



Terms and Conditions of Sale

1. APPLICABILITY.

- [1.1] These Terms and Conditions of Sale (these "Terms") are the only terms which govern the sale of Products and/or Services (each as defined below) by Gebhardt USA, Inc. dba Gebhardt Intralogistics North America ("Seller") to the buyer ("Buyer") named on the accompanying quote or proposal (collectively, "Proposal"). Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Products and Services covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.
- [1.2] The Proposal and these Terms (collectively, this "Agreement") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless of whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms.
- [1.3] The Proposal is valid as identified therein or, if not so identified, for thirty (30) days from the date thereof. Purchase orders are not binding upon Seller unless accepted by Seller in writing, and any acceptance is subject to these Terms.

2. DEFINITIONS

Whenever used herein with initial capitalization, the following definitions shall be applicable:

- [2.1] "Equipment" shall mean Gebhardt lifts, shuttles, load carriers, vehicles, and other Gebhardt conveyor or warehouse systems.
- [2.2] "Product" shall mean the Equipment, hardware, components, parts, and/or materials provided by Seller under this Agreement.
- [2.3] "Services" shall mean services, including any training, provided by Seller pursuant to the Agreement.
- [2.4] "Software" shall mean computer programs, procedures, rules, and any associated documentation pertaining to the operation of the computer system.
- [2.5] "Technical Assistance" shall mean advice and consultation given to Buyer by Seller with respect to (a) installation, inspection, repair, and maintenance activities performed by others at the installation site; and (b) any Seller recommended quality assurance procedures for activities performed at the installation site. Where Seller furnishes Technical Assistance, Buyer shall be responsible for (a) supervision, management, regulation, and determination of the number of its personnel or contractors and their work; and (b) planning, scheduling, management, and progress of the work.
- [2.6] "Work" shall mean all Product, Services, Software and Technical Assistance which may be provided by Seller pursuant to this Agreement.

3. SCOPE

Seller will furnish to Buyer the Work as specified in Seller's Proposal and pursuant to the Agreement.

4. PRICE BASIS; TAXES

- [4.1] Prices are quoted in U.S. Dollars. Prices for deliveries are firm for the agreed period of delivery. Prices for deliveries are understood to be net and FCA point of shipment (Streetsboro, Ohio or Sinsheim, Germany, whichever applies) (Incoterms 2020).
- [4.2] The price includes packing in accordance with Seller's general practices. Cables, installation material, installation, Technical Assistance of installation and commissioning, acceptance tests or any other Services are not included, except as otherwise stated in the Proposal.
- [4.3] All prices are exclusive of all sales, use, gross receipts, excise, value-added, or similar taxes as well as any other duties and/or charges of any kind imposed by any governmental authority applicable to this Agreement or the subject matter hereof. Buyer shall be responsible for all such taxes, duties, and charges; provided that Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, personal or real property, or other assets.

5. TERMS OF PAYMENT

- [5.1] Equipment. Payment for Equipment (including any related Work set forth in the relevant Proposal) shall be made in accordance with the following payment milestones unless otherwise stated in the Proposal (percentages are of the order value including any changes):
 - a. Thirty percent (30%) down payment payable upon receipt of Seller's purchase order confirmation;
 - b. Thirty percent (30%) payable upon receipt of Seller's notification of readiness to ship;
 - c. Thirty percent (30%) payable upon completion of installation or thirty (30) days after receipt of all Products, whichever is earlier; and
 - d. The final ten percent (10%) payable upon signing of the acceptance protocol or two (2) weeks after Seller's completion of installation, whichever is earlier.
- [5.2] Other Work. Except as otherwise set forth in the Proposal or Section 5.1 above, all payments are due and payable net thirty (30) days from date of invoice.
- [5.3] Technical Assistance: Per Diem, Travel and Living Expenses. When Technical Assistance is provided on a per diem basis, invoices will be issued monthly for one hundred percent (100%) payment of charges, plus travel and living expenses at the price in effect when the Services are provided.
- [5.4] Training and Parts. When training is included, invoices will be issued for one hundred percent (100%) payment upon provision of said Services. Invoices for (spare or replacement) parts will be issued for one hundred percent (100%) of the shipment value.



- [5.5] Payment by ACH. All payments are to be made net via ACH, unless otherwise stated in the Proposal.
- [5.6] Default Interest. Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Products or performance of any Work and stop Products in transit if Buyer fails to pay any amounts when due hereunder.
- [5.7] Purchase-Money Security Interest. As collateral security for the payment of the purchase price hereunder, Buyer hereby pledges and grants to Seller, a lien on and security interest in and to all of the right, title, and interest of Buyer in, to, and under the Products and Software, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the applicable Uniform Commercial Code.

6. DELIVERY/TITLE

- [6.1] Delivery will be made FCA point of shipment (Streetsboro, Ohio or Sinsheim, Germany, whichever applies) (Incoterms 2020). If Seller arranges shipment, freight will be invoiced to Buyer (unless specified otherwise by Buyer).
- [6.2] Title to and risk of loss of the Products shall pass to Buyer upon delivery, as stated in Section 6.1 above, or movement to storage.
- [6.3] Delivery time is the number of months included in the Proposal for delivery calculated from the date on which Seller has acknowledged the Agreement and received down payment (if applicable), whichever is later.
- [6.4] The quoted schedules depend upon prompt agreement on complete definition of the detailed scope of supply and receipt of information, including design data, drawing approval and manufacturing release according to the established project schedules. Delays by Buyer in providing such agreement or information may result in an appropriate adjustment of the Agreement in accordance with Section 8 (Changes).

7. CODES AND STANDARDS

Seller will design and manufacture Products under this Agreement in accordance with the applicable U.S. codes and standards relating to design and manufacture which prevail as of the date of the Proposal, unless otherwise specified in writing by Seller. Where such codes and standards are not applicable, Seller will design and manufacture the Product to Seller's standards. Seller will consider Buyer's request for compliance with new or revised codes and standards effective after the date of the Proposal as a revision in accordance with Section 8 (Changes).

If not contained in the design specifically in Seller's Proposal, changes required to comply with state or local codes and standards shall be brought to Seller's attention prior to the commencement of manufacture and shall also be subject to Section 8 (Changes).

8. CHANGES

- [8.1] Buyer may request changes in the scope of the Work and, if accepted by Seller, the price, schedule, and other pertinent provisions of the Agreement shall be adjusted by written agreement of the parties prior to implementation of the change.
- [8.2] Seller's expenses due to (a) delays (other than delays which are within the reasonable control of Seller); (b) changes in applicable laws and requirements after the date of Seller's Proposal; and (c) additional inspections or tests required by Buyer beyond those required for compliance with Seller's quality assurance program will be treated as changes to the scope of Work and the Agreement will be adjusted as set forth in the previous paragraph.

9. WARRANTIES

- [9.1] Equipment Warranty and Exclusive Remedy. Seller warrants that the Equipment supplied by it and installed using Seller certified technicians will be of the kind and quality specified in Seller's Proposal and free of defects in workmanship and material. In the event any Equipment fails to comply with this warranty, and Buyer notifies Seller promptly in writing of such nonconformity within twelve (12) months from delivery (the "Equipment Warranty Period"), Seller shall correct such nonconformity, at its option, by repair or replacement of defective part(s) FCA Seller's repair plant or factory (Incoterms 2020). If Buyer delays delivery, the Equipment Warranty Period will commence on the original delivery date. This warranty does not apply to consumables and wearing parts. **INSTALLATION, MODIFICATION, OR REPAIR OF THE EQUIPMENT BY TECHNICIANS THAT ARE NOT CERTIFIED BY GEBHARDT WILL VOID THE WARRANTY SET FORTH IN THIS SECTION 9.1.**
- [9.2] Technical Assistance/Service Warranty and Exclusive Remedy. Seller warrants for each Service (whether Technical Assistance, installation Service or otherwise) (hereinafter the "Service Warranty") that (a) the recommendations and performance of its personnel will reflect competent professional knowledge and judgment; and (b) the technical information, reports and analyses transmitted by Seller in connection therewith will reflect competent Seller engineering judgment. If, during the period commencing with the start of the Service and ending ninety (90) days after completion of said Service such Service fails to conform with the Service Warranty and Seller is promptly so notified in writing during such warranty period, Seller will promptly reperform the nonconforming portion of the Service by repair, adjustment, modification or replacement of the nonconforming portion or if reperformance is impracticable, Seller will refund the amount of the compensation paid to Seller for such nonconforming portion of the Service.



- [9.3] Title Warranty and Exclusive Remedy. Seller warrants that the Equipment, when delivered and paid in full, shall not be subject to any encumbrances, liens, security interests, or other defects in title. In the event of any nonconformity to this warranty, Seller, upon prompt written notice, shall defend the title to the Equipment.
- [9.4] Software Warranty and Exclusive Remedy. Seller's Software is warranted to be free from errors which materially affect its utility and shall achieve the functionality described in Seller's Proposal. Should Seller be notified promptly in writing of any failure to conform to this warranty within the Equipment Warranty Period provided above; Seller, at its option, will furnish corrected Software in the medium in which the Software originally was supplied to Buyer or will provide a procedure which will correct the operating effect of the error. Third-party Software or documentation is not warranted as to form and content by Seller and is provided subject only to such warranties, if any, that may be provided by such third party.
- [9.5] Parts Warranty and Exclusive Remedy. All spare and replacement parts are warranted against defects in material and workmanship as described in Section 9.1 (Equipment Warranty and Exclusive Remedy), for a period of ninety (90) days from the date of shipment.
- [9.6] Warranty Conditions. The warranties and remedies set forth in this Section 9 are conditioned upon:
- Buyer's receipt, handling, storage, and maintenance during any such storage, installation, testing, operation, and maintenance, including tasks incidental thereto, of Work in a normal and proper manner with competent supervision in accordance with the recommendations of Seller to the extent applicable or, in the absence of such recommendations or to the extent such recommendations are not applicable, in accordance with generally accepted industry standards and practices. In addition, such Work shall not have been operated in excess of limitations specified in writing by Seller and not have been subjected to accident, alteration, abuse or misuse; and
 - Buyer providing, without cost to Seller, diagnosis, working access to the nonconformity by disassembling, removing, replacing and reinstalling any Equipment, Products, components, materials or structures to the extent necessary to permit Seller to perform its warranty obligations.
- [9.7] Exclusivity of Warranties and Remedies. THE WARRANTIES IN THIS SECTION 9 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES WHETHER STATUTORY, EXPRESS OR IMPLIED (INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE). The remedies provided herein are Buyer's exclusive remedies for any failure of Seller to comply with its obligations. Correction of any defect or nonconformity in the manner and for the period of time provided above shall constitute complete fulfillment of all such liabilities of Seller whether the claims of Buyer are based in contract, in tort (including negligence or strict liability), or otherwise with respect to or arising out of the Work furnished or performed hereunder.

10. INTELLECTUAL PROPERTY RIGHTS

- [10.1] License. Seller grants to Buyer a nonexclusive license to utilize Software furnished hereunder. Such license is limited to Buyer's internal use at or for the unit with which such Software is incorporated. Buyer may transfer such Software to an end user of the unit with which such Software is incorporated. All title and ownership of Software, including, without limitation, the copyright to such Software, shall remain exclusively with Seller or its licensor. Buyer shall not itself, or with the assistance of others, reverse compile, reverse engineer or in any other manner attempt to decipher in whole or in part the logic or coherence of any Software licensed hereunder. Third-party Software provided by Seller may be subject to a separate license agreement and/or registration requirements and limitations on copying and use.
- [10.2] Designs, Engineering Details, and Other Data. Seller retains for itself all of its intellectual property rights in any supporting documentation supplied hereunder, including but not limited to all designs, engineering details, and other data pertaining to any Product or Software.
- [10.3] Proprietary Information. Seller may have a proprietary interest in any information that may be furnished pursuant to the Agreement. Buyer will keep in confidence and will not disclose any such information which is specifically designated as being proprietary to Seller without the prior written permission of Seller or use any such information for other than the purpose for which it is supplied. The provisions of this paragraph shall not apply to information, notwithstanding any confidential designation thereof, which is known to Buyer without any restriction as to disclosure or use at the time it is furnished, which is or becomes generally available to the public without breach of any agreement, or which is received from a third party without limitation or restriction on said third party or Buyer at the time of disclosure. Seller also has a proprietary interest in the Proposal and the Agreement. Accordingly neither document will be disclosed in whole or in part to third parties without the prior written permission of Seller.
- [10.4] Infringement.
- Seller will, at its own expense, defend or at its option settle any suit or proceeding brought against Buyer so far as based on an allegation that any Work, or use thereof for its intended purpose, constitutes an infringement of any U.S. intellectual property rights of others, if Seller is notified promptly in writing and given authority, information, and assistance in a timely manner for the defense of said suit or proceeding. Seller will pay the damages and costs awarded in any suit or proceeding so defended. Seller will not be responsible for any settlement of such suit or proceeding made without its prior written consent. In case the Work, as a result of any suit or proceeding so defended, is held to constitute infringement or its use by Buyer is enjoined, Seller will, at its option and its own expense, either: (a) procure for Buyer the right to continue using said Work; (b) replace it with substantially equivalent non-infringing Work; (c) modify it so it becomes non-infringing; or (d) if all else fails, refund a portion of the price paid to Seller.



b. Seller will have no duty or obligation to Buyer under this Section 10.4 to the extent that the Work is (a) supplied according to Buyer's design or instructions wherein compliance therewith has caused Seller to deviate from its normal course of performance; (b) modified by Buyer or its contractors after delivery; or (c) combined by Buyer or its contractors with items not furnished hereunder and by reason of said design, construction, modification or combination, a suit is brought against Buyer. In addition, if by reason of such design, instruction, modification or combination, a suit or proceeding is brought against Seller, Buyer shall protect Seller in the same manner and to the same extent that Seller has agreed to protect Buyer under the provisions of Section 10.4(a) above.

c. THIS SECTION 10 IS AN EXCLUSIVE STATEMENT OF ALL THE DUTIES OF THE PARTIES RELATING TO INTELLECTUAL PROPERTY RIGHTS AND DIRECT OR CONTRIBUTORY INFRINGEMENT AND OF ALL THE REMEDIES OF BUYER RELATING TO ANY CLAIMS, SUITS, OR PROCEEDINGS INVOLVING INTELLECTUAL PROPERTY RIGHTS. Compliance with this Section as provided herein shall constitute fulfillment of all liabilities of the parties under the Agreement with respect to intellectual property rights.

11. COMPLIANCE WITH LAW.

Buyer shall comply with all applicable laws, regulations, and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Agreement. Buyer shall comply with all export and import laws of all countries involved in the sale of the Work under this Agreement or any resale of the Work by Buyer. Buyer assumes all responsibility for shipments of Work requiring any government import clearance. Seller may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other duties or penalties on the Work.

12. FORCE MAJEURE

[12.1] No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations of Buyer to make payments to Seller hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("Impacted Party") reasonable control, including, without limitation, the following force majeure events ("Force Majeure Event(s)": (a) acts of God; (b) flood, fire, earthquake, epidemics, pandemics, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; (h) shortage of adequate power or transportation facilities; and (i) other events beyond the reasonable control of the Impacted Party.

[12.2] The Impacted Party shall give prompt notice of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event of delay in performance excusable under this Section 12, the time for performance of the Work will be extended by a period of time reasonably necessary to overcome the effect of the delay.

13. SUSPENSION

If performance under this Agreement is held, delayed, or rescheduled at the request of Buyer, it will be subject to Section 8 (Changes). Further, if Product is ready for shipment and shipment cannot be made for causes beyond Seller's reasonable control, Seller shall submit an invoice for the balance due on such Product payable net thirty (30) days from date of invoice.

14. TERMINATION

[14.1] This Agreement may be terminated by Buyer upon sixty (60) days written notice and upon payment of reasonable and proper termination charges, including but not limited to all costs identified to the Agreement which have been incurred up to the date of notice of termination, plus a reasonable profit.

[14.2] In the event Buyer or Seller commits a material breach (other than Seller's obligations under any of its warranties, for which the remedies provided are exclusive), and the breaching party fails to take steps to remedy such breach within sixty (60) days from receipt of written notice specifying the nature and extent of such breach, and such breach prevents completion of the Agreement, the other party may, by subsequent written notice, terminate the Agreement. Any recoveries of Buyer and Seller shall be determined by mutual agreement. In no event will any such recovery be in excess of any limitations contained in this Agreement as to the types or amounts of damages recoverable.

15. LIMITATIONS OF LIABILITY

[15.1] Buyer expressly agrees that neither Seller nor any of its affiliates will under any circumstances be liable under any theory of recovery, whether based in contract, in tort (including negligence and strict liability), under warranty or otherwise, for any indirect, special, incidental or consequential damage whatsoever; damage to or loss of property or equipment; loss of profits or revenue; loss of use of Buyer's property, plant, equipment or system; increased costs of any kind; or claims of customers of Buyer.

[15.2] Buyer expressly agrees that the remedies provided herein are exclusive and that under no circumstances shall the total aggregate liability of Seller and its affiliates under any theory of recovery, whether based in contract, in tort (including negligence and strict liability), under warranty or otherwise, exceed 10 percent of the total price paid to Seller under this Agreement.

[15.3] This Section 15 shall prevail over any conflicting or inconsistent provisions in this Agreement.



16. INDEMNIFICATION

- [16.1] Seller shall indemnify and hold Buyer harmless for claims of third parties for physical damage to property and personal injury, including death, occurring on the premises of Buyer (or owner, respectively) during the performance of the Work hereunder, and resulting directly from (and to the extent of) any negligent act, action, omission, or failure to act when under a duty to act, on the part of Seller or its subcontractors while engaged in such Work.
- [16.2] Buyer shall indemnify and hold Seller harmless for claims of third parties for physical damage to property and personal injury, including death, occurring on the premises of Buyer (or owner, respectively) during the performance of the Work hereunder, and resulting directly from (and to the extent of) any negligent act, action, omission, or failure to act when under a duty to act, on the part of Buyer or its subcontractors.

17. MISCELLANEOUS

- [17.1] No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of these Terms.
- [17.2] Governing Law. All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of Ohio without giving effect to any choice or conflict of law provision or rule (whether of the State of Ohio or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Ohio. The United Nations Convention on Contracts for the International Sale of Goods does not apply.
- [17.3] Arbitration and Litigation.
- Any dispute or claim arising out of or relating to this Agreement, including non-contractual disputes or claims, or any question regarding its existence, validity or termination (a "Dispute"), will be referred to and finally resolved by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, which rules are deemed to be incorporated by reference into this clause. The seat, or legal place, of arbitration will be Cleveland, Ohio, and the language of the arbitral proceedings will be English. The governing law of the arbitration agreement will be the substantive law of the State of Ohio.
 - Despite the above Section 17.3(a), Seller, at its sole option (and regardless of whether Seller is claimant or respondent), may submit a Dispute to any court of competent jurisdiction, which will have non-exclusive jurisdiction to determine the Dispute. This Section 17.3(b) is for the benefit of Seller.
 - If Buyer has already commenced arbitration proceedings in relation to a Dispute before Seller has commenced court proceedings, it is agreed that, on the demand of Seller, the arbitration proceedings shall be discontinued within thirty (30) days after Seller's demand. It is agreed that, on commencement of the court proceedings by Seller, any arbitral tribunal already appointed, or to be appointed, will have no jurisdiction in respect of the Dispute.

- [17.4] Assignment. Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.
- [17.5] Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
- [17.6] Survival. Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Sections 4.3, 5, 9, 10, 11, 14.2, 15, 16, and 17.
- [17.7] Amendment and Modification. These Terms may only be amended or modified in a writing stating specifically that it amends these Terms and is signed by an authorized representative of each party.