

General Terms and Conditions of Purchase

(AGB-Einkauf)

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§ 1 – Preface / Scope

1. The following terms and conditions are applicable for all deliveries, services and offers of our suppliers. These are part of all the contracts concluded with our suppliers about their offered deliveries and services.
2. Our terms and conditions of purchase apply exclusively; supplier's regulations to the contrary or deviations are not accepted unless agreed in writing. Our terms and conditions of purchase apply also if we accept the consignment unconditionally knowing about the supplier's regulations to the contrary or deviations.
3. All the agreements, stipulated in this contract between us and the supplier, are to be put into writing. Supplements and amendments to the stated agreement including the General Terms and Conditions of Purchase are only valid in writing. Except from the Director and the Officer with Procurement, the employees of the purchasing company are not allowed to make agreements deviating from the terms.
4. Keeping the written form, the transmission by fax, as well as other telecommunicate transmissions especially by e-mail are sufficient.
5. Our Terms and Conditions of Purchase shall also apply for all future business transactions with our suppliers.

§ 2 – Documents of Offer

We reserve the copy- and property rights on the figures, drawings, calculations and other documents. They are not allowed to be handed over to third parties without our explicit consent in writing. They are only to be used for the production as per our orders. After production the documents are to be replaced to us without further request. They are to be kept secret towards third parties.

§ 3 – Prices and Payment

1. The price stipulated in the order is binding. Prices include delivery to our facilities, including any and all costs for packaging, except as otherwise expressly agreed upon in writing.
2. We settle payment within 14 days, on delivery and receipt of invoice, with 3% discount or otherwise within 45 days net after receipt of invoice.
3. We have all rights to offset or retain payment provided by applicable law.

§ 4 – Delivery and Delivery time

1. The delivery time stipulated in the order is binding.
2. The supplier is non-restrictively responsible for the purchase of the subcontracted supply and services which are necessary for his services-also through no fault of his own. The supplier has to avouch for the purchased subcontracted supplies and services like for his own consignments and services. This is valid especially in relation to defects.
3. The supplier is obliged to contact us in writing immediately when circumstances appear which may result in the fact that he cannot keep to the delivery time.
4. In case of a delay in delivery we have the right on statutory claims. Particularly after an unsuccessful expiry of additional period of performance, we are authorized to claim compensation instead of the service, and to withdraw from the contract.

§ 5 – Passing of Risk / Documents

1. Delivery has to be effected free domicile unless stipulated otherwise in writing. The risk will be transferred to us not until the goods have been released to us on the agreed place of destination, also if shipment has been agreed.
2. The supplier is obliged to indicate all shipping documents and delivery notes with our order number, project number, article number, description of article and the clerk. If not, delays in processing, for which we are not responsible, are unavoidable.
3. Furthermore, the supplier is obliged to hand over all manual guides and documents for maintenance in triplicate to the client on delivery at the latest.

§ 6 – Warranty against Defects

1. We are obliged to check the goods within an appropriate time for probable deviations of quality and quantity. The notification of defects is in time if it arrives at the supplier within 3 working days.
2. We have the right on an unexpurgated legal warranty of claim. Irrespective of this, we are entitled to demand either removal of defects or replacements. The supplier has to bear the costs for all the charges of the removal of defects or replacements. The right on compensation, especially the right on compensation instead of the service and performance, remains expressly reserved.
3. Warranty claims shall be time-barred after 36 month of the passage of risk aberrant from §438 para.1 n°3 Civil Code. For the rest legal arrangements apply.
4. For the assurance of warranty of claim we are entitled to deduct 5% of the invoice amount. This deduction can only be redeemed against handover of an unlimited, absolute and directly enforceable suretyship for warranty claims of a bank or a federally-insured financial institution accredited in the European Union. The collateral for warranty claims extends to the settlement of the claims including compensation as well as the rebate of overpayment including interests. In the bail, defences from §770 until §772 Civil Code have to be waived; on defences of set-off only as far as the counterclaim of the supplier is not undisputable or not legally binding. The bail must not contain escrow clause. In the bail it has to be stipulated that the demands on the bail do not prescribe before the secured demands. It has also to be stipulated that, in case of disputes and differences, the law of the Federal Republic of Germany applies. In the bail "Waldkirch" has to be stipulated as place of jurisdiction. A security which has not been used has to be given back after expiry of the warranty period. However, if our asserted claims are not settled at this time, we are authorized to keep an appropriated part of the security.

§ 7 – Liability for Products / Release from Liability / Coverage by Third-Party Liability Insurance

1. If a supplier is responsible for damage to goods, he is obliged to release us from claims of compensation of third parties upon first demand already, as far as the reason for it lies in his domain and scope of duties and he is liable in his relation to the outside world.
2. In this scale the supplier is obliged to compensate possible expenditures as per §683, 670 Civil Code, which arise from or are related to a product call-backs from our side, as far as the claim is no result of §§ 830,840 Civil Code in relation with §§426, 254 Civil Code. We will inform the supplier about content and scale of the product call-backs, if possible and reasonable and give him the opportunity for a statement.
3. The supplier releases us from claims of our clients, which they made because of advertising messages of our supplier, of a subcontractor (producer as per §4 para.1 or 2 Product Liability Act) or of one of their subsidiaries, and which would not exist or not to that amount or in that way without the advertising message. This arrangement applies irrespectively whether the advertising message has been made before or after the transaction.
4. The supplier is obliged to take out a product liability insurance with an amount of cover of 2.000.000,00 € flat per personal injury / damage to property.

§ 8 – Industrial Property Rights

1. The supplier avouches that, in relation to his delivery, no rights of third parties worldwide are violated as long as he does not prove that he is not responsible for the breach of duty.
2. If a third party makes a claim towards us, the supplier is obliged to release us from these claims after the first demand in writing. We are not authorized to make agreements, especially to make a settlement with a third party without the supplier's express consent.
3. The supplier's indemnification relates to all the expenditures which are results of the claims of a third party or which are related to them.

§ 9 – Retention of Title / Provision of Material

1. If we provide material to suppliers, we reserve the title on it. Processing or transformation by the supplier is made for us. If our propriety is processed with materials which are not our propriety, we acquire co-ownership on the new product proportionately to the value of our material at the time of the agreement.
2. If our propriety is mixed inseparably with materials which are not our property, we acquire co-ownership on the new product proportionately to the value of our material at the time of the mixture. It will be considered as agreed that the supplier transfers co-ownership towards us if the mixture is made in the way that the propriety of the supplier is to be regarded as main product. The supplier stocks the wholly owned and the co-ownership for us.

§ 10 – Contractual Penalty

1. The interim deadline and the completion date stipulated in the supplier's submission of offer may involve contractual penalties.
2. For the culpable exceeding of the agreed interim deadline, the supplier has to pay 0,2% of the total net order value of the partial service per working day -since the beginning of the delay-. The contractual penalties, which are due to the exceeding of the interim deadline, are credited to contractual penalties for the following interim deadlines and the completion dates.
3. For the culpable exceeding of the agreed completion date, the supplier has to pay per working day -since the beginning of the delay- 0,2% of the total net order value.
4. The contractual penalty is restricted to 5% of the total net order value.
5. Further assertion of indemnity claims will not affect the contractual penalty. However, a contractual penalty is credited to claims of indemnity.
6. Contractual Penalty can be held back until final invoice.
7. If the term is postponed or re-fixed amicably, due to justifiable requests for prolongation, the Contractual Penalty applies to the new terms and it does not request a new agreement on the arrangement for Contractual Penalty.

§ 11 – Avoidance of the right to refuse performance and the right of retention

1. If a contract partner applies to the right to refuse performance and the right of retention, he is obliged to set the amount for which he wants to assert the right. If the other contract partner contradicts to the assertion of the right to refuse performance and the right of retention, he is authorized to avert the assertion by a security about the amount set.
2. A security for the avoidance of the right to refuse performance and the right of retention as per §11 of this contract can be given by a deposit of an unlimited, absolute and directly enforceable suretyship by a bank or a credit insurer authorized by the European Union.
3. The costs for the security are to be paid by the parties in the relation to how far the assertion of the right to refuse performance and the right of retention was justified.

§ 12 – Assignment of claims, set-off

1. The assignment of a claim, whatever it contains, requires our consent. Assignments made without our consent are invalid. We will only withhold our approval if, after inspection of the individual case, our interests in the maintenance of the business relationship outweigh the interests of the supplier in the assignment.
2. A set-off with counterclaims is only valid if the claims are undisputed or has been declared final and absolute.

§ 13 – Confidentiality

1. Confidential information in accordance with this agreement is all the company and business secrets of GANTER and of his clients as well as all the other information about which the supplier comes to know, irrespectively whether in writing, orally, in electronic visual format, or during a briefing or at another time in relation with the above-mentioned project. Information which is well-known before is no confidential information.
2. The supplier is obliged to keep all the information secretly and confidential towards third parties and not to publish them. The supplier is also obliged to keep the confidential information save that third parties cannot inspect them. The use of the information for other purposes than the quotation or the eventual service provision for GANTER is strictly forbidden. These duties are applicable for an indefinite time. However, the non-disclosure agreement ends when the confidential information gets known without any effort of the supplier's part or when GANTER has agreed to the forwarding of single confidential information.
3. The supplier is obliged not to contact our clients for the time of the collaboration and the duration of the current project which we need his service for, also not via intermediary.
4. The supplier has to access the confidential information only to those employees who are responsible for submitting the corresponding offer and for performing the services and who are sworn to secrecy for an indefinite time.

- The supplier is responsible for the compliance with the regulations of the employees.
5. All the data media, documents and samples which are released to the supplier remain our property. They have to be returned to us immediately on request. Stored confidential data, copies of confidential information as well as records kept by the supplier have to be destroyed on request but after the collaboration at the latest.
 6. If the supplier has to disclose the confidential information to a public authority or a public court of law, he has to announce it to us in writing and in time.
 7. The provision of information or access to the contract or to plans and documents of tender to third parties is forbidden, if the provision of information or the access is not necessary for the fulfilling of the contract. The same applies to company secrets and other confidential information which emerge in connection with the fulfilling of the contract.
 8. Publications about the services and performances of the supplier and parts of the project are only permitted after an agreement written by us. Same applies to publication of our name or our clients by the supplier, especially in advertisement of the supplier and on his home page.
 9. If a non-disclosure agreement has been signed, the supplier has to pay for every case of culpable breach of secrecy or limitation of using our documents and name a contractual penalty in an appropriate amount but at least 10.00,00€. Irrespectively of indemnity claims, contractual penalty can be claimed but has to be credited against the indemnity claims unless a special non-disclosure agreement has been signed.

§ 14 - Final clause / Place of jurisdiction / Applicable law

1. If one or more provisions of this contract are partially invalid or impracticable, it does not affect the validity and the practicability of the other terms and conditions. The parties have to work together to replace the invalid and impracticable provisions by those who match the commercial aims of the party with the invalid and impracticable provision best. The above shall apply accordingly to the closing of any gaps in the Agreement.
2. This Agreement shall be governed by the law of the Federal Republic of Germany without conflict of laws rules. The application of the "United Nations Convention on Contracts for the International Sale of Goods" (CISG) is excluded.
3. Exclusive place of jurisdiction for all disputes which result from this contract is Waldkirch – as long as the supplier is a merchant as per Commercial Law.
4. A supplier who is not located in the Federal Republic of Germany is obliged to tell us his German authorized receiving agent within 14 days after the conclusion of the contract.
5. This agreement and its terms shall be governed by and constructed in accordance with the laws of Germany. If the English legal meaning differs from the German legal meaning of this agreement and its terms, the German meaning shall prevail.