

General Conditions of Purchase of the GMS-Chemie-Handelsgesellschaft mbH

§ 1 General

1. Our General Conditions of Purchase apply to all deliveries and services of the GMS Chemie-Handelsgesellschaft mbH including consulting services by the supplier, if applicable. Our Conditions of Purchase are only valid towards entrepreneurs according to § 310 sec. 1 German Civil Code (BGB).
2. We do not accept conditions of the supplier opposing or deviating from our General Conditions of Purchase unless we have explicitly approved of their validity in writing. Our General Conditions of Purchase also apply if we accept the delivery or service of the supplier unconditionally in knowledge of conditions of the supplier opposing or deviating from our General Conditions of Purchase.
3. All agreements between the supplier and us, especially subsidiary agreements and contract modifications require text form for validation. The written form requirement regulated in some provisions of these General Conditions stays unaffected.
4. The supplier may assign claims towards us to third parties only after our prior consent. The regulation contained in § 354a German Commercial Code (HGB) remains unaffected.
5. The supplier is informed according to § 33 German Data Protection Act that we will save his data. The processing of the data is done in adherence to the German Data Protection Act.
6. If individual regulations contained in these General Conditions of Purchase should be or become invalid, this shall not affect the validity of the remaining regulations.

§ 2 Orders

1. The supplier is obliged to indicate our order number on all documents especially on order acceptances, invoices, shipping papers, delivery notes, inspection reports, verifications, and certificates. The supplier is responsible for all consequences arising out of non-compliance to this obligation (delays, error of performance or return of goods etc.).
2. We reserve the right of property and copyrights to all illustrations, drawings, calculations and other documents. They are to be returned to us unrequested after processing of the order.

§ 3 Prices and Payment

1. The price stated in the order is binding. If no other deviating agreements exist, the price includes the costs for the shipping as set out in § 4 No. 8.
2. Legal value added tax is included in the price.
3. If no other deviating agreements exist, we will pay the purchase price within 14 days as of delivery and receipt of invoice with 2% cash discount or net within 30 days after delivery and receipt of invoice.
4. We have the right to set off and the right of retention as provided by the statutory regulations. In case of inadequate delivery we have the right to retain the payment amounting to three times the expense necessary for the elimination of the deficiency, until the deficiency is eliminated or compensated otherwise.
5. Payment does not constitute any acknowledgement of conditions and prices. The date of payment does not have any effect on the liability for defects of the supplier and the right to raise objections.

§ 4 Delivery

1. The delivery time stated in the order is binding. If the supplier is obliged to deliver certificates concerning the origin or technical condition along with the goods, these are also be delivered within the agreed delivery time. The delivery of such certificates is an essential part of the obligation to perform of the supplier. The time of delivery at the agreed delivery address is decisive for the adherence of delivery time.
2. The supplier is obliged to inform us immediately in text form if circumstances arise or become evident that allow the conclusion that the delivery time cannot be adhered to.
3. If the supplier does not adhere to delivery times even without his default, along with the statutory rights, we also hold the right to cancel the contract in whole or partially after expiration of a second deadline (if no absolutely fixed delivery date has been agreed upon). The right of cancellation regarding the remaining delivery is not excluded with acceptance of a part of the ordered goods.
4. In case of undue delay in delivery we are authorized to claim a contractual penalty per full week of delay amounting to 1 % of the order value, however limited to a maximum of 5 % of the order value We are obliged to declare the reservation of contractual penalty at the latest upon payment of the invoice, which succeeds the delayed delivery in time.
5. The right to claim further damages for delayed delivery remains explicitly reserved. The contractual penalty shall be deducted from such further damage.

6. Insofar the delivery takes place prior to the agreed delivery date, we are not obliged to accept delivery. In case of premature acceptance the agreed delivery date remains decisive for the due-date of the pecuniary claim of the supplier.
7. Deliveries are to be announced to us in text form immediately before loading. Defective or incomplete delivery announcements, waybills or other shipping papers oblige the supplier to compensate the resulting damage. Expenses like for example demurrage, storage charges, rent etc. resulting from the case that the supplier did not deliver according to our orders or call, as well as all costs that arise from the delayed hand-over of goods and documents are on the account of the supplier.
8. Insofar no deviating agreements in text form exist, the delivery is to be performed carriage paid, insured and including packaging. Place of delivery for the service is the receiving location as indicated by us, in case of unavailable indication, our business location.
9. The supplier is obliged to insure the goods (including consequential damage) at his own expense to our benefit against the common transport and storage risks and thereby caused spoilage.
10. We are authorized to return the packaging material to the supplier at his expense and risk.

§ 5

Condition of Goods

1. The quality of the goods must - provided no deviating agreements exist - adhere to the documents underlying the order like for example drawings, descriptions, samples, specifications, acceptance terms, as well as to the respectively valid regulations of the Federal Republic of Germany and the EU. If the place of final destination of the goods is apparent to the supplier due to the packaging, address or other similar aspects, the goods must only adhere to the legal regulations of this location, along with the requirements set out in the documents underlying the order.
2. All goods must adhere to the latest version of security regulations, and must be approved and authorized for the intended use by the responsible inspection authority upon hand-over.
3. The supplier must apply an adequate quality assurance system and assure that the goods correspond to our technical order conditions. The supplier undertakes to create reports of the performed inspections, as to the date, type and method by which the goods were inspected and the results the quality inspections. All results of inspections, measurements and controls are to be archived for 10 years.
4. If necessary, the consignment must - depending on the method of transportation chosen by us - also contain certifications for the dangerous goods safety advisor, as to how the goods are to be classified, packaged, marked and declared.
5. Insofar agreed upon, the delivery must also include certifications concerning the origin or the technical condition of the goods.

6. The supplier must oblige his pre-suppliers in the same manner as is he is obliged under this § 5.

§ 6

Acceptance/Certification and Warranty Claims

1. If a contractual or official certification is stipulated, the supplier bears the expenses caused by such certification. He must announce the date of certification at least two weeks in advance.
2. We are obliged to inspect the consignment for deviations from the agreed condition within an adequate term. Apparent faults are reproved in time if our notice of defects is sent off to the supplier within five workdays after receipt of the consignment. The reproof of hidden faults is in any case timely, if our notice of defects is sent to the supplier within five workdays after such hidden faults became apparent.
3. If the goods are not delivered to us, but to a recipient named by us, the notice of defects is in any case timely if it is sent off by us within ten workdays as of delivery of the goods to the recipient, respectively after identification of a hidden fault by the recipient.
4. If the consignment is inadequate, we are entitled to the arising legal claims with no reduction.
5. The limitation period for warranty claims is at least 36 months from the delivery of the goods. Longer legal limitation periods remain unaffected.
6. The limitation period is suspended as of notice of defects, and is reassumed only after explicit refusal of supplementary performance. In case of supplementary performance the limitation period restarts regarding the corrected fault. In case of defective components of a complete product, the suspension, respectively the restart of the limitation period is restricted to the defective component and to those components that are functionally connected with the defective component and potentially negatively influenced by the defect.

§ 7

Product Liability and Insurance Obligation

1. Insofar the supplier is responsible for damage to a product, he is obliged to indemnify us from claims for compensation of third parties upon first request insofar as the cause for the damage is within his area of influence and organisation, and he is liable with regard to third parties.
2. In this regard the supplier is also especially obliged to remunerate possible expenses according to §§ 683, 670 German Civil Code (BGB) that arise from or in relation to a product recall performed by us, insofar the claim for remuneration towards the supplier does not result from §§ 830, 840 German Civil Code (BGB) in conjunction with §§ 426, 254 German Civil Code (BGB). We will instruct the supplier concerning

content and extent of the product recall to be performed - insofar possible and reasonable - and give him the opportunity for statement.

3. The supplier agrees to ensure a product liability insurance with an insured sum of € 5 Million per bodily injury/property damage - lump sum.

§ 8

Reservation of Proprietary Rights and Orders

1. Extended or prolonged reservation of proprietary rights by the supplier is excluded.
2. Insofar we provide source material to the supplier, we reserve the proprietary right to this. Processing or modification by the supplier is performed for us. If the source materials provided by us are mixed inseparably with objects not belonging to us, or connected to each other in a manner that they become essential components of a unitary object, we gain joint ownership regarding the new object in ratio of the value of the source materials to the other objects at the time of mixture or connection. If the mixture or connection takes place in a manner that the object of the supplier is to be regarded as main component, it is agreed that the supplier transfers proportionate joint ownership to us. The supplier stores the property or the joint property for us.
3. Insofar the security interest we are entitled to under No. 2 exceeds the purchase price of all our not yet paid reserved goods by more than 10%, we are obliged to release security interest of our choice upon request of the supplier.

§ 9

Property rights and Secrecy

1. The supplier is responsible for the fact that no property rights of third parties are violated in relation to his delivery. The supplier will inform us of the usage of disclosed and non-disclosed own and licensed industrial property rights and applications for industrial property rights regarding the objects he delivered upon our request. § 6 No. 4 is accordingly valid.
2. If we are claimed by a third party due to this reason, the supplier is obliged to indemnify us of these claims upon first prompt transmitted in text form. The obligation for indemnification of the supplier concerns all expenses that necessarily arise from or in connection with the claim by third parties.
3. The limitation period for claims according to No. 2 is ten years, under reservation of a longer legal limitation period, beginning with the conclusion of the respective contract.

§ 10

Place of Jurisdiction and Applicable Law

1. As far as the supplier is qualified merchant, legal person under public law, or special fund under public law, our business location is exclusive place of jurisdiction. We are however also authorized to file suit for damages at the general place of jurisdiction of the supplier.
2. German Law is exclusively valid for all legal relations with the supplier, however excluding the UN-agreement concerning contracts about the international purchase of goods (CISG).
3. Insofar delivery clauses are agreed to for orders, these delivery clauses are subject to the INCOTERMS in their respectively valid version.