

General Terms and Conditions of Purchase – Gebrüder Frei GmbH & Co. KG

As of: March 2020

Applicable in business transactions with companies, legal entities under public law and special funds under public law.

1. General provisions

Our Conditions of Purchase apply exclusively; we will only recognize General Terms and Conditions of the Supplier which conflict with, or deviate from, our Conditions of Purchase to the extent that we have provided our express consent thereto in textual form. The acceptance of goods or deliveries from the Supplier (hereinafter referred to as the contractual object) or payment for these does not signify consent.

2. Conclusion of the contract and contractual amendments

2.1. Orders, framework agreements, acceptances, call-off contracts, supply contracts and other legal transactions to be concluded between ourselves and the Supplier as well as all amendments and supplements require the text form.

2.2. Our enquiries of the Supplier are only invitations to the Supplier to issue an offer.

2.3. Quotations are binding and are provided free of charge, unless expressly agreed otherwise.

2.4. The Supplier must confirm our order promptly and in textual form within 5 working days of receipt, at the latest, or we will be entitled to cancel our order.

2.5. Within the scope of what is reasonable for the Supplier, we may request amendments to the contractual object in construction and design. Any effects of such amendments, in particular, in respect of increased or reduced costs and changes to delivery deadlines, are to be regulated appropriately and by mutual agreement. Amendments by the Supplier require prior consent by us in textual form in order to be effective.

2.6. The Supplier undertakes to personally review drawings, calculations, specifications and other instructions from us, within the scope of its general and particular specialist knowledge for errors and inconsistencies and, where appropriate, to notify us without delay and in textual form of any concerns so that these can be clarified.

2.7. The Supplier bears the procurement risk for the goods.

3. Delivery deadlines, transfer of risk and shipping

3.1. Delivery deadlines and periods specified in the order or call-off are binding.

3.2. The delivery must, unless otherwise agreed, be made to us or to a place of delivery specified by us DDP in accordance with Incoterms 2010.

3.3. For compliance with the delivery deadline or delivery period, receipt of the contractual object and the shipping documents by ourselves or by the receiving point is determinative.

3.4. Where agreed deadlines are not upheld, statutory provisions will apply. Insofar as the Supplier experiences difficulties with respect to manufacturing, obtaining the primary materials, compliance with delivery deadlines or there are similar circumstances, which prevent the Supplier from delivering on time or with the level of quality agreed, the Supplier must inform us immediately.

3.5. Unconditional acceptance of a delayed delivery or service does not represent a waiver by us of any entitlement to compensation as a result of the delayed delivery or services, this will apply until complete payment owed by us for the relevant delivery or services.

3.6. Partial deliveries are strictly prohibited, unless we have expressly consented to these or these are reasonable for us.

3.7. Where the Supplier has agreed to carry out installation or assembly and unless otherwise agreed, subject to deviating provisions, the Supplier will bear all necessary ancillary expenses such as, for example, travel expenses, provision of tools.

3.8. In the case of deliveries deviating from the ordered quantities and for deliveries ahead of schedule, we reserve the right to refuse acceptance of the delivery at the expense of the Supplier or to adjust the value of the invoice accordingly.

3.9. The Supplier, unless otherwise agreed, provides standard, appropriate, clean packaging at its own expense and guarantees that the goods are protected from typical transport damages, corrosion, penetration of impurities or moisture by the packaging. The Supplier will be liable for all damages arising from non-compliance with this provision. Packaging is included in the price. If, exceptionally, other arrangements have been made, the packaging shall be calculated at cost price. The Supplier must select the packaging specified by us and ensure that the goods are protected from damage by the packaging. In the event of a return, at least two thirds of the invoiced value shall be credited.

3.10. The Supplier warrants that the goods do not contain any materials, which fall within the scope of the prohibition on hazardous substances in EC Directive 2011/65/EU (RoHS). The Supplier further warrants that materials incorporated in the goods and their use(s) are either already registered or exempt from the registration duty according to (EC) Regulation No. 1907/2006 (REACH Regulation) and that, if required, the certification issued under the REACH regulation is available. The Supplier will also, if necessary, compile the Safety Data Sheet in accordance with Annex II of the REACH Regulation and provide this to us. Where the goods delivered are classified as dangerous goods under international regulations, the Supplier will inform us of this, at the latest upon confirmation of the order.

3.11. The Supplier must provide us with appropriate assistance in obtaining customs and other public benefits and will provide evidence and documentation that we request in this regard, in particular, certificates of origin.

3.12. Hazardous goods according to GGVF and GGVE (ADR, RID) are generally to be cleared through customs freely.

3.13 Export Controls and Customs

The Supplier is obliged to inform us, as early as possible before the delivery date and in writing, of any licensing requirements for its goods according to currently applicable German, European (EU) and US-American export, customs and foreign trade law, as well as according to export, customs and foreign trade law of the country of origin of the goods.

If the Supplier violates its obligations as per Par. 1, it shall bear all expenses and damages, as well as any other disadvantages (e.g. additional charges of foreign import duties, fines) that should arise to us from the violation. This shall not apply if the Supplier is not responsible for the breach of obligations.

4. Force majeure

Force majeure, riots, official interventions or other unavoidable events release us and the Supplier, for the duration of the disruption and in the scope of its effects, from our performance obligations.

5. Pricing and payment terms

5.1. Prices are fixed prices. All additional delivery costs (customs duties, packaging, transportation, insurance) must be indicated separately by the Supplier in its offer and, with the exception of statutory VAT and in the absence of contrary, written agreement, must be borne by the Supplier. Increases in the price of the contractual object, including increased additional delivery costs, require our prior, written consent in order to be effective.

5.2. Insofar as no other agreement has been reached, invoices must be settled either within 10 days less 3% cash discount or within 30 days without a discount as of the payment due date and receipt of the invoice and goods or provision of the services. Payment is made subject to invoice verification.

5.3. We are entitled to the right of set-off, the right of retention and the right to plead non-performance of the agreement within the limits of statutory regulations. We are, in particular, entitled to retain payments due, so long as we are entitled to make claims against the Supplier arising from incomplete or defective services.

6. Quality

6.1. The Supplier guarantees, that its goods and services possess the characteristics, qualities and features specified in the order and correspond to the specifications, drawings, samples and other descriptions provided by us.

6.2. The Supplier is obliged to carry out quality assurance of a suitable nature and scope, corresponding to the current state of the art.

6.3. The Supplier must adhere to all the agreed technical characteristics and also establish and certify a quality management system which is in line with the recognised rules according to DIN EN ISO 9001.

6.4. If initial or selection samples are required, the Supplier may not proceed to series production until our written approval has been provided.

6.5. We expect the Supplier to consistently bring the quality of the products supplied to us in line with the most recent state of the art and to alert us of potential improvements and technical changes. Changes in the contractual object delivered by the Supplier, however, always require our prior written consent.

6.6. The Supplier warrants and guarantees that all legal and environmental requirements of the Federal Republic of Germany are met.

7. Notification of defects

We must notify the Supplier of defects in the contractual object immediately, as soon as these are identified in the normal course of business. In this respect, the Supplier shall waive any plea for late notification of defects. Our obligation to examine for defects and to notify defects is limited to examination of quantitative details on the relevant delivery note and to visually discernible shipping damage upon delivery (visual defects). Any further obligation to examine for defects and to notify defects does not form part of these Conditions and the Supplier expressly waives its right to object to notification of defects carried out improperly according to § 377 German Commercial Code.

Our payment does not represent recognition that the delivery is free from defects.

8. Warranty

8.1. The Supplier is responsible for the defect-free condition of the contractual objects. In particular, it warrants that the contractual objects use the latest technological advances, comply with generally-recognized technical safety regulations issued by competent authorities and professional associations and are in accordance with relevant legislation.

8.2. Statutory provisions in relation to material defects and defects in title will apply, unless otherwise agreed hereinafter.

8.3. As a matter of principle, we have the right to choose the kind of subsequent performance. The Supplier can reject the kind of subsequent performance that we choose if this is only possible at unreasonable costs for the Supplier.

8.4. In the event that the Supplier fails to begin to rectify defects promptly following our request for rectification, we are entitled, in urgent cases, in particular to avert danger or major damage, to carry out rectification work ourselves or to contract third parties to do so.

8.5. In the event of defects in title, the Supplier will indemnify us against any third party claims, unless it is not responsible for the defects in title.

8.6 Claims for defects become statute-barred - except in cases of fraudulent intent - in 3 years, unless the item has been used for a building structure according to its usual purpose and has caused defects in that structure. The limitation period commences upon delivery of the contractual object (transfer of risk).

8.7 For contractual objects, which cannot continue in operation during examination for defects and/or removal of defects, the warranty period already commenced will extend by the period of operational interruption.

8.8 In the event of exchange, or in cases where the rectified contractual object displays the same defect or where a defect occurs as a consequence of rectification, the limitation period will begin to run again.

8.9 Where we incur costs as a result of the defective delivery of the contractual object, in particular, shipping, travel, labour, installation, dismantling or materials costs or where the costs of an incoming goods inspection exceed the customary costs, the Supplier must bear these costs.

8.10 Other claims by us as a result of breach of contract or violation of other obligations remain unaffected.

9. Product liability

9.1. In the event that a claim is made against us on the basis of product liability, the Supplier undertakes to indemnify us against such claims by third parties, if and to the extent that a fault is caused by the contractual object delivered by the Supplier. This will only apply in cases of fault-based liability where the Supplier is at fault.

9.2. In the instances at Article 9.1, the Supplier will cover all costs and expenses, including any costs of taking legal action.

9.3. In all other respects, statutory provisions shall apply.

9.4. Prior to a recall campaign, which results, in whole or in part, from a defect in the contractual object delivered by the Supplier, we will inform the Supplier, providing it with the opportunity to collaborate and discuss with us how to implement the campaign effectively, unless notification of, or collaboration by, the Supplier is impossible on account of particular urgency. Insofar as a recall campaign results from a defect of the contractual object delivered by the Supplier, the Supplier will bear the costs of the recall campaign.

9.5. The Supplier undertakes to take out business and product liability insurance to cover all risks arising in connection with the supply of the contractual objects, which also includes recall measures with global coverage and a coverage amount of at least 5,000,000.00 euros per event of damage and shall maintain this insurance cover for the duration of the supply relationship and for five years following its expiry. Upon request, the Supplier will issue a corresponding certificate of insurance to us.

10. Execution of works

The Supplier's personnel, who execute works in fulfilment of the contract on works premises belonging to us or to third parties specified by us, must observe the provisions of the work regulations set down by us or by the third parties specified by us. Liability for accidents suffered by such personnel on these premises is excluded, insofar as such accidents are not caused by wilful or grossly negligent breach of obligations by our legal representatives or vicarious agents.

11. Provision/retention of title

Materials, parts, containers and specialist packaging provided by us remain our property. These must only be used in accordance with their intended purpose. Processing of materials and assembly of parts is effected on our behalf. It is agreed that we will have co-ownership of the object produced at the ratio of the value of the goods provided to the value of the object manufactured using materials and parts provided by us, which, to this extent, will be kept in safe custody for us by the Supplier.

12. Non-disclosure

12.1. The Contracting Parties undertake to treat as trade secrets all business and technical details not in the public domain, which they become aware of in the course of their commercial relationship.

12.2. Drawings, models, templates, samples and other objects must not be provided nor otherwise made accessible to unauthorized third parties and must only be used for the purposes of the respective contract between the Supplier and ourselves and not for any other purpose of the Supplier. Reproduction of such items is only permissible within the scope of operational requirements and copyright provisions.

12.3. Subcontractors must be bound by the same obligations.

12.4. The Contracting Partners may only advertise their business ties with prior, written permission.

13. Compliance

13.1. The Supplier undertakes to comply with statutory regulations covering employment rights, environmental protection and health and safety and to strive to reduce the adverse effects of its activities on people and the environment. In this respect, the Supplier shall make every feasible effort to establish and develop a management system in accordance with ISO 9001 and a management system in accordance with ISO 14001. Further, the Supplier shall observe the basic principles of the UN Global Compact Initiative. These relate primarily to the protection of international human rights, collective bargaining rights, the elimination of forced labour and child labour, the elimination of discrimination in employment and occupation, responsibility for the environment and anti-corruption.

13.2. If the Supplier acts unlawfully on repeated occasions and/or in spite of a corresponding warning, and fails to provide evidence that the infringement of the law was remedied insofar as possible and that appropriate measures were taken to avoid future infringements of the law, we reserve the right to withdraw from existing contracts or to terminate them without notice.

14. Transfer and use of performance resources

We will obtain title to appliances, models, tools, samples, drawings and other documentation prepared by the Supplier based on our instructions, against payment. From this point, such items will be on loan to the Supplier from us. Operating materials may only be used in the course of performance of the offer or to execute the contractual object or services ordered. Absent prior, written permission from us, these may not be made accessible to third parties nor used for deliveries to third parties. They must be kept in safe custody by the Supplier, for no charge and at its own risk, and returned to us upon our request at any time, without the Supplier being able to rely on a right of retention, unless the Supplier has a contractual right of ownership to the same.

15. Protected rights

15.1. The Supplier warrants that no third-party rights are infringed within the Federal Republic of Germany and the EU in connection to its deliveries.

15.2. The Supplier's indemnity obligation pertains to all expenses inevitably incurred through or in connection with the claims asserted by a third party.

15.3. The Supplier's aforementioned obligation to meet claims does not apply if the Supplier has produced the delivered contractual object based on drawings, models, or other equivalent descriptions or indications provided by us and does not know or is not required to know, in relation to the goods developed by the Supplier itself, that property rights are being thereby violated.

15.4. The limitation for these indemnity claims is 3 years from the time at which we become aware of the claim asserted by a third party.

16. Other provisions

16.1. The place of performance for payments is our business headquarters as recorded in the Commercial Register.

16.2. The laws of the Federal Republic of Germany shall apply, excluding conflict-of-law rules and the United Nations Convention on Contracts for the International Sale of Goods (CISG).

16.3. Insofar as the Supplier is a merchant, a legal entity under public law or special fund under public law, the place of jurisdiction for all disputes arising from the contractual relationship shall be our business headquarters. We are also entitled to initiate claims at the Supplier's registered office.