

General terms and conditions of purchase

Geroldinger GmbH, as of October 2018

The following general terms and conditions of purchase (GTCP) apply exclusively to all legal relationships with our suppliers, and especially to all enquiries and orders, unless otherwise expressly agreed to in writing by a person authorised to represent our company. All supplier terms and conditions are hereby expressly rejected and shall not have any validity for our contractual relationships with our suppliers, in particular regardless of whether they contain provisions that wholly or partially contradict or extend beyond these GTCP. By accepting an order, the supplier expressly acknowledges the exclusive validity of these GTCP. If the supplier wishes to reject the present GTCP, they must declare this in writing without delay, in which case we may withdraw the order without owing any claims to the supplier, and if this declaration is not made promptly the desired rejection shall have no effect. These GTCP also apply to all future contractual relationships with the supplier unless otherwise agreed to in writing.

1. Ordering

1.1 Orders and call-offs as well as changes and/or additions to such require an authorised signature. Orders, changes and/or additions made orally, by phone, by e-mail or by written telecommunication absolutely require an authorised signature in order to be valid unless the order or communication made by fax or e-mail includes a note indicating that no written order or confirmation is necessary.

1.2 Each order must immediately be confirmed in writing with a statement of the price, the mandatory delivery date, acknowledgement of these general terms and conditions of purchase and the order number and with an authorised signature on the "order confirmation" attached to our order. The order number must be listed on all documents. If the supplier does not accept the order within eight days of receiving it, the order shall be considered implicitly accepted even without an order confirmation.

1.3 An order may not be transferred, whether in whole or in part, without our prior written permission.

1.4 The supplier must provide us with written and electronic copies of all data, drafts and other technical information necessary for testing, using, maintaining, repairing or reselling their deliverables or their products on a permanent basis and at no extra charge. All machines, components and materials must be manufactured and delivered in accordance with the applicable EU directives in the metric system within the technically possible and reasonable physical parameters appropriate for the intended purpose.

1.5 Estimated costs are binding and may not be refunded.

1.6 Unless otherwise agreed to in writing, these GTCP also apply to all master contracts as included.

2. Prices and packaging

2.1 All agreed prices are fixed prices. Costs exceeding these prices may only be offset with our prior written permission. If the supplier has assumed the duty of set-up or assembly, they shall bear all necessary costs. The supplier shall ensure that they have taken all necessary conditions into consideration for their price quotes.

2.2 In the event that the price has not yet been fixed when the order is placed, it shall be specified in the order confirmation at the latest. We reserve the right to final acceptance in all cases.

2.3 The goods must be packaged properly, appropriately and as customary in the trade in all cases so that all legal regulations pertaining to this are adhered to, and the supplier shall accept liability for this. The packaging shall be included in the price. Transport containers, packing materials, etc. shall become our property unless there is a separate written agreement.

2.4 The supplier must disclose all necessary information about packaging within seven days of request so that proper disposal can be guaranteed notwithstanding our right to return packaging at the risk and expense of the supplier.

3. Delivery time

3.1 All delivery dates are fixed agreed dates unless there is a deviating agreement made in writing in individual cases. If delivery periods are agreed to, these shall be calculated from the day the confirmation letter is sent. Deliveries absolutely must be made within our business hours.

3.2 In cases of early or partial delivery, which must be communicated to us in a timely manner and require our written permission, the payment period shall start from the originally agreed date. The supplier shall bear all costs incurred due to delivery on an earlier date.

3.3 We must be promptly advised of any foreseeable delays in delivery.

3.4 Permission for earlier or delayed deliveries or partial deliveries not originally agreed to does not constitute a waiver of all claims for this reason.

4. Delay

4.1 The statutory provisions for delay apply unless otherwise specified below. We are not obliged to notify the supplier of delay or of the consequences associated with it.

4.2 This also applies if partial deliveries have already been implicitly accepted.

4.3 Regardless of the supplier's culpability in the event of delay, we are entitled in all cases to demand a contractual penalty in the amount of 1% of the total order sum for each delayed week started until proper fulfilment, though no more than 20% of the order sum. This penalty is not subject to judicial reduction. Assertion of claims for damages beyond this shall remain unaffected.

4.4 Implicit acceptance of delayed deliveries or services does not constitute a waiver of the claims due to us for this reason.

5. Delivery

5.1 In the absence of a separate written agreement, our factory in Sigharting, Austria, or another location specified to the supplier in individual cases shall always be the place of fulfilment and the place where risk and costs are transferred. Delivery shall be DDP pursuant to INCOTERMS in its current version at the time the contract is concluded. The delivery/shipping instructions specified in the order, including our factory standards, are binding and the supplier is obliged to take out insurance policies in sufficient amounts to cover all risks involved in transport, storage and assembly including commissioning and testing the performance of the goods. The supplier shall be liable for any detriment, damage, costs etc. incurred due to non-compliance with these instructions.

5.2 If a third party is brought in, the supplier must ensure that our shipping instructions in their current version are complied with. The supplier shall be liable for any detriment, damage, costs etc. incurred due to non-compliance with these instructions.

5.3 The shipment must enclose a delivery note stating our order number. Cash-on delivery shipments will only be accepted if this has been agreed to in writing. Cross-border shipments must enclose at least two invoices as customs documents in addition to the transport documents. The supplier is obliged to provide a written declaration concerning the customs origin of the delivered items. This declaration must be delivered to us no later than with the delivery or the first partial delivery.

5.4 If it has been expressly agreed that the goods will be picked up, the supplier shall be responsible for storing the goods at no charge for up to four weeks after they are reported as ready to ship, with a storage fee customary for the place charged after that. In this case, the supplier shall bear the risk until transfer to us or to our forwarder.

6. Warranty

6.1 The statutory provisions for material defects and defects of title apply unless otherwise specified below.

6.2 Supplier declarations that limit or void legal liability are not valid.

6.3 The statute of limitations for material defects and defects of title is three years. If the supplier does not indicate anything to the contrary, all defects that emerge within the warranty period shall be considered to have been present at the time of acceptance. The original warranty period will be extended accordingly for work or deliveries rendered due to the warranty.

6.4 The supplier acknowledges and consents to the fact that goods will essentially not be inspected for defects until their use is continued. Timely notice of defects shall be reported within a reasonable period of at least ten days after this date in each case. This excludes defects that are conspicuous upon delivery to the factory without further inspection; these must be reported immediately after delivery. A notice of defects shall suspend all periods to preserve our claims.

6.5 Defects must be corrected immediately by either repairing or exchanging the entire object (full replacement delivery) according to our choice, whereby the supplier shall bear all costs related to this, or, if there is no opportunity for correction and irrespective of the type of defect, settled through a price reduction or remedied through cancellation of the contract at our discretion. This shall not affect all claims beyond this, such as claims for damages.

6.6 Correcting or exchanging the goods must be at the supplier's cost at the site where the goods are located; if shipment to another location is necessary, the supplier shall absorb all costs for this.

6.7 If the supplier does not fully satisfy the chosen obligations for correcting defects, we have the right to make the necessary corrections to defects or to make replacement purchases at our own discretion and at the supplier's expense, without prejudice to the assertion of all other damages that we incur due to the delayed correction of defects and/or substitute fulfilment. Furthermore, we may withhold our payments or other services until delivery free of defects or correction of defects has taken place and may also offset against payments at any time with our claim to performance, claim to warranty and claims for compensation regarding costs, expenses, losses or damage and similar claims that emerge in connection with this.

6.8 Information regarding material and function, characteristics, quality or intended use of the goods, even if it is included in the general informational material, shall be considered expressly guaranteed by the supplier in all cases. The supplier also guarantees in particular that, where such certification is applicable, the ordered goods are CE-certified and of first-rate quality, conform to the state of the art in science and technology in terms of design, workmanship and features, are fully functional and are free of third-party rights and claims.

6.9 In the event of defects of title, especially violations of third-party intellectual property rights or official procedures, the supplier shall release us and our customers from claims by third parties or by authorities and shall reimburse all costs that we incur due to adequate legal defence.

6.10 If we take products manufactured and/or sold by us due to defectiveness of the contractual object delivered by the supplier, if our remuneration is lowered for this reason or if claims are otherwise made against us, we shall be entitled to all rights of recourse against the supplier in all cases. Regardless of the warranty period, these rights of recourse shall expire no earlier than one year after the last warranty to our customers.

6.11 Treating, processing or selling the goods shall not exclude the assertion of claims.

6.12 The supplier is liable without limitation for all damage and detriment, particularly consequential damage that we incur as a result of a defect in the contractual object.

6.13 The supplier is obliged to ensure the supply of replacement parts and repair services for a period of at least fifteen years after contractual delivery.

7. Guarantee/product liability

7.1 Irrespective of and in addition to the warranty, the supplier guarantees that no defects of any kind will emerge within a period of three years of proper use.

7.2 The provisions under 6.4 through 6.12 apply mutatis mutandis.

7.3 The supplier is also obliged to indemnify and hold us harmless in all respects regarding all product liability claims, regardless of whether these can be fully or partially attributed to the goods supplied by them. This agreement to indemnify and hold harmless also includes costs that we incur due to damage payment measures such as recall campaigns. Upon request, the supplier is obliged to secure the liability risk resulting from product liability by taking out adequate insurance with reasonable coverage and be able to provide evidence of this, and to register this in our favour at our request.

8. Intellectual property rights

8.1 All rights to intellectual property related to products, components, services and procedures that constitute the object of the contract (including patents, brands, patterns, copyrights, designs, expertise and commercial, technical, procedural and other information, as well as any inventions and other developments related to the contract) that arise in connection with or after rendering the service or in the course of manufacturing the supplier's product (the latter independent of the contract's conclusion) must be promptly reported to us and shall belong solely to us without restriction, and no rights to it whatsoever (no licensing rights in particular) shall be granted to the supplier. We are exclusively and fully entitled to use and utilise these rights and to register property rights or otherwise preserve or protect the rights and exercise all rights to protect intellectual property or other property rights. In addition, we reserve all rights related to prior use and all supplier or third-party rights related to prior use are excluded. We likewise have the exclusive, indefinite, unrestricted, global and gratuitous right of use to the works and creations produced in relation to rendering of the service. All documents concerning our enquiries or orders, in addition to pattern samples, materials, plans or other items delivered and thus related to rights shall remain our property. Documents or other items that we provide shall be provided without guarantee or other liability.

8.2 If property rights or other rights of the supplier or of third parties arise that could hinder us or our customers in the use or resale of products, components or procedures that constitute the object of the contract, the supplier shall hereby grant us indefinite, unrestricted, global and gratuitous right of joint use extending to our customers and suppliers or ensure that this right is granted by third parties.

8.3 The supplier guarantees that there are no third-party rights of which they are aware or should be aware that could present an obstacle to use or resale of products, components or procedures that constitute the object of the contract.

8.4 The supplier is obliged to immediately inform us of any rights related to the service, whether internal or external, published or unpublished, and to fully indemnify and hold us harmless in the event that third-party rights are violated. This obligation also covers compensation for attorney fees, other costs for legal defence and other expenses.

9. Confidentiality

The supplier may neither directly nor indirectly use or share with a third party any of our information unless this is necessary for proper and customary development, production or rendering of the service. The supplier shall take all necessary precautionary measures to keep our information confidential under all circumstances, including though not limited to ensuring that, if information is shared with employees or other persons, it is only done so in the context of a confidentiality agreement and only for the direct purpose of their work in connection with fulfilment by the supplier. After this contract has been terminated, after collaboration has ended, after service has been completed or discontinued or otherwise at our request, the supplier must promptly return to us all documents that contain our information or other items that were provided and delete electronic information permanently; the supplier is not entitled to the right of retention. The supplier may only advertise or publicise their business relationship with us with our prior written permission. The provisions under this point shall remain in effect even after the agreement has been terminated, irrespective of the reason for termination.

10. Invoices

10.1 Invoices must be sent to us separately in duplicate and must contain the information required by law and specified in section 11 of the UStG (Value Added Tax Act). Invoices enclosed with goods shall not be considered to have been delivered properly. Invoices are considered correct only if they also contain the order number, the order date and delivery number, the date of delivery and the company identification number and that of the supplier and the recipient, in addition to the name of the person who placed the order if placed in advance by phone.

10.2 Improperly submitted or incorrectly addressed invoices or invoices that contain factual or calculative flaws or errors shall not be grounds for due payment until they have been corrected and may be rejected by us at any time.

10.3 Payments shall under no circumstances constitute acknowledgement of fulfilment and therefore are not associated with a waiver of any claims resulting from warranty, guarantee, claims for damages or similar.

11. Payment

11.1 All properly submitted invoices shall be payable by bank transfer or cheque, according to our choice, minus a 3% discount if paid within 30 days of the beginning of the payment period, minus a 2% discount if paid within 45 days or at the net invoice amount if paid within 60 days. The timeliness of payments shall be determined by the date of the transfer order or, if another standard form of payment has been chosen, by the date of deposit.

11.2 If we have objections to the invoice or the delivery, we reserve the right to withhold payments and postpone the due date. Likewise, the discount period shall not begin until full delivery has been rendered and the invoice submitted according to the terms of the contract. Accepted payments shall always be offset according to our dedication.

11.3 In the event that we do not meet our payment obligations in a timely manner, the supplier is not entitled to charge interest higher than two percentage points above the three-month EURIBOR, compound interest or dunning or collection expenses (excluding the lump sum under section 458 of the Austrian Commercial Code).

11.4 In the event of force majeure or if import or export permits or other permits or licences cannot be obtained, we shall not be subject to any consequences of default.

12. Duration of contract, contract termination

12.1 Irrespective of our right of withdrawal in the event of disruptions in performance, we are entitled in particular to unilaterally terminate or withdraw from the contract with immediate effect if the supplier or a person attributable to them seriously violates the provisions of the contract, and to unilaterally terminate or withdraw from the contract with immediate effect without setting a final deadline if insolvency proceedings are initiated regarding the supplier's assets or an insolvency filing is rejected due to lack of covering costs (the right of termination can be asserted indefinitely until service has been rendered in full), the supplier ceases their payments or services or it is recommended that some or all creditors reduce or defer their payments or they are or may imminently become unable to pay or there are circumstances that make it clearly impossible to fulfil the order in a timely manner, e.g. as a result of force majeure. Furthermore, we are entitled to withhold payments or services if the supplier has not met their obligations or not done so in a timely manner.

12.2 If the contract is terminated, the supplier shall not be entitled to any claims, particularly to compensation and/or damages if they have not already rendered usable partial service for us.

13. Miscellaneous

13.1 We have the right to inspection and ongoing review of production and to rejection of defective parts during production.

13.2 In all cases, the supplier waives the agreement to retain ownership of the goods ordered or parts of them. Acceptance of delivered goods subject to the retention of title, though also the signing of invoices or delivery notes with retention of title, shall not have any explanatory value in this regard, and deliveries shall be considered transferred without the retention of title.

13.3 The supplier may not contest or modify contracts on the grounds of error or gross disparity.

13.4 If individual provisions of these GTCP are legally invalid, the rest of the provisions shall remain valid. The supplier agrees that we shall determine a legally valid provision with the same economic and legal intent to replace the invalid provision in this event. The same applies to any and all loopholes.

13.5 We are not liable for events that arise through no fault of our own or due to slight and simple gross negligence, nor are we liable for vicarious agents, indirect or consequential damage, losses, lost profits and pure financial losses. The supplier must comply with our IT rules when using our IT, and must indemnify and hold us harmless regarding all third-party claims arising from unlawful use of intellectual property.

13.6 All clarifications relevant to law, including amendments and additions to the conditions stipulated here, require an authorised signature in order to be valid and must be provided in German or English.

13.7 Points 8, 9, 13 and 15 shall remain in effect even after the contract has been terminated, regardless of other provisions that remain valid by their nature.

14. Force majeure

Force majeure, labour disputes, operational disruptions, disturbances, official measures and other unavoidable events, such as if an import or export permit or other permit or licence cannot be obtained, regardless of whether this happened to us or to our customers, entitle us to withdraw in whole or in part from the contract irrespective of other rights, insofar as they result in a substantial reduction of our requirements and continue for a significant length of time, whereby the supplier may not derive any claims, especially claims for damages.

15. Place of jurisdiction, dispute resolution and applicable law

15.1 The court of Sigharting, Austria, is agreed as the competent court and legal venue for all disputes that arise from or in connection with our contractual relationships with suppliers headquartered within the European Union or an EFTA country. All disputes that arise or in connection with contracts with suppliers headquartered outside the European Union or an EFTA country shall be subject to the final judgement of one or more arbitrators appointed under the arbitration code of the International Chamber Code (ICC), according to the same code. The arbitration panel is located in Ried, Austria. The language of the proceedings is German. In both cases, however, we reserve the right to file our claims in the supplier's normal place of jurisdiction as well.

15.2 All legal relationships with our suppliers are exclusively subject to Austrian material law. The United Nations Commission on International Trade Law (UNCITRAL) and provisions referring to different jurisdictions expressly do not apply. The provisions of the current version of INCOTERMS at the time the contract is concluded do apply insofar as the delivery contract or these GTCP do not stipulate otherwise.