

General Terms of Purchase: Langendorf Textil GmbH & Co. KG (GTP)

§ 1 Validity of the General Terms of Purchase

1. Contracts negotiated with our house will only be settled in compliance with the following conditions, unless other specific agreements have been made in written form.
2. Agreements, arrangements and assurances of any kind which deviate from the contractual norm must be rendered in written form in order to acquire legal force. The same holds true for any waiver of the requirement that agreements should be rendered in written form.
3. General terms of sale or other conditions presented by the Seller will only be accepted as contractual objects, given that they have been recognised by us as such in written form.

§ 2 Objection and acceptance of the GTP's

1. Any objection to the present GTP's must be clearly expressed in written form without delay. The submission of general terms of sale or other conditions by the Seller, protective clauses of a generic type, or the reticence of the customer in response to these GTP's cannot be considered viable objections to the present GTP's, or to their inclusion in the contract.
- 2.a) Should general terms of sale formulated by the Seller also become a contractual object, and should particular provisions of these terms of sale contradict the present GTP's, generally valid legal regulations would then be applicable to the extent required. The contract as such remains unaffected by this state of affairs.
- 2.b) The delivery of those goods we have ordered from the Seller is to be equated with the official recognition of the present GTP's by the Seller.

§ 3 Service and Delivery Deadlines

1. Service and delivery deadlines agreed upon by the contractual parties are valid as fixed time limits in the legal sense defined by § 376 German Commercial Code (Handelsgesetzbuch/HGB).
2. The place of service and performance is our main business site, or the specific location we have designated within the context of a commissioned order.
3. The Seller is obligated to immediately inform our General Management or Purchasing Department in written form about any delivery delays, and to await our decision as regards the upholding of the commissioned order.
- 4.a) The delivery deadline of the Seller is automatically extended by an appropriate length of time in the event of war, social upheavals or other events of Force Majeure. The same holds true should the delivery undertaken by the Seller be delayed as a result of events for which we are responsible. In such a case, as well, the deadlines in question will be extended by an appropriate length of time.
- 4.b) In respect to other cases in which delivery dates or delivery deadlines have been exceeded, we reserve the right to choose either a cancellation of contract or to demand compensation from the Seller for damages due to a breach of contract or non-performance. The same applies in the event of delayed or defective deliveries caused by subcontractors or third-party suppliers engaged by the Seller.
5. Any requests we have made in writing concerned with alterations or additions to the original order allow for the extension of delivery deadlines by an appropriate length of time.
6. Should the negotiated delivery deadlines/delivery dates be exceeded for reasons which are the sole responsibility of the Seller, we are authorized to demand liquidated damages or cancellation of the contract, alternatively, performance of the contract and liquidated damages, subsequent to the expiration of the original deadline and without further ado, unless the Seller is able to substantiate that the negotiated deadlines were not legally binding, i.e. fixed time limits. In the latter eventuality, we would be obliged to grant a further deadline prior to exercising our legal rights.
7. Should the Seller be in arrears in respect to the negotiated delivery as a result of his/her own negligence, we are authorized – notwithstanding other more extensive rights – to demand a contractual penalty from the Seller at the amount of ¼% of the original order value for every week started. In such an event, however, the contractual penalty is limited to 5% of the original order value.
8. Premature deliveries, deliveries made outside the period we have designated for the receipt of goods, as well as partial or surplus deliveries are only permissible with our express consent. Should additional costs ensue as a result of such deliveries, these must be remitted to us by the Seller.
9. Should we be in arrears in respect to the receipt of goods, the amount of monetary compensation which may be claimed, provided these claims are substantiated by the Seller, is limited to 0.1% of the original order value for each completed week of receipt delinquency, to the extent this delay is not attributable to a deliberate or grossly negligent breach of duty on our part.
10. Points „2“ to „4“ are valid accordingly in respect to contractual agreements defining delivery dates.

§ 4 Shipping and Packaging

1. Unless something else has been expressly negotiated, we will take responsibility for providing the necessary transport insurance. In such a case, the Seller would then lack any authorization to invoice insurance expenses (e.g., German forms of minimal insurance coverage for forwarding and/or transport by carriers such as Rollfuhrversicherungschein/RVS, Speditionsversicherungschein/SVS).
2. Shipping notes must be attached to all shipments. Along with the article name, shipping documents must also contain the article number, the order number, the order date, quantities and weights, as well as the type of packaging utilised. Furthermore, on the official shipping date, dispatch notes must be sent to our Purchasing Department and the final place of destination.
3. Partial and supplementary deliveries must be clearly indicated as such.
4. Deliveries – including packaging costs – are to be made without any additional expenses at the cost of the Seller, and to be sent to the place of reception we have indicated. Should we have agreed to transport the freight on our account, the Seller is obligated to choose the form of transportation we have prescribed, or to utilise the mode of transport and delivery most favourable to us.
5. We first assume any risks for the delivered goods after they have been accepted at our reception site and then incorporated or put into operation at our place of operations.
6. The goods must be packaged in such a way as to avoid damage by transportation. Packaging materials should only be utilised to the extent necessary to ensure the intact transport of the goods. Reusable packaging material is to be taken back by the Seller as prepaid freight.

§ 5 Offers, Orders, Writing Formalities

1. All processed offers, cost estimates or pre-contractual negotiations undertaken by the Seller on our behalf remain without monetary compensation. In this context, the Seller has no legal recourse to demand payment from us. The same holds true for visits, planning arrangements and other preparatory services the Seller has undertaken in connection with the presentation of offers to us, provided that no specific and written agreement concerning monetary compensation has been made in this context.
2. Orders, including any alterations or supplementation connected with them, as well as other agreements made during the process of contractual negotiations, first become legally binding after we have explained or confirmed them in written form (also via e-mail).

§ 6 Guarantee and Liability

1. The Seller must ensure our house that the products delivered to us are free of any defects.
2. As the Seller guarantees the suitability and material integrity of the goods he/she has delivered, and as our General Management also requires that all other suppliers guarantee the material integrity of the goods to be delivered, we ourselves do not conduct quality controls for the goods received. Due to the fact that – as a rule- defects are first detectable during the processing phase itself, any application of § 377 German Civil Code (Handelsgesetzbuch/HGB) is excluded for the contracts negotiated between the Seller and ourselves.
3. The period of limitation for eventual defects amounts to 36 months, calculated from the date of the official (German) passage of risk. The warranty period is to be extended by that period of time during which the defective goods could not be used. During the period of limitation, the Seller must eliminate the defects of the delivery or service at issue without delay and free of charge, including all incidental expenses, by means of repair or by the replacement of defective parts, according to our choice. We reserve the right to demand the new delivery of goods or the rendering of a service without material defects. The elimination of material defects, as well as new deliveries or new productions, must be undertaken without delay. Such corrective services effect a renewed beginning for the period of limitation.
4. Any limitation of legal obligations in connection with warranties, liability or damage compensation on the part of the Seller is not permissible.
5. The Seller must vouch for the state-of-the-arts quality of all objects delivered and all services rendered by him/her, their adherence to the applicable legal regulations (German chemical laws, for example), regulations and guidelines required by state authorities, trade associations and professional organisations, and that no pending alterations are known to him/her during the period of contractual settlement. This is especially relevant in respect to environmental protection laws with legal force for EU countries, the Federal Republic of Germany and the main business site of the Seller. The Seller must inform us about any pending alterations in these respects without delay.
6. a) To the extent any deviation from these provisions becomes necessary, the Seller is obliged to obtain our written consent in this regard. All remaining obligations of a commercial nature or in connection with contracts for labour and services, including eventual guarantees for the material integrity of goods or services, remain unaffected by the determinations of this agreement.
6. b) Should the Seller have objections against the mode of execution we have chosen, or the way in which we have decided to utilise the delivered materials, this must be communicated to us in written form without delay.
7. The Seller is committed to the compensation of all damages arising from service delays, provided that he/she can prove this was not his/her fault. Should we accept a late delivery or delinquent service, this in no way implies the waiving of substitution claims, of the imposition of contractual penalties or of damage compensation. The reservation of a guaranteed contractual penalty arising from a belated delivery is to be considered punctual, should we receive the guaranteed amount, lay claim to it or deduct it from an account of the Seller within the legal term of limitation.
8. For every delivery whose defective quality has been established by us subsequent to our receipt of it, we are authorized to demand a flat-rate compensation for storage and testing costs at the amount of 10% of the original order value, at least, however, EURO 250.00 plus the standard VAT, plus costs for independent testing procedures, which will be appropriately documented for the Seller. It is the sole responsibility and task of the Seller to prove that the amount of damage caused to us was actually less in value.

9. In urgent cases, it is possible for us to reach an agreement with the Seller that the belated fulfilment of contract in the form of defect elimination be undertaken by ourselves, or by a third party. We can repair minor defects ourselves without any prior agreement in the interests of an unimpeded production output, and then later bill the necessary expenditures to the Seller, without in any way affecting the legal obligations of the Seller. The same holds true under the threat of unusually high damages.

10. The official receipt of goods, processing, payment and repeated orders may not be interpreted as an approval of the delivery or the renouncement of possible claims in connection with material deficiencies. Should defects first be detected when the goods have been put into initial operation, or during the actual processing procedures, we reserve the right to demand compensation for the wasted expenses.

11. Sellers of machines, passenger vehicles and other objects requiring spare parts are obliged to supply us with the original spare parts, the original equipment and tools, even subsequent to the expiration of either the warranty period or the guaranteed deadline, for as long as the delivered object remains in operation at our business site. The Seller is not authorized to refer us to an established customer service in order to further pursue our interests.

12. In the case of lacking supplier declarations, lacking certificates of origin or a lack of similar proof of origin, the Seller is obliged to provide compensation for damages, even if he/she is not solely culpable for the falsity of this documentation, and this is especially pertinent in connection with customs duties which arise in such situations, and which we would later demand from the Seller.

§ 7 Delivery Recourse/Guarantees

1. To the extent we must respond to the right of recourse exercised by one of our immediate or distant customers within the context of a consumer goods purchase between that same customer and a consumer, whereby this right of recourse is based upon defects in an item delivered by the Seller, our own rights of recourse expire only after the conclusion of a five-year period, to be calculated from the date of the official delivery of the goods from the Seller to us.

2. To the extent the Seller has assumed the guarantee for the material condition of an item, or for a service or project, in the form of a warranty, he/she becomes liable for the compensation of damages in accordance with legal statutes, including the replacement of the damaged materials instead of a specific performance. The period of limitation amounts to three years, to be calculated from the date on which the defect or the lack of the contractually guaranteed quality were detected.

§ 8 Product Liability/Recourse

1. To the extent we must respond to the right of recourse exercised by a third party in connection with product liability or other legal provisions, the Seller is obligated to exempt us from all such claims insofar and to whatever extent he/she is liable to the same third party in an external business relationship. Whenever we are obliged to recall products as a result of such an event, we are henceforth authorized to charge all ensuing expenditures and costs to the Seller. The Seller is obliged to exempt us from such an eventuality, provided he/she is liable in the legal sense defined by §§ 830, 840, 426 German Civil Code (Bürgerliches Gesetzbuch/BGB). This is especially relevant in respect to product recalls within the context of (German) liability laws.

2. For the duration of this contract, the Seller is obliged to maintain product liability insurance with minimal coverage amounting to EURO 10,000,000.00 per liability case. We are authorized to demand corresponding proof of insurance coverage from the Seller.

§ 9 Prices/ Conditions of Payment

1. All prices negotiated with the Seller are gross amounts and are only valid with the inclusion of the standard VAT, unless other arrangements have been agreed upon. The sales prices negotiated between the contractual parties include all expenses caused by the delivery, especially those for transport and packaging, delivery insurance, taxes, tariffs, etc.

2. Invoices presented by the Seller are due for payment 90 days after billing. Whenever we have paid the Seller for the invoice within a 30-day period, we are entitled to a discount for prompt payment amounting to 3% of the gross invoice sum. Our payment and discount deadlines are initiated by the receipt of a verifiable invoice through our General Management, not, however, prior to the complete and flawless delivery of the objects contained in the contract of purchase, and not before the official acceptance of services rendered, as regards either a negotiated contract for labour and services, or a contract to supply labour and materials.

§ 10 Ownership Status/Protective Rights of Third Parties

1. Through the transfer of possessions, our General Management automatically acquires the material property of the goods delivered by the Seller.

2. The Seller is aware of the fact that we will process the delivered goods and make these into new products with our technical means. A prolonged or extended retention of title has not been negotiated between the contractual parties. Claims in our favour arising from the processing or the continued processing of goods we have delivered to or installed at the premises of third parties for this purpose will not be transferred to the Seller.

3. In the event the goods delivered to us by the Seller were sent with a legally binding retention of title, we are equally authorized to process and to continue to have these same goods processed through our usual business practices.

4. Even provided that no culpability has been substantiated, the Seller is nonetheless liable for guaranteeing that the delivered goods and their use do not violate the protective rights exercised by third parties.

5. Materials which we have provided remain our property. Such materials shall be stored separately and used exclusively for our orders. The Seller is liable for any diminishment of value or loss in relation to our property, even if no culpability could be established on his/her part. Items which have been produced with the materials we have provided remain our property in their respective stages of completion. The Seller must keep these objects in his/her custody for us free of charge.

§ 11 Set-Off and the Right of Retention

We lay unconditional claim to the legal right of set-off and the right of retention. Any restrictions of these rights exercised by the Seller are invalid.

§ 12 Confidentiality

1. The Seller commits himself/herself to treat all information communicated by us, in connection with publicly inaccessible commercial or technical details which have arisen during the course of this business relationship, as strictly confidential business secrets, and to make efforts to ensure that the same information is not directly or indirectly divulged by co-workers to third parties.

2. Drawings, illustrations, models, templates, patterns and similar objects may not be entrusted to unauthorized third parties, or made otherwise accessible. The reproduction of such objects is only permissible within the context of business-related exigencies and the relevant copyright laws. After the business relationship has concluded, all drawings, illustrations, models, templates, patterns and similar objects which we have entrusted to the Seller must be returned to us in complete form.

3. The Seller is obliged to similarly legally commit subcontractors which he/she has engaged in a business relationship in compliance with Points „1.“ and „2.“

4. The Seller commits himself/herself to only using our present business relationship for advertising purposes, given that our prior consent in writing has been obtained.

§ 13 Jurisdiction/Applicable Laws

1. The legal venue for all disputes arising from the basic contractual relationship is Coburg, Bavaria, FRG, provided that the Seller is a businessperson, a legal person from the public law sector, or special assets of the public law sector. The same holds true if the Seller does not have jurisdiction within the Federal Republic of Germany.

2. The laws of the Federal Republic of Germany apply. The provisions of the UN Convention on Contracts for the International Sale of Goods, Vienna (CISG) do not apply in this case.

3. Unless other agreements in a specific instance have been made, the place of performance for delivery and service is the official address which we have designated, whereas in case of doubt or the lack of a specified location, our place of business should be used (Marktrodach). The place of performance for future payments to be made is our place of business (Marktrodach).

§ 14 Concluding Provision

Should particular provisions within these General Terms of Purchase, or within the contractual conditions negotiated in individual contracts, prove to be legally ineffective, null and void or to contain omissions, the legal validity of the remaining provisions of this contract will not be affected. In such a case, that regulation which is most similar to the ineffective, null and void or omissive provision would then be considered a valid agreement.