



# General terms and conditions of sales | GERB Schwingungsisolierungen GmbH & Co. KG | As of 12 April 2022

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## I. General Provisions

- (1) These General Sales Terms and Conditions (GTCs) of GERB Schwingungsisolierungen GmbH & Co. KG apply to all of our deliveries and sales with our clients/buyer (hereinafter referred to as “the Customer”) and to Customer of companies affiliated with us as defined by §§ 15 ff. of the German Federal Companies Act (AktG).
- (2) These GTCs apply in particular to sales of movable goods (hereinafter referred to as “the Merchandise”), regardless of whether we manufacture the Merchandise ourselves or purchase it from suppliers. These GTCs apply in their respective version(s) as a framework agreement, including for future agreements concerning the sale of Merchandise with the same Customer. We shall immediately inform the Customer about any changes to our GTCs.
- (3) Our GTCs apply exclusively. Varying, conflicting or additional Terms and Conditions of Purchase of the Customer become an integral part of the contract only insofar as we have expressly approved their validity in writing. Otherwise they do not become part of the contract even in case of our order acceptance.
- (4) Individual agreements reached with the Customer in particular cases (including subsidiary agreements, addenda and modifications) shall prevail over these GTCs. The content of such agreements shall be determined by a written contract or our written confirmation.
- (5) We reserve all rights – in particular property rights and copyrights - to the drawings made available by us as well as technical information, cost estimates and similar information, including in electronic format. Third parties may access this information completely or partially only with our prior written consent. The same applies to the duplication of these documents.
- (6) Legally relevant declarations and notices that the Customer may issue to us after conclusion of the contract (e.g. deadlines, notices of defects, notices of cancellation or reduction, etc.) must be in writing in order to be effective.
- (7) References to the validity of 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 GTCs, or expressly excluded.
- (8) The invalidity or unenforceability of any provisions of these GTCs shall not affect the validity or enforceability of any other provisions of these GTCs, 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. Conclusion of Contract

- (1) If not otherwise stated, our quotations are subject to confirmation, and are not binding. This applies even when we have delivered catalogues, technical documentation (e.g. drafts, plans, accounts, calculations and references to DIN standards), any other product descriptions or documents - including in electronic format - to the Customer.
- (2) Except otherwise provided in the purchase order of the Customer, this document is deemed to be a binding contract offer. We are entitled to accept it within two weeks of receipt.
- (3) Acceptance can be declared either in writing (e.g. by order confirmation) or via delivery of the Merchandise to the Customer.

### III. Prices and Payment Terms

- (1) Unless otherwise agreed, our prices apply ex works, including loading at our site, excluding packaging and unloading (FCA GERB Berlin, Incoterms 2020 ICC) plus statutory VAT, if applicable.
- (2) The purchase price is payable within 14 days of receipt of the invoice and delivery of the Merchandise to the Customer, respectively the acceptance of the Merchandise by the Customer.
- (3) During the default period, the Customer shall pay default interest on the purchase price according to the applicable statutory interest rate. The Customer will additionally be charged with a lump-sum damage for default amounting to 40,- €. We reserve the right to claim further damage caused by default.
- (4) The Customer is entitled to withhold payments or to offset counter claims from other legal relationships, only insofar as his counter claims are undisputed or recognized by declaratory judgment.
- (5) If, after conclusion of the contract, the costs on which GERB's calculation is based, in particular for personnel, materials, raw materials, transport or energy – also due to exchange rate fluctuations – change by at least 5%, we are entitled to adjust the prices. The price adjustment must be made in accordance with our calculation while retaining the calculated profit. We shall inform the Customer immediately of the price adjustment and justify it comprehensibly. If a price increase is more than 10%, the customer has the option of cancelling the order in question free of charge for two weeks from receipt of our notification. The cancellation must be made in writing.

### IV. Delivery Time, Delay in Delivery and Impossibility

- (1) The delivery time shall be determined by the parties. The delivery time can be complied with only once all commercial and technical issues have been resolved, and the Customer has met all of his obligations (e.g. providing the required information and documents, etc.). If the Customer did not comply with his obligations, the delivery time shall be extended adequately.
- (2) Compliance with the delivery time is subject to the condition that we ourselves receive the materials correctly and in good time by our suppliers and that the necessary energy and transport capacities are available. We shall immediately inform the Customer of any delays.
- (3) The delivery time is met when the Merchandise has left our site by the relevant expiry date, or respectively, when we have given notification of readiness for delivery. Except when the Merchandise is lawfully rejected, the acceptance date or the notification of readiness for acceptance shall be relevant.
- (4) If the delivery, or the acceptance of the Merchandise, is delayed for reasons that the Customer must be held responsible for, we may invoice him for the resulting costs, starting with one month after notification of readiness to dispatch or readiness for acceptance.
- (5) If the delivery time is exceeded due to circumstances of force majeure or other events outside of our control, the delivery time shall be extended adequately. We shall immediately inform the Customer of any such delays.
- (6) In case of impossibility of performance before the passing of risk, the Customer is entitled to withdraw from the contract without necessity to set a time limit. The Customer is also entitled to withdraw from the contract if it is impossible to undertake part of the delivery for a particular order,

and the Customer has a legitimate interest in refusing the partial delivery. Further claims are determined exclusively pursuant to Section VIII article 2 of these GTCs. In the event of impossibility during the default of acceptance, the Customer shall still be obliged to pay the contract price. The same applies if the Customer is at least predominantly responsible for the occurrence of these circumstances.

- (7) The fulfillment of the contract with the Customer by us is subject to the condition, that neither national nor international regulations of foreign trade law, embargoes or other sanctions are applicable.
- (8) If the default results in any damage to the Customer, he may demand a lump-sum compensation. For each complete calendar week, compensation shall amount to 0.5% of the value of the corresponding part of the total delivery, 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% overall.
- (9) In accordance with the contractual provisions and taking into account the relevant legal exceptions, the Customer may withdraw from the contract, if we fail to meet a reasonable deadline for the delivery 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 delayed delivery are exclusively determined pursuant to Section VIII article 2 of these GTCs.

## V. Passing of Risk and Acceptance of Performance

- (1) The passing of risk to the Customer occurs as soon as the Merchandise has left our site. This applies even if partial deliveries are made or if we have undertaken to deliver other services.
- (2) If an acceptance of performance is legally required, this event determines the passing of risk. Acceptance of Performance shall occur without delay on the appointed date, respectively within one week starting from our notification of Readiness for Acceptance, if no specific date is agreed. If the Customer fails to undertake the Acceptance of Performance for reasons we cannot be held responsible for, it is deemed to have been undertaken upon lapse of time. Acceptance of Performance is also assumed where the Merchandise was actually put into use.
- (3) In case of sale by delivery to a place other than the place of performance, the risk of accidental damage and accidental deterioration of the Merchandise and the risk of delay shall be transferred to the freighter, hauler, person or company otherwise appointed to carry out the delivery, as soon as the Merchandise has been delivered to them. In case that the Merchandise shall not be collected by or on behalf of the Customer, we are entitled to determine the form of dispatch (e.g. transport companies, dispatch route and packaging, etc.) at our own option, unless otherwise agreed.
- (4) Partial deliveries are permitted as long as they are reasonable for the Customer. In the event of an insignificant defect, the Customer may not refuse Acceptance of Performance of the Merchandise.

## VI. Reservation of Proprietary Rights

- (1) The sale and supply of all Merchandise is subject to reservation of proprietary rights until receipt of all payments arising from the business relationship with the Customer.

- (2) The Customer is not permitted to pledge the Merchandise or to transfer it by way of security. The Customer shall immediately inform us of any pledges, seizures or any other provisions by third parties.
- (3) In the event of contractual breaches, particularly regarding payment defaults and corresponding demand for payment, the Customer shall return the Merchandise to us at our request.
- (4) We can demand the Merchandise back only if we have withdrawn from the contract.
- (5) In case of petition in bankruptcy against the Customer, we are entitled to withdraw from the contract and to demand the immediate restitution of the Merchandise.
- (6) The Customer is authorised to re-sell and/or process the Merchandise under reservation of proprietary rights in the proper course of business. In this case, the following provisions additionally apply:
  - (a) The reservation of proprietary rights is extended to the products created from the manufacture, mixing or combination of our Merchandise, whereby we are considered to be the manufacturers. If the property rights of third parties remain unaffected when manufacturing, mixing or combining the Merchandise, we acquire joint ownership in proportion to the invoice values of the manufactured, mixed or combined Merchandise. Furthermore, the same applies for the new product as for the Merchandise delivered under reservation of proprietary rights.
  - (b) The claims against third parties arising from the resale of the Merchandise or of the product shall be assigned by way of security by the Customer to us here and now, or amounting to any co-ownership share pursuant to the previous paragraph. We shall accept the assignment. The Customer's obligations as set out in Paragraph 2 also apply in consideration of the assigned claims.
  - (c) The Customer is authorised to collect the claim. We oblige ourselves not to collect the claim, as long as the Customer meets his payment obligations to us, does not enter into arrears, no application for insolvency proceedings is made, and his performance capacity is not otherwise deficient or lacking. In each of the aforementioned cases, the Customer shall notify us of the assigned claims and their debtors, provide all information required for collection, deliver all of the associated documents and inform the debtors (third parties) of the assignment.
  - (d) The authorisation to re-sell does not apply, insofar as the resale is made to third parties who have excluded or restricted the claim made against them, and as a result thwart the assignment in advance.
  - (e) If requested to do so by the Customer, we shall release securities at our discretion if the realizable value of the securities exceeds by more than 10% the value of our claims.

## VII. Claims for Defects

Insofar as the parties have agreed on the quality of the purchased item, objective requirements for the purchased item shall not apply in this respect. We shall be liable for material defects and defects of title of the Merchandise to the exclusion of further claims, subject to Section VIII, as described below:

## VII.1 Material Defects

- (1) At our own discretion, we shall replace the relevant parts of the Merchandise or repair them if they are defective as a result of circumstances that existed before the passing of risk. In the event of replacement deliveries, the Customer shall return the defective Merchandise to us in accordance with the statutory provisions in place.
- (2) The Customer shall immediately inform us in writing about such defects.
- (3) The Customer shall give us the necessary time and opportunity to undertake the repairs; otherwise we are not liable for the associated consequences. In order to avoid any disproportionately excessive damage, the Customer is entitled to resolve the defect 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.
- (4) We are entitled to make the due repair dependent on the Customer paying the due purchase price. However, Customer is entitled to retain a share of the purchase price that is reasonable in proportion to the defect.
- (5) Insofar as the claim proves to be valid, we shall bear the direct costs for the repair or replacement delivery to the extent that this cost is not disproportionate.
- (6) If an adequate time limit set to us by the Customer for the repair or replacement delivery due to a Merchandise defect, lapses without effect, the Customer is entitled to withdraw from the contract within the limits of the statutory provisions and taking into account the relevant legal exemptions.
- (7) The Customer is entitled to a reduced purchase price in the event of insignificant defects pursuant to the statutory provisions.
- (8) In particular, we accept no responsibility for: Inappropriate or improper use of the Merchandise; incorrect assembly or operation by the Customer or third parties; natural wear and tear, defective or negligent handling; improper maintenance; defective construction work and inappropriate construction surfaces, insofar as we are not liable for the precedent circumstances.
- (9) In the event of improper repairs carried out by the Customer or a third party, or if modifications are made to the Merchandise without our consent, we assume no liability for the associated consequences.
- (10) Claims by the Customer for expenses incurred for the purpose of rectification of defect, in particular transport, travel, labour and material costs, are excluded insofar as the increase of expenses is caused because the Merchandise delivered by us has subsequently been taken to a place other than the Customer's branch office, unless the transfer is in accordance with the intended use.
- (11) The Customer shall only have a right of recourse against us to the extent that he has not entered into any agreements with its customer that go beyond the statutory mandatory claims for defects. Furthermore, paragraph 11 shall apply accordingly to the scope of the Customer's right of recourse against the supplier.
- (12) Further claims are determined exclusively pursuant to Section VIII article 2 of these GTCs.

## VII.2 Defects of Title

- (1) In the event that using the Merchandise violates the industrial property rights or copyrights according to German law, we grant the Customer the right of further use at our cost. If this is not possible under economically reasonable conditions or within a reasonable time limit, we and the Customer are entitled to withdraw from the contract. We shall exempt the Customer from associated undisputed or legally valid claims.
- (2) Our obligations with regard to defects of title shall apply exclusively except for the provisions of Section VIII article 2 of these GTC's. Our obligations expire in case that: The Customer does not immediately inform us of breaches of asserted industrial property rights or copyrights; the Customer does not provide us with adequate or reasonable support when defending against the asserted claims; or the defect of title in question is based on instructions from the Customer or an unauthorised change to the Merchandise.

## VIII. Liability and Disclaimer

- (1) If any suggestions that we have been culpable of omitting or providing erroneously, or advice 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 VII and VIII Paragraph 2 shall apply, to the exclusion of further claims.
- (2) We assume responsibility for damages on any legal grounds, which have not been caused to the Merchandise itself only in the case of
  - (a) Intent
  - (b) Gross negligence on the part of the owner/the bodies 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 is applicable
- (3) 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.

## IX. Statute of limitations

The Customer's claims expire within twelve months, regardless of the legal basis. This also applies to the statute of limitations for recourse claims in the supply chain in accordance with § 445b (1) BGB. The



suspension of expiry under § 445b Abs. 2 BGB remains unaffected; it shall end no later than five years after the date on which the Supplier has delivered the Merchandise to the Seller. These regulations on the limitation of recourse claims and on the suspension of expiry do not apply if the last contract in this supply chain is a consumer goods purchase.

For compensation claims in accordance with Section VIII Para. 2 a-e, the legal periods of prescription shall apply. The statutory periods of prescription shall also apply to defects to a building, or to a Merchandise, that is usually used for a building for its original purpose, and caused the defectiveness.

## X. Applicable Law and Place of Jurisdiction

- (1) For these GTCs and all legal relationships between us and the Customer, the law of the Federal Republic of Germany is applicable, excluding international uniform law, particularly the United Nations Sales Convention.

The preconditions and effects of the reservation of title pursuant to Section VI shall be subject to the laws of the country where the Merchandise is stored, insofar as the choice of German law is inadmissible or invalid.

- (2) The sole 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.