

## **Terms and Conditions of Purchase of Gruber Folien GmbH & Co. KG**

The Terms and Conditions of Purchase below apply toward entrepreneurs (Sec. 14 of the German Civil Code (BGB)), legal persons under public law and special funds under public law.

### **1. General Information: Application of the Terms and Conditions of Purchase, Prohibition of Assignment, Choice of Law, Place of Jurisdiction**

**1.1.** These Terms and Conditions of Purchase apply to all deliveries, services and offers of our contract partner (hereinafter referred to as "Supplier") to us. Insofar as these Terms and Conditions of Purchase only mention suppliers, this term shall also be deemed to include those contract partners who render services to us, e.g. under a contract for work or an agency agreement.

**1.2.** Our Terms and Conditions of Purchase shall apply exclusively, unless otherwise provided for in the contract; we do not accept any terms and conditions of the Supplier which are inconsistent with or deviate from our Terms and Conditions of Purchase, unless we have given our explicit written consent to their applicability. Our Terms and Conditions of Purchase shall also apply if we accept the Supplier's delivery without reservations, in full knowledge that the latter's terms are inconsistent with to or deviate from our Terms and Conditions of Purchase.

**1.3.** Our Terms and Conditions of Purchase shall also apply to all future deliveries and services of the Supplier to us, until our new Terms and Conditions of Purchase enter into force.

**1.4.** All agreements concluded between us and the Supplier for the purpose of performing this contract, including and any all changes, shall be laid down in writing in the contract. A transmission by telecommunication means, in particular by fax or email, shall suffice for compliance with the written form requirement, insofar as the copy of the statement is transmitted. The provision above shall also apply, insofar as a written form is required in these Terms and Conditions of Purchase or if such is considered to be decisive.

**1.5.** The Supplier may not assign any claims they have against us.

**1.6.** These Terms and Conditions of Purchase and all legal relations between us and the Supplier shall be governed by the substantive laws of the Federal Republic of Germany, to the exclusion of the international uniform law, in particular to the exclusive of the Vienna UN Convention on Contracts for the International Sale of Goods dated 11 April 1980 ("CISG").

The language of the contract and of any negotiations shall be German.

**1.7.** The place of fulfilment shall be at the registered office of our company, both for the obligations of the Customer and for our obligations, unless otherwise agreed.

**1.8.** If the Supplier is an entrepreneur as defined in the German Commercial Code, a legal person under public law or a special fund under public law, the exclusive, even international place of jurisdiction for all disputes arising from the contractual relationship shall be Straubing, Germany. This place of jurisdiction shall also apply, if the Supplier has no general place of jurisdiction in Germany, if they relocate their place of residence or usual place of residence from Germany after the conclusion of the contract or if their place of residence or usual place of residence is unknown at the time an action is filed before the court. We shall, however, also be entitled to sue at the place of fulfilment of the delivery obligation.

## **2. Contracts on Deliveries and Services, Written Form, Communication, Shipping Documents, Invoices**

**2.1.** Unless our offers (regularly referred to as "Purchase Order") contain an explicit commitment period, we shall be bound by them for 5 work days from the date of the offer. The receipt of the statement of acceptance (often also referred to as "Order Confirmation") by us, shall be decisive for the timely acceptance. Any delayed acceptance shall be deemed to be a new offer of the Supplier and requires our acceptance.

**2.2.** Any agreements made prior to or upon conclusion of the contract shall only be effective if such were made in writing. A transmission by telecommunication, in particular by fax or email shall suffice for compliance with the written form requirement, insofar as we receive a copy of the signed statement.

**2.3.** We may request changes of the deliverable regarding its construction and design, unless these changes are unreasonable for the Supplier. The effects for the Supplier, in particular regarding extra and lower costs or regarding the date of delivery or service shall duly be taken into account for this purpose.

**2.4.** Deliveries and services shall be made by taking into account our *General Terms and Conditions of Delivery and Packaging* which set forth, in full, the delivery addresses by stating the opening hours, the labels attached to the delivery, including delivery note, the provisions on packaging, provision on palettes, etc. Insofar as individual documents or information as specified in our *General Terms and Conditions of Delivery and Packaging* are missing or if our processing in our normal course of business is delayed thereby, the payment terms will be prolonged by the period of such delay (see Art. 5.3).

**2.5.** Offers and cost estimates of the Supplier shall be made free of charge and will not justify any obligation for us.

## **3. Dates and Periods of Delivery, Delay of Delivery**

**3.1.** Agreed deadlines and periods shall be binding. The time when we receive the goods or when the goods are received by the receiving office specified by us shall be decisive for compliance with the date or period of delivery. If the Supplier finds, after the confirmation of the order, that they are unable to comply with the agreed dates of delivery, they shall immediately inform us, regardless of our rights arising from any delay of delivery. The Supplier undertakes to take, at their own expense, all necessary counter-measures to avoid any delay and to mitigate any consequences of the delay.

**3.2.** Force majeure, labour disputes, business interruptions without own fault, unrest, measures by authorities and other unavoidable events shall entitle us - notwithstanding our other rights - to withdraw from the contract, in full or in part, unless they are of an insignificant duration or lead to a significant reduction of our need. The Supplier undertakes, to the extent reasonable, to immediately provide us with the necessary information and to adapt their obligations to the changed conditions, in good faith. Any and all rights in case of a delay of delivery shall remain reserved.

**3.3.** In case of a delay of delivery, we shall be entitled to request a compensation in the amount of 0.5 % of the net order value, however a maximum of not more than 5 %; we reserve the right to assert any higher damage. We shall be entitled to declare the reservation of compensation no later than upon payment of the invoice which comes after the delayed delivery.

**3.4.** If the day on which the delivery or service must be made at the latest, can be determined based on the contract, the Supplier shall be in default at the end of such day, where no reminder shall be required on our part.

**3.5.** In case of a default of delivery or service, we shall be entitled to the legal claims, without restrictions, including the right of withdrawal from the contract and the claim for damages instead of the service, after the unsuccessful expiry of an adequate grace period.

#### **4. Delivery and Service, Transfer of Risk and Transfer of Ownership**

**4.1.** The delivery or service shall be made “delivered free“ to the place specified in the Purchase Order, unless otherwise provided for in writing. We may specify the type of transport.

**4.2.** We shall be entitled to reject the acceptance of partial deliveries / partial services, unless we have agreed to them or they are reasonable for us.

**4.3.** In case of deliveries with set-up or assembly and in case of services, the risk shall pass upon acceptance, for deliveries without set-up and assembly upon their receipt at the receiving office specified by us. Insofar as an acceptance has been agreed, it shall be decisive for the transfer of the risk. The legal provisions on contracts for work and labour shall also apply otherwise upon acceptance. If we are in default of acceptance, the hand-over or acceptance shall be deemed to be made.

The legal provisions specify when we are deemed to be in default of acceptance. The Supplier must explicitly offer their services to us, even if a certain or determinable calendar time has been agreed for any activity or cooperation on our part (e.g. provision of material). If we fall in default of acceptance, the Supplier may request the reimbursement of any extra expenses they incur (Sec. 304 of the BGB). If the contract relates to any irreplaceable object to be manufactured by the Seller (special individual production), the Supplier shall only be entitled to rights going beyond that, if we have committed to cooperation and are responsible for the non-performance of such cooperation.

**4.4.** Retentions of title of the Supplier shall only apply insofar as they relate to our payment obligation for the relevant deliverables, to which the Supplier retains the ownership title. Any retention of title passed on and the retention of account balances or current account reservations shall be prohibited in case of expanded or prolonged retentions of title (e.g. the so-called manufacturer's clause or the assignment of claims against our customers as security upon re-sale of the deliverable).

**4.5.** The unconditional acceptance of a delayed delivery or service does not contain any waiver of the claims for reimbursement to which we are entitled due to delayed delivery or service.

**4.6.** Values which we determined during our incoming goods inspection shall be decisive for quantities, weights and measures - notwithstanding any other evidence.

**4.7.** We shall not only have the right to use, to the extent permitted by law (sections 69 a et seq. of the *UrhG* [German Copyright Law]), the software which belongs to the scope of delivery of the product, including its documentation, but also the right to use it with the agreed performance characteristics and to the extent necessary for a use of the product in accordance with the contract. We may also prepare a back-up copy without any explicit agreement.

**4.8.** The Supplier shall not be entitled to have services owed by them rendered by third parties (e.g. sub-contractors), unless we have given our prior written consent. We may withhold our consent only for an important reason. The Supplier shall bear the procurement risk for their services, unless it is a special individual production.

**4.9.** Deviations from our Purchase Orders shall only be permitted with our prior written consent.

## **5. Prices and Payment Terms**

**5.1.** The prices shall be understood as “carriage-free, customs-paid“, to the specified receipt offices. Unless otherwise agreed, the costs of delivery and packaging, the costs for disposing of the packaging and the costs of any transport insurance shall be borne by the Supplier. Packaging costs will only be paid separately, if that was agreed in writing. In case of a freight-free return of the packaging, they shall be credited to us for at least two third of the charged value. In case a price ex works or ex Supplier’s sales warehouse was agreed, the shipment shall be made at the lower cost, unless we have prescribed a certain type of transport. Extra costs arising from a non-compliance with the shipment provision shall be borne by the Supplier. Extra costs for any expedited transport which might be necessary to comply with the date of delivery shall be borne by the Supplier.

We do not accept the charging of any deposits for packaging. Any loading equipment used for transport by rail shall be declared specifically in the consignment note, for the purpose of a freight-free sending and returning. All damage arising from an improper packaging shall be borne by the Supplier.

**5.2.** Invoices shall be sent separately in a single copy - by observing Art. 2.5. - after the delivery.

**5.3.** Payments will fall due within 30 days net from the complete delivery and service, including any agreed acceptance and receipt of an invoice in conformity with the tax provisions, unless a longer payment term was agreed. If we make the payment prior to the due date, within 14 calendar days from the complete delivery and service, including any agreed acceptance and receipt of an invoice in conformity with the tax provisions, we shall be entitled to deduct a discount of 3 %.

**5.4.** All our payments are made under the reservation of our rights for any defects. That shall not constitute any acknowledgement of the fulfilment or waiver of warranty or damages. The same shall apply to the receipt of delivery issued by our receiving department.

**5.5.** In case of defective delivery, we shall be entitled to withhold the payment of the invoice, on a pro-rated basis, up to 3 times the value of the amount which is probably necessary for removing the defect, until the proper fulfilment of the delivery. If and insofar as payments have already been made for defective deliveries, we shall be entitled to retain other due payments up to the amount of this payment which has already been made.

**5.6.** Otherwise and regardless of Art. 5.5, we shall be entitled to rights of set-off and retention as well as to the objection of an unfulfilled contract, to the legal extent.

**5.7.** The Supplier may only exercise a right of set off or rights of retention against our claims if their claims are undisputed or were found to be legally effective.

**5.8.** We will not owe any default interest. The Supplier’s claim for payment of default interest shall remain unaffected thereby. The legal provisions apply to the time from which we shall be deemed to be in default. But a reminder by the Supplier shall be necessary in any case. In case of default of payment, we will owe default interest in the amount of 5 percent above the base interest rate per year according to Sec. 247 of the BGB.

## **6. Technical Conditions, Quality, Quality Assurance and Inspection by Us**

**6.1.** Our *Technical Terms and Conditions* shall apply which provide for the maximum allowable deviations regarding weight, quantities, measures, etc.

Unless otherwise agreed separately or unless provided for in the *Technical Terms and Conditions*, the below regulations shall apply as to quality in accordance with Articles 6.2. and 6.3.

**6.2.** The Supplier assures that their deliveries are in compliance with the legal provisions, the generally accepted good engineering practice and the safety provisions and that the agreed technical data have been observed. They assure, in addition, that the goods comply with the provisions on occupational safety and accident prevention. The Supplier assures otherwise that they comply, in particular, with the EN standards, DIN standards, provisions of the VDE [German Electrotechnical Association] and the other generally accepted technical provisions. The Supplier shall perform irreproachable work, ensure an appropriate and proper execution in line with the agreement by using good and impeccable raw materials, provide full warranty for the existence of the assured properties.

Insofar as a place is separately agreed as the place of fulfilment which is not located in the Federal Republic of Germany, the Supplier shall comply, in addition, with the provisions applicable in the relevant foreign country where the place of fulfilment is located.

**6.3.** The Supplier shall be obliged to render the deliveries and services by observing the latest state of the art at the time of transfer of risk (i.e. at the time of the hand-over or acceptance). Any intended technical change or changes affecting our production shall be presented to us, in advance, for approval.

**6.4.** The Supplier will perform and maintain an effective quality assurance and will provide us with evidence thereof upon request. The Supplier will apply a quality management system according to DIN ISO 9000 et seq. or of an equivalent type. We shall be entitled to inspect this quality assurance system or to have it inspected by third parties engaged by us.

**6.5.** Any changes of the deliverable require our prior written release.

**6.6.** We shall have the right to inspect the performance of the order by the Supplier. For this purpose, we shall be entitled to access the Supplier's premises during the usual operating hours after a prior notification in due time. The Supplier and we shall bear the expenses arising from the inspection.

**6.7.** Inspections and the presentation of evidence shall not affect our contractual or legal rights of acceptance and our rights arising from defects.

## **7. Claims for Defects, Claims for Damages and Reimbursement of Expenses**

**7.1.** If the Supplier is an entrepreneur, the legal provisions (sections 377, 381 of the *HGB* [German Commercial Code]) shall apply to the commercial duties of inspection and complaint under the following conditions:

Our inspection obligation shall be limited to defects which are evident during our incoming goods inspection by an external examination, including the delivery documents and during our quality control in the sampling procedure (e.g. transport damage, incorrect delivery or short delivery). Insofar as an acceptance was agreed, no duty of inspection shall apply. Otherwise, it shall be important to what extent an inspection is feasible by taking into account the circumstances of the individual case according to the proper course of business.

Our duty to report defects which we discover at a later time shall remain in full force and effect. Our complaint (notice of defects) shall, in all cases, be deemed to be made immediately and in due time, if the Supplier receives it within five work days after discovery of the defect.

No duty of inspection and complaint applies toward suppliers who are no entrepreneurs.

**7.2.** If the Supplier fails to comply with their duty of supplementary performance - at our choice by elimination of the defect or delivery of a defect-free object - within a reasonable period specified by us, we may eliminate the defect and request the Supplier to reimburse us for any expenses arising therefrom or we may request a relevant advance payment. If the subsequent performance by the Supplier failed or is unreasonable for us (e.g. due to special urgency, danger to the operational safety or the threatening occurrence of a disproportionate damage), no grace period needs to be granted. The Supplier shall be informed immediately, if possible, in advance. Otherwise, we shall be entitled to reduce the remuneration or to withdraw from the contract in accordance with the legal provisions, in case of a material or legal defect.

**7.3.** We shall have a claim for damages or be entitled to reimbursement of expenses, without restriction, according to the legal provisions, both as regards the preconditions and the legal consequences, regardless of whether the claim for reimbursement arises from a defective service or from the violation of other contractual duties or other legal obligations.

**7.4.** The Supplier shall reimburse the costs which we incur by the inspection, sorting, disassembly etc. of defective goods. If we detect defects only during the processing or machining or when we start using the object, we may request the Supplier to reimburse us for any costs which we have incurred fruitlessly until that time. In addition, we are entitled to the rights under Art. 7.2.

**7.5.** The limitation periods for defects are three years from the transfer of risk, unless a longer warranty period is provided for by law or a longer warranty period was agreed. Insofar as an acceptance was agreed, the limitation starts upon acceptance. The 3-year limitation period shall apply, mutatis mutandis, also for claims arising from legal defects, where the legal limitation period for claims for surrender in rem of third parties shall remain unaffected; claims under legal defects will, in no case, become statute barred, for as long as the third party is still able to assert the right against us - in particular due to the lack of limitation.

**7.6.** We shall be entitled to return the goods reported as defective to the address of the Supplier, at the latter's cost and expense and to request, at our choice, the elimination of the defect or the delivery of a defect-free object to the place of fulfilment, at the Supplier's cost and risk.

**7.7.** If a material defect is revealed within six months after the transfer of risk, it is presumed that the defect has already been present upon transfer of the risk, unless this presumption is incompatible with the type of the object or the defect.

**7.8.** If we take back any goods that we have produced and/or sold, due to the defectiveness of the deliverable delivered by the Supplier, or if the purchase price was reduced to our detriment for this reason or if other claims have been asserted against us for this reason, we reserve the right to take recourse against the Supplier, were no period needs to be provided regarding our rights arising from defects which would otherwise be necessary.

**7.9.** The costs incurred by the Supplier for the purpose of inspecting and repairing (including any expansion and installation costs) shall be borne by the latter, even if it is found that no defect actually existed. Our liability for damages in case of unjustified requests for the elimination of defects shall remain unaffected; we shall, insofar, only be liable if we have recognised or failed to recognise by gross negligence that no defect existed.

**7.10.** Deviating from Sec. 442 (1) clause 2 of the BGB, we shall be entitled to unlimited claims for defects even if we failed to recognise the defect upon conclusion of the contract due to gross negligence.

## **8. Secrecy, Construction Protection and Industrial Property Rights**

**8.1.** The Supplier undertakes to keep in confidence, in particular, not to disclose to any third parties and not to use for any other purpose than the performance of the contract and to only provide to those persons and employees who need to know them for the purpose of fulfilling the contract, all business or technical documents, information and data which have been made available by us in the course or on the occasion of the contractual cooperation. That shall not apply insofar as such information is in the public domain. The Supplier must not use for themselves nor disclose to any third parties any details about our business operation made known to them, neither during the time of the contractual relations nor afterwards. We reserve all rights to such information (including copyrights, the right to apply for industrial property rights such as patents, utility models, semi-conductor protection, etc.). Products which were produced according to our documents, must not be offered, delivered or otherwise made known without our written consent, directly or indirectly, in connection with other products. This duty of secrecy also covers our customer connections. The Supplier is, insofar, not entitled to contact our customers directly.

**8.2.** Samples, drawings, templates, cost estimates, standards sheets, print templates, gauges, models, profiles, tools, press dies, or the like (hereinafter referred to as know-how) shall remain our property and shall be kept in secret according to the provisions in the above Art. 8.1. Any know-how provided must be stored and maintained by the Supplier, free of charge. Know-how of the type mentioned above shall be returned to us after the performance of the purchase order, free of charge and without the need for a request.

Tools, fittings and the like which are produced at our expense, in full or in part, will be transferred to our ownership upon production. They will be stored and maintained carefully by the Supplier, free of charge. The Supplier shall, insofar, not be entitled to any right of retention. The gauges provided by us are only master gauges; work gauges shall be prepared by the Supplier.

The above Art. 8.1 shall otherwise apply with regard to the confidentiality and the reservation of any and all rights.

**8.3.** Any abuse of the above Articles 8.1. and 8.2. will result in an obligation to pay damages and shall entitle us to withdraw from the contract, in full or in part, without any compensation.

**8.4.** The Supplier shall accept the full and independent warranty that no property rights of third parties in the domestic and foreign country will be violated by the delivery and use of the ordered objects, and shall release us of all claims which are asserted against us due to a violation of property rights. In case of any violation of property rights of third parties, we shall be entitled not only to claims damages against the Supplier, but also to all legal and contractual claims from material and legal defects; that shall also apply to parts that the Supplier has procured from third parties.

**8.5.** If third party property rights are used based on license agreements concluded by the Supplier the scope of application of which is restricted to a certain territory, the Supplier shall ensure that the use is allowed in all countries in which the relevant property rights apply.

**8.6.** Insofar as the Supplier has property rights whose object is the application of the products produced and delivered by them for a special use, they will grant us an irrevocable, world-wide, transferable right of co-use, free of charge, to their property rights, to the extent applicable to the delivered goods.

**8.7.** Sub-suppliers or sub-contractors of the Supplier shall be committed by the Supplier to the same extent as set forth in the above Articles 8.1. to 8.6.

## **9. Provisions**

**9.1.** Any materials, parts, containers and special packaging provided by us shall remain our property and must only be used according to the intended purpose. Any processing or transformation by the Supplier will be made for us. If any objects provided by us are processed with other objects not owned by us, we shall acquire the co-ownership in the new objects in proportion of the invoice value of the objects provided by us to the invoice value of the other processed objects at the time of processing; the Supplier will store the sole ownership or co-ownership for us with the care of a prudent businessman.

**9.2.** If the objects provided by us are indivisibly mixed or blended with other objects not owned by us, we acquire the co-ownership in the new object in proportion of the invoice value of the object provided by us to the invoice value of the other mixed objects at the time of mixing or blending. If the mixing or blending is done in a manner that the object of the Supplier is to be regarded as the main object, it shall be deemed to be agreed that the Supplier will transfer the co-ownership on a pro-rated basis; the Supplier will store the new object, the sole ownership or the co-ownership for us with the care of a prudent businessman.

## **10. Replacement Parts**

**10.1.** The Supplier undertakes to perform purchase orders for replacement parts for delivered products for the term of no less than seven years after the last delivery.

**10.2.** If the Supplier intends to cease the production of replacement parts for the products delivered to us, they will immediately notify us thereof after the decision on cessation. The decision must be made no later than 12 months before the cessation of the production - notwithstanding the above Art. 10.1.

## **11. Product Liability, Re-Call and Business Liability and Product Liability Insurance**

**11.1.** In the event that claims are asserted against us based on product liability, the Supplier shall be obliged to release us of such claims, insofar and to the extent that the damage was caused by a defect of the deliverable supplied by the Supplier. That shall, however, apply in case of a fault-based liability only, if the Supplier is culpable. If the cause of the damages falls within the scope of responsibility of the Supplier, they shall bear the burden of proof.

**11.2.** In the scope of their indemnity obligation as defined in Art. 11.1., the Supplier shall reimburse expenses in accordance with Articles 683, 670 of the BGB which arise out of or in connection with claims asserted by third parties, including re-call actions performed by us or other preventive measures taken to avoid damage. We will inform the Supplier about the contents and scope of such re-call measures or other preventive measures - insofar as possible and reasonable - and give them the option to make comments. Any legal claims going beyond that shall remain unaffected thereby.

**11.3.** The Supplier shall take out and maintain a business liability insurance and a product liability insurance with a flat-rate sum insured of no less than € 2,000,000.00 per personal injury/property damage. They shall be obliged, at any time, to provide us with evidence thereof by presenting suitable documents, at request.