



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

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I. Scope of Application

- (1) Our orders are subject to the exclusive validity of our General Terms and Conditions of Purchase. Any deviating, conflicting or supplementary General Terms and Conditions of Purchase by the supplier of the goods or services will only become an integral part of the contract only insofar as we have expressly approved their validity in writing.
- (2) The present General Terms and Conditions of Purchase will only be valid with regard to companies, legal entities under public law or special funds under public law according to § 310 paragraph 1 BGB (German Civil Code).
- (3) Individual agreements concluded with the supplier (including subsidiary agreements, addenda and modifications) shall take precedence over these General Terms and Conditions of Purchase. The content of such agreements shall be determined by a written contract or our written confirmation.
- (4) The present Terms and Conditions of Purchase will also apply to all future transactions between the parties, and also if we are aware of any deviating or conflicting terms and we accept the goods without reservation.
- (5) References to the legal provisions are only for purposes of clarification. Even without such clarification, the statutory provisions shall therefore apply insofar as they are not directly altered in these General Terms and Conditions of Purchase, or expressly excluded.
- (6) The General Delivery Guideline is part of the present General Terms and Conditions of Purchase.
- (7) The invalidity or unenforceability of any provisions of these General Terms and Conditions of Purchase shall not affect the validity or enforceability of any other provisions of these General Terms and Conditions of Purchase, 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. Offer and Acceptance

- (1) The preparation of offers by the supplier will be free of charge and non-binding for us. Unless otherwise stipulated in the offer, the supplier will be bound to his offer for 15 work days. Only written orders will be binding.
- (2) The supplier shall confirm orders immediately in writing, but by the latest within 3 work days. The order confirmation must specify the purchase price and the binding delivery date. Where this deadline is not met, the order will be regarded as having been accepted subject to our terms if we do not inform the supplier within 5 work days after lapse of the deadline that we are rescinding the contract.

III. Prices and Payment

- (1) The prices quoted are for free delivery and include packaging costs but exclude value added tax at the statutory rate, unless otherwise agreed. Should packaging not be included in the price, it may only be charged to us at cost price.
- (2) Invoices are to be submitted separately after delivery, in duplicate, recording value added tax separately and specifying the order identification and order number.

- (3) Subject to longer periods conceded by the supplier, the purchase price will be due within 14 days after proper invoicing with 3% discount and net within 30 days. The deadlines will commence as from the date of receipt of the invoice, but not before receipt of the complete goods or acceptance of the services. Should documents (certificates, material reports, etc.) or similar papers be part of the scope of delivery, the delivery will be regarded as being complete only when the required documents have been submitted to us in accordance with the contract.
- (4) Payments will be effected per bank transfer.

IV. Set-Off and Retention

We are fully entitled to set-off and retention rights in accordance with the statutory provisions. We have the right to assign all claims from the contract without the consent of the supplier. The supplier does not have the right to assign claims from the contract to third parties without our prior written consent.

V. Delivery

- (1) All terms of delivery specified in the order or elsewhere in writing are binding. The term of delivery is the day on which the goods are to arrive at the destination specified in the order within regular business hours. Time is of the essence, thus the supplier guarantees timely delivery.
- (2) Partial delivery or delivery of extra or fewer goods or services or premature deliveries are only possible with our written consent.
- (3) The supplier undertakes to inform us immediately about any non-compliance with the term of delivery that is imminent or has already occurred, specifying the causes and anticipated duration of the default. This will not affect the occurrence of default and the related legal implications.
- (4) We are entitled to all statutory claims in case of default.
- (5) In the case of default, we are additionally entitled to impose a contractual penalty on the supplier of 1% per each new week, up to a maximum limit of 5% of the total order value.
- (6) Additional freight costs for priority and express consignments due to default will be borne by the supplier.
- (7) Unless otherwise agreed, the supplier shall install, connect and commission the goods in consultation with us at the intended location in consultation with us, provided the goods are machinery and equipment.

VI. Passing of Risk and Dispatch

The risk of accidental loss or deterioration of the goods shall pass at the specified destination upon proper (i.e. in accordance with our General Delivery Guideline) and complete performance.

VII. Retention of Title

Regarding any retention of title, the ownership of the purchase item will pass to us upon payment. Extensions of current account reservation and multiple reservation of title shall not apply.

VIII. Liability for Defects and Guarantee

- (1) The supplier guarantees that the goods or services have the characteristics, quality and features specified in the order and comply with the specifications, drawings, samples and other descriptions provided to us.
- (2) The supplier is obligated to perform a quality control adequate for the type and extent of the consignment and in accordance with the state of the art.
- (3) The supplier guarantees and warrants compliance with all statutory safety and environmental regulations of the Federal Republic of Germany.
- (4) Subject to apparent deficiencies, the statutory obligation to immediately examine the goods and to notify the defect is waived. The supplier is obligated to examine the goods carefully before delivery. Our defect notification is timely if effected within two weeks after receipt of goods or from detection of hidden defects.
- (5) We are fully entitled to statutory guarantee claims. In particular we have the right to choose to demand that the supplier either rectify the defect or provide a defect-free replacement. We expressly reserve the right to damages especially in lieu of performance.
- (6) In the case of imminent danger or an emergency, we will have the right to rectify the defects ourselves at the supplier's expense after adequately notifying the supplier.
- (7) Warranty periods are based upon legal requirements, so far as the Parties did not agree upon longer warranty periods. If the supplier is obligated to rectification of defects, the warranty period starts anew with a new delivery, the same applies for rectification of the matter, if the repair was executed faulty. If the goods are a machine or plant, it shall apply for the downtime caused by the defect that the warranty period shall be extended by the quantity of months in which they are out of order for at least 5% of the intended monthly runtime.

IX. Product Liability and Insurance

- (1) The supplier undertakes to indemnify us upon first request from any liability vis-à-vis third parties or third-party claims incurred from the manufacture, delivery, storage or use of the supplied goods if the cause of the liability falls under his domain or organizational area and he would be personally liable.
- (2) Within the framework of his liability for damage as set out in paragraph I, the supplier undertakes to reimburse any expenses incurred from or in connection with a recall campaign carried out by us. We will inform the supplier of the contents and scope of the recall campaign to the furthest extent reasonable and possible and will give him the opportunity to make a statement. All other statutory claims will remain unaffected.

- (3) The supplier will be obligated to maintain product liability and recall insurance with adequate minimum coverage of €5,000,000 per case of personal injury or material damage during the term of the contract and to prove this to us upon request.
- (4) We will inform the supplier immediately if we intend to make claims against him in accordance with the aforementioned paragraphs.
- (5) Any further-reaching damage compensation claims shall remain unaffected.

X. Legal Defects

- (1) The supplier guarantees that the goods are free of third-party rights (e.g. patents, intellectual property rights) and that no third-party rights are infringed through delivery. The supplier will indemnify us from any third-party claims upon our initial request.
- (2) Claims based on legal defects will expire within the statutory provisions.

XI. Choice of Law and Place of Jurisdiction

- (1) The present contract is subject to the laws of the Federal Republic of Germany excluding the UN Convention on the International Sale of Goods.
- (2) The place of performance and exclusive place of jurisdiction for all disputes arising from or in connection with the present contract is our registered office in Berlin. Notwithstanding, we also have the right to sue the supplier at his place of business.

XII. Miscellaneous

- (1) We reserve the ownership and copyrights to all drawings, tools, models and technical information, including in electronic form, made available to us. This information and these documents may only be wholly or partially disclosed to third parties with our prior written consent and may only be used for manufacturing purposes based on our order. They must be returned to us or deleted after completion of the order without this being specifically requested. Reprinting our catalogs and imitation of our models is not permitted.
- (2) The supplier and/or his sub-suppliers undertake to allow us and third parties free access to his production facilities for monitoring purposes.
- (3) The subcontracting of orders by the supplier will require our prior written consent.
- (4) The supplier warrants that he and, if applicable, his subcontractors abide by the statutory provisions according to the German law concerning the minimum wage. If the supplier renders work performances or services he undertakes to quarterly provide evidence of the payment of the minimum wage by him and, if applicable, by his subcontractors. He permits us to inspect the anonymized payroll of his company and, if applicable, of his subcontractors. We are entitled to terminate the contract without notice if the supplier or, if applicable, his subcontractors do not pay the statutory minimum wage.
- (5) We are a customer exempted from forwarding insurance.