

# Gebert GmbH & Co. KG

## General Terms and Conditions of Sale and Delivery

as of: 05/2018



*These Sales Conditions apply to all entrepreneurs, legal entities under public law and special funds under public law.*

### 1. General provisions

All agreements, deliveries, supply contracts, offers and contracts are based on our terms and conditions, even if in the future we do not expressly refer to them and regardless of whether we refer to them in each individual case. By placing an order or accepting a delivery, you accept our terms and conditions. We do not consider differing terms and conditions set by our Contractual Partner and not expressly accepted by us to be binding, even if we do not expressly object to them. All previous terms and conditions of sale and delivery are hereby invalid. We retain unrestricted property and copyright exploitation rights to our cost estimates, drawings and other documents. The documents may only be made accessible to third parties with our prior consent and must be returned to us immediately upon request if the order is not placed with us.

### 2. Offers and conclusion of contracts

Our offers are non-binding; they only become binding with our order confirmation in textual form. We reserve the right to make technical changes as well as changes in shape, colour and / or weight within reasonable limits. Orders, amendments and additions to the contract as well as additional agreements must be made in textual form. Orders placed with us by telephone are considered accepted when the goods and invoice are dispatched or handed over.

### 3. Prices and payment

Unless fixed prices for delivery have been expressly agreed upon, the prices valid at the time of delivery are applied. Our prices are in Euros and ex works, excluding packaging plus value added tax and do not include transport, postage, customs, taxes and insurance costs. We reserve the right to deliver goods to new customers only against cash on delivery or prepayment. A minimum order surcharge of € 25.00 plus VAT will be added to small orders below a net order value of € 100.00 (Germany) or € 200.00 (abroad).

If delivery is made more than 4 months after the order, we are entitled to pass higher production costs arising from increased wages or material costs on to the Purchaser. In this case, the prices that are valid on the day of delivery shall apply. Full payment of the invoice is due within 10 days of the date on the invoice. The Purchaser is considered to be in default of payment no later than 30 days after receipt of the invoice. This does not affect the fact that the Purchaser can be placed in default by means of a reminder. Discount deductions can only be applied if they are listed on the invoice and if the Purchaser has settled all outstanding invoices with us or settles them all at once. If the Purchaser is in default of payment, the interest rate on default is governed by Section 288 of the German Civil Code (Bürgerliches Gesetzbuch, BGB). However, we reserve the right to claim further damages.

Bills of exchange and cheques are only accepted on account of performance. Bills of exchange are accepted without warranty for protest, only by arrangement and on condition that they can be discounted. Discount charges are calculated from the due date of the invoice amount.

If a due date for payment or if a partial payment has been agreed upon and justified doubts arise as to the Purchaser's ability to pay, in particular if payment of an instalment is delayed by more than 14 days, payments have been suspended or insolvency proceedings have been filed against the Purchaser's assets, our full claim becomes due for immediate payment, regardless of the date on any bills of exchange that may have been accepted. The Purchaser can only offset against our claims if the Purchaser's counterclaim is undisputed or a legally binding title exists; the Purchaser can only assert right of retention if it is based on claims from the corresponding contract.

If the Purchaser is in default of payment of two consecutive agreed instalments, we may, after setting a reasonable grace period, withdraw from the contract without prejudice to our rights under item 3 or claim damages for non-performance.

### 4. Delivery, transfer of risk, shipping and transport

Our delivery obligations are conditional upon complete and accurate deliveries being made by us or our own suppliers.

For orders of custom-made products, over- or under-delivery of up to 10% is permissible and will be accounted for in the invoice. We reserve the right to customary deviations on the dimensions stated for the goods that we are to deliver, unless we have expressly assured compliance with dimensions.

We are entitled to make reasonable split deliveries. Failed payment on a delivery entitles us to refuse further deliveries. If dispatch of the ordered goods is delayed due to circumstances for which the Purchaser is responsible, the risk is transferred to the Purchaser upon receipt of the notice of readiness for dispatch.

Unless otherwise agreed upon in writing between the parties, delivery is made at the Purchaser's risk and expense. The risk of accidental loss or deterioration is transferred to the Purchaser upon delivery to the shipping agent, no later, however, than when the goods leave the factory or warehouse, regardless of whether the shipment is made from the place of performance and of who bears the transport charges.

If the goods are ready to be shipped and dispatch of the ordered goods is delayed due to circumstances for which the Purchaser is responsible, the risk is transferred to the Purchaser upon receipt of the notice of readiness for dispatch.

We are not obliged to take out insurance. At the Purchaser's express request and at its expense, we will insure the goods against theft and transport damage. Packaging will be charged at order and cannot be returned.

When an order is placed based on samples provided to us, we endeavour to deliver true to the submitted sample. Minor deviations which are not considered relevant by industry standards must be accepted by the Purchaser.

### 5. Delivery times

Delivery and performance dates must always be confirmed by us in writing. Delivery and performance dates cannot be agreed upon without our written confirmation. In principle, the delivery period is considered to be approximate - even if it has been confirmed in writing. Drop-dead dates are not accepted.

The delivery period begins on the day the order confirmation is dispatched, and delivery time is met if the goods leave the factory by the end of the delivery period or if they are ready for dispatch and notification of this is given.

The delivery period does not begin until all technical and commercial details related to order processing have been definitively clarified. The delivery period does not begin before the documents, approvals, releases, materials, tools and devices to be provided by the Purchaser have been obtained and the agreed payment is received.

Agreed delivery periods shall be extended appropriately - even in the context of a delay in delivery - if unforeseeable obstacles beyond our control occur, such as strikes, lock-outs, operational disruptions, delays in the delivery of preliminary materials, regardless of whether we or our suppliers are affected by these obstacles. We will immediately inform the Purchaser of such circumstances. We shall not be held responsible for such circumstances even if we are already in default. If such circumstances occur, we are entitled to withdraw from the contract. In such cases, the Purchaser may withdraw from the agreement after a reasonable grace period has passed without effect. Claims for damages by the Purchaser are excluded in such cases.

If the contract is subsequently amended, the delivery period shall be extended accordingly. In the event of a delay in delivery on our part, the Purchaser must grant us a reasonable grace period (at least 4 weeks) with the warning of refusal to accept performance after its expiry. If this period expires without effect, the Purchaser is entitled to withdraw from the contract. Further claims for damages by the Purchaser due to delay in delivery are excluded, unless the Supplier or its managerial staff can be accused of intent or gross negligence. Under no circumstances can the Purchaser demand compensation for lost profit.

### 6. Default of acceptance

If the Purchaser is in default of acceptance, we are entitled to set a grace period; if said period expires without effect we are entitled to withdraw from the contract in full or in part and claim damages for non-performance.

### 7. Ownership and retention of title

We retain ownership of the delivered goods until all our pending claims against the Purchaser have been fulfilled. If the value of the security interests to which the Supplier is entitled exceeds the overall amount of the secured claims by more than 20%, the Supplier shall release a corresponding part of the security interests at the Purchaser's request. The Purchaser is entitled to resell the delivery items owned by us in the ordinary course of business. However, the Purchaser hereby assigns to us all claims from this resale; we accept this assignment. The Purchaser is entitled to collect the claim also after assignment. Our entitlement to collect the assigned claims ourselves remains unaffected, however, we undertake not to collect them so long as the Purchaser meets its payment obligations. If the Purchaser exercises the right to collect, we shall be entitled to the collected proceeds in the amount of the delivery price that we agreed to with the Purchaser for the goods subject to retention of title. Payments received on our behalf are to be administered in trust for us. At our request, the Purchaser must provide the information required for collection of the assigned claims and inform the debtors of the assignment.

Any treatment and processing of the goods subject to retention of title shall be carried out by the Purchaser on our behalf (Section 950 of the German Civil Code) without any obligations for us arising as a result. If the goods subject to retention of title are processed, combined, mixed or blended with other goods that do not belong to us, we shall be entitled to a co-ownership share of the new item in proportion to the invoice value at the time of processing, mixing, combining or blending. If the Purchaser acquires sole ownership of the new item, the contractual partners agree that the Purchaser shall grant us co-ownership of the new item in proportion to the invoiced value of the processed or combined, mixed or blended reserved goods and shall keep them in custody for us free of charge. If the goods subject to retention of title are resold together with other goods, regardless of whether this occurs with or without processing, combination, mixing or blending, the advance assignment agreed to above shall apply only in the amount of the invoice value of the goods subject to retention of title that are resold together with the other goods. The Purchaser must immediately inform us of any enforcement measures on goods subject to retention of title or claims previously assigned to us, seizures thereof or other actions thereon by third parties by handing over the documents required for an intervention.

### 8. Warranty, liability and notice of defects

8.1 The condition of the goods is defined exclusively by the agreed technical delivery specifications. In the event that we are to make deliveries in accordance with drawings, specifications, models etc. by our Partner, the latter bears the risk of suitability for the intended purpose. The point in time at which risk is transferred is decisive in determining whether the condition of the goods complies with the contract.

8.2 We will not be liable for material defects caused by unsuitable or improper use, defective installation or commissioning by the Purchaser or a third party, fair wear and tear, defective or negligent handling, nor for the consequences of improper modifications and modifications made without our consent or maintenance work carried out by the Purchaser or third parties. The same applies for defects which reduce the value or suitability of the item to an insignificant extent.

8.3 The Purchaser is obliged to meet its obligation to inspect and submit complaints in compliance with Section 377 of the German Commercial Code (Handelsgesetzbuch, HGB) as a prerequisite for making any claim on the basis of defects. Here, it must examine the delivery immediately or, at the latest, one week from receipt, for any defects and notify us where defects are discovered. If there is a defect that is imputable to us, we are entitled to choose whether to rectify the delivery or to replace it. Within the scope of supplementary performance, we are obliged to reimburse the Purchaser for the expenses required to remove the defective goods and for installation or fitting of repaired goods or subsequently delivered defect-free goods. Reimbursement of costs is excluded, insofar as expenses increase due to the fact that the goods are taken to another location after our delivery, unless this is in conformity with the intended use of the goods. This shall apply accordingly to claims for reimbursement of expenses by the Purchaser pursuant to Section 445a (seller's recourse) of the German Civil Code, provided that the last contract in the supply chain is not a consumer goods purchase. If one of the two types of subsequent performance or both prove impossible or unreasonable, we are entitled to refuse them. For as long as the Purchaser fails to meet payment obligations to an extent that reflects the defect-free portion of the performance, we are entitled to refuse subsequent performance. 8.4 If the rectification or replacement delivery does not occur within a reasonable period - taking into consideration of our delivery possibilities - or if the rectification and/or replacement delivery fails, the Purchaser may demand a reduction of purchase price or withdraw from the contract.

8.5 Unless otherwise provided for below (par. 7), further claims by the Purchaser are excluded, regardless of their legal grounds (in particular claims arising from a breach of principal or subsidiary contractual obligations, reimbursement of expenses with the exception of that pursuant to Section 439 II of the German Civil Code, unlawful acts or other tortious liability); this applies in particular to damages not caused to the delivery item itself and to claims for loss of profit; claims which do not result from the defectiveness of the purchased object are also included.

8.6 The preceding provisions also apply if a different item or a smaller quantity is delivered. 8.7 The exclusion of liability regulated in paragraph 5 does not apply insofar as an exclusion or limitation of the liability for damages from injury to life, limb, or health has been agreed upon and said injury is caused by an intentional or grossly negligent violation of duties by the user; the exclusion of liability does not apply either insofar as an exclusion or limitation of liability for other damages is agreed upon and said damages are caused by an intentional or grossly negligent violation of the duties by a legal representative or agent of the user. Insofar as we culpably breach a contractual or material obligation, liability is not excluded, but limited to foreseeable damages that are typical of the agreement; it is otherwise excluded pursuant to par. 5. Furthermore, the exclusion of liability does not apply if liability exists under product liability law for personal injury for material damage to privately used objects. It also does not apply in the event of assumption of a guarantee and assurance of a feature, if a defect thereby covered triggers our liability. The above shall apply also to reimbursement of expenses.

8.8 Claims on subsequent performance, damages and reimbursement of expenses become time-barred one year after delivery of the purchased object. This does not apply to an object which has been used according to its usual purpose for a construction and has caused its defectiveness; in this case, claims shall only lapse after 5 years. Claims on reduction and exercise of the right to withdraw from the contract are excluded, insofar as the subsequent performance claim has lapsed. The Purchaser may, however, refuse payment of the purchase price in the event of clause 3 insofar as it would be entitled to do so based on withdrawal or reduction; in the event of exclusion of withdrawal and a subsequent refusal to pay, we are entitled to withdraw from the contract.

8.9 The Purchaser's right of recourse against us in accordance with Section 445a (seller's recourse) of the German Civil Code shall only exist insofar as the Purchaser has not made any agreements with its customer that exceed the statutory claims for defects.

### 9. Right to refuse performance, right of retention and offsetting

If counterclaims by the Purchaser are acknowledged by us or if they are established in court, the Purchaser can offset them against us or refuse or withhold services. If we do not recognise the counterclaims or they have not been recognised by a court, the customer cannot refuse or withhold its services because of its counterclaims or use them for offsetting.

### 10. Moulds and tools, infringement of rights and patents

Moulds, tools and other devices manufactured by us to carry out the order shall remain our property until the costs incurred have been paid separately from the respective order. If only pro rata costs for moulds / tools / devices are charged, we retain ownership of the moulds / tools.

If tools / moulds / devices are manufactured according to documents provided by the Purchaser, then the Purchaser is responsible for the accuracy of the drawings, dimensions and figures included therein. If tools / moulds / devices are provided by the Purchaser, the Purchaser is obliged to check that they are suitable and free of errors. Defective deliveries and services resulting from unsuitability or errors do not entitle the recipient to exercise warranty rights. The Purchaser is instead obliged to accept these deliveries and services and pay the agreed price for them.

The Purchaser is liable for infringement of third-party property rights when presenting documents for the production of tools / moulds / devices or presenting finished tools / moulds / devices.

If the goods are manufactured and delivered following a design specified by the Purchaser (e.g. according to drawings or samples), the Purchaser guarantees that the design does not infringe third-party rights, in particular patents, utility models and other industrial property rights and copyrights. The Purchaser is obliged to release us from all third-party claims which may arise from such an infringement.

### 11. Place of performance, place of jurisdiction, miscellaneous

The place of performance for all obligations arising from the contractual relationship is our business premises.

Insofar as the Purchaser is a merchant, a legal entity under public law or a special fund under public law, the location of our headquarters shall be the place of jurisdiction. This also applies if the Purchaser is not a merchant but has no general place of jurisdiction in Germany, if the Purchaser moves its place of business, residence or habitual residence outside Germany after concluding the contract or if the place of business etc. is not known at the time the action is filed.

The contractual relationship shall be governed exclusively by the law of the Federal Republic of Germany, under exclusion of UN Sales Law.

We consider collateral or additional agreements to be binding only if they have our express confirmation in textual form.