

General Terms and Conditions of Delivery for the Export of Plant and Machinery of Geppert Rührtechnik GmbH

1 General – Area of Validity

- 1.1 The following Terms and Conditions of Delivery are valid for the export of plant and machinery, unless otherwise expressly agreed in writing.
- 1.2 If **GEPPERT** Rührtechnik GmbH (in the following: „**GEPPERT**“) is also responsible for the assembly or the supervision of the assembly, then the VDMA¹ Additional Clauses for Supervision of erection of plant and machinery abroad, together with the attached Annex by the German Capital Goods Industry, both in the current German version, apply in addition to the General Terms and Conditions of Delivery for the Export of Machines.
- 1.3 The Terms and Conditions of Delivery are exclusively valid; **GEPPERT** does not recognize opposing terms and conditions or customer terms and conditions which deviate from the Terms and Conditions of Delivery, unless **GEPPERT** has expressly agreed to their validity in writing. The Terms and Conditions of Delivery are also valid when **GEPPERT**, with knowledge of opposing terms and conditions or customer terms and conditions which deviate from the Terms and Conditions of Delivery, carries out the delivery to the customer unconditionally.
- 1.4 All agreements, which are reached between **GEPPERT** and the customer in relation to the execution of this contract, are set down in writing in this contract.
- 1.5 This contract is issued in the English language. The German version is definitive in case of doubt.

2 Completion of the Contract

- 2.1 A contract of delivery only comes into effect or is amended by means of a confirmation of order in writing by **GEPPERT**. If the written confirmation of order contains extensions, limitations or other changes with regard to the order, then the customer is regarded as being in agreement with this, if he does not immediately contest it in written form.
- 2.2 **GEPPERT** unrestrictedly retains its proprietary rights to, and copyrights of, cost estimates, illustrations and other documents (in the following „documents“). The documents may only be made available to third parties with **GEPPERT**'s prior approval and, on demand, must be returned to **GEPPERT** immediately.

3 Delivery Period and Delay

- 3.1 Delivery date and delivery time can be found in the written confirmation of order from **GEPPERT**.
- 3.2 The beginning of the delivery period set by **GEPPERT** presupposes the clarification of all technical questions.
- 3.3 The adherence to the delivery obligations further presupposes the punctual and proper fulfillment of the obligations of the customer.
- 3.4 The meeting of the delivery date additionally presupposes, that the customer punctually obtains any import permit which might be required, informs **GEPPERT** of the number, date and the period of validity of the import permit, and that a punctual agreement is reached on all technical questions, the clarification of which the contract partners had reserved for later negotiations when the contract was completed.
- 3.5 If the terms and conditions under 3.2., 3.3. and 3.4. are not punctually satisfied, then the delivery periods will be extended accordingly, as long as **GEPPERT** is not responsible for the delay.
- 3.6 If the failure to meet the delivery date can be attributed to force majeure, including obstructions, accidents or faults, which could not have been avoided despite taking the necessary care, then the delivery period will be likewise appropriately extended. Force majeure includes, in particular, mobilization, war, rebellion, terrorism, government actions, the non-issuing of required export permits, epidemics, industrial disputes and lockouts, shortage of raw materials, lack of transport capacity, power failure and natural events.
- 3.7 The delivery date is considered to be met, when, before it has expired, the delivery goods have left the factory or the readiness for dispatch has been demonstrated to the customer.
- 3.8 **GEPPERT** reserves the right to make use of partial deliveries and charge for them.

4 Prices

Unless otherwise stated in the contract confirmation, the „ex works (EXW Incoterms 2000) Eltersdorf“ prices apply, excluding transport and packaging and all taxes, customs duty or duties, which must be paid in accordance with the applicable law. The packaging will be charged separately. The customer is obligated to pay or to refund taxes, custom duty or duties, which are imposed on **GEPPERT** or its sub suppliers.

¹ VDMA: Verband Deutscher Maschinen- und Anlagenbau - German Engineering Federation

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4. 5 Conditions of Payment

- 5.1 The conditions of payment arise from the written confirmation of order from **GEPPERT**.
- 5.2 The customer does not have the right to withhold agreed payments, or to offset them with counter claims, which he might possibly have with respect to **GEPPERT**, unless such counter claims are undisputed or have been legally established.
- 5.3 If a calendar date has been set for the payment, then the customer is in arrears, without a reminder, if he has not made the payment by the due date. The interest rate is set at 8 percentage points p.a. above the respective basic interest rate in accordance with § 247 BGB². The right to enforce further delay damages which go beyond this is retained.

6 Transfer of Risks

- 6.1 Unless otherwise stipulated in the order confirmation, the delivery „ ex works (EXW Incoterms 2000) Eltersdorf “ is agreed.
- 6.2 Transport- and all other packaging will not be taken back by **GEPPERT**. The customer is obligated to take care of the disposal of the packaging at his own expense.

7 Acceptance

The customer does not have the right to refuse the acceptance of goods due to negligible defects.

8 Liability for Defects

GEPPERT is liable to the customer for all material defects as follows:

- 8.1 **GEPPERT** is obliged to act in compliance with a written request from the customer. The type of compliance (improvement, or manufacture or delivery of a replacement) is determined by **GEPPERT** at it's own discretion.
- 8.2 Material defect claims become statute-barred after a period of 12 months. The warranty period begins on the day on which the delivered goods were put into operation. If the delivery, assembly and commissioning are delayed for reasons for which **GEPPERT** is not responsible, then the warranty period ends no later than 18 months after the announcement that the goods to be delivered are ready for dispatch.
- 8.3 The customer must immediately check the delivery and immediately submit a written complaint about any material defects to **GEPPERT**. If the customer does not immediately complain in writing to **GEPPERT**, the goods are considered as accepted with respect to this defect.
- 8.4 The customer only then has the right to withhold payments on account of defects, when no doubts exist about the legitimacy of the defect claims made by the customer, and the defect is not negligible.
- 8.5 **GEPPERT** must be given sufficient time and opportunity to correct the defect. For this purpose, the customer must allow **GEPPERT** access to the defective goods and facilitate their disassembly and assembly.
- 8.6 If the defect has not been rectified before the reasonable period set aside for **GEPPERT** expires, or if the corrective measures are unsuccessful, the customer is entitled to a reduction in the payment, or has the right to terminate the contract. However, in the case of only a negligible breach of contract, especially with insignificant defects, the customer is not entitled to terminate the contract.
- 8.7 **GEPPERT** is not liable for defects which only negligibly impair the usability of the affected goods, for negligible deviation from the agreed condition of the goods, for natural wear and damage caused by improper or unsuitable treatment after the transfer of risks, excessive or unsuitable use, faulty assembly or commissioning which was not carried out by **GEPPERT**, unsuitable site or defects which arise due to special external influences on the delivery, which are not presupposed according to the contract.
- 8.8 **GEPPERT** is not liable if the customer or third parties carry out improper modifications or repairs.

9 Overall Liability

- 9.1 **GEPPERT** is liable in accordance with the legal requirements, insofar as the customer asserts his damage claims, which are due to premeditation or gross negligence, including premeditation or gross negligence of the statutory representatives or contractual agents of **GEPPERT**. **GEPPERT** is further liable in accordance with the legal requirements, insofar as the customer asserts his damage claims, which are due to culpable injury to life, limb or health of the customer.

² BGB: German Civil code

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- 9.2 **GEPPERT** is not liable in the case of minor negligible breaches of duty. This does not apply, insofar as **GEPPERT** culpably infringes an essential contractual obligation; in this case, **GEPPERT**'s compensation liability is limited to the direct, foreseeable damage which is typical of a contract of this type.
- 9.3 Customer damage claims due to a defect become statute-barred after a period of one year after the transfer of risks. This does not apply, if **GEPPERT** can be accused of gross negligence, as well as in cases where **GEPPERT** is culpable for injury to life, limb or health of the customer.
- 9.4 The binding regulations of the Product Liability Act remain unaffected.

10 Retention of Title

- 10.1 The delivered goods remain the property of **GEPPERT** until the fulfillment of all the obligations which apply to the customer from the business relationship. If this retention of title is not authorized in accordance with the laws of the country in which the delivered goods are to be found, but instead similar rights apply, then **GEPPERT** reserves these rights. On completion of the contract, the customer empowers **GEPPERT** to enter, or to publicize the retention of title, at the customer's expense and in accordance with the applicable national regulations, in the required format in public registers, books or similar documents.
- 10.2 While the retention of title exists, the customer is prohibited from mortgaging or transferring ownership of the goods as a means of security, and the resale of the same is only permitted to retailers in customary day-to-day business and only under the condition that the retailer receives payments from his customer, or reserves the right that the ownership is only then transferred to the customer when he has fulfilled his payment obligations.
- 10.3 The customer must immediately notify **GEPPERT** in writing about seizures, confiscations or other disposals or third party interventions which could result in the loss of **GEPPERT**'s rights, so that **GEPPERT** can institute legal proceedings in accordance with § 771 ZPO. Insofar as the third party is unable to reimburse **GEPPERT** for the legal and out-of-court costs of a legal procedure in accordance with § 771 ZPO, the customer is liable for the losses incurred by us.
- 10.4 The customer is obliged to handle the delivered goods with care; in particular, he is obliged to insure them, at his own expense, against damage due to fire, water and theft in accordance with their value when new, and to use them exclusively for the purposes for which they were intended. Insofar as maintenance and inspection work is necessary, the customer must carry this out in a timely manner at his own expense.
- 10.5 The customer hereby assigns to **GEPPERT** any receivables accruing to him from the resale of the goods to a buyer or third party, in proportion to the amount of the invoiced value (including value-added tax) of the goods from **GEPPERT**. The customer remains authorized to collect the receivables after the assignment. The authorization of **GEPPERT**, to collect the receivables itself, is hereby unaffected. **GEPPERT** commits itself not to collect the receivables, as long as the customer fulfills his payment obligations with the collected proceeds, does not fall into arrears with the payment and, in particular, no petition for the institution of insolvency proceedings has been placed, or payment stop exists. However, if this is the case, then **GEPPERT** can demand, that the customer informs **GEPPERT** of the assigned receivable and its debtor, provides all information necessary for the collection, delivers all of the associated documentation and informs the debtor (third party) of the assignment.
- 10.6 **GEPPERT** commits itself, at the customer's request, to release the appropriate amount of the collateral it is entitled to, should the realizable value of the collateral exceed the amount of receivables to be secured by more than 10%; **GEPPERT** is free to choose which collateral is released.

11 Place of Jurisdiction – Place of Performance

- 11.1 The place of business of **GEPPERT** is the place of jurisdiction, however, **GEPPERT** is entitled to take proceedings against the customer at the court which has jurisdiction over his company headquarters.
- 11.2 Unless otherwise stated in the contract confirmation, **GEPPERT**'s place of business is the place of performance.

12 Concluding Provisions

- 12.1 Changes and extensions as well as supplementary agreements to these General Terms and Conditions must be made in written form. This also applies in so far as the written form requirement stipulated here should no longer apply. If a stricter form is legally stipulated then this applies. The electronic form, with a qualified electronic signature (§ 126a BGB) is not equivalent to the written form. Any other electronic form (§ 127 Abs. 3 BGB) does not replace the written form either.
- 12.3 The law of the Federal Republic of Germany applies exclusively to this contract. The provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) from April 11, 1980 do not apply.