

General Sales, Delivery and Assembly Terms of GERB Schwingungsisolierungen GmbH & Co. KG

For use in business relations with businesses and public clients

As per May. 15th, 2006

I. General Provisions

1. The present terms of GERB Schwingungsisolierungen GmbH & Co. KG (hereinafter referred to as Supplier) regulate all sales, deliveries or assembly work. Any deviating agreements must be concluded in writing. Deviating terms by the Purchaser/Ordering Party will not become part of the contract even where the orders are accepted notwithstanding.
2. The Supplier reserves the ownership right and copyright to all drawings and technical information provided by him. Such information may only be made wholly or partially accessible to third parties with the prior written consent of the Supplier. The same will apply to reproduction of said documents.
3. Unless otherwise agreed, the valid "VDMA-Terms for the Delivery of Machines for National Business and VDMA Terms for Assembly Work within the Country" will apply.

II. Retention of Title

1. The sale and supply of all goods is subject to retention of title pursuant to §§ 449, 929, 158 Sect. 1 BGB. The contractual item will remain the property of the Supplier until satisfaction of all claims from the business relationship he is entitled to against the Purchaser/Ordering Party. Where the value of all security rights the Supplier is entitled to exceed the amount of all secured claims by more than 20%, the Supplier will release a respective portion of the security rights at the request of the Purchaser/Ordering Party.
2. The Purchaser/Ordering Party may resell the contractual item within the scope of proper and customary business. He hereby assigns to the Supplier the claims incurred to the Purchaser/Ordering Party against third parties to the amount of the invoice value of the consignment or of the services rendered. The Supplier hereby accepts the assignment. The Purchaser/Ordering Party is authorized to collect the claim. However, the Supplier reserves the right to collect the claim himself where the Purchaser/Ordering Party fails to duly comply with his payment obligations or is in arrears with payment. The authorization for resale will not apply where the resale is to third parties who excluded or limited the assignment of the claims against them or who declare the advance assignment of claims as null and void.
3. Where the consignment is associated with real property, the Purchaser/Ordering Party will assign the claim incurred to him on the basis of the association of the goods with the property as security to the Supplier.
4. In the case of delayed payment by the Purchaser/Ordering Party and other breaches of duty, the Supplier may rescind the contract after a fruitless lapse of a period of grace stipulated for payment or compliance with a duty by the Purchaser/Ordering Party and demand the return of the item subject to retention of title. Additional costs arising from withdrawal can be presented by the supplier to the Purchaser/Ordering Party. The legal provisions on the dispensability of a period of grace will remain unaffected.
5. The Purchaser/Ordering Party will only be authorized to pledge or assign the items subject to retention of title as security with special written consent.
6. In the case where bankruptcy has been filed for, the Supplier may rescind the contract and demand the immediate return of the items subject to retention of title as well as the documents specified under Item I. No. 2.

III. Delivery-, Service- and Payment Terms

1. Where the Purchaser/Ordering Party did not provide the plans, permits, approvals and other documents necessary for the performance on time or did not meet the agreed payment dates or other obligations the Purchaser/Ordering Party will be responsible for the non-observance of the delivery/performance deadline and in this case it will be extended accordingly.
2. The observance of delivery and performance deadlines is subject to the proviso that the Supplier in turn receives his supplies correctly and punctually. The delivery- or performance deadline will be adequately extended in the case of force majeure, labour disputes and other circumstances beyond the control of the Supplier. The delivery deadline is regarded as having been met when the contractual item left the Supplier's plant before expiry of the deadline or readiness for dispatch was announced to the Purchaser/Ordering Party. Where the prerequisite is an inspection by the Purchaser/Ordering Party, the inspection deadline, or alternatively the Supplier's announcement of readiness for inspection, will be authoritative.
3. Where the Purchaser/Ordering Party is liable for the delayed delivery, work performance or inspection, the costs incurred by the delay will be imposed on him starting with the announcement of the readiness to deliver, perform work or for inspection.
4. In all cases of unpunctual delivery or performance of work, damage compensation claims by the Purchaser/Ordering Party are excluded with regard to the delayed delivery or work performance. This will also apply in the case of the fruitless lapse of a period of grace for the delivery or work performance stipulated for the Supplier. Liability due to wilfulness, gross negligence or injury to life, limb or health will remain unaffected.

IV. Assembly Work

1. Prior to assembly work, the Purchaser/Ordering Party must unsolicitedly inform the Supplier of any potential risks. The Purchaser/Ordering Party must provide the items and materials necessary for assembly and operation to the Supplier in good time at his own expense.
2. The Purchaser/Ordering Party guarantees that the technical and/or construction specifications made to the Supplier prior to and upon conclusion of the contract fulfil the performance purpose intended by the Purchaser/Ordering Party.
3. The Purchaser/Ordering Party guarantees free access to the installation site at the agreed assembly date as well as the installation site's proper condition for assembly work without additional delays.

V. Passing of Risk, Inspection

1. All deliveries and work will be performed at the risk of the Purchaser/Ordering Party. Shipping costs must be borne by the Purchaser/Ordering Party in every case.
2. After completion of the work, the Supplier can demand that the Purchaser/Ordering Party carry out the inspection within one week. Where the Purchaser/Ordering Party fails to make a statement, inspection will be deemed to have been declared upon lapse of the deadline. The inspection will also be deemed as having been performed where the contractual item was actually used, where applicable, even after the end of the agreed trial period.

VI. Material Defects

1. The Purchaser/Ordering Party may not reject the contractual item due to minor defects. There will be no claims in the case of minor deviations from the actual or target features of the contractual item, usual wear and tear and damage incurred after passing of risk by faulty handling of the item, by failure to carry out maintenance or to carry out adequate maintenance, due to an inappropriate construction foundation or other defective construction work. This will also apply where the Purchaser/Ordering Party subsequently performs alterations or repair work at his own liability.
2. The Purchaser/Ordering Party must report major defects immediately in writing, i.e. within 3 working days after detection.
3. Where a major material defect of the contractual item which originated within the expiry period can be detected after a complaint, the Supplier may either provide a replacement consignment or substitute work within an adequate period or carry out a rectification on site. At the request of the Supplier, the Purchaser/Ordering Party must declare within one week after receipt of the request letter whether he demands a price reduction or rescinds the contract. Where the Purchaser/Ordering Party fails to make a declaration, he may only reduce the price after lapse of the deadline.

VII. Damage Compensation Claims

Damage compensation claims by the Purchaser/Ordering Party outside of the Product Liability Act are excluded, regardless of the legal ground, in particular on the basis of breaches of contractual duties and illegal acts. This will not apply in the case of wilfulness, gross negligence, on grounds of injury to life, limb or health and in the case of breach of cardinal contractual duties.

VIII. Statute of Limitations

All claims by the Purchaser/Ordering Party will expire after 12 months, regardless of the legal grounds on which they are based. The statutory limitation periods will apply to damage compensation claims due to injury to life, limb or health, in the case of wilfulness or gross negligence, fraudulent concealment of a defect or due to a claim on the basis of product liability. They will also apply in the case of §§ 438 Sect. 1 Nr. 2, 634a Sect. 1 Nr. 2 BGB.

IX. Applicable Law, Place of Jurisdiction

1. The laws of the Federal Republic of Germany excluding the United Nations Sales Convention (CISG) will apply to all legal relations of the parties
2. The competent court both geographically and for the specific cases is the Municipal Court of Berlin-Wedding or district court of Berlin according to the choice of the Supplier. However, the Supplier may sue at the main domicile of the Purchaser/Ordering Party.

X. Severability Clause

Should an individual term of the contract or of the General Business Terms be invalid, this will not affect the entire agreement. The invalid term is to be replaced by a provision of the law; where there is no such provision, the term is to be construed to account for the intentions of the parties in equitable consideration of the interests of both parties.