

General Terms and Conditions of Business

Scope of validity

Our General Terms and Conditions of Business (hereafter referred to as "GCB") printed below apply for use in respect of the following (hereafter referred to as the "Purchaser"):

1. natural persons or legal entities or partnerships;
2. legal entities under public law or corporations, establishments or similar institutions under public law.

All goods and services of GEMÜ GmbH (hereafter referred to as the "Supplier") are subject to these GCB as well as any separate contractual agreements. No conditions of purchase of the purchaser will become part of the contract, even if an order is accepted.

Any assurances, additional agreements as well as amendments and additions to these GCB must be in writing. The same applies to any change in the requirement for the written form.

1. Offer and conclusion of contract

1.1 Our offers are always issued on a non-binding basis with regard to price, quantity, delivery date and availability.

1.2 In the absence of any separate agreements, the contract comes into force on the written order confirmation from the supplier. Verbal agreements and additional agreements require our written approval to be valid.

1.3 All offers, order confirmations and other contracts are valid only subject to the issue of the export license by the competent Swiss authorities and any additional consent from foreign authorities for the goods to be supplied, insofar as such a license is required.

If the license is refused or a license which has already been issued is revoked by the competent authorities, the supplier is released from its supply obligation and no claims for compensation can be made against the supplier.

2. Prices

2.1 The prices are understood as being net in Swiss francs (CHF) ex Rotkreuz, excluding value added tax. Additional costs, in particular costs for packaging and dispatch/delivery (freight/transport) are not included in the prices unless explicitly agreed otherwise with the supplier and will be charged to the purchaser. The amount of the packaging costs corresponds to 1% of the net value of the goods. Packaging materials will not be taken back. The sales prices, any additions for inflation or price discounts applicable on the date of delivery shall apply for all goods/services listed in the offers or order confirmations. Make-and-take orders will fundamentally only be concluded for a maximum period of one year. If the goods ordered by way of a make-and-take order are not taken within this period, then the supplier can withdraw from the make-and-take order. A subsequent debit based on the supplier's list prices will be issued for the goods already taken. The purchaser must indemnify the supplier for any losses incurred by the supplier arising from this withdrawal from the make-and-take order.

Obvious mistakes and errors in offers, order confirmations or invoices may be corrected by the supplier. Information issued in error which is in obvious contradiction with the other sales documents, cannot constitute grounds for any legal claims by the purchaser.

2.2 If the costs of production upon which the supplier's calculation is based change after the conclusion of contract, the supplier shall be entitled to make a subsequent adjustment to the agreed price.

3. Delivery

3.1 All deliveries are effected at the client's cost; the risk passes to the purchaser once the item of delivery has left the factory, even if part deliveries are made or if the supplier has agreed to other services, e.g. the dispatch costs or delivery or installation. In the absence of any agreement to the contrary the choice of transport route and mode of transport is made at the supplier's discretion, without any liability to choose the cheapest form of freight. Insurance will only be concluded at the purchaser's express request and expense.

3.2 The delivery times stated will be adhered to as far as possible but shall not be binding.

If a delivery is delayed beyond a delivery date promised in writing by the supplier, then the purchaser can put the supplier in default following expiry of an additional period of grace of at least three weeks issued in writing and consequently withdraw from the corresponding order following expiry of a further reasonable period of grace. In the event of delay in delivery the purchaser cannot assert any claim for compensation of any kind whatsoever unless the purchaser can prove that the delay is the result of gross negligence or omission by the supplier. The liability for vicarious agents is expressly excluded.

The adherence to the delivery period is subject to the supplier receiving its own deliveries correctly and promptly. Moreover, the delivery period is agreed as being met if the delivery item has left the supplier's plant within good time or if the supplier has given notification that it is ready to dispatch the goods. Where an acceptance is required – except for justified refusal of acceptance – the date of acceptance, alternatively the notification of readiness for acceptance, is definitive. Express reference is made to the right of retention in respect of the supplier's deliveries in accordance with No. 4.6 resulting from delay in payment by the purchaser.

3.3 If dispatch or acceptance of the delivery item is delayed for reasons for which the purchaser is responsible, then the costs incurred by the delay will be charged to the purchaser – commencing one week after notification of readiness for dispatch or acceptance.

If the supplier is in delay and the purchaser becomes entitled nevertheless to a claim for compensation, then it shall be entitled only to demand a flat rate compensation payment for delay. For each full week of the delay, this amount shall be a maximum of 0.5%, in total however a maximum of 5% of the value of that part of the total consignment that cannot be used on time or in accordance with the terms of the contract as a result of the delay; this is however subject to the purchaser being able to specifically prove both a claim for compensation for delay at least in the flat rate amount being claimed, as well as the supplier's fault.

3.4 The dispatch weights and dimensions stated in the printed documents are given as precisely as possible but cannot be guaranteed. The purchaser has no claims which are based on differences between the actual weight or the actual dimensions of the subject of the delivery and the details stated in the printed documents.

3.5 The dimensions and weights stated in the supplier's descriptions are not binding. The right is reserved to make changes to design.

3.6 In the event that on conclusion of a matching cover transaction the supplier does not receive supply or prompt supply from its own supplier, or, in the absence of matching cover transactions, the supplier is unable to procure the goods to be processed or if the supplier is prevented from performing its contractual obligations due to force majeure, disruption to business or transport disruption, strikes or motorway blocks, the supplier shall be entitled to extend the delivery time by the period of delay plus an appropriate lead period or limit the consignment accordingly or withdraw from the contract in whole or correspondingly in part. Claims for compensation from the purchaser against the supplier or its vicarious agents are excluded where this is legally permissible.

The purchaser can withdraw from the contract without giving a period of notice if it is finally rendered impossible for the supplier to perform the contract in full prior to the transfer of risk. In addition, the purchaser can withdraw from the contract if the execution of part of the delivery for an order is rendered impossible and it has a justified interest in refusing the part delivery. If this is not the case then the purchaser must pay the contract price applicable to the part delivery. The same applies in the event of incapacity on the part of the supplier. In these cases of incapacity the purchaser cannot make claim for damages of any kind whatsoever unless the purchaser proves that the incapacity is the result of gross negligence or omission on the part of the supplier. The liability for vicarious agents is expressly excluded.

If the impossibility or incapacity occurs during the delay in acceptance by the purchaser, or if the purchaser is at least primarily responsible for this situation, it shall remain obligated to pay consideration in return.

3.7 If, after confirmation of the order, justified doubt arises about the purchaser's creditworthiness, for example as the result of negative information, protests about bills of exchange, cessation of payment, enforcement orders, pending settlement or bankruptcy proceedings etc., or if the purchaser is overdue with the payment of a due commitment to the supplier, then the supplier shall be entitled to demand payment in advance of the purchase price or collateral, at the discretion of the supplier. If the purchaser fails to meet this request within a reasonable period the supplier shall be entitled to withdraw from the contract. The supplier is also entitled to withdraw if the purchaser has not called for delivery of the delivery item, in the quantity ordered, by the expiry date of the make-and-take period. This does not affect the right of the supplier to further claims, in particular the claim for damages arising from the failure of the contract.

3.8 The supplier is entitled to make part deliveries and render part services at any time.

3.9 If the purchaser delays acceptance then the supplier shall be entitled to demand reimbursement of the loss incurred by the supplier.

If the purchaser refuses acceptance on expiry of a reasonable period of grace it has been given, or has already expressly declared that it does not wish to effect acceptance, the supplier can withdraw from the contract and demand compensation for failure of the contract or continue with the contract and demand compensation for non-performance. The supplier can demand 20% of the purchase price, without deductions, as compensation for delay in acceptance.

In this context, the purchaser has the right to furnish proof that the supplier has not incurred any loss or that the loss incurred is less than the flat rate compensation amount.

On commencement of the delay in acceptance the risk of accidental deterioration and accidental loss passes to the purchaser.

Further claims arising from delay in delivery are determined exclusively in accordance with No. 6 ff of the GCB.

4. Payments

4.1 In the absence of any written agreement to the contrary all invoices of the supplier become payable and due, net, 30 days after the invoice date. On expiry of this period the purchaser shall be deemed to be in arrears without any reminder. Payment must be made by bank, Giro or post office check transfer.

4.2 The purchaser is only entitled to offsetting, retention or reduction, even if the purchaser is asserting warranty claims or counterclaims, if the counterclaims have been established as legally binding or are undisputed. This does not apply to the purchaser's right of retention arising from counterclaims from the same specific contractual relationship. The supplier expressly reserves the right to accept bills of exchange or checks. Bills of exchange or checks will only be accepted for payment and are only valid as payment by the purchaser once these have been collected in full. All costs and expenses in connection with the collection of bills of exchange and checks shall be charged to the purchaser. When accepting bills of exchange or checks the supplier gives no guarantee that submission or protests will be made promptly.

4.3 The supplier's sales personnel are only authorized to receive payments if they are able to present an express, written authority from the supplier to receive monies. The sales personnel are not permitted to issue invoices, exchange goods or to take back goods in the absence of any instructions from the supplier.

4.4 If the purchaser is in arrears with payment the supplier can claim arrears interest of 7%. All expenses incurred in issuing reminders and for collection in the event of delay in acceptance or payment shall be charged to the purchaser. The supplier reserves the right to prove a higher loss caused by delay in the individual case.

4.5 If the purchaser is in arrears with a payment, if a bill of exchange or check is subject to protest/rejected or if enforcement proceedings are issued against the purchaser by a third party, then all invoices not yet due up to that date shall become immediately due for payment.

4.6 If the purchaser is in arrears with a payment, if a bill of exchange or check is subject to protest/rejected or if enforcement proceedings are issued against the purchaser by a third party, the supplier shall be entitled to withhold further delivery of goods, even for delivery dates which have already been promised, without this constituting the grounds for any claim for compensation whatsoever by the purchaser. During the period of delay the supplier shall also be entitled at any time to withdraw from the contract, to demand return of goods already supplied and to claim damages resulting from the failure of the contract.

4.7 Payments of the purchaser are fundamentally applied to the oldest invoices due for payment. Any discount deductions agreed will only be acknowledged providing no other invoices are already due for payment on the date the money is received (by the supplier).

5. Retention of title

5.1 The subject of the delivery remains the property of the supplier until it has received full payment of the purchase price in accordance with the terms of the contract. Up to this date the supplier is entitled to register the retention of title in accordance with Art. 715 ZGB (Swiss Civil Code) in the Register of Retention of Title at the purchaser's respective place of residence or registered offices. The purchaser gives an undertaking, at the request of the supplier, to immediately give its written consent to the registration of a retention of title in respect of all the key points for the registration (see Art. 4, Clause 4 of the Decree of the Federal Court).

5.2 The supplier is entitled to insure the delivery item against theft, breakage, fire, water and other damage at the purchaser's expense unless the purchaser has itself submitted proof that a corresponding insurance policy has been concluded. The purchaser gives an undertaking to take all the necessary due care for the storage and maintenance of the delivery items until full and final payment has been made.

5.3 The purchaser may neither sell, pledge nor transfer the delivery item as collateral until full payment has been made. In the case of attachments as well as seizure or other orders by third parties, the purchaser is obligated to immediately notify the supplier.

5.4 In the event of action by the purchaser in breach of the terms of the contract, in particular in the event of payment arrears, the supplier is entitled to take back the delivery item and the purchaser obligated to return same. The assertion of the right of retention and the pledging of the delivery item by the supplier do not constitute withdrawal from the contract.

5.5 The application for initiation of insolvency proceedings shall entitle the supplier to withdraw from the contract and demand the immediate return of the subject of the contract.

6. Guarantee services

6.1 The supplier gives the following guarantees for material and legal deficiencies in the goods supplied, to the exclusion of further claims – subject to Section 6.2 of these conditions:

6.1.1 Material deficiency:

6.1.1.1 The warranty period is 12 months commencing on delivery to the purchaser. The purchaser gives an undertaking to check the consignment immediately on delivery. All those parts which are identified as defective as the result of circumstances applicable prior to the transfer of risk must be repaired or replaced free of charge at the supplier's choice. The supplier must be immediately notified in writing of the discovery of any defect; otherwise all rights arising from defects shall become null and void. Defective and replaced parts become the property of the supplier.

6.1.1.2 The purchaser must give the supplier the necessary time and opportunity to carry out all the repairs and replacement deliveries deemed necessary by the supplier; otherwise the supplier shall be released from its liability for the subsequent consequences. The purchaser has the

right to rectify the defect itself or arrange for this to be done through a third party and to demand reimbursement from the supplier for the necessary costs only in urgent cases which jeopardize operating safety or to prevent a disproportionately greater loss – for which the supplier must be notified immediately – or if the supplier delays rectifying the defect.

6.1.1.3 The costs incurred as a result of the repair or replacement delivery shall be borne by the supplier – insofar as the complaint emerges as being justified – to the extent of the costs of the replaced item, including dispatch as well as the reasonable costs of dismantling and assembly, and in addition, if this can be reasonably demanded depending upon the situation in the individual case, the costs of any necessary provision of its fitters and vicarious agents.

6.1.1.4 The purchaser is entitled to withdraw from the contract within the framework of the statutory regulations if the supplier allows a reasonable period for repair or replacement delivery which it has been set to rectify a technical defect to expire without success. In the event of a minor defect the purchaser shall only be entitled to a reduction in the contract price. The right to reduction in the contract price is otherwise excluded.

6.1.1.5 No guarantee is given in particular for: inappropriate or improper use, faulty installation or commissioning by the purchaser or third parties, normal wear and tear, faulty or negligent handling, improper maintenance, unsuitable operating materials, faulty construction work, unsuitable base, chemical, electrochemical or electrical influences unless these are the fault of the supplier.

6.1.1.6 If the purchaser or a third party carries out an improper repair, the supplier shall have no liability for the resultant loss/damage. The same applies to any modifications to the subject of the delivery carried out without the prior consent of the supplier.

6.1.1.7 Insofar as there is no obvious defect on the subject of the delivery, credit notes will only be issued for goods which have been returned to the supplier within six months and in their original packaging. The supplier reserves the right to refuse credit notes to the purchaser.

6.1.2 Legal deficiency

6.1.2.1 If the use of the subject of the delivery results in the infringement of commercially protected rights or copyrights in Switzerland the supplier will, at its expense, fundamentally procure the right of the purchaser to continue using the goods or will modify the subject of the delivery in such a way that the protected rights are no longer infringed. If this is not possible at an economically reasonable price or within a reasonable period, the supplier will take back the delivery item and refund the contract price less an amount which takes into account the benefits of the use and condition of the delivery item.

These obligations apply only if

- The purchaser informs the supplier immediately of any claims of patent or copyright infringements;
- The purchaser provides the supplier with appropriate support for the claim being made or enables the supplier to carry out the modification measures in accordance with 6.1.2.1;
- The right is reserved for the supplier to take all counter-measures including out of court settlements;
- The subject of the delivery has not been manufactured or modified at the purchaser's instructions;
- The infringement of rights has not been caused by the fact that the purchaser has carried out an unauthorized modification to the subject of the delivery or has used it in a manner which is not in accordance with the contract.

6.1.2.2 Any liability of the supplier or its vicarious agents for further legal deficiencies not covered by No. 6.1.2.1 is expressly excluded.

6.2 Liability

6.2.1 If, due to the fault of the supplier, the subject of the delivery cannot be used as a result of omission or faulty execution of suggestions and advice issued prior to or after conclusion of the contract, or as the result of breach of other contractual obligations – in particular instructions on the operation and maintenance of the subject of the delivery – the rules of Sections 6.1 and 6.2 apply accordingly, to the exclusion of further claims by the purchaser.

6.2.2 The supplier is liable in each case only for the direct loss and only if the purchaser proves that this has been caused by willful intent on the part of the supplier. The liability for vicarious agents is expressly excluded.

6.2.3 Any liability on the part of the supplier and its vicarious agents is excluded for losses which are not incurred on the subject of the delivery itself. In particular, the client does not in any event have any claims for reimbursement of losses such as lost production, loss of use, loss of orders, lost profits or any indirect or consequential losses.

7. Assignment

The purchaser may not assign any claims arising from the contract to third parties without the prior written consent of the supplier.

8. Statute of limitations

Where legally permissible and not contractually agreed otherwise, all claims of the purchaser – arising from any legal ground whatsoever – expire in twelve months.

9. Intellectual property

The copyright, rights arising from the Patent Act as well as the rights arising from the Design Act to drawings and equipment, plus the associated documents, offers and cost proposals remain the property of the supplier. These are only entrusted to the purchaser for its personal use as a basis for the supplier's corresponding offer and may not be duplicated or made accessible to third parties, even in extract form, without the express consent of the supplier. In the event of an order not being placed, drawings and associated documents must be returned to the supplier immediately after the decision has been taken. The supplier guarantees its equipment in respect of foreign protected rights only for the territory of Switzerland.

10. Change in the GCB

The supplier reserves the right to amend the GCB at any time. The purchaser will be notified of any changes in the GCB in the appropriate manner or these will be available to be called up at www.gemue.ch. The amended GCB shall apply to all of the purchaser's orders following their publication or notification.

11. Place of performance, definitive law and jurisdiction

11.1 The place of performance is Rotkreuz.

11.2 The parties agree that Swiss law shall apply to the contract and its interpretation. The provisions of the United Nations Convention on Contracts for the International Sale of Goods do not apply.

11.3 All disputes arising from this contract are to be settled by the competent courts in the canton of Zug. The supplier is also entitled to take legal action against the purchaser at the purchaser's ordinary courts of jurisdiction.

12. Partial invalidity and severability clause

If a provision of these GCB is or becomes invalid or unenforceable this will not affect the remainder of the GCB. The invalid or unenforceable clause must be replaced by a valid clause that most closely reflects the commercial purpose of the invalid clause. The same procedure is to be followed if a loophole becomes evident.