

**Tecalan GmbH**

## **General Terms and Conditions of Purchase (GPC)**

Status: 01.11.2021

### **§ 1 Scope, form**

(1) These Terms and Conditions of Purchase (GPC) shall apply to all business relationships with our suppliers if the supplier is an entrepreneur (§ 14 of the German Civil Code (BGB)), a legal entity under public law or a special fund under public law.

(2) These GPC shall apply in particular to contracts for the purchase and/or delivery of movable goods ("Goods"), irrespective of whether the Supplier manufactures the Goods itself or purchases them from suppliers (§§ 433, 650 of the German Civil Code (BGB)). Unless otherwise agreed, these GPC shall apply in the version last notified to the Supplier in text form at the time of the order or, in any case, in the version last notified to the Supplier in text form, as a framework agreement also for similar future contracts without our having to refer to them again in each individual case.

(3) These GPC shall apply exclusively. Deviating, conflicting or supplementary General Terms and Conditions of Sale of the Supplier shall only become part of the contract if and to the extent that we have expressly agreed to their application in writing. This shall apply in any case, for example, even if we accept the supplier's deliveries without reservation in the knowledge of the Supplier's general terms and conditions.

(4) Individual agreements made with the Supplier in individual cases (including collateral agreements, supplements and amendments) shall in any case take precedence over these GPC. Subject to proof to the contrary, a written contract or our written confirmation shall be authoritative for the content of such agreements.

(5) Legally relevant declarations and notifications of the Supplier with regard to the contract (e.g., setting of a deadline, reminder, withdrawal) shall be made in writing, i.e., in written or text form (e.g., letter, e-mail, fax). Legal formal requirements and further proof, in particular in the case of doubts about the legitimacy of the person making the declaration, shall remain unaffected.

(6) References to the applicability of statutory provisions shall only be of a clarifying nature. Therefore, even without such clarification, the statutory provisions shall apply unless they are directly amended or expressly excluded in these GPC.

### **§ 2 Contract**

(1) Our order shall be deemed binding at the earliest upon written submission or confirmation. The supplier shall point out obvious errors (e.g., spelling and calculation errors) and incompleteness of the order including the order documents to us for the purpose of correction or completion before acceptance; otherwise, the contract shall be deemed not concluded.

(2) The Supplier shall confirm our order in writing within a period of two weeks or, in particular, execute it without reservation by dispatching the goods (acceptance). A delayed acceptance shall be deemed to be a new offer and shall require acceptance by us.

### **§ 3 Prices and terms of payment**

(1) The price stated in the order is binding. All prices shall be inclusive of statutory value-added tax if this is not shown separately.

(2) Unless otherwise agreed in individual cases, the price shall include all services and ancillary services of the supplier (e.g., assembly, installation) as well as all ancillary costs (e.g., packaging, transport costs including any transport and liability insurance).

(3) The agreed price shall be due for payment within 30 calendar days of complete delivery and performance (including any agreed acceptance) and receipt of a proper invoice. If we make payment within 14 calendar days, the Supplier shall grant us a 3% discount on the net amount of the invoice. In the case of bank transfer, payment shall be deemed to have been made in due time upon receipt of our transfer order by our bank; we shall not be responsible for any delays caused by the banks involved in the payment process.

(4) We do not owe any interest on arrears. Default in payment shall be governed by the statutory provisions.

(5) We shall be entitled to rights of set-off and retention as well as the defense of non-performance of the contract to the extent provided by law. In particular, we shall be entitled to withhold payments due as long as we are still entitled to claims against the Supplier arising from incomplete or defective performance.

(6) The Supplier shall have a right of set-off or retention only in respect of counterclaims which have been finally adjudicated or are undisputed.

### **§ 4 Delivery time and delay in delivery**

(1) The delivery time specified by us in the order is binding. If the delivery time is not specified in the order and has not been agreed otherwise, it shall be two weeks from the conclusion of the contract. The supplier shall be obliged to inform us immediately in writing if it is likely that it will not be able to comply with agreed delivery times - for whatever reason.

(2) If the Supplier is in default, we may - in addition to further statutory claims - demand lump-sum compensation for damage caused us by default in the amount of 1% of the net price per completed calendar week, but in total not more than 5% of the net price of the goods delivered late. We reserve the right to prove that higher damages have been incurred. The supplier reserves the right to prove that no damage at all or only a significantly lower damage has been incurred.

#### **§ 5 Performance, Delivery, Passing of Risk, Default of Acceptance**

(1) The Supplier shall not be entitled to have the performance it owes fulfilled by third parties (e.g., subcontractors) without our prior written consent. The Supplier shall bear the procurement risk for its services unless otherwise agreed in individual cases (e.g., limitation to stock).

(2) Delivery shall be made "free domicile" within Germany to the place specified in the order. If the place of destination is not specified and nothing else has been agreed, the delivery shall be made to our place of business in Hungen, Germany. The respective place of destination shall also be the place of performance for the delivery and any subsequent performance (obligation to deliver).

(3) The delivery shall be accompanied by a delivery bill stating the date (issue and dispatch), the contents of the delivery (article number and quantity) and our order identification (date and number). If the delivery bill is missing or incomplete, we shall not be responsible for any delays in processing and payment resulting therefrom. A corresponding dispatch bill with the same content must be sent to us separately from the delivery bill.

(4) The risk of accidental loss and accidental deterioration of the item shall pass to us upon handover at the place of performance. If acceptance has been agreed, this shall be decisive for the transfer of risk.

(5) The statutory provisions shall apply to the occurrence of our default in acceptance. However, the supplier must expressly offer us his performance even if a specific or determinable calendar time has been agreed for an action or cooperation on our part (e.g., provision of material). If we are in default of acceptance, the Supplier may demand compensation for its additional expenses in accordance with the statutory provisions (§ 304 of the German Civil Code (BGB)). If the contract relates to a non-representable item to be manufactured by the Supplier (individual production), the Supplier shall only be entitled to further rights if we have undertaken to cooperate and are responsible for the failure to cooperate.

#### **§ 6 Secrecy and Retention of Title**

(1) We reserve the property rights and copyrights to illustrations, plans, drawings, calculations, execution instructions, product descriptions and other documents. Such documents shall be used exclusively for the contractual performance and shall be returned to us after completion of the

contract. The documents must be kept secret from third parties, even after termination of the contract. The obligation to maintain secrecy shall only expire if and to the extent that the knowledge contained in the documents provided has become generally known.

(2) The above provision shall apply mutatis mutandis to substances and materials (e.g., software, finished and semi-finished products) as well as to tools, templates, samples and other items which we provide to the Supplier for production. Such items - as long as they are not processed - shall be stored separately at the Supplier's expense and insured to a reasonable extent against destruction and loss.

(3) Any processing, mixing or combination (further processing) of provided items by the Supplier shall be carried out on our behalf. The same shall apply in the event of further processing of the supplied goods by us, so that we shall be deemed to be the manufacturer and shall acquire ownership of the product at the latest upon further processing in accordance with the statutory provisions.

(4) The transfer of ownership of the goods to us shall be unconditional and without regard to tendered payment. If, however, in individual cases we accept an offer of the Supplier for transfer of ownership conditional on payment of the purchase price, the Supplier's retention of title shall expire at the latest upon payment of the purchase price for the goods delivered. We shall remain authorized to resell the goods in the ordinary course of business even prior to payment of the purchase price with advance assignment of the claim arising therefrom (alternatively, the simple reservation of title extended to the resale shall apply). This excludes all other forms of retention of title, in particular the extended retention of title, the passed-on retention of title and the retention of title extended to further processing.

## **§ 7 Defective Delivery**

(1) The statutory provisions shall apply to our rights in the event of material defects and defects of title of the goods (including wrong delivery and short delivery as well as improper assembly, and including defective assembly, operating or instruction manuals) and in the event of other breaches of duty by the supplier, unless otherwise provided below.

(2) In accordance with the statutory provisions, the Supplier shall be liable in particular for ensuring that the goods have the agreed quality at the time of the transfer of risk to us. In any case, those product descriptions which - in particular by designation or reference in our order - are the subject matter of the respective contract or have been included in the contract in the same way as these GPC shall be deemed to be an agreement on the quality. It makes no difference whether the product description originates from us, from the supplier or from the manufacturer.

(3) Notwithstanding Section 442 (1) line 2 of the German Civil Code (BGB), we shall also be entitled without limitation to claims based on defects if the defect remained unknown to us at the time of conclusion of the contract due to gross negligence.

(4) The statutory provisions (§§ 377, 381 of the German Commercial Code (HGB)) shall apply to the commercial duty to inspect and give notice of defects, subject to the following proviso: Our duty to inspect shall be limited to defects which become apparent during our incoming goods inspection under external examination including the delivery documents (e.g., transport damage, wrong delivery and short delivery) or which are recognizable during our quality control in the random sampling procedure. Insofar as acceptance has been agreed, there shall be no obligation to inspect. Otherwise, it shall depend on the extent to which an inspection is feasible in the ordinary course of business, taking into account the circumstances of the individual case. Our obligation to give notice of defects discovered later shall remain unaffected. Notwithstanding our duty to inspect, our notice of defect shall be deemed to have been given without undue delay and in good time if it is sent within seven (7) working days of discovery or, in the case of obvious defects, of delivery.

(5) Subsequent performance shall also include the removal of the defective goods and their re-installation, provided that the goods have been installed in another item or attached to another item in accordance with their nature and intended use; our statutory claim to reimbursement of corresponding expenses shall remain unaffected. The Supplier shall bear the expenses necessary for the purpose of inspection and subsequent performance even if it turns out that there was actually no defect. Our liability for damages in the event of an unjustified request to remedy a defect shall remain unaffected; in this respect, however, we shall only be liable if we recognized or were grossly negligent in not recognizing that there was no defect.

(6) Notwithstanding our statutory rights and the provisions in para. 5, the following shall apply: If the Supplier fails to meet its obligation to remedy the defect - at our option by remedying the defect (subsequent improvement) or by delivering an item free of defects (replacement delivery) - within a reasonable period set by us, we may remedy the defect ourselves and demand reimbursement of the expenses required for this from the Supplier or a corresponding advance payment. If subsequent performance by the supplier has failed or is unreasonable for us (e.g., due to particular urgency, risk to operational safety or imminent occurrence of disproportionate damage), no deadline need be set; we shall inform the supplier of such circumstances without undue delay; if possible, in advance.

(7) Otherwise, in the event of a material defect or defect of title, we shall be entitled to reduce the purchase price or to withdraw from the contract in accordance with the statutory provisions. In addition, we shall be entitled to claim damages and reimbursement of expenses in accordance with the statutory provisions.

## **§ 8 Supplier's recourse**

(1) Our legally determined recourse claims within a supply chain (supplier's recourse pursuant to §§ 445a, 445b, 478 of the German Civil Code (BGB)) shall accrue to us without restriction in addition to the claims for defects. In particular, we shall be entitled to demand from the Supplier exactly the type of subsequent performance (repair or replacement delivery) that we owe to our customer in the individual case. Our statutory right of choice (Section 439 (1) of the German Civil Code) is not restricted by this.

(2) Before we acknowledge or fulfill a claim for defects asserted by our customer (including reimbursement of expenses pursuant to Sections 445a (1), 439 (2) and (3) of the German Civil Code), we shall notify the supplier and request a written statement, briefly setting out the facts. If a substantiated statement is not made within a reasonable period of time and if no amicable solution is reached, the claim for defects actually granted by us shall be deemed to be owed to our customer. In this case, the supplier shall be responsible for providing evidence to the contrary.

(3) Our claims under supplier recourse shall also apply if the defective goods have been further processed by us or another contractor, e.g., by incorporation into another product.

## **§ Producer liability**

(1) If the Supplier is responsible for product damage, he shall indemnify us against claims of third parties to the extent that the cause lies within his sphere of control and organization and he himself is liable in relation to third parties.

(2) Within the scope of its indemnification obligation, the Supplier shall reimburse expenses pursuant to Sections 683, 670 of the German Civil Code (BGB) arising from or in connection with a claim by third parties including recall actions carried out by us. We shall inform the Supplier about the content and scope of recall measures - to the extent possible and reasonable - and give him the opportunity to comment. Further legal claims shall remain unaffected.

(3) The Supplier shall take out and maintain product liability insurance with a lump sum coverage of at least EUR 10 million per personal injury/property damage.

## **§ 10 Statute of Limitations**

(1) The mutual claims of the contracting parties shall become statute-barred in accordance with the statutory provisions, unless otherwise stipulated below.

(2) Notwithstanding § 438 para. 1 no. 3 of the German Civil Code (BGB), the general limitation period for claims for defects shall be three (3) years from the passing of risk. Insofar as acceptance has been agreed, the limitation period shall commence upon acceptance. The 3-year limitation period shall also apply mutatis mutandis to claims arising from defects of title, whereby the statutory limitation

period for claims in rem of third parties for surrender of goods (Section 438 (1) No. 1 of the German Civil Code (BGB)) shall remain unaffected; claims arising from defects of title shall not become time-barred in any case as long as the third party can still assert the right against us - in particular in the absence of a limitation period.

(3) The limitation periods of the law on sales including the above extension shall apply - to the extent provided by law - to all contractual claims for defects. Insofar as we are also entitled to non-contractual claims for damages due to a defect, the regular statutory limitation period (§§ 195, 199 of the German Civil Code (BGB)) shall apply in this respect, unless the application of the limitation periods of the law on sales leads to a longer limitation period in individual cases.

### **§ Choice of law and jurisdiction**

(1) These GPC and the contractual relationship between us and the Supplier shall be governed by the laws of the Federal Republic of Germany, excluding international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods.

(2) The same shall apply if the Supplier is an entrepreneur within the definition of § 14 of the German Civil Code (BGB). However, we shall also be entitled in all cases to bring an action at the place of performance of the delivery obligation in accordance with these GPC or a prior individual agreement or at the general place of jurisdiction of the Supplier. Overriding statutory provisions, in particular on exclusive jurisdiction, shall remain unaffected.