



## Terms and Conditions of Purchasing

Our orders and agreements with entrepreneurs (Section 14 BGB (German Civil Code)), legal entities under public law, and special funds under public law are governed solely and exclusively by the Terms and Conditions of Purchasing below. Supplier's deviating terms and conditions of sale shall be deemed as accepted only if and when they have been confirmed as a supplement to our Terms and Conditions of Purchase. Unless their application is acknowledged, they do not obligate us even if and when we do not expressly object to their application. The above provision shall also apply in the event that we accept ordered goods or effect payment, either in whole or in part. By making his first-time delivery subject to these Terms and Conditions of Purchase, the Supplier accepts their application to any and all future supply relationships as being solely and exclusively legally binding.

### 1. Orders

- 1.1 Orders and their modification are valid only if they are placed or confirmed in writing by our Purchasing Department and have been signed by two authorized persons. Oral agreements are legally binding only if and when they are confirmed in writing. In deviation from Section 127 BGB, electronic form of messages is not the equivalent of written form.
- 1.2 The Supplier shall confirm the order/modification in writing immediately. If we have not received a proper confirmation within 5 business days, beginning upon receipt of the order/modification, we are entitled to revoke the order without giving rise to any rights of the Supplier to assert claims as a consequence.
- 1.3 We are entitled at all times to request modifications in design, consignments, and delivery time for any orders which have not been fulfilled completely.
- 1.4 Compensation for costs of the technical and commercial processing of the offer, including the costs of any technical tests which have been carried out, the costs of the assignment of an engineer, and the costs of meetings may be requested only if and when such compensation has been previously and expressly agreed with us. This provision shall also apply in the event that no contract is concluded.
- 1.5 The Supplier may award sub-contracts only with our consent.
- 1.6 If and when the Supplier suspends payments, or bankruptcy proceedings are initiated against his assets, or he requests out-of-court settlement from his creditors, we are entitled to rescind the contract, without prejudice for any further rights, in the case of an out-of-court settlement and after setting a reasonable period for performance.

### 2. Delivery and Acceptance

- 2.1 The consignment must correspond in manufacture, scope, and scheduling to the order or our delivery program and must be carried out in compliance with the delivery dates or periods. The consignment shall be accompanied by a delivery note in duplicate, showing our order number, item number, number of units, weight, and exact designation of the goods.
- 2.2 Agreed delivery dates are binding. If and when delivery is not effected in compliance with agreed delivery dates, we are entitled to assert legal claims due to default.
- 2.3 The Supplier shall observe the instructions of the pertinent transporter, carrier, or shipping agent. The Supplier is liable for any damage resulting as a consequence of inadequate packaging. The Supplier shall bear packaging costs, carrier charges, and storage costs as well as any and all ancillary shipping costs. This provision shall also apply to any additional costs incurred for express transport which has become necessary due to circumstances for which the Supplier is accountable.

- 2.4 Empties and packaging material, unless disposable, will be returned freight unpaid at the Supplier's expense.
- 2.5 In the case of deliveries free works, the risk will transfer to us when the consignment is delivered properly and accepted at the place of performance.
- 2.6 The numbers of units, dimensions, weights, and quality characteristics determined during our incoming goods inspection are authoritative. The statistical inspection procedure designated in our order and the results based on this procedure with regard to the complete delivery are also authoritative. The plea of acceptance without reservation is excluded. We are not obligated to accept any partial deliveries or overdeliveries to which we have not agreed. We are entitled to return any consignments delivered before the agreed date at the Supplier's expense and risk or to charge storage costs.
- 2.7 Natural disasters, unrest, official actions, transport disruption, industrial action, and other operational disruptions in our area or in the area of our suppliers which lead to the suspension or restriction of our production or which hinder us from dispatching the ordered goods shall exempt us from our acceptance obligation for the duration and in the scope of the effects of such factors, provided that we could not ward off the disruption or it was not possible to ward it off using reasonable means.
- 2.8 The Supplier shall include the preferential status certificate with each and every consignment for deliveries from countries with preferential status. The long-term supplier's declaration pursuant to EC Regulation 1207/2001 shall be submitted once a year. If and when the delivered goods are subject to an export approval obligation pursuant to the AWG (German Foreign Business Act) or to special export restrictions pursuant to American laws, the Supplier shall notify us in writing immediately.

### **3. Quality**

- 3.1 The Supplier warrants that the ordered goods comply with the requirements and the agreed characteristics and that the ordered goods are free from any defects in design, material, and manufacture. The goods shall be permanently labeled by the Supplier as coming from him.
- 3.2 The Supplier shall conduct quality assurance measures in compliance with state-of-the-art technology and which are appropriate in their type and scope.
- 3.3 If and when initial or type samples have been requested, the Supplier may not commence series production until he has received our express, written approval.
- 3.4 We expect the Supplier to orient the quality of the products he delivers to us continuously to the latest findings of science and technology and to notify us of possible improvements and technical modifications. However, no modification of the goods of any kind (including formulas and manufacturing procedures) may be carried out under any circumstances without our prior express consent.
- 3.5 The Supplier is obligated to provide to us any and all information, in particular DIN safety data sheets, required for proper disposal. If the return of packaging is not accepted, we are entitled to bill the Supplier for the costs of the disposal and additionally a lump-sum compensation for expenses in the amount of 1% of the net value of the goods.

### **4. Prices, Payment, and Transfer of Title of Ownership**

- 4.1 The prices in our order are always shown free our works. If, in exceptional cases, the prices have not been agreed in advance, the contract shall not be deemed concluded until we have accepted in writing the prices which are to be shown as binding in the order confirmation.
- 4.2 Payment shall be made after receipt of the goods in accordance with the contract and receipt of the proper and verifiable invoice. Among other points, it must include our order number; the work records must also be included for repair work. Unless otherwise specifically agreed, the invoices will be paid within 30 days subject to a 3% cash discount or within 60 days without deductions. The payment period shall commence upon receipt of the verifiable invoice and the consignment (including delivery note). Consignments which are delivered and accepted before the agreed delivery date shall be regarded as received at the latter point in time.

- 4.3 Invoices will be paid by the method of our choice. We reserve the right to use checks or bills of exchange as well.
- 4.4 The Supplier may not assign his claims against us, unless it is a question of a mutual trade transaction and a monetary claim, or have them collected by third parties.
- 4.5 In the event of the occurrence of a defect which is covered by warranty, we are entitled to refuse payment until subsequent performance has been properly carried out. Payments shall not be interpreted as acknowledgement that the delivery was in accordance with the contract.
- 4.6 If we have made an advance payment or provided material for processing, the title to the ordered goods shall transfer to us upon commencement of their manufacture. The delivery will be replaced by the agreement that the goods remain in the Supplier's possession for working until the agreed delivery date and that they are safeguarded on our behalf.

## **5. Warranty and Liability**

- 5.1 Unless otherwise agreed in the provisions below, the legal statutes apply in the event of defective delivery.

If in urgent cases subsequent fulfillment is possible and the Supplier is not capable of carrying it out within a period we have set as absolutely necessary, we are entitled, after prior consultation with the Supplier and at the Supplier's expense, to remedy the defects ourselves or to have them remedied by a third party or to procure substitute delivery from another source. The above provision shall also apply in the event that the Supplier is in default of performance of his warranty obligations.

If it is determined by the statistical inspection procedure designated in the order that the maximum threshold of defects has been exceeded, we are entitled to assert claims due to defects with regard to the entire consignment or to inspect the entire consignment at the Supplier's expense after prior notification.

- 5.2 The limitation period pursuant to Section 438 para. 1 clause 3 BGB is extended to three years. Section 438 para. 1 clause 1 and 2 BGB and Section 634 a BGB remain unaffected.
- 5.3 The Supplier is liable for substitute deliveries/subsequent improvement work in the same scope as for the original delivered goods; the limitation period recommences for substitute deliveries.
- 5.4 Goods about which complaint have been made will be returned at the Supplier's expense and risk, regardless of the location where the defective goods are found.
- 5.5 In the event of repeated delivery of defective goods, we are entitled, after prior warning of the assertion of the loss or damage suffered, to rescind the contract for the part of the supply agreement which has not been fulfilled, and, in the case of successive supply agreements, to terminate the agreements without notice, whereby any tool costs which we have paid, but which have not been amortized, shall be reimbursed.
- 5.6 The loss or damage due to a defective product for which compensation must be paid includes any and all (internal and external) costs of a recall.
- 5.7 The Supplier promises to maintain a product liability insurance policy, including cover for recalls, with a sum insured of €5 million per incident of personal injury/material damage, lump sum. The above provisions are without prejudice for any further claims to which we are entitled, in particular to reimbursement of the costs for a precautionary recall.
- 5.8 Persons who carry out work on our plant premises in the performance of contractual obligations shall comply with the provisions of the relevant plant rules from government authorities, employers' liability insurance associations, and professional associations and with the accident prevention rules in consultation with our safety officer. The rules applicable to entering and leaving the factor premises must be observed.

## **6. Third-party Intellectual Property Rights**

- 6.1 The Supplier is responsible for ensuring that the use of the goods he has delivered – to the extent that he has designed them – does not, directly or indirectly, violate any German or foreign intellectual property rights or other rights which do not enjoy special protection, and indemnifies and holds harmless us and our customers from and against any and all claims asserted on the basis of such a violation. Furthermore, the Supplier is liable for any and all further losses or damage, direct or indirect, which we suffer as a consequence of his violation of such rights.
- 6.2 If and when the Supplier determines during manufacture that intellectual property rights or applications for such rights could be violated by the manufacture, he shall automatically notify us immediately.

## **7. Means of Production**

- 7.1 The Supplier shall safeguard free of charge and on our behalf any means of production such as drawings, models, patterns, tools, calipers, and similar objects which we have provided to the Supplier or which have been manufactured by the Supplier in accordance with our instructions; they must be labeled as our property and may not be sold, pledged, or otherwise relinquished to third parties or used for third parties without our consent and may be used solely and exclusively for performance of the agreements concluded with us.
- 7.2 If and when we have paid the Supplier the full or the major part of the costs for production materials, the Supplier shall convey ownership to us. The delivery shall be replaced by the agreement of a lending relationship on the basis of which the Supplier is entitled to be in possession of the production means unless we revoke the permission. The Supplier is not entitled to any right of retention to any such means of production to which we have title.
- 7.3 The Supplier shall bear any and all costs for care, maintenance, insurance, and replacement of the means of production which have been provided by us, manufactured according to our instructions, or for which we have paid the full or major part of the costs. These means of production may not be modified without our prior written consent. Upon request, they shall be returned to us at the Supplier's expense and risk.

## **8. Business Secrets and Advertising**

- 8.1 The Supplier is obligated to consider the order and any and all related commercial and technical details as a business secret and to treat them in strict confidence. He shall impose a corresponding obligation on his sub-suppliers.
- 8.2 The Supplier may refer to his business relationship with us in his advertising only if and when we have previously declared our agreement in writing.

## **9. General**

- 9.1 Order and delivery are governed solely and exclusively by the laws of Germany. The application of the CISG is excluded.
- 9.2 Place of performance and jurisdiction is Weissenburg or, at our discretion, the Supplier's place of business.

GUTMANN Bausysteme GmbH

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