

## **General terms and conditions**

of the company Gurtner GmbH., GAF Projekt GmbH., GAF Stallbau GmbH., Gurtner Geflügelzucht GmbH. & Co.KG

### **1. General:**

The following terms and conditions shall **exclusively** govern all legal transactions with us, unless otherwise agreed in writing with the customer. Orders are only accepted when they have been confirmed by us in writing. Verbal agreements shall only become effective upon our written confirmation.

If we are the principal (purchaser), acceptance or execution of the order shall be deemed acceptance of our terms and conditions.

The rights of the customer arising from the legal transactions concluded with us are non-transferable.

### **2. Offer:**

This offer is based on the information currently given to the seller by the customer (in particular about barn height, width, length, floor condition of the barn, etc.). If there are any changes to this information, the present contract shall be adapted to the changed situation. Furthermore, the order is based on the current feed and material prices. Should the feed prices for poultry in the rearing period deviate by more than 2 % and the prices for equipment or plants on delivery deviate by more than 5 % upwards or downwards compared to the order date, the sales price shall change accordingly.

The basis of this offer is that structurally stable and dowelable components are available as the on-site substructure for our installations in accordance with our plan specifications. The customer is responsible for proving the load-bearing capacity.

Deviations from ordered characteristics of the control room due to serial modifications by the supplier are permissible, provided that this does not result in any disadvantages for the customer with regard to the function of the system.

If the order deviates from our offer, promises made by us in the offer shall only apply insofar as this is compatible with the modified order.

Illustrations and information in our business documents, catalogues, brochures and the like contain only approximate values and are not deemed to be tacitly underlying the contract. They are only binding if this is expressly agreed in writing. We are entitled to modify models, constructions or their equipment.

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All offer documents, including drawings, sketches and the like, must be returned to us immediately if the order is not placed, without the customer being entitled to make copies or duplicates thereof. In the event of a breach of this obligation, the customer shall pay a contractual penalty of 10 % of the order amount.

Subsequent requirements of the customer not included in the original offer (basic offer) require a new offer by us. Only when this offer has been accepted are we obliged to carry out the additional requirements. This shall also apply in the event of subsequent changes to the original offer. In this case, we reserve the right to re-offer the entire work, including the original order.

### **3. Prices:**

Our prices apply ex company headquarters. The prices do not include the costs for shipping, packaging, scaffolding, climbing aids, other protective measures and transport insurance. All prices quoted in our business documents are net prices. The prices valid on the day of delivery according to our price lists shall apply. For projects requiring a longer execution time, we are entitled to adjust the prices for services to our respective current hourly rates. The prices are subject to change and are based on the material procurement costs valid on the day the offer is submitted.

Price changes due to changes in material costs or raw material prices, in particular due to changes in national or world market prices for raw materials, changes in relevant exchange rates, etc. since conclusion of the contract, are expressly reserved and entitle us to adjust the price. The adjustment shall be made to the extent that the actual production/delivery costs at the time of conclusion of the contract change compared to those at the time of the actual performance of the service

Unless otherwise agreed, the prices for subsequent deliveries (due to additional orders) shall be ex warehouse Moosbach. Packaging and loading material will be charged additionally.

All prices are to be understood without assembly and VAT. In general, if not project-related, invoicing shall be based on the actual consumption of materials. We are not obliged to carry out a test run after the system has been installed. If a test run is not possible due to missing electrical connections and additional trips become necessary, this will be charged to the customer. Electrical connections and troubleshooting must only be carried out by the local electrician.

### **4. Payment:**

Our invoices are payable within 30 days of the invoice date without deduction. If payment is received within 14 days of the invoice date or after notification of readiness for dispatch, we grant a 2% discount, likewise for payment by direct debit. Subject to further claims, interest on arrears amounting to 8 % p.a. above the respective base interest rate shall be charged for payments received late. In the case of consumer transactions, interest on arrears shall be charged at a rate of 5% above the statutory or agreed interest rate. Default in payment or justified doubts about the creditworthiness of the customer entitle us to withdraw from the delivery obligations not yet executed or to demand advance payment. 1/3 of the order value upon receipt of the order confirmation without deduction, remaining amount 14 days after delivery date or reported readiness for delivery with 2 % discount within 30 days net.

If the goods cannot be delivered for reasons for which the customer is responsible, this shall not extend the payment deadline. In this case, the payment period begins with our notification of readiness for dispatch.

Payments by the customer shall first be set off against claims not arising from the delivery in question and only then against the claims arising from the delivery in question. Furthermore, first to costs, interest, default interest and only then to the capital (this also applies in particular in connection with our retention of title).

If the customer does not pay the invoice or only one of several invoices in due time, a loss of time shall occur with regard to our entire outstanding claim in such a way that the entire outstanding claim shall become due immediately, irrespective of which payment terms were granted with regard to individual partial amounts by agreement or by acceptance of bills of exchange.

The withholding of payments due to warranty claims or offsetting with counterclaims of the customer due to or with counterclaims not expressly recognised by us is excluded; in any case, any right of retention on claims of the customer is limited to the cover capital required for the rectification of defects.

If the customer encounters payment difficulties (financial collapse, means of payment without cover, bill or cheque protest, seizure, settlement, bankruptcy, etc.), the entire invoice amount from the delivery in question plus any other outstanding claims shall be due for immediate payment without us having to put the customer in default. In these cases, we are entitled at any time to take back the delivered goods at the customer's expense and to utilise them in the best possible way, without this releasing the customer from the obligation to fulfil the contract or allowing him to claim damages for non-fulfilment.

Prior to delivery, we are entitled to withdraw from the contract if the customer's ability to pay appears to us to be justifiably doubtful. The same applies if we receive adverse information about the customer's creditworthiness from a reliable source. For new customers, we reserve the right to ship cash on delivery.

In the event of default, the customer further undertakes to pay the costs necessary for the appropriate collection of the claim, in particular the dunning charges incurred by us and all costs, expenses, cash outlays, in particular also the lawyer's fees incurred as a result of the default in payment in accordance with the tariff for the extrajudicial lawyer's dunning procedure as a supplement to the autonomous tariff of the Upper Austrian Bar Association. Notwithstanding any declarations of dedication to the contrary, we are entitled, even in the event of the existence of an execution title or in the event of execution, to use incoming sums of money at our discretion first to cover reminder charges, lawyers' fees, etc. and only last to cover interest and principal amounts.

## **5. Retention of title:**

The delivered goods shall remain our property until full payment of the purchase price (remuneration for work) including all ancillary costs or encashment of any bills of exchange or cheques given in payment. The retention of title with regard to the goods in question shall also apply to claims from other deliveries and shall therefore remain valid until all claims to which we are entitled from the customer, irrespective of the delivery, have been paid in full.

The customer is obliged to treat the reserved goods with care and to insure them adequately against all usual risks, in particular fire, theft and water risk. He shall provide us with proof of insurance cover upon request. At our request, the customer shall store the reserved goods separately and mark them as our property.

Claims of the customer against third parties due to loss of or damage to the reserved goods, in particular insurance claims and claims for damages, are hereby assigned to us. The customer shall obtain the authorisations of the debtors of such claims required for the assignment.

## **6. Delivery / Delivery time:**

We will inform the customer of the readiness for delivery. In this case, the customer shall immediately ensure that vehicles making the delivery can reach the construction site unhindered. The customer shall be responsible for careful unloading, transport to the installation site and proper storage of the material, as well as for ensuring that the delivered goods are stored well and safely. The customer shall therefore be liable for damage, destruction or loss of the material during the unloading process or of the stored material, e.g. due to fire, theft, etc.

The stated delivery time is non-binding. If a delivery time (delivery period) has been bindingly promised, we shall only be in default if the customer has set a grace period of at least 8 weeks in writing. The customer shall only be entitled to withdraw from the contract in the event of a delay in delivery if we are unable to make a binding delivery commitment within the grace period. Claims for damages may only be derived from delays in delivery in the event of intent or gross negligence. Force majeure of any kind, shortage of raw materials, unforeseen difficulties, including those caused by the nature of the manufacturing process, delays in delivery by sub-suppliers, operational restrictions, official measures or other unforeseen obstacles to manufacture or delivery, including strikes or lock-outs at our premises or those of our sub-suppliers, cases of illness at our premises, defective or untimely completion of preliminary work or foundation work to be provided by the customer, shall entitle us to exceed delivery times or to withdraw from the contract, in whole or in part, without the customer being entitled to subsequent delivery or compensation.

If delays occur in the execution of a project for which we are not responsible, the customer shall inform us immediately. In this case, delivery dates shall be agreed anew; previously agreed delivery dates shall lapse.

In the event of default of acceptance on the part of the customer, we shall be entitled to withdraw from the contract or to demand compensation for damages after granting a grace period of no more than 30 days.

If the preconditions to be fulfilled by the customer for the delivery are not met in accordance with the contract, any delivery deadlines shall not begin to run and any agreements on contractual or other contractual penalties shall become invalid. If delays occur in the execution of a project or the order for which we are not responsible, the customer shall inform us thereof in writing without delay. In this case, delivery dates are invalid.

Subsequent change requests from the customer can only be taken into account after order confirmation if production has not yet started.

If, for procedural or other reasons beyond our control, the order cannot be completed within a foreseeable period of time, we shall be entitled to demand full reimbursement of the expenses incurred up to that time in accordance with the contract with the customer. Furthermore, in this case we are entitled to declare withdrawal from the contract if the problems that have arisen cannot be solved within a reasonable period of time.

## **7. Shipping and handling:**

Unless otherwise agreed, shipment shall be for the account of the customer. At our request, the customer shall pay the transport costs directly or advance them.

## **8. Transfer of risk and acceptance:**

The risk shall pass to the customer as soon as the goods leave our location or one of our distribution warehouses. This also applies if the transport by ourselves or by our means of transport and we bear the transport costs.

If the acceptance of a work is to be carried out, the acceptance is free of form. The work shall be deemed to have been accepted upon commissioning at the latest.

If dispatch or delivery is delayed at the request of the customer, we shall be entitled to charge the customer storage charges amounting to 1/2 % of the invoice amount for each month or part thereof, commencing one month after notification of readiness for dispatch. This shall not affect any further claims on our part.

## **9. Installation and commissioning:**

At the customer's request, we shall undertake the installation and commissioning of the goods and equipment supplied by us against reimbursement of the travel and accommodation expenses, as well as the costs for working hours. Travelling and waiting times are charged as working time. Necessary official permits for installations and the operation of equipment are to be provided by the customer. The client's specialists must be present for supervision during all work.

By signing a drawing, sketch etc. of goods to be delivered by us, the customer approves both the type and dimensions of the goods.

The client shall ensure, at his own expense and responsibility, that the conditions for carrying out the work are met. Costs for any necessary scaffolding, climbing aids and other protective measures are not included in the calculated costs of the offer or order, unless expressly agreed.

## **10. Warranty:**

The object of the contract is goods which are usable in the sense of our brochures and descriptions contained in other business documents.

The customer is obliged to inspect the goods for defects immediately after delivery, even before they are unloaded from the lorry, and to report any defects to us in writing without delay. In the case of delivery by a carrier, the assertion of the defects shall be made by a note on the freight documents. The inspection obligation concerns in particular the number of packaged goods or colli delivered. We shall only be liable for defects of which we have been notified in due time and form.

The place of performance of the warranty is our registered office or place of business. Expenses and travel costs in connection with the fulfilment of warranty claims shall therefore be borne by the customer.

We provide a warranty for recognisable and hidden defects or for the absence of warranted characteristics. We shall have the right to choose whether a defect is remedied by improvement or replacement of the defective item in accordance with § 932 para. 2 ABGB.

Any further claims, for whatever legal reason, in particular for redhibitory action or price reduction, are excluded.

The statutory warranty period for movable goods is reduced to 6 months.

For consumer transactions, the statutory warranty period for used items is reduced to one year.

A right of retention with regard to payments to be made by the customer is excluded, as is a set-off of claims of the customer, of whatever kind, against our claims for payment.

Purely visual defects that do not impair the function of the system / equipment, e.g. missing zinc coating or paint, sharp edges, etc. Defects caused by disregard of installation, maintenance and other regulations; overuse or improper handling of delivery items; structural defects caused by insufficient roof construction, etc.; caused by auxiliary personnel provided by the customer (including those arranged by us but commissioned and paid for directly by the customer); caused by the customer himself by changing settings of the installation or similar; caused by the use of materials which the customer has not purchased from us.

The presumption of defectiveness according to § 924 ABGB is waived.

## **11. Product liability and compensation:**

Claims for damages outside the scope of application of the Product Liability Act, of whatever kind (non-performance damage, damage caused by delay, consequential damage caused by defects, damage based on contractual and tort liability), as well as recourse claims, of whatever kind, in particular those pursuant to § 933 b ABGB (Austrian Civil Code) are excluded, unless the circumstances causing the damage were caused by us through intent or gross negligence (in the case of consumer transactions, this provision does not apply to personal injury).

**12. Applicable law, place of performance and place of jurisdiction:**

Austrian substantive law shall apply. The applicability of the UN Convention on Contracts for the International Sale of Goods is excluded. The contractual language is German. The place of performance is the registered office of our company. The court with subject-matter jurisdiction at the registered office of our company shall have exclusive local jurisdiction to decide all disputes arising from this contract.

**13. Distance contracts:**

In the case of contracts concluded at a distance (internet, long-distance telephone, teleshopping, catalogues, etc.), the consumer may withdraw from the contract within a period of 7 working days, whereby Saturday is not considered a working day, pursuant to § 5e KSchG. The time limit begins with the day of receipt by the consumer for contracts for the delivery of goods and with the day of conclusion of the contract for contracts for the provision of services.

The consumer has no right of withdrawal from contracts for:

- Services the performance of which is commenced vis-à-vis the consumer as agreed within 7 working days (§ 5e par. 1 first sentence) from the conclusion of the contract,
- Goods or services whose price depends on the development of rates on the financial markets over which the entrepreneur has no influence,
- Goods that are manufactured according to customer specifications, that are clearly tailored to personal needs, that are not suitable for return due to their nature, that can spoil quickly or whose expiry date would be exceeded,
- Audio or video recordings or software, provided that the delivered goods have been unsealed by the consumer,
- Newspapers, periodicals and magazines with the exception of contracts for periodical printed matter (§ 26 par. 1 fig. 1),
- Betting and lottery services and
- Home deliveries or leisure services (§ 5c par. 4 fig. 1 and 2).

**14. Confidentiality obligation:**

The parties agree on unconditional secrecy regarding all matters which have become or will become known to them on the basis of their business relationship.

They shall also impose this confidentiality obligation on persons working for them, in particular workers, employees and the like.

For each individual breach of this confidentiality obligation, the contracting parties agree on a penalty of € 5,000 irrespective of damage and fault. Any further claims for damages or claims for injunctive relief or other claims arising from a breach of contract shall remain unaffected.

**20. Delivery time for individual and special machines:**

Delivery times for individual and special machines are up to 24 months. In the event of a delay in delivery, we shall be granted a period of grace, the duration of which shall depend on the production time of the machine concerned.

**21. Cancellation:**

If the customer cancels an order, he has to pay a cancellation fee in the amount of 35 % of the gross contract sum.

**22. Authority requirements:**

We only sell systems that comply with the approval regulations. It is the customer's responsibility to ensure that the emission limit values are not exceeded by means of noise protection measures such as extraction systems, chimneys, etc. In the case of heating systems, hay ventilation systems, aggregates and tanks, walls, enclosures etc. must be built by the customer at his own expense.

Safety measures of any kind prescribed by the authorities shall be carried out by the customer at the customer's expense.

It is also the customer's responsibility to obtain any necessary permits for the operation of installations and to fulfil any conditions imposed by the authorities at his own expense.

All disadvantages resulting from the non-fulfilment of these obligations shall be borne by the customer.

**23. Static calculations:**

If a static calculation is required for the assembly of the system to be delivered by us, this shall also be prepared at the expense of the customer. If the customer does not comply with this obligation and we suffer damage as a result, the customer shall compensate us for such damage.

**24. Provision of helpers:**

Helpers provided during assembly work exclusively under the instruction and on behalf of the customer; the customer is exclusively responsible for helpers and lifting aids provided. The customer shall indemnify us and hold us harmless against any claims arising from damage to these persons.

Only such helpers may be provided who are capable of carrying out the assigned work due to their age, training and state of health.

**25. Chick and pullet sales:**

In the case of sales of chicks and pullets, the General Terms and Conditions of Delivery and Sale of the Austrian Poultry Industry, as amended from time to time, shall be deemed to have been agreed as binding, unless otherwise agreed in these Terms and Conditions of Contract.

**26. Installation and maintenance instructions:**

Every new delivery from us is accompanied by installation and maintenance instructions. By accepting the delivery, the customer also confirms that he has accepted the installation and maintenance instructions. The proof that the installation and maintenance instructions were not handed over to the customer must therefore be provided by the customer.

**27. Enrolment:**

The customer is free to request training in the operation of the system and the individual components by a specialist from us, subject to a charge.

**28. Photographs:**

We are entitled to use photographs of supplied equipment and materials and properties on which they are erected and installed for advertising purposes free of charge. However, in the case of erection of construction signs and permanent installation of advertising boards, an agreement must be made with the customer.

**29. Travel and subsistence expenses:**

Travel and subsistence expenses of fitters shall in any case be borne by the customer, both for initial assembly and for assembly under warranty. For travel expenses, it is assumed that the fitters go home at least on weekends.