

GTCP – GLOBAL TERMS AND CONDITIONS OF PURCHASING



GTCP – GLOBAL TERMS AND CONDITIONS OF PURCHASING

between

Eckerle Holding GmbH
Industriestraße 15
77833 Ottersweier
DEUTSCHLAND

and

(in the following named: supplier)

18.07.O.104

GTCP – GLOBAL TERMS AND CONDITIONS OF PURCHASING



GTCP – Global Terms and Conditions of Purchasing

For use in business transactions with companies, legal persons under public law, and special funds under public law.

1. General

Our Terms and Conditions of Purchasing apply exclusively. General Terms and Conditions of Suppliers that conflict with or deviate from our Terms and Conditions are only recognised by us insofar as we have explicitly agreed upon these in writing. The acceptance of goods or services of the Supplier (hereinafter: Contract Object) or their payment does not imply approval, even when the acceptance or payment has occurred with knowledge of the conflicting or supplementing contractual conditions of the Supplier. In the same manner, any previously agreed Conditions of the Contractor conflicting with or supplementing these Terms and Conditions shall no longer apply.

2. Conclusion of contract and contractual amendments

2.1 Orders, transactions, and delivery requests as well as their modifications and amendments must be in written form.

2.2 Oral agreements of any kind – including subsequent changes and supplements to these Terms and Conditions – must be confirmed in writing by us to become effective.

2.3 Written form also includes fax and remote data transfer by email.

2.4 Cost estimates shall be binding and not subject to compensation, unless deviating terms were expressly agreed on.

2.5 Where the Supplier does not accept the order within two weeks after receipt, we shall be entitled to rescind.

2.6 Delivery schedules in the scope of an order and schedule planning become binding if the Supplier does not reject them within two working days after receipt.

2.7 The General Shipping & Packaging Regulations as well as the logistics manual of Eckerle Gruppe GmbH apply.

3. Delivery

3.1 Agreed dates and periods are binding. Relevant for compliance with the delivery date or the delivery deadline is receipt of the goods by us. If ex-works delivery (DAP or DDP in accordance with Incoterms® 2000) is not agreed upon, the Supplier shall make the goods available in time taking into consideration the time determined for loading and shipping with the carrier.

3.2 If the Supplier has undertaken the assembly or installation, he bears responsibility of all necessary expenditures such as travel expenses, provision of tools, as well as allowances.

3.3 If agreed deadlines are not upheld, the statutory provisions apply. If the Supplier foresees difficulties regarding manufacturing, input material supply, compliance with the delivery deadline, or similar circumstances that might prevent him from delivery compliant with the term or quality agreed upon for delivery, the Supplier shall immediately inform our ordering department.

3.4 Unconditional acceptance of a delayed delivery or performance shall not indicate the waiving of any compensation claims arising thereof. This provision applies until complete payment of the amount owed by us for affected delivery or service.

18.07.O.104

GTCP – GLOBAL TERMS AND CONDITIONS OF PURCHASING



3.5 Partial deliveries are generally not permitted, unless expressly approved by or acceptable to us.

3.6 The quantities, weights, and measures ascertained by our incoming goods inspection are decisive, unless evidence to the contrary is provided.

4. Force majeure

4.1 Circumstances of force majeure, operational disruptions, unrests, administrative measures, and other unavoidable events discharge us from our obligation to punctually accept goods for the duration of their occurrence. During such events and for a two-week period thereafter, we – without prejudice to our other rights – have the right to completely or partially rescind the contract, insofar as these occurrences are not of negligible duration and our requirements are considerably reduced due to the necessary procurement elsewhere resulting thereof.

4.2 The provisions of § 4.1 also apply to cases of labour disputes.

5. Delivery note and invoice

The specifications in our order and delivery instructions apply. The invoice is to be sent in single copy, specifying invoice number and other allocation characteristics, to the address printed on the invoice. The invoice shall not be enclosed with shipments.

6. Pricing and transfer of risk

If no special agreement has been made, the prices shall be determined as delivered at the named place (DAP in accordance with Incoterms® 2010) including packaging. VAT is not included. The Supplier bears the risk of damage until the goods are accepted by us or by a person authorised by us at the location to which the goods are supposed to be delivered.

7. Payment conditions

If no special agreement has been made, invoices shall be settled either within 14 days with a deduction of 3% of the net price or within 90 days without reduction, as of the payment due date and receipt of the invoice as well as receipt of the goods or rendering of the service. Payment is made subject to invoice verification.

8. Notice of defects

8.1. We examine the goods upon arrival, only as regards manifest damages, in particular transport damages and identity and quality deviations of the delivery, if no deviating agreement has been made with you regarding quality assurance.

8.2 We will complain of any defects immediately after their discovery.

8.3 In this respect, the Supplier waives objection to delayed complaints.

9. Claims for defects

9.1 The statutory stipulations concerning defects of title and material apply, unless otherwise stipulated in the following.

9.2 We are entitled to choose the type of supplementary performance. The Supplier may refuse the type of subsequent performance we have chosen if this is only possible while incurring excessive costs.

GTCP – GLOBAL TERMS AND CONDITIONS OF PURCHASING



9.3 If the Supplier does not commence remedying the defect immediately after our notification thereof, we shall, in important cases, particularly to avoid acute danger or larger damage, be entitled to remedy these ourselves or have a third party do so at the Supplier's expense.

9.4 In the case of defects of title, the Supplier shall indemnify us against any eventually occurring claims of third parties, unless the claim is outside of his responsibility.

9.5 Warranty claims become time-barred – except for cases of fraudulent intent – after 3 years, unless the object was used in a building following its usual application and is the cause of this building's defectiveness. The period of limitation for guarantee claims shall begin with the delivery of the Contract Object (transfer of risk).

9.6 If the Supplier fulfils his supplementary performance by a replacement delivery, the statute of limitations for the replacement goods starts anew, unless the Supplier has upon delivering the replacement goods explicitly and appropriately stated that he has only performed the delivery out of goodwill, to avoid conflicts, on the interest of the continuation of the supply relationship.

9.7 If we incur costs due to the defective delivery of the Contract Object, particularly transport costs, travel costs, labour costs, installation or expansion costs, material costs, or costs for a receiving inspection outside of the usual scope, the Supplier shall bear these costs.

9.8 The Supplier shall bear the responsibility of his contractors' faults as his own.

10. Product liability and recall

10.1 If we are subject to product liability claims, the Supplier is obliged to indemnify us from such claims, insofar and to the extent that these damages are caused by failure of the Contract Object delivered by the Supplier. In cases of fault-based liability, this only applies if the Supplier is to blame. If the cause of the damage lies within the Supplier's area of responsibility, he must prove that he is not to blame.

10.2 The Supplier assumes all costs and expenses incurred in the cases stipulated in § 10.1, including the costs of any legal proceedings.

10.3 For the rest, the statutory provisions apply.

10.4 Prior to any recall action that is wholly or partly the consequence of a defect of the Contract Object supplied by the Supplier, we will inform the Supplier, give him an opportunity to cooperate and discuss the efficient execution of the recall action, unless such informing is not possible due to urgency. If a recall action is the result of a defect of the Contract Object delivered by the Supplier, the Supplier will bear the costs of the recall action.

11. Rights to rescind and terminate

11.1 We are entitled over and above of the statutory rights of rescission to terminate the contract if the financial condition of the Supplier substantially deteriorates or threatens to do so and the fulfilment of the supply obligation towards us is endangered as a result thereof.

11.2 We are furthermore entitled to rescind from the contract if

- the Supplier becomes insolvent,
- the Supplier stops its payments,
- the Supplier enters into imminent illiquidity following § 18 InsO or if overindebtedness is indicated,
- an insolvency procedure or comparable debt settlement procedure is initiated by the Supplier regarding the assets or operation of the Supplier, or
- if the commencement of insolvency proceedings relating to the assets of the Supplier has been rejected due a lack of insolvency assets.

GTCP – GLOBAL TERMS AND CONDITIONS OF PURCHASING



11.3 In the case of continuing obligations, § 11.1 and 11.2 apply analogously, with the specification that instead of the right to rescind, an extraordinary right to terminate applies.

11.4 If the Supplier has rendered part of a performance, we are only allowed to rescind from the entire contract if we have no interest in the partial performance.

11.5 If we rescind from the contract or terminate the contract based on the preceding contractual rights to rescind and terminate, the Supplier shall compensate us for costs incurred by us, unless he bears no responsibility for the rights to rescind or terminate.

11.6 Contractual rights and entitlements are not limited by the provision stipulated in § 11.

12. Execution of works

Persons who carry out work on the factory premises in fulfilment of the contract must observe the respective factory regulations. The liability for accidents which happen to these persons on the factory premises is excluded, as far as these were not caused by intent or grossly negligent breach of duty on the part of our legal representative or vicarious agents.

13. Additionally provided performances

Material, parts, containers, or special packaging ("additionally provided performances") provided by us either against payment of a fee or at no cost remain our property. These may only be used as intended. We overtake the processing and assembly of additionally provided performances. It is agreed that we shall be the joint owner of the goods which were produced by using our products, kept safe for us by the Supplier. We reserve partial ownership of the goods which were produced by using our products until our claims resulting from the additionally provided performance have been fully satisfied. The Supplier has the right to resell goods which were produced by using our products in proper business transactions under reservation of title. The Supplier already now transfers all claims resulting from the resale of these goods with ancillary rights in full. The transferred claims serve to secure our incurred expenses resulting from the additionally provided performances. The Supplier is allowed to collect the claims. We can rescind these rights according to § 13 if the Supplier does not duly and properly perform its obligations towards us, gets into arrears with payment, stops his payments, or if an insolvency procedure or comparable debt settlement procedure is initiated by the Supplier regarding the assets of the Supplier. We can also rescind these rights according to § 13 in the case of or with looming material adverse change of the Supplier or if the Supplier enters into insolvency or overindebtedness. If the value of all collaterals held by us exceeds our claims by more than 10%, we will upon request of the Supplier release securities to this excessive amount as we choose.

14. Documentation and secrecy

14.1 All business and technical information made available by us (including any features of objects, documents or software, and any other know-how or experience) are, as long as and as far as they are not demonstrably knowledge in the public domain, kept secret from third parties and may be made available in the Suppliers' business only to such persons who necessarily have to be brought in for their use for delivery purposes. They are also obliged to secrecy; these goods remain our exclusive property. Such information may not – except for deliveries to us – be copied or commercially used without our prior written consent. Upon our request to do so, all information originating from us (if applicable including copies and

GTCP – GLOBAL TERMS AND CONDITIONS OF PURCHASING



recordings) and objects loaned out are to be returned to us completely and without delay or destroyed.

We reserve all rights to such information (including copyright and the right to register intellectual property rights such as patents, utility models, semi-conductor protection, etc.). If these are provided to us by third parties, these legal reservations also apply to these third parties.

14.2 Products which were manufactured using documents drafted by us such as drawings, models, and the like or manufactured using our confidential specifications or with our tools or with replicated tools, may not be used, offered to third parties, or delivered by the Supplier himself. This applies similarly for our print orders.

15. Export control and customs

15.1 The Supplier is obliged to inform us of any possible approval obligations for (re)exports of his goods pursuant to the German, European, or US export and customs provisions as well as the export and customs provisions of the country of origin of his goods in his business documents and to send the following for goods to be licensed on-time before the first delivery:

- Material number
- Description of goods
- All applicable export list numbers, including the Export Control Classification Number according to the U.S. Commerce Control List (ECCN),
- Trade-policy place of origin
- Statistical goods number (HS code)
- A contact person in his company to clarify any queries that might arise

15.2 The Supplier is obliged to inform us immediately of any changes of the licencing obligations of the goods he will deliver to us based on technical or legal changes or regulatory determinations.

16. Compliance

16.1 The Supplier undertakes to, within the business relationship with us, not provide, grant, demand, or accept advantages that violate valid anti-corruption legislation, in business transactions nor in dealings with public officials.

16.2. The Supplier undertakes to, within the business relationship with us, not reach agreements or agree upon synchronised behaviours with other companies which might lead to or result in a hindrance, limitation, or distortion of competition as defined by currently valid antitrust rules.

16.3 The Supplier guarantees to comply with valid legislation concerning general statutory minimum wage and to oblige contractors to comply to the same extent. The Supplier will provide evidence of compliance with the aforementioned provision upon request. In the event of a breach of the aforementioned provision, the Supplier will indemnify us from claims by third parties and is obliged to reimburse any fines issued to us with connection to this.

16.4 The Supplier shall comply with the respective statutory provisions governing the treatment of employees, environmental protection, and occupational safety and work to reduce negative humane and environmental effects during the execution of his tasks. To this end, the Supplier shall, in the scope of his capabilities, set up and further develop a management system compliant with ISO 14001. The Supplier will furthermore observe the principles of the UN Global Compact Initiative, principally concerning the protection of international human rights, the abolition of forced and child labour, the elimination of discrimination in hiring and

GTCP – GLOBAL TERMS AND CONDITIONS OF PURCHASING



employment, as well as the responsible treatment of the environment (www.unglobalcompact.org).

16.5 If suspicion of a violation of the obligations stipulated in § 16.1 to 16.4 arises, the Supplier shall immediately explain potential violations and inform us of the measures taken to inform us. If the suspicion turns out to be justified, the Supplier needs to inform us within a reasonable period of time on which internal company measures he has taken to prevent future violations. If the Supplier fails to fulfil these obligations within a reasonable period of time, we reserve the right to rescind from the contract or terminate the contract effective immediately.

16.6 In the case of serious legal violations of the Supplier and violations of the statutory provisions in § 16.1 to 16.4, we reserve the right to rescind from the contract or terminate the contract without notice.

17. Place of performance

The place of performance is the place where the goods should be delivered or the service should be rendered as per the order.

18. General provisions

18.1 If one of the provisions of these Terms and Conditions or of additional agreements reached should be or become ineffective, this shall not affect the validity of the Terms and Conditions in other respects. The contractual partners are obliged to replace the ineffective provision with a new one as closely as possible following the economic intent of the previous provision.

18.2 The laws of the Federal Republic of Germany shall apply to this contractual relationship, to the exclusion of conflict of laws and the UN purchasing law (CISG).

18.3 The place of jurisdiction for all legal disputes arising directly or indirectly from contractual relationships that are based on these purchasing Terms and Conditions is Karlsruhe. The Karlsruhe District Court is responsible for proceedings of all courts. We are furthermore entitled to sue the Supplier, choosing between the courts of his seat or his branch or the courts at the place of performance.

Supplier

Eckerle

Name

Name

Date, signature, stamp

Date, signature, stamp

18.07.O.104