

## **General Purchasing Conditions for**

**TIGGES GmbH und Co. KG  
Kohlfurther Brücke 29  
42349 Wuppertal**

### **§ 1 General, Scope of Validity**

- (1) These General Purchasing Conditions are valid for all business relationships with our business partners and suppliers. The General Purchasing Conditions are only valid if the supplier company (§ 14 BGB [German Civil Code]) is a legal entity under public law or a special fund under public law.
- (2) The General Purchasing Conditions are valid specifically for contracts for the sale and/or supply of movable goods (hereafter also known as: “goods”), irrespective of whether the supplier manufactures the goods themselves or purchases them from suppliers (§§ 433, 651 BGB). This version of the General Purchasing Conditions is also valid as a framework agreement for future contracts for the sale and/or supply of moveable goods with the same supplier, without requiring us to refer to it again in each individual case.
- (3) These General Purchasing Conditions apply exclusively. Different, adverse or additional terms and conditions of the supplier shall only become part of the contract if, and to the extent that, we have expressly acknowledged their validity in writing. This requirement of consent applies in each case. Our Purchasing Conditions are also valid if we accept the delivery from the supplier without reservation in recognition of terms and conditions of the supplier that conflict with or differ from our Purchasing Conditions.
- (4) Individual agreements reached with the supplier in individual cases (including side agreements, additions and amendments) shall have precedence over these General Purchasing Conditions in any event. The content of such agreements must be set forth in a written contract or with our written confirmation.
- (5) Legally relevant declarations and notifications, which are to be submitted to us by the supplier after conclusion of the contract (e.g. setting of deadlines, payment reminders, declaration of withdrawal), are only valid if submitted in writing.
- (6) Any references to the application of statutory provisions are for the purposes of clarification only. Therefore, the statutory regulations shall also apply without such a clarification insofar as they are not directly changed or are explicitly excluded in these General Purchasing Conditions.
- (7) We reserve the right to amend the General Purchasing Conditions. The terms and conditions valid at the time of conclusion of the contract are applicable. If our General Purchasing Conditions should change, we will make the suppliers aware of the new version as part of the on-going business relationship.
- (8) Business practices are not part of the contract and are not effective unless we have already explicitly agreed in writing to their inclusion in the contract.

## **§ 2 Conclusion of Contract**

- (1) Our order is considered to be binding when submitted or confirmed in writing. Before acceptance, the supplier must make us aware of any obvious mistakes (e.g. misspellings or calculation errors) in the purchase order, including the order documents, for the purposes of correction and/or completion. The contract shall otherwise be considered as not concluded.
- (2) The supplier is obliged to either confirm our order in writing without reservation within a deadline of 2 days giving all order data and content or by delivering the goods (acceptance). If the supplier does not accept the order within 2 weeks, the acceptance is considered to be delayed. A delayed acceptance is considered to be a new offer and requires acceptance by us. If the service to be provided by the supplier deviates from our original orders, we must first confirm the deviations in writing. Uncertainties in the interpretation of constantly changing designation and measurement situations concerning DIN, EN and ISO must be clarified in advance.
- (3) Upon acceptance of each order, the supplier/service provider is obliged to strictly observe the valid product standards under DIN and/or EN/ISO, the current technical delivery conditions under DIN and/or EN/ISO and any further quality agreements made with us.
- (4) Regardless of whether or not an order is issued, no remuneration or compensation is paid for visits or for preparing offers, projects etc.

## **§ 3 Delivery Time and Delayed Delivery**

- (1) The delivery time specified by us in the order is binding. If the delivery time has not been specified in the order and has not been agreed otherwise, it is taken to be 2 weeks from the conclusion of the contract. It is considered to be met if the product reaches our warehouse or the agreed place of service and fulfilment within the specified period. If the agreed delivery period cannot be met, the supplier is obliged to inform us in writing immediately giving the reasons for and duration of the delay. The obligation to meet the original agreed deadline remains unaffected.
- (2) If the supplier does not provide the service or does not provide it within the agreed delivery period, or if it is delayed, our rights shall be determined according to the statutory regulations, specifically with regard to withdrawal and compensation for damages. The regulations in par. 3 remain unaffected.
- (3) If the supplier is delayed, we can - in addition to the further statutory entitlements - demand a flat-rate compensation to the amount of 1% of the net price per completed calendar week up to a maximum of 5% of the net price of the goods delivered late. We reserve the right to prove that a greater loss has been incurred. The supplier retains the right to prove that we did not suffer any loss whatsoever or only a slight loss.
- (4) In the case of call-off contracts, we are entitled to change the time and location of the delivery as well as the type of packaging each time in a written notification submitted at least 5 calendar days before the agreed delivery date. The same applies to changes to product specifications if these can be implemented within the framework of the normal production process of the supplier without significant additional costs, whereby, in these cases, the notification period as per the previous clause is at least 14 calendar days. We will reimburse the supplier for any additional costs incurred due to the change, provided that they are documented and appropriate.

If such changes result in delays to the delivery and they cannot be avoided with reasonable efforts within the supplier's normal production and business operations, the original agreed delivery date shall be postponed accordingly. The supplier will notify us in writing of the expected additional costs or delays to delivery in good time before the delivery date following on a careful assessment, however, at least 5 work days after receipt of our notification in accordance with clause 1.

- (5) The supplier can only assert the absence of necessary documents that we must supply if the supplier has not received these documents within the specified period in spite of an early written request.

#### **§ 4 Service, Delivery, Transfer of Risk and Delay in Acceptance**

- (1) Without our prior written consent, the supplier is not entitled to have his services to us provided by a third party (e.g. subcontractor). The supplier is liable for the procurement risk for its services, unless agreed otherwise (e.g. if this relates to a one-off production).
- (2) Unless specified otherwise in the order, all agreements relating to the delivery must conform to the 2010 version of INCOTERMS. Unless agreed otherwise in writing, delivery should be DDP (carriage and customs paid, including all fees), including packaging. The place of service and fulfilment is the location named by us. If the point of destination is not specified and no other agreement has been made, the delivery should be made to our registered office in Wuppertal.
- (3) The risk of accidental loss and the accidental deterioration of the goods shall pass to us upon delivery of the goods to the place of fulfilment. If an inspection has been agreed, this is crucial for the transfer of risk. In all other respects, the legal regulations of the law applicable to works and services shall also apply accordingly for the inspection. It is deemed equivalent to the handover or inspection if we have delayed our acceptance.
- (4) We are entitled to refuse additional or part-deliveries that have not been agreed in the contract. The same applies if the goods are delivered before the agreed date. We are entitled to return the goods at the supplier's cost and risk or to store them with a third party.
- (5) A delivery note with the date (issue and dispatch), content of the delivery (article number and quantity) and our order number (date and number) must be provided with the delivery. If there is no delivery note or if it is incomplete, we are not responsible for the resulting delays to processing and payment. An appropriate dispatch note with the same content must also be sent to us, separately from the delivery note.
- (6) The statutory regulations apply for the commencement of our delay in acceptance. The supplier must, however, still expressly offer its service if a specific or definable calendar date has been agreed for an action or assistance on our part (e.g. for the provision of materials). In the event that we are in delay of acceptance, the supplier can demand additional expenses in accordance with the statutory regulations (§ 304 BGB). If the contract relates to unacceptable goods that are to be produced by the supplier (one-off production), the supplier shall only be entitled to further rights if we are obliged to provide assistance and are responsible for the failure to provide the assistance.

## **§ 5 Offer Documents – Documentation**

- (1) We reserve all intellectual and intellectual property rights to figures, drawings, calculations and other documents. Documents of this type are to be used exclusively for the contractual service and must be returned to us after completion of the contract. The documents must not be disclosed to third parties, even after termination of the contract. The confidentiality agreement only lapses if and when the knowledge in the surrendered documents has become publicly known. After completion of the order, they must be returned to us unprompted.
- (2) The above provision shall apply accordingly to substances and materials (e.g. software, finished products and semi-finished products) as well as to tools, templates, models, samples and other items that we have provided to the supplier. If they have not been processed, the seller must pay for articles of this type to be stored separately and reasonably protected against destruction and loss.
- (3) The scope of delivery includes all technical documentation listed in the order such as the designs, assembly, testing and examination of products. If the order does not meet applicable technical standards or quality requirements, the standards and requirements common in the supplier's industry sector are valid.
- (4) All documentation sent to us from the supplier - unless specifically agreed otherwise - becomes our property and may be circulated to our customers by us, provided this has not been specifically prohibited in advance.

## **§ 6 Prices and Payment Conditions**

- (1) The price given in the order is binding. In the absence of any other written agreement, the price includes “DDP” delivery and all additional services (e.g. assembly, installation) and additional costs (e.g. proper packaging, transport costs including any transport and personal liability insurance). The supplier is obliged to take back the packaging in accordance with § 4 ff. Packaging Directive. In the case of a recurring supply relationship, it may be taken back with the next delivery. Deviations require a special agreement.
- (2) Payment is determined by the quantities, weights or other units determined by us on which the calculation is based.
- (3) The statutory value-added tax is included in the price, unless listed separately.
- (4) Unless agreed otherwise between the parties and noted separately on our order, the agreed price must be paid within 60 calendar days from complete delivery and service (included an agreed inspection if applicable) and receipt of a proper invoice with the order number listed. If we make the payment within 30 calendar days, the supplier shall grant us a 3% discount on the net invoice amount. In the case of bank transfers, the payment is received on time if our transfer request is received by our bank before the expiration of the payment period; in the case of delays due to the payment process of participating banks, we are not responsible.
- (5) Delivery and service are only considered to be complete if all components of the service have been provided. Specifically, we must be in possession of all documents listed in the order as components of the service (e.g. certificates, quality certificates, material certificates).

- (6) We are not liable for any maturity interest. The entitlement of the supplier to payment of default interest remains unaffected. The statutory regulations are valid for the commencement of our delay. In each case, however, a payment reminder from the supplier is necessary.
- (7) We are legally entitled to offsetting and retention rights as well as the plea of non-performance of the contract. The discount deduction is also possible in this case. We are specifically entitled to retain due payments if there are still claims against the supplier due to incomplete or insufficient provision of services.
- (8) The supplier only has an offsetting and retention right as a result of counter-claims that are final or are undisputed.
- (9) Payments are not considered to be recognition of the service being as per the contract.
- (10) Up until the delivery time, general price increases can only be levied if they are explicitly provided for in the contract.

#### **§ 7 Examination for Defects and Liability for Defects**

- (1) For the rights in case of defects in goods or title (including wrong delivery and short delivery, as well as incorrect assembly and inadequate assembly and operating instructions), and in case of other breaches of duty by the seller, the statutory provisions apply unless agreed otherwise below.
- (2) In accordance with the statutory provisions, the seller has specific liability for ensuring that the goods are in the agreed condition when the risk is transferred. In all cases, the product descriptions which form part of the respective contract or which are included in the contract in the same way as these GPC are considered a valid agreement on the condition - specifically by means of their name or reference in our order. It makes no difference whether the product description comes from us, from the seller or from the manufacturer.
- (3) Notwithstanding § 442 par. 1 p. 2 BGB, we are also entitled to unrestricted defect claims if the defect remains unknown to us upon conclusion of contract as a result of gross negligence.
- (4) The statutory provisions (§§ 377, 381 HGB) apply for the commercial obligation of examination and notification of defects subject to the following condition: Our examination obligation is limited to defects which are evidently revealed by an external examination when the goods are received, including examination of the delivery papers, and by our quality control by way of random sample tests (e.g. transport damage, incorrect or short deliveries). If an inspection has been agreed, there is no examination obligation. In all other cases, it depends to what extent an examination is feasible according to the proper course of business, taking into account the circumstances of the individual case.

Our notification obligation for defects identified afterwards remains unaffected. In all cases, our notification (notice of defects) is valid as immediate and timely if it is received by the seller within 5 working days of it becoming apparent.

- (5) The costs incurred by the seller for the purposes of testing and subsequent fulfilment (including any possible removal and installation costs) are paid by the seller, even if becomes apparent that there is actually no defect. Our claim for compensation in the case of an unauthorised request to remedy a defect remains unaffected; in this respect we are only liable if we recognised, or were grossly negligent in failing to recognise that there was no defect.
- (6) In the event that the seller does not honour his obligation for supplementary fulfilment - at our choice by remedying the defect (rectification) or by delivery of an item free of defects (replacement delivery) - within a reasonable time limit as set by us, we can remedy the defect ourselves and demand compensation from the seller for the expenses necessary for this or an appropriate advance payment. If subsequent fulfilment by the seller fails or is infeasible for us (e.g. due to particular urgency, risk to operational safety or the threat of disproportionate damage), no time limit is set; we will inform the seller of circumstances of this type immediately, if possibly earlier.
- (7) In all other cases, in accordance with the legal regulations, we shall be entitled to a reduction of the purchase price or withdrawal from the contract in the case of defects of quality and defects of title. In addition, in accordance with the statutory provisions, we are entitled to damage and compensation claims.
- (8) Notwithstanding § 438 par. 1 No. 3 BGB, the general limitation period for defect claims is 3 years from the transfer of risk. If an inspection has been agreed, the limitation period starts with the inspection. The 3-year limitation period also applies correspondingly for claims resulting from defects of title, whereby the statutory limitation period for material surrender claims of third parties (§ 438 par. 1 no. 1 BGB) remain unaffected; beyond that, claims arising out of defects in title shall on no account lapse so long as the third party can still assert the right - in particular, in the absence of limitation - against us.
- (9) The limitation periods of the purchase rights, including the above extension, apply - on a legal basis - for all contractual defect claims. To the extent that we are also entitled to non-contractual claims for damages because of a defect, the regular statutory limitation period (§§ 195, 199 BGB) shall apply unless, in the individual case, the application of the limitation periods under purchasing law gives rise to a longer limitation period.

## **§ 8 Product Liability – Release – Liability Insurance Protection**

- (1) If the supplier is responsible for damage to a product, he is obliged to exempt us from claims to compensation for damages from third parties upon initial request, if the cause is to be found within their territory and organisation and he is liable himself in an external relationship.
- (2) Within the framework of his indemnity obligation, the seller shall refund expenses as per §§ 683, 670 BGB that result from or are in connection with a claim from a third party, including any product recall actions carried out by us. Insofar as this is possible and reasonable, we shall inform the seller about the content and extent of product recalls and give him the opportunity to comment. Further legal claims remain unaffected.
- (3) The supplier is obliged to keep product liability insurance with a coverage total of EUR 2.5 million per personal/property claim. If requested, the supplier shall provide evidence of the insurance. If we are entitled to further claims for compensation, these remain unaffected.

## **§ 9 Supplier Recourse**

- (1) We are also entitled without restriction to our statutory rights of recourse within a supplier chain (supplier recourse according to §§ 478, 479 BGB), as well as the claims for defects. Specifically, we are entitled to demand the specific type of subsequent fulfilment (rectification or replacement) that we owe our customer in this individual case. Our statutory voting right (§ 439 par. 1 BGB) is not restricted by this.
- (2) Before we acknowledge or fulfil a claim for defects asserted by our customer (including reimbursement of expenses §§ 478 par. 2, 439 par. 2 BGB), we shall notify the seller and, giving a brief account of the facts, request written comments. If no comment is made within an appropriate period and if no mutual solution is precipitated, the claim for defects actually allowed by us is regarded as owing to our customer; in this case, the seller is responsible for supplying counter evidence.
- (3) Our claims for supplier recourse also apply if the goods have been further processed before their sale to a consumer by us or by one of our customers, e.g. through installation in another product.

## **§ 10 Property Rights**

- (1) The supplier shall ensure that no rights of third parties are breached in relation to the delivery.
- (2) If a claim is asserted against us by a third party, the supplier is obliged at our first written request to release us from all claims. We are not entitled to enter into any agreements with the third party - without the supplier's prior consent - to the supplier's disadvantage, in particular not to enter into any settlement.
- (3) The indemnity obligation of the supplier refers to all expenses that we may incur in conjunction with the claims lodged by a third party.
- (4) The limitation period for claims from trademark infringements is 10 years, calculated from the conclusion of the contract.

## **§ 10 Retention of Title – Provision – Tools – Confidentiality**

- (1) If we provide parts to the supplier, we retain ownership of them. Processing or alteration by the suppliers is carried out for us. If our reserved goods are processed with other objects not belonging to us, then we shall acquire co-ownership of the new item in proportion to the ratio of the value of our item (purchase price plus value-added tax) to the other processed objects at the time of processing.
- (2) If goods provided by us are inseparably combined with other objects not belonging to us, then we shall acquire co-ownership of the new item in proportion to the ratio of the value of our reserved item (purchase price plus value-added tax) to the other combined objects at the time of processing. If combining is carried out in such a way that the supplier's object can be regarded as the main object, it is agreed that the supplier shall assign co-ownership to us on a proportional basis; the supplier shall keep the solely owned or co-owned object for us.

- (3) We retain ownership of tools; the supplier is obliged to use the tools only for the manufacture of goods ordered by us. The supplier is obliged to pay for insurance of the tools belonging to us at their replacement value against fire, water, and theft damage. At the same time, the supplier now assigns all claims for compensation from this insurance to us; we hereby accept this assignment. The supplier is obliged to carry out any required maintenance and inspection work for our tools and to carry out all serving and installation work at their own cost. Any breakdowns must be reported to us immediately. If he culpably omits to do so, claims for compensation shall remain unaffected.
- (4) The supplier is obliged to treat all figures, drawings, calculations and other documents and information in the strictest confidence. They may only be made available to third parties with our explicit prior agreement. The confidentiality requirement also applies after conclusion of this contract; it only lapses if, and to the extent that, knowledge included in the figures, drawings, calculations and other documents has become publicly known.
- (5) If the security rights available to us under (1) and/or (2) exceed the purchase price of all our still unpaid reserved goods by more than 10%, we are obliged, if the supplier so requests, to release corresponding security rights at our discretion.
- (6) The transfer of goods to us must be absolute and regardless of the price paid. However, if, in an individual case, we accept an offer for transfer by the seller that is made necessary by the payment of the purchase price, the retention of title by the seller becomes void at the latest when the payment price is paid for the delivered goods. Within the scope of ordinary business activities, we remain authorised for the further sale of the goods even before payment of the purchase price with advance assignment of the resulting claim (alternative application of the simple retention of title extended to the further sale). All other forms of the title retention are excluded, specifically the expanded and forwarded title retention and the title retention extended to the further processing.

#### **§ 11 Court of Jurisdiction – Place of Performance and Fulfilment – Applicable Law**

- (1) The law of the Federal Republic of Germany is applicable for these General Purchasing Conditions and the contractual relationship between us and the seller, with the exclusion of international uniform law, specifically the UN Sales Law.
- (2) If the seller is a businessperson in the sense of the Commercial Register, a legal entity under public law or a special fund under public law, the exclusive - also international - court of jurisdiction for all disputes resulting from this contractual relationship is our business premises in Wuppertal. The same applies if the buyer is a business person in the sense of § 14 BGB. However, we shall also be entitled to take action at the fulfilment location of the supplier obligation as per these GPC and/or a primary individual agreement or at the general court of jurisdiction of the seller. Priority statutory provisions, specifically on exclusive responsibilities, remain unaffected.

#### **§ 12 Severability Clause**

If individual provisions in these conditions or purchases are or become ineffective, either wholly or in part, the validity of the remaining provisions or remaining parts of such clauses remains unaffected. The contract parties are obliged to replace the invalid or infeasible provision by a provision that best meets the financial aim of the provision from the start of the invalidity or infeasibility.