

# Terms of sale and delivery

(As at: 01.05.2018)

## Section 1: General Provisions

Our terms of supply and delivery shall apply exclusively; any general terms used by the customer which conflict with or deviate from our terms of sale shall not be acknowledged by us. Our terms of sale and delivery shall also apply if we carry out deliveries without reservation with knowledge of the existence of customer terms which conflict with or deviate from our terms of sale and delivery.

Any agreements reached between us and the customer with regard to the execution of this contract are to be set down in writing in this contract.

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.

Our terms of sale and delivery shall apply to all present and future relationships with the customer.

## Section 2: Offer and Conclusion of Contract

The contract shall be concluded with the reservation that our suppliers deliver to us correctly and in a timely manner. This shall only apply if the non-delivery is due to circumstances beyond our control, in particular if a congruent hedging transaction was concluded with our supplier. The customer shall be informed of the non-availability of the service without undue delay. Any effected payments shall be reimbursed without undue delay.

We reserve title and copyrights to illustrations, drawings, calculations and other documents; they may not be made accessible to third parties. This shall apply in particular to such written documents which have been labelled "confidential"; the customer requires our express written approval before passing them on to third parties.

### In general:

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 shall apply to supplements, amendments or supplementary agreements.

### Onlineshop:

#### Sale contract

The product range on our website is not binding, the customer makes a binding purchase offer with his order. This purchase offer is not automatically accepted with a first confirmation email (confirmation of receipt), but only manually by a second email (order confirmation). If the customer has not received an order confirmation within 2 working days, he is no longer bound by his order.

#### Rental racks

The product range on our website is not binding, the customer makes a binding offer with his order. The lease does not come automatically with a first confirmation email (confirmation of receipt), but only by the signing of the lease by both parties. A copy of the rental contract will be sent to the customer by e-mail within two working days.

## Section 3: Price, Price Adjustment Clause, Payment Terms

Unless the order confirmation states otherwise, our prices shall apply "ex works", plus packaging; this shall be invoiced separately.

Due to considerable price fluctuations in the raw material market, we are forced to include the following provision: We reserve the right to modify our prices if cost reductions or cost increases of at least 3% com-

pared to the costs taken as a basis for cost estimation occur after conclusion of the contract, in particular due to changes in material prices. We shall substantiate these to the customer on request (price adjustment clause).

Statutory value added tax is not included in our prices; it shall be shown separately on the invoice at the percentage value.

Deduction of cash discounts must be agreed separately in writing.

Unless the order confirmation states otherwise, the purchase price is payable net (without deductions) within 14 days from the invoice date. Should the customer be in default with his payments, we are entitled to request payment of default interest, amount according to the legal rate. Should we be able to prove damage caused by default exceeding this amount, we shall be entitled to claim this damage. However, the customer is entitled to prove to us that no or substantially less damage occurred as a consequence of the default in payment.

Partial deliveries shall be invoiced immediately and shall be due for payment separately, regardless of the completion status 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.

The customer shall be entitled to exercise rights of retention insofar as his counter-claim is based on the same contractual relationship.

#### **Section 4: Delivery, Delivery Time**

We shall not be liable for delays in delivery and performance due to force majeure or due to events which considerably impede delivery for us or make it impossible –in particular strikes, lock-outs, official directives, etc., even if they occur at our suppliers or their sub-suppliers – and even in cases where deadlines 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, in whole or in part, from the contract due to the part not performed yet.

Should the obstruction last for more than three months, the customer shall be entitled to withdraw from the contract in view of the part of the contract not performed yet after fixing an adequate additional time limit. Should the 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 invoke the named circumstances if we have informed the customer of them without undue delay.

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

Should the customer be in default of acceptance or should he violate other co-operation obligations, we shall be entitled to request payment for the resulting damage, 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 he is in default of acceptance.

If the customer collects the purchased goods from one of our factory premises, he or a person commissioned by him shall be obligated to request to be handed out the "Werksordnung" (Factory Regulations for External Companies) before entering the factory premises. It is imperative that the provisions of the factory regulations are observed on our factory premises. We shall not be liable for damage to the customer or his vicarious agents caused by a violation of the factory regulations. The customer shall be fully liable for any damage due to violations of the factory regulations committed by the persons commissioned by him.

#### **Section 5: Passing of Risk, Packaging Costs**

The risk of accidental loss and accidental deterioration of the goods shall pass to the customer at the time of delivery, in case of sale by dispatch upon delivery of the goods to the forwarder, carrier or any other third parties named for the execution of shipment.

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

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

Transport packaging and all other packaging subject to packaging ordinances are non-returnable. The customer is obligated to arrange the disposal of the packaging at his own expense.

## **Section 6: Warranty**

The customer's warranty rights only exist if he has properly fulfilled his obligations to inspect and to give notice of defects owed pursuant to Section 377 of the HGB (German Commercial Code).

In the event of defects covered by warranty, we shall initially amend the defect through rework or new production, at our option. The customer undertakes to make defective goods available in a suitable room to which the technicians commissioned by us shall be given access 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 be defective in one delivery, the customer is obligated to make these work-pieces available simultaneously in a suitable room, in order to permit rework in one session.

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 performance is unsuccessful or unreasonable for us, the customer can, at his option, only request reduction of payment (price reduction) or annulment of the contract (withdrawal) and demand compensation within the scope of the limitation of liability (Section 7) instead of performance. In case of a slight lack of conformity with the contract, in particular in case of insignificant defects, the customer shall not have a right to withdraw from the contract.

Insofar as we are not responsible for the violation of an obligation arising from a defect, the customer shall not be entitled to withdraw from the contract.

Claims on the part of the buyer due to material deficiency of new goods are subject to a limitation period of one year from handover / delivery of the object of purchase to the customer. Exempted from this are claims for defects of consumers and claims for damages due to injury to life, body or health and / or claims for damages due to gross negligence or intentional damage caused by the seller. In that regard, the statutory limitation periods apply. Our liability under the German Product Liability Act shall also remain unaffected.

Should defects be fraudulently concealed or if we provide a guarantee for the quality, further claims on the part of the customer shall remain unaffected.

We shall not offer any guarantees within the meaning of German law to the customer.

Any liability for wear and tear is excluded.

Only the direct customer is entitled to assert defect liability claims against us; these warranty claims are not transferable.

If a submitted production drawing is not expressly rejected, it shall be deemed approved. All main functional dimensions must be defined and recorded as check dimensions. Dimensions not labeled as check dimensions shall not be guaranteed by GEBHARDT. GEBHARDT reserves the right to carry out modifications. Should no special measurement methods or measuring points have been specified, GEBHARDT shall be at liberty to freely define them itself.

## **Section 7: Limitations of Liability**

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

We shall not be liable for slightly negligent violation of non-essential contractual obligations.

The above limitations of liability shall not apply to claims on the part of the customer arising from product liability. Furthermore, the limitations of liability shall not apply in respect of any damage resulting from bodily injury or damage to the customer's health or loss of the customer's life for which we are responsible.

## Section 8: Reservation of Title

We reserve our title to the delivered items until receipt of all payments from the existing business relationship with the customer. This reservation of title refers to the recognised balance. In the event of behaviour of the customer that is in breach of contract, in particular in case of default of payment or violation of an obligation pursuant to No. 2 and 3 of this provision, we shall be entitled to withdraw from the contract and demand the return of the goods. After taking back the delivered items, we shall be entitled to utilise them and to set off the proceeds from the utilisation - less adequate utilisation costs - against the customer's outstanding payments. In the event of withdrawal, we shall be entitled to take possession of the purchased goods; the customer shall expressly approve this so that this is not deemed to be unlawful interference with the possession of another.

The customer is obligated to take good care of the delivered items; in particular he is obligated to insure the items sufficiently at replacement value for fire, water and theft damage at his own expense. Insofar as maintenance and inspection work is necessary, the customer is required to carry out such work in a timely manner and at his own expense.

In the event of seizures or other interventions by third parties, the customer is required to inform us without undue delay in writing, so that we can file action pursuant to Section 771 of the 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 Section 771 of the ZPO (German Civil Procedure Code), the customer shall be liable to us for the loss incurred.

The customer is entitled to resell the delivered items in a diligent course of business; however he shall already now assign to us the right to all accounts receivable to which he is entitled against his purchaser or third parties as a result of resale, up to the level of the final invoice amount (including VAT), irrespective of whether the delivered items were resold with or without modifications. The customer shall still be entitled to collect these accounts receivable even after their assignment. Our power to collect these accounts receivable ourselves shall remain unaffected. However, we undertake not to collect such accounts receivable as long as the customer fulfils his payment obligations, 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 regarding the adjustment of debts (Section 305 Paragraph 1 No. 1 of the InsO - German Insolvency code), and as long as there are neither protests of cheques or bills of exchange nor a cessation of payments. However, should this be the case, we may request the customer to notify us of the assigned accounts receivable and their respective debtors, provide us with all information necessary for collection, hand out the corresponding documents and notify the debtor (third parties) of the assignment. The entitlement to collection refers to the entire balance of the accounts receivable.

Any modification or change to the delivered items carried out by the customer is always done on our behalf. Should the delivered item be processed with other items which do not belong to us, we shall acquire joint ownership of the new item in proportion to the value of the delivered item compared to the other processed items at the time of processing. The same shall apply to the object resulting from processing as well as to the delivered item supplied under reservation of title.

Should the delivered item be inseparably blended with other items which do not belong to us, we shall acquire joint ownership of the new item in proportion to the value of the delivered item compared to the other blended items at the time of blending. If blending is carried out in such a way that the item belonging to the customer can be regarded as the principal component, then it is deemed to be agreed that the customer transfers joint ownership to us on a pro rata basis. The customer shall retain the resulting sole ownership or joint ownership for us free of charge.

At the time of a cessation of the authority to collect accounts receivable pursuant to Paragraph 4 of this provision, the customer shall not longer be entitled to incorporate, inseparably blend or process the goods subject to retention of title.

If the client connects the delivery item or the new goods with real estate, he shall, without the need for further special explanations, also assign his claim, which he is entitled to as remuneration for the connection, to the amount invoiced by the contractor the price of the delivery item.

Should the goods subject to retention of title be installed by the customer in his own real estate property as an essential component, the customer shall already now assign to us the accounts receivable resulting from the commercial sale of the real estate property or of rights to the real estate property, amounting to the value of the goods subject to retention of title, including all ancillary rights and ranking above other accounts receivable. We shall accept the assignment.

We undertake to release the securities due to us at the request of the customer, insofar as the realisable value of our securities exceeds the accounts receivable to be secured by more than 10 %. Unless the customer proves a lower realisable value of the goods subject to retention of title, the realisable value shall be the customer's purchase price or, in case of processing of the goods subject to retention of title, the production costs of the security collateral or the joint ownership share, less an admissible evaluation deduction to compensate for possible losses. The choice of securities to be released is at our discretion.

### **Section 9: Place of Jurisdiction, Place of Performance, Applicable Law**

Unless otherwise stipulated in the order confirmation, the place of performance shall be Cham. The exclusive place of jurisdiction for all disputes arising from this contract is our place of business, Cham. German law applies to the exclusion of the UN purchasing law (CISG).

### **Section 10: Severability Clause**

Should individual provisions in this contract with the customer, including the present general terms and conditions, be or become invalid, whether in whole or in part, this shall not affect the validity of the remaining provisions.

The regulation which has become entirely or partly invalid is to be replaced by a regulation which comes as close as possible to the economic outcome of the invalid regulation.

A waiver of the above general terms and conditions must be effected in writing. The same shall apply to this requirement of the written form.

GEBHARDT Logistic Solutions GmbH  
Frühlingstr. 2 – 3  
93413 Cham, Germany