



Construction Equipment & Parts GmbH / CEP LLC

Vibro Division

Purchase & Delivery Terms

I. General

1. Our General Terms and Conditions of Sale and Delivery exclusively apply to all current and future business relations with Customer. Different, conflicting or additional General Terms of Business do not become part of the contract, even if they are known, unless its validity is expressly approved. Verbal agreements do not become an obligation until accepted in writing. In this document the following expressions shall have the meanings assigned to them – “**The Customer**” means the person or persons, firm or company with whom ‘**Construction Equipment & Parts GmbH / CEP LLC**’ enters into an agreement to carry out the work(s).
2. Our offers are subject to confirmation; estimates of costs are not binding.

II. Delivery

1. Details about delivery times refer to the delivery ex works (Germany). Unless otherwise agreed, we are entitled to ship partial deliveries.
2. All transport and related costs connected with all deliveries are totally at the cost of the customer and will be invoiced separately.
2. If the delivery is delayed for reasons beyond our control, we are entitled to postpone the delivery for the period of the obstruction, plus an appropriate start-up time. We are also entitled to fully or partly withdraw from the contract, without being held liable for compensation for damages. Such obstructions are, in particular, acts of God, strike, lockout, mobilisation, war, blockade, embargo on exports and imports, delivery difficulties of our suppliers, traffic blockades, breakdowns and other transport hold-ups, lack of raw material, lack of energy and fuel, fire, defects on transport vehicles, natural disasters and similar circumstances. This also applies if the circumstances affect subcontractors. We are not even responsible for these circumstances, if they occur during an already existing delay.
3. According to legal requirements, we are liable provided that the delay of delivery is based on a wilful or negligent breach of contract within our control. In case of negligence, the liability is limited to the foreseeable, typically occurring damage. According to legal requirements, we are also liable provided that the delay of delivery is based on the culpable breach of an essential term of contract. In this case, the liability is also limited to the foreseeable, typically occurring damage. If the delay in delivery only occurs due to culpable breach of a negligible term of contract, the customer is entitled to claim compensatory damages in a lump sum for the delayed delivery. The claim for compensatory damages may be 0.5 % of the delivery value for every completed week of delay, but may not exceed 2.5 % of the delivery value.

III. Shipment

Unless otherwise stated in the acknowledgement of order, a delivery “ex works” is agreed. Construction Equipment & Parts GmbH / CEP LLC does not have to dispose of packaging material for transport and all other purposes according to the packaging laws, except pallets. The customer takes on the obligation to dispose of the packaging material at his own expense. If required, we will cover delivery by transport insurance. The customer is to bear the arising costs.

IV. Warranty

1. The customer’s warranty rights presuppose that the customer has duly carried out his duties with regard to examinations and claims. In case of defects, we either rework or supply a new, faultless article. In case of the elimination of the defect we only bear expenditures up to the purchase price. Replaced parts become our property.
2. The warranty period for the equipment is 6 months / 500 working hours (which ever is sooner), starting from the date of commissioning.
3. All transport and related costs connected with all warranty claims are totally at the cost of the claimant.
4. All replaced parts are warranted by Construction Equipment & Parts GmbH / CEP LLC for 6 months / 500 working hours from time of installation, but at least up until the expiry of the original warranty period for the article. Our liability for essential third-party products is limited to assign the liability claims to the third-party supplier.



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IV. Warranty (Continued)

5. The customer has to grant us an appropriate time and opportunity in order to execute all necessary repair works and substitute deliveries. Otherwise, we are released from the liability for defects. The customer is only allowed to eliminate the defect himself or to have it eliminated by a third party and to claim for reimbursement of expenses from us when the operational safety is endangered, in order to avoid excessively big damages, and in case we fall behind with the elimination of defects. However, these cases must be immediately reported to us.

6. The liability for defects does not refer to wear and tear (such as of shaft seals, bearings, wear mantles, nose cone etc.). It also does not apply to damages which occur after passing of risk due to faulty or negligent treatment, excessive load or faulty assembly, unsuitable or improper use, maintenance not according to proper standards, unsuitable working stock or chemical, electrochemical, and electrical influences, unless we are responsible for them. If the customer or a third party reworks improperly, we are not liable for the arising consequences. This also applies to alterations of the article without our prior agreement.

7. When the repair works fail, the customer may either reduce the remuneration or withdraw from the contract. In case of minor contract adversities, particularly in case of insignificant defects, the customer is not entitled to back out of the contract. If the customer withdraws, he may not sue Construction Equipment & Parts GmbH / CEP LLC for compensation of this defect. In case the customer asserts a claim for damage, the article will remain with him, if this is reasonable for him. The claim for damage is limited to the difference between the purchase prices and the value of the faulty article. This is not valid in case we have cunningly withheld the breach of contract.

8. Basically, the state of the article is either as described in the manufacturer's product information or as agreed. Besides that, public statements, recommendation as well as advertising of the manufacturer or us do not describe the state of the article as stipulated in the contract. If the customer receives incorrect mounting instructions, we are only committed to provide faultless mounting instructions, in case the fault of the mounting instructions stands in the way of a proper assembly.

9. We are liable according to legal terms, provided that the customer claims compensation which is based on intent or culpable negligence, including intent or culpable negligence of our representatives or persons employed to perform obligations. Unless we are not blamed for wilful default, the liability for damages is limited to the foreseeable, typically occurring damage.

10. We are liable according to legal terms, provided that we culpably break an essential term of the contract. However, in this case the liability for damages is limited to the foreseeable, typically occurring damage.

11. Incidentally, the liability for damages is excluded. In this respect, we are particularly not liable for damages which do not affect the article itself. The conclusive stipulations of the product liability law remain unaffected.

V. Joint Liability

1. A further reaching liability for damages as described under IV is excluded, without consideration of the legal nature of the claim raised. This is particularly valid for claims for damage.

2. The liability on the basis of the stipulations of the product liability law remains unaffected. The limitation of liability is not effective for bodily harm and damage to health or a customer's death within our control.

3. As far as the liability for damages towards us is excluded or restricted, this also applies to the personal liability for damages of our staff, representatives and persons employed to perform obligations.



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VI. Reservation of Proprietary Rights

1. We reserve the property of the purchase matter for ourselves until we receive all payments from the business with the customer. As far as we agree, payment of the purchase price based on the check/draft system with the customer, the reservation also applies to taking up the draft accepted by us through the customer and does not expire by the credit note of the check received.
2. The customer is entitled to resell the purchase matter in proper business. However, already now he assigns all claims in the amount of the final amount of the invoice (including value-added tax) to us who accrue to him from resale to his buyers or third parties, independently whether the purchase matter has been resold without or after processing. The customer remains authorised collecting this debt even after the assignment. Our authority to collect the debt ourselves remains unaffected hereof. However, we commit ourselves not to collect the debt as long as the customer complies with his obligations to pay from taken proceeds, does not get into default of payment and, particularly no application is made for opening insolvency procedures or suspension of payment is in existence. Should this be the case, we can claim that the customer discloses the assigned claims and their debtors, gives all details about collection, hands over the necessary documents and informs the debtor (third party) of the assignment.
3. The processing or reconstruction of the purchase matter by the customer is always carried out for us. If the purchase matter is processed together with other articles which do not belong to us, we acquire joint ownership on the new articles in proportion of the value of the purchase matter to the other processed articles at the time of processing. In fact, the same is valid for the newly processed article as for the purchase matter supplied under reservation.
4. The customer is committed to treat the purchase matter carefully. He is particularly obliged to insure the purchase matter at its original value against fire and water damages as well as losses caused by theft at his own costs. Provided that maintenance and inspection works are required, the customer must carry them out in time at his own costs.
5. The customer has to inform us immediately in writing in case of seizure and other interventions of third parties, so that we can institute proceedings. When the third party is not able to reimburse the court and out of court costs, the customer is liable for the resulting loss.
6. When the customer's conduct conflicts with the contract, particularly in case of delay in payment or infringement of one of the duties according to clauses 4 or 5 of this stipulation, we are entitled to withdraw from the contract and to claim the product. The seizure of the purchase matter through us always comprises a withdrawal from the contract. After taking back the purchase matter we are authorised to use it, the proceeds of utilisation are to be taken into account for the obligations of the customer, less appropriate utilisation costs.
7. We commit ourselves to release our security in case of request of the customer; in as far as the realisable value of our security exceeds the claims to be secured by more than 10 %. The choice of the security to be released is our responsibility.

VII. Payments

1. Unless otherwise stated in the acknowledgement of order, a delivery "ex works" is agreed, excluding packing. This will be charged separately.
2. The legal value-added tax is not included in our prices. It will be separately shown on the invoice in the amount effective on the day of invoicing.
3. The cash discount requires a special agreement in writing.
4. Unless otherwise stated in the acknowledgement of order, the customer commits himself, to pay 60% of the net purchase price (net terms only) within 7 days of the date of confirming the order. Then 20% of the net purchase price upon delivery of the article and the balance (20%) 14 days after formal commissioning of the article. After this end of period he gets into delay in payment. We are then entitled to claim default interest in the amount of eight percentage points over the basic lending rate. If we are able to prove a more extensive damage caused by default, we are entitled to claim it. However, the customer then is entitled to prove to us that no or an essentially smaller damage results from the default of payment.
5. The customer is only entitled to set-off rights in case his counterclaims are finally adopted, undisputed and accepted by us. In addition, he is authorised to exercise a lien in as far as his counterclaim is based on the same contractual relationship.



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VIII. Court of Jurisdiction and Applicable Law

1. These General Terms and Conditions of Sale and Delivery are governed by the Law of the UAE. The stipulations of the UN-purchase right do not apply. If the customer is a businessman, a legal person of the public law or special assets under public law, our place of business is the exclusive court of jurisdiction. This also applies if the customer has no general court of jurisdiction in UAE or the residence or the habitual residence is not known at the time instituting proceedings. However, we are also entitled to take the customer to the court of his residence.
2. Unless otherwise stated in the acknowledgement of order, our place of business is the place of performance.
3. The language of the contract is in English
4. In case single stipulations of the contract with the customer or these General Terms and Conditions of Sale and Delivery are or will become fully or partly ineffective, the validity of the other stipulations remains unaffected. A fully or partly ineffective, invalid, unclear or impracticable stipulation is to be replaced or interpreted, so that the intended economical purpose is achieved. Loopholes are to be filled in accordance with the intended economical purpose.

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