

# General Terms and Conditions of Business

## GERSTEL GmbH & Co KG

(valid from 01 January 2025; the previous conditions hereby lose their validity)

### I. General, offer and order confirmation

1. These General Terms and Conditions of Delivery and Payment shall apply to all - including future - contracts with entrepreneurs, legal entities under public law and special funds under public law for deliveries and other services, including contracts for work and services, contracts for the delivery of fungible and non-fungible goods to be manufactured or produced. In the case of drop shipments, the conditions of the price list and the shipping instructions of the commissioned delivery plant shall apply in addition. The buyer's terms and conditions of purchase shall not be recognised even if we do not expressly object to them again after receipt.

2. Our offers are subject to change. Verbal agreements, promises, assurances and guarantees made by our employees in connection with the conclusion of the contract shall only become binding upon our written confirmation.

3. In case of doubt, the Incoterms in their latest version shall be decisive for the interpretation of commercial clauses.

4. In the case of contracts for work and services and contracts for work and materials, the buyer within the meaning of these terms and conditions shall also be the purchaser.

5. The delivery (provision) of test certificates or similar requires express written agreement. We are entitled to hand over copies of such certificates. In the absence of an express agreement, the fee for test certificates shall be based on our price list or the price list of the respective issuer (supplier plant).

### II. Grades, Dimensions and Weights, CE and GS Marks

1. Grades and dimensions shall be determined in accordance with the agreed standards or, in the absence of an agreement, in accordance with the standards applicable at the time of conclusion of the contract or, in the absence of such standards, in accordance with commercial practice. References to standards, e.g. DIN/EN or their components, e.g. material sheets, test certificates and test standards as well as information on grades, dimensions, weights and usability are no assurances or guarantees, nor are declarations of conformity, manufacturer's declarations and corresponding marks such as CE and GS.

2. The weighing carried out by us or our supplier shall be decisive for the weights. Proof of weight shall be provided by presentation of the weighing slip. We are entitled to determine the weight without weighing according to the standard (theoretical) plus 2.5 % (commercial weight). In the case of goods invoiced by weight, the numbers of pieces, bundles etc. stated in the dispatch note are non-binding. Unless individual weighing is customary, the total weight of the consignment shall apply in each case. Differences compared to the calculated individual weights shall be distributed proportionately among them.

### III. Shipment, risk and packaging

1. We shall determine the route and means of dispatch as well as the forwarding agent and carrier.

2. Goods notified as ready for dispatch in accordance with the contract must be called off immediately, otherwise we are entitled, after issuing a reminder, to dispatch them at our discretion at the expense and risk of the buyer or to store them at our discretion and to invoice them immediately.

3. If, through no fault of our own, transport by the intended route or to the intended place in the intended time becomes impossible or substantially more difficult, we shall be entitled to deliver by another route or to another place; the additional costs incurred shall be borne by the buyer. The buyer shall be given the opportunity to comment beforehand.

4. The risk, including the risk of seizure of the goods, shall pass to the buyer for all transactions, including carriage paid or free domicile deliveries, when the goods are handed over to a forwarding agent or carrier, but no later than when they leave the warehouse or the delivery plant. We shall only provide insurance on the instructions and at the expense of the buyer. The obligation to unload as well as the costs of unloading shall be borne by the buyer.

5. The goods are delivered unpacked and not protected against rust. If customary in the trade, we deliver packaged. We shall provide packaging, protection and/or transport aids according to our experience at the buyer's expense. Packaging shall be taken back at our

warehouse within a reasonable period of time (14 days after delivery); we shall not assume any costs of the buyer for the return transport there or his own disposal of the packaging.

6. We are entitled to make partial deliveries to a reasonable extent. We are entitled to reasonably exceed or fall short of the agreed delivery quantities. The indication of an approximate quantity entitles us to over/under-delivery and corresponding invoicing of up to 10 %.

7. In the case of contracts with continuous delivery, call-offs and grade classifications for approximately equal partial quantities shall be given to us; otherwise we shall be entitled to make the determinations at our reasonable discretion.

8. If the contractual quantity is exceeded by the individual call-offs, we shall be entitled, but not obliged, to deliver the surplus. We may charge for the excess at the prices valid at the time of the call-off or delivery.

### IV. Execution of deliveries, delivery periods and dates

1. Our delivery obligation is subject to timely and correct self-supply, unless the incorrect or late supply or non-supply is our fault. 2. details on delivery periods are approximate.

2. Information on delivery times is approximate. Agreed delivery periods shall commence on the date of our order confirmation and shall only apply on condition that all details of the order have been clarified in good time and that all obligations of the buyer have been fulfilled in good time, e.g. provision of all official certificates, letters of credit and guarantees or payments on account.

3. The time of dispatch ex works or ex warehouse shall be decisive for compliance with delivery periods and dates. They shall be deemed to have been met upon notification of readiness for dispatch if the goods cannot be dispatched on time through no fault of our own.

### V. Acceptance

1. The acceptance of the products takes place with the successful performance of the functional test. The functional test shall be deemed to have been successfully performed if the diagnostic and test programmes or procedures developed by us for this purpose do not detect any defect in the products. If we install the products as agreed, the functional test shall be carried out by us after delivery and installation of the products at the place of installation. The buyer is entitled to participate in the functional test. After the functional test has been carried out, we shall inform the Buyer that the products are ready for operation.

2. For all other products, we shall carry out the functional test as part of the final inspection at our manufacturing plant. In this case, acceptance shall be deemed to have taken place unless the buyer expressly objects to acceptance in writing within 7 days of receipt of the products, stating the exact defect.

3. If the acceptance and/or functional test is not carried out, not carried out in time or not carried out completely through no fault of our own, we are entitled to dispatch the goods without acceptance or to store them at the expense and risk of the buyer and to charge him for them.

4. The buyer shall ensure that we can commission the acceptance company requested by him in the name and for the account of his customer. Unless otherwise agreed, this authorisation shall be deemed to have been granted with the naming of an acceptance company in the order.

### VI. Notice of defects and warranty

1. The quality of the goods shall be determined in accordance with Section II of these terms and conditions. We accept no liability for the suitability of the goods for normal use or for their usual quality. Defects in the goods must be reported in writing without delay, at the latest 14 days after delivery. The same applies to defects or the absence of test certificates, performance declarations, safety data sheets, lists of substances, CE marks, Ü marks to be supplied. Defects which cannot be discovered within this period even with the most careful inspection must be reported in writing immediately after discovery, at the latest before the expiry of the agreed or statutory limitation period, with immediate cessation of any processing.

2. After an agreed acceptance of the goods by the buyer has been carried out, the notification of material defects which were detectable during the agreed type of acceptance shall be excluded.

3. In the event of a justified notice of defect in due time, we may, at our discretion, remedy the defect or deliver a defect-free item (supplementary performance). In the event of failure or refusal of subsequent performance, the buyer may reduce the purchase price or withdraw from the contract after setting and unsuccessful expiry of a reasonable deadline. The same applies if the goods have already been sold, processed or transformed.

4. If the buyer does not immediately give us the opportunity to convince ourselves of the defect, in particular if he does not immediately make the rejected goods or samples thereof available upon request, all rights due to the material defect shall lapse. The same shall apply in the event of an insignificant reduction in the value or the suitability of the goods.

5. Expenses in connection with the subsequent performance, in particular costs in connection with the installation and removal of the defective item, shall only be borne by us insofar as they are reasonable in the individual case, in particular in relation to the purchase price of the goods, but in no case in excess of 150 % of the value of the goods. Excluded are costs incurred by the buyer for the self-remedy of a defect, without the legal requirements for this being met. We shall not bear any expenses incurred by the fact that the goods sold have been taken to a place other than the buyer's registered office or branch unless this is in accordance with their contractual use.

6. The buyer's rights of recourse according to § 478 BGB remain unaffected.

## **VII. Prices**

1. Unless otherwise agreed, the prices and conditions of our price list valid at the time of conclusion of the contract shall apply. The goods shall be invoiced gross for net.

2. If duties and other external costs included in the agreed price change later than four weeks after conclusion of the contract or if they are newly incurred, we shall be entitled to change the price accordingly.

3. If the manufacturer increases its prices before delivery, we shall be entitled to change the price accordingly. If the manufacturer increases its prices before we have delivered, we are entitled to increase the price agreed with the buyer for the goods not yet delivered to the same extent if and to the extent that we increase our prices in general.

## **VIII. Terms of payment**

1. Payments must be made within 30 working days of the invoice date without deduction. Cheques shall only be deemed to be payment upon their final legal encashment. If the installation is not included in the purchase price, acceptance of the products by the customer shall take place upon delivery. If the installation is included in the purchase price, the acceptance of the products by the customer takes place when the product has passed GERSTEL's installation and testing procedure. If the customer plans or delays the installation by GERSTEL for more than thirty (30) days after delivery, acceptance of the product(s) shall take place on the thirty-first (31st) day after delivery. We are entitled to make deliveries by means of partial deliveries. In this case, the purchase price of each partial delivery shall be due regardless of the remaining delivery. If the payment deadline is exceeded, we shall be entitled to charge interest on arrears in accordance with § 288 para. 1 sentence 2 BGB (German Civil Code). This does not exclude the assertion of further damages. A reminder is not required. We are entitled to charge a fee of € 25.00 per reminder.

2. In the event of default in payment, cheque protests and other circumstances which make the creditworthiness of the buyer appear doubtful, in particular in the event of an application for composition or bankruptcy proceedings or in the event of cessation of payments, all claims shall become due immediately, irrespective of agreed payment periods, whereby we shall be entitled to charge costs in the amount of the usual bank interest and expenses for the granting of unsecured overdraft facilities from the respective invoice date.

3. In the event of default of payment by the purchaser, we shall furthermore be entitled to withdraw without notice from all delivery obligations still existing vis-à-vis the purchaser.

4. If, after placing the order, we become aware of circumstances which make the creditworthiness of the Purchaser appear doubtful, GERSTEL shall be entitled to withdraw from the contract or to demand advance payment in cash. A circumstance which makes the creditworthiness of a buyer appear doubtful is in particular a corresponding credit report from a credit agency. A right of retention or set-off with regard to the purchase price or other obligations of the buyer is excluded for all deliveries, including partial deliveries, unless these claims have been recognised or legally established. Reduction of the purchase price is only permissible in accordance with the cases expressly stated in these conditions. As long as we have not expressly recognised a right of reduction of the purchaser in writing, the purchaser is obliged to pay the full purchase price.

## **IX. Retention of title**

1. All goods delivered shall remain our property (reserved goods) until fulfilment of the claims to which we are entitled from the respective delivery. This shall also apply to conditional claims arising in the future, e.g. from acceptor's bills of exchange, and also if payments are made on specially designated claims, and also to claims which are established unilaterally by the insolvency administrator by way of choice of performance.

2. Treatment and processing of the goods subject to retention of title shall be carried out for us as manufacturer within the meaning of § 950 BGB (German Civil Code) without obligating us. The processed goods shall be deemed to be goods subject to retention of title within the meaning of No. 1. If the goods subject to retention of title are processed, combined or mixed with other goods by the buyer, we shall be entitled to co-ownership of the new item on a pro rata basis in the ratio of the invoice value of the goods subject to retention of title to the invoice value of the other goods used. If our ownership lapses as a result of combining or mixing, the buyer shall already now transfer to us the ownership rights to which he is entitled in the new stock or item to the extent of the invoice value of the reserved goods and shall keep them in safe custody for us free of charge. Our co-ownership rights shall be deemed to be reserved goods within the meaning of No.1.

3. The buyer may only sell the goods subject to retention of title in the ordinary course of business under his normal terms and conditions of business and as long as he is not in default, provided that the claims from the resale are transferred to us in accordance with nos. 4 to 5. He is not entitled to dispose of the reserved goods in any other way.

4. The buyer's claims arising from the resale of the reserved goods or for any other legal reason (such as the processing or installation of supplied building materials and other materials in a property) are already assigned to us now, together with all securities which the buyer acquires for the assigned claims. They serve as security to the same extent as the reserved goods. If the goods subject to retention of title are sold by the buyer together with other goods not sold by us, the claim from the resale shall be assigned to us in the ratio of the invoice value of the goods subject to retention of title to the invoice value of the other goods. In the event of the sale of goods in which we have co-ownership shares pursuant to No. 2, a part corresponding to our co-ownership share shall be assigned to us.

5. The buyer is entitled to collect claims from the resale. He is obliged to transfer the collected amounts to us in the amount of the invoice value of the reserved goods. Upon collection by the buyer, our claim shall become due immediately. This authorisation to collect shall expire in the event of our revocation. We shall only make use of our right of revocation if the buyer acts in breach of contract, in particular in the event of his default in payment or non-redemption of a bill of exchange, or if he disregards our security interest as seller in any other way. At our request, the buyer is obliged to inform his customers immediately of the assignment to us and to provide us with the information and documents necessary for collection. A further assignment of the claims from the resale by the buyer is not permitted, unless it is an assignment by way of genuine factoring, which is notified to us and in which the factoring proceeds exceed the value of our secured claim. Our claim shall become due immediately upon crediting of the factoring proceeds.

6. The buyer must inform us immediately of any seizure or other impairment by third parties. The buyer shall bear all costs which have to be incurred in order to cancel the seizure and to recover the object of purchase, insofar as they cannot be recovered from third parties.

7. If the value of the existing securities exceeds the secured claims including ancillary claims (interest, costs, etc.) by more than 50% in total, we shall be obliged to release securities of our choice at the request of the buyer.

8. If the buyer defaults on payment or does not honour a bill of exchange when it is due, we are entitled to take back the goods subject to retention of title and, if necessary, to enter the buyer's business or warehouse for this purpose. The same shall apply if, after conclusion of the contract, it becomes apparent that our claim for payment under this or other contracts with the buyer is jeopardised by the buyer's lack of ability to pay. Taking back the goods does not constitute a withdrawal from the contract. We may also prohibit the resale, further processing and removal of the reserved goods. The provisions of the Insolvency Code shall remain unaffected.

9. This section VII shall not apply in the case of delivery against advance payment.

## **X. Warranty**

1. Unless otherwise agreed, the warranty period shall be 12 months from the handover/delivery of the object of purchase to the Buyer; for spare parts as well as for repairs and spare parts deliveries made after the expiry of the original warranty period, the warranty period shall be 6 months. Excluded from this are claims for defects by consumers as well as claims for damages due to injury to life, body or health and/or claims for damages due to grossly negligent or intentional damage caused by us. In this respect, the statutory limitation periods shall apply.

2. Our warranty extends exclusively to material and manufacturing defects.

3. The warranty shall commence on the date of delivery in the case of materials, software, components, spare parts and instruments, and on the date of completion of our activities in the case of measures whose assembly or installation is carried out by us. This shall be notified by us in writing, otherwise from the date of acceptance. Material-related deviations in quality, dimensions and quantities shall not constitute grounds for

complaint. Liability for defects under the warranty does not apply to natural wear and tear, nor to damage occurring after delivery as a result of incorrect or negligent handling, excessive stress, chemical, electrochemical, electrical or atmospheric influences.

4. If the complaint about the goods is based on drawings made by us, complaints relating to the drawings are excluded insofar as the customer approved the drawings before the work was carried out.

5. We warrant that the software conforms to the specifications set out by us in the associated programme documentation and has been produced with due care and skill. Nevertheless, according to the current state of the art, the complete exclusion of errors in the software is not possible. The responsibility for the selection of the software functions, the use as well as the results achieved with it is borne by the purchaser. We shall correct software errors which impair the intended use to a more than insignificant extent, at our discretion and depending on the significance of the error, either by supplying an improved software version or by providing information on how to eliminate or circumvent the effects of the error.

6. In the case of components and instruments, any warranty shall lapse if a component or instrument is tampered with without our prior express written consent. In addition, the warranty shall expire if the service and maintenance intervals prescribed by us are not observed. Intervention is deemed to have taken place in particular if the instrument is opened, microelectronic components are replaced, etc. Notifications of defects must be made within eight days of receipt or occurrence of the defect. Otherwise, the goods shall be deemed accepted.

7. Furthermore, notifications of defects must be made in writing before the goods delivered by us are processed or used, giving precise details of the individual defect found, and in particular do not release the customer from the obligation to pay. If the complaint is justified, the buyer may only demand rectification of the defect, but not a reduction in the purchase price, cancellation of the contract or payment of damages or a replacement delivery. However, instead of rectifying the defect, we shall be entitled to deliver goods free of defects or to provide compensation for the reduced value. The measured values, performance values or test specifications of the materials or products supplied by us are always laboratory values. These may deviate from the buyer's values due to special operating conditions.

8. We point out that some products contain selected and carefully overhauled parts which correspond to new parts in their performance.

## **XI. Software**

The Buyer shall be granted a non-exclusive and non-transferable right to use proprietary software, third-party software (software developed by a software supplier independent of us) and the respective associated documentation and subsequent supplements for internal use with the products for which software is supplied (all other rights to the software and the documentation, including copies and subsequent supplements, shall remain with us or the software supplier). The buyer must ensure that this software and documentation is not accessible to third parties without our prior written consent. Copies may in principle only be made for archiving purposes, as replacements or for troubleshooting; sentences 1 and 2 apply accordingly. The transfer of source programs requires a special written agreement. If the originals bear a notice indicating copyright protection, the buyer shall also affix this notice to copies. Unless otherwise agreed, the right of use shall be deemed granted in each case upon order confirmation and delivery of the software, documentation and subsequent supplements.

## **XII. Claims for damages**

1. Due to breach of contractual and non-contractual obligations, in particular due to impossibility, delay, culpa in contrahendo and tort, we shall only be liable - also for our executive employees and other vicarious agents - in cases of intent and gross negligence, limited to the typical contractual damage foreseeable at the time of conclusion of the contract. In the case of Zirka delivery quantities, this shall be calculated on the basis of the minimum quantity of 90% of the delivery quantity provided for in the contract.

2. These limitations shall not apply in the event of culpable breach of material contractual obligations, in cases of mandatory liability under the Product Liability Act, in the event of damage to life, limb and health and also not if and insofar as we have fraudulently concealed defects in the item or guaranteed their absence. Essential are specifically described contractual obligations, the breach of which endangers the achievement of the purpose of the contract, or such contractual obligations, the fulfilment of which enables the proper performance of the contract in the first place and on the observance of which the buyer regularly relies and may rely.

3. The statutory provisions on the burden of proof shall remain unaffected.

4. Unless otherwise agreed, contractual claims, including claims for damages based on material defects, which the Buyer incurs against us on the grounds of or in connection with the delivery of the goods, shall become statute-barred 1 year after delivery of the goods, unless they involve compensation for physical injury or damage to health or typical, foreseeable damage or are based on intent or gross negligence on the part of the Seller. This period shall also apply to such goods which are used in accordance with their usual manner of use for a building and have caused its defectiveness, unless this manner of use was agreed in writing. In cases in which we have acknowledged the buyer's claim for supplementary performance, the limitation period shall not start anew but shall be suspended until three months after the supplementary performance has been carried out.

## **XIII. Industrial property rights and copyrights**

In the event of infringement of industrial property rights (including copyrights) due to the use of one of our products, we shall indemnify the buyer against (damage) claims of the owner of the industrial property rights. In addition, we shall generally procure for the buyer the right to continue to use the product. If this should not be possible under economically reasonable conditions, we shall, at our own discretion, either modify or replace the product in such a way that the property right is not infringed or take back the product and refund the purchase price paid to us less an amount taking into account the age of the product. The aforementioned obligations on our part shall only exist if the buyer informs us immediately of any claims made against him, we reserve the right to take all defensive measures, including out-of-court settlements, and the infringement of the property right is not caused by the fact that a product supplied by us is modified, used in a manner not described by us in publications or used with products not supplied by us. This provision contains, subject to clause 8, all obligations of us in the event of claims in connection with the infringement of industrial property rights.

## **XIV. Safety precautions**

If safety precautions of any kind are to be taken during installation or assembly work to be carried out by us or if the cooperation of the buyer or third parties not to be commissioned by us is required to carry out the installation or assembly work, all costs resulting from this shall be borne by the buyer. Any equipment or other aids to be provided shall be provided by the buyer.

## **XV. Place of performance and jurisdiction**

1. Place of performance for deliveries, services and payments is Mülheim an der Ruhr, without prejudice to the provision of § 29 ZPO. If the purchaser is a registered trader, a legal entity under public law or a special fund under public law, the exclusive place of jurisdiction with regard to local jurisdiction is agreed to be the courts having jurisdiction for Mülheim an der Ruhr, also for rights and obligations arising from liabilities under bills of exchange and cheques.

2. The place of jurisdiction is Mülheim a. d. Ruhr.

3. All legal relations between us and the buyer shall be governed by the law of the Federal Republic of Germany, including the Vienna UN Convention on Contracts for the International Sale of Goods of 11 April 1980 in the case of cross-border deliveries and services.

## **XVI. Data protection**

We will only store and use personal customer data in accordance with the Basic Data Protection Regulation (DSGVO). The data protection regulations are available on our website at <http://www.gerstel.de>.

## **XVII. Miscellaneous**

The parties will comply with all applicable laws and regulations. We may suspend performance of the contract if the customer violates any applicable laws or regulations.

All terms and conditions of delivery of the buyer which are not expressly accepted by us in writing shall not be binding on us, even if they form the basis of an order and we do not expressly object to their content again. The rights of the buyer arising from a contract are not transferable without our express written consent. If we take back goods, these can only be credited with 75% of the invoice amount, insofar as they are standard devices, systems or goods. In the case of custom-made products, return is excluded in any case.

Insofar as agreements deviate from the above conditions, they must be in writing in order to be valid. We are in any case entitled to make partial deliveries.

The invalidity of individual provisions of these terms of delivery and payment or other parts of the contract shall not affect the validity.