

# General Purchasing Terms and Conditions

## 1. **Scope of application, contractual partners and contractual object**

- 1.1. The following General Purchasing Terms and Conditions (hereinafter referred to as "GPTC") apply to all business relations between TROB Tröstler & Oberbauer GmbH, Rudolf-Diesel-Str. 4, 85296 Rohrbach, Tel.: +49 (0) 8442 – 9676-0, Fax: +49 (0) 8442 – 9676-56, Email: info@trob.de, Internet: <https://www.trob.de> (hereinafter referred to as "Purchaser") and the suppliers (hereinafter referred to as "Supplier", jointly also as "Parties") of the Purchaser.
- 1.2. These GPTC apply exclusively if the Supplier is an entrepreneur. According to sec. 14 of the BGB (German Civil Code) an entrepreneur is a natural or legal person or a partnership with legal personality who or which, when entering into a legal transaction, acts in exercise of his or its commercial or independent professional activities.
- 1.3. Entrepreneurs within the meaning of these GPTC also include public authorities, corporations, institutes, foundations, legal entities of public law or a special fund under public law acting exclusively in a private law capacity upon contractual conclusion.
- 1.4. These GPTC apply in particular to contracts concerning the sale and/or delivery of movable goods ("goods"), irrespective of whether the Supplier manufactures the goods personally or purchases them from other suppliers (secs. 433 and 650 of the BGB [German Civil Code]).
- 1.5. Unless otherwise agreed between the parties these GPTC apply for the Supplier in the version valid at the time of ordering by the Purchaser or in any event in the latest version notified to the Supplier in text form as a framework agreement also for future contracts of a similar nature, without the Purchaser having to refer to them again specifically in each individual case.
- 1.6. These GPTC apply exclusively. Any different, contrary or supplementary general business terms and conditions of the Supplier become components of the contract only and to the extent that the Purchaser has explicitly agreed to their validity in writing. This requirement for agreement applies in every case, for instance even if the Purchaser, being aware of the general business terms and conditions of the Supplier, accepts the deliveries without protest.
- 1.7. Individual agreements made with the Supplier in specific cases (including side agreements, additions and amendments) take precedence over these GPTC in every case.

## 2. **Contractual conclusion**

- 2.1. The Purchaser's order is deemed binding at the earliest upon written issue or confirmation. The Supplier is to point out to the Purchaser before acceptance any obvious errors (e.g. typing errors or miscalculations) and any incompleteness in the order, including the order documentation, for the purpose of correction or completion; otherwise the contract is deemed not concluded.
- 2.2. The Supplier is required to confirm the Purchaser's order in writing or implement it without protest in particular by sending the goods (acceptance) within a time limit of two (2) working days.
- 2.3. Late acceptance is deemed a new offer and requires the acceptance of the Purchaser.
- 2.4. In the case that the Supplier is financially unable to fulfil its obligations towards the Purchaser, the Purchaser can terminate existing exchange contracts with the Supplier without notice by way of revocation. This also applies in the case that the Supplier files for insolvency. Sec. 321 of the BGB (German Civil Code) and sec. 112 of the InsO (German Insolvency Act) remain unaffected. The Supplier is to inform the Purchaser in writing in good time of any impending insolvency.

## 3. **Delivery times and default of delivery**

- 3.1. The delivery times stated by the Purchaser in the order are binding. The Supplier is obliged to inform the Purchaser in writing without undue delay if it is foreseeable – for whatever reason - that compliance with the agreed delivery times is not possible.
- 3.2. If the Supplier does not provide performance or not within the agreed delivery time or if the Supplier is in default then the rights of the Purchaser – in particular with regard to revocation and compensation – are determined according to the statutory provisions. The provisions in clause. 3.4 remain unaffected.
- 3.3. If the Supplier is in default the Purchaser can – in addition to further statutory claims – demand as default damages a flat-rate reimbursement at the rate of 1 % of the net price for each full calendar week, but overall no more than 5 % of the net price of the goods delivered late. The Purchaser remains entitled to provide proof that more extensive damage was caused. The Supplier remains entitled to provide proof that no damage at all or considerably less damage was incurred.

## 4. **Performance, delivery, transfer of risk, default of acceptance**

- 4.1. The Supplier is not entitled without the prior written consent of the Purchaser to have performances owed by the Supplier provided by third parties (e.g. subcontractors). The Supplier bears the procurement risk for performance if not otherwise agreed in the individual case (e.g. restriction to stocks held).

- 4.2. Delivery within Germany is made “free domicile” to the location stated in the order. If the place of destination is not stated and no other agreement is made, delivery is to be made to the business seat of the Purchaser in Rohrbach. The relevant place of destination is also the place of performance for delivery and any subsequent fulfilment (debt to be discharged at creditor’s domicile).
- 4.3. Delivery is to be accompanied by a delivery note giving the date (issue and dispatch), content of the delivery (article number and quantity) and the Purchaser’s order references (date and number). If the delivery note is missing or incomplete then the Purchaser is not responsible for any resulting delays in processing and payment. Separately from the delivery note the Purchaser must also be sent a corresponding dispatch note with the same content.
- 4.4. The Supplier can only rely on any delivery restrictions if this was already clearly understandable from the offer and the Purchaser did not object to this.
- 4.5. The risk of accidental destruction and accidental deterioration of the item is transferred to the Purchaser upon handover at the place of performance. If acceptance has been agreed this is decisive for the transfer of risk. Also in all other respects in the case of acceptance the statutory provisions applicable to contracts for work and services apply correspondingly. Handover or acceptance is deemed to have occurred if the Purchaser is in default of acceptance.
- 4.6. For the onset of default of acceptance by the Purchaser the statutory provisions apply. The Supplier must however explicitly offer performance to the Purchaser even if a defined or definable calendar date was agreed for an action or cooperation on the part of the Purchaser (e.g. provision of material). If the Purchaser is in default of acceptance then the Supplier can demand compensation of their additional expenses in line with the statutory provisions (sec. 304 of the BGB [German Civil Code]). If the contract involves a non-interchangeable item to be manufactured by the Supplier (one-off production), then the Supplier is entitled to further rights only if the Purchaser was obliged to cooperate and is responsible for the failure to cooperate.
5. **Prices and payment conditions**
- 5.1. Unless otherwise provided for in the Supplier’s offer the prices stated are to be understood as net prices subject to addition of VAT at the statutory rate applicable on the date of invoicing.
- 5.2. Unless otherwise agreed in the individual case, the price includes all performances and supplementary performances of the Supplier (e.g. assembly, installation) and all ancillary costs (e.g. appropriate packaging, customs duties, transport costs including any transport and third party liability insurance).
- 5.3. The agreed price is payable net without deduction within 30 days of full delivery and performance (including any agreed acceptance) and receipt of a proper invoice. If the Purchaser effects payment within 14 days, the Supplier is to grant the Purchaser 3 % dis-

count on the net amount of the invoice. In the case of bank transfer payment is in good time if the Purchaser's transfer instruction is received by the Purchaser's bank before expiry of the payment period; the Purchaser is not responsible for delays as a result of the payment procedures of the banks involved. Payment to the Purchaser is made subject to verification of the invoice

- 5.4. An original single copy of each invoice is to be sent to the Purchaser, stating the invoice number, order number, quantity, price and other identifying characteristics.
- 5.5. The Purchaser does not owe interest from the due date. The default interest rate is 5 (five) percentage points per annum over the base interest rate. For the onset of payment default the statutory provisions apply. But in any event a written reminder from the Supplier is required.
- 5.6. Rights of set-off and retention and the defence of contractual non-fulfilment are available to the Purchaser to the extent statutorily permissible. The Purchaser is in particular entitled to withhold due payments as long as there are still outstanding claims against the Supplier arising from incomplete or defective performances.
- 5.7. The Supplier has a right of set-off or retention only in the case of legally established or undisputed counterclaims.

## 6. **Confidentiality, right of disposal, processing and retention of ownership**

- 6.1. The Purchaser retains rights of ownership and copyrights to illustrations, plans, sketches, calculations, implementation instructions, product descriptions and other documentation. Such documents are to be used exclusively for contractual performance and are to be returned to the Purchaser after the contract is completed. These documents are to be kept confidential from third parties, even after the ending of the contract. The confidentiality duty expires only if and to the extent that the knowledge contained in the documents provided has become generally known.
- 6.2. The provision above applies correspondingly to substances and materials (e.g. software, finished and semi-finished products) and to tools, templates, samples and other objects which the Purchaser provides to the Supplier for manufacture. Such objects – as long as they are not processed – are to be stored separately at the cost of the Supplier and insured to an appropriate extent against destruction and loss.
- 6.3. The Supplier offers an assurance of its right of disposal to sell the goods to the Purchaser in the contractually agreed condition and to grant ownership to them. The Supplier further offers an assurance that the goods are free from any rights of third parties.
- 6.4. Any processing, mixing or combining (further processing) of objects provided undertaken by the Supplier is done for the Purchaser. The same applies in the case of further processing of the delivered goods by the Purchaser, so that the Purchaser is deemed the manufacturer and at the latest upon further processing acquires ownership of the product in line with statutory provisions.

6.5. The transfer of ownership of the goods to the Purchaser must be made unconditionally and without regard to payment of the price. However if in individual cases the Purchaser accepts an offer from the Supplier for transfer of ownership conditional upon payment of the purchase price then the retention of ownership by the Supplier expires at the latest upon payment of the purchase price of the goods delivered. In the regular course of business the Purchaser remains entitled to sell on the goods even before payment of the purchase price subject to advance assignment of the claim thus created (alternatively the application of simple retention of ownership and retention of ownership extended to resale). This thus excludes in any event all other forms of retention of ownership, in particular prolonged and assigned retention of ownership and retention of ownership extended to further processing.

## 7. Defective delivery

7.1. The statutory provisions apply in respect of the rights of the Purchaser in the case of material and legal defects of the goods (including incorrect or insufficient delivery and improper assembly, inadequate instructions for assembly, operation or use) and in the case of other violations of duty by the Supplier, unless otherwise agreed below.

7.2. In accordance with the statutory provisions the Supplier is liable in particular that the goods have the agreed quality upon the transfer of risk to the Purchaser. Agreements as to quality are in any event those product descriptions which – in particular by way of mention or reference in the Purchaser's order – are a component of the relevant contract or are incorporated into the contract in the same way as these GPTC. It makes no difference here whether the product description originates with the Purchaser, the Supplier or the manufacturer.

7.3. In deviation from sec. 442 (1) sentence 2 of the BGB (German Civil Code) the Purchaser is unrestrictedly entitled to defect claims even if the Purchaser remains unaware of the defect upon contractual conclusion as a result of gross negligence.

7.4. The statutory provisions (secs. 377, 381 of the HGB [German Commercial Code]) apply to the commercial duty to examine and notify defects with the following proviso: the Purchaser's duty to examine is restricted to defects which are manifest at the Purchaser's incoming goods inspection upon external inspection including the delivery documentation (e.g. transport damage, incorrect or insufficient delivery) or which are recognisable in the random checking procedure during the Purchaser's quality inspection. If acceptance has been agreed there is no duty to examine. In all other respects it depends upon the extent to which examination is feasible in line with the regular course of business taking account of the circumstances of the specific case. The Purchaser's duty to notify defects in the case of subsequently discovered defects remains unaffected. Regardless of the Purchaser's duty to examine, a complaint (defect notification) is in any case deemed made without undue delay and in good time if it is sent within 14 days of discovery or, in the case of obvious defects, of delivery.

7.5. Subsequent fulfilment also includes removal of the defective goods and reinstallation, if the goods were installed into another item or attached to another item in line with their

design and function; the Purchaser's statutory claim to reimbursement of the associated costs remains unaffected. The costs necessary for inspection and subsequent fulfilment are to be borne by the Supplier even if it transpires that there was in fact no defect. The liability of the Purchaser to pay compensation in the case of unjustified demands to correct defects remains unaffected; to this extent the Purchaser is however only liable if the Purchaser was aware or was not aware due to gross negligence that there was no defect.

- 7.6. Notwithstanding the statutory rights of the Purchaser and the provisions of clause 7.5. the following applies: if the Supplier does not discharge its obligation of subsequent fulfilment – by correction of the defect (subsequent improvement) or delivery of an item free from defects (replacement delivery) according to the Purchaser's choice – within a reasonable time limit set by the Purchaser, then the Purchaser can rectify the defect itself and demand from the Supplier reimbursement of the necessary costs or a corresponding advance payment. If subsequent fulfilment by the Supplier has failed or if this is not reasonable for the Purchaser (e.g. due to particular urgency, risk to the safety of business operations or the impending threat of disproportionate damage) no time limit need be set; the Purchaser is to inform the Supplier of such circumstances without undue delay, if possible in advance.
- 7.7. In all other respects the Purchaser is entitled in the case of a material or legal defect in the goods to a reduction of the purchase price or to revoke the contract in the line with the statutory provisions. In addition, the Purchaser is entitled to compensation for damages and expenses in line with the statutory provisions.

## 8. **Supplier recourse**

- 8.1. The Purchaser is unrestrictedly entitled to the statutory recourse claims within a supply chain (supplier recourse in accordance with secs. 445a, 445b, 478 of the BGB [German Civil Code]) alongside the defect claims. The Purchaser is in particular entitled to demand the precise type of subsequent fulfilment (subsequent improvement or replacement delivery) from the Supplier as the Purchaser owes to its customer in the individual case. The Purchaser's statutory right to choose in accordance with sec. 439 (1) of the BGB (German Civil Code) remains unaffected.
- 8.2. Before the Purchaser acknowledges or fulfils a defect claim asserted by its customer (including reimbursement of expenses in line with secs. 445a (1), 439 (2) and (3) of the BGB [German Civil Code]), the Purchaser is to inform the Supplier with a brief presentation of the facts and request a written statement. If a substantiated statement is not issued within a reasonable time limit and no mutually acceptable solution is reached then the defect claim actually granted by the Purchaser to its customer is deemed owed. In this case it falls to the Supplier to prove otherwise.
- 8.3. The claims of the Purchaser arising from supplier recourse are applicable even if the defective item has been further processed by the Purchaser or another entrepreneur, e.g. by installation into another product.

## 9. **Manufacturer liability**

- 9.1. The Supplier is obliged to comply with the generally acknowledged rules of technology and the statutory provisions on product safety, in particular those of the German Product Safety Act (ProdSG), and offers an assurance that the goods fulfil the appropriate statutory requirements.
- 9.2. If the Supplier is responsible for damage to a product they must indemnify the Purchaser against all justified claims of third parties to the extent that these are asserted in connection with a violation of third party rights relating to the goods delivered to the Purchaser.
- 9.3. The Supplier is to inform the Purchaser without undue delay if third parties assert claims against this latter which fall under the above-mentioned indemnity obligation and, to the extent possible in the circumstances of the individual case, grant the opportunity of defence against the asserted claim. The Supplier is obliged to inform the Purchaser fully, truthfully and without undue delay in text form of all information available to them regarding the relevant circumstances. Furthermore the Supplier is obliged to assume all the legal costs arising to the Purchaser in respect of the third party claim, to the extent that these are necessary and reasonable. These also include in particular all court and legal defence costs at the statutory levels. The assumption of costs does not apply if the Supplier is not responsible for the legal infringement.
- 9.4. In the course of the above-mentioned indemnity obligation the Supplier is to reimburse expenses in accordance with secs. 683, 670 of the BGB (German Civil Code) incurred out of or in connection with a third party claim including recall actions implemented by the Purchaser. The Purchaser is to inform the Supplier of the content and scope of recall actions – to the extent possible and reasonable – and give the Supplier the opportunity to respond. Further statutory claims remain unaffected.
- 9.5. The Supplier must conclude and maintain product liability insurance with a flat-rate sum insured of at least EUR 10 million per case of personal/property damage

## 10. **Expiry of claims**

- 10.1. The mutual claims of the contracting parties expire in accordance with the statutory provisions, unless otherwise agreed below.
- 10.2. In deviation from sec. 438 (1) no. 3 of the BGB (German Civil Code) the general time limit for expiry of defect claims is 3 years from the transfer of risk. If acceptance has been agreed the expiry period commences upon acceptance. The 3-year expiry period also applies correspondingly for claims due to legal defects, whereby the statutory expiry period for third party in rem claims to restitution of property (sec. 438 (1) no. 1 of the BGB [German Civil Code]) remains unaffected; in addition, claims arising from legal defects shall on no account expire as long as the third party can still assert the right – in particular in the absence of expiry - against the Purchaser.

10.3. The expiry periods of sales law, including the above-mentioned extension, apply – in the scope according to statute – for all contractual defect claims. If the Purchaser also has extra-contractual compensation claims due to a defect then the regular statutory expiry period applies for this (secs. 195, 199 of the BGB [German Civil Code]) as long as application of the expiry periods of sales law would not lead to a longer expiry period in the individual case.

## 11. Choice of laws and jurisdiction

11.1. These GPTC and the contractual relationship between the parties are subject to the law of the Federal Republic of Germany under exclusion of international uniform regulations, in particular the UN Convention on the International Sale of Goods.

11.2. If the Supplier is a merchant within the meaning of the German Commercial Code (HGB), a legal entity under public law or a special fund under public law, the seat of the Purchaser in Rohrbach is the sole - also international - place of jurisdiction for all disputes arising out of the contractual relationship. The same applies correspondingly if the Supplier is an entrepreneur within the meaning of sec. 14 of the BGB (German Civil Code). The Purchaser is however in all cases also entitled to assert claims at the place of fulfilment of the delivery obligation in accordance with these GPTC or under an individual agreement that takes precedence or at the general place of jurisdiction of the Supplier. Statutory provisions that take precedence, particularly regarding exclusive competences, remain unaffected.

Valid from: 14/03/2022