

TERMS OF SALE AND DELIVERY **(as per: 01.03.2008)**

§ 1 General provisions

1. Our terms of sale and delivery shall apply exclusively; any general terms used by the customer which conflict with, or deviate from, our terms of sale are not acknowledged by ourselves, unless we have expressly approved of their validity in writing. Our terms of sale and delivery shall also apply if we carry out deliveries to the customer without reservation upon knowledge of the existence of customer terms conflicting with, or deviating from, our terms of sale and delivery.
2. Any agreements reached between ourselves and the customer with regard to the execution of this contract are to be set down in writing in this contract.
3. Our terms of sale and delivery are valid only in relation to natural persons or legal entities or partnerships capable of holding rights, acting in the execution of a commercial or self-employed professional activity.
4. Our terms of sale and delivery apply for all present and future business relationships with the customer.

§ 2 Offer and conclusion of contract

1. Our offers are subject to confirmation and not binding. Declarations of acceptance and all orders require our written confirmation in order to be legally valid. The same applies for amendments, modifications or supplementary agreements.
2. We reserve title and copyrights to illustrations, drawings, calculations and other documents; they may not be made accessible to third parties. This applies in particular for such written documents which have been labelled "confidential"; The customer requires our expressed written approval before passing them on to third parties.
3. The contract shall be concluded under reservation of the correct and timely delivery to ourselves by our suppliers. This only applies if the non-performance has not originated in our sphere of responsibility, in particular in case of a congruent hedging transaction with our supplier. The customer shall be informed without undue delay of the lack of availability of the supply. Any effected payments shall be reimbursed without undue delay.

§ 3 Price, price adjustment clause, payment terms

1. In so far as the order confirmation does not state otherwise, our prices shall apply "ex works", plus packaging; this will be invoiced separately.
2. Due to considerable price fluctuations in the market of raw materials, we are forced to include the following provision:
We reserve the right to modify our prices, should cost reductions or cost increases occur after the conclusion of the contract of at least 3 % compared to the prices on which the calculation of the offer had been based, in particular due to changes in material prices. We shall substantiate these to the customer upon request (price adjustment clause).
3. Statutory value added tax is not included in our prices; it shall be shown separately in the invoice at the percentage valid on the date the invoice is issued.
4. Deduction of cash discounts must be agreed separately in writing.
5. In so far as the order confirmation does not state otherwise, the purchase price shall be due for payment net (without deductions) within 14 days from the invoice date. Should the customer be in default with his payments, we shall be entitled to request payment of default interest to the amount of 8% above the applicable discount rate of the German Federal Bank p.a. Should we be able to prove default damages exceeding this amount, we shall be entitled to assert these. However, the customer is entitled to prove to us that no, or substantially less, damage has occurred as a consequence of the default in payment.
6. Partial deliveries shall be invoiced immediately, and shall be due for payment each for itself, independent of the completion of the total delivery; pre-payments at the time of the conclusion of the contract shall be set off on a pro rata basis against the individual partial deliveries unless otherwise agreed.

7. The customer shall only be entitled to set-off rights if his counter-claims have been determined in a legally binding way, are undisputed or have been acknowledged by us. Furthermore, he shall only be entitled to execute rights of retention in as far as his counter-claim is based on the same contractual relationship.

§ 4 Delivery, delivery time

1. We shall not be liable for delays in delivery and performance due to force majeure and due to events which considerably impede delivery for us or make it impossible – in particular including strikes, lock-outs, official directives etc, even if they occur with our suppliers or their sub-suppliers –, and even in cases where time limits or dates have been agreed bindingly. Such events shall entitle us to postpone the delivery or performance for the duration of the obstruction plus an adequate lead time, or to withdraw, entirely or in part, from the contract for the part not performed yet.

2. Should the obstruction last for more than three months, the customer shall be entitled, after setting an adequate additional time limit, to withdraw from the contract with regard to the part not yet performed. Should delivery time be extended or should we be discharged from our obligations, the customer shall not be entitled to derive claims for damages from this. We shall only be entitled to call upon the above mentioned circumstances if we have informed the customer of them without undue delay.

3. We are entitled to effect partial deliveries and partial performance at any time.

4. Should the customer be in default in his obligation to take delivery or should he violate other obligations of co-operation, we shall be entitled to request payment for the damage resulting from this, including any possible additional expenses. In such cases, the risk of accidental loss or accidental deterioration of the purchased goods shall pass to the customer at the time when his default in his obligation to take delivery commences.

5. Insofar as the customer collects the purchased goods from one of our factory premises, he, or the person assigned by him, shall be obliged to request to be handed out the “Betriebsordnung für Fremdfirmen” (Factory Regulations for External Companies) before entering the factory premises. The provisions of the factory regulations are to be categorically adhered to on our factory premises. We shall not be liable for damages to the customer or his vicarious agents incurred due to a violation of the factory regulations. The customer shall be liable to the full extent for any damages due to violations of the factory regulations committed by persons assigned by him

§ 5 Passing of risk, packaging costs

1. The risk of accidental loss or accidental deterioration of the goods shall pass to the customer at the time of delivery, in the case of sales by delivery to a place other than the place of performance, at the time of handing over the goods to the forwarder, carrier or any other person or entity named for the execution of the shipment.

2. Should the customer be in default in taking the delivery of the goods, this shall be treated as an effected delivery.

3. Insofar as this is requested by the customer, we shall cover the delivery by a transport insurance; the costs incurred through this shall be borne by the customer.

4. Transport packaging and all other packaging under the packaging rules will not be taken back. The customer is obliged to provide for the disposal of the packaging at his own expense.

§ 6 Warranty

1. The customer's warranty rights only exist if he has properly fulfilled his obligations of examination and notification of defects owed pursuant to § 377 HGB (German Commercial Code).

2. We shall first of all provide warranty by remedy or new production, at our option. The customer undertakes to make defective goods available for remedy in a suitable room which the technicians assigned by us shall be granted access to from Monday to Saturday in two shifts. Furthermore, electricity, water, compressed air and, if the customer has this available, fork lifts are to be provided as necessary. Should several work-pieces in one delivery be defective, the customer is obliged to make these work-pieces available simultaneously in a suitable room, in order to permit remedy within one session.

3. Insofar as we seriously and finally refuse performance, insofar as we refuse to remedy the defect or to provide subsequent performance due to disproportionate costs, insofar as the subsequent perform-

ance is unsuccessful or unreasonable for us, the customer can, at his option, only request reduction of the price (price reduction - Minderung) or annulment of the contract (withdrawal - Rücktritt) and damages within the framework of the limitation of liability (§ 7) instead of the performance. In cases of slight lack of conformity with the contract, in particular in cases of insignificant defects, the customer shall not have a right to withdraw from the contract.

4. Insofar as the violation of an obligation that has caused a defect has not arisen within our sphere of responsibility, the customer shall not be entitled to withdraw from the contract.

5. Rights of the customer due to defects not concerning a building or a work that consists of the provision of planning and monitoring services for a building are subject to a limitation period of one year from the acceptance of the work. This short limitation period shall not apply if we can justifiably be accused of gross negligence or in cases of damages caused within our sphere of responsibility to the customer's body or health or in cases of the customer's loss of life. Our liability under the Produkthaftungsgesetz (German Product Liability Act) also remains unaffected.

6. Should defects be fraudulently concealed or should a guarantee for the quality have been taken over by ourselves, further claims by the customer remain unaffected.

7. The customer will not be granted any guarantees under German laws by us.

8. Any liability for normal wear and tear is excluded.

9. Warranty claims against us are due only to the direct customer, and can not be assigned.

10. If a submitted production drawing is not expressly objected to, it shall be deemed to have been approved of. All important functional measures are to be defined and to be deposited as check measurements. Dimensions not labelled as check measurements will not be guaranteed by Gebhardt. Gebhardt reserves the right to carry out modifications. Should no special measuring methods or measuring points have been stipulated for check measurements, Gebhardt shall be free to define them themselves.

§ 7 Limitations of liability

1. In cases of slightly negligent violations of duties, our liability shall be restricted to the average direct damage which is foreseeable and typical for the contract according to the type of the work. This shall also apply for slightly negligent violations of duties by our legal representatives or our vicarious agents.

2. We shall not be liable for the slightly negligent violation of non-essential contractual duties.

3. The above limitations of liability do not apply for claims by the customer on the grounds of product liability. The limitations of liability do not apply in cases of damages caused within our sphere of responsibility to the customer's body or health or in cases of the customer's loss of life.

§ 8 Reservation of title

1. We reserve our title to the delivery object up until the receipt of all payments from the existing business relationship with the customer. This reservation of title refers to the recognised balance. Should acts by the customer violate the contract, in particular in cases of default in payment or violations of duties pursuant to No. 2 and 3 of this provision, we shall be entitled to withdraw from the contract and request the goods to be returned to us. After taking back the delivered object we shall be authorised to utilise it and to set off the proceeds from the utilisation – less adequate utilisation costs – against the customers' outstanding payments. We shall be entitled to take possession of the purchased goods in cases of withdrawal; the customer expressly approves of this, so that this will not be considered as "verbotene Eigenmacht" (unlawful interference).

2. The customer is obliged to look after the delivered object carefully; in particular, he is obliged to insure it at his own expense sufficiently at the replacement value against damages caused by fire, water and theft. Insofar as maintenance and inspection work is necessary, the customer is to carry out such work in good time and at his expense.

3. In cases of seizures or other interventions by third parties, the customer is to inform us without undue delay in writing, so that we can file action pursuant to § 771 ZPO (German Civil Procedure Code). Insofar as the third party is unable to reimburse the judicial and extra-judicial costs of an action pursuant to § 771 ZPO, the customer shall be liable to us for the loss incurred.

4. The customer is entitled to re-sell the delivery object in a diligent course of business, however, he already now assigns to us all claims, up to the sum of the final invoice sum (including value added tax) of our receivables, which he has against his purchasers or against third parties from the re-sale, re-

ardless of whether the delivery object is sold without or after prior processing. The customer shall maintain the right to collect such amounts even after the assignment. Our power to collect such sums ourselves, remains unaffected. However, we undertake not to collect such sums as long as the customer fulfils his payment obligations from the obtained proceeds, as long as he is not in default with payments and in particular as long as no application has been filed for the opening of insolvency proceedings or the execution of out-of-court settlements with the creditors on the adjustment of debts (§ 305 Section 1 No. 1 InsO – German Insolvency Code), and as long as there are neither protests of cheques or of bills of exchange nor a cessation of payments. However, should this be the case, we may request that the customer notify us of the assigned receivables and their respective debtors, provide us with all information necessary for the collection, hand out the corresponding documents and notify the debtor (third party) of the assignment. The entitlement for collection refers to the entire balance of the sums receivable.

5. Processing or remodelling of the delivery object by the customer is always done for our benefit. Should the delivery object be processed together with other objects not belonging to us, we shall obtain joint ownership in the new object to the proportion of the value of the delivery object compared with the value of the other processed objects at the time of processing. What has been said for the delivery object delivered under reservation of title, shall be valid for the object resulting from the processing as well.

6. Should the delivery object be inseparably blended with other objects not belonging to us, we shall obtain joint ownership in the new object to the proportion of the value of the delivery object compared with the value of the other blended objects at the time of blending. If blending is done in a way that the customer's object is to be regarded as the principal object, it shall be deemed to have been agreed that the customer transfers joint ownership to us on a pro rata basis. The customer shall keep the resulting sole ownership or joint ownership for us free of charge.

7. At the time of a cessation of the authority to collect receivables as defined in Section 4 of this clause, the customer shall no longer be entitled to build in the reserved title goods, to blend them inseparably or to process them.

8. The customer shall also assign to us his claims against third parties resulting from the amalgamation of the purchase object with real estate property. This includes the right to the granting of a mortgage (Sicherungshypothek) ranking above other claims. We accept the assignment.

9. Should reserved title goods be installed by the customer into his own real estate property as an essential component, the customer now already assigns to us the claims resulting from the commercial sale of the real estate property or of rights to the real estate, to the value of the reserved title goods including all ancillary rights and ranking above other claims. We accept the assignment.

10. We undertake to discharge securities we are entitled to, upon the customer's request, insofar as the value of our realisable securities exceeds the claims to be secured by more than 45% (20 % value deduction, 4 % § 171 Section 1 InsO, 5 % § 171 Section 2 InsO plus statutory value added tax). The realisable value shall, unless the customer proves a lower realisable value of the reserved title goods, be the customer's purchase price or, in cases of processing of the reserved title goods, the production costs of the security collateral or the joint ownership share, in all cases less an admissible evaluation deduction of a maximum of 45 % of the claim to be secured (20 % value deduction, 4 % § 171 Section 1 InsO, 5 % § 171 Section 2 InsO plus statutory value added tax) to compensate for possible losses. The choice of the securities to be discharged is at our discretion.

§ 9 Place of jurisdiction, place of performance, applicable laws

1. Unless otherwise stipulated in the order confirmation, the place of performance shall be Cham.

2. The exclusive place of jurisdiction for all disputes arising out of this contract shall be our place of business, Cham. This also applies for cases where the customer has no general place of jurisdiction in Germany or where the customer's ordinary place of abode at the time action is filed is unknown.

3. German laws shall apply exclusively. The application of the UN Convention on Contracts for the International Sale of Goods is excluded.

§ 10 Severability clause

1. Should individual provisions in this contract with the customer, including the present general terms and conditions, be or become invalid, whether entirely or in part, this shall not affect the validity of the remaining provisions.
2. The regulation which has become entirely or partially invalid is to be replaced by a regulation which comes as close as possible to the economic outcome of the invalid regulation.
3. A waiver of the above general terms and conditions must be effected in writing. This also applies for this requirement of the written form.

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