

As at March 2022

Special note about the “German Ordinance on Industrial Health and Safety” [Betriebssicherheitsverordnung]

We refer to the applicable German Ordinance on Industrial Health and Safety [BetrSichV].

It is therefore recommended that the situation regarding occupational safety is checked and improved as part of the maintenance and modernisation measures in accordance with the statutory provisions. An assessment as to whether and which improvements are required in individual cases can be carried out only as part of a risk assessment, taking into account the statutory provisions of the German Ordinance on Industrial Health and Safety [Betriebssicherheitsverordnung] and with the supplementary application of the provisions of DIN EN 12100. Gehring Technologies GmbH will be pleased to provide this risk assessment and implement the requisite measures.

### **Section 1 General/scope**

(1) These terms and conditions apply to all current and future business relationships.

(2) Deviating, contradictory or supplementary general terms and conditions of the buyer are not part of the contract, even if Gehring Technologies GmbH (hereinafter referred to as “Gehring”) has knowledge of them, unless their applicability is expressly approved in writing.

Gehring’s general terms and conditions therefore apply even if Gehring unconditionally renders services to the buyer whilst having knowledge of the buyer’s contrary or deviating general terms and conditions.

### **Section 2 Offer/offer documents**

(1) Our offers are non-binding, provided they are not time limited. Orders placed by the buyer are binding upon the buyer and are deemed accepted upon presentation of the order confirmation from Gehring. For offers with a time limit and a specified acceptance period, the offer is decisive in the absence of an order confirmation being received in good time. Gehring is entitled to accept an order within four weeks.

(2) If substantial increases in the prices of raw materials, wages, taxes, public fees and/or burdens arise from laws and/or regulations before the fulfilment of the order and which have a material effect on Gehring’s offer calculation, Gehring is entitled to invoice a reasonable surcharge.

(3) Gehring reserves the right to make technical changes, as well as changes in form, colour and/or weight, within reason.

Compliance with technical data or other information/details from catalogues, documents, parts lists and/or drawings/sketches, etc. is confirmed only insofar as individual data, measurements or details are expressly included in the technical description for the offer. Only the function is considered confirmed in general reference to documents or drawings.

(4) If the order qualifies as an offer, Gehring can accept it within four weeks. Acceptance is confirmed by a written order confirmation.

(5) The contract is concluded when Gehring has done everything necessary, and is conditional upon correct and timely delivery by Gehring’s suppliers in accordance with the contract. This applies only if the failure to deliver is out of Gehring’s control, in particular by executing a matching covering transaction with Gehring’s supplier.

In the event that Gehring is unable to fulfil its obligations, however, the buyer must be notified that performance will not be forthcoming. Any services provided in return by the buyer shall be reimbursed without delay.

(6) Obvious errors and mistakes or printing, arithmetical, typing and calculation errors are non-binding for Gehring and do not entitle the buyer to assert a claim for compensation.

(7) Gehring retains ownership rights and copyright to illustrations, drawings, calculations and other documents; they must not be made accessible to third parties. This applies in particular to written documents that are marked “confidential”. Transfer to third parties requires Gehring’s express written consent.

(8) The offer is based on the status of the machine as communicated by Gehring and set out in writing. Gehring assumes that no defects or damage are present beyond natural wear. Gehring shall notify the buyer immediately of any additional damage or defects that are noticed during disassembly and/or upon fulfilment of the order. Should Gehring consider it necessary, the buyer shall receive a supplementary offer. The scope and price of the additional services are to be agreed separately between Gehring and the buyer within the context of the supplementary offer. The costs of materials specified in the offer apply only if the retrofit of the machine is carried out by Gehring.

### **Section 3 Delivery period**

(1) The delivery period starts with the dispatch of the order confirmation, but not prior to the receipt, if necessary, of documents to be procured or provided by the buyer, such as drawings, descriptions, approvals and releases. If one of the requirements mentioned above is not met, or ambiguities caused by the buyer are present, the delivery period is suspended until the obstacle is eliminated by the buyer.

(2) The delivery period is considered honoured if notice is provided to the buyer of readiness for shipment prior to the expiration of the calendar week provided in the order confirmation, or the delivery item has left the factory prior to the expiration of the calendar week provided by Gehring in the order confirmation.

(3) The delivery period shall be extended appropriately in the context of labour disputes, in particular strikes and lockouts, as well as with the occurrence of unforeseeable events that are out of Gehring’s control, such as any operational disruptions and delays in the delivery of important materials, should such obstacles materially and demonstrably affect the delivery time of the contractual item. This also applies if the circumstances arise for Gehring’s subcontractors. The delivery period shall be extended according to the duration of measures and obstacles of this type. The circumstances described above are also out of Gehring’s control if they develop during a delay that already exists. Gehring is obligated to notify the buyer without delay regarding the start and end of obstacles of this type.

(4) If deliveries of multiple delivery items are to be made, then deliveries of part of the delivery items, as well as delivery and related invoicing, are acceptable as long as this does not negatively affect the use of the items in question for the buyer.

### **Section 4 Scope of delivery**

(1) The scope of delivery is established by means of written order confirmation by Gehring. If the contract is concluded through acceptance of a time-limited offer from Gehring, the content of the offer from Gehring is decisive for the content of the contract. Ancillary agreements and modifications require written confirmation by Gehring.

(2) Gehring reserves the right to make design and shape changes during the delivery period for the purposes of improving technology or complying with requirements of the legislature, provided that the delivery item or the stipulated delivery is not considerably changed and these changes are acceptable to the buyer.

### **Section 5 Installation and commissioning**

- (1) In the absence of a different agreement, the installation of replacement parts is not part of Gehring's scope of services.
- (2) If installation difficulties occur for replacement parts that are sold without assembly service, the buyer is exclusively responsible for preventing losses as a result of the installation.
- (3) If assembly services are included in the stipulated scope of delivery, the assembly conditions that are customary in the machine tools industry according to VDW 502A / ECI conditions LMW 188A in their respectively current versions are applicable; in particular, the buyer is obligated to provide any necessary technical assistance at his own expense.
- (4) If the beginning and/or the end of the work for disassembly or reassembly and commissioning is delayed for reasons that are out of Gehring's control, any resulting added expense supported by evidence shall be charged for in addition. Stipulated delivery times are to be adjusted if necessary.
- (5) Services which are required in accordance with Items 1 to 4 above are calculated by Gehring based on the billing rates for daily work schedules, idle times and other expenses.  
The buyer can view these billing rates at any time.

### **Section 6 Installation/commissioning**

- (1) Checking whether the delivery item needs to be installed on a foundation or a separate foundation base plate is the sole responsibility of the buyer.
- (2) The structural engineering design, construction and inspection of a foundation or a foundation base plate, including acceptance, is not included in Gehring's scope of delivery and services. Upon request by the buyer, Gehring shall provide the necessary documents regarding foundation stress and rigidity.

### **Section 7 Ready-for-operation delivery/preliminary acceptance/final acceptance/special acceptance**

- (1) Acceptance of the delivery item takes place in accordance with the ready-for-operation delivery report by Gehring, unless a deviating provision has been agreed in writing in individual cases.
- (2) Preliminary acceptance, final acceptance and/or special acceptance take place according to a separate written agreement and are to be remunerated separately where these are not expressly part of the stipulated scope of services.
- (3) Any remuneration in accordance with Item 2 is charged based on the billing rates for daily work schedules, idle times and other expenses applicable at Gehring. The buyer can request the relevant applicable billing rates from Gehring at any time.

### **Section 8 Cancellation expenses**

If the buyer withdraws from a placed order without justification, and a reasonable period for subsequent performance has been provided to the buyer, Gehring can claim 10% of the selling price for the expenses incurred for processing the order and for lost profits, without prejudice to the option to claim greater actual damages. The buyer retains the right to prove lower damages.

### **Section 9 Default in acceptance/delay in acceptance**

- (1) If the buyer falls into default in acceptance or breaches other cooperation obligations, Gehring is entitled to claim the damages that result, including any additional expenditures.  
In this case, the risk of accidental destruction or accidental degradation of the contractual item transfers to the buyer at the point in time at which the buyer falls into default in acceptance.
- (2) If the shipment or delivery of the delivery item is delayed at the request of the buyer, the expenses that accrue from storage (and in no case less than a minimum 0.5% of the invoice amount for each month or portion thereof) shall be charged to the buyer from the beginning of the month that follows the notice of readiness for delivery or shipment. The buyer retains the right to prove lower damages.

### **Section 10 Packaging and shipment**

Packaging becomes the property of the buyer and is charged for by Gehring unless otherwise agreed. Postage and packaging expenses are invoiced separately. The choice of shipping method is made at Gehring's discretion, exercising due care and diligence.

### **Section 11 Transfer of risk**

- (1) If an assembly service is performed by Gehring at the buyer's premises, the risk is transferred when ready-for-operation delivery is recorded by the buyer. For replacement parts deliveries without assembly at the buyer's premises or pure replacement parts deliveries, "Free Carrier FCA" delivery is agreed, including packaging up to the loading dock.
- (2) Delivery is considered to have taken place if the buyer is in default in acceptance.
- (3) The preceding clauses also apply for stipulated partial deliveries.
- (4) If Gehring has accepted shipping costs, delivery or installation of the contractual item according to the contractual agreement, the preceding risk transfer clauses shall remain unaffected as a result.
- (5) Upon the buyer's default in acceptance, or if performance and delivery are delayed at the buyer's request, the risk transfers to the buyer from the day of readiness for shipment. Gehring is, however, obligated to take out any insurance policies required by the buyer at the request and expense of the buyer.
- (6) Delivered items are to be accepted by the buyer without prejudice to the rights in Section 12, even if they have immaterial defects. Partial deliveries are permitted.

### **Section 12 Warranty**

(1)  
The limitation period for any claims for defects is 12 months – except in the case of fraudulent intent and subject to the provisions in Section 13 (6). Any claims to compensation, including those based on a breach of the duty to provide subsequent performance, are subject to the provision in Section 13.

(2)  
Otherwise, Gehring's warranty is limited to subsequent performance, namely by means of repair or replacement delivery, at Gehring's choice.  
In the case of rectification of defects, Gehring shall bear the required expenses if these do not increase because the contractual item is located in a different place.

If the repair fails, the buyer shall be entitled to withdraw from the contract. The buyer has no right to withdraw for a minor non-conformity, in particular for minor defects. The right of the buyer to a reduction is precluded.

The repair is deemed to have failed upon the second failed attempt, unless further attempts at repairs are reasonable due to the contractual item and these are acceptable to the buyer.

(3)  
If the buyer chooses compensation for damages after failed repair, the buyer has the right to demand that the contractual item be taken back if the buyer establishes that the entire contractual item is no longer usable to him.

Subject to the provisions in Section 13, compensation for damages is limited to the difference between the purchase price and the value of the defective item after providing the failed service, or to the respective price minus expenses saved if the service was provided by a third party. This does not apply if Gehring has fraudulently caused a breach of contract.

(4)  
Service descriptions from Gehring represent mere feature specifications and not warranty promises. Public statements, promotions or advertising represent neither a contractual feature specification nor a warranty promise.

(5)  
If the buyer receives defective assembly instructions, Gehring is only obligated to provide instructions that are free of defects. A requirement for this is that the defect in the assembly instructions is contrary to correct assembly.

(6)  
The buyer can demand compensation for damages or withdraw from the contract due to non-performance if Gehring neither repaired nor made a replacement delivery despite the provision of a period for doing so, or if a replacement delivery or repair is not acceptable to the buyer.

(7)  
Warranty claims according to Items (2) - (6) assume that the buyer notifies Gehring in writing of obvious defects within a period of two weeks, calculated from the receipt of the goods, and of hidden defects within two weeks after ascertainment of the defect.

The buyer is responsible for proving that he provided notification of a defect without delay. The buyer is also responsible for proving that he has not taken any measures to rectify the defect himself.

(8)  
Gehring assumes no responsibility for damage caused by natural wear and tear, incorrect or negligent handling, chemical, electrical or other influences on which Gehring has no influence.

(9)  
If, under a warranty obligation of Gehring, just one part of the delivery item is exchanged, the new warranty periods associated with this will only relate to the exchanged part.

(8)  
The buyer does not receive warranties from Gehring in the legal sense. Manufacturer warranties from third parties remain hereby unaffected.

(9)  
If use of the delivery item leads to the breach of industrial property rights or copyright within Germany, Gehring grants the buyer the right to continue to use the goods or to rectify the breach of intellectual property rights in some other way. If this is not possible under economically reasonable conditions or within a reasonable time period, the buyer is entitled to withdraw from the contract. Gehring also has the right to withdraw from the contract under the conditions specified above. This obligation is conclusive for any breaches of intellectual property rights

and copyright subject to Section 13, whereby there is no entitlement to further claims. This requires that the buyer informs Gehring without delay of any alleged breaches and that Gehring offers support in the defence against any claims that are asserted and/or enables modification measures to be taken. A further condition is that Gehring reserves the right to take all defensive measures, the defect of title is not based on an instruction from the buyer and the legal infringement was not caused by the fact that the buyer had changed the delivery item on his own authority or used it in a manner which is not in accordance with the contract. Where Gehring is not liable in accordance with this paragraph, the buyer releases Gehring from all claims made by third parties.

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**Section 13 Limitations of liability**

- (1)  
For negligent breaches of obligations, Gehring's liability is limited to the average foreseeable direct damages under a typical contract, based on the type of goods. This also applies for negligent breaches of obligations by Gehring's salaried staff, employees, staff members, representatives and vicarious agents. Liability is excluded in the event of a slightly negligent breach of minor contractual obligations.
- (2)  
Unless otherwise specified below, further claims by the buyer are precluded, regardless of the legal grounds. Gehring is therefore not liable for damages that result indirectly from the delivery item; in particular, Gehring is not liable for lost profits or damages to other assets of the buyer.
- (3)  
The exclusion of liability and the limitation of liability in the preceding Items (1) and (2) do not apply to damages from loss of life, personal injury or harm to health, or if the damage is caused by malicious intent or gross negligence. The exclusion of liability also does not apply if Gehring breaches an essential duty (material obligation) from the contract; in this case, however, corresponding to Item (1), the liability is limited to the average foreseeable direct loss under a typical contract. Essential contractual obligations (material obligations) are those which ensure that the purpose of the contract is achieved and those which must be fulfilled as part of the proper execution of the contract and the fulfilment of which the buyer may rely on.
- (4)  
If Gehring negligently breaches one of its essential contractual obligations, Gehring's duty to compensate for property damages or personal damages is limited to the coverage amount of Gehring's product liability insurance policy. Gehring provides access to the insurance policy upon request.
- (5)  
The above limitations of liability do not affect the buyer's claims from warranties and/or product liability.
- (6)  
Claims to compensation under Items 1-5 above expire within the statutory limitation periods.

**Section 14 Prices/payment conditions**

- (1)  
In the absence of a special agreement, the prices apply in accordance with "Free Carrier FCA", packaged up to the loading dock, excluding any applicable statutory VAT.
- (2)  
Unless otherwise stated in the order confirmation, the stipulated purchase price is made as
- one advance payment of 30% at the time of the order,
  - an additional partial payment of 30% half way through the stipulated delivery time,
  - an additional partial payment of 30% upon delivery
  - the final payment of 10% upon execution of the final acceptance report to one of Gehring's specified bank accounts by bank transfer (SWIFT). If the buyer is in payment default, Gehring is entitled to demand default interest of 9% above the European Central Bank's prime rate per year. If Gehring proves greater default damages, it can claim them. For his part, the buyer is entitled to produce evidence of lesser damages.
- (3)  
If they are not expressly included in a total price for an offered delivery item, assembly services shall be invoiced on a time/materials basis. If no express agreement is made between the parties, the terms and conditions of assembly and the billing rates that are customary in the industry shall apply. In the absence of an agreement to the contrary, billing shall take place every 14 days based on evidence of the service rendered.

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(4)  
The buyer is entitled to the right to offset or lien only if his counterclaims are determined legally valid or indisputable, or are recognised by Gehring. The buyer is authorised to exercise a lien only insofar as his counterclaim is based on the same contractual relationship.  
Gehring is entitled to set payments off against the oldest outstanding debt, notwithstanding the buyer's repayment terms.

(5)  
The prices are applicable with the requirement that a thoroughly cleaned machine be made available by the buyer at the start of any retrofit measures to be carried out by Gehring, and the buyer handles, at his own expense and (if necessary) through the support of his own personnel, corresponding to the exigencies of assembly, in particular:  
- The provision of suitable assistants as required;  
- The provision of the necessary tools and auxiliary materials;  
- The provision of the necessary operational services (power, compressed air, water, etc.);  
- The transportation of the assembly parts to the specified assembly location.

(6)  
The prices are applicable exclusively for delivery and performance within the Federal Republic of Germany.

### **Section 15 Retention of ownership**

(1)  
Gehring retains ownership in the contractual item until receipt of all payments for its ongoing business relationship.  
Upon behaviour by the buyer that is contrary to the terms of the contract, in particular upon payment default, Gehring is entitled to take back the contractual item. Taking back the contractual item is only considered withdrawal from the contract if Gehring declares this expressly in writing. The seizure of the contractual item by Gehring is always a withdrawal from the contract.  
Gehring has the right to sell the contractual item after taking it back. The proceeds from the sale – minus the selling costs incurred – shall be credited against the amount owed by the buyer.

(2)  
The buyer is obligated to treat the goods with care; in particular, he is obligated to adequately insure them at replacement value against fire, water and theft at his own expense.  
If maintenance and inspection work is required, the buyer must carry this out at his own expense in good time and on a regular basis.

(3)  
If the delivery items are seized or included in a seizure pledge before or after installation, the buyer is required to inform Gehring in writing without delay regarding this fact.  
In addition, the buyer is obligated to notify Gehring without delay of any damage to or destruction of the delivery item. The same applies if, while the retention of ownership exists, the buyer transfers possession of the delivery item to a third party or the buyer's registered office is relocated.

(4)  
The buyer may resell the delivery item in the ordinary course of business. However, he hereby assigns to Gehring all accounts receivable from the resale in the amount of the final invoice amount, including VAT, which accrue to him from the resale with respect to his customers or third parties. This occurs regardless of whether the delivery item has been resold without or with processing. Gehring accepts this assignment.  
The buyer remains authorised to collect the account receivable, even after assignment. Gehring's authorisation to collect the account receivable itself remains unaffected as a result. However, Gehring is obligated to not collect the assigned account receivable as long as the buyer fulfils his payment obligations from the collected proceeds, is not in payment default, and in particular no application is filed for the opening of an insolvency proceeding or a suspension of payments exists. If Gehring is subsequently entitled to collect assigned accounts receivable, the buyer is obligated to provide notice to Gehring of the amount of the assigned accounts receivable and the debtors concerned, and to make all information necessary for the collection of the accounts receivable available, as well as to provide the related documentation and to inform the debtors (third parties) of the assignments.

(5)  
The delivery item is always used or altered by the buyer in the name of and on behalf of Gehring. If the delivery item is processed with other items not belonging to Gehring, Gehring acquires co-ownership of the new object in proportion to the value of the goods to the remaining processed objects at the time of the processing. Moreover, the same applies to objects resulting from processing as for goods delivered with reservations.

(6)  
If the delivery item is mixed with other items not belonging to Gehring, Gehring acquires co-ownership of the new object in proportion to the value of the goods to the other mixed objects at the time of the mixing.  
If mixing is carried out in such a manner that the buyer's object is regarded as the main object, it is considered agreed that the buyer shall transfer pro-rata co-ownership to Gehring. The buyer safeguards the resulting sole ownership or co-ownership for Gehring.

(7)  
To secure Gehring's accounts receivable, the buyer also assigns to Gehring the accounts receivable that accrue against a third party from associating the goods with real estate; this is up to the amount of the final invoice including VAT.

(8)  
Gehring is obligated to release any collateral at the buyer's request, insofar as the value of the collateral provided to Gehring exceeds the accounts receivable to be secured by more than 20%.

The selection of the collateral to be released is Gehring's responsibility.

### **Section 16 Final provisions**

(1)  
The contracting parties shall try to manage possible differences of opinion in connection with the mutual, contractually obligatory services in an amicable way by common accord.

(2)  
The law of the Federal Republic of Germany applies, excluding all bilateral and/or multilateral agreements concerning the purchase of moveable items, in particular excluding the UN Convention on Contracts for the International Sale of Goods (CISG).

(3)  
Where contractual agreements between Gehring and the buyer, or rather the delivery obligations placed on Gehring and/or the payment obligations on the side of the buyer resulting from these, breach national and international binding provisions (e.g. foreign trade legislation of the Federal Republic of Germany, export and embargo legislation of the EU or other states, particularly the USA, including the EU anti-terrorism legislation), Gehring is entitled to terminate the contract on the basis of extraordinary termination and/or to withdraw from the contract.

(4)  
If the buyer is a merchant, a public corporate entity or a special fund governed by public law, the exclusive place of jurisdiction for all disputes based on this contract is Gehring's registered office and, depending on actual jurisdiction, either Esslingen or Stuttgart. The same applies if the buyer has no general place of jurisdiction in Germany, or if domicile or residence are not known at the time the complaint is filed.  
Gehring is also entitled to file claims with the principal place of business of the buyer.

(5)  
If individual provisions of Gehring's general terms and conditions are or become invalid, the validity of the remaining provisions is hereby unaffected.

The provision that is invalid in whole or in part shall be replaced by a provision the commercial result of which comes as close as possible to that of the invalid provision.

Ostfildern, March 2022