

General Terms and Conditions (GTC)



Version 11/2013

I. General information

1. All deliveries, services and offers from GEBR. JEHMLICH GMBH, D-01683 Nossen (subsequently referred to as "the supplier") to companies, legal persons under public law or special funds under public law are subject to these conditions as well as any special agreements. They also apply to all future supply agreements, even if they are not agreed upon again. The General Terms and Conditions of the purchaser, insofar as they conflict with this document, do not form part of the agreement even if an order is accepted.

Unless otherwise agreed, the agreement comes into effect upon receipt of the order confirmation from the supplier (either in the original or via electronic means). These conditions shall count as having been accepted no later than the receipt of the goods or services. Any acknowledgement from the purchaser to the contrary, citing their own terms and conditions or conditions of purchase, are hereby rejected.

The legal invalidity of part of these general terms and conditions has no influence on the validity of the remaining content of these terms and conditions.

2. Offers from the supplier are open and non-binding. Documentation relating to offers, such as figures, drawings, and specifications of weights, measurements and performance are only binding if this has been expressly agreed upon in writing. Corresponding drawings and other documents included with offers must be returned immediately upon request, or if the order is not placed.

Declarations of acceptance and all orders require written confirmation (or confirmation in electronic form) from the supplier to be legally valid. The written order confirmation from the supplier is definitive in establishing the scope of supply and services. The supplier shall not be liable for obvious mistakes or printing and typographical errors.

The supplier retains rights of ownership and copyright to samples, cost estimates, drawings, and other information of a physical or intellectual nature – including in electronic form; such information may not be made accessible to third parties. The supplier is obligated to only to make information and documents designated as confidential by the purchaser accessible to third parties where agreement has been obtained by the purchaser.

II. Price and payment

1. Unless otherwise agreed, the prices are ex works, including loading at the works, but exclusive of packaging and unloading. The prices indicated in the order confirmation of the supplier, plus the respective legal value-added tax, are authoritative. Additional deliveries and services are charged separately.

2. Unless otherwise agreed, payment must be made to the suppliers account without any deductions, as follows:
deposit of 1/3 of the full value upon receipt of the order confirmation,
a further 1/3 once the purchaser has been informed that the main parts are ready for despatch,
the remaining sum within one month of transfer of risk.

3. The purchaser shall only be entitled to withhold payment in cases where their counterclaims are uncontested or have been established by law.

4. The purchaser shall only be entitled to offset counterclaims from other legal relationships if these are uncontested or have been established by law.

III. Delivery period, Delivery delay

1. The delivery period is determined from the agreements made between the contractual parties. In order for the supplier to comply with it, all commercial and technical matters between the contractual parties must be settled, and the purchaser must have fulfilled all of their obligations, i.e. supplying the necessary official certifications or approvals or paying the deposit. If this is not the case, the delivery period shall be extended accordingly. This does not apply in cases where the supplier is responsible for the delay.

2. The supplier's ability to comply with the delivery period is conditional upon the contents of their own parts deliveries being correct and arriving promptly. The supplier must notify the purchaser of forthcoming delays as soon as possible.

3. The delivery period counts as having been met if the delivery item has left the factory before the period's lapse, or readiness for delivery has been announced. Where acceptance is to be performed – unless refused on legitimate grounds – the acceptance date, or alternatively the notification of readiness for acceptance is decisive.

4. If the delivery or acceptance of the delivery item is delayed for reasons ascribed to the purchaser, then they will be billed the costs incurred due to the delay, starting one month after notification of readiness for delivery or acceptance.

5. Should it not be possible to comply with the delivery period due to force majeure, strikes or other events which are beyond the control of the supplier, then the delivery period shall be extended accordingly. The supplier shall inform the purchaser as soon as possible when such circumstances occur and when their impact is at an end.

6. The purchaser can withdraw from the contract, without first giving notice, if the overall performance ultimately becomes impossible for the supplier prior to the transfer of risk. In addition, the purchaser can withdraw from the contract if it becomes impossible to supply part of an order and they have a legitimate interest in refusing delivery of the remaining parts. If this is not the case, then the purchaser must pay the contractually-agreed amount owed for the partial delivery. The same applies to the inability of the supplier. Section VII.2 is also applicable.

If this impossibility or inability occurs during a delay in acceptance or if the purchaser bears primary or most of the responsibility for these circumstances, they shall still be obliged to perform their side of the contract.

7. If the supplier causes a delay in delivery and the purchaser suffers damages as a result, then the latter shall be entitled to demand a flat-rate compensation payment for the delay. This shall be in the amount of 0.5% for each full week of delay, though not to exceed a total of 5% of the value of that part of the overall delivery which could not be used promptly or per the contract, due to the delay.

After the due date, if the purchaser gives the supplier a reasonable period for performance – taking account of statutory exceptions – and this deadline is not met, the purchaser is legally entitled to withdraw from the contract. They are obliged to declare to the supplier upon request, a reasonable period in advance, whether they intend to make use of their right to withdraw.

Other claims based on delayed delivery are determined exclusively according to Section VII.2 of these conditions.

IV. Transfer of risk, Acceptance

1. Risk is transferred to the purchaser when the delivery item leaves the factory, this includes partial deliveries (if applicable) or also applies where the supplier is providing other services, e.g. delivery costs or delivery and installation. Where an acceptance will take place, this is the definitive point concerning transfer of risk. It must be performed without delay at the acceptance appointment, or alternatively after the notification of readiness for acceptance. The purchaser shall not be entitled to refuse acceptance on the grounds of a non-significant defect.

2. If delivery or acceptance are delayed or halted owing to circumstances which cannot be attributed to the supplier, risk is transferred to the purchaser on the day they are notified of readiness for delivery or acceptance. The supplier is obliged to take out such insurance policies as they shall deem appropriate, at the cost of the purchaser.

3. Partial deliveries are permitted, provided that the purchaser agrees that this is reasonable.

V. Reservation of title

1. We reserve title on the delivered goods until all present and future claims derived from this particular contract and all ongoing business relations (secured claims) have been paid.

The reservation of title also extends to the full value of any products created by processing, mixing or combining our goods, of which we shall count as the manufacturer. If our goods are processed, mixed or combined with those from third parties, who are also reserving title to their goods, then we shall acquire joint ownership in the ratio of the invoiced values of the processed, mixed or combined goods. Furthermore, the same provisions shall apply to the resulting product as to the goods delivered under reservation of title.

The claims from the resale or on other legal grounds (insurance, unlawful act) are hereby transferred from the purchaser to the supplier in the full amount, by way of security.

2. The supplier is entitled to insure the delivery item at the expense of the purchaser against theft, breakage, fire damage, water damage and other damage, unless the purchaser themselves can produce evidence of having taken out their own insurance.

3. The purchaser may not sell, pledge or assign the delivery item by way of security. In the case of pledging and seizure or other dispositions by third parties, the supplier must be informed without delay.

4. If the purchaser breaches the contract, particularly in case of delayed payment, the supplier is entitled - after issuing a warning - to take back the delivery item, and the purchaser is obliged to hand it over.

5. Due to reservation of title, the supplier may only request return of the delivery item if they have withdrawn from the contract.

VI. Claims for defects

The supplier shall be held liable for material defects and defects of title on the delivery as follows (to the exclusion of further claims) – subject to Section VII:

Material defects

1. Defective goods may be either repaired or replaced with defect-free goods, at the discretion of the supplier. The replaced parts become the property of the supplier.

2. The purchaser must allow the time and opportunity for the supply to carry out all repairs and replacement deliveries which the latter shall deem necessary; otherwise the supplier is exempted from liability for the consequences. Only in urgent cases, where operational safety is endangered or to avert disproportionate further damage, in which case the supplier is to be informed immediately, does the purchaser have the right to rectify the defect themselves or to have it rectified by a third party and to demand payment from the supplier for the necessary expenses.

3. Where the complaint proves to be founded, the supplier shall bear the immediate costs for repairs or delivery of a replacement, including delivery costs. They shall also bear the costs for removal and installation, as well as the costs for providing any required fitters and support staff, including travel, provided that this does not result in any disproportionate burden on the supplier. The purchaser shall bear the remaining costs. Travel and hourly wages for fitters and support staff outside the Federal Republic of Germany shall be borne by the purchaser, since the prices of the supplier are calculated on the basis of domestic business.

4. The purchaser has a statutory right to withdraw from the contract, if the supplier is given a reasonable period for the repairs or delivery of a replacement, due to a material defect – taking account of statutory exceptions – and allows it to elapse without result. If the defect is not significant, the purchaser shall only be entitled to a reduction in the contractually-agreed price. Except for these circumstances, there is no entitlement to a reduction in the contractually-agreed price.

5. Other claims are determined exclusively according to Section VII.2 of these conditions.

6. The supplier particularly excludes liability in the following cases:

- the supplier's operating or maintenance instructions were not followed
- changes were made to the product
- parts were replaced
- consumables were used which do not correspond to original specifications
- incorrect assembly and/or commissioning by the purchaser or third parties
- normal wear and tear
- incorrect or negligent handling
- improper maintenance
- unsuitable operating materials
- defective building work, unsuitable foundation
- chemical, electrochemical or electrical influences, insofar as they cannot be traced back to the fault of the supplier

7. If repairs are carried out improperly, either by the purchaser or a third party, the supplier shall not be held liable for any consequences. The same applies to modifications undertaken on the delivery item without prior approval from the supplier.

Defects of title

8. If the use of the delivery item leads to the infringement of industrial property rights or copyrights within Germany the supplier will generally grant to the purchaser the right to continued use or modify the delivery item in such a way as is reasonable to the purchaser, so as to avoid property right infringement.

If this is not possible under economically reasonable conditions or in a reasonable period of time, the purchaser is entitled to withdraw from the contract. The stated preconditions also give the supplier entitlement to withdraw from the contract.

Moreover, the supplier shall indemnify the purchaser against any claims of the respective holder of property rights which are uncontested or have been established by law.

9. The obligations of the supplier listed in section VI.8 shall be exhaustive, with the exception of section VII.2, in the event of industrial property or copyrights being violated.

They shall only apply if:

- the purchaser notifies the supplier without delay (no more than 7 days after becoming aware) of infringements of
- industrial property rights or copyright
- the purchaser assists the supplier to a reasonable extent in warding off claims or allows the supplier to perform the modification measures according to section VI. 8,
- all defence measures including out-of-court settlements are retained by the supplier
- the defect of title is not based on an instruction given by the purchaser
- the legal infringement has not been caused by the purchaser making unauthorised changes to the delivery item or
- using it in a manner not intended under the contract.

VII. Liability of the supplier, Exclusion of liability

1. If the delivery item cannot be used by the purchaser in accordance with the contract, due to recommendations or advice from the supplier which are culpably omitted or incorrect, before or after the contract is concluded, or due to culpable infringement of other subsidiary contractual obligations – particularly the manual for operating and maintaining the delivery item – then the provisions from sections VI and VII.2 shall apply, to the exclusion of all further claims by the purchaser.

2. The supplier shall only be held liable for damage not arising on the delivery item itself (on whatever legal grounds):

- a. where there is intent
- b. in the case of gross negligence on the part of the owner / executive bodies or managerial staff
- c. in the event of culpable injury to life, body and health
- d. in the case of defects concealed fraudulently
- e. within the scope of a guarantee promise
- f. if the delivery item exhibits defects, where liability is provided in accordance with the German Product Liability Law for injury to persons and material damage to objects in private use.

In the case of culpable infringement of major contractual obligations, the supplier shall also be liable for gross negligence of non-managerial staff and slight negligence; for the later, this is limited to reasonably foreseeable damage which is typical of the contract.

All other claims are excluded.

VIII. Statute of limitations

All claims of the purchaser – on whatever legal grounds – are shall fall under the statute of limitations.

This does not apply:

- to claims for damages, where section VII is exclusively applicable.
- to claims from special legal provisions in the case of ultimate delivery of the goods to a consumer (suppliers' recourse according to sections 478, 479 of the German Civil Code)

- for defects with a building, or for delivery items which were used in a building structure in accordance with their customary use and have caused the building structure to be defective

In such cases, the statutory periods are observed.

IX. Non-availability of the service

If the service is not available for reasons which cannot be attributed to us (e.g. force majeure), even after the expiry of a reasonably extended delivery period (III.5. in these conditions), we are entitled to withdraw from the contract, either partly or fully. We shall inform the purchaser of the non-availability without delay. Any services provided in return by the purchaser will be compensated promptly. Failure of our component suppliers to make prompt deliveries also counts as a case of non-availability of the service, if we have entered into a matching cover transaction.

X. Installation and commissioning

Installation and commissioning of the delivered machinery at the site of use are not the object of this contract and must – if this is desired by the purchaser – be agreed upon separately.

XI. Use of software

Where software is included in the scope of delivery, the purchaser is granted a non-exclusive right of use to the supplied software, included its documentation. It is provided for use on the intended delivery item. Use of the software on more than one system is prohibited.

The purchaser may only copy, adapt or translate the software, or convert it from object code to source code to the legally permitted extent (section 69 a ff. German Copyright Act). The purchaser is obliged not to remove the manufacturer's information – particularly copyright notices – or to modify them without obtaining express approval from the supplier in advance.

All other rights to the software and documentation, including copies, are retained by the supplier or software vendors. Issuing sub-licences is not permitted.

XII. Applicable legal system, Legal venue, Written form

1. All legal relations between the supplier and the purchaser buyer shall be governed exclusively by the law of the Federal Republic of Germany, which is the law governing legal relations between domestic parties.
2. The legal venue for all disputes arising directly or indirectly from the contractual relationship is the court responsible for the town in which the supplier's registered office is located. The supplier is however entitled to institute legal proceeding at the purchaser's principal registered office.
3. Individual contractual agreements always take precedence over these T&C. Changing other conditions of the contract made by mutual agreement after the contract is concluded requires written confirmation from the supplier, before they can enter into force.



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