

General Conditions of Purchase

1. General

1.1 These General Conditions of Purchase (hereinafter referred to as "Conditions of Purchase") shall apply to all declarations of intent, contracts and legal or similar transactions in connection with the delivery of goods and the provision of services by the supplier (hereinafter referred to as the "Supplier") to our company. We hereby object to any conditions of the Supplier that are contrary to or deviate from our Conditions of Purchase. They shall not become part of agreements unless we expressly agree to their validity. We shall grant such consent in written form.

1.2 Our Conditions of Purchase shall also apply if we accept delivered items without reservation in the knowledge that the Supplier's conditions are contrary to or deviate from our Conditions of Purchase.

1.3 Our Conditions of Purchase shall only apply to companies, legal entities under public law and special funds under public law.

2. Offering; services

2.1 The preparation of offers by the Supplier is free of charge. Any enquiries on our part are subject to change and do not constitute any obligations on our part. The Supplier can accept our order within a period of one week. Receipt of the declaration of acceptance by us shall be decisive for the determining compliance with this period. We are entitled to revoke the order free of charge until it is accepted by the Supplier. The revocation is in time if it is made before receipt of the acceptance. After the fruitless expiry of the above-mentioned period for the submission of the declaration of acceptance, we shall no longer be bound by the order.

2.2 If a work or service is agreed upon, the Supplier undertakes to perform the service in its own company with its own employees. The complete or partial subcontracting of services requires our prior express consent. Any consent does not release the Supplier from its responsibility and liability for the service provided.

3. Force majeure

3.1 Force majeure, war, riots, operational disruptions without fault and other unavoidable events, official measures by authorities for which we are not responsible, strike, lockout, fire damage, natural events, etc. entitle us – without prejudice to our other rights – to withdraw from or terminate the contract, provided that the events are not of insignificant duration and result in a considerable reduction of our requirement.

3.2 In the event of the aforementioned events, we shall be released from the obligation to take delivery in due time for the duration of their occurrence. Negative legal consequences (damages, right of withdrawal, etc.), which are directly derived from the aforementioned events, are excluded.

4. Delivery time / delay in delivery

4.1 The delivery or performance time stated by us in the order is binding. If the time of delivery or performance is not specified in the order and not otherwise agreed, it shall be two weeks from the conclusion of the contract. The Supplier is obliged to inform us immediately in writing or in electronic form if it is unlikely to be able to meet agreed delivery and performance periods – for whatever reasons. Any documents or information required for the execution of the order must be requested by the Supplier in good time.

4.2 The unconditional acceptance of a delayed delivery or service shall not constitute a waiver of any claims for compensation to which we may be entitled due to the delayed delivery or service.

4.3 The Supplier shall only be entitled to make partial deliveries or services or premature delivery or service with our prior written consent.

4.4 If the Supplier does not perform its service or does not perform it within the agreed delivery or service period or if it is in default, our rights – in particular to withdraw from the contract and to claim damages – shall be determined in accordance with the statutory provisions. The regulations in the following paragraph remain unaffected.

4.5 If the Supplier is in default due to a circumstance for which it is responsible, we may demand a contractual penalty of 0.3% of the order value per calendar day, but not more than 5% of the order value in total. We shall be entitled to demand the contractual penalty in addition to performance and as a minimum amount of compensation owed by the Supplier in accordance with the statutory provisions; the assertion of further damages shall remain unaffected, whereby the contractual penalty shall always apply in addition to the compensation. We may claim the contractual penalty until the final invoice, even if we do not expressly reserve the right to do so upon acceptance of the delayed delivery or service.

5. Packaging

The delivered goods must be properly packed and labelled. At our request, the Supplier is obliged to take back the packaging free of charge.

6. Shipping

6.1 Delivery shall be made free to our works at the risk of the Supplier to the delivery address specified by us at normal goods acceptance times. The shipping address given by us as well as the order number and department must be indicated in all letters, delivery notes, consignment notes, accompanying labels, parcel addresses, invoices etc.

6.2 The delivery must be accompanied by a delivery note, packing slip and the legally required documents, such as identification, certificates, etc. On the day of shipping, the Supplier shall send a dispatch note for each shipment. The invoice shall not be construed as a dispatch note.

6.3 In the event of the delivery of chemicals or other dangerous goods, the relevant DIN safety data sheets as well as any safety data sheets and/or information in accordance with the REACH Regulation (Regulation (EC) No. 1907/2006 and Regulation (EU) No. 2017/999) must be enclosed with the order confirmation or, at the latest, with the delivery. The Supplier is responsible for the marketability as well as the completeness and correctness of the labelling of the delivered items.

7. Goods acceptance

When the goods are delivered to our incoming goods department, a delivery note must accompany the shipment. If the goods arrive at our premises in damaged packaging, we are entitled to reject the goods without further examination of their contents. The costs of a possible return shipment shall be charged to the Supplier.

8. Claims for defects

8.1 We are entitled to the statutory claims for defects without restriction. If the delivery or service is defective (cf. clauses 9.1 to 9.4 of the Conditions of Purchase), we shall be entitled to demand from the Supplier, at our discretion, either rectification of the defect ("subsequent improvement") or delivery of a new item ("subsequent delivery", hereinafter jointly referred to as "subsequent performance"). We shall be entitled to remedy the defects ourselves at the Supplier's expense if the Supplier is in default with the rectification of defects. If subsequent performance by the Supplier has failed or is unreasonable for us (e.g. due to particular urgency, endangerment of operational safety or the threat of disproportionate damage), no deadline need be set. We shall inform the Supplier in advance or immediately in the event of self-rectification.

8.2 The Supplier shall bear all costs incurred within the scope of subsequent performance, in particular replacement costs (disassembly, assembly, transport, workshop costs, etc.) or costs incurred in connection with the processing of the delivery item.

8.3 We expressly reserve the right to claim damages, in particular damages in lieu of performance, the right to withdraw from the contract and the right to reimbursement of expenses.

8.4 For the purpose of rectification of defects, the defective goods shall be made available to the Supplier at our discretion at the place where they are located when the defect is discovered or at the place of destination. For the duration of the supplementary performance, the course of the warranty periods shall be suspended.

8.5 The period of limitation for rights arising from defects is 24 months calculated from the transfer of risk. For parts that have been repaired or newly delivered within the scope of the warranty, the aforementioned warranty regulation shall apply, calculated from the time of rectification of the defect.

9. Quality; defects, declarations of conformity, product safety, obligation to inspect

9.1 The Supplier assures and guarantees that the delivery item has the contractually agreed properties, complies with the recognised rules of technology and is not afflicted with other defects in the sense of §§ 434, 435 BGB (German Civil Code). The Supplier further guarantees that the construction and composition of the delivery item has not been changed in comparison with previous similar deliveries recognised as free from defects, unless such changes have been made with our express consent.

9.2 The Supplier assures and warrants that all its deliveries and services demonstrably and verifiably comply at all times with all applicable EU (EC) directives and regulations (e.g. REACH Regulation), harmonised standards and German law (including industrial safety and accident prevention regulations, etc.). This also applies to deliveries and services imported from outside Europe. In all other respects, the Supplier undertakes to execute the delivery in accordance with the conditions of the relevant competent trade association.

9.3 The Supplier shall prepare all technical documentation required by the respective EU (EC) directives applicable to the delivery or service and the German provisions implementing these directives, such as hazard analyses, risk assessments, operating instructions, validation documents, manufacturer/installation/conformity declarations, etc., and shall provide us with these documents in German immediately upon delivery or service. The Supplier shall, if applicable, provide us with all data required for CE certifications still to be carried out and all safety equipment and measures still to be fulfilled for this purpose in writing, correctly and in German with its delivery or service.

9.4 The Supplier's warranty within the meaning of the above paragraphs also extends to any parts and services purchased from subcontractors.

9.5 Acceptance of the delivered goods shall in all cases be subject to the reservation of possible complaints. We shall immediately inspect the delivered goods for any deviations in quality and quantity. Any defects discovered shall be notified within a reasonable period of time. In any event, the complaint is deemed to be in time if it is received by the Supplier within a period of five working days calculated from the receipt of the goods or – in the case of hidden defects – from their discovery. In all other respects, the statutory regulations governing the notification of defects (§ 377 HGB (German Commercial Code)) shall apply.

10. Warranty period

The Supplier guarantees for its deliveries or services for 36 months after transfer of risk, if necessary after complete rectification of any defects subject to complaints, that the delivered goods are free from defects according to clauses 9.1 to 9.4 of these Conditions of Purchase. For parts that have been repaired or newly delivered within the scope of the warranty, the aforementioned warranty regulation shall apply, calculated from the time of rectification of the defect.

11. Liability insurance

11.1 The Supplier shall take out and maintain adequate liability insurance at its own expense for any damage that may be caused by the delivered goods or by itself, its legal representatives, executive employees or other vicarious agents in connection with the execution of the contract.

11.2 The sum insured per personal injury and property damage must be sufficient to cover all typical contractual damage foreseeable as a possible consequence at the time of conclusion of the contract. The liability insurance must be maintained for the duration of the contract, i.e. until the respective expiry of the limitation period for defects. The amount of the sum insured per loss event must be proven to us upon request. The conclusion and proof of liability insurance does not limit the scope of legal liability.

12. Proofs of origin

12.1 Unless expressly confirmed otherwise in the order confirmation, all orders shall in principle only refer to products which are originating products within the meaning of the preferential agreements of the European Community or the European Union. The Supplier shall provide us with the necessary proofs of preference (long-term or individual supplier declaration with originating status, origin declaration on the invoice: UE or UE EUR-MED, movement certificate: EUR.1 or EUR-MED, certificate of origin form A) at the latest upon delivery. It shall also be prepared to submit, at the request of any interested party, evidence of the originating status within the meaning of the preceding paragraph by means of information certificates INF 4 certified by the customs office responsible for the location in which it is established. If general indications of origin, e.g. "European Union", are used in these documents, the national origin (e.g. "Netherlands") must also be indicated.

12.2 If, during the period of validity of a long-term supplier declaration, the Supplier deviates from its declaration with a delivery, it undertakes to notify the changes, in addition to the reference on its invoice, in the form of a written notification to the customs foreign trade department responsible for us (double notification obligation). It should be noted that supplier declarations containing an exclusion clause will not be accepted as they are not covered by the content of Regulation (EC) No. 1207/2001. Exclusion clauses in this context means any addition to the prescribed wording of the supplier declaration which limits the statement of the declaration by reference to subsequent individual documents (delivery notes, invoices, etc.) and any marking which may or may not be included therein.

12.3 The delivery of goods which are not originating goods within the meaning of a preferential agreement of the European Community or the European Union requires our prior written consent.

12.4 In addition to the alternative obligations set out in clauses 12.1 and 12.3 of these Conditions of Purchase, the Supplier shall be obliged to submit certificates (certificate of origin, long-term and individual non-originating supplier declaration, addendum in the declaration of origin on the invoice) for all goods to be supplied, certifying the non-preferential origin of the goods. Whenever general indications of origin such as "European Community" are used in these documents, the national origin (e.g. "Netherlands") must also be indicated.

12.5 All proofs of origin shall be submitted without solicitation, at the latest upon delivery, and at the Supplier's own expense.

12.6 The Supplier undertakes to expressly inform us in writing upon receipt of the order by means of a separate letter as well as in the relevant business documents of any approval requirements under the Foreign Trade and Payments Act (AWG), the War Weapons Control Act (KrWaffKontrG) or the Implementation Act of the Chemical Weapons Convention (CWÜAG). In addition, it must be indicated under the specific list item whether the goods are listed in the EC Dual-Use Regulation with Annexes I to IV (Regulation (EC) No. 428/2009), in the supplementary Delegate Regulation (EU) 2016/1969 of the Commission or in the Export List Part 1, Sections A and C of the Foreign Trade and Payments Regulation (AWV). It must be indicated whether the goods or their components (with indication of the percentage of value of the goods to be delivered) are covered by the US American Commerce Control List (CCL) (with indication of the specific Export Control Classification Number (ECCN)) or are otherwise subject to US Export Administration Regulations (EAR) (classification EAR99). The relevant business documents include in particular purchase contracts, order confirmations, delivery notes, packing lists, pro forma invoices and dispatch notes.

12.7 Insofar as goods are the subject of a transfer of rights and obligations within the meaning of Art. 218 of Regulation (EU) 952/2013 (UZK), the Supplier shall transfer the rights and obligations to us and shall submit the relevant documents in accordance with UZK, such as the approval of the end use (with integrated "TORO approval" if applicable).

13. Invoice; payment; due date

13.1 The condition for payment/remuneration is the existence of a proper and verifiable invoice. The invoice must contain all order data, the order and delivery number and all other legally required information, in particular the VAT identification number. Upon request, the Supplier shall provide us with an invoice in electronic form.

13.2 The remuneration stated in the order is binding. Unless otherwise agreed, the agreed remuneration shall be in euros net including packaging, shipping, any insurance, import duties and other expenses, plus the statutory value added tax, which shall be shown separately in the offer and invoice.

13.3 Unless otherwise agreed, invoices shall be paid within 14 days after delivery and receipt of the invoice with a 2% discount or without deduction after 30 days at our discretion. The payment periods shall be calculated from complete delivery free from defects and receipt of a proper invoice within the meaning of clause 13.1 of these Conditions of Purchase. Payments do not constitute recognition of the delivery as being in accordance with the contract.

13.4 In the event of acceptance of premature deliveries or services, the due date shall be based on the agreed delivery or service date. In the event of defective delivery or service, we shall be entitled to withhold payment proportionate to the value of the goods or service until proper performance, while maintaining our right to discount. If, after conclusion of the contract and before expiry of the warranty period, circumstances become known which are relevant to reduce the creditworthiness of the Supplier, we shall be entitled to retain up to 5% of the order sum to secure our warranty claims. The retained sum is to be paid if the delivered goods are in the contractual condition after expiry of the warranty period.

14. Product liability

14.1 To the extent permitted by law, the Supplier is responsible for the materials and individual parts of the goods it delivers and to this extent also for the end product in accordance with the Product Liability Act.

14.2 If a claim is made against us on the basis of product liability, the Supplier shall indemnify us on first demand against claims for damages or other claims by third parties (including any costs and expenses, such as costs of legal action), provided that the cause of the damage lies within the Supplier's sphere of control and organisation and the Supplier itself is liable in the external relationship.

14.3 We shall inform the Supplier of any claims made by third parties and give it the opportunity to comment on the third party's claim. The Supplier is obliged to support us to the greatest extent possible in our defence and to make the necessary information available to us immediately.

15. Special rules for service providers

15.1 Unless otherwise agreed, the Supplier shall perform the service personally.

15.2 We may request changes to the contractual services at any time. The Supplier may object to the request for modification if the implementation of the request for modification is unreasonable for the Supplier. The Supplier shall submit a new written offer to us for these additional and further services. The additional service may only be provided after a separate individual contract for these services has been concluded. The Supplier may waive the written documentation of the separate individual order if this is not possible or not appropriate and issue a force-account instruction. In this case, the Supplier is obliged to submit a force-account report every working day with a description of the activity and the expenditure incurred and any material used for signing and then to submit the report to our purchasing department at the end of each week.

15.3 Unless otherwise agreed, invoicing shall be based on time spent and material costs reimbursed in accordance with the last written contract. If such a contract does not exist or if the Supplier proves that the usual remuneration differs from this, the usual remuneration shall be deemed agreed. Unless otherwise agreed, the remuneration shall also cover any travel and accommodation costs.

15.4 The Supplier's invoicing of force-account work must be made without delay and may not exceed the expenditure proven according to the force-account reports submitted.

15.5 The Supplier undertakes to provide our purchasing department, without solicitation, with an overview of the costs of its services incurred in the relevant month by no later than the 26th calendar day of each month. The costs are to be allocated to the individual trades, deviations from the original order are to be identified and, if necessary, explained. Services of the Supplier that do not meet these requirements shall not be remunerated. If no agreement is reached, we may terminate the contract for the specific service to be changed extraordinarily if it is unreasonable for us to adhere to the contract without the requested change. In other respects, clause 13 of these Conditions of Purchase shall apply accordingly to the invoice, payment and due date.

16. Third-party property rights, legal conformity, exemption

16.1 The Supplier guarantees that the delivered goods or their use does not infringe any industrial property rights (such as trademark, patent or design rights) or other rights of third parties (e.g. copyrights or personal rights) and that they are also in conformity with the law (e.g. according to the German Unfair Competition Act – UWG, the REACH Regulation – see clause 9.2 of these Conditions of Purchase, etc.).

16.2 If claims are asserted against us by third parties due to the infringement of industrial property rights or lack of legal conformity of the goods within the meaning of the above clause 16.1, the Supplier shall be obliged to indemnify us against all claims of the third party on first demand. The obligation to indemnify includes all costs and payment obligations which we necessarily incur from or in connection with the claim by the third party, including necessary legal costs. The limitation period for the claim for indemnification is 36 months calculated from the transfer of risk. Clause 14.3 of these Conditions of Purchase shall apply accordingly.

17. Documents, secrecy

17.1 Drawings and static calculations and other documents shall be submitted to us free of charge in the required number, if requested by us.

17.2 We reserve the rights to all documents (in particular calculations, technical records, etc.) and samples which are provided to the Supplier irrespective of the actual conclusion of the contract within the scope of the contract negotiations and the conclusion of the contract. They may not be reused, duplicated or made accessible to third parties by the Supplier for purposes other than the execution of the contract with us without our express written consent. Extracts and the production of individual parts for third-party invoices are also not permitted. This also applies to documents which are prepared by the Supplier according to our special specifications.

17.3 At our request, these are to be returned with all copies and/or duplicates. If a contract is not concluded, the Supplier must hand over all documents to us immediately and without solicitation.

17.4 The Supplier shall treat as strictly confidential any enquiry, order, delivery or service as well as any information in connection with the contract negotiations, the conclusion of the contract and its execution which is marked as confidential. In other respects, the parties shall conclude a separate confidentiality agreement which shall apply in addition to these Conditions of Purchase.

18. Retention of ownership

Unless otherwise agreed, the ownership of ordered goods is transferred to us upon delivery to us. Retention of ownership by the Supplier is excluded. This does not apply to any extended reservation of title on the part of the Supplier.

19. Offsetting, right of retention, assignment

19.1 We shall be entitled to the statutory rights of retention and offsetting without restriction.

19.2 The Supplier may not set off claims outside the synallagmatic contract, i.e. outside the reciprocal relationship between performance and consideration. The prohibition of offsetting does not apply if the counterclaims are not disputed by us, have been legally established or are ready for decision. The Supplier cannot assert a right of retention unless one of the aforementioned exceptions applies.

19.3 The assignment of claims against us arising from the order to third parties is only permitted with our express consent.

20. Misappropriation of orders

The use of placed orders for advertising purposes is not permitted. Any use to depict the Supplier's business process in reports and publications is not permitted.

21. Safety regulations

The Supplier shall inform the fitters and other persons involved in the work of the regulations of the leaflet "Regulations for Construction/Installation Work (External Companies)". If necessary, this will be sent to the Supplier together with the order. It must ensure that the regulations of the leaflet "Regulations for Construction/Installation Work (External Companies)" are observed by the fitters and other persons involved in the work.

22. Failure to comply with safety regulations

If we have to provide services which are attributable to the Supplier's failure to comply with the regulations mentioned in clause 21, these will be invoiced or the amount will be deducted from the final invoice.

23. Data protection

We would like to point out that the personal data received with regard to our business relationship or in connection with it, regardless of whether it originates from the Supplier itself or from third parties, shall be processed in accordance with the relevant data protection regulations, and in particular the provisions of the Federal Data Protection Act (BDSG) and the General Data Protection Regulation (GDPR) shall be observed. The Supplier's personal data shall be collected, stored and processed exclusively for the purpose of executing contracts and handling payments within the framework of the business relationship. Further explanations are contained in our data protection declaration, which the Supplier can download from the following website: gk-graphite.com.

24. Applicable law

The law of the Federal Republic of Germany shall apply to the contractual relationship. The application of the Vienna UN Convention on Contracts for the International Sale of Goods (CISG) as well as German private international law is excluded.

25. Place of performance and jurisdiction

The place of performance is the delivery address specified by us. The exclusive place of jurisdiction for all disputes arising from and in connection with the contractual relationship between the Supplier and us is Passau. However, we are also entitled to take legal action against the Supplier at its general place of jurisdiction.

26. Final provisions

26.1 Should individual provisions of the contract with the Supplier, including these Conditions of Purchase, be or become invalid in whole or in part, this shall not affect the validity of the remaining provisions. The parties undertake to replace ineffective or partially ineffective regulations by a regulation that comes as close as possible to the ineffective regulation in economic terms. The same applies if the contract and/or these Conditions of Purchase contain an omission that needs to be filled.

26.2 In cases of doubt, the German version shall prevail where different language versions of the Conditions of Purchase exist.

Graphit Kropfmühl GmbH, 9th April 2020