

GENERAL TERMS AND CONDITIONS OF SALE

Preamble

For more than 70 years, GLORIA has been synonymous with high-quality and technically advanced spraying equipment and innovative garden tools. GLORIA offers a comprehensive range of spraying equipment for demanding use in industry, trade or cleaning. Our product portfolio includes a wide range of pressure sprayers made of plastic, steel and stainless steel, piston-backed sprayers and gardening aids, including thermal and mechanical weeding and surface treatment. GLORIA always strives for the highest degree of innovation and to use the latest technologies in product development in order to present our customers with high-quality and convenient new products.

Article 1. Formation of the Contract

1.1.

The terms and conditions set out below shall form part of the Contract concluded with us.

1.2.

We hereby object to any counter confirmation, counteroffer or other reference by the Customer to his general terms and conditions; any dissenting terms and conditions of the Customer shall only apply if we have confirmed the same In Writing. The Last-Shot-Rule shall not apply.

1.3.

Our General Terms and Conditions of Sale shall apply to all subsequent transactions without any need of express reference thereto or Contract thereon at the conclusion of such transaction.

Article 2. Definitions

In these General Terms and Conditions of Sale and Services, the following terms shall have the meanings hereunder assigned to them:

- “Contract”:
the agreement In Writing between the parties concerning the supply of products as well as all appendices, including agreed amendments and additions In Writing to the said documents;
- “Gross Negligence”:
a conscious and voluntary disregard of the need to use reasonable care, which is likely to cause foreseeable grave injury or harm to persons, property, or both;
- “Liability”:
Liability is subject to fault implying at least negligence;
- “In Writing”:
communication by a document signed by both parties or by letter, fax, electronic mail and by such other means as agreed by the Parties;
- “The Product(s)”:
refer in this instrument to the sale of goods, including the supply of spare parts if necessary for the performance of the contractual duty.

Article 3. Orders

3.1.

The offer, order acknowledgment, order acceptance of sale of any Products covered herein is conditioned upon the terms contained in this instrument and will not be binding upon us unless assented In Writing. No modification of these General Terms and Conditions of Sale or our offers, order acknowledgments or Contracts is valid unless agreed or evidenced In Writing. Amendments or supplements to these General Terms and Conditions and/or our offers, order acknowledgments or Contracts shall be In Writing. This applies equally to a waiver of the written form.

3.2.

Unless otherwise expressly agreed In Writing, any indicated time of delivery or information hereto, be it In Writing or given verbally, shall be non-binding. Time of delivery is only of the essence if confirmed by us as such In Writing.

3.3.

It is agreed that any information relating to the Products and their use, such as weights, dimensions, capacities, performances, prices, colours and other data contained in catalogues, prospectuses, circulars, advertisements, illustrations, price lists, as well as information as to the time and terms of delivery and prices shall not take effect as terms of the

Contract unless expressly confirmed In Writing.

Article 4. Prices and Costs

4.1.

Unless otherwise agreed In Writing, our prices shall be in Euro and exclude any statutory VAT which shall be payable at the date of delivery. The prices do not include transport and are to be understood EXW (Incoterms ® 2020).

4.2.

However, should we bear any costs which, according to the Contract, are for the account of the Customer (e.g. for transportation or insurance under EXW), such sums shall not be considered as having been included in the Contract price and shall be reimbursed by the Customer.

4.3.

Prices agreed on former transactions do not apply to subsequent transactions unless expressly agreed so In Writing.

Article 5. Payment Conditions, Set-off

5.1.

Our price claims are net cash amounts and payable free of any deduction within 30 days upon the invoice date unless other payment terms shall have been agreed in writing. However, the Customer is only entitled to this deduction if all due invoices are paid at that time. Payments by Letter of Credit, drafts, promissory notes and cheques are not subject to discount.

5.2.

We shall accept Letters of Credit, drafts, promissory notes and cheques only upon specific written arrangement and only on account of payment. Any fees for discount bills or promissory notes shall be at the expense of the Customer and immediately payable.

5.3.

The Customer shall have no right to set off, retention or reduction unless the underlying counterclaims have been conclusively determined by a court or expressly acknowledged by us. Any retention or deduction for nonconforming Products is limited to the nonconforming Products provided the Customer having given notice of the lack of conformity in compliance with article 11.1.

5.4.

If the Customer's business shall be operated beyond the ordinary course of business which shall include, without limitation, acts of seizures or a situation where a protest in relation to promissory notes or cheques has been made, payments shall be delayed or even discontinued or judicial or out of court settlement or insolvency proceedings shall have been petitioned or opened or proceedings in accordance with or functionally equivalent an event of insolvency shall have been petitioned, then we shall have the right to declare all our claims arising from the business relationship as immediately payable, even if we shall have accepted promissory notes or cheques. The same shall apply if the Customer shall be in payment default towards us or other incidents shall surface which give rise to doubts about its creditworthiness. Moreover, we may in such event demand prepayments or a security deposit or rescind the Contract.

Article 6. Interest in Case of Delayed Payment

If the invoice amount shall not have been settled within 30 calendar days after the date of the invoice or at another due date, then we shall without the need to a separate warning notice have the right to recover default interest in an amount equalling 9 full percentage points above the rate of the main refinancing facility of the European Central Bank p.a.. Moreover, the Customer shall indemnify us to the extent of reasonable lawyer fees arising out of or in connection with the default of payment.

Article 7. Passing of Risk

The risk in respect of the Products supplied hereunder shall pass to the Customer on delivery of the Products by us at the place specified for delivery.

GENERAL TERMS AND CONDITIONS OF SALE

Article 8. Retention of title

8.1.

We shall retain full title of the Products that have been delivered until the Customer has discharged all claims arising from the business relationship which shall include any account balance and claims from refinancing or reverse promissory notes.

8.2.

With our consent In Writing, the Customer shall have the right to dispose of the Products delivered by us within the ordinary course of business. The authority granted hereunder shall cease in the cases referred to in article 5.4. Moreover, we may withdraw the Customer's sales authority through written notice if he is in breach of any obligation owed to us, in particular if he is in payment default or if we become aware of other incidents that give rise to doubts about his creditworthiness.

8.3.

The Customer's right to process the Products delivered shall also be subject to the limitations set out in paragraph 8.2. above. The Customer shall not acquire title to the fully or partly processed Products; the processing shall be free of charge for our benefit as manufacturer. If we should, for whatever reason, lose our rights under the retention of title, then it is hereby agreed between the Customer and us that we shall acquire title upon processing of the Products and the Customer shall remain custodian of the Products which shall be free of charge.

8.4.

If the Products in which we have retained title shall be inseparably assembled or mixed with Products that are third-party property, then we shall acquire co-title in the new Products or the mixed stock. The proportion of title shall follow from the proportion of the invoice value of the Products delivered by us under retention of title and the invoice value of the other Products.

8.5.

Products in which we shall acquire sole or co-title in accordance with article 8.3. and 8.4. shall, the same as with regard to the Products delivered under retention of title according to subsection 8.1. above, be regarded as Products delivered under retention of title for the purposes of the following paragraphs.

8.6.

The Customer hereby assigns to us all claims arising from the resale of the Products delivered under retention of title. Such claims shall also include claims against the bank which, within the scope of such sale, shall have issued or confirmed a letter of credit for the benefit of the Customer (= reseller). We hereby accept such assignment. If the Products delivered under retention of title shall be a processed good or a mixed stock, where, in addition to the Products delivered by us, only such Products exist that are either the property of the Customer or a third-party property as a result of a (simple) retention of title, then the Customer shall assign all of the claims arising from the resale. In the other case, i.e. in the event of a conflict between pre-assignment claims by other suppliers, we shall be entitled to receive any resale proceeds on a pro rata basis which shall be determined in proportion to the invoice value of our Products and the other processed or mixed Products.

8.7.

Where our claims shall be undoubtedly be secured through the assignment and retention by more than 20 per cent over the securable amount, any surplus of receivables and/or goods delivered under retention of title shall, upon demand of the Customer, be released.

8.8.

The Customer shall be authorized to collect any receivables arising from the resale of Products. Such authority shall cease to exist in the event that there shall no longer be an ordinary course of business as defined in the article 5.4. above. Moreover, we may withdraw the authority granted to the Customer to collect, if he is in breach of any obligation owed to us, in particular if he is in payment default or if we become aware of other incidents that give rise to doubts about his creditworthiness. If the above authority shall cease to exist or be withdrawn by us, then the Customer shall upon our demand immediately specify to us his debtors in the claims assigned and provide us with all information and documentation necessary for collection.

8.9.

In the event of any third-party action against our Products delivered under retention of title or any receivables assigned to us, the Customer shall notify such party of our property/

our right and immediately inform us about such action. The Customer shall bear the costs of any intervention.

8.10.

If the Customer is in breach of contract, in particular in payment default, then he shall, upon our demand, immediately return to us all Products delivered under retention of title and assign to us any repossession claims against any third party in conjunction with such Products. Any repossession or enforcement proceedings with regard to the Products delivered under retention of title shall not be regarded as a rescission of this Contract, unless expressly specified otherwise by us.

8.11.

In the cases referred to in article 5.4. above, we may require the Customer to inform us about the claims arising from the resale that have been assigned to us in accordance with article 8.6. above including his debtors. Following such information, we shall have the right to disclose the assignment as we consider appropriate.

8.12.

If, according to the laws of the country of destination (lex rei sitae), an extended clause of reservation of ownership is not valid, we reserve title to the Products to the extent permitted by the applicable law, this being at least a simple retention of title until full payment of the delivered Products.

Article 9. Contractual Terms of Delivery

9.1.

Unless otherwise agreed, delivery shall be "Ex Works" (EXW – Incoterms © 2020). Risk of damage to or loss of the Products shall pass to the Customer at the time when we notify the Customer that the Products are available for collection. In case of transportation organized by us, the risk passes to the Customer at the time of handing over of the Products to the carrier.

9.2.

Any agreed trade term shall be construed in accordance with the INCOTERMS © in force at the moment of formation of the Contract.

9.3.

We shall have the right to reasonable delivery in instalments.

Article 10. Delay in delivery

10.1.

When there is delay in delivery of any Products, the Customer is entitled to claim liquidated damages equal to 0.5% of the Contract price for each complete week of delay, provided the Customer notifies us of the delay. Where the Customer so notifies us within 15 days from the agreed date of delivery, damages will run from the agreed date of delivery or from the last day within the agreed period of delivery. Where the Customer so notifies us after 15 days of the agreed date of delivery, damages will run from the date of the notice. Liquidated damages for delay shall not exceed 5% of the price of the delayed Products.

10.2.

When we have not delivered the Products by the date on which the Customer has become entitled to the maximum amount of liquidated damages under article 10.1., the Customer may give notice In Writing to terminate the Contract with regard to such Products, if they have not been delivered to the Customer within 5 days of receipt of such notice by us.

10.3.

If the Parties have agreed upon a fixed delivery date, the Customer may terminate the Contract by notification to us with regard to Products which have not been delivered by such cancellation date.

10.4.

In case of termination of the Contract under this article, then in addition to any amount paid or payable under article 10.1., the Customer is entitled to claim damages for any additional loss not exceeding 10% of the price of the non-delivered Products.

10.5.

The remedies under this article exclude any other remedy for delay in delivery or non-delivery.

GENERAL TERMS AND CONDITIONS OF SALE

Article 11. Liability for Lack of Conformity

11.1.

The Customer shall examine the Products as soon as possible after their arrival at destination and shall notify us In Writing of any lack of conformity of the Products without delay from the date when the Customer discovers or ought to have discovered the lack of conformity. In any case the Customer shall have no remedy for lack of conformity if he fails to notify us thereof within 12 months from the date of arrival of the Products at the agreed destination.

11.2.

We shall not be liable for defects arising out of Products provided or a design stipulated or specified by the Customer. We shall only be liable for defects which appear under the conditions of operation provided for in the Contract and the proper use of the Product. Products will be deemed to conform to the Contract despite minor discrepancies which are usual in the particular trade or through course of dealing between the Parties, but the Customer will be entitled to any abatement of the price usual in the trade or through course of dealing for such discrepancies.

11.3.

Where Products are non-conforming and provided the Customer, having given notice of the lack of conformity in compliance with article 11.1., does not elect in the notice to retain them, we shall at our option:

- (a) replace the non-conforming Products with conforming Products, without any additional expense to the Customer, or
- (b) rectify the non-conforming Products, without any additional expense to the Customer, or
- (c) reimburse to the Customer the price paid for the non-conforming Products and thereby terminate the Contract with regard to those Products.

Defective parts or non-conforming Products which have been replaced shall be made available to us and shall be our property.

11.4.

The Customer shall be entitled to liquidated damages as quantified under article 10.1. for each complete week of delay between the date of notification of the nonconformity according to article 11.1. and the supply of substitute Products under article 11.3.(a) or repair under article 11.3.(b) above. Such damages may be accumulated with damages (if any) payable under article 10.1, but can in no case exceed in the aggregate 5% of the price of those Products.

11.5.

If we have failed to perform our duties under article 11.3. by the date on which the Customer becomes entitled to the maximum amount of liquidated damages according to that article, the Customer may give notice In Writing to terminate the Contract with regard to the non-conforming Products unless the supply of replacement Products or the repair is performed within 5 days of receipt of such notice by us.

11.6.

Where the Contract is terminated under article 11.3.(c) or article 11.5., then in addition to any amount paid or payable under article 11.4. as reimbursement of the price and damages for any delay, the Customer is entitled to damages for any additional loss not exceeding 5 % of the price of the non-conforming Product(s).

11.7.

Where the Customer elects to retain non-conforming Products, he shall be entitled to a sum equal to the difference between the value of the Products at the agreed place of destination if they had conformed with the Contract and their value at the same place as delivered, such sum not to exceed 15% of the price of those Products.

11.8.

With the exception of the provisions laid down in articles 10.1., 10.4., 11.1. to 11.7. above, there shall be no Liability towards the Customer for consequential and indirect damages, including, but not limited to loss of production or production time, loss of income, loss of profit, loss of use, loss of contracts, loss of Customers, loss of orders or loss of goodwill.

11.9.

The remedies under this article 11. are a full and final settlement of all or any claims whether under statute, common law or in equity of whatsoever nature that exists or may exist and to the exclusion of any other rights or remedies. However, the limitations of Liability contained in this instrument shall not apply when required by applicable mandatory law, such as in case of personal injury or death, claims under the scope of the Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products or where we are guilty of fraud, wilful conduct or Gross Negligence. In the case of Gross Negligence, our Liability is limited to the foreseeable damage at the time of the formation of the Contract.

11.10.

Our Liability for damages, to the extent agreed between the Parties, is subject to fault implying at least negligence on our part.

Article 12. Claims for Lack of Conformity

12.1.

Unless otherwise agreed In Writing, no action for lack of conformity can be taken by the Customer after 12 months from the date of arrival of the Product. It is expressly agreed that after the expiry of such term, the Customer will not plead non-conformity of the Product, or make a counter-claim thereon, in defence to any action taken by us against the Customer for non-performance of this Contract.

12.2.

When a defect in a part of the Product has been remedied, we shall be liable for defects in the repaired or replaced part under the same terms and conditions as those applicable to the original Product for a period of 12 months. For the remaining parts of the Product, the period mentioned in clause 12.1 shall be extended only by a period equal to the period during which and to the extent that the Product could not be used as a result of the defect.

Article 13. Intellectual Property Rights

We reserve our rights with regard to our intellectual property rights, patents, utility models, registered design, copyrights, trademarks or similar rights.

Article 14. Force Majeure

14.1.

“Force Majeure” means the occurrence of an event or circumstance (“Force Majeure Event”) that prevents or impedes us from performing one or more of our contractual obligations under the contract if such impediment is beyond our reasonable control, could not reasonably have been foreseen at the time of the conclusion of the contract and where the effects of the impediment could not reasonably have been avoided or overcome by us.

14.2.

Where we fail to perform one or more of our contractual obligations because of default by a third party whom we have engaged to perform the whole or part of the contract, we may invoke Force Majeure to the extent that the requirements under paragraph 14.1. of this Clause are established both for us and for the third party.

14.3.

In the absence of proof to the contrary, the following events shall be presumed to fulfil conditions under paragraph 14.1. of this Clause:
war (whether declared or not), hostilities, invasion, act of foreign enemies, extensive military mobilization; civil war, riot, rebellion and revolution, military or usurped power, insurrection, act of terrorism, sabotage or piracy; currency and trade restriction, embargo, sanction including secondary sanctions, boycott, limitations or disruption in supply or delivery as a consequence of an unregulated Brexit or an unregulated exit of another EU member state, act of authority whether lawful or unlawful, compliance with any law or governmental order, expropriation, seizure of works, requisition, nationalization; plague, epidemic, pandemic, natural disaster or extreme natural event; explosion, fire, water damage, destruction of equipment, prolonged break-down of transport, telecommunication, information system or energy including cyberattacks; general labor disturbance such as boycott, strike and lock-out, go-slow, occupation of factories and premises.

14.4.

We shall give notice of the event without delay to the Customer.

GENERAL TERMS AND CONDITIONS OF SALE

14.5.

If and when successfully invoking this Clause, we are relieved from our duty to perform our obligations under the Contract and from any liability in damages or from any other contractual remedy for breach of contract, from the time at which the impediment causes inability to perform, provided that the notice thereof is given without delay. If notice thereof is not given without delay, the relief is effective from the time at which notice thereof reaches the Customer.

14.6.

Where the effect of the impediment or event invoked is temporary, the consequences set out under paragraph 14.5. above shall apply only as long as the impediment invoked prevents performance by us of our contractual obligations. We must notify the Customer as soon as the impediment ceases to impede performance of our contractual obligations.

14.7.

We are under an obligation to take all reasonable measures to limit the effect of the event invoked upon performance of the contract.

14.8.

Where the duration of the impediment invoked has the effect of substantially depriving the Customer of what he was reasonably entitled to expect under the contract, either Party has the right to terminate the contract by notification within a reasonable period to the other Party. Unless otherwise agreed, the Parties expressly agree that the contract may be terminated by either Party if the duration of the impediment exceeds 120 days.

14.9.

Where paragraph 14.8. above applies and where either contracting Party has, by reason of anything done by another contracting Party in the performance of the contract, derived a benefit before the termination of the contract, the Party deriving such a benefit shall pay to the other Party a sum of money equivalent to the value of such benefit.

Article 15. Hardship

15.1.

We are bound to perform our contractual duties even if events have rendered performance more onerous than could reasonably have been anticipated at the time of the conclusion of the contract.

15.2.

Notwithstanding paragraph 15.1. of this Clause, where the continued performance of our contractual duties has become excessively onerous due to an event beyond our reasonable control which we could not reasonably have been expected to have taken into account at the time of the conclusion of the contract; and where we could not reasonably have avoided or overcome the event or its consequences, the Parties are bound, within a reasonable time of the invocation of this Clause, to negotiate alternative contractual terms which reasonably allow to overcome the consequences of the event.

15.3.

Where paragraph 15.2. of this Clause applies, but where the Parties have been unable to agree alternative contractual terms as provided in that paragraph, we are entitled to terminate the contract. The Customer cannot request adaptation by the judge or arbitrator without our agreement.

Article 16. Choice of Law

16.1.

Any questions relating to this Contract which are not expressly or implicitly settled by the provisions contained in the Contract itself (i.e. these General Terms and Conditions of Sale and Services and any specific conditions agreed upon by the parties) shall be governed:

(a) by the United Nations Convention on Contracts for the International Sale of Products (Vienna Convention of 1980, hereafter referred to as "CISG"), and

(b) to the extent that the provisions of the CISG do not apply according to articles 1 to 3 CISG or do not cover a specific area at issue, by reference to the substantial Swiss law.

16.2.

Any reference made to trade terms (such as EXW, FCA, etc.) is deemed to be made to the relevant term of Incoterms 2020 © published by the International Chamber of Commerce.

Article 17. Place of Performance and Forum

17.1.

The place of performance for deliveries of Products shall be the place of our business, unless otherwise agreed In Writing.

17.2.

Any disputes arising out of or in relation with this Agreement shall be finally settled under the Swiss Chambers' Arbitration Institution (SCAI) Rules of Arbitration by one or more arbitrators appointed in accordance with those Rules. The arbitral tribunal shall be composed of one or three arbitrators. The arbitral tribunal shall be composed of one arbitrator if the parties reach agreement hereto within 30 days after the statement of claim is received by the SCAI, otherwise it shall be composed of three arbitrators. The seat of the arbitration shall be Zurich, Switzerland. The arbitration shall be conducted in the German language. The applicable rules of law are those set forth in article 16 of these General Terms and Conditions of Sale. The parties expressly exclude any application for setting aside the arbitral award.

17.3.

All claims, disputes and controversies arising out of or in relation to the performance, interpretation, application, or enforcement of this Contract, including but not limited to breach thereof, shall be referred to Collaborative Law proceedings before, and as a condition precedent to, the initiation of any action or proceeding according to article 17.2. Collaborative Law is a manner in which disputes are attempted to be settled using attorneys trained in mediation and/or Collaborative Law to assist the Parties in working together and collaborating in order to find the best scenario that will work for both Parties with respect to their mutual and reasonable interests. If there is a failure to reach an agreement and one of the Parties seeks to go to arbitration, it is the end of the Collaborative process and the attorneys of each Party shall refrain from representing their Client(s) in court.

Article 18. Severability and Miscellaneous

18.1.

Each clause and sub-clause of these General Terms and Conditions of Sale shall be separate and severable from each other. In the event that any of the clauses or sub-clauses are deemed invalid or unenforceable this shall not affect the validity or enforceability of the other clauses or sub-clauses. Invalid clauses or sub-clauses shall be deemed to be replaced by such valid provisions that shall be suitable to implement the economic purpose of the deleted clause or sub-clause to the greatest extent possible. This shall apply accordingly to any lacunae in the Contract.

18.2.

In case of ambiguity or conflicting interpretation of legal terms, the terms contained in this instrument are to be construed according to the applicable law.

18.3.

All section headings are for convenience of reference only and shall not affect the interpretation of these General Terms and Conditions of Sale.

Contact:

GLORIA HAUS- & GARTENGERÄTE GMBH

Därmanbusch 7

58456 Witten

Germany

Fon: 0049 (0) 23 02 / 7 00 0

Fax: 0049 (0) 23 02 / 7 00 46

E-Mail: info@gloria-garten.com

Version 8/2020