

# General Purchase Conditions (GPC)

Applicable to business transactions with entrepreneurs, legal entities under public law and special public-law funds.

## 1. General comments

- 1.1. Our General Purchase Conditions (hereinafter referred to as "GPC") shall apply exclusively. We shall not accept the general terms and conditions of the supplier (hereinafter referred to as "Supplier") that conflict with or deviate from our GPC unless we have expressly consented to their application in writing. Our GPC shall apply even if we, being aware that the Supplier's terms and conditions conflict with or deviate from our GPC, unconditionally accept or pay for the delivery of products and services by the Supplier (hereinafter referred to as "Subject Matter of the Contract").
- 1.2. Our GPC shall also apply to all future deliveries of goods and services by the Supplier until an updated version of our GPC replaces the current one.
- 1.3. Within the scope of these GPC, working days shall be all calendar days from Monday to Friday with the exception of public holidays observed in the region where our offices are based.
- 1.4. In case that reference is made to text form under these GPC, text form shall have the meaning in accordance with section 126b of the German Code of Civil Law (*Bürgerliches Gesetzbuch* or *BGB*).

## 2. Contract conclusion, changes, documents

- 2.1. All arrangements (including any changes thereto and the termination thereof) made between us and the Supplier for the purpose of executing the contract, which refers to these GPC (hereinafter referred to as "Contract"), must be set out in text form in this Contract.
- 2.2. If the Supplier does not accept the order within two weeks of receipt, we are entitled to revoke the order. Delivery call-offs shall become binding unless the Supplier objects within five working days of receipt.
- 2.3. We retain title to and copyrights in images, drawings, calculations and other documents; they must not be made available to third parties without our express written consent and must exclusively be used for the production as set out in our order; after the order has been processed, they must automatically be returned without a special request made by us. They must be kept secret vis-à-vis third parties. In addition, the provisions set out in section 14. hereunder shall apply.

## 3. Prices, invoices, payment conditions

- 3.1. The price set out in the order shall be binding. Unless otherwise agreed in text form, the goods including packaging must be delivered FCA (INCOTERMS 2010) to the destination listed in the order. The return of the packaging requires a separate agreement. Cost estimates will only be reimbursed following special prior agreement in text form.

- 3.2. Prices exclude VAT. Invoices must list the VAT separately.
- 3.3. Invoices can only be processed if they, according to the specifications made in our orders or call-offs, contain the order number listed therein. One copy of the invoice including invoice number and other details facilitating allocation must be sent to the respective printed address; invoices must not be enclosed with the delivery. Consequences arising from non-compliance with these obligations are the responsibility of the Supplier unless it can be proven that such arose due to none of its faults.
- 3.4. Unless otherwise specifically agreed, invoices shall be payable either within 14 days and subject to a 2% discount for prompt payment or within 30 days without discount as of the payment due date and after both the invoice and the goods have been received or the services have been provided. Payment shall take place subject to invoice verification.
- 3.5. We are entitled to have offsetting and retention rights as provided by law.

## 4. Delivery

- 4.1. Any deviations from the Contract and/or orders are permitted only following our prior consent in text form.
- 4.2. Delivery dates and delivery periods agreed are binding.
- 4.3. The Supplier shall make the goods available promptly taking into account the time required for loading and dispatching the goods to be agreed with the transport company.
- 4.4. The Supplier shall be obliged to notify us immediately in text form if circumstances arise or if it becomes aware of circumstances suggesting that the delivery time agreed cannot be complied with.
- 4.5. If agreed due dates and/or periods are not complied with, we are entitled to the statutory rights. Hence, after the fruitless expiry of an appropriate period of grace, we shall, in particular, have the right to demand damages and withdrawal instead of performance. If we claim damages, the Supplier has the right to prove that it was not responsible for the breach of obligations.
- 4.6. The acceptance without reservations of a belated delivery or performance does not constitute a waiver of our claims for damages that we are entitled to on account of the belated delivery or performance.
- 4.7. Partial deliveries are generally unacceptable unless we have expressly consented to such deliveries in text form or can reasonably be expected to accept them.
- 4.8. Unless otherwise agreed in individual cases, each delivery shall be from one single batch.
- 4.9. As far as the number of items, weights and measurements are concerned, the values established by us upon goods arrival are relevant unless another type of verification has been agreed.
- 4.10. Title to the Subject Matter of the Contract shall, upon handover, pass on to us. Reservation of title and, in particular, extended or prolonged reservation of title shall be excluded.

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## 5. Force majeure

In the event of circumstances which are beyond control, not connected with operations and which could not be averted even with extreme due diligence that is to be reasonably expected, the parties shall, for the duration of that event and as far as it affects them, be exempt from their duties of performance. The parties shall, as far as they can be expected to do so, be obliged to inform each other of the existence and duration of such an event as well as of the scope of performance limitation resulting thereof. As far as the restrictions caused by force majeure are not only temporary, we shall – irrespective of our other rights – have the right to fully or partially withdraw from the Contract.

## 6. Transport, transfer of risk

- 6.1. Unless otherwise agreed in writing, the Supplier shall bear the risk of damage to or loss of the goods until the goods are accepted by us or parties authorised by us in the place where the goods are to be delivered as contractually agreed.
- 6.2. The goods must be packaged and secured for the duration of transport in such a manner that damage in transit is avoided.
- 6.3. The Supplier must, as part of its outgoing goods inspections, enclose an analysis certificate for each individual batch of the delivery.

## 7. Inspection to establish defects, liability

- 7.1. The acceptance of goods shall be subject to inspection on defects. Unless otherwise agreed, we only inspect incoming goods for visible defects and for obvious differences concerning quality and quantity. We have the right to inspect the Subject Matter of the Contract as far and as soon as such inspections are feasible in the proper course of business. Upon the discovery of any defects we shall inform the Supplier forthwith; such notifications are deemed to have been made on time if they are received by the Supplier within a period of 5 working days from the day of receipt or, in the case of hidden defects, from the day of discovery. Under such circumstances the Supplier shall refrain from objections claiming late notification.
- 7.2. Unless otherwise agreed below, we shall be entitled to all rights that are due to us under the respective statutory provisions concerning material and legal defects; in any case, we shall have the right to demand that the Supplier either remedy the defect or replace the goods. The Supplier shall have the right to refuse the type of supplementary performance chosen by us under the conditions set forth in section 439(3) of the German Code of Civil Law (*Bürgerliches Gesetzbuch* or *BGB*). We expressly reserve the right to claim damages, in particular the right to claim damages instead of performance.
- 7.3. In urgent cases, in particular to prevent acute danger or avoid great damage, where we are either unable or cannot reasonably be expected to give the Supplier the opportunity of supplementary performance, we shall have

the right to remedy the defect ourselves or have a third-party remedy at the Supplier's risk and expense.

- 7.4. Claims arising from material defects fall under the statute of limitations in 36 months starting on the day of delivery of the Subject Matter of the Contract. Other limitation periods depend on the respective statutory rules and regulations.
- 7.5. If, due to the defects of the Subject Matter of the Contract, we are faced with costs, in particular transport, travel, labour or material costs or costs resulting from incoming goods inspections that exceed normal standards, the Supplier shall bear these costs.
- 7.6. If we, on account of the defects of the Subject Matter of the Contract provided by the Supplier, are obliged to take back goods made and/or sold by us or if we have to accept a lower selling price or are subject to claims in other ways due to these defects, we reserve the right of recourse to the Supplier whereby our rights arising from the defects are not subject to any deadline, which is otherwise required.
- 7.7. We are entitled to ask the Supplier to reimburse the costs that we had to bear in our dealings with our customers because they had the right to the reimbursement of the costs required due to supplementary performance, including but not limited to the transport, travel, labour and material costs if the defect existed at the time when the risk was transferred to us.
- 7.8. Irrespective of the provisions set out in section 7.4. hereunder (limitation period for claims arising from material defects) the limitation period shall, in the cases referred to in sections 7.6. and 7.7 hereunder, take effect at the earliest two months after we have settled the claims made against us by our customers but, at the latest, five years after delivery by the Supplier.

## 8. Product liability, release, liability insurance

- 8.1. Insofar as the Supplier is responsible for damage (including any damage affecting products sold on by us) the Supplier shall be obliged to indemnify and hold us harmless from claims for damages by third parties on first request if the defect has been caused within its field of control and organisation and if it is liable vis-à-vis third parties. In such a case the Supplier shall bear all costs and expenses including any potential litigation or re-call costs. We shall, as far as possible and as far as we can be reasonably expected to do so, inform the Supplier of the content and scope of the re-call operations to be performed and offer the Supplier an opportunity to state its case. Other statutory claims shall remain unaffected thereof.
- 8.2. If the Supplier, due to public-law regulations, is obliged to notify the competent authorities of circumstances affecting the marketability of the Subject Matter of the Contract, the Supplier must immediately inform us thereof in writing.
- 8.3. In the event of regulatory measures that lead to a reduced marketability of the Subject Matter of Contract, we shall have the right to either fully or partially withdraw from the Contract. In such a case, the Supplier shall be obliged to indemnify us for all the resulting damage unless it is not

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responsible for the underlying cause. Other claims and rights shall be unaffected thereby.

- 8.4. The Supplier undertakes to take out and maintain a product liability insurance offering appropriate cover. If we are entitled to further claims for damages, they shall remain unaffected.

### 9. Protection rights

- 9.1. The Supplier guarantees that, in connection with its delivery, no rights and, in particular, no patent rights, copyrights as well as personality and trademark rights of third parties are breached.
- 9.2. If a third party makes a claim against us, the Supplier shall be obliged to release us from such claims following our first written request; we do not have the right to make any arrangements and, in particular, accept a settlement with a third party without the consent of the Supplier.
- 9.3. The indemnity obligation of the Supplier refers to all costs unavoidably arising for us from or in connection with claims made against us by third parties.
- 9.4. The period of limitation is five years calculated from the day of Contract conclusion.
- 9.5. Liability pursuant to section 7 hereunder shall remain unaffected.

### 10. Compliance with statutory provision regarding chemicals

- 10.1. The Supplier shall comply with the ruling statutory provisions regarding chemicals. This shall include in particular compliance with the statutory provisions (in their respective ruling versions) regarding the following:
- a) Registration and licencing of chemicals as well as information obligations, in particular pursuant to REACH Registration (Registration (EC) No. 1907/2006);
  - b) Restrictions and prohibitions regarding the marketing of substances;
  - c) Import and export of chemicals;
  - d) Classification, identification and packaging of chemicals, in particular pursuant to CLP Regulation (Regulation (EU) No. 1272/2008);
  - e) Merchantability and identification of biocide products and goods treated with biocides; as well as
  - f) Transportation of hazardous goods
- 10.2. In case that we are obliged to register the Subject Matter of Contract in accordance with the statutory provisions, (including but not limited to the REACH Regulation (EC) No. 1907/2006), the Supplier shall provide us free of charge with all available information necessary therefor and inform us of any appointment of the sole representative without undue delay.

### 11. Export control legislation

- 11.1. For any Subject Matter of the Contract, the Supplier shall comply with the applicable national and international export control, customs and foreign trade regulations and

shall obtain any necessary export licences for the Subject Matter of Contract unless the applicable foreign trade legislation requires that, instead of the Supplier, we or any third party are obliged to apply for such licences.

- 11.2. The Supplier shall advise us in text form as early as possible of any information and data which we need to comply with the applicable foreign trade legislation with respect to export, transfer and import as well as, in case of reselling, with respect to re-export of the Subject Matter of Contract or of any goods and services based on the Subject Matter of the Contract. In any case the Supplier shall provide us for each Subject Matter of Contract with the following information:
- a) all applicable export list numbers of the national or European Foreign Trade regulation (if the Subject Matter of the Contract is subject to any export list item);
  - b) the Export Classification Number (ECCN) according to the U.S. Commerce Control List (CCL) if the product is subject to the U.S. Export Administration Regulations;
  - c) the mineral oil content if the product contains any mineral oil;
  - d) the customs tariffs number or statistical commodity code according to the current classification of goods for the foreign trade statistics and the HS (Harmonized System) Coding; as well as
  - e) the country of origin (under commercial law).
- 11.3. Furthermore – upon request of us – the Supplier shall provide the Long Term Supplier's Declarations concerning the preferential origin in case of European suppliers or certificates of preferences in case of non-European Countries.
- 11.4. In case of any alterations to origin, to properties or characteristics of the Subject Matter of the Contract or the foreign trade legislation to be applied, the Supplier shall update the export control and foreign trade data unrequested as early as possible, and inform us accordingly in text form.
- 11.5. The Supplier shall be liable for any expenses and any damage that might arise for us due to the fact that export control and foreign trade data are missing or inaccurate.

### 12. Quality management

- 12.1. The Supplier must introduce a quality management system, e.g. according to DIN ISO 9001 and/or DIN ISO 14001 and maintain it for the entire duration of the contractual relationship and furnish proof thereof upon request. We shall, following consultation, have the right to inspect the system used by the Supplier by way of an audit.
- 12.2. The Supplier must inform us in writing without undue delay, but at least 6 months prior to changing the production processes, the production site and/or the ingredients used. The Supplier shall provide us with all the information that we require.

### 13. Assignment

Rights and claims outside the scope of application set out in section 354a of the German Code of Commercial Law

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(*Handelsgesetzbuch* or *HGB*) may only be assigned by the Supplier with our prior written consent.

and the United Nations Convention on Contracts for the International Sale of Goods (CISG). In addition, the INCOTERMS in their last valid version shall apply as far as they do not conflict with these GPC and any special arrangements that may have been made.

## 14. Confidentiality and privacy

- 14.1. All business or technical information made available by us must be kept secret vis-à-vis third parties as long and as far as it is not verifiably already in the public domain and must only be made available to such persons employed by the Supplier who, of necessity, must be informed thereof to ensure the fulfilment of contractual obligations. Without our prior express consent in text form, such information must not be copied or put to commercial use except for the purpose of deliveries to us. Upon our request, all information provided by us (which may include copies or records) and any items loaned to the Supplier must immediately and in their entirety, be returned to us or destroyed. This does not apply to automatically generated backup files and as far as the Supplier, based on statutory or regulatory obligations, is obliged to store such files on the proviso that the Supplier, based on the aforementioned rules and regulations, treats such information confidentially for an unlimited period of time and refrains from using it.
- 14.2. The information referred to in section 14.1 above remains our property. We reserve all rights therein (including copyrights and the right to register industrial property rights such as patents, utility models, etc.).
- 14.3. The Supplier is obliged to comply with the applicable rules and regulations concerning data protection in their respective valid version and shall observe them.

## 15. Jurisdiction, place of performance

- 15.1. The sole venue for all disputes arising from or in connection with the GPC and any Contract as well as regarding their validity shall be Hamburg, Germany; we shall, however, also have the right to sue the Supplier at its local place of jurisdiction.
- 15.2. The place of performance for deliveries is the place where, according to the order, the goods must be delivered to. The place of performance for payment is our registered seat.

## 16. General provisions

- 16.1. Should any individual provision of these GPC and/or of any further arrangements made be or become invalid, the validity of the remaining provisions shall not be affected thereby. The parties shall replace the invalid provision by another clause that comes as close as possible to the economic purposes of the invalid clause. The same shall apply, mutatis mutandis, to omissions.
- 16.2. These GPC are available in German and in English. In the event of any discrepancies, the German version of these GPC shall prevail.
- 16.3. The contractual relationship shall exclusively be governed by the laws of the Federal Republic of Germany to the exclusion of the regulations concerning the conflict of laws