

GENERAL TERMS AND CONDITIONS OF PURCHASE

- Friedrich Graepel AG
- Graepel Lönigen GmbH & Co. KG
- Graepel Seehausen GmbH & Co. KG
- Oberflächentechnik Lönigen GmbH & Co. KG

Applicable in commercial transactions with companies, legal persons governed by public law and special funds under public law.

1. General information

1.1

Unless expressly agreed otherwise, these General Terms and Conditions of Purchase shall apply exclusively in the version current at the time of ordering for all deliveries and services provided by the Supplier to us.

1.2

In the absence of any agreements to the contrary, these General Terms and Conditions of Purchase shall also apply to any future deliveries and services provided to us, even if no further separate reference has been made to their application in the individual case.

1.3

We shall only recognise any general terms and conditions of the Supplier that conflict with or differ from our Terms and Conditions of Purchase if we have expressly agreed to them in writing. Neither acceptance of the Supplier's goods or services (hereinafter referred to as the Contractual Object) nor payment therefor shall constitute approval, even if the acceptance or payment takes place in the knowledge of conflicting or supplementary contractual conditions of the Supplier. Likewise, any previously agreed contractual terms of the Supplier that contradict these Terms and Conditions of Purchase or supplement them are no longer recognised.

1.4

Our sales and field staff are not authorised to make any commitments that deviate from these provisions.

2. Conclusion and amendment of contracts

2.1 Orders, deals and delivery requests as well as changes and additions to such must be made in writing or in text form.

2.2 A contract or a confirmation in text form shall be decisive with regard to the existence and content of subsequent collateral agreements, amendments and supplements. The possibility of counterproof remains unaffected.

2.3 Quotations are binding and will not be remunerated unless otherwise expressly agreed.

2.4 If the Supplier does not accept the order within two weeks of receipt, we are entitled to cancel the order at no cost.

2.6 Call-offs made in the context of an order and call-off schedule shall become binding unless the Supplier opposes them within two working days from receipt.

3. Delivery

3.1 Agreed deadlines and dates are binding. Compliance with the delivery date or deadline shall be dependent upon our receipt of the goods. Unless 'ex works' delivery been agreed, the Supplier shall prepare the goods for loading and dispatch in a timely manner with due consideration of the time agreed with the forwarding agent.

3.2 If the Supplier has undertaken the assembly or installation, the Supplier shall bear all the necessary expenses such as travel expenses and the provision of tools.

3.3 If the agreed deadlines are not met, then the statutory provisions shall apply. If the Supplier anticipates difficulties with regard to production, the supply of raw materials, compliance with the delivery deadline or similar circumstances which could prevent the Supplier from delivering on time in the agreed quality, the Supplier shall inform our ordering department without delay.

3.4 The unconditional acceptance of a late delivery or service does not constitute a waiver of the compensation claims to which we are entitled due to the late delivery or service;

3.5 Partial deliveries are not permitted as a general rule, unless we have expressly agreed to them or they are reasonable for us.

3.6 Unless proven otherwise, the values in respect to quantities, weights and measures which we determine during the inspection of incoming goods are decisive.

3.7 Where software is part of the scope of product delivery, we shall, upon delivery, be granted a simple right of use, unrestricted in terms of time and place. Our permitted use includes, in particular, the reproduction, loading and running of the software. It also covers sublicensing, leasing or any other form of transfer of the software to our affiliates within the meaning of section 15 of the German Stock Corporation Act (AktG).

3.8 We also have the right to use such software, including its documentation, with the agreed features to the extent necessary for the contractual use of the product.

We may create a reasonable number of back-up copies.

4. Force majeure

4.1 Force majeure, operational disruptions beyond our control, riots, official measures, and any other unavoidable events shall release us for the duration thereof from the obligation of timely acceptance of the delivery of the goods. During such events and for a two-week period thereafter we are entitled – without prejudice to our other rights – to withdraw from the contract in whole or in part, provided that such events are not of inconsiderable duration and our requirements are considerably reduced due to the procurement of the goods from elsewhere as a result thereof.

4.2 The provisions of clause 4.1 shall also apply in the event of industrial disputes.

5. Dispatch note and billing

The details in our purchase orders and delivery call-offs shall apply. A single copy of the invoice shall be sent to our indicated address, stating the invoice number, order number and any other information requisite to allocating the goods; the invoice must not be enclosed with the shipments. The Supplier is responsible for any consequences resulting from non-compliance with these obligations.

6. Pricing and transfer of risk

In the absence of any specific agreement, prices are “Delivered at Place” (DAP according to Incoterms 2020) including packaging. Value-added tax is not included. The Supplier shall bear the risk of damage to or loss of the goods until the goods have been accepted by us or our agent at the place of delivery stipulated in the order.

7. Terms of payment

7.1. In the absence of a separate agreement, the invoice shall be paid either within 14 days with a 3 % discount, or within 30 days net without deduction, from the date when the payment claim becomes due and receipt of both the invoice and the goods or rendering of the service. Payment shall be made subject to invoice verification.

7.2 We shall have the right to set-off and retain payments to the extent permitted by law. In addition, in case of a defective or incomplete delivery or service, we shall be entitled, without prejudice to other rights, to retain payments on accounts receivable arising from the business relationship with the Supplier to a reasonable extent until proper performance is effected.

7.3 The Supplier's accounts receivable from us shall not be assigned to third parties without our prior consent.

8. Notification of defects

8.1. Upon receipt of the goods, we shall only inspect the goods with regard to obvious defects, in particular transit damage, deviations of the delivery in terms of identity and quantity, unless otherwise agreed with you in a quality assurance agreement.

8.2 Hidden defects shall be reported by us in the ordinary course of business within fourteen days of their discovery.

8.3 To this extent the Supplier waives the objection to delayed notification of defects.

9. Claims for defects

9.1 The statutory provisions concerning material defects and defects of title shall apply, unless otherwise stipulated below.

9.2 If the Supplier's delivery or service is based on our plans, drawings or other specific requirements, the conformity of the delivery or service with these specifications is deemed expressly assured unless expressly agreed otherwise.

9.3 We shall be entitled to choose the type of subsequent performance. The Supplier may refuse the type of subsequent performance chosen by us if it is only possible at disproportionate cost.

9.4 The Supplier shall bear the expenses necessary for the purposes of subsequent performance, in particular, transport, travel, labour and material costs. If we have installed the defective item in another item or affixed it to another item in accordance with its nature and intended purpose, the Supplier is also obliged, within the scope of the subsequent performance, to reimburse us for the necessary expenses for removing the defective item and installing or affixing the repaired or non-defective item supplied.

9.5 Should the Supplier not begin to remedy the defects immediately after our request to remedy the defects, we shall be entitled in urgent cases, in particular to avert acute risks or avoid major damage, to do so ourselves or have it done by third parties at the Supplier's expense.

9.6 In the case of defects in title, the Supplier shall also indemnify us against any third-party claims, unless it is not responsible for the defects in title.

9.7 Except in cases of fraudulent intent, claims for defects shall become statute-barred after 3 years, unless the item has been used for a building in accordance with its usual purpose and has caused its defectiveness; in this event, the limitation period is 5 years. The limitation period shall begin upon delivery of the Contractual Object (passage of risk). The course of the limitation period shall be suspended for the period beginning with the dispatch of a notification of defects and ending upon fulfilment of the defect claim.

9.8 If the Supplier fulfils its obligation of subsequent performance by providing a replacement delivery, a new limitation period begins for the replacement goods after they have been delivered, unless the Supplier has expressly and rightfully reserved when making the subsequent performance that the replacement delivery was only made as a goodwill gesture to avoid disputes or in the interests of a continued supply relationship.

9.9 The Supplier shall be liable for any fault on the part of its sub-suppliers to the same extent as for any fault on its own part.

9.10 We shall be fully entitled to the rights set out in section 445a of the German Civil Code (BGB).

10. Product liability and recall

10.1 In the event that claims are made against us on the basis of product liability, the Supplier shall be obliged to indemnify us against such claims if and to the extent that the damage was caused by a defect in the Contractual Object supplied by the Supplier. In cases of fault-based liability, however, this shall only apply if the Supplier is at fault. If the cause of the damage lies within the area of responsibility of the Supplier, it must prove that it is not at fault.

10.2 In the cases set out in clause 10.1, the Supplier shall bear all costs and expenses, including the costs of any legal proceedings.

10.3 In all other respects, the statutory provisions apply.

10.4 Before a recall action which is wholly or partly the result of a defect in the Contractual Object delivered by the Supplier, we shall inform the Supplier, give it the opportunity to cooperate and discuss an efficient execution, unless the information or participation of the Supplier is not possible due to particular urgency. If a recall action is the result of a defect in the Contractual Object delivered by the Supplier, the Supplier shall bear the costs of the recall action.

11. Rights of rescission and termination

11.1 In addition to the statutory rights of rescission we have the right to withdraw from the contract if there is or threatens to be a fundamental deterioration in the financial circumstances of the Supplier and, as a result of this, the performance of a supply obligation to us is in jeopardy.

11.2 We furthermore have the right to withdraw from the contract if:

- the Supplier is insolvent,
- the Supplier suspends its payments,
- the Supplier is facing imminent liquidity in accordance with section 18 of the German Insolvency Act, or over-indebtedness on the part of the Supplier becomes apparent,

- the Supplier files for the opening of insolvency proceedings with respect to its assets or business, or comparable proceedings are filed to settle debts or
- if the opening of insolvency proceedings with respect to the Supplier's assets is refused due to a lack of assets.

11.3 In the event of an ongoing obligation, clauses 11.1 and 11.2 shall apply by analogy, such that the right of rescission shall be substituted by an extraordinary right to terminate the contract without notice.

11.4 If the Supplier has already provided a partial performance, we shall be authorised to withdraw from the whole contract only in the event that the partial performance bears no interest whatsoever for us.

11.5 If we withdraw from the contract or terminate it on the basis of our aforementioned contractual rights of rescission or termination, the Supplier shall compensate us for any damage we have incurred as a result thereof, unless the Supplier is not liable for the creation of our right to withdraw from the contract or to terminate it.

11.6 The provisions of clause 11 shall be without prejudice to legal rights and claims.

12. Realisation of works

Persons who carry out work on the works premises in fulfilment of the contract must comply with the provisions of the relevant internal regulations of our company. Liability for accidents that befall these persons on works premises is excluded, unless they were caused by a wilful or grossly negligent breach of duty on the part of our legal representatives or vicarious agents.

13. Reservation of title, provision of materials, tools

13.1. Insofar as we provide parts to the Supplier, we shall retain ownership of said parts. Any processing or changes made by the Supplier shall be made on our behalf. If our reserved goods are processed with other goods that do not belong to us, we shall acquire joint title to the new item in proportion to the value of our item (purchase price plus VAT) compared with the other processed items at the time of processing.

13.2. If the item we have supplied is inseparably blended with other items that do not belong to us, we shall acquire joint title to the new item in proportion to the value of the reserved goods (purchase price plus VAT) compared with the other blended goods at the time of blending. If the blending takes place in such a way that the Supplier's item is deemed the main item, it is agreed that the Supplier shall transfer joint ownership to us on a pro rata basis; the Supplier shall hold the resultant sole property or joint property in safe custody for us.

13.3. We reserve ownership of tools; the Supplier is obliged to use the tools belonging to us for the production of goods we have ordered only. The Supplier is furthermore obliged to insure the tools belonging to us at its own expense and at the original value against damage by fire, water and theft. At the same time, the Supplier shall herewith already assign to us all compensation claims arising from this insurance; we hereby accept the assignment. The Supplier is obliged to perform any necessary servicing and inspection work on our tools, as well as all repair and maintenance work on the same, in good time and at its own expense. It must immediately notify us of any instances of malfunction; should it culpably fail to do so, any damages claims remain unaffected.

13.4. To the extent that our collateral rights as defined in clause 13.1. and/or clause 13.2 exceed by more than 10 % the purchase price of all our as yet unpaid for, reserved goods, we are, upon request by the Supplier, obliged to release the collateral rights at our discretion.

14. Documents and confidentiality

14.1 All business or technical information (including the characteristics that can be found in the submitted items, documents or software, and other findings or experience) made available by us, unless they are demonstrably in the public domain, shall be kept confidential with respect to third parties and such information shall only made available to those persons in the Supplier's works who must necessarily use it for the purpose of the delivery to us and who are also bound by the obligation of confidentiality; such information shall remain our exclusive property. Such information – with the exception of deliveries for us – may not be reproduced or utilised for business without our prior written consent. At our request, all information originating from us (including any copies or records made, where relevant) and lent items shall be returned to us or destroyed without delay and completely.

We reserve all rights to such information (including copyrights and the right to registration of industrial ownership rights, such as patents, utility models, etc.). If such information was made available to us by third parties, this reservation shall also apply on behalf of such third parties.

14.2 Products which are manufactured pursuant to documents designed by us, such as drawings, models, etc., or pursuant to our confidential data or with our tools or tools produced pursuant to our pattern, may not be used by the Supplier itself or offered or delivered to third parties.

15. Export inspection and customs

15.1 The Supplier is obliged to inform us in its business documents of any licensing obligations or restrictions for the (re)export of its goods in accordance with German, European, US export and customs regulations, as well as the export and customs

regulations of the country of origin of its goods and, for goods subject to licensing, to send the following information in good time before the first delivery to us:

- material number,
- description of goods,
- all applicable export list numbers including the Export Control Classification Number according to U.S. Commerce Control List (ECCN),
- trade origin of goods,
- statistics code (HS code),
- a contact person in its firm for the clarification of any questions from our side.

15.2 The Supplier is obliged to inform us without delay of any changes to the licensing requirements for the goods it has supplied to us due to technical, legal changes or regulatory determinations.

16. Compliance

16.1 The Supplier undertakes, within the framework of its business relationship with us, not to offer or grant, promote or accept any advantages which are in breach of applicable anti-corruption regulations, whether in its business dealings or when dealing with governmental officials.

16.2. The Supplier undertakes, within the framework of its business relationship with us, not to make any agreements with other companies or to agree on concerted practices with other companies aiming to or bringing about the prevention, restriction or distortion of competition under applicable antitrust regulations.

16.3 The Supplier shall give an assurance that it will comply with all applicable laws on the regulation of the general minimum wage and that it will obligate any of its appointed sub-suppliers to the same extent. Upon request, the Supplier shall provide proof that it has complied with the above assurance. If the above assurance is breached, the Supplier shall indemnify us against claims by third parties and is obliged to reimburse fines which are imposed upon us in this connection.

16.4 The Supplier shall comply with the respective statutory regulations on dealing with employees, environmental protection and occupational safety and shall work to reduce adverse effects on people and the environment in its activities. Furthermore, the Supplier shall comply with the principles of the UN Global Compact Initiative, which essentially concern the protection of international human rights, the abolition of forced and child labour, the elimination of discrimination in employment and occupation, and responsibility for the environment (www.unglobalcompact.org).

16.5 In the event of suspicion of a breach of the obligations under clauses 16.1 to 16.4, the Supplier must immediately investigate possible breaches and inform us of the investigative measures taken. If the suspicion proves to be justified, the Supplier

must inform us within a reasonable period of time of the internal measures it has taken to prevent future infringements. If the Supplier fails to comply with these obligations within a reasonable period, we reserve the right to withdraw from contracts with it or to terminate such with immediate effect.

16.6 In the event of serious infringements of the law by the Supplier and in the event of infringements of the provisions in clauses 16.1 to 16.4, we reserve the right to withdraw from existing contracts or to terminate such without notice.

17. Place of performance

The place of performance shall be the place where the goods are to be delivered in accordance with the order or where the service is to be rendered.

18. General provisions

18.1 If any of the provisions of these Terms and Conditions and other concluded agreements are or become invalid, this shall not affect the validity of the other provisions. The Contracting Partners shall be obliged to replace the invalid provision with a provision that comes as close as possible to the invalid provision in terms of its economic success.

18.2 German law shall apply exclusively to the contractual relations to the exclusion of the conflict of laws and the United Nations Treaty on Contracts for the International Sale of Goods (CISG).

18.3 The place of jurisdiction in case of any legal disputes resulting directly or indirectly from the contractual relationships on which these Terms and Conditions of Purchase are based is Oldenburg. We are furthermore entitled to institute legal proceedings against the Supplier, at our discretion, at the court of its registered office or branch office or at the court of the place of performance.

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