



**1 General – Scope of Application**

- 1.1 Our General Terms and Conditions of Purchase (GTCP) apply exclusively to all business relations with our suppliers; we do not accept any terms and conditions of the supplier that conflict with, or deviate from our GTCP unless we have explicitly and in writing consented to their application. Our GTCP also apply in the case that we, while being aware of the supplier's conflicting or deviating terms and conditions, accept delivery from the supplier without reservation.
- 1.2 Our GTCP only apply to entrepreneurs ("Unternehmer" in terms of § 14 BGB - German Civil Code (BGB)), legal entities under public law and public law special funds ("öffentlich - rechtliche Sondervermögen").

**2 Conclusion of Contract**

- 2.1 Our orders are only binding when issued or confirmed in writing including the specifications or analysis attached or otherwise agreed.
- 2.2 Unless we have explicitly waived the order confirmation, the supplier is obliged to confirm to us each order in writing within a period of one (1) week, thereby stating the binding delivery time. Late acceptance of our order or acceptance subject to changes is deemed to constitute a new offer for contract conclusion and requires acceptance by us.
- 2.3 Offers or cost estimates of the supplier are binding and free of charge unless explicitly otherwise agreed.

**3 Prices – Terms of Payment**

- 3.1 The prices stated in the order are binding. All prices are inclusive of the statutory value - added tax unless the latter is stated separately.
- 3.2 Unless agreed otherwise from time to time, the price is deemed to include any and all performance and services and additional ancillary services provided by the supplier as well as all ancillary costs (e.g. appropriate packaging and transport costs including, where applicable, transport and liability insurance). The supplier is obliged to accept return of packaging material upon our request.
- 3.3 The invoice is to be issued after dispatch for each single order separately in duplicate form by post, stating our order number as well as the item description and item number. If the supplier should fail to comply with any one or several of these requirements, so causing a delay in our processing of the invoice in the ordinary course of business, the periods for payment stated in no. 3.4 will be extended accordingly.
- 3.4 Payment is made by us either within fourteen (14) days less three (3%) discount or within thirty (30) days without deduction, unless otherwise agreed from time to time. The payment periods run from the receipt of a proper invoice or, if the goods arrive after receipt of the invoice, from arrival of the goods. Our payments are deemed in time if our remittance order is received by our bank before the expiry of the payment period.
- 3.5 In no case are we liable to pay interest from the due date ("Fälligkeitszinsen" in terms of German commercial law). Default on our part is deemed exclusively to occur according to the statutory provisions.

**4 Set - Off - Right of Retention - Assignment**

- 4.1 We are entitled to rights of set - off and retention as is provided for law. The supplier is only entitled to invoke a right of set - off or retention if and to the extent that the claim asserted by him is undisputed or has been acknowledged by us or has been established by a final non - appealable court decision (res judicata).
- 4.2 Any assignment of claims which may be asserted against us requires our explicit written consent.

**5 Delivery Time**

- 5.1 The delivery time indicated in our order is binding. If no delivery time has been stated in the order and has not been otherwise agreed upon either, it is deemed to be five (5) days from contract conclusion. The supplier is obliged to inform us in writing without undue delay ("unverzüglich") in the event that he will presumably be unable to comply with the agreed upon delivery time for any reason whatsoever.
- 5.2 If the supplier fails to perform or fails to perform within the agreed upon delivery times or if the supplier is in default, we will be entitled to the rights and claims provided for by law, including but not limited to the right to withdraw from the contract and the right to claim damages.

**6 Delivery – Transfer of Risk – Place of Performance**

- 6.1 Delivery is to be made DDP (according to the incoterms 2010 or the respective version thereof valid at the time), unless otherwise agreed.
- 6.2 The place of performance for the delivery obligation is our works in Iserlohn, unless a different place of performance or a different delivery address is agreed.
- 6.3 If no specific agreement has been made, the risk is deemed to pass to us upon delivery at the agreed place of performance. If and to the extent that formal approval of the goods ("Abnahme" in terms of German law) has been agreed to take place, the risk will pass to us upon formal approval.
- 6.4 All consignments need to be accompanied by a packaging slip, an analysis certificate and a delivery note stating our order date, our order number as well as the item description and item number. In addition, a separate advice of dispatch is to be sent to us by post or e-mail. If the supplier fails to comply with any one or several of these requirements, any delay resulting therefrom is not imputable to us. This in particular applies for potential delays in payment (see no. 3.4).

**7 Inspection – Notice of Defect**

As to our obligation as a merchant to inspect the goods delivered and give notice of defect, if any § 377 HGB (German Commercial Code) applies with the following conditions: We will inspect the delivered goods without undue delay ("unverzüglich") after receipt as to the type, quantity and obvious defects and damages such as in particular obvious production defects and transport damage, and give notice of any detected defect or damage without undue delay ("unverzüglich"). Defects that are detected later will be reported by us after detection without undue delay ("unverzüglich"). The notice of defect is in any case deemed given without undue delay ("unverzüglich") and thus in due time if it is received by the supplier within five (5) working days from receipt of the goods or, in the case of hidden defects, from detection of the defect.

**8 Warranty – Liability**

- 8.1 Our rights in the case of a defect in quality or title of the goods, in particular in case of derogations from the agreed analytical conditions and / or the agreed quality, including wrong / aliud delivery and short delivery and in the case of any other breach of duty by the supplier are governed by the statutory provisions unless stipulated otherwise.
- 8.2 Pursuant to the statutory provisions, the supplier is in particular liable for compliance of the goods with the agreed quality at the time the risk passes to us and for conformity of the goods with current state - of - the - art standards. Unless otherwise agreed, those product specifications are deemed to constitute the agreed quality in the aforesaid sense which -in particular by appropriate specification or reference made in our order - have become part of the respective contract or have been included in the contract in the same way like the present GTCP. In this context, it makes no difference whether the product specifications come from us or the supplier or the reseller.
- 8.3 The supplier warrants that the products and services delivered or provided by him comply with all applicable environmental law regulations, especially the ROHS Directive and the REACH Regulation, and that they comply with the agreements concluded.
- 8.4 The costs incurred by the supplier for inspection and subsequent performance ("Nachbesserung" in terms of German law) of the goods, including any costs of de - installation and re - installation resp. disassembly and reassembly, are borne by the supplier. This also applies if it is found that the goods actually are not defective. In the case that our request for defect remedy proves to be unjustified, we can only be held liable for damages if we actually were aware or unaware by gross negligence that the goods were not defective.
- 8.5 If the supplier fails to fulfil his obligation to provide subsequent performance ("Nacherfüllung" in terms of German law) within a reasonable grace period fixed by us, we will be entitled to remedy the defect on our own and claim from the supplier reimbursement of the expenses required for such purpose resp. payment of an appropriate advance. If the supplier refuses to provide subsequent performance or if the contract was about a fixed date transaction ("Fixschuld" in terms of German law) or if subsequent performance by the supplier has failed or is unreasonable for us (for instance because of the special urgency of the case, endangerment of the operational safety or threatening occurrence of unreasonable damage), we need not grant a grace period; the supplier has to be informed to that effect without undue delay ("unverzüglich"), preferably beforehand.
- 8.6 The limitation periods for our claims are governed by no. 16

**9 Recourse to the supplier**

- 9.1 We are entitled to assert without restrictions the recourse claims within the supply chain to which we are entitled by law (recourse to supplier according to §§ 445a, 445b, 478 BGB - German Civil Code) in addition to our rights and claims for defects. In particular, we are entitled to claim from the seller exactly that type of subsequent performance (subsequent remedy or substitute delivery) which we are obliged to provide to our customer from time to time. Our right stipulated by law to choose the type of subsequent performance to be provided (§ 439 subs. 1 BGB) remains unaffected.
- 9.2 We may also assert our recourse claims against the supplier in the case that the goods, before they were sold, had been processed by us or by any of our customers, e.g. by integrating them into another product.

**10 Quality Assurance**

The supplier maintains an appropriate state - of - the - art quality assurance system suitable in kind and scope (at least according to DIN ISO 9001) including the possibility to keep retention samples for three (3) years and provides appropriate evidence thereof upon our request.

**11 Product liability – Precaution measures**

- 11.1 If and to the extent that the supplier is responsible for a damage caused by the product delivered, the supplier is obliged to indemnify us from any and all third - party claims for damages upon our first request to the extent that the cause for the damage lies within the supplier's sphere of control and organizational responsibility and the supplier as himself liable to the third party.





**11 Product liability - Precaution measures (ff)**

- 11.2 Within his obligation to indemnify in terms of no. 11.1 the supplier is also liable under §§ 683, 670 BGB (German Civil Code) and §§ 830, 840, 426 BGB (German Civil Code) for reimbursement of any expenses incurred by us as a result of or in connection with the assertion of claims by third parties. Any other statutory claims remain unaffected.
- 11.3 The supplier is also obliged to bear the cost of precautionary measures to be taken and compensate for any damage or loss incurred as a result thereof provided that the cause for the precautionary measures lies within the supplier's sphere of control and / or his organizational responsibility and the supplier is himself directly liable to the third party. If and to the extent possible and reasonable, prior to taking precautionary measures, we will inform the supplier about the reason, kind and scope of the intended measures and give him the opportunity to comment thereon. Precautionary measures are deemed to refer to measures which do not pertain to certain individual defective products of ours but to large number of our products, such as in particular recall and alteration or redesign measures.
- 11.4 The supplier undertakes to take and maintain product liability insurance with a minimum lump-sum cover of EUR (€) 1 million for each single case of personal injury / damage to property. The supplier will provide us with a copy of the liability policy at any time upon our request.

**12 Non - Disclosure**

Our supplier is obliged to treat all technical and commercial documents made available by us strictly confidentially and according commit his employees and sub-suppliers to secrecy. The obligation of secrecy does not apply if the information is already generally known or was demonstrably known to the supplier before it was disclosed by us. The same applies if the information, after disclosure by us, becomes generally known with no contributory breach of contract or is disclosed to the supplier by a third party without such third party thereby violating an obligation of secrecy incumbent on it or the content of the information is developed by the supplier independently of the information disclosed by us or the information is publicly disclosed by us resp. is required to be disclosed by virtue of statutory provisions. Any violation of this obligation of secrecy gives rise to a claim for damages.

**13 Foreign Trading Documents - Export Restrictions**

- 13.1 The supplier will provide any foreign trading documents requested by us, such as in particular certificates of origin and supplier's declarations, with all necessary information and duly signed.
- 13.2 The supplier will inform us if any item to be delivered is, in whole or in part, subject to export restrictions under German or any (e.g. American) foreign trading law.

**14 Industrial Property Rights**

The supplier is liable for ensuring that patents or industrial property rights of third parties are not infringed by the goods delivered by the supplier or by the intended proper use of the goods delivered and / or of the work created by him. The supplier undertakes to indemnify us from any and all third-party claims based on an infringement of the said rights and also hold us harmless in any other respect whatsoever. This does not apply where the specific infringement of the industrial property right is not imputable to the supplier. The supplier's obligation to indemnify pertains to all expenses incurred by us as a result of or in connection with the assertion of claims by a third party.

**15 Property Acquisition**

- 15.1 Ownership of the goods must be transferred to us unconditionally and regardless of the payment of the purchase price.
- 15.2 If we accept, in exceptional cases, the supplier's offer for transfer of ownership subject to the condition of purchase price payment, the supplier's reservation of title only applies to the extent that it pertains to our payment obligation for the respective products title to which is reserved by the supplier. In this case, we are entitled to resell the goods in the ordinary course of business already before the purchase price is paid, subject to assignment of the claim arising from such resale to the supplier. Expanded or transferred reservation of title as well as any reservation of title extending to the reprocessing of the goods ("erweiterter / weitergeleiteter / verlängerter Eigentumsvorbehalt" in terms of German law) is excluded.

**16 Limitation**

- 16.1 Limitation of the mutual claims of the contracting parties is governed by the statutory provisions unless stipulated otherwise hereinafter.
  - 16.2 In derogation of §§ 438 subs. 1 No. 3, 634a subs. 1 No. 1 BGB (German Civil Code), the general limitation period for claims for defects in quality or title is three (3) years from passing of the risk. If and to the extent that formal approval of the goods ("Abnahme" in terms of German law) has been agreed to take place, the limitation period runs from the time of such formal approval. If, for claims for defects, longer limitation periods are prescribed by law, these remain unaffected. This applies in particular to claims for defects consisting in a third-party right in rem which gives the right to claim surrender of the goods purchased or in any other right which was entered in the land register ("Grundbuch") (§ 438 subs. 1 No. 1 BGB - German Civil Code) as well as to claims for defects of a construction ("Bauwerk") or defects of products which, according to their regular use, were used for a construction and have caused the defectiveness of the construction or in the case of defects of a work the result of which consists in planning or supervising services relating to a construction (§§ 438 subs. 1 No. 2, 634a subs. 1 No. 2 BGB - German Civil Code).
  - 16.3 If and to the extent that we are entitled to recourse claims against the supplier based on the provisions governing recourse to the supplier (§§ 445a, 478 BGB - German Civil Code), the limitation of such recourse claims is subject to § 445b BGB (German Civil Code); however, the claims will not become time-barred before the expiry of the period stipulated in no. 16.2.
  - 16.4 If the supplier fraudulently conceals a defect (§§ 438 subs. 3, 634a subs. 3 BGB - German Civil Code), if to the extent that in this case we are also entitled to concurrent contractual and / or non-contractual claims for damages, these are subject to the regular statutory limitation period (§§ 195, 199 BGB - German Civil Code); however, such claims will not become time-barred before the expiry of the period stipulated in no. 16.2. In any case, the statutory limitation periods under the "Produktionshaftungsgesetz" (German Product Liability Act) remain unaffected.
- 17 Place of Jurisdiction - Choice of Law - Partial Nullity**
- 17.1 If the supplier is a merchant, legal person under public law or a special funds under public law ("öffentlich-rechtliches Sondervermögen") as defined by German law, the place of jurisdiction for any and all disputes arising directly or indirectly from the contractual relationship shall be Iserlohn. We are however entitled to also sue the supplier at the supplier's private or business domicile.
  - 17.2 The law of the Federal Republic of Germany shall apply. Application of the United Nations Convention on Contracts for the International Sale of Goods is excluded.
  - 17.3 If any provision of these GTCP or any provision contained in any other agreement should be or become invalid, this will be without prejudice to the validity of the remaining provisions or agreements.

