAUTSCHI's property.

The Buyer should allow GAUTSCHI a customarily reasonable time period to supply a replacement or repaired component and indicate when it will be possible to correct the fault. The Buyer has the right to claim defects up to six months after notifying GAUTSCHI of a defect, as indicated above, but at the latest before the expiration of the warranty period.

b) When the equipment is delivered but not installed or commissioned, the warranty period starts from the date of dispatch of the materials from GAUTSCHI's factory, or where there is a delay in dispatch that is not owing to GAUTSCHI, it will date from the notification of availability of the equipment.

In the case of delivery and installation, or attendance during installation and commissioning, the warranty period starts with the first heating-up or commissioning, and signing of an acceptance document, and expires at the latest 18 months after the date of the last delivery of materials or their availability.

c) The warranty covering replacement or repaired components expires on the same date as that of the main delivery.

d) The warranty becomes void if the Buyer or a third party attempts to modify or repair the installation without being authorized to do so in writing by GAUTSCHI or if the Buyer does not take immediate measures to prevent worsening of damage and give GAUTSCHI the opportunity to correct the fault. In addition, the warranty becomes void if the facility is started up without supervision by GAUTSCHI personnel or is not used as specified by GAUTSCHI guidelines.

This does not apply in exigent circumstances when the safety of the facility is at risk, or to prevent serious damage (GAUTSCHI having been informed immediately beforehand), or if GAUTSCHI is unreasonably late in correcting a fault. Then the Buyer will have the right to correct the fault itself or with the help of a third party and to claim a refund of reasonable direct costs from GAUTSCHI.

e) If the occurrence of a defect as described above is disputed, the burden of proof lies with the Buyer.

XII. Exclusion of liability

All other claims of the Buyer, irrespective of legal grounds, for instance a breach of secondary contractual obligations (e.g., advice, information, user manual), unforeseen circumstances (e.g., attack on property, damage to equipment, responsibility for products), or in particular a claim for repair of damages to items outside the scope of supply, especially consequential damages, indirect damages, financial loss, loss of profit, production downtime, loss of interest, etc., are excluded.

This exclusion of liability is not valid in the case of willful misconduct or gross negligence. However, the existence of willful misconduct or gross negligence must be proven by the Buyer.

Any liquidated damages will only be paid by the party at fault up to a maximum amount foreseeable at the time of the formation of the contract.

If liquidated damages or penalties have been agreed upon in the contract, they represent the sole and final remedy, ruling out any further claims for damages.

The above-mentioned exclusions or limitations of liability apply to all GAUTSCHI's liabilities covered by the contract, especially to any liability resulting from the breach of warranties and specifications.

XIII. Arbitration and applicable law

1. All disputes arising from the existing contract will be resolved by one or more arbitrators by applying the rules of conciliation and arbitration of the International Chamber of Commerce. The place of jurisdiction is Zürich, Switzerland.

2. Unless specified otherwise, the contract is governed by Swiss substantive law, without regard to its conflict of law provisions and the U.N. sales convention.

XIV. General terms

1. If individual clauses in these general sale terms and conditions are invalid, the other clauses remain in effect. In the case of invalid clauses the Buyer and GAUTSCHI will agree on a legally permissible clause that is as close as possible to the invalid clause.

The same applies to any omissions in the contract.

2. The contracting parties shall refrain from challenging this contract because of errors, omissions or changes in the basis of the contract for any reason.

3. Article 21 of the Swiss Code of Obligations (laesio enormis) is mutually ruled out.

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