

## General Conditions of Purchase

### 1. Generally

- 1) Göbber GmbH (hereinafter referred to as 'Göbber') orders exclusively on the basis of these General Conditions of Purchase (hereinafter referred to as AEB), which are an element of the contract that is concluded with the supplier. The AEB apply – even without a separate agreement – to all future contracts that are concluded with the supplier. Nevertheless, they apply exclusively vis-à-vis companies, legal entities under public law and special assets under public law for the purposes of article 310, clause 1, line 1 of the German Civil Code (BGB).
- 2) Göbber does not recognize the supplier's diverging or additional terms and conditions of business, unless Göbber would have agreed to their validity in writing. The conditions of article 2, clause 2 remain unaffected.
- 3) The applicable legal regulations and – with international contracts – the INCOTERMS (200) of the International Chamber of Commerce in Paris apply supplementarily in an individual case, as do the respectively latest edition of the unified Guidelines and Uses for Letters of Credit (ERA).

### 2. Purchase orders

- 1) Only written purchase orders from Göbber are binding. Göbber will confirm in writing any alterations or supplements of already placed orders. The regulation in article 151 of the BGB is waived.
- 2) Solely Göbber's authorized signatories and directors are authorized to make verbal agreements which diverge from article 1 and article 2, clause 1 of these General Terms and Conditions of Business (AGB).
- 3) If the supplier does not accept the purchase order within one week after its receipt, then Göbber is entitled to revoke the purchase order. The purchase order will also be inoperative without a revocation if the supplier does not accept the quotation from Göbber within 10 days of receipt. The supplier certainly has to confirm call-forward orders arising from basic contracts within 1 working day. The receipt of the declaration by Göbber is required for complying with the time-limit in each case.

### 3. Purchase order documents and samples for packaging

Göbber is and remains the owner of all documents, samples and data carriers, which will be placed at the supplier's disposal within the framework of the business relationship, as well as the proprietor of all copyrights and other intellectual property rights associated with them. The supplier is not entitled to place such documents, samples and data carriers as well as the data contained by them at the disposal of third parties, nor to make them accessible to third parties without Göbber's written consent. Göbber remains entitled to demand the surrender of all documents, samples and data carriers at any time. If Göbber makes use of this right of surrender, then the customer also has to delete the data which is stored on the data carriers that were transferred to him, including all of the existing duplicated items that are held by him.

### 4. Periods of delivery, delay and withdrawal

- 1) Dates of delivery and periods of delivery that Göbber quotes in the purchase order are binding. The conditions of article 376 of the German Commercial Code (HGB in German) remain unaffected. Göbber's interest in the service is connected with the timeliness of the service. If the supplier declares – before the date that is stipulated in the contract or within a specific time-limit – that the service cannot be provided on schedule or within the agreed time-limit, then Göbber is entitled but not obligated to set a new date or to prolong the time-limit, even several times. In this case, Göbber's interest in the service ends with expiry of the new date or prolonged time-limit for it. Insofar as the supplier falls into delay with the delivery without a new date being stipulated or without the period of delivery being prolonged, then the rights and claims arising from the law because of the delay shall be vested in Göbber unlimitedly.
- 2) The receipt of the goods by Göbber is decisive for the delivery's timeliness, insofar as nothing else is agreed.
- 3) If the supplier recognizes that he cannot comply – irrespective of whatever reason – with the agreed time-limits or dates, then he has to inform Göbber about it in writing immediately, by giving information about the reasons and about the probable duration of the delay.
- 4) In the case of delayed delivery, Göbber is entitled to withdraw from the contract of sale and to demand compensatory damages instead of the service, irrespective of further legal rights and claims. These rights will also be vested in Göbber if a basic contract has been concluded, which the supplier only fulfils partially. Nevertheless, Göbber can only demand compensatory damages instead of the complete service arising from the basic contract if Göbber no longer has any interest in the basic contract's fulfilment. Göbber is entitled but not obligated to limit the withdrawal entirely or partially to the still outstanding deliveries, in the case of partial deliveries.  
The supplier shall fall into delay with the delivery:
  - as soon as a date of delivery that is stipulated or can be stipulated according to a calendar month is exceeded,
  - when a date or time-limit that is stipulated in the contract expires unsuccessfully, unless Göbber would have set a new date beforehand or would have prolonged the time-limit, or
  - in all other cases, if Göbber has unsuccessfully stipulated a reasonable time-limit for service or subsequent fulfilment to the supplier, the supplier falls into delay according to the legal regulations even without setting a subsequent time-limit, insofar as setting a time-limit is non-essential for the onset of delay according to the legal regulations.

- 5) Göbber is entitled to demand damages for the delay or a contractual penalty amounting to 1% of the order's value for every commenced week but 3% maximum of the order's value, instead of the rights mentioned in clause 3. Göbber is not obligated to retain the contractual penalty in the case of acceptance.

### 5. Prices and terms of payment

- 1) Agreed prices are understood to be fixed prices including packing and packaging. Invoices must be issued in the currency that we quote in our purchase order.
- 2) Göbber regulates all invoices within 14 days at 3% discount or within 30 days net after receiving the delivery or service and receipt of the invoice.
- 3) Interest on arrears will be paid amounting to 4% or according to higher damages against proof.
- 4) Göbber is entitled to set off the supplier's debt claims against us with liabilities which Göbber has vis-à-vis the supplier.
- 5) Invoices must be directed in writing (paper form) and as single copies to Göbber GmbH, Bahnhofstr. 40, 27324 Eystrup, Germany. It is absolutely essential to quote the date of the purchase order and the purchase order number. Only the deliveries or services arising from a purchase order are allowed to be accounted for in the invoice, provided that nothing else is agreed.

### 6. Passage of risk and ownership

- 1) The supplier bears the risk of accidental destruction or worsening of the goods until they have been handed over to Göbber. This rule also applies in the case of a sale to destination according to the buyer's instructions, unless Göbber has stipulated the transport company. The place of fulfilment for the delivery is the delivery address which is quoted respectively in the purchase order.
- 2) Göbber only accepts a simple reservation of ownership by the supplier. A prolonged or extended reservation of ownership is rejected. As a result, the ownership of the delivered goods passes to Göbber when the purchase price is paid at the latest, in the case that a delivery is made subject to the reservation of ownership.
- 3) Göbber is entitled to mix the supplier's goods – which are subject to the reservation of ownership during the course of customary business – with another product, to mix them with two or more ingredients into a single product and to resell them, with effect for itself.

### 7. Warranty

- 1) The supplier warrants that the goods comply at the time of the delivery with the specifications that are specially described in the purchase order, as well as with the samples which have been handed over and the trial deliveries which have been made. The supplier further guarantees that the delivered goods comply with the legal and official regulations which apply to the sale and their utilization; especially that they comply with the regulations under laws about food which apply in the European Union's member states, are free from sulphur (SO<sub>2</sub>) and other chemical additives, as well as pure and free from foreign bodies.
- 2) The supplier guarantees that he is allowed to bring the goods into commerce and that he is not prevented from doing so especially because of official rules and regulations.
- 3) The supplier is obligated to keep the goods free from such rights of third parties who can assert these rights against Göbber. The supplier also guarantees that the delivery as such, as well as the processing of the goods, does not infringe third-party rights. Insofar as this guarantee refers to foreign intellectual property rights, it is limited to the country of origin and the country of destination which is known to the supplier.
- 4) Suppliers with whom Göbber has continuous business relationships are obligated to inform Göbber in good time whenever they intend to carry out readjustments of the product or process it, as well as to make alterations of the analytical methods in relation to the products which have been purchased from us.
- 5) In the case of guarantees that are undertaken by the supplier, the rights and claims resulting from them are vested in Göbber. In any case, the legal warranty rights because of redhibitory (material) defects and defects of title are vested in Göbber undiminishedly.
- 6) If Göbber chooses a type of subsequent fulfilment and if the supplier does not carry this out within a reasonable time-limit which is set by Göbber, then Göbber still has the right to choose between the warranty rights that are quoted in clause 5 again. The same thing applies in the case that the supplier refuses the subsequent fulfilment, or such a subsequent fulfilment is no longer of interest to Göbber, or the supplier declares within a reasonable time-limit that he is incapable of the subsequent fulfilment. In these cases, Göbber has the right to cover its requirements otherwise or elsewhere at the supplier's cost.
- 7) Göbber's legal claims of recourse according to article 478 of the BGB remain unaffected; it is incumbent on the supplier to prove that the defect which is asserted by the customer did not exist already when the risk passed to Göbber.
- 8) The defects claims for the purposes of clause 4 are statute-barred (i. e., time-barred) in 2 years from the date of handover to Göbber. As a divergence from this rule, claims arising from guarantees are statute-barred, insofar as nothing else is agreed, in the regulated statutory limitation of time according to articles 195 of the BGB, or in 3 years according to article 199 of the BGB. Claims because of malicious intent or wilful deceit are statute-barred within the legal time-limits.

## 8. Product liability

- 1) If a claim is made against Göbber by a third party on the basis that the goods coming from the supplier have apparently infringed his legally protected rights like the body, health, life and limb, ownership or other rights, or if such an infringement is apparently based on a circumstance, the cause of which lies within the supplier's area of control or organization, then the supplier is obligated to exempt Göbber completely from such a claim at the first request. The obligation concerning exemption also comprises the compensation for all costs which Göbber incurs because of such a claim (e.g., personnel costs or legal counsel's costs).
- 2) The supplier is obligated within the framework of his liability for cases of loss or claims for the purposes of clause 1) to reimburse Göbber for any expenses that arise from or in connection with a recall action which is implemented by Göbber. Göbber will inform the supplier, insofar as it is possible and reasonable to do so, about the content and extent of the recall measure which is to be implemented and give him the opportunity of making a statement. Furthermore, Göbber reserves the rights and claims arising from the law or contract.

## 9. Customer's complaints (notifications of defects)

- 1) Göbber is only obligated to inspect the goods by taking random samples when they are delivered. Göbber has to complain to the supplier about detectable defects within 2 weeks after receipt. Göbber has to complain to the supplier about latent defects within 2 weeks after their discovery.
- 2) In the case of customer's complaints that are made within the time-limit, the supplier has to collect the goods immediately at his own cost. If he does not comply with this duty, then the goods will be stored at the customer's cost and risk. If the supplier has still not collected the goods within three weeks from sending the customer's complaint, then Göbber can destroy the goods after issuing a preceding threat, insofar as the matter concerns perishable goods.

## 10. Rules and regulations about despatch

- 1) The supplier has to comply with the description (naming of the delivered goods, purchase order numbers, etc.) which is quoted by Göbber on the purchase order form and to make a note of it on the despatch documents and invoice documents.
- 2) Göbber's delivery address is basically:  
Göbber GmbH  
Fruchtallee 1  
27324 Eystrup  
Germany  
Göbber remains entitled to name diverging delivery addresses or destinations of delivery.
- 3) The supplier has to bear the costs that arise in connection with the delivery and customs clearance of the goods. He is not allowed to charge Göbber for any unloading fees or customs clearance duties, carriage or other delivery costs in particular. The supplier is obligated to arrange a transport insurance policy at his own cost.
- 4) The proper delivery requires as a prerequisite that the delivery notes are followed. If this does not happen, then the supplier has to bear any arising costs.
- 5) The supplier undertakes to comply with the regulations of the laws about foods during the loading and shipping. Insofar as nothing else is agreed individually, deep-frozen goods must be kept at minus 20°C at the most during the transport, in order to maintain the deep-freezing chain. In addition, the supplier has to comply with the conditions of transport that are stipulated in the respective product specifications, especially regarding temperature and relative air humidity.

## 11. Environmental protection, industrial safety, accident-prevention and safety

- 1) The supplier is obligated to comply with all relevant legal regulations and sets of rules concerning environmental protection, industrial safety, accident-prevention, safety during transport and storage, as well as the regulations and instructions which are appropriate for Göbber in relation to the location and operation, to maintain an effective management system in the quoted areas and to place appropriate proofs at our disposal on request or to allow us to examine them.
- 2) If the supplier infringes the aforementioned regulations within the framework of a basic contract despite a preceding warning, then Göbber is entitled to cancel the contract without notice and to demand compensatory damages if necessary. A preceding warning is indispensable in the case of considerable infringements.
- 3) The supplier accepts an assessment of his environmental performance and industrial safety performance by us (through questionnaires or an audit if necessary).

## 12. Protection from economic exploitation

- 1) The supplier recognizes the child's rights according to article 32 of the UN Convention on Children's Rights to be protected from economic exploitation and not to be involved in work which entails risks (dangers or hazards), hinders the child's education or can damage the child's health or his physical, spiritual, moral or social development.
- 2) The supplier will comply with all laws and legal regulations which are issued by the contracting states of the UN Convention on Children's Rights concerning the protection of children from economic exploitation and which are issued by the members of the Agreements 138 and 182 of the International Labour Organization about the minimum age, in order to eliminate the worst forms of child labour.
- 3) The supplier recognizes the prohibition of slavery and forced labour for the purposes of article 4 of the European Convention for the Protection of Human Rights and Basic Freedoms. He will also comply with all laws and legal regulations that are issued by the contracting states of the Agreement about Slavery in the edition of the Supplementary Agreement about the abolition of slavery, the slave trade and slave-like establishments and practices.
- 4) The supplier further undertakes to impose the aforementioned obligations, including this obligation of transmission, on his upstream suppliers.

## 13. Miscellaneous

- 1) The supplier can only assign claims arising from contracts that are concluded according to these General Conditions of Purchase with Göbber's prior, written permission. The supplier can demand this consent in the case of a legitimate interest. This rule applies especially in the case of assigning security for financing or in the case of agreeing a prolonged reservation of ownership between the supplier and upstream supplier.
- 2) Göbber is entitled to set off its claims against the supplier's debt claims or to make use of its right of retention.
- 3) Eystруп is the place of fulfilment (domicilium executandi) for deliveries and payments, insofar as nothing else is agreed individually or according to these General Conditions of Purchase. The parties undertake mutually to treat confidentially all commercial and technical details which become known to them within the framework or the business relationship and are not made public to third parties; they will not disclose them nor make them accessible to any third parties. Göbber and the supplier will also impose this obligation on their subcontractor and buyers accordingly.
- 4) German law applies – subject to excluding the regulations of the UN Purchase Law.
- 5) Göbber's head office (in Eystруп) is the place of jurisdiction (domicilium disputandi). Nevertheless, Göbber remains entitled to bring a lawsuit against the supplier at his head office.

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