

General Terms of Purchase (GTP)



ZIERER Karussell- und Spezialmaschinenbau GmbH & Co. KG
Josef-Wallner-Straße 5, 94469 Deggendorf, Germany

§ 1 General Terms / Scope of Application

- (1) All of our orders are solely subject to these General Terms of Purchase (hereinafter referred to as GTP) even without being explicitly mentioned during negotiations. Therefore our GTP shall also apply for all future business transactions with the seller/supplier, even if they are not repeatedly or explicitly agreed upon. Sentence 2 does not apply to non-merchants.
- (2) Conflicting or contradictory terms of the seller/supplier to our GTP shall not be recognized and therefore shall not constitute the basis of any order even if we do not expressly object to them.

§ 2 Offer, Acceptance of Order

- (1) Offers shall be submitted free of charge for us.
- (2) Only orders placed in writing shall be binding for us. Our purchasing employees are not authorized to make verbal additional agreements or assurances that extend beyond the contents of a written order.
- (3) The seller/supplier shall accept the order within 10 days from the date it is placed by means of countersigning it. The order shall be deemed accepted as a binding order if seller/supplier does not object to it within the aforementioned time period. We are entitled to revoke or withdraw from the order if it is not accepted within 5 days. Seller/supplier recognizes unrestrictedly our GTP when accepting our order.

§ 3 Prices, Invoice, Terms of Payment

- (1) The price stated on the order is a binding fixed price plus the respective, applicable sum of statutory VAT, unless the seller/supplier does not generally reduce his affected prices and shall include - unless otherwise agreed under the order - delivery to place of delivery/performance, packaging and freight costs (including acceptance of returned packaging insofar as we desire the same) as well as loading and unloading. If delivery "ex works" is agreed under the order, then we shall only take over the lowest price freight costs. In this case, seller/supplier shall bear all costs, especially loading costs, that arise up to surrender of the shipment to the freight carrier.
- (2) Seller/supplier shall likewise bear the costs of transportation insurance or any similar insurance.
- (3) The net purchase price shall become due for payment (without deductions) within 30 days following acceptance of the complete delivery/performance, including all documentation belonging to the delivery/performance, and receipt of invoice, unless otherwise stated on the order. The due date for payment shall conform with the agreed date for delivery/performance in the event of acceptance of premature delivery/performance.
- (4) Unless otherwise agreed under the order, invoices shall be submitted in duplicate and shall include the appropriate information set out under § 4 section 2, sentence 2, and they shall be submitted in writing following completion and acceptance of delivery/performance along with information as required by law (especially in accordance with applicable tax laws) and separate statement of statutory VAT.

§ 4 Delivery, Delivery Date, Impediments to Delivery

- (1) The delivery/performance shall be made in all instances at seller's/supplier's own risk. Risk shall transfer to us not until due and proper acceptance of the delivery/performance at the place of delivery/performance. Unless otherwise stated on the order or on these GTP, delivery/performance shall be carried out according to Incoterms 2010 DDP.
- (2) Delivery notices shall be sent to us immediately following dispatch of a delivery/performance to us. At least two duplicates of the appropriate bills of delivery shall be enclosed with each delivery/performance. Information and markings that we require or as required by law (especially statement of the cost centre, the order date and number, item and product number, quantity and quantity unit and shipping address) shall appear on the shipping documents and bills of delivery. We shall be entitled to refuse the delivery/performance and to return the same in accordance with Clause 6 in the event of failure to comply with the foregoing requirements.
- (3) The date of delivery/performance stated on the order (date of arrival at place of delivery/performance) is binding and shall be complied with in any event. We shall be notified immediately in writing of delays accompanied by statement of the reasons for the estimated delay. The acceptance of the delivery/performance shall solely take place during our normal working business hours.
- (4) We are entitled to assert liquidated damages for delay if seller/supplier exceeds the date of delivery/performance due to his own fault. Said liquidated damages shall amount to 0.3% of the price stated on the order per working day of delay. The maximum liquidated damages for delay shall amount to 0.3% of the price stated on the order per working day of delay also if several individual dates of delivery/performance are exceeded due to own fault. The liquidated damages for delay shall be limited to a maximum total of 5% of the price stated on the order regardless of the duration of any exceeded deadline or of exceeding several individual dates of delivery/performance due to own fault. Any individual liquidated damages for delay caused may be asserted up to the due date of final payment for the order notwithstanding acceptance or receipt of individual portions of deliveries/performance or of the entire delayed delivery/performance without reservation. Seller/supplier has the right to prove to us that substantially lower damages or no damages occurred as a consequence of the delay. The liquidated damages shall decline appropriately in any such instance.
- (5) The liquidated damages shall not affect any further rights and claims. The liquidated damages caused shall be subsequently asserted as the minimum amount of the claim for damages in the event that higher claims for damages are asserted. Acceptance of a delayed delivery/performance does not constitute any waiver of claims to compensation for damages.
- (6) We are entitled, in the event of both premature and/or delayed delivery/performance, to refuse acceptance of the delivery/performance and to return the delivery/performance to the seller/supplier at his own expense and risk, or to store it on our premises or at a third party, up to the agreed date of delivery/performance in the event of premature delivery/performance.

§ 5 Furnishing Materials, Retention of Title

- (1) We reserve title to any parts that we may furnish to seller/supplier. Seller/supplier shall process, mix or connect any such parts on our behalf. If parts or materials that we furnish are processed, mixed or connected with other goods that do not belong to us, then, insofar as permitted by law, we shall acquire co-ownership to the new item in proportion of the value of our retained goods to the value of the other processed goods, which they possess at the time of processing, combining, mixing.
- (2) Furnished materials may only be used for us in compliance with our order. Seller/supplier is required to store them separately and mark them as our property. Seller/supplier shall bear liability for reduction in value, loss or destruction also in the event of no fault. Seller/supplier is required to keep furnished materials free of encumbrances of any kind whatsoever and to notify us immediately in writing of any seizure by third parties and to provide us with all required information. Seller/supplier is likewise required to disclose the foregoing circumstances of ownership to the third parties. This requirement especially applies for attachment, confiscation or other disposals of third parties against the material.

§ 6 Spare Parts, Repair, Maintenance

- (1) A detailed index of wear and tear parts as well as appropriate codification documents shall be enclosed with the delivery/performance. Said documents must enable ordering of spare parts and classification of main parts subject to wear and tear, vendor and standard parts. Seller/supplier is required to update the documents continuously. Seller/supplier is required to surrender to us, free of charge and for our ownership, the plans or drawings (e.g. detailed drawings) that are required for repair, maintenance and servicing of the delivery/performance or parts thereof. We are especially entitled to use such drawings and plans for manufacturing of spare parts, for repair, maintenance and for modification/expansion and the likes thereof of the delivery/performance.
- (2) Seller/supplier guarantees that spare parts and parts subject to wear and tear for his delivery/performance are in stock, available and can be delivered to us for the entire, common useful life of the delivery/performance. Seller guarantees that he shall keep in stock an immediately available base package of spare parts and parts subject to wear and tear for his delivery/performance for the duration of the agreed warranty period.

§ 7 Assignment, Set-Off and Retention by Seller/Supplier

- (1) Assignment of any claims against us is solely permissible with our prior written approval.
- (2) Set-off by seller/supplier or exercising any right of retention is solely permissible, notwithstanding mandatory instances under the law, with or in the event of a contested or final and non-appealable counter-claim and solely if the claims and rights of the seller/supplier are based on the same contractual relationship.
- (3) Seller/supplier is required to execute the delivery/performance within his own company. Forwarding the delivery/performance to third parties is solely permissible with our prior written approval. Seller/supplier shall remain responsible as joint and several debtor in the event of approved forwarding of a delivery/performance to third parties.

§ 8 Guarantees, Warranty Claims, Liability, Product & Producer Liability

- (1) Seller/supplier guarantees that his delivery/performance complies with the information stated on the order, the latest state of the art, the respectively relevant provisions under law and the regulations, directives and standards of official agencies, professional associations, employer liability insurance associations and the likes thereof. The foregoing requirement especially applies for both German and European provisions, regulations, directives and standards and for any of them that may apply at the site where the delivery/performance is used. Machinery, equipment and facilities must especially meet special safety regulations in effect at the time of performance of contract, and they must have a CE marking affixed to them. Material and test certificates and documents required for any possibly necessary official approvals shall be submitted along with the delivery/performance.
- (2) Seller is required to notify us immediately in writing of any reservations against the type of ordered design of the delivery/performance. In the event of a delivery/performance ordered in compliance with drawings, plans, etc., seller/supplier is required to check them and especially to check all measurements prior to executing the order. Any omissions in this regard shall be at seller/supplier's charge.
- (3) Seller/supplier is required to execute quality assurance at his company for the delivery/performance that complies with the latest state of the art and is appropriate for the type and scope of the delivery/performance. He is likewise required to furnish to us documented evidence of the same upon request. We are entitled to check quality controls as in place at seller's/supplier's at any time and at seller's/supplier's expense. However, any quality control that we may perform shall not release seller/supplier from his incumbent obligations.

- (4) If we are subject to requirements regarding inspection and notification of defects in accordance with § 377 German Commercial Code (HGB), then they shall solely apply for obvious and visible defects at the time of delivery/acceptance. In this case we shall have a period of two weeks from date of delivery for meeting inspection and notification requirements. We nevertheless reserve the right in such and in all other instances to inspect the delivery/performance following receipt thereof for visible and obvious defects and not to declare formal acceptance of the delivery/performance until said inspection has been carried out. Seller/supplier is required to reimburse to us the costs for the inspection in the event that defects are established in this regard. Seller shall waive the plea of delayed notification of hidden defects during the warranty period insofar as permitted by law. Otherwise, a defect that appears at a later time shall be deemed in compliance with the time period, as defined by § 377, German Commercial Code, if the complaint is made within two weeks after the defect is discovered.
- (5) We are entitled to unabridged statutory warranty claims. We are nevertheless entitled to demand from seller/supplier at his expense (a) remedy of the defect or (b) replacement delivery or respective new performance. In both instances, seller/supplier is required to pay all expenses required for remedying the defect or for replacement delivery or respective new performance, including all ancillary costs and especially, for example, costs for removal and reinstallation. We reserve the right to assert claims for damages.
- (6) If seller/supplier fails to meet his supplementary performance obligation within an adequate time period that we stipulate, then we shall be entitled to take required measures, in compliance with § 637 German Civil Code, ourselves or through third parties and at seller's/supplier's own risk and expense notwithstanding other rights under the law. We may take such measures also in the event of purchase contracts and contracts that have delivery of chattels that require manufacturing or production as their subject matters. Stipulation of a time period is not required if stipulating the same is unreasonable for us. Unreasonableness is especially deemed present, in addition to provisions under the law, in the event of impending, inappropriate delay or uncertainty occurrence of success in supplementary performance of contract by seller/supplier for safety-relevant and operationally required parts of the delivery/performance. The same shall apply in the event of threat of unusually high damages. If random sample inspection is agreed under the order for checking the delivery/performance, then we are entitled in terms of the entire delivery/performance to assert the warranty claims as soon as exceeding of the agreed maximum permissible share of defects is established.
- (7) Warranty claims shall prescribe two years after unobjectionable and defect-free acceptance of the delivery/performance unless otherwise provided under the order or if the law provides for a longer limitation period. For guarantees that seller/supplier has assumed for the assured quality or shelf-life of his delivery/performance, he shall bear liability in accordance with provisions under the law, also for compensation for damages and for compensation for damages in lieu of performance of contract. The limitation period in this case shall amount to three years from the date of discovery of the fault or absence of an assured quality unless otherwise provided under the order or if the law provides for a longer limitation period.
- (8) Seller/supplier shall bear liability in accordance with provisions under the law, especially for all damages that he or his employees or other third parties within his sphere of risk inflict on us, our employees or third parties through his/their own fault. If claims are made against us due to any such kind of damage or due to a defect in the delivery/performance of seller/supplier under product and/or producer liability (domestic or foreign product liability regulations) or in accordance with other provisions under the law, then seller/supplier is required to reimburse to us reasonable costs for any related recall program based on product liability law.
- (9) Seller is required to take out adequate and reasonable coverage under a business liability insurance policy and to maintain said policy for the duration of the contractual relationship with us. He is likewise required to insure corresponding the risks arising under product and producer liability. We shall be furnished proof that insurance has been taken out in an appropriate manner upon request.

§ 9 Withdrawal, Termination because of Impediment of Performance

- (1) We are especially entitled to a right of withdrawal or to a right of extraordinary termination of the order of good cause, notwithstanding our other statutory or contractual rights, if petition is filed (own or third party petition) against the assets of seller/supplier for opening insolvency proceedings or if the insolvency proceeding is opened. The same applies if adequately substantiated suspicion is given that requirements are present for filing a petition for insolvency.
- (2) We are likewise entitled to a right of withdrawal or to a right of extraordinary termination of good cause if changes occur through no fault of our own in conditions that are authoritative for the order during execution of the order by seller/supplier. Such conditions especially include, war, civil war, acts of terror, export and trade restrictions in the event of a change of political conditions, amendments of laws, strikes, lockouts, restrictions and disturbances in operations and all other instances of Force Majeure. In any such instances, we shall be entitled to the right to request an extension of the acceptance time period for the delivery/performance in addition to our aforementioned right of withdrawal or extraordinary termination.

§ 10 Documented Evidence & Information

Seller/supplier is required to our request to immediately furnish adequate and duly signed certificates of origin. The same applies for any documented evidence required under laws governing VAT. Seller/supplier shall notify us appropriately in writing if the delivery/performance is subject to any export restrictions (pursuant to German law or other law).

§ 11 Proprietary Rights

- (1) Seller/supplier confirms and bears liability for the fact that deliveries/performance and utilization thereof by us (including later modifications/expansions, production of spare parts, procurement of accessories and repair and maintenance) are free of proprietary rights of third parties or do not breach the proprietary rights of third parties.
- (2) If claim is nonetheless asserted against us due to possible breach of proprietary rights, then seller/supplier is required to release us from all and any such claims, expenses and other disadvantages or performances related to the breach.

§ 12 Security Furnishment

If advance payments are covenanted under the order, then we are entitled to request appropriate and reasonable securities for them at any time. Seller/supplier is required to furnish the security. Securities may be requested individually or jointly in the form of advance payment guarantees and/or transfer by way of security of appropriate materials, especially of such materials that are currently being processed for the order.

§ 13 Trade Secrets

The seller/supplier obligates himself to keep permanently secret all information became accessible to him in connection with the business relationship with us concerning internal circumstances and procedures or those of our clients, suppliers or subcontractors - both technical and commercial/economic - which are designated as confidential or are recognizable due to other circumstances as commercial or industrial secrets and not to record them, nor disclose them to third parties or exploit them in any way himself, unless this is required to achieve the contractual purpose.

§ 14 Place of Performance, Legal Venue and Applicable Law

- (1) The place of delivery/performance for the seller's/supplier's delivery/performance shall be the place of where our company will use the delivery/performance. Our registered headquarters is deemed to constitute this place of delivery/performance unless otherwise stated on the order or otherwise agreed under the order. Our registered headquarters is likewise deemed to constitute the place of delivery/performance in all other instances.
- (2) Disputes arising out of or in connection with the order will be decided by the ordinary courts. Jurisdiction is our registered headquarters, insofar as permitted by law. However, we are entitled to sue at our discretion at any other appropriate court. Sentence 2 shall not apply if the seller/supplier is non-merchant.
- (3) All claims and rights resulting from the order shall be ruled exclusively by German Law. Any conflicting provisions of private international law and the UN Convention on Contracts for the International Sale of Goods (CISG) are explicitly excluded.

§ 15 Miscellaneous

- (1) In case of conflicts between the GTP and the order the contractual agreements shall take precedence.
- (2) The usage of our name, our enquiries or orders etc. for advertising purposes is not permitted without our written permission.
- (3) Plans, drawings, drafts, models etc. prepared at our expense shall remain our property and shall be returned to us together with the delivery, unless otherwise agreed under the order. They may not be used, copied or made accessible to third parties for any purposes other than executing the order.
- (4) We have the right to set off all claims of any kind to which we or companies in our group (STREICHER group) are entitled, towards all claims of the seller/supplier which are due against us or companies in our group, even with different maturity of the claims, provided that the membership of the group was recognizable when concluding the contract.
- (5) Data resulting in connection with the business relationship may be stored by us and shared within our company group. The seller/supplier gives his approval on this.
- (6) Contract and correspondence language is German. All correspondence transmitted to us shall contain the information required for processing it (see § 4, section 2, sentence 2).
- (7) Additional agreements, amendments or supplements to the order must be in writing.
- (8) Should any individual provisions of the GTD be or become ineffective or void in whole or in part, this shall not affect the effectiveness of the remaining provisions. The contractual parties rather commit themselves to agree on a provision that replaces the ineffective or void provision and that corresponds with its economic purpose to the greatest possible extent.