

# Terms and Conditions of Purchase of Gontermann-Peipers GmbH

## Version of 1 January 2005

Applicable in business transactions with business enterprises, legal entities under public law and special funds under public law.

### 1. General Provisions

- 1.1 Our terms and conditions of purchase shall apply exclusively; we do not acknowledge Supplier's general terms of business that are contrary to or deviate from our terms of purchase unless we have expressly consented to applicability of said terms in writing. Our terms of purchase shall apply even if we accept or pay for deliveries of Supplier's products and services (hereinafter referred to as: subject matter of contract) in the knowledge of Supplier's terms that are contrary to or deviate from our terms and conditions of purchase.
- 1.2 Our terms and conditions of purchase shall also apply for all future transactions with the Supplier.

### 2. Conclusion and Modification of Contract

- 2.1 Purchase orders, contracts, and delivery call-offs as well as changes in and additions to the same shall be valid only if concluded in writing. Purchase orders and delivery call-offs can also take place through data communications or by telefax.
- 2.2 Oral agreements concluded prior to or at the time of conclusion of contract are effective only if confirmed by the Purchasing Department in writing.  
This shall not affect Clause 2.1, sub-clause 2.
- 2.3 Oral agreements after conclusion of contract, especially subsequent changes and additions to our terms and conditions of purchase - including this clause requiring written form - as well as side agreements of any kind, are likewise valid only if confirmed by the Purchasing Department in writing.
- 2.4 Cost estimates are non-binding and shall not be reimbursed unless an express written agreement was made to the contrary.
- 2.5 If the supplier does not acknowledge the purchase order within two weeks after receipt, then we shall be entitled to cancellation. Delivery call-offs shall become binding if the Supplier does not contradict them within five working days after receipt.

### 3. Delivery

- 3.1 Deviations from our contracts and purchase orders are permissible only after our prior written consent.
- 3.2 Contracted dates and time limits are binding. What is decisive for compliance with the delivery date or the delivery period is the receipt of the goods at Gontermann-Peipers GmbH. If delivery has not been contracted "free domicile" (DDU or DDP in accordance with Incoterms 2000), then the Supplier shall make the goods available in due time, taking into account the time agreed on with the forwarding agent for loading and shipment.
- 3.3 If the Supplier has undertaken the installation or erecting and there is no other agreement, then the Supplier, subject to deviant arrangements, shall bear all necessary ancillary expenses, for example, travel expenses, provision of the tools and travel allowances.
- 3.4 If contracted deadlines are not complied with, then the statutory provisions shall apply. If the Supplier foresees difficulties with regard to manufacturing, supply of input materials, compliance with the delivery deadline or similar circumstances that could prevent the Supplier from delivering on time or in the contracted quality, then the Supplier shall immediately notify the department of our company that placed the purchase order.
- 3.5 Acceptance of the delayed delivery or service shall not constitute a waiver of the claims for compensation to which we are entitled due to the delayed delivery or performance; this shall apply until complete disbursement of the payment that we owe for the delivery or service in question.
- 3.6 As a rule, partial deliveries are impermissible unless we have expressly requested them or they are reasonable for us.
- 3.7 Subject to other proof, the values we determine during inspection of incoming goods shall be authoritative for quantities, weights and dimensions.
- 3.8 In the software that is part of the scope of delivery including associated documentation, we shall have, besides rights of use in the scope permitted by law (Art. 69a ff. German Copyright Act,) rights of use with the contracted features and in the scope necessary for the use of the product in accordance with the contract. We may make backup copies even without an express agreement.

### 4. Force Majeure

Force majeure, labour disputes, disruptions of operations that are not our fault, official measures and other events beyond our control shall entitle us - without prejudice to any other rights we have - to postpone fulfilment of the obligation to accept delivery for the duration of the disruption or cancel the Agreement in whole or in part, provided they are not of insignificant duration and result in a substantial reduction of our demand.

### 5. Delivery Note and Invoice

Shipment shall take place according to our statements in our purchase orders and delivery call-offs and we shall be notified of shipment in duplicate on the day of shipment, stating the order number and date of order.  
The goods must be packed in the manner common in the trade. Packing materials shall only be returned upon express request and in the condition in which they find themselves after removal of the goods; the Supplier shall be responsible for the cost of return delivery. Upon our request, the Supplier shall be obligated to take back packing materials at Supplier's expense.  
Invoices shall be sent to our address in duplicate; they may not be enclosed with the shipments.

### 6. Pricing and Transfer of Risk

The contracted prices are fixed prices and rule out subsequent claims of any kind. Saving special provisions to the contrary, prices are stated free domicile duty paid (DDP in accordance with Incoterms 2000) including packing. Value-added tax is not included. Supplier shall bear the risk of accidental loss, destruction, or deterioration until acceptance of the goods by us or our authorized representative at the place where the goods are to be delivered in accordance with the contract.

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### 7. Terms of Payment

Saving a separate agreement to the contrary, the invoice shall be paid either within 14 days less 3% cash discount or within 30 days net cash without deduction from the date when the payment claim becomes due and receipt of both the invoice and the goods or rendering of the service. Payment shall be remitted subject to auditing of the invoice.

### 8. Claims for Defects and Recourse

8.1 Acceptance shall take place subject to inspection for freedom from defects, especially also for correctness, completeness and suitability. We shall be entitled to inspect the subject matter of the contract if and as soon as this is feasible within the ordinary course of business; we shall complain about defects that we discover without delay upon discovery. To this extent, the Supplier waives the objection of late notice of defects.

8.2 Saving other provisions in the following, the statutory provisions regarding material and legal defects shall apply.

8.3 As a rule, we shall have the right to choose the manner of subsequent fulfilment. The Supplier shall have the right to refuse the manner of subsequent fulfilment chosen by us under the preconditions of Art. 439 Para. 2 German Civil Code.

8.4 If the Supplier does not start eliminating the defect immediately after our demand to eliminate the defect, then in urgent cases, especially in order to protect against acute danger or avoid major damages, we shall have the right to eliminate defects ourselves or have them eliminated by third parties at the Supplier's expense. The period of limitation for material defects shall be two (2) years unless the object was used for an edifice in accordance with its usual use and caused said edifice to be defective. The period of limitation for material defects shall begin upon delivery of the subject matter of contract (transfer of risk).

8.5 In the event of legal defects, Supplier indemnifies and holds us harmless from any third-party claims that may exist. The period of limitation with regard to legal defects shall be 10 years.

8.6 For parts of the delivery that have been overhauled or repaired within the period of limitation for our claims for defects, the period of limitation shall start over again from the point in time when the Supplier has completely satisfied our claims for subsequent fulfilment.

8.7 If we incur costs as a result of the defective delivery of the subject matter of contract, in particular transport costs, infrastructure costs, labour costs, material costs or costs for inspection of incoming goods above and beyond the usual scope, then said costs shall be borne by the Supplier.

8.8 If, as a result of the defectiveness of the subject of contract delivered by the Supplier, we take back products manufactured and/or sold by us or if the purchase price was reduced in relationship to us because of this or if claims were asserted against us in any other manner for this reason, then we reserve the right to recourse against the Supplier, whereby any otherwise necessary setting of a time limit shall not be necessary for our rights with regard to defects.

8.9 We shall be entitled to demand compensation from the Supplier for the expenditures that we had to make in relationship to our Customer because said Customer asserted a claim against us for compensation for expenditures that were necessary for the purpose of subsequent fulfilment, in particular transport costs, infrastructure costs, labour costs and material costs.

8.10 Notwithstanding the provisions of Clause 8.4, in the cases in Clauses 8.8 and 8.9, claims shall lapse at the earliest two (2) months after the point in time when we have satisfied the claims asserted against us by our Customer, at the latest, however, five (5) years after delivery by the Supplier.

8.11 If a defect in quality appears within six (6) months after the transfer of risk, then it shall be supposed that the item was already defective at the time of transfer of risk unless this supposition is incompatible with the type of object or the type of defect.

### 9. Product Liability and Recall

In the event that claims are asserted against us on the basis of product liability, the Supplier agrees to indemnify and hold us harmless against claims of this type if and to the extent that the damage was caused by a flaw in the subject matter of contract delivered by the Supplier. In cases of culpability-based liability, however, this applies only if the Supplier is at fault. If the cause of the damage falls within the Supplier's sphere of responsibility, then to this extent the burden of proof shall be incumbent on the Supplier.

In such cases, the Supplier shall take responsibility for all costs and expenditures, including the cost of any legal prosecution or recall campaign. For the rest, the statutory provisions shall apply. Upon request, the Supplier shall present us with proof of the existence of a product liability insurance policy that in particular covers the risk of a recall with a sufficient amount insured.

### 10. Execution of Work

Persons who carry out work on the factory premises in fulfilment of the Agreement shall obey the provisions of the respective factory regulations. Liability for accidents to which said persons fall victim on the factory premises is hereby ruled out unless these were caused by malicious or grossly negligent breach of duty on the part of our legal representatives or persons employed in fulfilling our obligations.

### 11. Provision

Materials, parts, containers, and special packaging provided by us shall remain our property. They may only be used according to the terms of the Agreement. The processing of materials and assembly of parts take place for us. The parties agree that we acquire a co-ownership share in the products manufactured using our materials and parts in the ratio of the value of the things provided to the value of the overall product. To this extent, materials and parts provided are kept in safekeeping for us by the Supplier. If an object provided by us is destroyed or becomes unusable as a result of incorrect treatment or processing, then the Supplier shall compensate us for the damages incurred through this. Proof of sufficient insurance coverage shall be provided to us upon request.

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**12. Documents and Secrecy**

- 12.1 All business or technical information made available by us (including features that can be inferred from any objects, documents or software handed over and other knowledge or experience) shall, unless and to the extent that it is not demonstrably public knowledge, be kept secret in relationship to third parties and may only be made available to those persons at the Supplier's own company who must use said information for the purpose of the delivery to us and who are likewise obligated to maintain secrecy; they remain solely our property.  
Except for deliveries to us, said information may not be duplicated or commercially utilized without our prior written permission. Upon our request, all information originating from us (including any copies or records made) and any objects on loan to the Supplier from us shall be returned to us immediately and completely or destroyed.  
We reserve all rights to said information (including copyright and the right to register intellectual property rights such as patents, utility models, semiconductor protection, etc.). To the extent that said information was made available to us by third parties, this reservation of rights shall also apply in favour of said third parties.
- 12.2 Products produced according to plans drawn up by us, such as drawings, models, and the like, or according to our confidential specifications or with our tools or reverse engineered tools may not be used by the Supplier itself nor offered or delivered to third parties. This shall also apply analogously for our printing orders.

**13. Place of Fulfilment**

Place of fulfilment shall be the place to which the goods are to be delivered in accordance with the order.

**14. General Provisions**

- 14.1 If one of the provisions of these Terms and the additional agreements reached should be or become invalid, then this shall not affect the remaining valid provisions herein. The contractual partners are obligated to replace the invalid provision with that valid provision that most closely approximates the economic effect of the invalid provision.
- 14.2 Place of jurisdiction for all legal disputes arising directly or indirectly from contractual relationships that are based on these terms of purchase shall be Siegen. Furthermore, we shall be entitled to institute proceedings against the Supplier at our discretion before the court having jurisdiction over Supplier's headquarters or branch or before the court having jurisdiction over the place of fulfilment.
- 14.3 Contractual relations shall be governed solely by German law excluding conflict of laws and the United Nations Convention on Contracts Regarding International Sales of Goods (CISG).