# General terms and conditions for sales and installation, Gantrex GmbH (edition 6/2016)

**1. VALIDITY**
Conclusion of sale, delivery and installation take place entirely subject to the following general terms and conditions for sales and installation. These represent an integral part of all contracts signed and are valid for all future business relations, even where they are not specifically agreed upon. These terms and conditions are implicitly acknowledged by the customer from the moment of order, or at the latest upon reception of the delivery or service concerned. Opposing terms of business or exceptional counter-confirmations on the part of the customer are non-binding for the vendor, even if not specifically contradicted by the same. Such opposing terms require the written acknowledgement of the vendor to be legally binding. Alterations or sub-agreements also require the written confirmation of the vendor to be considered enforceable.

**2. OFFERS AND PRICES**
All offers, insofar as they are not specifically described to the contrary, are free and non-binding. The term of validity of all contractual arrangements data from their confirmation by the vendor. Once the order has been granted, the vendor reserves the right to alter technical specifications, insofar as such changes, while taking into account the interests of the vendor in making them, are acceptable to the customer. Sales personnel of the vendor is not authorized to enter into verbal sub-agreements or make verbal assurances that in any way go beyond the written contract. Prices are calculated net from the works dispatch bay or warehouse, not including packaging, and subject to the appropriate VAT rate. Special packaging, such as for sea freight, will be calculated separately. Only the quantity, weight or number of the goods concerned as they left the works or warehouse are considered for invoicing. The vendor may rightfully invoice any extra costs arising from subsequent agreed changes to the job contract. Cost reductions thereby engendered will be refunded to the customer after reduction of all costs to the vendor arising from such changes. All earthworks, walling and masonry works, retaining works, roughening and concrete work, as well as measures undertaken for winter building, are not included in the total price. Transport costs engendered by installation work will be invoiced separately. Night-work, work on Sundays and public holidays, dirty work, work at unusual heights or in particularly dangerous conditions will all engender an increase, in accordance with the appropriate tariff, to the rates per hour as quoted in the offer. Protection of the building, its interior fittings and surroundings from dust caused by drilling, lathing, sanding and cleaning of the base plate in the area around the rail supports, or the vacuum extraction of same, is not included in the contractors' quote. Any costs arising from work interruptions that are not of the contractors' own volition or responsibility, are to be assumed by the customer; this applies equally to interruptions caused by the weather.

**3. DISPATCH AND THE TRANSFER OF RISK**
Dispatch is undertaken at the customers' risk. Risk responsibility is transferred to the customer as soon as the goods are freed for dispatch or, at the latest, when they leave the works facility or warehouse. If the goods are picked up by the customer, then the risk is transferred to the latter when the goods are prepared for dispatch. If the actual dispatch is delayed for reasons lying within the customers' control, then the goods are the customers' responsibility from the moment they are ready for dispatch. In this event, the vendor is justified in invoicing any additional costs thereby incurred to the customer. Unless other measures have been specified, packaging, choice of transport medium and the transport route taken are all decided by the vendor. The transfer of the goods from the vendor to a road or rail freight service, postal service or other transport contractor, without remark or complaint from these latter, is taken as confirmation of the irreproachable nature of the packaging at the time of dispatch and excludes any legal responsibility of the vendor for damage or loss due to alleged inappropriate or incorrect packaging or handling, inasmuch as the vendor cannot be shown as clearly responsible through deliberate or obvious dereliction. If the delivered goods are installed by the vendor or under contract on the vendors' behalf, then the customer is obliged to undertake a reception inspection once the vendor has, either orally or in writing, confirmed that installation has been completed. This also applies in situations where delivery and installation are separate jobs. The customer putting the goods into service is equivalent to a reception inspection. Goods ordered will only be insured at the specific behest of the customer. Such insurance will be invoiced to the customer. Goods that are picked up by the customer prior to dispatch are considered as having delivered in accordance with requirements.

**4. DELIVERY**
Delivery time begins with the date of order, at the earliest when the customer has presented all necessary documentation, authorizations, releases etc. The delivery time limit is considered as honoured if the ordered goods have either left the vendors' production works or warehouse, or their readiness for dispatch has been announced, prior to its elapse. The vendor may, particularly for operational reasons, in justifiable special cases and after prior announcement, undertake partial deliveries or provide a partial service and invoice these separately. The vendor cannot be held to an agreed schedule or deemed responsible for delivery and service delays due to act of God or other events that render delivery considerably difficult or even impossible, particularly strike, lockout, fire, damage through flood or water, mechanical defects, unavailability of raw materials, unavailability of necessary materials to or from subcontractors or their non-delivery, nor in the event of bankruptcy, catastrophe and other acts of God, including those touching subcontractors and suppliers. In such cases the vendor has the right to withdraw either partially or completely from the contract, or to put back the delivery schedule for a period equal to the period of the delay caused, with the addition of a reasonable running time. The customer may not claim compensation for any effects of these actions. The vendor will inform the customer immediately should such a situation arise. The vendor is entitled to a delivery extension of two months in the event of being unable to keep to the agreed delivery schedule. The customer may not shorten this limit unilaterally. Inasmuch as the vendor may be held responsible for the breach of binding agreements regarding delivery or service data, schedules, limits or extensions, or finds himself falling behind with these, the compensation that can be claimed by the customer for damages resulting from any of the former is limited to 5% of the invoiced value of the deliveries or services affected. Further claims, insofar as the delays cannot be shown to be due to the express intention or negligence of the vendor, are excluded. The vendor retains all physical and intellectual rights of ownership, copyright, usufruct of all offer, job, installation or instruction related plans and drawings. No communication of the same by the customer to third parties is permitted.

**5. INSTALLATION**
To afford the installation crew undisturbed working access, the installation area must be free from all obstacles, objects and other work processes. For reasons of security, no installation for other work processes may be carried out above the installation area. The customer guarantees that the installation work can be carried out without interruption. Installation will be interrupted if the temperature falls below +5° Centigrade. Before installation can begin, a point of fixed height (= the highest point of the base plate) and two horizontal axes set at 90° to one another should be marked in a permanent manner, if possible in front of each rail axis. It must be possible to deliver the rails, required fixing and reinforcing materials, as well as any other necessary installation materials to the area directly adjacent to the rail plant in such a way that they can be loaded and manoeuvred by crane (maximum 60 tonnes; hook height 30 metres) or forklift truck and transported to the installation area in a single work action (in the case of an existing automatic or conventional warehouse). From there, the transport of the rails, steel segments, grouting compound etc. along the installation area must be possible with a simple hand-operated roll truck over a firm cement foundation. The exact date for installation must be fixed between the customer and the contractor at least four weeks prior to starting. 220 Volt and 380 Volt/32 Amp electric current and a clean water supply must be provided to the contractor, free of charge, by the customer in the direct proximity of the installation zone (30 metres maximum distance from the high-bay storage). The contractors' installation crew must have access, free of charge, to toilets, washroom etc. When using cement-based grouting, the outer overlapping edge of the bottom casting may show cracks with time. However, these have no detrimental influence on the resistance of the foundation, nor on the faultless positioning of the rails. The edges of the grout are left unlevelled. The customer guarantees the foundation as being appropriate for this type of poured mortar grouting as well as for the longterm stability of the foundation under the intended loads. The responsibility for the evacuation of any standing water on the installation area rests with the customer, the contractor may only be expected to see to the evacuation of puddles of less than 10mm in depth. The customer is liable for the correctness and integrity of all given measures, for the exactitude of all architectural building plans provided by him, as for any further information having a bearing on the durability or appropriateness of the materials used. He also is liable towards the contractor that the use of the plans or documents he provides do not violate any patent or other rights of third parties.

**6. TERMS OF PAYMENT**
Insofar as no other specific arrangements have been written into the confirmation of order, the purchase price is to be paid immediately. The vendors' invoices are considered valid, recognized and accepted if they are not challenged in writing within a term of two calendar weeks from their date of issue. The invoice is considered overdue when the customer has not paid within two calendar weeks from its date of issue. Business persons, as defined under the HGB, are obliged, after the invoice settlement date has lapsed, to pay the appropriate interest. Cheques, insofar as this form of payment has been arranged by exception, will only be considered accepted after validation. All charges for collection and crediting to our account will be carried by the customer. The vendor is not liable for punctual submission of a bill of exchange. Any risk arising from currency exchange rate differences is carried by the customer. If a reminder is issued, a charge of 7.50 € will be levied, this is non-obligatory only in the case of a first reminder, inasmuch as this is justified by delay. In situations of payment deferment, the purchase price will be charged interest at the same rate as for a delay. Should the customer be in payment difficulties, such as delay in payment, or in the validation of a bill or cheque, we have the right to declare all invoices still open, including those deferred, as being immediately. These may then be set against the return of bills of exchange taken in lieu of payment or against cash payments or whatever security guarantees are called for. In such cases the customer may have no recourse to any previously agreed payment or price discounts. If advance payments or surety is overdue, we may, after issuing a reminder, withdraw from the contract, refuse to carry out further deliveries of goods or services and introduce a legal claim for breach. Any rights the customer chooses to offset against such steps may only be advanced inasmuch as such a counter claim is legally valid and either unopposed or recognised by us. The right to withhold payment can only be founded in the same contractual relationship as validates our own claim. In such cases, only the individual sale may be taken into account in one invoice and not any probable compilation of sales.

**7. RESERVATION OF PROPRIETARY RIGHTS**
The vendor retains proprietary rights of all goods delivered by him, until such time as the customer will have fulfilled all demands of their contractual relationship, including any future claims, whether from contracts simultaneously or subsequently drawn up, including such as may arise from the customers' current account balance. The customer is within his rights to continue to work with the materials concerned within the context of a well-regulated business activity. In this case, the work carried out is in the interest of the vendor as manufacturer. Thus the vendor profits from the ownership of the goods or services thereby created. If the production concerned involves materials or plant that is not the property of the vendor, or the conditional goods or services in question are mixed with, or in common with, the goods or services of third parties, then the vendor holds proprietary rights about that proportion of these goods or services, equivalent to the total invoiced value of the conditional goods in question. The same applies even when the third party share is a majority. The customer is within his rights to dispose of the conditioned goods in the context of his regulated business activity, inasmuch as he is not overdue with the payment of any obligation to the vendor arising out of their business relationship. This right to dispose is not valid if a transfer ban exists within the customers' agreement with the vendor. For reasons of security, the customer should cede those claims and rights arising from transfer of the conditional goods or other legal justification (including all balance demands on the customers' current account) to the vendor. Any agreements on proprietary rights drawn up by the customer with a third party are to be considered as being in the vendors' favour, until such time as all claims imposed by the proprietary rights of the vendor on the conditioned goods have been fully paid off, including the valuation of all cheques and bills of exchange accepted. The customer may, until revoked, be empowered to collect from third parties all outstanding debts that constitute any part of the vendors' proprietary demands. The customer is moreover obliged to present the vendor with a record of the sums concerned, the nature of the financial obligation, the name of the debtor, as well as any relevant documentation. Once the value of the financial guarantees furnished by the customer exceed the value of the vendors' claim by more than 20%, the vendor will be prepared, on demand, to release those guarantee amounts that are in excess. If the customer does not fulfil his contractual obligations to the vendor, in particular if he is behind in his payment schedule, the vendor is entitled to withdraw the conditioned goods or to inform the debtor of their transfer and to assert the transferred claim. Neither such withdrawal, nor the seizure of the conditioned goods, inasmuch as the hire purchase law does not apply, implies a renunciation of the contract. Seizures and transfers of ownership by way of security on the part of the customer are inadmissible. It is the customers' duty to inform any third party, in the event of these undertaking or attempting seizures, confiscations or other sudden measures, of the proprietary rights of the vendor, as well as to immediately inform the latter of any such developments. If either the proprietary rights or their transfer are not in accordance with the law in whose jurisdiction the goods are situated, then the proprietary rights or transfer of appropriate financial guarantees are valid in their stead. Inasmuch as the involvement of the customer is required here, he should see to it that all necessary measures are undertaken for the justification and preservation of these rights. If the object of purchase concerned is inseparably mixed with other items that are not ours, then we claim the co-ownership of these new items in proportion to the value of the object of purchase to that of the other mixed materials at the moment they were mingled. If the mixture is such that the property of the customer is in the majority, then the following will apply: that the customer transfers proportional co-ownership to us. The customer holds the thus created property or co-property free of charge for us. With the lapse of the confiscation authorization, the customer is no longer authorized to install the conditioned goods to use them in production or to mix them inseparably. The customer also transfers to us claims against third parties, which have arisen due to the association of the object of purchase with a particular plot of land or site. This also includes the right to be granted a guarantee credit with prior ranking to others. We accept the transfer. If the conditioned goods are integrated through construction, as the most significant proportion, into the customers' own plot or site, then the customer transfers to us, as per the date of the present document, any claims founded on the commercial disposal of that plot, including ancillary rights, up to the value of the conditioned goods and in ranking prior to all others. We accept the transfer. We engage, upon the demand of the customer, to release the difference in the guarantee sums granted us as security, insofar as the realisable value of such guarantees exceeds the legal margin granted to our claims by more than 45% (20% value deduction, 4% § 171 1 InsO, 5% § 171 2 InsO plus the legally valid rate of VAT). To cover possible reduced earnings, the realisable value, inasmuch as we cannot demonstrate a lower realisable value for the conditioned goods, equals the customers' buying price or, in the case of conditioned goods being reworked, the production cost of the guarantee goods or coproprietary proportion of same, after deduction of the official value assessment maximum of 35% of the claim guaranteed (§ 20 value deduction 4%), § 171 1 InsO, § 171 2 InsO plus the legally valid rate of VAT. It is incumbent upon us to cancel the guarantee sums thus released.

**8. COMPLAINTS AND GUARANTEES**
The customer is obliged to immediately communicate any incorrect or incomplete article, quantity or measurement in writing, at the latest within three days of delivery. If the customer does not report any defect within this period, then the goods will be considered as defect free and contractually accepted. Inasmuch as the customer is a business person entered in the commercial register, the legal examination and complaint obligation in accordance with § 377 ff HGB applies. The composition of the goods to be delivered is exclusively defined by the agreement between us and the customer. Patterns and samples supplied by us only serve as an approximate descriptive guide to the goods concerned. All agreements between us and the customer concerning the composition and characteristics of the goods, as well as any other explanations concerning the goods do not represent a guarantee under § 443 BGB, unless a specific written explanation exists between us and the customer in which such a guarantee is explicitly accepted. Customary, minor and technically incompatible tolerances in quality to do not constitute grounds for a letter of complaint. We do not accept liability for divergences in the goods which fall within the tolerances permissible under DIN norms, or any excesses or shortfalls in the delivery quantity caused by these. Similarly we accept no liability for texture or colour tone differences in repeat orders. All moving parts which can be shown to be faulty or dangerous are, subject to our choice, either to be repaired or replaced. The customer is within his rights under the law to withdraw from the contract if we – taking into account all legally permissible exceptions – fail to react with an improvement, replacement or repair within a reasonable time limit. If the fault is insignificant, the customer may indulge his right to demand a reduction in the contracted price. Aside from this case, the right to a reduction in the contracted price is out of the question. If the customer is a business person, who has signed the contract in the performance of his independent or professional capacity, or if the customer is a legal entity or corporate body, or a public service corporation or fund, then any claims of material defect liability are limited to one year from the date of delivery. This is, however, not the case where the law (as per §§ 438 I Nr. 2, 479 I and 634 a I Nr. 2 BGB) stipulates a longer period, as in cases of loss of life and limb, physical injury or health damage, neither in the case of deliberate or gross dereliction on our part or suspicious concealment of the fault concerned. The legal dispositions regarding expiry restraint, expiry and reopening of the statutory period for complaint remain unaffected. If the customer is a private consumer, then the legal dispositions of consumer protection regulations apply.

**9. LIMITATION OF LIABILITY**
Should we be held liable, under the standards of the above requirements, for damages engendered through minor dereliction, then our liability is limited. Such liability can only be founded on the breach of significant contractual obligations and is limited to the types of damages typically envisaged under the terms of the contract. Such a limitation, however, does not apply to lost of life and limb, other physical injury or health damage. Inasmuch as the damages are covered by an insurance purchased by the customer to cover such eventualities, we may only be held liable for related disadvantages to the customer such as higher insurance premiums or interest losses through the regulation of damages on the part of the insurance company. For any damages not affecting the delivered goods themselves, our liability – under whichever legal disposition – is limited to: wilful damage, obvious dereliction on behalf of the owner, the responsible authority or site manager; faults which can be demonstrated to have been suspiciously concealed and whose absence had been guaranteed; faults in the delivered goods such as fall within the product liability laws relating to personal damages or liability for damages to private property. Statutory liability under § 1 of the product liability law (Produkthaftungsgesetz) remains unaffected. Blame-independent liability for the characteristics or composition of the goods in the event of a class liability suit is not accepted. Liability will only be accepted upon presentation of blame. Liability for consulting services etc. will only be accepted where this has been confirmed in writing.

**10. PLACE OF FULFILMENT AND COURT OF JURISDICTION**
For all claims and litigation arising from this agreement, including those concerning bills of exchange or certificates, the place of fulfilment and court of jurisdiction are those of the administrative seat of the vendor/supplier, given that vendor and customer are business people under the HGB.

**11. LEGAL FRAMEWORK**
The legal framework between us and the customer is subject to the law of the Federal Republic of Germany. UN commercial law is excluded hereby.

**12. DATA PROTECTION**
Our business associates' personal data is handled, processed and recorded, strictly within the context of the contractual relationship, in accordance with §§ 28 and 29 BDSG.

**13. FINAL CLAUSE**
Should one of the above cited requirements prove inoperative, the validity of the remaining requirements is affected in no wise. In such a case, a requirement which, from a commercial viewpoint, most closely matches the inoperative condition, will be considered as agreed.