

General Terms and Conditions of Business - Purchase (GTC-P)

-Valid: 12.2018 -

1 Scope

- 1.1 The following General Terms and Conditions of Business – Purchase Ewald Dörken GmbH & Co. KG (hereinafter "GTC-P") shall apply to all business transactions between (hereinafter "we", respectively "us") and our suppliers or other contractors (hereinafter collectively "Supplier"), even if the GTC-P are not separately agreed upon in later contracts. They shall only apply to business transactions with entrepreneurs (Sec. 14 German Civil Code - BGB), legal persons under public law and special public funds.
- 1.2 The inclusion of general sales conditions or any other general terms and conditions is hereby expressly excluded. This also applies if the Supplier refers to his own terms and conditions, even when these contain protective and/ or exclusivity clauses and we do not explicitly contradict these, regardless of the time sequence in which the competing conditions are referred to by the contract partners, unless these have been expressly accepted by us in writing.
- 1.3 The acceptance of goods or services does not imply the effectiveness or inclusion of other terms of the Supplier.
- 1.4 The Supplier shall be obliged to give special emphasis to deviations from our request order in his offer.

2 Conclusion of contract

- 2.1 An order shall only be considered as placed when it has been drafted by us in writing (e-mail is sufficient). Orders placed orally or by telephone shall only be binding, if we have confirmed them by subsequent transmission of a written order (e-mail is sufficient).
- 2.2 Should our order not contain an explicit binding period, we will keep our offer, except in case of premature revocation, which is possible at any time and without any formal requirement before acceptance of the offer through the Supplier, to one week after the date of the order. Acceptance will be seen as punctual, dependant on our receipt of the declaration of acceptance.
- 2.3 By confirming the order, the Supplier assures that he has obtained information about the type and scope of the performance – especially by inspecting the existing documents. In the event of obvious errors, spelling and calculation mistakes in the documents provided by us, there shall be no obligation on us. The Supplier shall be obliged to make us aware of such errors so that our order may be corrected. This shall also apply to missing documents.
- 2.4 The acceptance or effectuation of the order shall be deemed as acceptance of these GTC-P.
- 2.5 The order number and supplier number specified in our orders shall be quoted on invoices as well as in all correspondence.
- 2.6 Acceptances of orders shall be confirmed to us by signing the copy of the order or of another equivalent document within two weeks of the order, otherwise we shall be entitled to revocation.
- 2.7 Any deviations from the acceptance of order in quantity and quality against our order or any other changes shall be judged to be a new offer of the Supplier, which only leads to the conclusion of a contract, if we have confirmed this offer in writing.
- 2.8 We shall be at any time entitled to change the time and place of delivery, and the type of packaging in writing (including via e-mail) within a period of at least ten (10) working days before the agreed delivery appointment. We will refund the Supplier with any proven and appropriate additional costs incurred due to the change, as far as the Supplier informs us timely and in writing on the basis of a careful assessment about the expected additional costs before the delivery date, at the latest, however, within five (5) working days after receipt of our notice of change.
Should these amendments cause delays in delivery, which are unavoidable in the Supplier's normal production and business dealings with reasonable efforts, the Supplier shall inform us accordingly forthwith, but not later than within the time limit set out in cypher 2.8 sentence 2. If we accept the change after receipt of this notice, the originally agreed delivery appointment will be postponed accordingly.
- 2.9 We shall be entitled to terminate the contract at any time with a written declaration and indication of an objectively justified reason, especially if we can no longer use the ordered products in our business operations due to circumstances arising after entering the contract. In this case, the Supplier shall be remunerated for the partial services rendered by him until receipt of this notice.

3 Delivery periods

- 3.1 The agreed delivery periods and delivery deadlines shall be binding. They commence as the date of order. The order shall be delivered to the delivery address indicated by us by the agreed delivery date or within the agreed delivery time. If delays are anticipated, the Supplier shall inform us immediately and request a decision regarding whether the contract will be maintained.

- 3.2 In the event of agreed delivery times, the Supplier shall not be entitled to premature service provision, if legitimate operational reasons impede the acceptance of the goods (e.g. insufficient storage capacity). A refusal of acceptance from our part shall not cause in these cases a default of acceptance. A premature delivery shall not imply the bringing forward of the maturity of the purchase price.
- 3.3 Without our prior written consent, the Supplier shall not be entitled to partial deliveries.
- 3.4 In the case of delivery delays, we are entitled to unrestricted legal claims, including the right to rescind the contract and the right to replacement of damages instead of the supply. If the day on which the delivery has to be effected at the latest can be determined based on the contract, the Supplier shall be deemed to be in arrears at the end of that day without requiring a reminder on our part.
- 3.5 If the Supplier is delayed, we are entitled, following a respective warning if necessary, to demand a contractual penalty of 0.5% of the net order value for each week begun, however a maximum of 5% of the net order value and/ or to request delivery and/ or to rescind the contract. Payment of a contractual penalty shall be offset against eventual claims for compensation. Sec. 343 BGB remains reserved.

4 Dispatch and transport

- 4.1 All deliveries shall be effected as free deliveries, including packaging, transport, insurance, customs, taxes and other duties. Where a delivery is not effected as free delivery due to a special agreement, the Supplier shall arrange for transport insurance at his own cost.
- 4.2 The risk shall only be transferred to us after acceptance by our place of receipt.
- 4.3 We shall be entitled to return to the Supplier the packaging material or dispose of it at his own expense and risk; however, we shall be under no obligation to return or dispose of packaging material. The stipulations of the Packaging Ordinance remain unaffected.

5 Rights to order documents/ Ownership protection

- 5.1 We reserve the property and the copyright for all our orders, assignments as well as drawings, models, figures, calculations, descriptions or any other documents (hereinafter "order documents") placed at the disposal of the Supplier. The Supplier shall not make the order documents submitted to him accessible to third parties or use or reproduce them himself or allow them to be used or reproduced by third parties without our express written consent. He shall be obliged at our request and discretion to either return these documents to us completely or to destroy them, if they are no longer needed in the regular course of business or if negotiations do not result in the conclusion of a contract. Any copies the Supplier may have made of the documents are to be destroyed in this case; this excludes any data stored pursuant to the statutory storage duties and the storage of data as part of usual data storage practice.
- 5.2 Tools, devices and models that we put at the disposal of the Supplier or that are manufactured for contractual use and for which the Supplier charges us separately, shall remain or become our property. The Supplier shall mark the parts as our property, store them properly, protect them against any damages, use them only for contract purposes and they shall only be made available to third parties with our written consent. The Supplier shall bear the costs for their maintenance and repair. The Supplier shall inform us immediately about all not insignificant damages to these objects. As not otherwise agreed upon, the Supplier shall be obliged on an unsolicited basis to hand these objects over to us in proper condition without any delay, if they are no longer needed for fulfilment of the contract entered with us.
- 5.3 Title retentions of the Supplier shall apply only insofar as they refer to our payment obligations for the respective products upon which the Supplier reserves the right of ownership. In particular, extended or lengthened reservations of property rights shall not be permitted.

6 Documentation

- 6.1 Delivery notes, invoices and packing slips shall be submitted by the Supplier on the delivery day in duplicate for each consignment. The Supplier shall provide us with monthly statements by the third working day of the month following the accounting month.

7 Prices

- 7.1 The prices for the deliveries and services of the Supplier shall be understood – unless otherwise agreed in writing – to be net plus statutory VAT, but include packaging, freight, postage and the insurance agreed to this effect. If the agreement made does not expressly include the costs of packing and if the payment for the packaging – which is not only provided on a loan basis – is not expressly determined, this must be invoiced at cost prices as proven by the Supplier.
- 7.2 If not otherwise specified in written, the agreed prices shall be fixed prices, unless the Supplier reduces his prices.

8 Invoice, payment and assignment

- 8.1 Payments shall be effected only upon full receipt of the faultless goods and submission of the respective proper invoice. This shall also apply in case of partial deliveries agreed in writing.

- 8.2 Unless otherwise stipulated, payment shall be effected within fourteen (14) days less three percent discount or within thirty (30) days net, respectively as from the date under cypher 8.1. Incorrect or incomplete invoices shall not lead to the beginning of the afore-mentioned discount and payment periods. Where we are entitled to the discount deduction on payments to the Supplier, the basis for the calculation of the discount period – if receipt of delivery and receipt of invoice differ – shall be the chronologically last event occurred, unless another deadline is agreed in writing. The receipt of the transfer order at our bank shall be sufficient for the payment owed to us to be seen as punctual.
- 8.3 Where the payment is made by bill of exchange as agreed, the Supplier shall bear the bill tax and the market-based discount charges.
- 8.4 Payments to the Supplier shall principally not be regarded as approval with regard to the contractual conformity of the service rendered by the Supplier.
- 8.5 Claims the Supplier may have on us may be assigned to third parties only with our written consent, provided these claims are not claims resulting from a reciprocal trade transaction.
- 8.6 In the event of default of payment we shall be liable for default interest in the amount of five percentage points above the base interest rate, according to Sec. 247 BGB.
- 8.7 The offsetting as well the assertion of a right of retention through the Supplier shall only be permitted in case of uncontested or legally valid, assessed claims.

9 Warranty

- 9.1 We shall be entitled to the statutory warranty rights without restrictions. Notwithstanding Sec. 438 para. 1, no. 3 BGB, the general limitation period for claims for defects shall be, however, thirty (30) months as from the date of risk transfer.
- 9.2 If defective articles are delivered, the Supplier shall be given at our discretion a subsequent opportunity to eliminate the defect(s) or to provide a substitute delivery. If the Supplier cannot provide for or fails to carry out the foregoing immediately upon request and within the envisaged deadline, we shall be entitled to return the goods at the risk of the Supplier and to use another supplier. In urgent cases, we shall be entitled, after informing the Supplier and after expiry of an adequate deadline, to undertake the repair on our own or by a third party at the cost of the Supplier.
- 9.3 Acceptance or approval of submitted samples shall not constitute a waiver of warranty rights.
- 9.4 If the delivery is a commercial transaction for both parties, Sec. 377 HGB shall apply with the following peculiarities:
- 9.4.1 The goods shall not be deemed to be delivered until we had the possibility to check the delivery as soon as this is expedient in the ordinary course of business. In case of doubt, this shall be the time the goods arrive on our premises during the usual business hours. The handover of the goods to the carrier shall not be sufficient.
- 9.4.2 The effect of deemed approval shall not occur, if the carrier was not aware of the quality deviation as a result of own or attributable negligence, but had to assume in case of proper behaviour that we will not accept the deviations. In particular, in case of deviations from the minimum technical requirements the assumption of approval shall be excluded.
- 9.4.3 Deviations in quality and quantity shall be deemed to be reprimanded in time, if we report them to the Supplier within ten (10) working days after we have received the goods. In case of latent defects, it shall be sufficient if they are reported within ten (10) working days following the discovery.
- 9.4.4 Defects which could not be ascertained in the course of a simple sight or identity check, shall be considered as hidden defects.
- 9.5 Upon receipt by the Supplier of our written defect notification, the statutory limitation of guarantee claims is inhibited, until the Supplier rejects our claims or declares that the defect has been removed or refuses in written to continue the negotiations on our claims. The guarantee for replaced parts and remedy of defects restarts, unless according to the Supplier's behaviour, we had to assume that he did not feel obligated to take this measurement, but rather completed the replacement or remedies of defects in goodwill, or for similar reasons.

10 Product liability

- 10.1 For damages which are credited to the Supplier, the Supplier shall release us from the resulting liability at first request insofar as we are not co-responsible for the damage. If we are obliged to initiate a product recall affecting third parties due to defects in one of the products delivered by the Supplier, the Supplier shall bear all costs caused by the recall.

11 Property rights

- 11.1 The Supplier shall be liable for ensuring that no patents, other industrial property rights or other rights of third parties are violated by his delivery and the appropriate use and utilization of the delivered items through us. He shall release us and our customers from all such third-party claims and compensate for all damages, costs and expenses incurred hereby. This shall not apply if the Supplier has manufactured the delivered goods on the basis of the order documents provided by us (see cypher 5.1) and he does not know or – in terms of the products he has manufactured – cannot know that third-party property rights are being infringed by the utilization of the documents provided by us.

12 Confidentiality

- 12.1 The Supplier shall be obliged to maintain secrecy in respect of the order documents and of all data and information made available for this purpose and only to make use of such for the purpose of the fulfilment of the order. The Supplier will hand them back to us immediately upon our request after processing enquiries or orders.
- 12.2 The duties of confidentiality pursuant to cypher 12.1 shall not apply to order documents, data and information
- 12.2.1 which verifiably are already publicly available or will become, without this being attributed to any Supplier's unlawful action or action otherwise in contravention of the agreement, publicly available later,
- 12.2.2 which verifiably were already before submission by us in the possession of the Supplier lawfully and without obligation of confidentiality or were already known to the Supplier, or
- 12.2.3 which verifiably third parties disclosed to the Supplier lawfully and without obligation of confidentiality, or
- 12.2.4 which verifiably were developed independently by the Supplier without access to our confidential information, or
- 12.2.5 which verifiably are public knowledge or become public knowledge, without this being attributed to any Supplier's unlawful action or action otherwise in contravention of the agreement, or
- 12.2.6 which we expressly released by written declaration, or
- 12.2.7 which are required to be disclosed due to legal regulations or official, respectively judicial rulings.
- 12.3 The Supplier shall ensure that he obliges his employees in written to observe confidentiality under the terms of this agreement.
- 12.4 Without our prior written approval, the Supplier shall not be entitled to allude (e.g. in advertisement material, brochures, on websites etc.) to the business relationship with us and to exhibit delivery items manufactured for us.
- 12.5 The Supplier shall oblige his subcontractors according to this cypher 12.

13 Final provisions

- 13.1 All legal relationships between us and the Supplier shall be subject to the law of the Federal Republic of Germany to the exclusion of the Convention on the International Purchase of Goods (UN Sales Convention - CISG).
- 13.2 The place of execution for both parties and the exclusive court of jurisdiction for all disputes resulting from this contractual relationship shall be our registered office.