Gymnova – Terms and Conditions

Sales on our web site are ruled by their specific terms and conditions

1. Definition and interpretation

In these conditions

'**GVA**' means **Gymnova** (with its registered office 45 rue Gaston de Flotte, BP 56, 13375 Marseille Cedex 12, France under number 395080138 RCS Marseille, with VAT number FR45395080138

'**BUYER**' means the person or company who accepts a quotation of GVA for the sale of the Goods and related services if any (delivery, instalment) or whose order for the goods is accepted by GVA

'**CONDITIONS'** means the standard terms and conditions of the sale set out in this document and (unless the context other wise requires) includes any special terms and conditions agreed in writing between the Buyer and GVA

'**CONTRACT**' means the contract for the purchase and sale of the Goods and related services if any

'**GOODS'** means the goods (including any instalment of the goods or any parts for them) which GVA is to supply in accordance with these conditions.

'RELATED SERVICES' means any instalment of the goods or any parts for them, and delivery if any

2. Basis of sale and service

GVA shall sell and the Buyer shall purchase the Goods in accordance with any written quotation by GVA which is accepted by the Buyer, or any written order of the Buyer which is accepted by GVA, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.

Goods are new products, except promotional offer of second hand equipment on our website for a limited time and clearly identified items.

No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and GVA

Any services to be supplied by GVA to the Buyer ('the Services') shall be detailed on the quotation and shall be subject to the following additional term:

The Buyer shall supply to GVA without charge and within such a time as not to delay GVA in the execution of the Services all information requested by GVA and the Buyer shall give such assistance as shall reasonably be required by GVA in the execution of the Services;

The Buyer shall facilitate the speedy granting to GVA and any of its personnel of unrestricted access to all sites and locations necessary for the execution of the Services; and

GVA shall endeavour to complete the Services within the period or periods stated on the face of the quotation or as agreed in writing between the parties but time shall not be the essence. In the event that GVA is delayed or impeded in the execution of the Services by reason of the Buyer's failure to provide information, access, facilities or other services, which it is duty to provide or by reason of any matters beyond GVA's control, GVA shall be entitled to an extension of time for completion of the Services and reasonable remuneration including overhead costs and profit consequent thereon.

GVA's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by GVA in writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed.

Any advice or recommendation given by GVA or its employees or agents to the buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by GVA is followed or acted upon entirely at the Buyers own risk, and accordingly GVA shall not be liable for any such advice or recommendation which is not so confirmed.

Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by GVA shall be subject to correction without any liability on the part of GVA

3. Orders and Specifications.

No order submitted by the Buyer shall be deemed to be accepted by GVA unless and until confirmed in writing by GVA authorised representative. .

The Buyer shall be responsible to GVA for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving GVA any necessary information relating to the Goods within a sufficient time to enable GVA to perform the Contract in accordance with its terms.

The quantity, quality and description of and any specification for the Goods shall be those set out in GVA's quotation (if accepted by the Buyer) or the Buyers order (if accepted by GVA).

GVA reserves the right to make any changes in the specifications to the Goods which are required to conform with any applicable statutory or EC requirements or, where the Goods are to be supplied to GVA specification, which do not materially affect their quality or performance.
No order which has been accepted by GVA may be cancelled by the Buyer except with the agreement in writing of GVA and on terms that the Buyer shall indemnify GVA in full against all loss (including loss of profit), cost (including the cost of all labour and materials used), damages, charges and expenses incurred by GVA as a result of cancellation.

4. Price of the Goods

The price of the Goods shall be GVA quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in GVA's published price list current at the date of acceptance of the order. Where the goods are supplied for export from France, GVA shall apply charge transport depending on the incoterm specification.
All prices quoted are valid for 3 months only or until earlier acceptance by the Buyer, after which time they may be altered by GVA without giving prior notice to the Buyer.
Invoices are payable in euros only, unless otherwise negotiated with GVA.
GVA reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to GVA which is due to any factor beyond the control of GVA (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the cost of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give GVA adequate information or instructions.
Except as otherwise stated under the terms of any quotation of in any price list of GVA, and unless otherwise agreed in writing between the Buyer and GVA, all prices are given by GVA on an "ex works" basis, and where GVA agrees to deliver the Goods otherwise than at GVA's premises, the Buyer shall be liable to pay GVA charges for transport, packaging and insurance.
The price is exclusive of any applicable Value Added Tax, which the Buyer shall be additionally liable to pay to GVA.

5. Terms of Payment

Subject to any special terms agreed in writing between the Buyer and GVA, GVA shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event GVA shall be entitled to invoice the Buyer for the price at any time after GVA has notified the Buyer that the Goods are ready for collection or (as the case may be) GVA has tendered delivery of the Goods.
The Buyer shall pay the price of the Goods (less any discount to which the Buyer is entitled, but without any other deduction) on order unless otherwise accepted in written by GVA.
In the case GVA has negotiated specific terms of payment, at its sole discretion, shall determine that the Buyer should not be extended credit and may demand payment in full prior to any work or delivery. GVA shall be entitled to recover the price, not withstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer.
Payments shall be made by wire transfer to our CIC Bank account (IBAN: FR 76 1009 6181 0200 0242 0040 136) or any secured payments (stand by letters, letters of credit…).
The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to GVA, GVA shall be entitled to: cancel the contract or suspend any further deliveries to the Buyer; appropriate any payment made by the Buyer to such of the Goods (or the Goods supplied under any other contract between the Buyer and GVA) as GVA may think fit (notwithstanding any purported appropriation by the Buyer); and charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 11% per annum above REFI base rate from time to time, until payment in full is made.

5. Delivery

Delivery of the Goods shall be made by the Buyer collecting the Goods at GVA's premises (factory), except as otherwise incoterm accepted by GVA, at any time after GVA has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by GVA, by GVA delivering the Goods to that place.
Any dates quoted for delivery of the Goods are approximate only and GVA shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be the essence of the contract unless previously agreed by GVA in writing. The Goods may be delivered by GVA in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by GVA to deliver any one or more of the instalments in accordance with these Conditions or any claim be the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
If GVA fails to deliver the Goods (or any instalment) for any reason other than any cause beyond GVA's reasonable control or the Buyer`s fault, and GVA is accordingly liable to the Buyer, GVA's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.
If the buyer fails to take delivery of the Goods or fails to give GVA adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer`s reasonable control or by reason of GVA's fault) then, without prejudice to any other right or remedy available to GVA, GVA may: store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

6. Freight

Shipments will be sent third party prepaid (unless otherwise specified according the incoterm). Discounts that GVA has negociated with specific carriers, in most cases, are passed on to our customer. To avoid interruption of service, please establish credit with GVA preferred carriers prior to shipment. If a shipment cannot be sent third party, GVA may prepay and add freight to the Buyer's invoice.

6. Risk and Property

Risk of damage to or loss of the Goods shall pass to the Buyer: in the case of Goods to be delivered at GVA`s premises, at the time when GVA notifies the Buyer that the Goods are available for collection ("ex-works" incoterm); or in the case of Goods to be delivered otherwise than at GVA`s premises, at the time defined by the related incoterm, and, if the Buyer wrongfully fails to take delivery of the Goods, the time when GVA has tendered delivery of the Goods.
Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall pass to the Buyer when GVA delivers the goods to the carrier at GVA's premises.
Nevertheless, the Buyer shall hold the Goods as security, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured, (but shall be entitled to resell or use the Goods in the ordinary course of its business), until GVA has received full payment of the price of the Goods and all other goods agreed to be sold by GVA to the Buyer for which payment is then due.
Until such time as the payment is completely cleared (and provided the Goods are still in existence and have not been resold), GVA shall be entitled at any time to require the Buyer to deliver up the Goods to GVA and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the security for GVA, but if the Buyer does so all moneys owing by the Buyer to GVA shall (without prejudice to any other right or remedy of GVA) forthwith become due and payable.

7. Warranties and liability

Subject to the conditions set out below:
GVA warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of 24 months from the date of their initial use or 24 months from delivery, whichever is the first to expire. Nevertheless second hand products will be guaranteed only 12 months. The above warranty is given by GVA subject to the following conditions:
GVA shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow GVA's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without GVA's written approval; GVA shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment; the above warranty does not extend to parts, materials or equipment not manufactured by GVA, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to GVA.
Subject as expressly provided in these Conditions, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

8. Claims

Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified

to within 2 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify GVA accordingly, the Buyer shall not be entitled to reject the Goods and GVA shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to GVA in accordance with these conditions, GVA shall be entitled to replace the Goods (or the part in question) free of charge or, at GVA's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), but GVA shall have no further liability to the Buyer.
Product may be returned to GVA after obtaining a signed Return Authorization Form/ Number from a duly authorized employee of GVA. Return Form/ number are cancelled after 30 days. Items returned without an RA# will be refused. Goods will not be received unless they are in marketable condition. Please do not take a credit for the returned product until a Credit Memo has been issued. The replacement invoice will be credited upon receipt of the defective part if, after inspection, it is found to be under warranty.

9. General

Except in respect of death or personal injury caused by GVA's negligence, GVA shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of GVA, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, and the entire liability of GVA under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these Conditions.

GVA shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of GVA's obligations in relation to the Goods, if the delay or failure was due to any cause beyond GVA's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond GVA's reasonable control:
Act of God, explosion, flood, tempest, fire or accident, war or threat of war, sabotage, insurrection, civil disturbance or requisition; acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority; import or export regulations or embargoes; strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of GVA or of a third party); difficulties in obtaining supplies, raw materials, labour, fuel, parts or machinery; power failure or breakdown in machinery.

Insolvency of Buyer

This clause applies if: the Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or an encumbrancer to possession, or a receiver is appointed, of any of the property or assets of the Buyer; or (where relevant) Buyer ceases, or threatens to cease, to carry on business; or GVA reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly. If this clause applies then, without prejudice to any other right or remedy available to GVA, GVA shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

General

Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
No waiver by GVA of any breach of the Contract by the Buyer shall be considered as a waiver of any antecedent or subsequent breach of the same or any other provision. If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.
Where reference is made in these conditions to matters being agreed by the Buyer and GVA "in writing" that phrase shall mean matters agreed by way of exchange of letters or facsimile message or by any other written supplement to these terms signed by authorised signatories of the Buyer and a director of GVA.

10. Governing law

The sales contract shall be governed by and construed in accordance with the French law and any dispute shall be sorted out by the Tribunal de Commerce de Marseille, France.