

General Terms and Conditions of Purchase of Gütermann GmbH, Gutach-Breisgau

(Edition: March 2010)

The following Terms and Conditions of Purchase apply to all – including future – orders unless other terms and conditions have been agreed in writing. Any terms and conditions of the supplier or contractor (hereinafter together called Supplier) shall only apply if confirmed by us in writing.

1. Placement and acceptance of order

1.1

Only written orders and agreements are binding. Our employees are required to confirm in writing any verbal ancillary agreements or guarantees going beyond the scope of the written contract or modifying these Terms and Conditions of Purchase to our disadvantage.

1.2

The Supplier shall confirm the order in writing without delay. If we do not receive the confirmation of order within 14 days of the order date, we shall be entitled to revoke the order without any recourse of the Supplier.

2. Delivery and manufacturing time

2.1

Agreed deadlines shall be binding. The date of receipt of the delivery at the destination shall be authoritative for deciding whether a delivery date has been adhered to. If acceptance has been agreed or is required by law, the time of successful acceptance by a person authorized by us for this purpose shall be decisive.

2.2

The Supplier shall inform us without delay as soon as the Supplier becomes aware that the fulfilment of the delivery and/or service (hereinafter together called "Delivery") before the deadline is impossible in part or in whole, giving reasons and the likely period of the delay.

2.3

Partial deliveries are only permitted with our prior agreement.

2.4

The time for the fulfilment of our contractual obligations shall be extended in the event of Force Majeure, industrial disputes, equipment failure, lack of energy or raw materials, unrest or other unforeseeable or unavoidable events for which we cannot be held responsible, for the period of the disturbance and to the extent of their effect. We shall inform the Supplier without delay about the beginning and end of the impediments mentioned.

2.5

In the event of disturbances of the type indicated under Section 2.4 which are of more than insignificant duration and result in a significant reduction of our demand, we shall be entitled to withdraw from the contract in whole or in part. Our other rights shall remain unaffected by such a withdrawal. No claims for damages to the Supplier shall arise from such withdrawal.

2.6

In the event of a delay, we shall be entitled to demand a contractual penalty of 0.5% of the agreed total price of the delivery for each complete week of delay, but no more than 5 % in total. Any further-reaching rights shall remain unaffected. We reserve the right to assert this contractual penalty until the time of final payment.

3. Delivery / acceptance

3.1

Each delivery shall be accompanied by delivery notes indicating our order number, our article number, the type of packaging and the quantity and weight of the delivery.

3.2

The invoice shall be sent in duplicate to our address, separate for each order, giving our order number.

3.3

We shall be entitled to specify the type of shipment and the carrier. If we do not exert this right, the Supplier shall select the type of shipment most reasonable for us.

3.4

Until receipt of the proper delivery and shipping documents by us, the Supplier shall not be deemed to have fulfilled its delivery obligations. During such period, we shall be entitled to put the goods into storage at the Supplier's expense and risk

4. Work carried out on our or our customers' premises

4.1

If employees or agents of the Supplier carry out activities in our or our customers' companies, they shall take care to comply with accident prevention and all other safety regulations, as well as with the relevant in-company rules. Work shall not commence until these employees or agents have been made aware of such rules and regulations.

4.2

Assembly and installation work shall be approved. Approval is deemed to have been given when our responsible officer has accepted the services of the Supplier as in accordance with the contract explicitly in writing. We shall be entitled, however, to assert any claims for defects until the time of the final invoice. Should we fail to fulfil our obligation to approve the work, the Supplier shall grant us an extension of the approval period of at least three weeks.

4.3

A responsible officer of our plant shall confirm the number of working hours and the material supplied by the Supplier in writing immediately on completion of the work, but no later than the day of completion.

5. Prices and payment

5.1

The agreed prices are fixed prices and include packaging and delivery to the destination.

5.2

Unless otherwise agreed, we shall be entitled to pay within 14 days deducting a cash discount of 3%.

5.3

If we do not pay within 14 days deducting a cash discount of 3%, we shall be entitled to pay the net amount within 60 days.

5.4

We reserve the right to select freely among all commonly used methods of payment. The payment term shall commence on receipt of the complete delivery of goods according to the contract and receipt of the documents according to Section 3, but not before the agreed delivery date.

6. Packaging

6.1

The goods to be supplied shall be packaged in line with customary commercial practice taking into account all applicable regulations, in particular those concerning packaging and waste, or they shall be provided with special packaging specified by us at our request.

6.2

We shall be entitled to return the packaging carriage paid to the place of origin charging 1/3 of the packaging value to the Supplier.

7. Passage of risk

Unless otherwise agreed in writing, the Supplier shall deliver DDP our premises according to Incoterms 2000. This shall also apply if we involve our own transport personnel.

8. Quality assurance

Our company has been certified to ISO TS 16949 and ISO 9001, and we have committed to our customers only to purchase goods from such suppliers who also comply with these quality standards. The Supplier shall therefore take care to ensure that the quality standards according to ISO TS 16949 / ISO 9001 are observed unless differing quality standards have been explicitly agreed in writing. If we have concluded a separate quality assurance agreement with the Supplier, the stipulations of such an agreement shall have precedence over this clause.

9. Liability for defects

9.1

The Supplier warrants that the delivery item is free from deficiencies in title or material defects when handed over to us or our customer, and corresponds to the recognized state of the art, applicable laws, safety and accident prevention regulations as well as all customary and technical quality assurance standards (e.g. DIN, VDE, VDI, TÜV, explosion hazard guidelines of the employers' liability insurance). In the event of differences in contents of these standards, the German version shall prevail.

9.2

Following receipt, we shall examine the goods for evident defects, identity, missing quantities as well as transport damage. No further-reaching duty of inspection exists. We shall report any defects to the Supplier within a reasonable period following their detection. To this extent, the Supplier waives the defence of delayed notification of defects.

9.3

In the event of defects, we shall be entitled to demand additional delivery for the defective goods instead of rework. Following the unsuccessful expiry of a reasonable period of extension or – if it is impossible to set an extension due to the particular urgency of the delivery – following notification of the Supplier, we shall be entitled to remedy the defect ourselves at the Supplier's expense or have it remedied by a third party or procure replacement elsewhere.

9.4

The Supplier shall bear all expenses incurred during rework or for replacement deliveries at the relevant point of use of the goods. We shall inform the Supplier about the point of use on request.

9.5

The limitation for claims for defects is 36 months from delivery or from acceptance, where acceptance has been agreed or is legally required.

9.6

In the case of supply parts which become part of end products supplied to consumers with regard to which we might therefore be subject to recourse claims under the sale of consumer goods (§ 478 BGB), the period of limitation for claims for defects against the supplier shall be 60 months from the time specified under Section 9.5. On request, we shall inform the Supplier whether its supply parts will form part of end products supplied to consumers.

9.7

If the Supplier repairs delivery items or replaces them in whole or in part, the period of limitation according to Section 9.5 / 9.6 with regard to such a defect shall commence again with regard to these parts unless the rework is insignificant or an express good will action of the Supplier.

10. Third-party industrial property rights

10.1

The Supplier shall ensure that the contractually intended use of the delivered goods does not breach any industrial property rights such as design or other patents, other rights or commercial or company secrets of third parties – including those in the country of use. The Supplier shall indemnify us against such third-party claims following our initial demand in writing.

10.2

The Supplier shall not be liable if it produces goods exclusively according to our drawings and models and if the Supplier was not aware and could not be expected to be aware that the manufacture of such goods would break third-party rights.

11. Liability

11.1

In the event that a claim is made against us by a customer or other third party based on product liability, the Supplier shall indemnify us against such third-party claims following our initial demand in writing, provided that and in as far as the defect was caused in whole or in part by a fault in the product supplied by the Supplier. In cases of liability based on proof of fault this shall, however, not apply if the Supplier is not at fault.

11.2

If the Supplier can be held responsible for the cause of the damage, proof of causality of the defect with regard to the damage shall suffice; the Supplier shall bear the burden of proof.

11.3

In each case, the Supplier shall assume costs and expenses pro rata to its causative share/fault including the costs of any legal action or recall campaign; this shall also apply to recognizable or impending series production defects.

11.4

The Supplier shall cover its liability risk by means of an insurance and provide evidence of adequate cover on request.

11.5

Damage resulting from the breach of these conditions shall be borne by the Supplier. The Supplier shall also be liable even for slight negligence of its employees or agents.

11.6

Claims for damages – of whatever kind – against us are excluded in cases where we, our legal representatives or our agents have caused the damage as a result of slight negligence. This exclusion of liability shall not apply to personal injury or a breach of material contractual obligations which endanger the fulfilment of the purpose of the contract. Our liability shall be restricted, however, to contract-typical and foreseeable damage.

12. Manufacturing equipment, samples, drawings

12.1

Tools and other production equipment produced on our order and paid for by us shall become our property upon complete payment. The transfer of possession is replaced by the Supplier borrowing these objects from us. The Supplier shall store the objects which are part of our property separately from other objects not belonging to us. Our property rights shall be identified on the items themselves and in the books and records. The tools and manufacturing equipment shall be handed over at any time upon request. The tools and manufacturing equipment shall not be used by the Supplier for its own purposes, nor made available to third parties. The Supplier shall insure the tools and manufacturing equipment at the Supplier's expense against damage by fire, pipe water, storm, hail, theft, burglary and vandalism.

12.2

Products produced on the basis of documents designed by us (such as drawings, models and similar) or based on confidential information, or produced with our tools or reproduced tools, shall not be used by the Supplier itself nor offered or supplied to third parties.

13. Confidentiality

13.1

The Supplier shall not reveal to third parties any details of our orders such as unit numbers, technical designs, conditions etc. nor information subject to confidentiality requirements which the Supplier has received from us on purpose or accidentally. Inclusion of our company in a reference list or the use of our order for advertising purposes shall be subject to our written approval.

13.2

Documents and other objects of any kind such as samples, drawings, tools, models etc. which we make available to the Supplier shall be returned free of charge at our request as soon as they are no longer needed for the execution of the order. Such objects shall not be used by the Supplier for its own purposes, nor shall they be made available to third parties.

13.3

We shall claim damages in the event of a breach of these confidentiality stipulations unless the Supplier cannot be held responsible for such a breach. In the case of particularly severe breaches, we shall be entitled to terminate the whole contractual relationship with the Supplier with immediate effect and without compensation, and – where applicable – demand back any payments already made. A particularly severe breach is deemed to have occurred, in particular, when the Supplier passes on its acquired or received know-how to third parties which are in competition with us. We reserve the right to assert this contractual penalty until the time of final payment.

14. Assignment

The Supplier's rights arising from the contract shall not be assigned or pledged unless with our written agreement. This shall not apply to monetary claims. However, we shall be entitled to make payment to the Supplier with discharging effect.

15. Place of fulfilment, legal venue and applicable law

15.1

Place of fulfilment for all deliveries and services shall be the destination specified by us.

15.2

Legal venue shall be the court competent for our place of business. However, we shall also be entitled to bring action at the competent court for the place of business of the Supplier.

15.3

German law shall apply. The Vienna United Nations Convention On Contracts For The International Sale Of Goods of 11 April 1980 shall not apply.