

GTCP - General Terms and Conditions of Purchase of the company GALLER Lager- und Regaltechnik GmbH

1. General

- 1.1. We purchase exclusively in accordance with these terms and conditions of purchase ("GTCP"). The GTCP apply to all business relations entered into with our business partners and suppliers ("Seller") in respect of the sale and/or delivery of moveable property ("Goods") without consideration given to whether or not the Seller has itself manufactured the Goods or purchased these from suppliers (Sections 433, 650 BGB (German Civil Code)).
- 1.2. The Seller's terms of contract that vary from or are contrary to or supplement our terms and conditions of purchase shall only apply provided we have expressly agreed to such conditions in writing. We hereby expressly reject the Seller's counter confirmation that refers to terms of contract. The terms and conditions of purchase shall also apply if we unconditionally render services on behalf of the Seller although we are aware of its terms of contract that vary from or are contrary to or supplement our terms and conditions of purchase.
- 1.3. The GTCP shall also apply to future contracts entered into with the Seller without us having to refer to them again in each individual case.
- 1.4. Individual agreements entered into with the Seller in individual cases (including subsidiary agreements, supplementary information and amendments) shall in any case have preference over these terms and conditions of purchase. A written contract, or our written confirmation, shall be authoritative in respect of the content of such agreements, subject to proof to the contrary.
- 1.5. These conditions shall only apply if the Seller is an entrepreneur (Section 14 BGB), a legal person under public law or federal special funds.

2. Offers / offer documents / entering into contracts

- 2.1. The Seller's offers are free of charge for us and non-binding.
- 2.2. Our employees are not authorised to enter into verbal subsidiary agreements that extend beyond the content of the written contract.
- 2.3. The Seller is to confirm each order without delay by way of stating the binding price and the binding delivery time. Delivery call-ups shall acquire binding force at the latest if the Seller does not object to an order within one week from receipt.
- 2.4. We shall be entitled to cancel up until acceptance of the order by the Seller. The Seller is to draw our attention to obvious errors (e.g. typographical and calculation errors) and incomplete information in the order, including the order documents, for the purpose of correcting or completing the entering into of a contract.
- 2.5. We reserve ownership of and copyrights to diagrams, drawings, calculations and other documents. These may be used exclusively to process our order and may only be made available to third parties following our written approval and, namely, also following the end of the contract. The obligation to maintain secrecy shall only expire if and insofar as the knowledge contained in the surrendered documents has become generally known. These documents are to be returned to us without request once the order has been processed.

3. Delivery / default in delivery

- 3.1. The agreed delivery period is binding. Agreed delivery dates are therefore to be exactly complied with. The Seller may not cite delivery difficulties because of a strike or lock-out irrespective of whether or not these occur at the Seller's enterprise or that of one of its suppliers. The Seller may only cite lacking required information and/or documents to be furnished or provided by us if the Seller has not received the information and/or documents irrespective of the setting of a reasonable period.

- 3.2. Irrespective of further-reaching claims, in such cases and in cases of default in delivery or performance as a result of force majeure, we shall be entitled, without delay, to set a reasonable subsequent period at our reasonable discretion. The Seller is to confirm the new delivery period in writing.
- 3.3. Receipt of the Goods at our premises is authoritative with regard to compliance with a delivery date or a delivery period. If delivery is agreed upon as "ex works", the Seller is to make the Goods available in good time with consideration given to the customary time for loading and shipping. Where acceptance is agreed upon, compliance with a delivery date is authoritative for a successful acceptance. Such an acceptance is to be performed formally. This does not affect Section 640 of the German Civil Code (BGB).
- 3.4. We shall be entitled to assert statutory claims in the event of default in delivery or performance. This does not affect the regulations set out in sub-section 3.6. The Seller is, insofar, responsible for intent and any kind of negligence. A restriction or easing of liability on the part of the Seller has not been agreed upon. Acceptance of the delayed delivery does not constitute any waiver of compensatory damages.
- 3.5. The Seller is not entitled to render partial services. A provision to the contrary shall only apply if we have approved partial performance in writing.
- 3.6. As soon as the Seller must expect that it is not in a position to comply with the agreed delivery dates, the Seller is to notify us of this without delay by way of stating the reasons for, and the likely duration of, the delay. In the event of default in delivery, the Seller undertakes to pay flat-rate compensatory damages in the sum of 0.3 % of the affected net delivery value for each workday but not, however, in total more than 5 % of the affected net delivery value. Further-reaching statutory claims (in particular withdrawal and further-reaching compensatory damages) are reserved. We reserve the right to furnish proof that greater damage occurred. The Seller is reserved the right to furnish proof that no damage whatsoever was sustained or that only considerably less damage than stated was sustained.
- 3.7. In the case of delivery on a date earlier than specified, we reserve the right to return the Goods at the Seller's cost. If Goods are not returned in the case of an early delivery, the Goods shall be stored at our premises up until the agreed delivery date at the Seller's cost and risk.

4. Shipping / passing of risk

- 4.1. The transport risk shall be borne by the Seller. This shall also apply if shipping is delayed at our request. The risk of possible loss and possible deterioration shall pass to the us upon the hand-over at the place of performance. Insofar as acceptance has been agreed upon, it shall be authoritative for the passing of risk. In other respects as well, the statutory requirements of the contract for work and services law shall apply accordingly in the case of acceptance.
- 4.2. Where not agreed to the contrary, the Goods shall be transported at the Seller's cost "free domicile" to the place stated in the order. The respective place of destination is also deemed the place of performance for the delivery and a potential subsequent delivery (obligation to be performed at the creditor's place of business).
- 4.3. Where in an individual case we bear the cost of shipping and / or transportation, we shall be entitled to determine the type of packaging and / or shipping. If we do not make use of this, the Seller is to select the most favourable of several suitable options for the shipping and / or packaging.
- 4.4. Shipping documents such as delivery notes, packaging slips and the like are to be included with the consignments. The order numbers and the identification requested in the order are to be stated in all written correspondence. A dispatch note and a delivery note (duplicate) are to be forwarded to us for each individual consignment at the latest on the shipping date. A corresponding dispatch note is to be sent to us separate from the delivery note with the same content that is stated in the delivery note.
- 4.5. If, upon receipt of the delivery item, we are not in possession of proper shipping documents in accordance with sub-section 4.4 or our order numbers have been incorrectly stated in the shipping documents, all additional costs and delays as a result shall be the responsibility of the Seller and we shall not be responsible for resulting delays in respect of the processing and payment. In such cases we shall also be entitled to refuse to accept the delivery at the Seller's cost.

4.6. The Seller undertakes to collect the transport and outer packaging it uses, insofar as we request that such packaging be taken back, at our discretion at our registered office in Kerpen or the place of destination during customary business hours within one week following our request. If the Seller defaults in honouring this obligation, it is to carry the additional disposal cost we incur as a result.

5. Performance obligations / inspection for defects / liability for defects

5.1. The Seller is to comply with the recognised latest technological developments, the security requirements and the agreed technical standards and data in respect of its deliveries.

5.2. The Seller is to ensure that in respect of the composition, quality, packaging, declaration and Goods specification of the Goods it delivers comply with the statutory provisions of the country in which the Goods shall be delivered in accordance with the regulations and are made available for sale.

5.3. In any case, the product descriptions, which – in particular by way of description or reference to our order – are the subject matter of the respective contract or have been incorporated in the respective contract in the same manner as these terms and conditions of purchase, are deemed an agreement on the condition. In that respect it is irrelevant whether or not the product description originates from us, the Seller or the manufacturer.

5.4. If a delivery contract is based on a sample submitted by the Seller, which we have tested and accepted, the Seller is to make all deliveries and partial deliveries at least in terms of the manner and quality that correspond with a sample (purchase based on a sample).

5.5. The Seller waives its right resulting from the authorisation fiction set out in Section 377(2) HGB provided the defect for which notification is to be provided is not obvious, i.e. our obligation to inspect is limited to defects that are identified during our incoming goods inspection by way of an external assessment including the delivery documents (e.g. transport damage, incorrect and shortfall delivery) or are identified in the case of our quality control in the form of a sampling procedure. In other respects, the extent to which an inspection is expedient with consideration given to the circumstances of an individual case is relevant in accordance with the ordinary course of business. This does not affect our obligation to provide notification of defects in respect of defects identified at a later date.

5.6. We are entitled, without restrictions, to reject surplus quantities of Goods. All costs resulting from a surplus delivery shall be borne by the Seller.

5.7. The Seller waives objecting to us being unaware of defects as a result of gross negligence (Section 442(1) Sentence 2, BGB).

5.8. If we have notified the Seller of a defect, or sent the notification to the Seller, before the statutory or contractual warranty claims had fallen under the statute of limitations, we may also refuse payment of the purchase price following the end of the period of limitation insofar as we are authorised to take such action as a result of the rights in respect of defects to which we are entitled.

5.9. The period of limitation is 36 months starting from the passing of risk provided a longer period of limitation does not apply in accordance with the rule of law. If acceptance has been agreed, the period of limitation shall commence upon acceptance. Furthermore, under no circumstances shall claims resulting from defects in title fall under the statute of limitations as long as third parties – in particular in the absence of a statute of limitations – are still in a position to assert claims against us.

6. Declaration about origin characteristics

6.1. In the event that the Seller issues declarations about the origin of the Goods, the Seller undertakes to facilitate the review of the proof of origin by the customs authorities and both furnish details required in that respect and provide confirmation that may be necessary.

6.2. The Seller undertakes to provide compensation for damage caused because the stated origin is not acknowledged by the relevant authority as a result of a lacking certificates or lacking review options.

7. Provided substances and materials / passing of ownership

- 7.1. Substances and material (e.g. software, finished and semi-finished products) as well as tools, templates, samples and other items that we make available for the purposes of manufacturing and / or processing shall remain our property irrespective of the type and scope of the Seller's performance and shall be stored on our behalf at the Seller's cost and risk (separately as long as they are not processed) and are to be appropriately insured against destruction and loss. The regulations set out in sub-section 2.5 apply accordingly.
- 7.2. Processing, mixing or blending (further processing) by the Seller of items that are provided shall apply on our behalf. The same applies in the case of further processing the supplied Goods such that we shall be deemed to be the manufacturer and shall acquire ownership of the product at the latest upon the further processing in accordance with the statutory requirements.
- 7.3. The transfer of ownership of the Goods to us is to occur unconditionally and without consideration given to payment of the price. However, if we accept an offer of the Seller, which is conditional on payment of the purchase price, for the transfer of ownership in an individual case, the Seller's reservation of title shall expire at the latest upon payment of the purchase price of the supplied Goods. We shall remain authorised, during the course of ordinary business and prior to payment of the purchase price, to sell on the Goods by way of the assignment of the resulting future claim (alternatively application of the basic, and regarding the re-sale the extended, reservation of title). In any case, this excludes any other forms of reservation of title, in particular extended reservation of title, and reservation of title extended on the further processing.

8. Legal consequences of contractual violations / liability / compensatory damages

- 8.1. In the event of failure to honour fixed dates, warranted characteristics and guarantees and in the case of defects in title that cannot be rectified, we may withdraw from the contract and request flat-rate compensatory damages in the sum of 5 % of the delivery price (potential flat-rate compensatory damages in accordance with sub-section 3.6 is to be credited). This does not affect our right to assert a claim for greater damage based on the furnishing of proof. The Seller is reserved the right to furnish proof that no damage or only nominal damage was sustained.
- 8.2. We shall not be liable for minor negligence beyond key contractual obligations. We shall only be liable for compensation of typical and foreseeable damage in respect of gross culpability on the part of basic vicarious agents. Further-reaching claims for damages are excluded.
- 8.3. The Seller shall be liable in accordance with the statutory regulations. A limitation on liability is expressly rejected.

9. Invoicing / terms of payment

- 9.1. Invoices are to be submitted separate from the Goods delivery in duplicate and by way of stating the order number. The Seller shall be responsible for the delays that arise as a result of failure to honour these obligations without this being our responsibility.
- 9.2. In the absence of agreements to the contrary, payments are to be made for the receipt of invoices from the 1st to the 15th day of a month on the 30th of the calendar month and on the 15th of the following month for receipt of invoices from the 16th to the last day of the month less a 3 % trade discount.
- 9.3. Payment periods shall commence from the receipt of invoice but not, however, prior to receipt of the Goods or in the case of services that require acceptance not before these have been accepted and, provided supporting documents, test certificates (e.g. factory certificates) or similar documents are part of the delivery scope, not before these have been handed over to us as per agreement.
- 9.4. The conclusion of the payment process for us, and not receipt of the payment by the Seller, is relevant in respect of making payments in good time.
- 9.5. We are not required to pay interest after the due date. The statutory requirements apply to default in payment.

10. Setting off / assignment / right of retention

- 10.1. We are entitled to set off any counter-claim against the Seller's claims.
- 10.2. Setting off by the Seller by way of counter-claims shall be excluded unless the claims are undisputed or have become res judicata.
- 10.3. The Seller shall only be authorised to exercise a right of retention insofar as the Seller's counter-claim is based on the same contractual relationship.
- 10.4. Transferring a claim against us to third parties shall be excluded provided we have not expressly approved of such action in writing.

11. Prices / price increases

- 11.1. The price stated in the order has binding force. In the absence of agreements to the contrary in an individual case, the price shall include all services and subsidiary services on the part of the Seller (e.g. assembly and installation) as well as all incidental costs (e.g. proper packaging, transport costs including transport and third party liability insurance).
- 11.2. Where not stated to the contrary, the price includes the statutory value added tax.
- 11.3. Price increases after entering into the contract are excluded.

12. Property rights

- 12.1. The Seller assures that the Goods are free of third party rights, in particular that neither third party ownership rights nor domestic or foreign commercial property rights apply to the Goods that could be infringed upon by way of the delivery to us or by way of selling on or processing the Goods by us or third parties.
- 12.2. In the event that third parties assert such rights to the Goods, the Seller undertakes – irrespective of further-reaching rights on our part – to clarify without delay the justification of asserting such claims following consultation with us.
- 12.3. If a third party takes legal action against us in this respect, the Seller undertakes to render us exempt from such claims at the first request. We may only cite the third party claims resulting from agreements or the like against the Seller provided the Seller had agreed to this or provided statutory claims of the third parties are applicable.
- 12.4. The Seller's obligation to render us exempt applies to all expenses that we incur as a result of or in conjunction with the action that may be brought by a third party.

13. Supplementary provisions for the acquisition of machines and systems

- 13.1. Where machines or systems are supplied, the delivery scope must contain the following EC Machine Directive Conformity or Manufacturer's declaration:
 - Machinery Directive 2006/42-EC
 - Electromagnetic Compatibility Directive 2014/30/EU
 - Low Voltage Directive 2014/35/EU

in each case state stated in the version that is valid at the time of delivery.

- 13.2. Conformity or manufacturer's declaration and instructions about the proper operation of the aggregate are deemed integral parts of the documentation to be supplied.
- 13.3. Machines and system must be suitable for 3-shift operations without interruptions.

13.4. The Seller undertakes to secure the availability of the components required to operate the machine or system for a period of ten years. If this is unacceptable for the Seller, it may honour this obligation by way of stating a suitable supplier by way of which the availability of the components is secured.

14. Order to be performed by the Seller

14.1. The Seller undertakes to perform the order at its own business enterprise. The Seller shall only be entitled to transfer the order to third parties following our prior, written, approval. The Seller shall be responsible for the procurement risk involving its services if nothing to the contrary is agreed upon in an individual case (e.g. restriction in respect of stockpiling).

15. Place of jurisdiction / place of performance / choice of law

15.1. If the Seller is a merchant within the meaning of the German Commercial Code, legal person under public law or special federal funds, Cologne, Germany, shall be deemed the exclusive place of jurisdiction for all disputes resulting directly or indirectly from the contractual relationship. The same applies if the Seller is an entrepreneur (Section 14 BGB).

15.2. Unless otherwise stated in the order, our registered office in Kulmbach, Germany is deemed the place of performance.

15.3. The law of the Federal Republic of Germany applies to these conditions, and the entire legal relations between the Seller and us, by way of exclusion of international private law and the UN Sales Law (CISG).

16. Final provision

16.1. Any provisions set out in the general terms and conditions of purchase may be divided and are to be assessed separate from the other provisions provided one provision, or more provisions, is invalid or unenforceable. In the event that one of the above provisions is invalid or has not become an integral part of the contract, this shall not affect the validity of the other provisions. In such a case the contracting parties undertake at this point in time to enter into negotiations aimed at replacing an invalid provision with a clause that comes closest to the economic outcome intended by the parties by way of the previous provision.