

**General terms and conditions for deliveries of assemblies and spare parts
from GEBHARDT Intralogistics Group GmbH & Co. KG
GEBHARDT Fördertechnik GmbH, GEBHARDT Systems GmbH und Next Intralogistics GmbH**

1. General

- 1.1 These general terms and conditions (hereinafter: AGB) shall apply to deliveries of assemblies and spare parts of GEBHARDT Intralogistics Group GmbH & Co. KG; GEBHARDT Fördertechnik GmbH, GEBHARDT Systems GmbH and Next Intralogistics GmbH (hereinafter: GIG), where the client is an entrepreneur in the sense of § 14 German Civil Code (hereinafter: BGB) – this means, an individual or legally competent partnership acting in execution of its commercial or independent professional activity in conclusion of the legal transaction – a legal entity of public law or public-law special fund.
- 1.2 The entire contractual relationship between GIG and the client shall - subject to other individual agreements - be subject to the law of the Federal Republic of Germany under exclusion of the conflict of laws provisions of international private law.
- 1.3 The place of jurisdiction for any disputes from and in connection with the contract between GIG and the client, as well as any disputes on pre-contractual obligations or the conclusion of the contract shall be the respective factually relevant court at the seat of GIG.
- 1.4 Notwithstanding the provisions under I., 3., GIG shall have the right to also raise a claim before the respective factually relevant court at the main seat of Client according to its unilateral discretion.
- 1.5 All agreements between GIG and the addressee shall be made in writing. This shall also apply to any side agreements and procurement guarantees, as well as to any subsequent changes to the contract.
- 1.6 The inclusion of general terms and conditions of Client is expressly objected to.
- 1.7 The assignment of any contractual claims of Client against GIG shall be excluded.
- 1.8 Client shall not have any set-off or retention rights regarding claims of GIG except in case of undisputed or finally determined claims.

2. Price and payment

- 2.1 The offers of GIG shall always be subject to confirmation. Prices shall apply ex works, excluding packaging, loading, freight and customs, plus the respective arising statutory VATs. Pricing shall be in Euro. If any other currency has been agreed on, all changes to the exchange rate of the foreign currency and the Euro arising after the date of the order confirmation that are to the detriment of GIG shall be imposed on Client.
- 2.2 Payments shall be made at once after receipt of the respective invoice. The inclusion of bills of exchange and cheques shall require the express prior consent of GIG. It shall only take place in lieu of payment. Discount, bill of exchange, inclusion and bank expenses as well as taxes shall be at the expense of the issuer of the bill of exchange or cheque.
- 2.3 If payment is not made in time, GIG shall have the right to charge default interest at 9 percentage points above the base interest rate. This shall also apply if a payment is being deferred by GIG.
- 2.4 If GIG gains knowledge of any circumstances regarding Client's creditworthiness after conclusion of the contract that considerably endanger implementation of the contract, GIG may refuse the services subject to it until Client pays the compensation or provides collateral.

3. Delivery, passing of risk and acceptance

- 3.1 The scope of the obligations shall result from the written order confirmation of GIG. Documents such as brochures, catalogues, drawings, figures, descriptions and technical data as well as samples, weight and size indications shall be non-binding unless GIG has accepted them in writing in the order confirmation or otherwise.
- 3.2 Partial deliveries are permitted where reasonable for the client.
- 3.3 If no fixed date is given expressly for the delivery in the order confirmation by GIG, the indicated delivery periods and dates are non-binding. If an agreed fixed date is exceeded by more than one month for reasons due to the fault of GIG, Client shall have the right to set an appropriate grace period of at least 6 weeks for GIG, and to declare rescission of the contract if the period expires without results.
- 3.4 The prerequisite for timely delivery is timely clarification of all technical and financial questions, timely receipt of all documents to be delivered by the client and compliance with the agreed payment conditions or receipt of agreed letters of credit.
- 3.5 Compliance with the delivery period shall also be subject to the reservation of correct and timely own supply. GIG shall report any delays that become evident as soon as possible.
- 3.6 If non-compliance with the delivery time is due to force majeure, curfews, political riot, terrorist attacks, labour disputes or other events that

are not subject to the area of influence of GIG, the delivery time shall extend appropriately. If the delivery term extends by more than 3 months by this, both contracting partners shall have the right to declare rescission from the contract.

- 3.7 If the delivery or acceptance of the object of the delivery is delayed for reasons due to Client's fault, he shall be charged with the costs arising from the delay, starting one month after notification of readiness for shipment or acceptance.
- 3.8 If shipping is performed by GIG, the risk of accidental destruction and accidental deterioration shall pass to Client at dispatch. If shipping is performed by a third party, the risk of accidental destruction and accidental deterioration shall pass to Client at dispatch of the notification of readiness for delivery. If the delivery is not called in spite of notification of readiness for delivery, GIG shall have the right to store the goods at its discretion at the cost and risk of Client or to give them into custody for Client at his expense.
- 3.9 If Client does not accept any goods or services offered or delivered to him, GIG may set a grace period of 4 weeks for acceptance for the Client. After the end of the period, GIG shall have the right to declare rescission of the contract and/or demand damages. Notwithstanding the option of documenting a higher damage, the damages claims shall amount to at least 15% of the agreed price.

4. Retention of title

- 4.1 The delivered objects shall remain the property of GIG until complete payment of all claims due to GIG from Client from the entire business relationship. The inclusion of individual demands in a current invoice, balancing and acceptance of this shall not affect the retention of title.
- 4.2 Client shall grant GIG irrevocable and unlimited access to the rooms in which the property of GIG is stored, if it makes use of its right to take back the goods delivered subject to retention of title.
- 4.3 Client shall be entitled to sell on the goods delivered subject to retention of title only in its regular course of business. Pledging or transfer as collateral of the objects is not permitted.
- 4.4 In case of further sale or processing, Client hereby assigns GIG any claims due to him against his purchasers at the amount of the claim of GIG without requiring any further or express declaration of assignment. GIG hereby accepts the assignment.
- 4.5 Notwithstanding the assignment and the concurrent collection right, Client shall be entitled to collect the assigned claims for as long as he meets his obligations from the entire business relationship towards GIG.
- 4.6 The application for opening insolvency proceedings shall entitle GIG to declare rescission of the contract and to demand immediate return of the delivered object.
- 4.7 Client shall pay collected amounts to a separate account and keep them for GIG. On the demand of GIG, Client shall disclose the information on the assigned claims required for payment, specifically regarding the person and address of the debtor, and the precise description of the claim, transfer the required documents and inform his purchasers of the assignment.
- 4.8 Client shall not have the right to make any disposals for the claim assigned to GIG in advance, specifically not to include the claim in any current accounts relationship or to enter into any factoring contract concerning the claim. If it is, for any reason, nevertheless effectively included in a current accounts relationship, Client hereby assigns the claims resulting to his benefit from the respective individual balances and the right of termination of the current accounts relationship to GIG. GIG accepts the assignment.
- 4.9 If the object delivered by GIG is processed into a new object by Client, processing shall take place for GIG without any obligations arising from this for GIG. If processing, connection, mixing or blending of the object delivered subject to retention of title with any other goods not belonging to GIG gives rise to shared title, the resulting share in the shared title in the new object shall pass to GIG at the ratio of the value of the goods subject to retention of title by GIG to the value of the resulting object. The location of the newly created object shall be disclosed to GIG by Client on request.
- 4.10 If the valid of the present collateral exceeds the claims of GIG by more than 20%, the collateral available to GIG shall reduce accordingly.
- 4.11 GIG shall have the right to best utilise the object recovered by it by free sale upon advance notification with setting of an appropriate period, notwithstanding any further payment obligations of Client.

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5. Warranty claims and damages

For any defects of material and title of the delivery, GIG shall act as follows under exclusion of any further claims, and subject to section VI, items 2 and 3:

Defects of material:

1. Parts that turn out to be defective as a consequence of a circumstance arising before passing of risk shall be improved free of charge or replaced without defects at the choice of GIG. The determination of such defects shall be reported to GIG in writing without delay. Replaced parts shall become the property of GIG. Client shall give GIG the time and opportunity required to perform any improved and replacement deliveries that GIG deems necessary upon coordination with GIG. Otherwise, GIG shall be released from any liability for the resulting consequences.
2. Only in urgent cases of danger to the operational safety or defence against disproportionately severe damage shall Client have the right to remove the defect on his own or have it removed by third parties, and to demand reimbursement for the required expenses from GIG. This shall require that Client has informed GIG without delay.
3. Client shall have a right to rescission of the contract in the scope of the statutory provisions if GIG – under consideration of the statutory exceptions – lets any appropriate period set to it for improvement or replacement delivery due to a defect of material expire without result.
4. In case of inessential defects, Client shall only have a right to reduction of the contractual price. The right to reduction of the contractual price shall be excluded otherwise.

Defects of title:

1. If use of the object of the delivery leads to violation of commercial property rights or copyrights in the country, GIG shall generally procure the right to further use for Client at its expense, or modify the delivered object in a manner that is acceptable to Client so that the property rights are no longer violated.
2. If this is not possible at economically acceptable conditions or within an appropriate period, Client shall have the right to declare rescission of the contract. Subject to the above conditions, GIG shall also have a right to rescission of the contract. Rights due to violation of the property rights and copyrights shall only be asserted by Client if:
 - a) Client has informed GIG of the asserted violation of property rights and/or copyrights without delay,
 - b) Client appropriately supports GIG in the defence against the asserted claims or enables GIG to perform the modifications purs. to item 1,
 - c) All defence measures, including out-of-court settlement, are reserved to GIG,
 - d) The defect of title is not due to any instruction from Client and
 - e) The violation of rights has not been caused because Client has independently changed the delivered object or used it in any manner that was not according to the contract.

6. Liability

- 6.1 If the delivered object cannot be used by Client as intended due to fault of GIG as a consequence of omitted or defective execution or suggestions and consultation before or after conclusion of the contract, or due to violation of other contractual secondary obligations, the rules under section V and section VI, 2, 3 and 4 shall apply accordingly under exclusion of any other claims of Client.
- 6.2 For damage not arising to the delivered object directly, no matter the legal reason, GIG shall only be liable
 - a) for wilful intent,
 - b) for gross negligence of the owner/bodies, executive employees or servants,
 - c) for culpable violation of life, body and health,
 - d) for defects that GIG has maliciously concealed or the absence of which it represented,
 - e) for defects of the object of the delivery, in case of liability for injury or property damage to privately used objects according to the product liability act.
- 6.3 For culpable violation of contractual obligations, including default, the liability of GIG shall be limited to the direct average damage typical for the contract that was foreseeable according to the type of the goods.
- 6.4 Liability of GIG for violations of obligations due to slight negligence of

its statutory representatives or servants shall be excluded. This exclusion of liability shall not apply to any liability due to damage from the violation of life, body or health. Furthermore, the exclusion of liability shall not apply if the violation of obligations was due to the violation of any main performance obligation of GIG or any other essential contractual obligations; in this case, liability shall, however, be limited to the foreseeable damage that is typical for the contract. Essential contractual obligations shall be such obligations that characterise performance of the contract and the compliance with which Client may trust in. The exclusion of liability shall further not apply if GIG has maliciously concealed the defect.

7. Expiration

Any claims of Client - no matter the legal reason - shall expire within 12 months of the delivery. Damages claims purs. to section VI, items 2 a) to e), shall be subject to the statutory periods. They shall also apply to any defects of a building or to delivered objects that have been used for a building according to their common purpose, and that have caused the building to be defective.

8. Miscellaneous

If any provision in these terms and conditions is or becomes invalid, the remaining provisions shall remain valid. Any invalid provisions shall be replaced by such valid ones that come as close as possible to the economically intended content. This shall apply accordingly where there are any gaps.