

**GENERAL TERMS AND CONDITIONS (SALES) – "GTC SALES"**  
of Glogar Umwelttechnik GmbH, FN 182072d LG Steyr ("GLOGAR")  
as of June 2020

**1. Scope – definitions**

**1.1** These GTC SALES shall apply to all of GLOGAR's sales-related offers, legal transactions and services pertaining to customers who are enterprises as defined in the Consumer Protection Act (KSchG). Other arrangements shall be valid only with the written confirmation by GLOGAR. In case of disagreement about principles of the contract, the following order of precedence shall apply: Our offer; any special arrangements confirmed in writing; These GTC SALES; statutory standards. In case of on-going business relations, these GTC SALES shall also apply to future goods and services not expressly agreed upon. Any customers' GTC are hereby expressly rejected, Neither shall they apply if GLOGAR does not again object to them upon conclusion of a contract.

**1.2** "Goods" shall include all of GLOGAR's products and/or services. "Customer" shall include every contractual or negotiating partner of GLOGAR regardless of whether a contract has already been concluded or not.

**1.3** The language of negotiation and contracting shall be German.

**2. Contract coming into effect (order)**

**2.1** All offers by GLOGAR are conditional, not binding and exclusively to be understood as an invitation to place an order. All arrangements, orders, offers, contracts, contract changes, cancellations, etc. shall only become binding for GLOGAR when they have been confirmed by GLOGAR in writing (confirmation of order) or when their performance has begun. Regardless of this, silence by GLOGAR does not be regarded as confirmation.

**2.2** Arrangements by employees or other representatives of GLOGAR not expressly in written form and identified as binding declarations of intent shall require the written confirmation of GLOGAR before they become valid.

**3. Prices – terms of payment – default**

**3.1** Prices are understood to be in Euros plus statutory added value tax (MWSt) ex St. Florian warehouse, and they are subject to confirmation.

**3.2** Unless otherwise agreed upon, payments shall be net without deductions and free of charge within 14 days after the invoice date. If the customer is granted a longer payment term, the payment is regarded only as a deferment; if the term of payment is exceeded, deferment automatically becomes invalid. Payments made to employees or other representatives of GLOGAR not expressly identified in writing as collections, shall not have the effect of discharged debts.

**3.3** In every case of a customer's default, statutory interest (section 456, Corporate Code [UGB]) shall be regarded as agreed upon. In addition, the customer must compensate GLOGAR for necessary legal costs in the form of an appropriate amount of reminder and collection expenses. If a collection agency is employed, the maximum fees set forth in the regulations of the Austrian Federal Ministry of Economics and Labour [BMWA] shall apply, Federal Law Gazette [BGBl.] No. 141/1996 in the current version.

**4. Delivery – delivery periods**

**4.1** Delivery of chemical products and operating materials shall be as customary in the trade.

**4.2** Lacking other arrangements, deliveries shall be ex plant or ex St. Florian warehouse FCA (Free Carrier) according to Incoterms 2020). The goods are shipped at the customer's risk and account. When the goods are handed over to the forwarding agent/carrier or at the latest when the goods are leaving the plant or the warehouse, the risk is transferred to the customer. GLOGAR assumes no liability for the timely, complete and undamaged arrival of the goods. GLOGAR is not obligated to insure the shipping of the goods.

Notwithstanding the above, at the customer's request, GLOGAR may assume delivery under CIP

Incoterms 2020 (Carriage and Insurance Paid to), in which case GLOGAR must pay the cost of shipping, packaging and insurance.

**4.3** The customer shall undertake to immediately accept the goods shipped or prepared for pickup according to the contract: if the customer fails to do so, the delivery is regarded as completed on the day on which acceptance was to take place under the contract. At that time, the risk of accidental loss shall in any case transfer to the customer. In case of delayed acceptance, GLOGAR shall be entitled to charge a reasonable storage fee; this shall not affect any further-reaching claims.

**4.4** The customer shall note and approve that GLOGAR depends on pre-suppliers. That is why delivery dates or deadlines are non-binding. When a stated delivery time is exceeded, the customer shall set forth a subsequent deadline commensurate with the reason for the delay, but amounting to at least 6 weeks. There shall be no compensation claims for delayed delivery and no right to withdraw from the contract for that reason, except for GLOGAR's wilful intent and gross negligence.

**4.5** Every unforeseen in-house and external circumstance and every case of force majeure at GLOGAR or its shippers that interferes with the delivery of goods, or that delays or makes such delivery impossible, such as government measures, war, lockout or strike, material shortages, disruptions in operations or transportation, refusals of delivery by pre-suppliers, shortage of raw materials, etc. and other in-house or external circumstances not the responsibility of GLOGAR shall entitle GLOGAR to the option of withdrawing from the contract, to reduce delivery quantities, to reduce the quantitative and/or qualitative selection rate, or to reasonably postpone the delivery date, at least by the duration of the interference. Force majeure shall also include all events that can only be prevented at an unreasonably high cost or with means not economically feasible.

**4.6** If after conclusion of the contract, GLOGAR learns about circumstances concerning the customer which lead to well-founded doubts about the customer's ability or willingness to pay, and if the customer fails to prepay or provide an appropriate security, GLOGAR shall be entitled at its option either to hold back all deliveries or to withdraw from the

contract wholly or partly without assuming any resulting costs of whatever kind and to demand compensation for non-fulfilment. Any fixed delivery dates or delivery periods shall cease to apply as soon as the customer's unsatisfactory credit rating becomes known.

## **5. Warranty – pre-acceptance**

**5.1** Unless otherwise agreed upon and in the absence of express written arrangements to the contrary, the statutory warranty regulations shall apply.

**5.2** Only those warranted characteristics as defined in section 922 (1), Austrian Civil Code (ABGB) shall apply which are expressly named by GLOGAR. Goods recommended by GLOGAR or its vicarious agents, and product descriptions by GLOGAR (or a third-party manufacturer) are not regarded as expressly warranted characteristics. Specimens and samples are regarded as approximately representative for quality, dimensions, colour, packaging and appearance; however, these qualities are not guaranteed. GLOGAR shall make every effort to avoid deviations from samples or earlier deliveries. However, GLOGAR shall not be liable for the goods deviating from samples or from earlier deliveries except when this is agreed upon in writing: Minor deviations do not entitle customers to any replacement or warranty claims. In case of other than minor deviations, the customer is only entitled to replacement deliveries. However, GLOGAR shall have the choice of withdrawing from the contract. Customers shall not be entitled to claim compensation of any kind except in case of gross negligence.

**5.3** When requested, customers shall undertake to accept goods (in particular system components) at their own expense from GLOGAR or its pre-suppliers (factory acceptance, pre-acceptance). Pre-acceptance shall involve inspecting the goods for function, quality, scope/completeness, and arrangement of components. A pre-acceptance certificate shall be issued for each factory acceptance. GLOGAR shall remedy defects other than minor defects and implement specifications agreed upon in pre-acceptance before the goods are handed over to the customer. With pre-acceptance, the services shall be regarded as

properly performed, subject to those conditions. Subsequent claims for defects shall not be permissible in that respect; this shall not apply to any defects resulting from the improper implementation of the pre-acceptance protocol by GLOGAR. The specifications etc., according to the pre-acceptance protocol, shall serve as agreed-upon subject matter of the contract. Subsequent changes which have been accepted by GLOGAR, shall be compensated for separately by the customer.

**5.4** Customers must notify GLOGAR in writing of defects within seven working days (to be received by GLOGAR), exactly specifying these (with invoice number and date, product name and number) and submitting all documents, dates and samples necessary to corroborate the defect and its cause. The deadline shall begin upon transfer of the goods to the customer or, in case of delayed acceptance, when GLOGAR informs the customer that the goods are ready for acceptance. A notification of defects shall be considered only when the goods are still in the state of delivery. Hidden defects can only be claimed within a reasonable period, depending in particular on the nature of the goods; they must be reported to GLOGAR in writing immediately upon discovery, but must be received no later than within ten working days. If a notification of defects is not made on time, the customer shall lose all claims, in particular under title of warranty and compensation for damages. When GLOGAR rejects a notification of defect in writing, any court action must be commenced within six months, otherwise all warranty claims shall be lost and excluded.

**5.5** In case of a justified notification of defect made on time, GLOGAR shall have the option of delivering goods without defect of the same type, quality, size, shape and colour (replacement, exchange) or of withdrawing from the contract by refunding the purchase price in cash minus any cash discounts and other reductions agreed upon in an individual case. In case of replacement of the goods, the customer shall allow GLOGAR the required time and opportunity to do so to the required extent. If the customer refuses this or shortens the time unreasonably, GLOGAR shall be released from warranty or from the obligation to remedy the defects.

**5.6** GLOGAR shall accept returns only after prior arrangement and express written permission.

**5.7** All other compensation claims by the customer of any kind – with the exception of gross negligence by GLOGAR – and the application of sections 924, sentence 2 or 933b, ABGB, shall be excluded.

## **6. Compensation for damages**

**6.1** Subject to the other provisions of these GTC SALES, GLOGAR shall be liable for property damage arising in connection with the (non-) performance of the contract only in case of its own gross negligence and that of its employees, in particular with regard to delayed deliveries. In case of delayed deliveries, compensation for consequential damages (lost profits, third-party damages, etc.) shall be excluded.

**6.2** In all cases of liability by GLOGAR (also according to the other provisions of these GTC SALES), the onus is on the customer to prove that any fault of GLOGAR has given rise to liability. Reversal of the burden of proof according to section 1298, sentence 2, ABGB, is expressly excluded.

**6.3** GLOGAR does not assume any kind of obligation to protect the actual user of the goods delivered by GLOGAR; it is not the contractual intention of GLOGAR to conclude arrangements with the customer to protect the customer against third-party claims within the context of the contract concluded with the customer.

**6.4** The only security offered by the goods that can be expected is based on licencing regulations, operating instructions, manufacturer's provisions about the handling of the delivered items (operating instructions), in particular in view of the prescribed inspection and other notices according to the present state of the art in science and technology. Should the customer be made liable under the Product Liability Act [PHG], the customer shall expressly release GLOGAR from regress as defined in section 12, PHG, unless the customer proves that the defect was caused in the sphere of GLOGAR and has at least been caused by gross negligence. If customers market the delivered goods outside the EU, they shall undertake to exclude their customers from liability under PHG provided that this is possible under the laws prevailing in the customer's country.

If this obligatory exclusion is disregarded, the customer shall undertake to indemnify and hold us harmless with regard to all claims whatsoever under the title of product liability.

**6.5** Unless a statutory shorter period of limitation and preclusion applies, all claims against GLOGAR shall expire unless they are claimed in court within six months from the time when the customer received notification of the damage and the person causing the damage, or of the event otherwise causing the claim, but at the most after expiry of five years after the behaviour (or violation) causing the damages.

## **7. Reservation of title**

**7.1** The goods shall remain the sole property of GLOGAR (as reserved goods) until the customer has met all obligations to which GLOGAR is entitled under the contract, in particular until all payments are made, also if individual parts have already been paid for. Pledging or assigning the reserved goods is not permitted.

**7.2** In case of the further marketing of the reserved goods – which is permitted in the regular course of business as long as there is no default in payments – the customer shall even now assign all future accounts receivable for the resale of these goods to GLOGAR until GLOGAR's accounts are paid in full without the need of subsequent special explanations; and the assignment shall also include claims for outstanding balances from customers resulting from existing account relationships, or when such relationships arise between customers and their customers. If the reserved goods are sold together with other items without a separate price being agreed upon for the reserved goods, the customer shall preferentially assign to GLOGAR that part of the total accounts receivable that corresponds to the value of the reserved goods invoiced by GLOGAR. Until further notice, the customer shall be entitled to collect the assigned accounts receivable from the resale, but not entitled to dispose of them otherwise such as by assignment. Upon request by GLOGAR, the customer must inform his customer of the assignment and provide GLOGAR with the required documents such as invoices, and with all necessary information. The customer shall be responsible for all costs of collection and any potential intervention.

**7.3** If the customer processes the reserved goods into a new movable object, this is done for GLOGAR, but without any obligation by GLOGAR. The new object shall become the property of GLOGAR. If these goods are processed together with objects not belonging to GLOGAR, GLOGAR shall acquire co-ownership of the new object to the extent of the value of the reserved goods in relation to the other goods at the time of processing.

**7.4** If the customer defaults in full or in part, if there is excessive debt or suspension of payments, or if an application for bankruptcy or settlement is filed, GLOGAR shall be entitled to repossess all goods still under reserved title; GLOGAR may also immediately claim other rights under the reserved title; the same shall apply to any other deterioration of the customer's financial situation.

**7.5** In case of garnishment or other attachment by third parties, the customer must inform GLOGAR immediately.

## **8. Reach**

If the customer informs GLOGAR of a use according to Article 37 (2) of EU Regulations 1907/2006 by the European Parliament and the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) requiring the implementation of the registration or of the Substances Safety Report or any other obligation under the REACH Regulations, the customer shall be responsible for all verifiable expenditures. GLOGAR is not liable for delivery delays arising from the announcement of this application and the implementation of the various obligations under the REACH Regulations by GLOGAR. Should it not be possible for reasons of health and/or environment protection to include this use as an identified use, and should the client – contrary to GLOGAR's recommendation – intend to use the goods in a manner against which he was advised, GLOGAR may withdraw from the contract. The customer cannot claim any rights against GLOGAR from the above rules.

## **9. Offsetting**

The customer is not entitled to claim rights to hold back payments, to refuse any services or to offset rights with counter claims unless these are claims

expressly recognized by GLOGAR in writing or decreed by a final court order. Justified claims do not entitle the customer to hold back payments in full, but only a reasonable portion of the invoice total.

#### **10. Applicable law**

All legal transactions, especially those subject to these GTC SALES, are exclusively subject to Austrian law with the exception of Austrian conflict of law rules referring to a foreign legislation. If in case of foreign involvement, Austrian law refers to the application of special international substantive rules in Austria as well – such as the controlled UN Convention on Contracts – these are not to be

#### **11. Place of performance and jurisdiction**

Place of performance for all services, payments and deliveries is GLOGAR's place of business at Tagerbachstraße 10, AT-4490 St. Florian, Upper Austria. Place of jurisdiction for all disputes arising from or in connection with the transaction is the competent court in Linz, Upper Austria. However, GLOGAR reserves the right to file a law suit in any other jurisdiction, especially at the customer's place of business.

#### **12. Confidentiality**

The customer shall undertake to maintain strict secrecy about trade secrets and company secrets of GLOGAR and about all other information which GLOGAR designates as confidential. This obligatory confidentiality shall not apply to information that is generally known/available or that must be disclosed due to mandatory statutory or government regulations.

#### **13. Miscellaneous**

**13.1** Should individual provisions of these GTC SALES be wholly or partially ineffective, the other provisions shall remain in effect. The ineffective provision shall be replaced by another provision whose content and purpose comes closest to the ineffective provision. The headings contained in these GTC SALES do not serve to interpret the regulations contained in the individual rules.

**13.2** The headings for the provisions contained in these GTC SALES serve only the purpose of clarity and must not be used to interpret the provisions.