

General Terms and Conditions of Purchase of Gütermann, S.A.U. (Version June 2018)

1. Scope of application

1.1

These General Terms and Conditions of Purchase shall form the contractual basis for all orders and purchases of goods made by Gütermann, S.A.U. (hereafter "we" or "us") to the Supplier. They shall also apply for future contracts drawn up between us and the Supplier, once he is informed about the existence of such terms and has expressly accepted them.

1.2

The processing of our orders implies the express acceptance of our general and particular purchase terms and conditions.

1.3

The acceptance of these general terms and conditions of purchase also implies the immediate renunciation by the Supplier of any general conditions of sale he may have. Any condition added by the Supplier without our express written consent is null and void. The Supplier's reference to his general terms and conditions, even if repeated in order confirmations or in his invoices, does not imply our acceptance, even if we do not object to such reference on a case-by-case basis.

2. Conclusion of the contract

2.1

Unless we have previously agreed it in writing, the Supplier's services for the preparation of offers or quotations shall not entail any costs for us, nor shall they entail any commitment or obligation to accept the contract on our part. When, drafting offers and quotations, the Supplier provides services involving any kind of cost, he is obliged to inform us about this point in order to obtain our prior written consent.

2.2

Orders will be placed and confirmed in writing. When, in exceptional cases, orders are placed verbally, they will require an express written confirmation. This requirement also applies to parallel oral agreements or oral confirmations that modify or supplement the content of an existing written contract.

2.3

If our confirmation of an order does not fully correspond to the content of a written offer from the Supplier, the contract shall be deemed concluded on the basis of our confirmation. In such case, the Supplier shall reconfirm the order within the binding period specified in our order confirmation or, failing that, within a reasonable period of time. Not doing so, the order will be rendered null and void and we will no longer be bound by it.

3. Deadlines and dates

3.1

The agreed deadlines and dates are binding. In the case of good deliveries, the date of the reception of the goods at the specific place of destination shall be considered for the purposes of the fulfilment of the obligations. In the event that a reception procedure has been agreed or it is stipulated by law, the deadlines and dates to be taken into consideration shall be those of the of the reception confirmation by an authorised person for this purpose.

3.2

If the Supplier foresees that he will not be able to meet totally or partially the agreed goods delivery or services deadlines and dates, he must inform us immediately in writing, stating the reasons for the delay and its expected duration. However, a shipping delay does not relieve the Supplier of his responsibility of providing the agreed services. Hence, the supplier must deliver and fulfil the other obligations of the contract in the shortest time possible.

3.3

Any obstacles or impediments that may arise during the performance of the contract that prevent either party from properly fulfilling the obligations assumed, shall lead to the suspension of the term granted for the fulfilment of the respective obligations only if such obstacle or impediment arises as a result of force majeure, war or unforeseeable and unavoidable events, such as labour disputes, as long as they are not attributable to the party on whom the obstacle or impediment lies. This suspension will adjourn the dates and deadlines agreed during the persistence of the obstacle or impediment. In any case, the beginning and end of the obstacle or impediment must be notified to the other party immediately in writing.

3.4

Excepting the cases set out in Clause 3.3, if the Supplier is in default of delivery, we will be entitled to claim, as a contractual penalty, the 0.5% of the total net order value for each complete week of default in the delivery deadlines, albeit the maximum percentage for the penalty clause will be the 5% of the total net order value. In the event of a delay on the delivery, no other legally established rights will be affected.

4. Deliveries and acceptance of goods, changes to deliveries/services

4.1

Unless other provisions have been agreed in writing, or a reception procedure has been agreed or when it is legally stipulated, all deliveries of goods will be carried out according to "Delivered Duty Paid (DDP) Destination, Incoterms® 2010".

4.2

All deliveries of goods must be accompanied by the corresponding delivery note from the Supplier, indicating the order number, the content of the shipment and the number of packages, quantity and weight of the shipment. The Supplier shall also clearly indicate our order number on invoices, debit and credit notes as well as all the correspondence related to it. The omission of this point may cause delays in the verification of the goods and on the payment of the corresponding invoices. This eventual delay shall, in any case, be considered as attributable to the Supplier.

4.3

The overage or defect on the delivery (understood the latter as the delivery of a smaller quantity than the one agreed) will only be permitted within a regular volume for trade and only when the defect does not exceed the 10% of the order issued and accepted by us.

4.4

It is part of the Supplier's essential delivery obligation to provide with the correct and complete shipment documentation and information. In the event that we are unable to use the goods because of the lack of documentation or information, we will be entitled to store the goods at the risk and expense of the Supplier, as well as to claim for the damages caused by the Supplier's breach of his obligation.

4.5

If necessary, for the correct performance of the contract, the Supplier shall request in sufficiently advance all the documentation that we must provide or supply, as well as any other type of collaboration agreed.

4.6

Changes on the subject of delivery or service will require our prior written approval.

5. Use of subcontractors

5.1

Subcontracting third parties for the performance of the contract (in particular subcontracted companies of any type or recruitment agencies) or its replacement, requires our prior written consent. If such employment is planned in advance, the Supplier must request our written consent to his offer.

5.2

The infringement of the Supplier obligation to request our written consent or to subcontract services to third parties against our negative response to a request of consent, will be considered as a breach of contract. In this event, we will request the Supplier to cease such conduct within seven days.

If the Supplier does not prove the cessation of the infringement within the above-mentioned period, we will be entitled to terminate the contract, which would imply the settlement of any outstanding amount due on our part, and the delivery of any finished goods by the Supplier.

5.3

If the Supplier, with our authorization, subcontracts the services that constitute the purpose of the contract or part of it, he will be responsible of ensuring that all terms and conditions applicable by virtue of his contract with us, including rights, are also applicable to the subcontracted party, by formalizing a written contract with the latter under the same terms and conditions of the contract entered into with us.

The Supplier will be jointly liable with the subcontractors, expressly renouncing to any exclusion, order or division of the obligations regarding its subcontractors. In this regard, we will be apart from the relationship between the Supplier and the subcontractor, and we will not be liable, in any event, for the consequences of the agreement between the Supplier and the subcontractor. Therefore, we will continue interacting exclusively with the Supplier for all purposes.

Likewise, the Subcontractor shall be held liable for any damage that we may suffer as a result of the actions of any of his subcontractors or his employees.

Our acceptance of service subcontracting will not imply, under any circumstance, that we waive any future claim we may have against the Supplier or his subcontractors.

6. Supplier's Employees

6.1

The Supplier must ensure that the employees hired by him or by his subcontractors, receive, at least, for the performance of the contract, the legal minimum wage in accordance with the provisions of the Workers' Statute and the applicable Collective Bargaining Agreement. However, when the services are rendered in a country where a minimum wage that is superior for the relevant professional categories is applicable, in such case, local regulations shall apply. Mandatory obligations to pay salaries and social security contributions shall be met. Likewise, the Supplier must impose the same obligation on any subcontractors or recruitment agencies he uses, and must verify this matter during the selection. The Supplier will be liable for any damage caused to us by failure to comply with these obligations.

6.2

It is forbidden the illegal employment of external staff of any kind. In this regard, the Supplier will comply with the applicable labour regulations regarding employment contracts and affiliation to the Social Security.

6.3

The Supplier will be up to date with the compliance of labour and employment regulations, Social Security and Prevention of Occupational Risk Prevention obligations, regarding his personnel at all times. For this purpose, the Supplier will provide a negative certificate of outstanding amounts issued by the General Treasury of the Social Security prior to the effective date of the contract.

The Supplier must strictly comply with all the obligations regarding the payment of salaries, social security and other tax and labour obligations that may arise from his personnel during their relationship with Gütermann, S.A.U. At our request, at any time, the Supplier will prove that he is up to date with the payment of Social Security contributions, and will show, on our request, any other documentation that confirms the compliance of these obligations, such as copies of the Nominal List of Workers (TC-2), Receipt of Contributions Settlement (TC-1), and/or Negative Certificate of Outstanding amounts issued by the General Treasury of Social Security, as well as the payrolls relating to the workers who provide the services of the contract.

Likewise, the Supplier will use the necessary material and personnel means in order to guarantee the correct and complete fulfillment of the contracted services at all times. For this purpose, the Supplier will select the personnel of his organization that is more suitable for the performance of the contracted services, which will be exclusively under the Suppliers directions.

6.4

The personnel under an employment contract or hired in any other form by the Supplier, and the subcontracted personnel who renders the services contracted by us, shall be solely and exclusively dependent on the Supplier for all purposes and shall therefore perform their services in full compliance with the instructions given by the Supplier.

Consequently, and for the purposes of the contract, any mention made in the contract regarding the Supplier's employees will be considered as a reference that includes, not only personnel under an employment contract or hired in any other form by the Supplier but any personnel that is subcontracted by the Supplier.

The present General Terms and Conditions, and any contract concluded on the basis of them, do not establish any employment relationship, either directly or indirectly, between the two contracting parties.

For the fulfilment of the contract, the Supplier shall organise his activity and the time spent on it according to his own guidelines and criteria.

6.5

The Supplier's breach of his labour and employment obligations, Social Security or Occupational Risk Prevention, will be considered as a breach of contract, and shall give rise to a request on our part for the Supplier to prove that he has fulfilled his obligations within seven days.

If the Supplier does not prove the compliance of the relevant obligations within the above-mentioned period, we will be entitled to terminate the contract, which would imply the settlement of any outstanding amounts on our part and the delivery of any finished goods by the Supplier.

The Supplier will hold us harmless of any labour and social security obligation, which being his responsibility, may be passed on to us, as a result of this contractual relationship.

7. Work on the premises of Gütermann S.A.U. or on the premises of our customers

7.1

When the personnel of the Supplier or of the subcontracted companies for the work, have permitted the access to Gütermann, S.A.U. premises, they will need our prior authorisation, for which they will send Gütermann, S.A.U. a list of the personnel who require this access. This access authorisation does not exempt the Supplier from damage liability caused by these companies and their assistants during the performance of the contract.

7.2

When employees or subcontractors of the Supplier, work on the premises of our company or on the premises of our customers, the Supplier must ensure that they comply with the relevant regulations for the prevention of accidents at work and all other safety regulations, as well as with the company's internal regulations provided to the Supplier. Unless they have been instructed in these standards by the Supplier, they shall not be employed. The Supplier has to name a contact person who will receive instructions related to the performance of the services. The contact person needs to have the capacity to take decision, in general.

The Supplier will coordinate with us the obligations of Occupational Risk Prevention. Therefore, both parties will exchange relevant information, including occupational risk assessments, occupational risk planning and emergency plans, for occupational risk prevention purposes prior to the entry of direct or subcontracted employees of the Supplier to our facilities.

7.3

Gütermann S.A.U. shall accept that the Supplier executes the assembly and installation works that are necessary for the correct functioning, when those have been carried out in full and without defects. The acceptance has to be given in a written declaration from an authorised person by Gütermann, S.A.U. Any defects not detected during the inspection that takes place before the acceptance declaration, can also be claimed, as well as those which were reserved at the time of acceptance.

7.4

If time-based billing has been agreed on, the Supplier must ensure that we certify this matter on a daily basis, for each day of execution, as well as the material and quantity used by the Supplier, if they have to be paid separately.

8. Price and payment

8.1

The agreed prices are fixed prices. Deliveries shall be subjected to "DDP destination, Incoterms® 2010", including packaging (see Clause 4.1).

8.2

The Supplier must send us his invoice within 15 days from the date of the goods delivery day. Payment of invoices shall be made between the 10th and 25th day of each month and within a maximum period of 60 days from the date of expiry of the period for verification of the goods set out in Clause 12, unless any non-conformity with the order or defects in the goods delivered have been reported.

Subject to prior express written approval, we will be able to make prompt payment of the invoices within 14 days of the date of reception of the invoice. In this case a 3% discount will be applied.

In case of services which are reimbursed on the basis of the expenses incurred and are not dependent on the termination of a project, payment shall be made within the time limits indicated in the previous paragraphs, always after the service has been supplied and that the corresponding verifiable invoice is presented together with the proof of the service rendered.

9. Packaging

The goods to be delivered must be packaged in compliance with the legal regulations in force for packaging and waste disposal, applicable during the transport journey to the place of destination as agreed or in lack of such agreement based on the commercial practice.

10. Passing of risk

The passing of risk to us shall take place when the order arrives at the place of destination, according to DDP destination, Incoterms® 2010, as set forth under Clause 8.1. When a reception procedure has been agreed or it is legally stipulated, and in particular where services which depend on the functioning are to be provided (e.g. commissioning of machinery), the passing of risk may, under no circumstances, take place prior to our acceptance.

11. Quality assurance

We are an ISO 9001 certified company and we are obliged towards our customers to purchase goods only from suppliers who also meet this quality standard or other quality standards equivalent to it. The Supplier shall ensure compliance with the quality standards according to ISO 9001 or comparable quality standards. In case of an agreement on particular quality standards with the Supplier or a quality assurance agreement, the regulations of these standards shall prevail over this clause.

12. Defect liability. Supplier warranties

12.1

The Supplier shall guarantee that, when the goods are delivered at the place of destination, they are in conformity with the contract, free from material or legal defects, and that they comply with the legal and technical regulations in force. In particular those concerning safety at work, as well as with the requirements of the production safety guidelines and generally accepted safety standards of DIN, VDE, VDI or TÜV, and the guidelines of the professional associations.

12.2

For that purpose, by accepting these General Terms and Conditions, the Supplier guarantees for a minimum period of 36 months from the date of full delivery of each order (in the terms of Clause 3) that the goods delivered are in conformity with the contract, free of material or legal defects and that they comply with the requirements set out in clause 12.1.

12.3

We will examine the delivered goods and inform the Supplier of obvious defects, identity, insufficient quantities and damage during transport within eight working days from the delivery date. Any other defects, shall be notified to the Supplier within eight working days from their detection.

12.4

In the event that defects are found in the goods under the terms of the foregoing clauses, we will be entitled either to terminate the contract or to demand the fulfilment of the order on the agreed terms and, in particular, to demand the delivery of goods that are free of material or legal defects or in accordance with the order. The costs of an eventual rectification, a new shipment of goods or a new manufacture will be paid by the Supplier.

The place of performance or delivery of the goods replacing the defective ones will be the place indicated by us, the place of destination specified in the order, or the place of final use if the Supplier becomes aware of it. If the contract establishes a reception procedure or when it is legally stipulated, the place of fulfilment of the replacement goods delivery obligation will be the agreed take-over point or the place of final use known by the Supplier.

12.5

The Supplier will also be liable for any damage caused by the defective or non-conforming delivery and shall also be obliged to hold us harmless against any legitimate claims from third parties in connection with the delivery of defective goods or goods which do not fulfil the contract or the agreed standards. The foregoing is applicable without prejudice to the rights that may legally assist us if consumers are involved in the contractual relationship.

12.6

The rules set out in the preceding clauses shall also apply to the goods or parts delivered in replacement of defective goods.

13. Grant of rights of use, infringement of the property rights of third parties.

13.1

The Supplier grants us the right to use all the plans, drawings, graphics and other protectable documents belonging to the contract, as well as those which he has himself produced or commissioned to be produced by third parties unlimitedly in space, time and content in all forms of use, as well as in and with all known media, including the Internet, on all conventional data carriers for the agreed uses or for the purposes included in the contract.

13.2

In addition, the Supplier grants us an exclusive right to use and exploit the results of those work and projects commissioned by us and created for us individually. If the Supplier turns to third parties for the services, he must obtain from them the necessary rights to, subsequently, grant them to us.

13.3

In compliance with the purpose of contractual use, the Supplier has to ensure that we do not infringe the rights of third parties, e.g. patents or utility models, as well as any other business or company rights or secrets. In this respect, the Supplier shall hold us harmless against any legitimate claims filed by third parties regarding an infringement of intellectual property rights when this is due to the Supplier's negligent or fraudulent behaviour. This shall not apply when the Supplier works or has worked with designs filed or made available by us and does not know or could not have known that they infringe the mentioned rights of third parties.

14. General liability

14.1

The Supplier's liability shall be governed by these General Terms and Conditions and any specific written agreements. In all other cases not specified in these conditions other specific written agreements, liability shall be governed by the provisions of law.

14.2

The Supplier shall hold us harmless against any claim from third parties regarding any liability for any damage caused by defective products, provided that said damage was caused or co-produced by a product provided by the Supplier. In cases of liability based on negligence, this clause shall not apply if the Supplier proves that he is not liable for the defect.

14.3

In the event that necessary legal measures are taken, due to a defect in the product or part of it, including a withdrawal of products from the market, the Supplier shall bear the costs and damages incurred as a result, provided that these are due to a breach of his obligations.

14.4

The Supplier must subscribe an insurance policy covering such damages in a reasonable amount and shall be obliged to provide us, upon request, a copy of the contracted policy stating the scope of the insurance and the amounts insured.

15. Production means

15.1

The Supplier shall be obliged to return us any documents and objects of all kind, such as samples, drawings, tools, models or similar, which we have provided to him (means of production), upon request and free of charge, as soon as they are no longer required for the execution of the order. The Supplier is expressly prohibited from using such tools and means of production for his own purposes or making them available to third parties. The Supplier shall also insure them against any damage, loss or other contingencies at his own expense while they are under his control.

15.2

The Supplier may not personally use, offer to third parties or supply to third parties products manufactured in accordance with documents designed by us or in accordance with our confidential instructions or with our copied tools.

16. Confidentiality and data protection

16.

The Supplier is obliged to keep the confidentiality of all the technical and scientific information, as well as other information that he acknowledges, regardless that this knowledge results from an express permission on the access to this information or from our commercial collaboration, being in both cases irrelevant the manner in which he accessed to it. This obligation also applies to the details of our orders and their processing, such as quantities, technical details, prices or other information, including the information concerning our customers (hereinafter referred to as "Confidential Information"). Confidential Information must be kept in secret from third parties and may only be used for the contractual purposes. It is forbidden to publish, communicate and/or reproduce Confidential Information in any way. In those cases where it is unavoidable to make Confidential Information available to third parties in order to comply with the contract, they must undertake to keep it secret on the same terms as the Supplier. The Confidential Information obtained cannot be used for commercial purposes and cannot be object of intellectual property rights. The Supplier is obliged to keep Confidential Information secret for a period of ten (10) years after termination of the contract.

16.2

The Supplier shall ensure, by contractual agreement, that shareholders, directors, representatives, proxies, employees, assistants or temporary employees or personnel who are in any way dependent on the Supplier, are obliged to keep the Confidential Information secret and, upon request, confirm in writing the fulfilment of this obligation.

16.3

This obligation of confidentiality shall not be applied when there is a legal obligation or judicial or institutional order for official disclosure, provided that a written request to that effect is made and a copy of such order is provided to us. The obligation of confidentiality excludes information that is legally under the possession of the Supplier at the time the information is provided or obtained, either because it is already obvious or because it subsequently becomes obvious, or because the Supplier has legally obtained it from third parties.

16.4

When processing data, the Supplier must ensure the compliance with the applicable data protection regulations, especially in the case of personal data. The use and transfer of personal data to third parties without the consent of the persons concerned is prohibited, even if we have legally provided the personal data to the Supplier.

16.5

If the Supplier wishes to include our company in a reference list to be published or to use our order for advertising purposes, he needs our prior written consent.

16.6

By accepting these General Terms and Conditions, in accordance with the current data protection legislation, the Supplier expressly authorises us to include the data provided as a result of the contractual relations in a file, under our responsibility, in order to comply with the contractual relations. Furthermore, the Supplier accepts and hereby gives his express consent for his data to be transferred to third parties within the scope of contractual relations, even when such transfer involves an international data transfer, exclusively for the fulfilment of the purposes for which they were collected. At any time the Supplier may exercise his rights of access, rectification, removal, opposition, limitation, portability and forgetfulness by sending his request to the following email address: logistics.Barcelona@quetermann.com.

17 Assignment, pledge, transfer of contract, set-off, right of retention

17.1

The assignment and pledging of the Supplier's rights under the present contract can only be made with our prior written consent. This rule shall not apply to the assignment of pecuniary claims. If the Supplier has not notified us of the assignment of the receivables, we will be entitled to pay the Supplier with discharge.

17.2

The Supplier must inform us immediately, in writing, of any transfer of the contract by legal or judicial order or otherwise, as well as of any change in the corporate structure of his company.

17.3

Compensation of claims against us is prohibited unless they are undisputed, fixed, due and payable or legally provided for.

18 Place of execution, jurisdiction and applicable law

18.1

The place of fulfilment for all deliveries and services will be the place of the goods destination. If a reception procedure has been agreed or it is legally stipulated, the place of performance shall be the place of reception of the goods.

18.2

All disputes arising in connection with the contractual relations between us and the Supplier will be governed by Spanish law. The application of the United Nations Convention on Contracts for the International Sale of Goods of 11.04.1980 (United Nations Sales Convention, CISG) is expressly excluded.

18.3

If one or more of the clauses established in these General Terms and Conditions are null and void or become null and void, this will not affect the rest of the clauses of the contract. The null and void clauses will be interpreted as if they had been replaced by others (i) that have an equivalent economic content, as far as possible, and (ii) that are not affected by a cause of nullity.