

§ 1 General provisions, scope of application

Unless otherwise expressly agreed in writing, these General Terms and Conditions of Purchase (these "GT&C") shall exclusively govern and automatically apply to the purchase of any material, goods or products (collectively the "Products") by us for our or others accounts pursuant to the attached purchase order, contract of supply or call-offs, or any other document, as the case may be (collectively, the "Order") with you as the supplier (the "Supplier").

Unless otherwise agreed upon in writing, no terms and conditions other than these GT&C shall be binding for this Order. We shall accept Supplier's terms and conditions or any part thereof only if we explicitly agree to them in writing.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ANY TERMS AND CONDITIONS THAT MAY BE SET FORTH IN AN ORDER CONFIRMATION OR OTHER DOCUMENT ISSUED BY OR FOR THE SUPPLIER THAT ARE INCONSISTENT WITH OR IN ADDITION TO THESE GT&C SHALL NOT BE BINDING UPON US UNLESS SPECIFICALLY ACCEPTED BY US IN WRITING, AND THEY SHALL OTHERWISE BE DEEMED TO HAVE BEEN EXPRESSLY REJECTED IN CONFORMITY WITH ANY APPLICABLE LAW, INCLUDING BUT NOT LIMITED TO SECTION 2-207 OF THE UNIFORM COMMERCIAL CODE.

§ 2 Ordering

- (1) Orders issued by us (and any amendments and/or modifications thereto), shall be binding only if they are accepted in writing within the time limit specified in the Order and in no event later than ten (10) days after the date of issuance of the Order, unless revoked by us before acceptance. They can also be transmitted by remote data transmission which include, without limitation, fax, e-mails, internet platforms or machine-readable data carrier.
- (2) It is not permitted to pass on or disclose the contents of the Orders or these GT&C to third parties, unless we agreed to it in writing.

§ 3 Prices, invoicing and payment

- (1) The price for the Products shall be as set out in and calculated in accordance with the Order ("Price"). Unless otherwise set out in the Order, the Price may not be increased and shall include any applicable Value Added Tax or any other sales tax or other government charge or levy. The INCOTERMS terms applicable to the delivery, transfer of title, passage of risk of loss, and any other applicable matter, shall be as specified on the Order, and shall be interpreted in accordance with the definitions set forth in INCOTERMS 2010. Unless otherwise specified, all Products shall be imported and delivered DDP (delivered duty paid) to the destination specified in the Order, which shall be our facility unless otherwise indicated therein, and without limiting the generality of the foregoing, Supplier shall be responsible for filing all customs declarations and otherwise complying with import requirements, and for paying all duties and other charges that may be associated with such import.
- (2) We may select at our discretion the terms of payment including but not limited to one of the following ways: (a) fourteen (14) days with three percent (3%) discount; or (b) thirty (30) days net. The foregoing time-limit for payment shall be calculated as of the date of receipt of the invoice and, if applicable, of all documents to be provided with the delivery (bills of lading, packing lists, etc.), or the date of delivery of the Products, whichever is later.

§ 4 No Assignment of claims

The rights of Supplier hereunder, and any of its right, title and interest in or to any Order may not be assigned, transferred or subcontracted by the Supplier, in whole or in part, without our prior written consent.

§ 5 Dispatch, delivery dates and deadlines

- (1) Supplier shall deliver the Products in accordance with the terms specified in the relevant Order and any written instructions provided to the Supplier. Except as otherwise provided in writing in any applicable Order, the risk of loss and title to the Products shall pass to us once the delivery arrives at our place of delivery as specified by us, regardless of whether delivery ex works or FOB at any location in the export or any transit jurisdiction is agreed upon and of whether carriage or shipping, insurance or other transportation costs are paid by us.
- (2) The delivery dates and periods agreed-upon are binding and unless otherwise specified, the Supplier acknowledges that TIME IS OF THE ESSENCE. If the Supplier fails to deliver in accordance with the delivery time, without prejudice to any other remedy available to us at law or equity, we shall be entitled to cancel the Order and recover from the Supplier any losses and consequential costs arising from the purchase of substitute Products elsewhere. For the removal of any doubt, the requirement for certain delivery time and/or period shall be met and satisfied only when we or the relevant purchaser shall have received the Products at our factory, warehouse or other place of delivery specified by us.
- (3) If the Supplier realizes that an agreed deadline cannot be maintained, for whatever circumstances that arise or that indicate that the deadline will not be met, it shall immediately inform us about this fact in writing. The supplier undertakes to take any reasonable step and action, at its sole expense, in order to comply with the agreed upon delivery date.
- (4) In the event Products are delivered in excess of the quantities ordered, we may be entitled to reject all or any excess Products and in any case shall not be bound to pay for the excess and any excess will be and will remain at the Supplier's risk and we may, at our discretion, either return the excessive portion of the Products to the Supplier at the Supplier's sole risk and expense or keep them in storage at the Supplier's sole risk and expense until Supplier will arrange their return.
- (5) In the event of a delay in delivery of the Products for any reason (excluding circumstances covered under § 6 below), in addition to any other right or remedy available to us by law, Supplier shall pay a daily penalty at the rate of 0.2% of the value of the delayed delivery per calendar day, however not more than 10% of the value of the shipment. Penalties can be claimed up to when the final payment has been made. For the removal of any doubt, we (or our affiliates, agents or customers) reserve the right to pursue further legal claims in connection with such delay, in particular for contractual penalties applied by our customers and consequential damages.
- (6) Unless otherwise expressly accepted by us in writing, partial delivery shall not be permitted.

§ 6 Force majeure

Neither party herein shall be liable to the other party herein or any other person for any failure or delay in the performance of any obligation in connection with an Order and/or these GT&C due to unforeseen or unavoidable events beyond such party's reasonable control, including, but not limited to, acts of God, fire, storm, flood, earthquake, explosion, accident, transportation embargoes or delays, breakdown in machinery or equipment, acts of the public enemy, wars, riots and public disorder, sabotage, strikes, lockouts, labor disputes, labor shortages, work slowdown, stoppages or delays, shortages or failures or delays of energy, materials, supplies or equipment, and acts or regulations or priorities of the federal, state or local governments.

§ 7 Return of packaging and empties

Packaging items and empty containers provided by us shall be returned at Supplier's expense.

§ 8 Quality, acceptance and warranty

- (1) If and to the extent requested by us, Supplier shall permit our duly authorized representatives to inspect and test Products subject to an Order before tender of delivery, provided that we have no obligation to do so. We will inspect the Products for apparent defects and shortages within a reasonable time after receipt thereof. We will notify the Supplier on any defects that we discover within a reasonable period of time after detection. If any Products are found to be defective or otherwise not in conformity with the requirements of the Order, whether pursuant to the above-referenced inspection or otherwise, we may, in addition to our other rights and remedies, reject such Products and require their prompt repair (i.e. correction of all defects) or their replacement at Supplier's sole expense, including full shipping and packaging charges. Alternatively, we may repair or replace such defective or nonconforming goods at Supplier's sole expense subject to the terms of Section 8 (4) below. Missing Products shall be shipped promptly by any means of transportation necessary to meet the delivery dates set forth in the Order, or cancelled, at our election. For the removal of any doubt, our failure to inspect the Products shall not be deemed to constitute acceptance of any Product which do not conform to the specifications according to the Order, or to waive any of our rights or remedies arising by virtue of such defects or non-conformance.
- (2) The Products supplied shall be free of defects, correspond to our specifications, be designed and produced according to current standards and without any limitations applicable for the use specified in the contract. They shall correspond to the relevant statutory and administrative protective regulations applicable in the Federal Republic of Germany and in the country of destination and origin. SUPPLIER WARRANTS THAT ALL PRODUCTS DELIVERED PURSUANT TO AN ORDER WILL: (I) BE FREE FROM ANY SECURITY INTEREST, OR OTHER LIEN OR ENCUMBRANCE HELD BY ANY THIRD PARTY; (II) CONFORM TO ALL REQUIREMENTS OF THE ORDER, SPECIFICATIONS AND APPROPRIATE STANDARDS; (III) BE NEW, AND BE FREE FROM DEFECTS IN MATERIAL OR WORKMANSHIP; (IV) TO THE EXTENT SUPPLIER KNOWS OR HAS REASON TO KNOW THE PARTICULAR PURPOSE FOR WHICH WE OR THE PURCHASER ON OUR BEHALF INTENDS TO USE THE PRODUCT, BE FIT FOR SUCH PARTICULAR PURPOSE; (V) COMPLY WITH AND CONFORM TO THE CURRENT STATE OF THE ART, THE APPLICABLE LAWS, THE SAFETY AND ACCIDENT PREVENTION REGULATIONS; AND (VI) NOT INFRINGE UPON THE INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY AND BE FREE FROM DEFECTS IN DESIGN. SUPPLIER WARRANTS THAT SERVICES WILL BE PERFORMED IN A GOOD AND WORKMANLIKE MANNER. THE APPROVAL OF DESIGNS, INSPECTION, ACCEPTANCE, OR PAYMENT BY US SHALL NOT RELIEVE SUPPLIER SELLER OF ITS WARRANTY OBLIGATIONS HEREUNDER. SUPPLIER FURTHER REPRESENTS AND WARRANTS THAT ALL IMPLIED WARRANTIES APPLICABLE PURSUANT TO THE UNIFORM COMMERCIAL CODE OR OTHER BINDING BODY OF LAW HAVE NOT BEEN WAIVED AND SHALL BE DEEMED INCORPORATED HEREIN BY REFERENCE.
- (3) The warranty period is **48 months**. For buildings and building materials the statutory warranty period shall be applied. The period of warranty shall start upon receipt by us of the Products or in case of machines or machine components upon execution of the final acceptance certificate.
- (4) After the expiry of a reasonable grace period or if such a grace period cannot be granted because of particular circumstances, and after the Supplier has been notified, we shall be entitled to repair a defective item ourselves, to have it repaired by a third party or to otherwise procure a replacement, all at the Supplier's sole expense.
- (5) All costs occurring for the purpose of repair or replacement of the defective item at the respective place of use of the Products shall be at the Supplier's expense. Upon request, we shall inform the Supplier what is the place of use.
- (6) Supplier agrees to replace or correct defects of any goods or services not conforming to the foregoing warranties promptly, without expense to us, when notified of such nonconformity by us. The Supplier shall be liable for any damage-prevention measures, in particular for preventive substitution, if the parts are replaced because of a defect at the Products produced or delivered by the Supplier, unless it is not responsible for this defect. In these cases, the Supplier shall bear all costs and expenses including the costs arising for callback. In the event of failure to correct defects in or replace nonconforming Products promptly, we, after reasonable notice to Supplier, may make such corrections or replace such Products and charge Supplier for the cost incurred by us in doing so.
- (7) If in the case of serial defects the defect occurs for the first time within the warranty period, the following serial defects shall be considered to have occurred within the warranty period; declarations and legal acts made for the first event of damage shall always apply for all serial damages.

§ 9 Product Liability

- (1) Supplier shall defend, indemnify and hold us harmless against all damages, claims or liabilities and expenses (including attorneys' fees) arising out of or resulting in any way from any defect in the Products purchased hereunder, or from any act or omission of Supplier, its agents, employees or subcontractors. This indemnification shall be in addition to the warranty obligations of Supplier.
- (2) The Supplier shall be obliged to purchase and maintain a public and products liability insurance providing appropriate cover against the risks associated with the order and these GT&C including § 8 above and this § 9. The same applies to the insurance of the liability for callback of motor vehicles. Upon our request, the Supplier must promptly furnish us with satisfactory evidence of the maintenance of such insurance policy as well as proof of payment of premiums.

§ 10 Third party property rights

The Supplier ensures that the contractual use of the Products supplied does not infringe the property rights of a third party. Supplier agrees upon receipt of notification to promptly assume full responsibility for defense of any suit or proceeding which may be brought against us or our agents, customers, or other vendors for alleged infringement of any patent, copyright or misappropriation of any trade secret, as well as for any alleged unfair competition resulting from similarity in design, trademark or appearance of Products furnished hereunder, and Supplier further agrees to indemnify us, our agents and customers against any and all expenses, losses, royalties, profits and damages including court costs and reasonable attorneys' fees resulting from any such suit or proceeding, including any settlement. We may be represented by and actively participate through our own counsel in any such suit or proceeding if we so desire, provided at the costs of such representation shall be paid by us. If our use of any of the Products is enjoined as a result of any such infringement or alleged infringement, Supplier agrees, at our option to: (i) accept return of the goods from us and refund us the amounts we paid with respect to such Products; or (ii) modify the Products so that they become non-infringing but equivalent in functionality, quality, compatibility and performance; or (iii) procure for us and our customers the right to continue using and distributing the goods. The foregoing obligation does not apply with respect to any Product: (i) made in accordance with our specifications, if the alleged infringement would not have occurred but for conformance with such specifications; or (ii) which are modified after shipment by Supplier, if the alleged infringement would not have occurred but for such modification.

§ 11 Secrecy and legal title

- (1) The Supplier undertakes (a) not to disclose to any third parties (other than its agents or employees and only to the extent it is necessary for the purpose of performing its obligations hereunder), any detail in connection with our Orders, including without limitation the quantity and prices, technical specifications, commercial conditions etc. and any other information concerning us or our business requiring secrecy, which it receives intentionally or accidentally ("**Confidential Information**"); (b) not to use any Confidential Information for any purpose other than in complying with its obligations under the Order and these GT&C. The aforementioned shall not apply to the extent it is information in the public domain through no fault of the Supplier or it is required to disclose it by law. It is not permitted to register our company in a reference list or to use our Order for advertising purposes, unless we have given our prior consent in writing.
- (2) The obligation for confidentiality under these GT&C shall survive the expiration of the contractual relationship between us and the Supplier for any reason whatsoever; It shall expire when and in so far as the Confidential Information has become general knowledge through no fault of the Supplier or it is required to disclose it by law.
- (3) All materials provided to the Supplier further remain our property. They shall be stored systematically and clearly marked our property. The Supplier shall be liable for any damage to or loss of this additional material, even if it is not responsible for it. It shall take out, at its own expense, an insurance providing sufficient cover against fire loss, water damage and burglary.
- (4) The materials provided shall be used only for the intended purpose and must be returned to us when it is not needed to perform the Order.
- (5) When any material provided is processed, mixed or combined with other products by the Supplier or being converted into other products, we shall acquire joint ownership of the derivative product in proportion to the value of the material supplied to the overall value of the derivative item.
- (6) Tools and other facilities made available to the Supplier ("**Tools**") of which we pay the total cost of manufacturing or acquisition or part of it, shall become our sole property, or partial property when the Tool is made by third parties and paid in part by the Supplier.
The transfer of title is independent of whether the cost of the Tools has already been paid or to what extent. For the duration of the production we provide the Tools to the Supplier as a loan. The Supplier shall mark the Tools accordingly and insure them against accidental deterioration and breakdown (including fire, and commercial burglary). The Supplier shall keep the specified Tools in a ready-for-use condition. It shall pay the cost of storage, repair and maintenance and shall indemnify us at its own expense for all damages occurring at the Tools from usage.
We shall pay all costs arising for design modifications and the costs of overall replacements as a result of natural Tool wear. In case of co-ownership, we shall be entitled to acquire full ownership of a Tool by payment of the residual production or acquisition cost borne by the Supplier. Tools as to which we have full title shall be shipped to us at our cost upon request.
- (7) Packaging items, empty containers including lattice boxes, plastic inlays, covers and bottoms that we provide for usage to our Suppliers, remain our sole property. We provide these items to the Supplier as a loan. The Supplier shall be responsible for the proper handling of such items. Supplier shall mark it to clearly indicate that it is our property and shall insure it against accidental deterioration or loss (including fire, burglary and robbery insurance). The Supplier shall only make use of these items for the purpose of the contractual relationship with our company and shall not give it or use it in connection with third parties.

§ 12 Miscellaneous

- (1) These GT&C and any Order or any matter related thereto shall be construed and enforced under the laws of the State of Georgia, including the Uniform Commercial Code ("**UCC**"). The Convention on the International Sales of Goods shall not apply.
- (2) In connection with any disputes arising from these GT&C or any Order, the parties hereby consent to the exclusive jurisdiction and the convenience of the courts of the State of Georgia, and agree to accept service of process by mail, and hereby waive any jurisdictional or venue defenses otherwise available to them. However, notwithstanding the foregoing we shall also be entitled to bring any action against the Supplier at its place of jurisdiction as determined by the general law.