

# General Terms and Conditions of Purchase (GTC Purchase) of confer GmbH, Bielefeld

State 08/17/21

## 1. General

**1.1.** These General Terms and Conditions of Purchase apply exclusively to companies and entrepreneurs, legal entities under public law or special funds under public law within the meaning of § 310 (1) German Civil Code (BGB). They apply to all our - including future - orders as well as to all - including future - purchase contracts concluded with the supplier in which confer GmbH acts as the buyer, and other agreements made with the supplier in connection with these orders.

**1.2.** The corresponding deliveries and services are carried out exclusively in accordance with the following terms and conditions of purchase.

**1.3.** With the acceptance of an offer, an order confirmation, but at the latest with the placing of an order or the acceptance of a service, the supplier acknowledges that the purchasing conditions should apply to all business relationships with the supplier.

**1.4.** A silence on our part regarding the supplier's provisions to the contrary is not to be regarded as an agreement with the supplier's conditions; their validity is contradicted. Any deviation from the terms and conditions of purchase is deemed to be a rejection of the order; an acceptance of an order that has nevertheless taken place - even with reservations - is deemed to be acceptance of the following terms and conditions of purchase.

**1.5.** Agreements that deviate from the terms and conditions of sale and delivery require subsequent written confirmation in order to be effective.

**1.6.** Notwithstanding item 1.5, informal agreements are also effective if they are individual agreements in accordance with § 305 b of the German Civil Code (BGB).

**1.7.** The following terms are defined as follows:

### "Force majeure"

means any reason which makes it impossible for us or the supplier to fulfill the respective contractual obligations and which arises from circumstances beyond the reasonable control of the respective party, including but not limited to natural disasters, actions by governments or supra-national institutions, Outbreaks of violence, national emergencies, terrorist attacks, riots, civil unrest, fires, explosions or floods.

### "Order"

means every offer to the supplier for the purchase of certain goods with reference to these purchasing conditions.

### "Description of services"

means all documents, offers or estimates which, either individually or collectively, set out the requirements, specifications and / or expected service levels from us and which have either been issued by us or which have been expressly agreed in writing with us in relation to the goods and services and which are based on referenced on the order form.

### "Supplier"

delivers the ordered goods and services to us and is specified as such in the order.

### "Goods"

are the assets and economic goods we have ordered from the supplier.

## **2. Offer and order**

**2.1.** Offers are free and binding. Payments for visits and the development of projects etc. are not granted.

**2.2.** Orders are only legally valid if they have been placed in writing. This text form requirement also applies to additions to and changes to orders, taking Section 1.6 into account.

**2.3.** We are bound to our order for 5 working days. If the supplier does not accept an order in writing within 5 working days of receipt, we are entitled to revoke the order.

**2.4.** Insofar as the order concerns the procurement of technical work equipment (tools, machines, apparatus, etc.) or working materials, the supplier guarantees that the goods correspond to the specifications, documents and other information provided by us in the order and, if applicable, bears the CE mark and an EC declaration of conformity in German according to the currently valid version of the EC Machinery Directive (currently Appendix II.A of EC Directive 2006/42 / EC) and / or other applicable directives and provisions, issued and enclosed with delivery. Necessary protective devices are to be supplied without the need for a separate note in the order. An operating manual in accordance with the currently valid EC Machinery Directive (currently Annex I Number 1.7.4 of the EC Directive 2006/42 / EC) and DIN EN 292, Part 2, must be included in the German language upon delivery (including the noise emission and, if applicable, vibration parameters required therein). The technical documents in accordance with the EC Machinery Directive in the currently valid version (currently Annex VII of the EC Directive 2006/42 / EC) must be available from the delivery time by the supplier or by the person authorized to compile the technical documents.

**2.5.** In the case of software products, the delivery obligation is only fulfilled when the complete (technical system and user) documentation has been handed over. In the case of programs specially created for us, in addition to the final program version, the open source code with all linked components must also be delivered.

**2.6.** In any case, the goods must comply with the other German and European legal provisions applicable at the time of acceptance, as well as comply with the regulations of the responsible trade associations, accident prevention regulations, VDE / TÜV guidelines and other applicable laws and regulations in the respectively valid versions of the goods.

**2.7.** In the case of goods that are produced by the supplier on our behalf, we can also request changes to the goods after the conclusion of the contract and until delivery or before individual partial deliveries, provided there is an important reason for this and this is reasonable for the supplier. An important reason exists, for example, if the change is absolutely necessary to fulfill our contractual obligation towards our customers. If we request a change to the delivery item, the supplier must immediately inform us in writing of any higher or lower prices and the effects of deadlines.

**2.8.** The effects of such a change on the costs as well as on the delivery date may have to be taken into account by an adjustment of the price and the delivery date to be negotiated by the parties. If no agreement can be reached on the price, it will be determined in accordance with § 632 (2) of the German Civil Code (BGB).

**2.9.** Customary clauses are to be interpreted according to the currently valid Incoterms.

**2.10.** The contractually agreed quality of the ordered goods, in particular with regard to material, dimensions, processing, tolerances and the like, as well as the expected useful life can be found in the specifications that are attached to the respective inquiry or order. Samples made available, to which reference is made in the description of services, the order or an attached document, are deemed to be a binding specification of the visible and aesthetic quality of the goods (with regard to color, design, shape, etc.).

**2.11.** We can request changes to the ordered goods at any time by notifying the supplier in text form, including but not limited to changes in the design (including drawings, materials and specifications), quantity, place of delivery and delivery date of the goods. If changes to the goods that we request under this paragraph have an impact on the costs or the delivery times of the goods, we and the supplier will in good faith make an appropriate adjustment to the prices and / or the delivery times (depending on what happened on Carry comes) negotiate.

**2.12.** The supplier will not make any changes to the goods unless this is done in writing by us in accordance with our express instructions. The terms of the order will therefore change to the extent required by the agreed change. To avoid any doubts, it is hereby established that we accept no liability for an increase in the agreed prices resulting from a change to the goods and / or services, unless we have agreed to such a price increase in writing.

### **3. Delivery**

**3.1.** With the acceptance of the order, the delivery time stated there is binding and refers to the arrival at the destination, unless otherwise stated in the order. If the delivery takes place before the agreed delivery time, we are entitled to return the goods at the expense of the supplier, depending on the storage option, or to request reimbursement of costs for storage. We will only return the goods for a fee if and to the extent that at the time of the early delivery there is no suitable storage facility and cannot be procured elsewhere at the expense of the supplier and therefore we cannot be expected to accept the goods early. In the event of a return, the supplier will be informed of this.

**3.2.** The delivery time specified by us is binding. Delivery times for the goods are an essential part of the contract.

**3.3.** The supplier is obliged to inform us immediately in writing, stating the reasons, if he cannot meet the agreed delivery date or has to deliver earlier. The supplier must indicate the duration of the delay. If the agreed delivery date is exceeded, the supplier is obliged to arrange for the fastest possible mode of transport at his own expense.

**3.4.** If the supplier defaults on delivery, he has to pay 0.1%, but no more than 5% of the order amount as a contractual penalty for each working day of the delay. The assertion of legal claims due to delay in performance remains unaffected.

**3.5.** Accepting late deliveries does not exclude our claims for compensation for the damage caused by the delay or for reimbursement of wasted expenses. If the supplier is in default, we are entitled to instruct him to deliver the goods at his own expense to a different shipping address than the one originally agreed.

**3.6.** If the notification of delay named in section 3.3 is given in good time, we will set the supplier a grace period, taking into account our operational interests, after which we are entitled to withdraw from the contract in whole or in part, to make covering purchases, to demand compensation for damages and / or reimbursement of wasted expenses. The obligation to pay damages and / or reimbursement of expenses does not exist if the supplier is not responsible for the delay in its performance. In the event of force majeure, the delivery period will be appropriately extended.

**3.7.** The supplier is not entitled to perform partial services unless we can reasonably be expected to accept the partial services with reasonable appreciation of our own legitimate interests and the supplier's situation. Our right to demand partial performance from the supplier remains unaffected, provided this is reasonable for the supplier.

**3.8.** Ordered quantities must be strictly adhered to. Over or under deliveries are only permitted with our prior written consent. If the agreed delivery quantity is deviated from, the supplier must always agree with us in good time before delivery about the optimal delivery quantity.

**3.9.** Agreed material certificates must be submitted with the delivery, but no later than with the invoicing. These represent an essential part of our order. If necessary, certificates of origin and delivery certificates must be enclosed with the delivery without being requested to do so. If these papers lose their validity, the supplier will immediately provide new, valid documents without being asked and will hand them over to us immediately.

**3.10.** If we are prevented from accepting the goods due to circumstances of force majeure or other circumstances for which we are not responsible, such as operational disruptions, strikes, lockouts, raw materials or energy shortages or the like, the time of acceptance will be postponed by at least the duration of the hindrance. If acceptance is not possible for longer than 6 months due to these circumstances, we are entitled to withdraw from the contract without claims against us, unless we are culpably responsible for the delay.

**3.11.** The supplier is responsible for the import and export of the goods and for compliance with import and / or export regulations, in particular for obtaining the necessary permits and providing the documents required for this. Insofar as the supplier is responsible for the import and / or export, he will hold us harmless with regard to all claims that are asserted against us in connection with the violation of import and / or export regulations, including failure to provide documentation for deliveries within the EU by the supplier.

**3.12.** The delivery takes place within the EU and EEC "free destination".

#### **4. Prices**

**4.1.** The agreed prices are binding, they include all services and ancillary services (e.g. customs and customs formalities) of the supplier as well as all ancillary costs (e.g. proper packaging, transport costs including any transport and liability insurance, storage, monitoring, administration, etc.). The statutory sales tax is not included in the offer price.

**4.2.** The supplier provides all kind of samples free of charge.

#### **5. Invoicing and payment**

**5.1.** Invoices are to be submitted separately in proper form with all associated documents and data after delivery has taken place. The invoice must contain:

- our order number
- Amount of delivered goods (individual items, boxes, number of pallets)
- our article number
- our article designation
- Reference to the corresponding delivery note from the supplier

**5.2.** The invoices must meet the currently valid requirements of the UStG/Value Added Tax Act (in particular § 14. 4 ) and all other legal requirements. Payment is made subject to proper delivery as well as correct pricing and calculation, within 21 days with a 3% discount or within 30 days strictly net.

**5.3.** The payment periods begin with the date of the day on which the goods are handed over and the invoice, in which in paragraph. 5.1 and 5.2, is duly present.

**5.4.** Payment does not mean recognition of conditions and prices and is always subject to the invoice verification. The time of payment has no influence on the start of a warranty / guarantee by the supplier.

**5.5.** We are entitled to offset all claims due to us against the supplier. Furthermore, in the event of incomplete or faulty delivery, IF THE supplier has been given a deadline beforehand, we shall be entitled to provide supplementary performance.

**5.6.** The supplier is only entitled to an accounting right or right of retention with regard to undisputed or legally established claims from the same contractual relationship with us. The assignment of claims against us is only effective with our written consent.

**5.7.** If an advance payment has been agreed, the supplier must provide appropriate security on request, e.g. a bank guarantee, provided the amount is € 10,000.00 net.

## **6. Retention of title, tools**

**6.1.** An extended or extended reservation of title by the supplier is excluded.

**6.2.** If we provide the supplier with parts for the production of the order as part of the order, we reserve title to them. The processing or transformation by the supplier is carried out for us. If our reserved goods are mixed or processed with other items that are not in our ownership, we acquire co-ownership of the new item in the ratio of the value of the reserved goods (purchase price plus VAT) to the value of the newly manufactured item.

**6.3,** We expressly reserve the ownership and ownership rights to tools that we have financed for the customer to fulfill the order. The same applies to the co-ownership of partially financed tools. The supplier is obliged to insure the partially or fully financed tools at their replacement value against damage caused by natural forces and theft. At the same time, he already now assigns all claims for compensation from this insurance to us. We accept the assignment. The supplier is obliged to carry out the necessary maintenance and inspection work as well as maintenance and repair measures on the tools in good time at his own expense. He must inform us immediately of any damage to the tools.

## **7. Warranty, Notification of Defects and Liability**

**7.1.** The supplier assures that the goods delivered will have the properties agreed in the order. If no specific properties have been agreed, the goods are suitable for use in accordance with the order. If such a use has not been described, the goods are suitable for their usual use in good quality. If the supplier delivers other goods or a too small quantity, this is interpreted as a quality defect.

**7.2.** If the delivered goods are defective, we are entitled, at our option, to demand that the supplier rectify the defect or deliver a new object of performance. In the event of refusal, non-compliance or the failure to remedy the defect within the set period, we are entitled, at our discretion, to remedy the defect ourselves at the supplier's expense or to have it remedied or to make a replacement purchase. The improvement is considered to have failed after the unsuccessful first attempt.

**7.3.** The place of the following service for the removal of defects or the replacement delivery is the place at which the defective goods are at the time of the notification of our complaint to the supplier. If a replacement delivery is made, the supplier is obliged to pick up the defective goods from their current location. The supplier bears all expenses necessary for such supplementary performance. The return delivery or disposal of defective delivery items takes place after delivery of non-defective goods at the expense and risk of the supplier.

**7.4.** In the event of a justified complaint regarding the goods already installed by us, the supplier will also assume the costs for the dismantling and disposal of the defective goods and the subsequent installation of goods in accordance with the contract as part of the supplementary performance.

**7.5.** Irrespective of this, if the goods are defective, we are entitled to withdraw from the contract in accordance with the statutory provisions or to reduce the purchase price and to demand compensation instead of the entire service or the reimbursement of wasted expenses. This also applies if the delivered goods are partially defective. In this case, the above-mentioned claims can optionally be asserted with regard to the entire delivered goods or a part. If the delivery item is completely or partially renewed and the supplier has recognized the defect in accordance with § 212, 1 No. 1 BGB, the limitation period specified in 15. begins anew. In the event of withdrawal from the contract, the supplier will reimburse us for the full purchase price of the rejected goods within 14 days of receipt of the declaration of withdrawal, provided that the purchase price has already been paid.

**7.6.** The above provisions also apply to replacement deliveries and repair work carried out as part of the supplementary performance.

**7.7.** The legal claims (e.g., for damages etc.) remain unaffected.

## **8. Industrial property rights and copyrights; Exemption; other legal defects**

**8.1.** The supplier is liable for ensuring that no patents, utility models, registered designs, copyrights or other third party property rights are violated by the use of the delivery items.

**8.2.** If claims are made against us by a third party and the supplier does not remedy this infringement of property rights at our request within a reasonable period of time, the supplier shall indemnify us from the claims of the third party and the resulting costs and damage, without prejudice to further legal claims.

**8.3.** Our claims against the supplier due to the infringement of industrial property rights become statute-barred two years from the point in time at which the third party first asserts the infringement of industrial property rights against us.

**8.4.** In the event of other legal defects, the statutory provisions apply.

## **9. Product liability, product liability insurance**

**9.1.** If claims are made against us by a customer or other third party for damages from product liability, regardless of the legal reason and regardless of whether on the basis of domestic or foreign law, the supplier is obliged to indemnify us from such claims insofar as the damage is attributable to him caused and we are not responsible for the damage - even in part. In these cases, the supplier bears all costs and expenses including the costs of legal prosecution.

**9.2.** As part of its liability in accordance with Section 9.1, the supplier is also obliged to reimburse expenses and damage in accordance with §§ 683, 670 BGB and §§ 830, 840, 426 BGB that arise in connection with a recall campaign carried out by us. We will inform the supplier in advance of the content and scope of the recall measures to be carried out - as far as possible and reasonable - and give him the opportunity to comment and cooperate. Other legal claims remain unaffected.

**9.3.** Unaffected by the liability of the supplier and the obligation to indemnify us in accordance with Section 9.1 above, the supplier is obliged to take out sufficient product liability insurance and to prove this to us upon request by presenting the insurance policy.

## **10. Incoming goods, compliance with product data**

**10.1.** Our statutory examination and complaint periods according to § 377 HGB begin with the arrival of the delivery at the destination specified by us. Insofar as this is possible in the ordinary course of business, we will examine the delivered items immediately after their arrival and notify the supplier of obvious defects within 7 (seven) working days of their discovery. All other defects that are only noticeable when the

packaging of each individual delivery item is opened or during processing, or other hidden defects, must be reported by us within 7 (seven) working days of their discovery.

**10.2.** We will carry out an incoming inspection if the goods are properly received in accordance with Sections 3 and 11 and 12. This check is based on quantity, identity and obvious defects in the goods.

**10.3.** If an order is based on additional product data that is not recorded with the incoming inspection described, the supplier must design its outgoing inspection in such a way that this product data is complied with. With the delivery he guarantees compliance with this product data.

## **11. Security**

**11.1.** The supplier ensures that deliveries and services comply with the statutory provisions, in particular the safety and environmental protection provisions including the ordinance on hazardous substances, the ElektroG and the safety recommendations of the responsible German specialist or associations, e.g. VDE, VDI, DIN. Relevant certificates, test certificates and evidence are to be supplied free of charge and unsolicited.

**11.2.** The supplier is obliged to set up a quality control system that guarantees compliance with the requirements in accordance with Clauses 11.1 and 12.

## **12. Packaging and shipping instructions**

**12.1.** The supplier must pack and label his goods in accordance with the nationally / internationally applicable guidelines and provide them with appropriate accompanying documents (e. g. customs). This particularly applies to dangerous goods and hazardous substances.

**12.2.** Only approved / standardized Euro pallets in perfect condition will be accepted or exchanged. We charge the supplier a fee of 25 euros / piece for the disposal of euro pallets that differ from this.

**12.3.** The supplier must ensure that the cargo is properly and adequately secured against slipping and damage, especially on the euro pallets.

**12.4.** A delivery note must always be submitted with the goods when we receive the goods. This must contain:

- our order number / order number
- Quantity of the delivered goods (number of pallets, boxes and pieces)
- our article number
- our article designation
- current batch
- Dangerous goods symbol

Agreed material certificates are also to be delivered.

**12.5.** The dispatch takes place at the risk of the supplier to the delivery address given by us in the order. The risk of any deterioration, including accidental loss, remains with the supplier until delivery to the agreed shipping address or place of use.

## **13. Documents, Intellectual Property Rights**

**13.1.** We reserve the property rights and copyrights to all drawings, documents, samples and other information that we provide to the supplier for the production of a delivery item or for the execution of an order. The same applies to documents or products prepared by the supplier according to our special information, which are the subject of the order. They are to be kept secret by the supplier and may not be used by him for purposes outside the contract, copied, saved, restored or reproduced for third parties.

**13.2.** Information of the aforementioned type may not be made accessible to third parties, unless this is done with our prior consent in text form or is absolutely necessary for the fulfillment of the contract. In this case, the supplier has to oblige the third party to maintain confidentiality in the same way.

**13.3.** The above confidentiality obligations do not apply to documents, products and information

- a) which are or will be generally known or publicly available,
- b) are legally made known to the receiving party by a third party without restriction,
- c) which the receiving party demonstrably already owned or developed independently before the contract came into force, or
- d) which must be passed on or published due to legal regulations and / or official measures. After our order has been processed or beforehand at our request, the documents and information in accordance with Section 13.1 above, including all copies, reproductions, storage and embodiments, must be immediately returned to us or completely, finally and irreversibly destroyed or deleted. We reserve the commercial property rights to all documents handed over to the supplier.

**13.5.** The supplier must treat inquiries, orders and related work confidentially.

**13.6.** The confidentiality obligation has a duration of 10 years after the termination (payment of the invoice) of the last delivery relationship.

## **14. Inspections and audits**

**14.1.** At the request of the buyer, the supplier will allow the buyer or his authorized representatives to do the following during the period of the order

- a) To inspect every facility and every process related to the goods and / or services or to the order, including those related to production quality
- b) To inspect every facility and process to check compliance with the requirements of the order.

**14.2.** Any inspection in accordance with this section 14 will be carried out during the supplier's normal business hours and after prior notice in writing to the supplier (24 hours). At our request, the supplier will use its best endeavours to obtain information and consent from its subcontractors and suppliers that will enable us to carry out the inspections in accordance with this clause 14, with all other rights of us to this information or to Inspection of the respective system remain unaffected.

**14.3.** If the audit detects inadequate compliance with the purchase order by the supplier, the supplier's employees, its legal representatives, its commercial agents or other third parties that the supplier has engaged for the purposes of this contract (including but not limited to subcontractors) can be a subsequent one Subject to testing without prior notice and without significant disruption to ordinary business operations. The supplier will support us in carrying out these audits.

**14.4.** The supplier also undertakes to provide us with all information required for such an audit within a time frame set by us in a previous request, provided that a previous request on our part has been made in text form. If the audits reveal a breach of the obligations on the part of the supplier with regard to the order or inadequate fulfillment by his legal representatives, employees, commercial agents or third parties that the supplier has commissioned for the purpose of implementing the contract and with regard to the fulfillment of the order, the supplier bears all costs of the audit and assumes responsibility for all damage suffered by us.

## **15. Statute of Limitations**

**15.1.** The limitation period for our claims and rights due to defects in the delivered goods - for whatever legal reason - is 3 years. The applicability of §§ 478 and 479 BGB remains unaffected.

**15.2.** The limitation period for our claims and rights due to defects in the delivered goods in the case of items that are used for buildings in accordance with the contract or customary in traffic is 6 years.

**15.3.** The statute of limitations is suspended for the period of supplementary performance until the supplier declares the end of the supplementary performance or rejects further improvement.

## **16. Applicable law, place of jurisdiction**

**16.1.** The place of performance for all obligations arising directly or indirectly from the contractual relationship, including the obligation to pay, is Bielefeld.

**16.2.** Exclusive place of jurisdiction for all disputes arising from or in connection with orders, sales contracts and agreements that are made in accordance with Clause 1.1. take place under the application of these General Terms and Conditions of Purchase, if the customer,

- a) is a merchant, legal entity under public law or special fund under public law, or
- b) does not have a general domestic place of jurisdiction or
- c) After the conclusion of the contract, his domicile or habitual abode has moved outside of Germany or his domicile or habitual abode is not known at the time the action is brought.

**16.3.** The law of the Federal Republic of Germany applies exclusively to all business relationships with us. The applicability of the CISG (UN sales law) is expressly excluded.