

General Terms and Conditions of Purchase of Gütermann GmbH, Gutach-Breisgau

(Version: July 2018)

1. Scope

1.1

These General Terms and Conditions of Purchase shall form the contractual basis for all orders. They shall also apply for future contracts with the Contractor, provided he has acknowledged them after they have been brought to his attention.

1.2

The Contractor's General Terms of Business shall not apply, unless we have explicitly acknowledged them in writing. Even if the Contractor makes repeated reference to his General Terms of Business in order confirmations or on invoices, they shall not be acknowledged, even if we have not opposed such reference in each individual instance.

2. Conclusion of contract

2.1

We will not incur a charge for services by the Contractor associated with the production of quotations, nor will we be obliged to conclude a contract. If, during the quotation phase, the Contractor performs services that should be chargeable, it must notify us thereof in writing in advance and obtain our consent. If the Contractor expects us to provide assistance, it must notify us thereof in the quotation.

2.2

Orders shall be set out in writing. If orders are placed verbally in exceptional circumstances, they must be confirmed in writing. The same shall apply to verbal ancillary agreements or commitments, which modify or supplement the content of a contract that has been drawn up in writing.

2.3

If the order does not confirm a written quotation with the same content, then the contract will be concluded on the basis of a written order confirmation that confirms the content of the order. The Contractor must confirm, within the binding period stated in the order, or else within a reasonable period, that the content of the order is the same. We will otherwise no longer be bound by the order.

3. Periods and times

3.1

Agreed times and periods shall be binding. In the case of goods deliveries, the delivery must be received at the specified place of destination in order to constitute adherence to agreed times and periods. If an acceptance procedure has been agreed to or is prescribed by law, times and periods shall relate to the declaration of acceptance by a person whom we have authorised for this purpose.

3.2

As soon as the Contractor recognizes that fulfilment of his supplies or services within the agreed period or at the agreed time is entirely or partially impossible, he must immediately notify us in writing, stating the reasons and the anticipated length of the delay. However, this will not relieve the Contractor of responsibility in the event of default in delivery or default in the provision of services that are required of it.

3.3

Impediments that arise during execution of the contract will suspend contractual obligations in the event of force majeure, war and also other unpredictable and unavoidable events, for example labour disputes, if the contracting party at whose premises the impediment arises is not responsible for them. The suspension will bring about an extension of times or deadlines for the duration of the impediment. The other contracting party must be notified immediately when an impediment arises and ends.

3.4

If the Contractor defaults, we will be entitled to demand 0.5% for each complete week of default, albeit no more in total than 5% of the total net order value, as a contractual penalty, for completion times that are not adhered to. If a contractual penalty is incurred, we shall be entitled to claim this up to the date of the final payment. This shall not affect further statutory claims in the event of default.

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

4.1

Unless agreed otherwise in writing and/or unless acceptance is agreed or provided for by statute, all deliveries will take place 'DDP place of destination, Incoterms® 2010'.

4.2

A delivery note stating our order number, our article number, the type of packaging and the quantity and weight of the delivery, must be attached to each delivery.

4.3

Part-deliveries shall only be admissible provided we have given our approval in advance. The Contractor must bear additional transport costs that arise as a result of part-deliveries, even if consent is given. Our consent to part-deliveries will not entitle the Contractor to raise a separate invoice for the part-delivery. Our consent will also be required in such a case.

4.4

Only those excess and short deliveries that are customary in the trade shall be permitted.

4.5

The Contractor must abide by a type of shipment that is prescribed in the order and/or the named carrier. Otherwise, the Contractor shall be obliged to select a secure shipment type with a reliable carrier.

4.6

The Contractor's delivery obligations shall include the presentation of proper delivery and shipping documents. If we cannot use the goods because the papers are missing, we shall be entitled to store the goods at the Contractor's expense and risk, and may make a claim for additional losses we have incurred as a result of a culpable breach of obligation on the part of the Contractor.

4.7

The Contractor will be obliged to request, in good time, all documents required of us for execution of the contract or other agreed assistance.

4.8

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

5. Use of subcontractors, minimum wage under the Mindestlohngesetz [German Minimum Wage Act] (MiLoG) or the Arbeitnehmerentendegesetz [German Employee Secondment Act] (AEntG), ban on illegal employment

5.1

The use of third parties to fulfil the contract (in particular subcontractors at any level or recruitment agencies) and/or their replacement, will require our prior written consent. If such use is planned in advance, the Contractor must notify us thereof in its quotation.

5.2

The Contractor must ensure that the employees it or its subcontractors or recruitment agencies use to perform the contract receive the statutory minimum wage according to the MiLoG or, if the services to be provided fall within the scope of the AEntG, the prescribed industry minimum wage. Mandatory obligations to pay social security contributions, contributions to employer's liability insurance associations and other institutions, such as the joint institutions of the parties to the collective bargaining agreement, which are referred to in Section 8 AEntG, must be met. The Contractor must impose the same obligation on any subcontractors or recruitment agencies it uses, and must verify this during their selection. The Contractor will be liable towards us for any losses that arise through culpable failure to fulfil these obligations.

5.3

The Contractor must refrain from the illegal employment of external staff of any kind.

6. Work at Gütermann GmbH's company premises or at the premises of our customers

6.1

If the Contractor calls upon subcontractors for work assigned to him, their use must be approved by us in advance. Approval will not release the Contractor from its responsibility for losses caused by such staff and their vicarious agents.

6.2

If the Contractor's employees or subcontractors are working at our company premises or at those of our customers, the Contractor must ensure that they observe the relevant accident prevention regulations and all other safety regulations, and also the Rules of Procedure that have been brought to the Contractor's attention. The Contractor will not be permitted to use them if they have not been briefed on these regulations. The Contractor must provide us with the name of a contractual contact person to take receipt of instructions relating to the acceptance of the services executed and for agreements in general.

6.3

Performance-related assembly and installation work undertaken by the Contractor will be accepted by Gütermann GmbH on its completion provided it has been undertaken fully and without defects. Acceptance shall be by means of a written statement by a representative of Gütermann GmbH who is authorized to undertake acceptance. Notices of defect may be submitted both with respect to defects that could not be ascertained during the examination preceding the statement of acceptance and to those that have been the subject of a reservation during acceptance.

6.4

If time-based billing has been agreed, the Contractor must arrange for daily written confirmation of its account by Gütermann GmbH, on the date of execution of the work in each case, and also of the nature and quantity of the materials, if these are to be paid for separately.

7. Pricing and payment

7.1

The agreed prices are fixed prices. In the case of deliveries, these prices will be 'DDP place of destination, Incoterms ® 2010' free place of destination including packaging (see 4.1).

7.2

Unless agreed otherwise, payment shall be within 14 days following receipt of a verifiable invoice, subject to 3% discount. The payment and discount period will not start to run before delivery in full without defects (upon handover of the documents in accordance with 4.6) or acceptance, if this was agreed or is provided for by statute. If, exceptionally, we accept early deliveries, the period will not start before the agreed delivery date. If services are required that are to be provided independently and are not performance-based, and which are charged at cost, payment will be made on the basis of the payment and discount period, after presentation of a verifiable invoice after the service has been provided, including proof of provision of the service and the cost.

7.3

Provided the other maturity conditions are met, we may make payments net within 30 days. The payment period will be based on 7.2.

8. Packaging

The goods to be delivered must be packaged in compliance with the provisions of the law relating to packaging and waste that apply en route to the place of destination, as agreed or, if no agreement on the type of packaging has been made, in accordance with commercial practice.

9. Transfer of risk

In the case of deliveries, risk will transfer to us when these arrive at the designated place of destination. If acceptance has been agreed or is provided for by law, in particular if performance-based services are to be provided, risk will not transfer before acceptance.

10. Quality assurance

We are a company certified according to IATF 16949, and are obligated towards our customers to only purchase goods from suppliers who also satisfy these or other comparable quality standards. The Supplier warrants compliance with the quality standards provided for in IATF 16949 and ISO 9001 or comparable quality standards. If we have agreed specific quality standards or have concluded a separate quality assurance agreement with the Contractor, the provisions thereof will take precedence over this clause.

11. Defect liability

11.1

The Contractor shall warrant that when they arrive at the place of destination, the deliveries are free of material and legal defects, and that they conform to the recognised state of the art, relevant statutory provisions, in particular safety and accident prevention regulations and the requirements of product safety guidelines and generally recognised safety provisions under DIN, VDE, VDI or TÜV specifications, and also the guidelines of the employer's liability insurance association.

11.2

If the commercial duty of examination and complaint according to Section 377 HGB [*German Commercial Code*] applies, we shall examine deliveries for obvious defects, identity, shortages and transport damage within eight working days of delivery. Upon discover of any defects, we shall report these to the Contractor within eight working days.

11.3

In the event of defects, we shall be entitled to make statutory defect claims, and in particular to claim supplementary performance. The Contractor shall be responsible for expenses incurred in connection with defect remedy, or with delivery or manufacture of replacements. The place of performance shall be the envisaged place of destination, or if this was known to the Contractor, the final place of delivery. If an acceptance procedure was contractually provided for or was required by law, the place of supplementary performance shall be the place of acceptance or the final place of delivery known to the Contractor.

11.4

The period of limitation for defect claims shall be 36 months and shall commence at the time of delivery or acceptance, if the latter procedure is agreed or is provided for by law. If longer statutory periods of limitation apply, and these start to run at different times, their period and start date shall be binding.

11.5

For recourse claims arising out of the purchase of a consumable pursuant to Section 478 BGB [*German Civil Code*], the Contractor will be liable towards us in accordance with the statutory provisions during the period of limitation provided for. When requested to do so, we shall advise the Contractor whether parts he has delivered are incorporated into products supplied to final consumers, or are delivered to them through retail chains.

11.6

For parts replaced during the remedy of defects, the statutory period of limitation will start to run again for the replacement parts.

12. Grant of rights of use, infringement of the proprietary rights of third parties

12.1

The Contractor will grant us, without restriction in terms of place, content and time, the right to use and exploit all plans, drawings, diagrams and other documents eligible for protection that relate to the contract, and which it has produced itself or had produced by third parties, in all known types of use and with the aid of all known media, including the internet, via all data media on the market, for the purposes that have been contractually agreed or are provided for under the contract.

12.2

The Contractor will also grant us an exclusive right of use and exploitation in relation to work results we have commissioned and that the Contractor is to provide us on a bespoke basis. If it uses third parties for the services, it must procure from such third parties the rights required in order to enable it to grant rights to us.

12.3

The Contractor shall ensure that we do not infringe proprietary rights of third parties, such as patents or registered designs, or other rights or trade/company secrets of third parties, when adhering to the contractual uses. The Contractor must therefore hold us harmless with respect to justified claims of third parties for infringements of proprietary rights, if these have arisen through culpable behaviour on the part of the Contractor. This shall not apply if the Contractor is working from drawings and models that we have supplied, and was not or could not be aware that the rights of third parties were being infringed as a result.

13. Liability in general

13.1

The extent and amount of the Contractor's liability, on whatever legal ground, will be based on the statutory provisions.

13.2

The Contractor shall be obliged to hold us harmless with respect to product liability claims made against us by third parties, where a defect in the product supplied by the Contractor has caused or has contributory to the damage. This shall not apply in cases of fault-based liability, provided the Contractor is not culpable.

13.3

If a fault in a product or part thereof should result in measures that could, if they are required by law, even lead to a product recall, the Contractor must bear the resultant costs and damages, if and to the extent that they are the result of a culpable breach of obligation by the Contractor.

13.4

The Contractor shall undertake to arrange for insurance cover that is sufficient to indemnify losses, and must provide us with proof of the type of cover and the cover amount on request.

14. Means of production

14.1

Documents and other items of all kinds, such as samples, drawings, tools, models or the like, which we make available to the Contractor (production materials), must be returned to us free of charge on request as soon as they are no longer required for the order. The Contractor may not either use such tools and means of production for his own purposes or make them available to

third parties. The Contractor must insure them at his own expense against damage, loss or other destruction, for as long as they remain in his actual possession.

14.2

The Contractor may not use itself, nor offer or deliver to third parties, any products made from production materials, which have been manufactured on the basis of documents we have produced, or according to our confidential details, or with our tools or copied tools.

15. Secrecy and data protection

15.1

The Contractor will be bound not to disclose any technical, scientific or other information that is made accessible to it based on the collaboration with us, irrespective of whether it has been given to it or whether it came to its knowledge on the occasion of the collaboration, irrespective of how that came about. This will also apply to the details of our orders and the processing thereof, for example quantities, technical designs, prices or other information, including information about our customers. Such information must not be disclosed to third parties, and may be used only for the contractual purposes and may not be published. If making it accessible to third parties within the context of fulfilment of a contract with ourselves is unavoidable, the third parties in question must be bound by a non-disclosure obligation. The information obtained may not be re-used commercially, nor may it be the subject of commercial proprietary rights. It will be subject to a non-disclosure obligation for a period of ten (10) years after the contract ends.

15.2

The Contractor will ensure, by contractual agreement, that the employees it uses to fulfil the contract, other vicarious agents or temporary employees will all be bound by a non-disclosure obligation, and will confirm observance of that obligation immediately in writing on request.

15.3

The duty of non-disclosure will not apply in the event of statutorily, judicially or officially ordered duties of disclosure. Exceptions from the non-disclosure obligation will also be information that, at the time the information was made available or acquired by us, was lawfully in the Contractor's possession, was in or entered the public domain, or which the Contractor obtained lawfully from third parties.

15.4

The Contractor must ensure compliance with current data protection regulations when handling personal data in particular. Personal data may not be used or passed on to third parties without the consent of the person concerned, even if we have permissibly made such data available to the Contractor. This provision will not replace the contractual provisions, measures and obligations of any contract data agreement that is to be concluded in accordance with data protection regulations.

15.5

When handling the personal data that is disclosed to us by the Contractor or which becomes known to us, we refer to our data protection information for suppliers and service providers of Gütermann GmbH, which are part of our contractual regulations with the Contractor. For additional information, please refer to our privacy policy available on our website at www.guetermann.com. Our Data Protection Officer, who is available via e-mail at dataprotection@guetermann.com, can provide information about existing personal data records.

15.6

Our company name may only be included in a reference list of the Contractor that is intended for publication, or our order used for advertising purposes, subject to our prior written consent.

16. Assignment, pledge, contract transfer, setoff, right of retention

16.1

The Contractor may only assign and pledge the rights afforded to it under the contract subject to our prior written consent. This will not apply to the assignment of monetary claims. If the Contractor has not notified us of such an assignment, we may make payment to it with debt-discharging effect.

16.2

The Contractor must notify us immediately in writing of any statutorily triggered contract transfer or any change of its company name under company law.

16.3

Offsetting using claims against us will be inadmissible, unless such claims are uncontested or have been finally determined.

16.4

The Contractor will only have a right of retention against us with respect to claims provided the right of retention originates from the same contractual relationship.

17. Place of performance, place of jurisdiction and governing law

17.1

The place of performance for all supplies and services shall be the place of destination. If an acceptance procedure has been agreed or is statutorily prescribed, the place of performance shall be the place of acceptance.

17.2

The place of jurisdiction shall be the court with competence for our registered office. However, in the event of a legal dispute we shall be entitled to refer the case to the court with competence for the registered office of the Contractor.

17.3

German law shall be the governing law. The United Nations Convention on Contracts for the International Sale of Goods of 11/04/1980 (UN purchase law; CISG) may not be applied.