

This is a translation into the English language of the Standard Terms and Conditions of Business of Gantrex GmbH. Only the wording of the German version of these terms and conditions is definitive. The English version is intended for information purposes only.

Standard Terms and Conditions of Business of Gantrex GmbH (version dated 12/2019)

1. APPLICATION

The following Standard Terms and Conditions of Business apply to all deliveries and services of Gantrex GmbH, Aachen (Germany), referred to below as "Gantrex" and their customers, referred to below as "Customers". They form part of all contracts that are concluded and also apply to all contracts to be concluded in the future, even if they have not been expressly agreed again. The Customer's terms and conditions shall not apply, even if Gantrex does not object to their application in the individual case. This is also the case where Gantrex refers to a written communication by the Customer which contains or refers to terms and conditions.

2. OFFERS AND PRICES

Unless expressly stated to be binding, all offers made by Gantrex are subject to change and non-binding. In order to be effective, contracts and any ancillary agreements are required to be concluded in at least text form in accordance with Section 126 b of the German Civil Code ("BGB"). If a contract has not already been concluded by the acceptance of an offer that was exceptionally stated to be binding, the contractual relationship comes into existence when the Customer receives the order confirmation from Gantrex or when Gantrex begins to perform the contract. The order confirmation conclusively describes the contractual services to be performed by Gantrex, whereby non-essential elements of performance can be specified at the reasonable discretion of Gantrex.

Gantrex reserves the right to carry out technical alterations after the contract is concluded if such alterations lead to a technically equivalent solution that it is reasonable to expect the Customer to accept.

Alterations to services requested by the Customer must be agreed in contractual form.

All prices are quoted net EXW Aachen (Incoterms 2010), plus the statutory value added tax where applicable. Only the quantities, weight or number of units determined by the supplying plant or warehouse upon dispatch shall be decisive for invoicing. Subsequently agreed alterations to the order entitle Gantrex to charge any additional costs incurred. Reductions in the cost of the order will be refunded to the Customer after deducting any additional costs caused by the alterations.

Packaging and special packaging, such as seaworthy packaging, will be charged for separately.

3. SHIPPING AND TRANSFER OF RISK

Shipping always takes place at the risk of the Customer. Risk passes to the Customer when the goods are released for shipping, at the latest when they leave the factory or warehouse. If the goods are to be collected by the Customer, risk passes when they are made ready for collection. If shipping is delayed for reasons for which the Customer is responsible, risk passes when the goods are ready for shipment. Handover of the subject matter of the contract is deemed to have taken place or acceptance of performance declared if the Customer is in default of receipt. In this event, Gantrex is entitled to charge the Customer for any additional costs incurred. If no particular instructions have been issued, the choice of packaging, mode of transport and transport route is at the discretion of Gantrex. Acceptance of the goods from Gantrex without objection by the transporter is deemed to be confirmation that the packaging is in faultless condition when dispatched.

4. DELIVERY

The delivery period begins – at the earliest – on the date the contract is concluded. If plans, approvals, clearances or other documents are to be produced by the Customer for the performance of the contract, the delivery period begins from the date upon which full documentation is received by Gantrex. The delivery period is complied with if the goods have left Gantrex' factory or warehouse, etc. or their readiness for shipment has been notified prior to its expiry. Gantrex is authorized to effect partial deliveries for operational reasons after giving prior notice and to charge for such partial deliveries separately. Even in the event that binding delivery deadlines and dates have been agreed, Gantrex is not responsible for delays in delivery or performance based on force majeure or other events over which Gantrex has no influence, namely in the event of strike, lock out, fire, water damage, defective machinery, bankruptcy and goods being unavailable or undeliverable from suppliers. In such cases, Gantrex is entitled, at its discretion, to withdraw from the contract or to postpone performance by the duration of the hindrance plus a suitable start-up period. The Customer cannot derive any compensation claims from this. Gantrex will inform the Customer without delay in the event that any of the abovementioned circumstances occurs. If Gantrex cannot comply with an agreed delivery period for other reasons, it is entitled to a subsequent delivery period of two months. The Customer cannot shorten this period unilaterally. If Gantrex is responsible for not complying with binding deadlines or subsequent delivery deadlines or dates or is in delay with performance, any eventual claims of the Customer for compensation due to delay are limited to a total maximum of 5% of the invoice value of the subject matter of the contract affected by the delay. In all cases, delay requires a reminder to have been given to Gantrex in at least text form. Any further claims for compensation for losses caused by delay are excluded, unless the delay is intentional or due to Gantrex' gross negligence. Gantrex reserves the sole rights of ownership, copyright and rights to use all drawings relating to the order or performance of the contract. The Customer is not permitted to pass these drawings on to third parties.

5. ASSEMBLY

The General Terms and Conditions of Assembly apply to all assembly works to be carried out by Gantrex.

6. PAYMENT TERMS AND CONDITIONS

Unless otherwise provided in the order confirmation, contractual payments become due upon receipt of an invoice. Invoices from Gantrex are deemed to be accepted if they are not objected to in writing within two calendar weeks of receipt. Payment default occurs if the Customer does not pay within two calendar weeks from the date of delivery.

If agreed advance payments or security deposits are not paid on time, the total contract price shall become due immediately. In this event, Gantrex is entitled to withhold performance of its own contractual obligations until the payments due, including all ancillary claims, are settled. If payment remains outstanding, Gantrex can withdraw from the contract and claim compensation.

7. RESERVATION OF TITLE

Gantrex retains title to the goods delivered until all current and future claims out of the mutual contract or on-going business relationship (secured claims) are paid in full.

Until they are paid for in full, the goods subject to the reservation of title may not be pledged or transferred as security to a third party.

In the event that the Customer is in breach of contract, in particular upon non-payment of the purchase price due, Gantrex is entitled – where necessary upon the expiry of a specified deadline - to cancel the contract and/or demand the return of the goods based upon its reservation of title. A demand for the return of the goods shall not be deemed to be a simultaneous declaration of cancellation of the contract.

8. NOTICES OF DEFECTS AND WARRANTY

The Customer undertakes to inspect deliveries from Gantrex without delay and to give notice of any apparent defects in writing without delay. Section 377 et seq. of the German Commercial Code (“HGB”) apply.

The characteristics of the goods to be delivered are determined exclusively by Gantrex’ product information sheets and the contractual agreements between Gantrex and the Customer. Samples and specimens only serve to approximately describe goods and only describe the characteristics of the subject matter of the contract if the contract specifically refers to a sample or specimen. No warranty can be derived from an agreed characteristic if a warranty is not expressly agreed in the contract.

Customary and minor, technically unavoidable differences in quality do not found warranty claims. The same applies to contractually permitted changes to the subject matter of the contract, deviations falling within the tolerances of generally accepted technical regulations or applicable DIN-ISO standards and excesses or shortfalls in delivery quantities due to technical limitations. In the event of an insignificant defect, the Customer has a right to reduction of the contract price only.

Gantrex reserves the right to choose whether subsequent performance of the contract should be by way of rectification or replacement delivery. This does not affect the right to refuse subsequent performance where permitted by statute. If the Customer withholds payment of more than an appropriate part of the contractual payment because of a defect, Gantrex is entitled to refuse subsequent performance of its obligations until the deficit is paid.

The Customer’s warranty claims will become time-barred one year after delivery and in cases in which an outcome is owed, within two years after acceptance of performance. In deviation therefrom, warranty claims relating to welded seams at rail joints become time-barred within one year of acceptance.

9. LIABILITY

Gantrex is liable without limitation

- In the event of intent or gross negligence,
- In cases of injury to life, limb or health,
- Pursuant to the provisions of the German Product Liability Act (“Produkthaftungsgesetz”) and
- To the extent of any warranty provided by Gantrex.

In the event of a slightly negligent breach of a cardinal obligation (a duty that the Customer can generally expect will be complied with, the fulfilment of which is a prerequisite for the proper performance of the contract so that its breach endangers the attainment of the purpose of the contract), Gantrex’ liability is limited to the losses that are foreseeable and typical for the type of contract entered into.

Any further liability of Gantrex is excluded.

10. PLACE OF PERFORMANCE AND JURISDICTION

In relation to all claims and disputes arising out of this contract, including bills of exchange and summary proceedings, it is agreed that the place of performance and place of jurisdiction is Aachen.

11. APPLICABLE LAW

The law of the Federal Republic of Germany (excluding the provisions the UN Sales Convention (CISG)) apply to the legal relationship between Gantrex and the Customer. Where reference is made to statutory provisions or contractual terms and conditions, these relate to statutes or contractual terms and conditions of the Federal Republic of Germany.

12. CONCLUDING PROVISIONS

If one of the above terms and conditions should be ineffective, this will not affect the validity of the remaining provisions. The ineffective provision shall be replaced by the provision that comes closest to attaining the commercial effect of the ineffective provision.

Terms and conditions of installation

1. The following terms and conditions of installation apply to all installation works carried out by GANTREX ("the Contractor") on behalf of its customers ("the Customer").
2. The exact date of installation must be agreed between the Customer and the Contractor at least 2 weeks prior to commencement of the work.
3. It must be possible for the installation work to be carried out without interruption. In the event of interruptions to the installation work caused by circumstances for which the Contractor is not responsible, the costs incurred shall be invoiced to the Customer; this applies equally in the event of interruptions caused by adverse weather conditions. If temperatures fall below -5°C, the installation work must, where necessary, be interrupted in agreement with the Customer. If the interruption to the installation work on site continues for more than 4 weeks then, notwithstanding the agreed terms and conditions of payment, the Contractor has the right to issue a partial invoice for work that has already been undertaken.
4. The installation site must be dry and free from all objects and other tradespersons, so that the Contractor can work continuously without disruption. In order to guarantee safety, no other works may be carried out above the installation site.
5. It must be possible to deliver and store rails, fixing and other materials necessary for the installation in close proximity to the track system, so that they can be unloaded in a single step with a truck-mounted crane (max 60t, hook height 30m) or forklift truck. It must be possible to transport the rails, steel plates and pallets from there along the installation site with hand propelled trolleys and pallet trucks on a solid foundation. If this is not guaranteed, making another means of transportation necessary, the cost of this will be invoiced to the Customer separately.
6. Prior to commencement of the installation works, the Customer must provide suitable physical measuring points on site. The Contractor requires that the following are permanently marked for each stretch of track: track elevation, as well as a start and end point and at 30m intervals an axis point approx. 200mm next to the rail axis.
7. The Customer must provide the Contractor with an electricity supply of 230V and 400 V/ 64 A and a supply of clean water in the immediate vicinity (max. 30 m from the rail system) free of charge. Sanitary facilities, such as toilets and washrooms must also be made available to the Contractor free of charge.
8. The installation work to be carried out is the rail installation work described in the quote. Additional work, such as, for example, the clearing of foundations, core drilling, cutting and other work, is not included in the contract price.
9. Winter building measures, scaffolding, lifting platforms, special safety measures etc. (pursuant to DGVU – the German Statutory Accident Insurance provisions) are not included in the contract price.
10. Dust may be generated during drilling, milling, cement, welding and grinding work or when the base plate around the rail supports is cleaned. Our quote does not include the protection of buildings and existing facilities against dust or the removal of dust. If, contrary to expectations, the assembly site is wet, the Contractor assumes that the Customer will undertake any final cleaning required.
11. If work is carried out at night or on Sundays or public holidays, or in the event that particularly dangerous work within the meaning of the German Construction Site Regulations must be made safe, the hourly rate specified in our quote will be increased by the usual or (if applicable) collectively agreed surcharges.
12. The warranty period for installation work is stipulated in the contract. If no separate agreement is made, the warranty period is one year from the date on which the work is accepted in accordance with the contract.
13. In the event that cement-bound mortars are used, the exterior, protruding edge of the supporting grout may display hairline cracks, cracks or blisters which do not have any adverse effect on the compressive strength of the supporting grout beneath the steel plates and the proper positioning of the rails. As this does not constitute a technical defect, it shall not give rise to any right of complaint. The outside edge of the grout base is not chamfered when it is made.
14. The Customer has a duty to accept installation work carried out in accordance with the contract. The work shall be deemed to be accepted when it has been completed, a final invoice has been issued and the Customer has not demanded formal acceptance within 14 days of receipt of the final invoice.
15. The Contractor's warranty obligations are limited to the remedying of any defects existing in the parts and services they provide up to the amount of the contract price. In the event of consequential damages, the provisions of the Contractor's standard terms and conditions of business apply.