

GENERAL TERMS AND CONDITIONS

General conditions of sale, delivery and service of the GPE Group

§ 1 Scope of application

1.1

The following conditions apply to all deliveries and services performed by companies of the GPE Group (hereinafter referred to as GPE / vendor) concluded between the vendor and the contractual partner (hereinafter referred to as buyer / purchaser). They apply particularly to all future transactions between the contractual partners from ongoing business relations, even if reference is not expressly made to them.

The following general conditions of contract apply exclusively. The mere acceptance without reservation of goods / services by the vendor does not constitute acceptance of the conditions of the buyer.

1.2

Conditions of the purchaser contrary to or deviating from the conditions of sale of the vendor do not apply unless the vendor provides express written approval of their applicability. The conditions of sale, delivery and service of the vendor also apply if the vendor performs the delivery to the purchaser without reservation in knowledge of conditions of the purchaser contrary to or deviating from its conditions of sale. The conditions of delivery of the vendor are considered acknowledged upon acceptance without reservation of our goods at the latest. Confirmations to the contrary of the purchaser with conditions deviating herefrom are objected to.

1.3

All agreements and declarations reached and made between the vendor and the purchaser in connection with contract conclusions are to take place in written form and are set out in contracts, these conditions and the order confirmation of the vendor.

1.4

The issue of information, proposals and advice as part of business operations takes place under exclusion of all liability, as long as these services are provided without additional remuneration and the vendor is not guilty of intent or gross negligence.

§ 2 Quotation / contract conclusion

2.1

All price quotations of the vendor are subject to alteration and non-binding, unless the vendor designates these as binding expressly and in written form. Quotations of the vendor maintain their validity for the duration of 30 days from shipping and transfer to the buyer. Documents, drawings, performance specifications and samples transmitted with the quotation are considered non-binding demonstration pieces and product descriptions and are part of the agreed properties and condition only if their binding nature has been pledged in writing upon submission of the quotation. The purchaser must examine statements and drawings of the vendor for recognisable contradictions or discrepancies.

2.2

A contractual relationship comes into being only upon receipt of a written order confirmation of the vendor. The same applies to all subsequent changes to the order and pledges, warranties and for all side agreements of the parties and their proxies. In the event that there is no written order confirmation, the order is considered accepted upon handover to the purchaser or freight carrier at the latest. The purchaser has sole responsibility for the contractual use planned by it of the purchase objects ordered.

2.3

The vendor unrestrictedly reserves exploitation rights under property law and copyright law to quotations, drawings and other documents; they may be made accessible to third parties only after prior approval by the vendor. Any appendices such as drawings, illustrations or information concerning weight, dimensions, performance or requirements or other design-related information transmitted on submission of the quotation are to be returned without delay upon request by the vendor if the order is not issued. This applies correspondingly to documents of the purchaser. However, the vendor has the right to make such documents provided by the customer available to third parties to which it permissibly transfers deliveries or (partial) services.

§ 3 Prices

3.1

All prices are indicated in EUR. Statutory value added tax and any shipping, packaging and transportation costs are not included in the prices indicated. The prices indicated in the order confirmation are binding for the order in question. Unless the order confirmation provides otherwise, the prices apply ex works. Special services or change requests are charged to the customer separately.

3.2

The vendor reserves the right to alter prices adequately if cost increases or cost reductions occur after conclusion of the contract, especially due to tariff agreements or changes to material prices. These are demonstrated to the purchaser on request. The same applies to the case of a non-insignificant delay to delivery for which the purchaser is responsible.

3.3

Additional costs incurred to the vendor due to subsequent changes to the order are charged to the purchaser.

Sketches, drafts, samples and similar preparatory work for orders prompted by the purchaser are charged for, even if the order is not issued.

§ 4 Payment / default

4.1

Unless an alternative agreement was reached, the purchase price is to be paid net (without deduction) within 30 days as of the date of invoice. A discount of 2% of the invoice amount is granted only in the event of full payment within 14 days as of the date of invoice. A discount drawn unjustifiably will be demanded back.

4.2

After 30 days have expired, the purchaser defaults without a warning.

4.3

Bills of exchange and cheques are accepted only on account of performance; costs and fees are charged to the customer's account.

4.4

Should the purchaser enter into default of payment, the vendor has the right to demand default interest of the statutory eight percentage points above the respective basic interest rate. The proof of higher damage caused by default and the assertion of the same remain unaffected hereby.

4.5

Should a significant deterioration of the pecuniary circumstances of the purchaser occur after conclusion of the contract or if the vendor becomes aware of a deterioration of the pecuniary circumstances that occurred previously only after conclusion of the contract, the vendor has the right to demand either advance payment or a security payment, according to its own choice. Should the purchaser fail to comply with this demand within a reasonable period of time, the vendor has the right to withdraw from the contract.

4.6

Payments by GPE do not signify any acknowledgement of prices, conditions or conformity with the contract of the goods and services delivered to or performed for GPE.

§ 5 Compensation / rights of retention

5.1

The buyer has the right to compensation with its own claims only if its counter-claims are legally established, undisputed or acknowledged in writing by GPE.

5.2

The buyer has the right to exercise a right of retention only if its counter-claim is based on the same contractual relationship.

§ 6 Delivery / acceptance

6.1

Statements about the delivery term are non-binding, unless the delivery deadline was pledged in binding fashion on an exceptional basis. Only the written order confirmation is authoritative for the content and scope of the good or service. However, the delivery period does not begin before the purchaser has provided the required documents, authorisations and approvals, nor before receipt of an agreed advance payment. An originally agreed delivery period extends in reasonable fashion if alterations are made to the delivery object at the request of the purchaser after acceptance of the order.

6.2

Disruptions in operation and force majeure events, such as legal industrial action in companies of the GPE Group or supplying companies on which the vendor is dependent to obtain materials, as well as militant conflicts, etc., give the vendor the right to postpone the fulfilment of the contract. In these cases, damages and a cancellation of the contractual relationship based thereon are excluded. The principles concerning the doctrine of frustration remain unaffected.

6.3

Deliveries take place ex works (EXW-Incoterms 2010, 7th revision). The delivery period has been complied with if readiness to ship the goods and products was shown to the buyer in a deadline-compliant fashion. At this time, the acceptance duty of the buyer commences. The vendor can also perform and invoice appropriate and reasonable partial deliveries before the agreed delivery deadline, unless the buyer brings a justified interest in a complete delivery to bear. Should the purchaser obligated to collect the good – or the purchaser of call orders – fail to accept the good even though the delivery period has expired and it has been informed that the good has been made available, the vendor has the right to warehouse the good at the cost and risk of the purchaser. Should the delay in acceptance exceed two weeks, the vendor has the right to withdraw from the contract and demand damages. The right of withdrawal also applies to the case of non-acceptance of the purchase object due to reasons for which the purchaser is not responsible. In this case, the purchaser has no claim to damages.

6.4

Should the vendor default with the fulfilment of its delivery obligations, a reasonable grace period is initially to be granted. Only after the grace period expires without result can the purchaser withdraw from the contract. Compensation for the damage caused by default can be demanded only up to a maximum of the amount of the order value (goods on own account minus advance payment and material). In these cases, the claim to delivery is excluded.

§ 7 Retention of title

7.1

The vendor reserves the title to all goods delivered by it (reserved goods) until the fulfilment of all receivables existing or still emerging from the business relationship with the buyer. In case of allocation to a current invoice the reservation of title shall apply to the respective balance. The buyer may neither pawn the delivery object nor assign it as a security before the transfer of title to it.

7.2

The buyer has the right to continue to sell the delivery object in the regular course of business if it, for its part, delivers under retention of title. An example of when continued sale does not take place in the regular course of business is if the buyer has agreed an effective prohibition of assignment with its sub-purchaser; however, allocation to a current invoice is permitted. Sale abroad is permitted only with the prior written approval of the vendor.

7.3

In the event of resale, the buyer surrenders even at this stage all receivables of the amount of the final invoice amount (including value added tax) to the vendor that accrue to it from the resale against its sub-purchasers or third parties, independently of whether the delivery object has been resold without or after processing.

7.4

The buyer is also authorised to recover these receivables after they have been surrendered. The vendor's authority to recover the receivables itself remains unaffected hereby. However, it undertakes not to recover the receivables as long as the buyer fulfils its payment obligations towards it in an orderly fashion and does not default. At the request of the vendor, the purchaser shall reveal the surrender, provide the vendor with all necessary information and supply the pertinent documents on the first request.

7.5

The buyer bears liability for the reserved goods and is obliged to store them carefully and to insure them sufficiently against loss (fire, water and theft, etc.) at its own cost. The buyer hereby surrenders the claims against insurance for the case of damages to the vendor. The latter accepts the surrender.

7.6

The vendor undertakes to approve collateral due to it according to its choice as soon as they exceed the receivables to be secured by more than 25%.

§ 8 Liability / warranty

8.1

The vendor is liable for defects only as follows:

The purchaser is to inspect the quantity, properties and condition and pledged properties of the received good immediately after its receipt. It is to notify of obvious defects by means of written notification within one week and is to provide proof of claimed defects by means of suitable evidence at the request of the vendor. Should the vendor contest the defectiveness of the good, the purchaser is obliged to provide proof that the defect was already present at the passing of risk.

In the event of a complaint, the purchaser must inform the vendor immediately about the storage, pre-treatment, processing, post-treatment, transportation and use of the delivered good.

The purchaser must inspect the pre-certificate and intermediate certificate sent for checking at all events.

The risk of any errors is transferred to the purchaser with the production approval, unless the errors are such that arose or were detected only in the production process following the production approval. The same applies to all other declarations of approval of the purchaser for further production.

8.2

The vendor is liable for deviations in the properties and condition of the material used only up to the level of its own claim against the respective suppliers. In such a case, the vendor is exempt from liability if it transfers its claims against the suppliers to the purchaser. Only the buyer is entitled to warranty claims against the vendor; these cannot be surrendered.

8.3

The rights of the buyer in the event of defects of the purchased item prescribe in one year from the delivery of the purchased item.

8.4

No liability is assumed for damages that have arisen for the following reasons:

Unsuitable or improper use, erroneous assembly or commissioning by the purchaser or third party, natural wear and tear, erroneous or negligible treatment, unsuitable equipment, replacement materials, chemical, electrochemical or electrical influences, unless they are attributable to the fault of the vendor.

8.5

The vendor guarantees that its products are in line with the ruling product law provisions in Germany.

§ 9 Protection rights / secrecy

9.1

Templates, drawings, raw materials, print substrates, tools and other objects suitable for reuse as well as semi-finished and finished products are stored beyond the delivery deadline only after prior agreement and against special remuneration. The vendor is liable only for intent and gross negligence.

9.2

Equipment, tools and other templates for the implementation of the order manufactured by the vendor remain its property, even if proportionate costs were invoiced.

9.3

The purchaser has sole responsibility for ensuring that no third party rights, especially copyrights, patents or utility models, are violated through the performance of its order. The purchaser must exempt GPE from all third-party claims due to such legal infringements.

9.4

The purchaser is obliged to make all information expressly designated as confidential by the vendor or whose need for secrecy results from the circumstances accessible to third parties only with the vendor's express prior written agreement.

The purchaser will limit access to the confidential information exclusively to those of its managing directors, employees or consultants who need to know it for the purposes of this agreement and will oblige them to observe corresponding confidentiality.

§ 10 Place of fulfilment / Place of jurisdiction

10.1

Unless something to the contrary results from the order confirmation, the respective production site of the vendor is the place of fulfilment (cf. No. 6.3).

The place of fulfilment for payments is the location of the vendor's usual business activity.

10.2

The laws of the Federal Republic of Germany apply.

As far as legally permitted, the validity and application of the uniform CISG is excluded. This also applies to any other interstate law.

10.3

The place of jurisdiction for all claims and lawsuits – including bill of exchange processes and trials by the record – that emerge from the contractual relationship is the vendor's place of business. However, the vendor has the right to institute proceedings against the purchaser at every other general place of jurisdiction.

10.4

The buyer may transfer the rights and obligations resulting from the contract to third parties only with the prior written agreement of the vendor.

§ 11 Closing provisions

11.1

All agreements that were reached between the purchaser and the vendor for the purpose of fulfilling this contract are set down conclusively and in writing in this contract.

11.2

The effectiveness of the other provisions is not affected by any ineffectiveness of one or several provisions of these general conditions of sale, delivery and service. The contractual partners are obliged to replace the ineffective provision with a permissible provision that comes as close as possible to the economic intent and purpose of the ineffective provision. The corresponding applies to any gaps.

11.3

Personal data of the purchaser is processed and saved electronically exclusively for the purposes of fulfilling the contract and serving customers. The data is not passed on to third parties for a purpose above and beyond this purpose. With the issue of an order, the purchaser agrees at the same time to the data being saved electronically.

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