

# Terms and conditions of purchase Erich Utsch AG (As of: June 2021)

## §1 Scope

- (1) Our general terms and conditions of purchase (hereinafter "GTC") apply to all business relationships with our suppliers exclusively; we do not recognise contrary or deviating GTC of the supplier unless which expressly agreed to their validity in writing. Our GTC shall also apply if we accept the supplier's delivery without reservation despite being aware of contrary, or deviating conditions from our GTC on the part of the supplier.
- (2) Our GTC apply only to companies (Section 14 German Civil Code), legal entities under public law and special funds under public law.

## §2 Conclusion of Contract

- (1) Our General Terms and Conditions of Purchase also apply to our inquiries. Our inquiries are not binding. The supplier must stick to our inquiry in the offer and clearly point out any differences. The submission of offers shall be made free of charge and shall not be binding for us; we cannot grant any remuneration for visits, development of plans, drawings and the like, without an express written agreement.
- (2) Our orders shall be considered binding only after written submission or confirmation.
- (3) Insofar as we have not expressly waived an order confirmation every order must be confirmed with us within 5 business days specifying the binding delivery time. Delayed or additional acceptance of our order shall constitute a new offer and requires acceptance by us.
- (4) To ensure consistent and predictable product quality the supplier may, in particular in an ongoing business relationship, not make any changes to the manufacturing processes or procedures, the composition, function, or appearance of the goods, raw materials or other components which are used in the manufacturing of the goods, without our prior written consent. We will decide, at our own discretion, whether we will provide, or deny, consent.

## §3 Delivery date and quantity

- (1) The delivery time specified in the order is binding. If the delivery time is not specified in the order and no other agreement has been made it shall equal one week from the date of contract conclusion. The supplier is obliged to immediately inform us in writing if he anticipates he cannot meet agreed delivery times - regardless of the reasons.
- (2) If the supplier does not perform his service or does not perform it within the agreed delivery time, or if he is in default then our rights - in particular to withdrawal and compensation for damages - shall be determined according to the statutory provisions. The provisions of paragraph 3 remain unaffected.
- (3) In the event of delay of delivery we are entitled to a lump sum amount for damages caused by the delay in the amount of 1 % of the net price per completed week, however not more than 5 % of the net price of the goods delivered behind schedule. Additional legal claims shall be reserved taking into account the lump-sum damages. The supplier has the right to prove that no damage, or significantly lower damages were incurred as a result of the delay. The lump sum is then reduced accordingly.
- (4) In the case of mass-produced articles if excess, or under-delivery is not avoidable, this is only permissible up to 5 %. In such cases we expect timely written notification of the delivery quantity.

## §4 Delivery / Transfer of risk

- (1) If nothing else is agreed the supplier is not entitled to have the service owed by him completed by a third party (e.g. sub-contractors) without our consent. The supplier shall bear the procurement risk for his services if nothing else is agreed on a case-by-case basis (e.g. restriction to stock).
- (2) The delivery shall be made DDP (in accordance with Incoterms 2020 or the respective current version) unless otherwise agreed.
- (3) The place of performance is our plant in Siegen unless otherwise agreed.
- (4) If no agreement has been made the risk is transferred to us upon delivery of the goods at the agreed place of performance. If an acceptance procedure has been agreed this shall be decisive for the transfer of risk.
- (5) All shipments should include a delivery note stating our ordering number and article number and, if available, customs tariff number, country of origin and article weights. If this information is not included we are not responsible for the resulting delays.
- (6) In the event of our delay of acceptance the statutory regulations shall apply. The supplier must expressly offer his service to us even if a specific, or definable calendar date is agreed for an action or cooperation (e.g. provision of material). In the event we are in default of acceptance the supplier can request compensation for additional expenses incurred in accordance with the statutory provisions (Section 304 German Civil Code). If the contract concerns a non-fungible item to be manufactured by the supplier (custom-made item) the supplier shall only be entitled to further-reaching rights if we have committed to participation and are responsible for the failure to participate.

## §5 Prices - Terms of payment

- (1) The price identified in the order is binding. All prices are subject to applicable value-added tax.
- (2) Unless otherwise agreed in an individual case the price includes all services and associated services of the supplier (e.g. assembly and installation) as well as all associated costs (e.g. proper packaging and transportation costs) includes possible transportation and liability insurance). The supplier shall take back packaging material at our request.
- (3) We can only process invoices if these include the order number and our article numbers provided in accordance with the specifications in our order. If these specifications are not followed and the processing is delayed as a result within the scope of our normal course of business the payment deadlines specified in Par. 4 shall extend accordingly.
- (4) We will pay fees (e.g. purchase prices/compensation for work etc.) within 14 days minus 3 % discount, or within 30 days, net unless otherwise agreed in writing. The deadlines begin with the receipt of a proper invoice or, in the event the goods arrive after the invoice, upon receipt of the goods. The receipt of our transfer order by our bank prior to the expiry of the payment period shall suffice for the timeliness of our payments.
- (5) Our payment do not constitute a recognition of the delivery or service as being in accordance with the contract. Our claims, in particular warranty claims, will not be affected by a possible payment already made.
- (6) We do not owe any interest on maturity. The statutory provisions shall apply to default of payment. In the event of default of payment, in any case, a reminder by the supplier is required.
- (7) We are entitled to the rights of offsetting and retention to the extent provided by law. The supplier can only exercise his right of offsetting or right of retention to the extent that his claim is undisputed, has been recognised or established to be legally binding.
- (8) The assignment of claims of the supplier against us to third parties is excluded if we have not expressly agreed in writing.

## §6 Guarantee / Investigation

- (1) For our rights in the event of material defects or defects of title of the goods (including incorrect and under-delivery as well as improper assembly, defective assembly, operation or operating instructions) and in the event of other breaches of duty by the supplier the statutory provisions apply unless otherwise agreed in the following.
- (2) According to the statutory provisions the supplier is liable for, in particular, that the goods have the agreed quality and comply with the current state of the art technology at the time of the transfer of risk to us, can be marketed in the country of destination and does not violate the statutory provisions in the country of destination. Unless otherwise agreed the product descriptions which - particularly through the description and reference in our order - are part of the respective agreement or included in the contract in the same way as these general terms and conditions of purchase are considered the agreement regarding the quality. Whether the product description comes from us, the supplier, or the manufacturer does not matter. References to technical standards serve as a description of goods and services and should also be understood as a quality agreement.
- (3) For our commercial obligation to examination and notification of defects Section 377 of the German Commercial Code applies with the following proviso: We will inspect the delivered goods immediately after receipt of the goods with respect to type, quantity and obvious damages such as transportation damages in particular, and immediately notify of any defects discovered. No obligation to inspect exists if an acceptance procedure has been agreed. Furthermore, it depends to what extent an investigation is feasible in the normal course of business taking into consideration the circumstances of the individual case. Defects found later shall be notified immediately after being discovered. The notification of a defect shall, in any case, be considered as immediate and timely if it is submitted to the supplier within a period of 10 business days from the receipt of goods or in the case of hidden defects from the time of discovery.
- (4) The expenses incurred by the supplier (including any installation and disassembly costs) for the purposes of supplementary performance shall be borne by the supplier. This also applies if it is determined that no defect actually existed. In the event of an unwarranted request for the remedy of defects on our part we are only liable for damages if we recognised, or were grossly negligent in not recognising, that there was no defect.
- (5) If the supplier does not meet his obligation to subsequent performance - according to our choice through elimination of the defect (repair) or through delivery of a defect-free item (replacement delivery) - within a reasonable period set by us we may remedy the defect ourselves and request the expenses required for replacement, or a corresponding advance payment, from the supplier. If the supplier refuses subsequent performance or if it concerns a fixed liability, or subsequent performance by the supplier failed or is unreasonable for us (e.g. due to particular urgency, danger to operational safety or impending occurrence of disproportionate losses) no deadline must be set; the supplier shall be informed immediately, in advance if possible.

## §7 Supplier recourse

- (1) We have an unrestricted right to exercise our legally determined rights to recourse within a supply chain (supplier recourse in accordance with Sections 445a, 445b, 478 of the German Civil Code) in addition to the claims for defects. In particular, we are entitled to request exactly the type of subsequent performance (repair or replacement delivery) from the seller which we owe our customers in an individual case. Our statutory right to choose (Section 439 Par. 1 German Civil Code) is not restricted by this.
- (2) Before we will recognise, or fulfil, a claim for defects asserted by a customer (including reimbursement of expenses in accordance with Sections 4445a para. 1, 439 para. 2 and 3 German Civil Code) we will inform the supplier, provide a brief statement of the facts and request a written statement. If a substantiated statement is not made within a reasonable period of time and if no amicable solution is found the claim for defects we actually conceded shall be considered as owed to our customer. In this case it shall be incumbent upon the supplier to provide proof to the contrary.
- (3) Our claims resulting from supplier recourse also apply if the goods were processed by us prior to their sale, or by one of our customers, e.g. through installation in another product.

## §8 Product liability – Precautionary measures – Indemnity insurance protection

- (1) If the supplier is responsible for product damage he is obliged to release us from claims for compensation by third parties upon our first request as the cause lies within his domain and organisation and he himself is liable to third parties.
- (2) Within the scope of his indemnity obligation within the meaning of paragraph 1 the supplier is also obliged to reimburse us for any expenses in accordance with Sections 683, 670 of the German Civil Code as well as Sections 830, 840, and 426 of the German Civil Code, which result in connection with a claim of a third party. Other statutory claims remain unaffected.
- (3) The supplier is also obliged to assume the costs of precautionary measures as well as resulting damages if the cause for the precautionary measures lies within the domain and / or organisation of the supplier and he himself is liable to third parties. We will inform the supplier of the reason, type and scope of the measure prior to implementing precautionary measures and provide him the opportunity to comment. Precautionary measures are measures which refer to great number of products of ours, not just individual defective products of ours, in particular recalls and alterations.
- (4) The supplier obligates himself to maintain public and product liability insurance with a reasonable insured sum. The supplier will send a copy of the liability insurance policy at any time upon request. If we are entitled to further claims for damages these remain unaffected.

## §9 Intellectual property rights

- (1) The supplier is liable for ensuring that patents and / or other intellectual property rights of third parties are not violated by its delivery and the intended use of the delivered goods and / or the manufactured work.
- (2) The supplier shall be obliged to release us from any claims by third parties resulting from the violation of these rights and otherwise indemnify and hold us harmless. This shall not apply if the supplier is not responsible for intellectual property right violation in question. The indemnification of the supplier pertains to all expenses that arose for us out of or in connection with the claim by a third party.

## §10 Transfer of ownership

The transfer of ownership of the goods to us must take place unconditionally and without regard to the payment of the purchase price. If, in an individual case, we accept an offer of the supplier with the condition of the payment of the purchase price upon the transfer of ownership the supplier's retention of title only applies if it pertains to our payment obligation for the respective products to which the supplier retains the right of ownership. In this case, in the ordinary course of business, even before the payment of the purchase price, we are entitled to resale of the goods under advance assignment of the resulting claim. Expanded and transferred retentions of title, and retentions of title extended to the subsequent work are excluded.

## §11 Provision – Tools

- (1) If we provide parts to the supplier we reserve the right to ownership. Processing or transformation by the supplier shall be carried out for us. If our reserved goods are processed with any other objects that are not our property, we will obtain joint ownership of the new item in the proportion of the value of our item (purchase price plus VAT) to the value to the processed objects at the time of processing.
- (2) If the item provided by us is inseparably mixed with any other objects that are not our property, we will obtain joint ownership of the new item in the proportion of the value of the object subject to reservation (purchase price plus VAT) to the value of the processed objects at the time of mixing. If the mixing is done in such a way that the supplier's item is considered the principal object it is deemed agreed that the supplier transfer proportional joint ownership to us; the supplier shall preserve the sole ownership or the joint ownership for us.
- (3) We retain ownership of tools handed over to the supplier; the supplier is obligated to use the tools solely for the manufacture of the goods ordered by us. The supplier is obligated to insure all tools belonging to us at their original value against damage from fire, water and theft at his own expense. At the same time the supplier shall assign all claims for compensation from this insurance to us now; we hereby accept the assignment. The supplier is obliged to conduct any necessary maintenance and inspection work on our tools as well as all maintenance and repair work at his own expense and in a timely manner. He must immediately notify us of any malfunctions; if he culpably fails to do so claims for damages shall remain unaffected.

## §12 Production documents - confidentiality

- (1) All production documents handed over to the supplier are entrusted to him as our property solely for the purpose of completing our orders. After the completion of the work they must be returned to us or verifiably destroyed, at our choice, including any copies made. They may not be used for other purposes, duplicated or made accessible to third parties if this is not necessary, on a case-by-case basis, for the fulfillment of the contract.
- (2) The supplier is obliged to handle all technical and commercial documents handed over as strictly confidential and to obligate his employees and subcontractors to secrecy accordingly. The obligation to maintain secrecy does not apply if the information is already generally known or was verifiably known by the supplier before notification from us. The same applies if the information becomes generally known after its disclosure without an infringement of the contract, becomes known to the supplier from a third party without the third party violating a confidentiality obligation, the information was independently developed by the supplier himself, regardless of the information conveyed by us, or is disclosed to the public by us, or must be disclosed due to statutory provisions. Infringements shall entail claims for compensatory damages.

## §13 Special right of termination in the event of financial collapse

If a contractual partner no longer fulfils his payment and/or delivery or service obligations in a timely manner, or if insolvency proceedings are filed regarding its assets, we are entitled to terminate the contract without notice.

## §14 Statute of limitations

- (1) The reciprocal claims of the contractual parties shall become statute-barred according to the legal guidelines unless agreed otherwise in the following.
- (2) Differing from Sections 438 Par. 1 No. 3, 634 a Par. 1 No. 1 of the German Civil Code the general statute of limitations for claims based on material defects or defects of title is three (3) years from the date of the transfer of risk. Insofar as an acceptance has been agreed, the statute of limitations begins with acceptance. Longer statutory limitation periods due to defects shall remain unaffected. This applies in particular to claims due to defects which can be claimed in the right in rem of a third party based on which the return of the purchase item may be required, or in another right which is entered in the land register (Section 438 Par. 1 No. 1 German Civil Code) and for claims due to defects in a building or defects of products which were used for a building according to their customary use and which caused the deficiency of the building, or a plant, where success consists of the planning or monitoring services for a building (Sections 438 Par. 1 No. 2, 634 a Par. 1 No. 2 German Civil Code). Claims arising from defects in title shall not subject to a statute of limitations in any case as long as the third party can still assert the right against us - in particular in the absence of the statute of limitations.
- (3) If we are entitled to recourse claims (Sections 445a 478 German Civil Code) against the supplier based on the provisions for supplier's recourse Section 445b of the German Civil Code applies for the statute of limitations of the recourse claims, however the statute of limitations does not take effect prior to the expiry of the deadline regulated in § 14 para. 2.
- (4) In the event of the fraudulent concealment of a defect by the supplier (Sections 438 Par. 3, 634 a Par. 3 German Civil Code) and if we are also entitled to competing contractual and/ or non-contractual claims for damages due to a defect, the regular statutory limitation period applies (Sections 195, 199 German Civil Code), however the statute of limitations does not take effect prior to the expiry of the deadline regulated in § 14 para. 2. The legal statute of limitation periods according to the product liability act remains unaffected in any case.

## §15 Force majeure

In the event of force majeure, such as labour disputes which cannot be attributed to us, official measures, scarcity of energy or raw materials, transportation bottlenecks or obstacles, pandemics, operational disturbances e.g. as a result of fire, water and/or damage to machinery or other disruptions in operation for which we are not responsible, which have a demonstrable material impact, we are entitled to suspend acceptance of the service by the duration of the force majeure or the disruption, if we immediately informed the supplier of the occurrence of the force majeure event. If the force majeure event, or disruption lasts longer than one month we can withdraw from the contract with respect to the part not yet fulfilled if we informed the supplier immediately of the occurrence of the force majeure event. Any rights of the supplier in the event of force majeure remain untouched. Force majeure within the meaning of these general terms and conditions of purchase is any external event, brought about from the outside by elementary natural forces or by the actions of third parties, which is unpredictable according to human understanding and experience, cannot be prevented by economically viable means even by the utmost care that can reasonably be expected from the circumstances or cannot be rendered harmless and can neither be expected by the entrepreneur based on its frequency.

## §16 Processing of personal data

- (1) We process personal data which we collect in the scope of deliveries, services and orders only in compliance with the applicable data protection laws. Information in accordance with Article 13, 14 of the Data Protection Regulation (EU) No. 2016/679 regarding this processing of personal data can be found at [www.utsch.com/Datenschutzrechtliche-Information](http://www.utsch.com/Datenschutzrechtliche-Information). Upon request we can also send you this in writing.
- (2) In the event of the transfer of personal data to us the supplier is obliged to inform the persons affected in a timely manner in accordance with the provisions of Article 14 EU Data Protection Regulation No. 2016/679 regarding the data processing by us; we refrain from the information of the person affected.

## §17 Jurisdiction - Applicable Law - Partial nullity

- (1) If the supplier is a merchant, legal person under public law or a public special fund the place of jurisdiction is Siegen. If a place of fulfillment other than Siegen is agreed the place of jurisdiction is this place of fulfillment. However, we are entitled to bring an action against the supplier at the court of his residence or business location.
- (2) The contract is subject exclusively to the law of the Federal Republic of Germany under the exclusion of the UN Convention for the International Sale of Goods.
- (3) If any provision in these GTC or a provision in the framework of other agreements is or becomes invalid or void, this shall not affect the validity of all other provisions or agreements.