

GBH Design GmbH

Am Branden 2, 85256 Vierkirchen

Telephone 08139 / 9321 – 310, Fax 08139 / 9321 – 301, Email info@gbh-design.de

Terms and Conditions

1. These Terms and Conditions apply to

1.1 A person, who concludes a contract for his business practice or in the course of entrepreneurship

1.2 Companies under public law or a public fund

2. Offer and conclusion of the contract

2.1 All deliveries and services of GBH Design GmbH (henceforth referred to as GBH) shall be in accordance with these Terms and Conditions. Conflicting or deviating Terms and Conditions of the purchaser from these Terms and Conditions will not be recognised, unless, we agree to their validity formally and in writing. So long as no deviating agreements are met, the purchaser acknowledges the exclusive validity of these Terms and Conditions, at the latest with the order or our first delivery or service. A contract is concluded, in the absence of a particular agreement, with the written confirmation of order from GBH.

2.2 GBH reserves the right to proprietary and copyright of samples, offers, drawings, as well as information in both physical and unphysical forms as well as in electronic form. These may not be made accessible to a third party.

2.3 Information concerning prices, dimensions, weights, services, energy use and other technical matter given in offers or their enclosed documents or otherwise in catalogues, pricelists, prospectuses etc. are only binding if they are formally identified as binding. They may vary within the parameters of "DIN-Toleranzen". For the glazing of all forms the guidelines on the assessment of the visual quality of glass pursuant to DIN EN ISO 12543-6 apply.

2.4 For offers, which are identified as binding under paragraph 2.3, the period of commitment is 30 days from the date of the offer.

2.5 Any agreements, including per telephone or verbal, regardless of whether they were made in the offer stage or during the project stage, must have written confirmation in order to be legally effective.

3. Scope of Services and Production Modifications

3.1 The scope, for deliveries and services to be performed by GBH are enlisted in the confirmation of order. Deliveries will be made, so long as nothing else has been agreed, ex works Vierkirchen. GBH reserves the right to production modifications or other technical improvements or changes to offered or ordered constructions without previous agreement from the purchaser, so long as quality, service or other technical information will not be deteriorated.

3.2 After the conclusion of the contract and before the beginning of production, GBH will produce a schedule of delivery to the purchaser for written approval. Modifications (deviations to the offer and order) to the released schedule, which are not relevant according to these Terms and Conditions will become part of the offer.

3.3 The purchaser assures, that all performances and premises which - according to the offer or contract specifications - have to be done by the purchaser, will be done punctually and according to the agreement, i.e. the agreed delivery times are ready or will be ready. He must apply, at his cost, for all necessary constructional and other authorisation.

3.4 If the agreed scope of services of GBH comprises assembly, site measuring or other work on the building site, the purchaser must have assured the appropriate legal occupational health and safety requirements. If this is not assured, GBH is entitled, after notification to the purchaser, to discontinue its work until the regulations of occupational health and safety are appropriately met by the purchaser. This interruption period correspondingly reschedules the agreed completion date and is considered as caused by the purchaser.

3.5 In the case that GBH comes into contact, or could come into contact with materials or building elements on the building site, which might be dangerous according to the hazardous materials regulations (Gefahrstoffverordnung), GBH must receive such information during the negotiation period. If GBH receives this information only after the negotiation period and/or the conclusion of the contract, the purchaser must additionally carry the full cost for protection measures, disposal of material etc.

4. Delivery Period and Period of Services

4.1 The delivery period shall be agreed between the contracting parties. The delivery period will not start before all commercial and technical questions between the contracting parties have been solved and until the purchaser has provided all documents, permits etc. which have to be provided by him and until all contractual and payment obligations have been met. This does not apply in so far as GBH is at fault for the delay.

4.2 The delivery period is met, if up until the expiry of the delivery deadline, the objects ordered have left the factory of GBH or if the purchaser has been informed of the readiness for shipment. If a formal acceptance is to be made – except in the case of a justified refusal of acceptance - the acceptance date respectively the notification of readiness acceptance is decisive.

4.3 If the shipment, or agreed assembly is delayed by request of the purchaser, or for reasons for which he is responsible, the corresponding storage costs will be calculated starting from one month after the announcement of the readiness for shipment. The corresponding storage costs for storage at the GBH plant will be calculated at, at least, 0,5% of the current net invoice amount of the stored goods per every month commenced. If the delay of shipment or assembly lasts for more than three months, GBH is authorized, after informing the purchaser with a reasonable period of time, to make other use of the goods. In such case, the delivery period to the purchaser shall be reasonably prolonged. The duty of the purchaser to meet the agreed payment deadlines remains unaffected.

4.4 GBH is at all times authorized to make part shipments or partial performances and to bill these on a pro rata basis, unless part shipments or partial performances are not reasonable to the purchaser.

4.5 In the event that GBH does not finalise its services to be performed within a reasonable grace period, despite written reminder of the purchaser, the purchaser is authorized to claim for damages caused by the delay. Such damages must not exceed 0,5% per full week after the expiration of the reasonable grace period, however may not amount altogether to more than 5%, of the current order value of the late deliveries and performances, provided that the purchaser can prove that damages of at least this amount have occurred. All further claims for damages made by the purchaser are, as long as not based upon intent or gross negligence of GBH, excluded.

4.6 Delay in delivery or performances resulting from force majeure, strikes, lockouts as well as by reason of further unforeseen events which are not due to negligent behaviour and are beyond the control of GBH, are not accountable to GBH and entitle GBH to reasonably postpone the delivery date or at its choice to rescind the whole or part of the contract. The same applies where such events occur to subcontractors. If the delivery period is delayed or the contract is rescinded by reason of the aforementioned events GBH shall not be liable and the purchaser cannot claim for damages.

4.7 If the purchaser is in default of acceptance, then GBH is authorized to demand compensation for the corresponding damages. On occurrence of a default of acceptance the risk of incidental deterioration and of incidental loss lies with the purchaser.

5. Transfer of risk, Acceptance

5.1 On delivery the risk lies with the purchaser, once the good or machine is handed over to the person or firm performing the delivery from the Vierkirchen plant, or for the purpose of shipment, the goods have left the GBH-plant. In the case that all or part of the products to be delivered can not be delivered, by reason of default of acceptance by the purchaser, GBH shall fulfil its obligations by storing the products or part of the products. In this case, the purchaser is obliged to bear all the arising costs on receipt of invoice. GBH will inform the purchaser immediately in writing as to the storage of the products or part of the products. Legal claims for damages in such case remain unaffected. In case of default of acceptance, the risk of incidental loss or incidental deterioration of the products or part of the products lies with the purchaser, from the moment in which the default of acceptance occurs.

5.2 If assembly operations have been contractually agreed, the risk for these services lies with the purchaser after performance. If the purchaser causes an interruption in services then the risk lies with the purchaser from the moment of the interruption.

5.3 The services to be performed by GBH shall be deemed to be formally accepted, at the latest, when GBH gives the purchaser a notice concerning the completion of the contractual assembly. This notification is automatically included in the closing invoice, if GBH did not previously notify the completion to the purchaser separately, and the purchaser does not object, within 14 days from receipt of the closing invoice, by means of a justified report. In the case that the purchaser collects the products from the GBH-plant in Vierkirchen, GBH and the purchaser will agree upon a date for the products to be ready for formal acceptance by the purchaser.

6. Prices

6.1 In general, offers made by GBH are subject to change, unless in exceptional cases they are said to be binding. In the exceptional case of a fixed offer, GBH will maintain this offer for 30 days from which it is dated (Clause 2.3.). Without an exceptionally fixed offer the prices mentioned in the confirmation of order from GBH are applicable. In the event of changes of the material price, wages, transportation charges or other cost factors, GBH is entitled to price adjustments, if there is a period of at least four months between the conclusion of the contract and the delivery date.

6.2 The prices specified are the net prices in EUR plus the applicable VAT at the time of delivery. Additional services (special packaging, transportation charges, postal charges, insurance, customs duty) will be charged on occurrence.

7. Terms of payment

7.1 Depending on the order placed, the following payment plans apply:

7.1.1 Elevator components delivered within Germany: 30% on placement of order, 70% on delivery or notice of readiness for shipment

- 7.1.2 Exported elevator components (outside Germany): 50% on placement of order, 50% on delivery
- 7.1.3 Complete Elevators: 30% on placement of order, 30% on provision of samples, 20% after delivery, 10% on general working order, 10% after formal acceptance.

7.2 Payments shall be made within two weeks of the invoice date, without any discount, into the account of GBH provided in the invoice. A payment is only then deemed to be successfully made when GBH has received the amount. Unauthorized discounts will be claimed and an additional processing fee of €25 will be charged.

7.3 In the event that a payment is not made to GBH by the due date, the purchaser is in arrears with his payment obligations. GBH shall – without prejudice to other rights – be entitled to charge interest on the amount due. Interest will be charged at a rate of 8% per annum above the base rate according to § 247 of the German Civil Code (Bürgerliches Gesetzbuch). The issuance of a reminder is not necessary. GBH may charge a higher amount if GBH can establish that the amount of damage was higher.

7.4 The customer may only retain or reduce payments or set-off a claim against the claims of GBH, if its counter-claim is undisputed or based on a final and binding court decision. The purchaser is further entitled to a retention under the terms in section 9. A right to retention concerning claims from other contracts is barred.

7.5 In case of deterioration of the purchaser's financial situation after conclusion of the contract, GBH may suspend its performance until the purchaser has entirely fulfilled his obligations, or made available a bank guarantee or other enforceable security as per discretion of GBH. The same applies in cases of repeated and/or substantial delay of the purchaser's payments.

7.6 The claims of GBH concerning the remuneration are subject to a limitation of five years.

8. Retention of Title

8.1 GBH shall retain title to the delivered products until all claims arising out of this delivery, as well as out of any other open claims against the purchaser, have been entirely fulfilled. If the purchaser is in delay of payment and a grace period, set by GBH, has expired fruitlessly, GBH shall be entitled to cancel the contract, take back the delivered products and the purchaser shall be obliged to surrender them.

8.2 The purchaser is entitled to resell the delivered products, which are still owned by GBH ("retained goods"), in his ordinary course of business. In order to secure GBH's claims the purchaser hereby assigns to GBH all claims arising out of the resale of the retained goods for the amount of the price of the delivery.

8.3 After the transfer of the claims to GBH, the purchaser shall be authorized to collect payment. GBH shall be authorized to revoke this right to collect payment and shall collect open claims itself, if the purchaser does not properly fulfil his payment obligations vis-a-vis GBH, is in delay of payment, files for insolvency or ceases its payments. In this case, the purchaser is obliged to transmit the data necessary for collecting the claim, to forward the necessary documents to GBH and to inform its customer of the transfer of title.

8.4 Any processing or converting of any retained goods, shall be performed on behalf of, but without any obligation for GBH. The processed or converted product shall replace the original good as a retained good. If the retained good is incorporated or combined with other goods by the purchaser, GBH shall acquire joint ownership of the new goods up to the ratio of the price of the retained goods to the price of the other goods.

8.5 If the title of GBH will expire due to combination, processing or assembly, the purchaser hereby transfers ownership of the newly established product up to the extent of the delivery price of the retained goods. The purchaser will safeguard the newly established product for GBH with due diligence and free of charge. The newly established products shall be deemed as retained goods up to the ratio of the joint ownership.

8.6 If and in so far as the value of the securities exceeds the claims to be secured by more than 10 per cent, GBH shall release the assigned securities for the exceeding amount.

8.7 In case of a forced lien or any other impairment of the proprietary rights of GBH by a third party, the purchaser shall notify GBH immediately thereof.

9. Warranty

9.1 The products and deliveries must be manufactured according to the generally accepted engineering rules and according to the established works-standard specification of GBH, and must comply with the elevator specifications valid at the time of the submittal of offer. Information of GBH concerning technical data of the elevators such as performance, speed and power requirements are considered to be fulfilled if the deviations thereof amount to no more than +/- 10%.

9.2 For material defects and defects of title, GBH shall only be held responsible under the exclusion of any further claims and under the exceptions according to section 9.7 and 10., if the purchaser has notified GBH in writing within eight (8) days in the case of obvious defects or such defects that could be discovered without thorough investigation and in all other cases immediately after discovery and provided further that the purchaser has observed the instructions of GBH with respect to the operation and storage of the delivered products. § 377 of the German Commercial Code (Handelsgesetzbuch) remains unaffected.

9.3 The warranty of GBH does not cover normal wear and tear as well as parts which, owing to their inherent material or their intended use, are subject to natural wear and consumption. The warranty shall not include damages caused by inadequate storage, treatment, operation, inadequate equipment or the use of unsuitable operating resources. GBH shall only be held responsible as provided within this section 9 under the exclusion of any other warranty claims.

9.4 It is at the sole discretion of GBH whether it fulfils its obligation concerning the warranty either by replacement or improvement of the delivered product. The purchaser shall grant GBH sufficient time and opportunity to make such improvements and replacements as are necessary in the opinion of GBH; otherwise, GBH is released from any liability for resulting consequences. The purchaser may only, in urgent cases (endangering of safe operation; protection against excessive damages), repair the defect himself or by a qualified third party, provided however, that GBH is immediately informed thereof. The purchaser may only then and to that extent, request any compensation for the related repair costs, if these costs were necessary and not excessive according to the relevant circumstances.

9.5 GBH shall obtain title to the replaced parts.

9.6 As far as legally permissible, the purchaser shall have the right to withdraw from the contract if GBH – unless permitted by law – makes no effort to repair or replace the defective products within a reasonable period of time set by the purchaser. In case of minor defects which do not significantly affect commercial operability, the purchaser is only entitled to a price reduction. In all other cases the right to a price reduction or damages is excluded.

9.7 Any warranty claims of the purchaser – irrespective of its legal basis – are time barred after 12 months from delivery.

10. Limitation of Liability

10.1 If due to negligent behaviour of GBH the contractual product cannot be operated in the contractually agreed manner due to missing or defective implementations, proposals or consultations made after conclusion of the contract, or through other breaches of ancillary obligations (especially misleading instructions as to the intended operation of the product), Section 9 and the next paragraph (2) shall be applicable under exclusion of any further claims. GBH shall not be liable, and the customer agrees to indemnify GBH from all claims, liabilities and damages that might occur if and to the extent that the customer does not follow the instructions and warnings given by GBH.

10.2 For damages caused outside the delivered product and outside of the express warranty contained in Section 9, GBH shall only be held responsible in cases of wilful misconduct, gross negligence of representatives or leading employees of GBH, culpable injury to life, body or health, defects that have been maliciously kept secret or whose absence has been guaranteed, or personal injury or damages to property, provided that there is strict liability under the product liability laws. In the case of a breach of essential contractual obligations, GBH shall be liable even if the non-managerial employees have acted grossly negligent as well as in cases of ordinary negligence. In the latter case, however, the liability of GBH is restricted to reasonably foreseeable damages.

10.3. Further claims for damages are excluded.

11. Premature Termination

In the event of a premature end, caused by the purchaser, to the contract, GBH is authorized to charge a cancellation fee. This will amount to 10% of the gross-order-volume (including, e.g. but not limited to VAT), without need for confirmation. In the event that GBH proves higher damages or the purchaser proves that GBH has incurred lower damages, these amounts are considered to be agreed.

12. Assignment

The purchaser shall not assign any direct or indirect claims resulting from this contract to a third party unless explicit approval of GBH has been given.

13. Applicable Law, Jurisdiction

13.1. The contract shall be governed and construed according to the laws of the Federal Republic of Germany. The United Nations Convention on the International Sale of Products (CISG) is not applicable and shall be excluded.

13.2. The place of execution and exclusive jurisdiction for all disputes resulting from or in connection with the contract is the registered seat of GBH. GBH is, however, authorised to make a claim at the purchasers place of business.

13.3. Should any of the provisions contained in a contract or in these Terms and Conditions be or become wholly or partially invalid for any reason, the validity of all other provisions shall not be affected. The invalid provision shall be replaced by a valid provision that reflects, as much as possible, the original economic intention of the parties.