

# Terms and conditions of sale, delivery, and payment of Gebhardt Fördertechnik GmbH

## I. General terms

- (1) All offers, orders, and deliveries of Gebhardt Fördertechnik (hereinafter called GF) are subject to the following terms and conditions and to the terms of separate contracts with the customer, should such contracts exist. Even with the acceptance of an order, any deviating conditions of purchase of the customer do not become part of the contract.
- (2) If not otherwise specified, a contract is formed when the customer receives the written order confirmation by GF.
- (3) Should the information in the order confirmation differ from the offer or order, the written order confirmation of GF shall be regarded as definitive, if the customer does not file an objection to said confirmation within 10 days of dispatch of said confirmation.
- (4) GF retains the proprietary right and copyright of any samples, cost estimates, calculations and other physical information – including information in electronic form. Third parties may be granted access to this information only with the express and written consent of GF.

## II. Prices and payment

- (1) The offers of GF are always subject to confirmation. The prices specified are prices ex works exclusive of packing, loading, shipping, customs duties and the applicable legal VAT. The prices are specified in Euro. If a different currency has been agreed on, all fluctuations in the exchange rate of said currency and the Euro which take place after the date of the order confirmation and are to the disadvantage of GF shall be borne by the customer.
- (2) Payment is to be made without any deduction; 1/3 of the invoice amount is to be paid 10 days after dispatch of the order confirmation, 1/3 upon notification of readiness for shipment, and the rest within 30 days after delivery. Deliveries with a value of up to 250.00 Euro are shipped COD only. Bills of exchange and checks are discounted only with express consent of GF. Such discounting is on account of payment only. Discount, bill, collection, and bank charges, and taxes are to be paid by the drawer of the bill or check.
- (3) If the customer does not make payment within the agreed time limit, GF is entitled to charge penal interest in the amount of the respective current account rates of its house bank, but at least in the amount of 8 percentage points above the base interest rate of the European Central Bank. The same applies in the event that GF grants a delay in payment.
- (4) If, after conclusion of the contract, GF receives information about the customer's credit rating which seriously endangers the completion of the contract, GF is entitled to refuse performance of its contractual obligations until the customer has fulfilled his obligations or has furnished security.
- (5) The customer is not entitled to withhold payment or net the payment sum with counterclaims unless said counterclaims are undisputed or have been legally acknowledged.

## III. Delivery

- (1) The scope of obligations is stipulated in the written order confirmation of GF. Documents and information such as brochures, catalogs, diagrams, pictures, descriptions and technical data, and samples and indications of dimensions and weight are noncommittal, unless GF has acknowledged them in the order confirmation or in any other written form.
- (2) Partial deliveries are permitted, if they are reasonable for the customer.
- (3) If the order confirmation of GF does not stipulate a fixed delivery date, the delivery periods and deadlines indicated are noncommittal. If a fixed delivery date is exceeded by more than one month for reasons that are within the responsibility of GF, the customer is entitled to set GF a reasonable time period – at least 6 weeks – within which to make performance. If GF does not make performance within this grace period, the customer has the right to withdraw from the contract.
- (4) Prerequisites for a delivery on schedule are the timely settlement of all technical and financial questions, the timely receipt of all documents to be provided by the customer, and compliance with the terms of payment agreed on (receipt of the letters of credit agreed on).

- (5) The meeting of the delivery deadline is also subject to the correct and timely delivery of parts and materials to GF. GF will notify the customer as soon as possible of any delays to be expected.

- (6) If failure to meet delivery deadlines is due to force majeure, labor disputes or other events outside the control of GF, the delivery period shall be extended reasonably. If delivery is delayed by more than 3 months due to the above causes, both parties are entitled to withdraw from the contract.

- (7) If delivery, that is to say acceptance of the item delivered, is delayed for reasons within the customer's responsibility, the customer shall be charged the costs incurred as a result of the delay, beginning one month after he has been notified of the item's readiness for shipment/delivery.

## IV. Passage of risk and acceptance

- (1) Loading and shipment of the ordered item is at the customer's risk, even if these operations are performed by GF employees. The risk passes to the customer with dispatch of the notification of the item's readiness for shipment.

- (2) If the item is not called off despite the notification of readiness for shipment, GF is entitled to use its discretion to store the goods at the customer's risk and expense or to put the goods into storage somewhere else at the customer's expense.

- (3) If the customer does not accept goods or performances offered or delivered to him, GF can extend the time period for acceptance by 4 weeks. After this period, GF is entitled to withdraw from the contract and/or claim damages. The damages claim shall amount to at least 15% of the agreed price, notwithstanding the possibility to furnish proof of a higher loss.

## V. Reservation of ownership

- (1) The delivered items remain the property of GF until all claims to which GF is entitled from the entire business relations with the customer have been paid. The transfer of individual claims to an open account, and the balancing out and confirmation of balance remain unaffected by the reservation of ownership.

- (2) In the event that the GF makes use of its right to take back items delivered under reservation of ownership, the customer shall grant GF the irrevocable right of free access to the rooms in which the property of GF is kept.

- (3) The customer is entitled to resell items delivered under reservation of ownership only within the scope of normal business operations. The items may not be pledged or assigned as security.

- (4) In the event of a resale or further processing of the item delivered, the customer hereby assigns the claims he holds against his buyer in the amount of the claim of GF to GF; an additional or explicit declaration of assignment is not required. GF hereby accepts the assignment.

- (5) Notwithstanding the assignment and the concomitant right to collect the assigned claims, the customer retains his rights for as long as he fulfills his obligations resulting from the entire business relation with GF.

- (6) In the event of an application for the opening of insolvency proceedings, GF is authorized to withdraw from the contract and demand the immediate return of the item delivered.

- (7) Collected funds are to be placed in a separate account by the customer and held in safe custody for GF. At the request of GF, the customer shall provide GF with all information on the assigned claims which is necessary for payment; in particular, such information includes the name and address of the debtor and a detailed description of the claim. The customer shall provide GF with the required documents and inform his buyers of the assignment.

- (8) The customer is not entitled to dispose in any way of the claim assigned to GF in advance; in particular, he is not authorized to transfer the claim to an open account or to conclude a factoring contract about the claim. If, for any reason whatsoever and in spite of the above provisions, the claim is transferred to an open account in a legally effective manner, the customer hereby assigns all claims to which he is entitled from the respective individual balances and the right of termination of the open account relationship to GF. GF accepts the assignment.

- (9) If the customer reprocesses an item delivered by GF, such reprocessing shall be regarded as being performed for GF but shall not result in any obligations for GF. If GF obtains joint ownership due to the processing, combination, incorporation or association of an item delivered under reservation of ownership with other goods not owned by GF, then GF's ownership share in the new item shall correspond to GF's share in the products from which this new item was made. At the request of GF, the customer shall inform GF of the location of this new item.

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- (10) If the value of the securities provided exceeds the value of the claims held by GF by more than 20% in total, the securities at the disposal of GF shall be reduced accordingly.
- (11) GF is entitled to sell the item it has taken back by private contract in order to make the best possible profit from it, provided that the customer has been given due warning of GF's intention and been granted a reasonable time and notwithstanding the customer's continuing obligation to pay.
- (2) Irrespective of the legal ground, GF is not liable for damage which does not directly concern the delivered item unless
- such damage was caused with intent,
  - the proprietor, agents, executive officers, or vicarious agents acted with gross negligence,
  - such damage is a culpable injury of life, body and health,
  - such damage is due to defects which GF has maliciously concealed or whose absence it has warranted,
  - such damage is due to defects of the delivered item, insofar as the Product Liability Act stipulates liability for injury to persons or damage to privately used property.

## VI. Warranty claims and damages

GF gives the following warranty for defects in title and redhibitory defects of the items delivered, excluding any further claims and subject to section VII paragraphs (2) and (3)

### Redhibitory defects:

- (1) Parts which turn out to be defective due to a circumstance that occurred before the passage of risk shall be either reworked free of charge to rectify the defect or exchanged for a part without defects at the discretion of GF. GF must be notified immediately and in writing of such defects. Exchanged parts become the property of GF. After consultation with GF, the customer shall give GF adequate time and opportunity for any rework and spare part deliveries which GF deems necessary. Otherwise, GF shall be relieved from liability for any damages that are due to the defect.
- (2) The customer is not authorized to rectify the defect himself or have it rectified by a third party and demand compensation for the expenses incurred from GF unless he is faced with the emergency of a threat to operating safety or is trying to prevent unreasonably extensive damage. GF must be notified immediately of such measures.
- (3) If GF does not rectify a redhibitory defect or deliver spare parts within a set time limit and if none of the legal exceptions apply, the customer is entitled to withdraw from the contract within the framework of legal regulations.
- (4) If the defect is of an immaterial nature, the customer is merely entitled to a reduction of the purchase price. In all other cases, such a price reduction is excluded.
- (5) Defects in title:
- (6) If the utilization of a delivered item leads to a violation of domestic industrial property rights or copyrights the supplier will, at his own expense, obtain for the customer the right of continued use or modify the delivered item in a way reasonable for the customer so that the violation of property rights no longer exists.
- (7) If this proves to be impossible in economically reasonable conditions or within a reasonable time limit, the customer may withdraw from the contract. Under the above-mentioned circumstances, GF is also entitled to withdraw from the contract. The customer may claim rights arising from a violation of property rights or copyright only on condition that:
- the customer has immediately notified GF of the asserted violation of industrial property rights or copyrights,
  - the customer lends reasonable support to GF in the defense against the asserted claims or permits GF to perform the modifications specified in section VI. (1),
  - GF can reserve the right to carry out all defensive measures including out-of-court settlements,
  - the defect in title is not due to an instruction of the customer, and
  - the violation of property rights and copyrights was not due to unauthorized modification or nonconforming use of the delivered item.

## VII. Liability

- (1) If the delivered item cannot be used by the customer as stipulated in the contract due to an omitted or faulty execution, due to propositions or advice made or given before or after conclusion of the contract or due to the violation of other subsidiary obligations, the provisions of section VI. and section VII. (2) and (3) apply and all other claims are excluded.

- (3) In case of a culpable violation of contractual obligations, including delayed performance, GF's liability is limited to the immediate average damage typical to the contract and foreseeable based on the nature of the goods. With the exception of a violation of the "cardinal obligations", GF shall be relieved of liability for a violation of obligations due to ordinary negligence of its legal representatives or vicarious agents.

## VIII. Statutory limitation

All claims of the customer – irrespective of the legal ground – become barred by limitation 12 months after delivery. In case of claims for damages pursuant to section VII, (2), a) to e), the legal time limits apply. These time limits also apply to defects of constructions or to delivered items which were used – in a manner consistent with their usual utilization – for a construction and caused the defectiveness of said construction.

## IX. Applicable law and place of jurisdiction

- (1) All legal relations between the supplier and the customer are subject exclusively to the laws of the Federal Republic of Germany; choice-of-law rules are excluded.
- (2) The competent authority for all disputes between businessmen regarding deliveries and services of GF and for any disputes regarding obligations effective prior to the conclusion of the contract or regarding the formation of a contract is the local court with subject-matter jurisdiction at the headquarters of GF.
- (3) GF may file a suit at the headquarters of the customer as well.