



# General terms and conditions of installation | GERB Schwingungsisolierungen GmbH & Co. KG | As of July 01, 2021

## CONTENT

I.	General Provisions	3
II.	Installation Costs	3
III.	Customer's obligations to co-operate	3
IV.	Installation Period	4
V.	Acceptance of Performance	4
VI.	Claims for Defects	4
VII.	Liability and Disclaimer	5
VIII.	Statute of Limitations	6
IX.	Applicable Law and Place of Jurisdiction	6

## I. General Provisions

- (1) These Installation Terms and Conditions (ITCs) of GERB Schwingungsisolierungen GmbH & Co. KG shall apply as a supplement to our General Sales Terms and Conditions to all of our Installations carried out for our clients/buyer (hereinafter referred to as “the Customer”).
- (2) Our ITCs shall apply exclusively. Varying, conflicting or additional Terms and Conditions of the Customer shall become an integral part of the contract only insofar as we have expressly approved their validity in writing, and shall otherwise not become part of the contract even in case of our order acceptance.
- (3) Individual agreements reached with the Customer in particular cases (including subsidiary agreements, addenda and modifications, etc.) shall prevail over these ITCs. The content of such agreements shall be determined by a written contract or our written confirmation.
- (4) Legally relevant declarations and notices that the Customer may issue to us after the conclusion of contract (e.g. deadlines, notices of defects, notices of cancellations or reductions, etc.) must be in writing in order to be effective.
- (5) References to the validity of legal provisions shall only be for purposes of clarification. Even without such clarification, the statutory provisions shall therefore apply insofar as they are not directly altered by these ITCs, or expressly excluded.
- (6) The invalidity or unenforceability of any provisions of these ITCs shall not affect the validity or enforceability of any other provisions of these ITCs, which remain in full force and effect. In the event that a particular provision may be invalid, the parties shall mutually agree on a provision whose effect is to the greatest possible extent equivalent to the invalid provision.

## II. Installation Costs

The installation costs shall be charged according to the time required, the actual material and transport costs as well as the travel expenses (hotel costs, air fare, etc.), if no lump-sum is expressly agreed. Statutory VAT shall be added to the installation costs, if applicable.

## III. Customer's obligations to co-operate

- (1) The Customer takes the necessary actions to protect persons and the property at the installation site. The Customer shall inform our site supervisor about special safety instructions, if applicable.
- (2) The Customer provides technical assistance at his own expense. In particular, he undertakes to
  - (a) Provide the required and appropriate auxiliary personnel for the installation works. The personnel shall comply with the instructions of our site supervisor. The Customer shall be liable for the auxiliary personnel. In case that defects and damages caused by the auxiliary personnel originated from wrong instructions given by our site supervisor, these shall be governed by Section VI and VII.
  - (b) Execute the necessary construction works and to provide the scaffolding works including the necessary equipment and heavy lifting tools. The Customer shall conduct all necessary activities in

order to facilitate the adjustment of the items to be installed and the final acceptance inspection, if applicable.

- (3) In case that the Customer does not fulfill his duties and obligations, and if an adequate time limit set by us lapses without effect, we are authorized to conduct them on his behalf and at his expense. Our further legal rights and claims shall remain unaffected.

#### IV. Installation Period

- (1) The installation period is met, when the installation is ready for approval prior to the expiration of the agreed term.
- (2) If the installation period is exceeded due to circumstances of force majeure or other events outside of our control, it shall be extended adequately.
- (3) If the default results in any damage to the Customer, he may demand a lump sum compensation: For each complete calendar week, the compensation shall amount to 0.5% of the value of the corresponding part of the installation, which cannot be used on time as stipulated in the contract as a result of the delay, however it cannot exceed a maximum of 5% of the agreed installation costs.
- (4) In accordance with the legal provisions, the Customer shall be entitled to withdraw from the contract, if we fail to meet a reasonable extension of time for the service after the due date. The Customer shall, at our request, inform us within a reasonable time limit, whether he exercises his right of withdrawal. Other claims from the default shall be exclusively determined pursuant to Section VII of these ITCs.

#### V. Acceptance of Performance

- (1) The acceptance of performance shall occur as soon as we have informed him about the completion of the installation. In case that the installation works prove to be not in accordance with the contract, we shall be obliged to remedy the defects provided that the defects are not insignificant to the Customer or the defects are attributable to him.
- (2) If the delay of the acceptance of performance is not attributable to us, it shall be deemed as being carried out after the lapse of two weeks subsequent to the notification of the completion of installation.
- (3) If the Customer did not reserve his rights regarding particular defects, our liability for visible defects shall expire after the acceptance of performance.

#### VI. Claims for Defects

- (1) The Customer shall immediately inform us in writing about any defects detected. After the acceptance of performance we shall exclusively be liable according to paragraphs 5 and 6 of the present Section and according to Section VII, as well as to remedy the defects from installation.

- (2) We shall not be liable for defects that are insignificant to the Customer or which are attributable to him. The same shall be applicable in case that the Customer or any third party on his behalf undertakes any kind of alterations or maintenance without our prior consent.
- (3) The Customer shall give us the necessary time and opportunity to undertake the repairs; otherwise we shall not be liable for the associated consequences. In order to avoid any excessive damage, the Customer shall be entitled to resolve the defects by himself or by means of third parties, and to demand a reimbursement from us for the objectively required expenses, provided that he immediately informs us of this situation. The same shall be applicable in case that we do not comply with a deadline according to the statutory provisions set by the Customer.
- (4) In case of legitimate claims, we assume the direct costs caused to remedy the defects, to the extent that these costs are not disproportionate.
- (5) In case that an adequate time limit set to us by the Customer to remedy the defects lapses without effect, he shall have the right to reduce the contract price within the limits of the statutory provisions. In case that the reduction of the contract price is verifiably without interest to the Customer, he has the right to withdraw from the contract.
- (6) Further claims shall be determined exclusively pursuant to Section VII of these ITCs.

## VII. Liability and Disclaimer

- (1) In case that we damage during the installation a part of the Merchandise to be installed, we can decide whether to repair it or to deliver a new one.
- (2) If any suggestions or advise that we have been culpable of omitting or providing erroneously, or culpable violations of other accessory contractual obligations result in the Customer being unable to use the Merchandise in accordance with the contract, then the provisions of Sections VI and VII Paragraph 3 shall apply, to the exclusion of further claims.
- (3) We assume responsibility for damages on any legal grounds, which have not been caused to the Merchandise to be installed itself only in the case of
  - (a) Intent
  - (b) Gross negligence on the part of the owner/ a company organ or executive employees
  - (c) Culpable injury to life, body and health
  - (d) Defects that we have maliciously concealed
  - (e) Defects to the Merchandise, insofar as the German Product Liability Law ("Produkthaftungsgesetz") is applicable

In the event of a culpable violation of fundamental contractual obligations according to the German law ("wesentliche Vertragspflichten" i.e. obligations that unless they have been actually fulfilled, do not allow the contract to be properly implemented, and which the contracting partner does and should rely on being complied with), we shall assume responsibility even for gross negligence on the part of non-executive employees and for minor negligence, with liability for the latter being restricted to damages that are typical of and reasonably foreseeable for such contracts.

Any further claims are excluded.

## VIII. Statute of Limitations

The Customer's claims prescribe within twelve months, regardless of the legal basis. For compensation claims in accordance with Section VII Para. 3 a-e, the legal periods of prescription shall apply. The statutory periods of prescription shall also apply to defects to a building, if the installation of the Merchandise caused its defectiveness.

## IX. Applicable Law and Place of Jurisdiction

- (1) For these ITCs and all legal relationships between us and the Customer, the law of the Federal Republic of Germany shall apply.
- (2) The exclusive jurisdiction for all disputes arising directly or indirectly from the contractual relation shall be in Berlin at our registered office. However, we are also entitled to take action at the general place of jurisdiction of the Customer.