



Terms and Conditions of Purchase of Gummiwerk KRAIBURG Elastik GmbH & Co. KG

§ 1 Scope of application

- (1) Our Terms and Conditions of Purchase shall apply to all business relationships with our business partners and suppliers ("Supplier"). Our Terms and Conditions of Purchase shall apply only if the Supplier is an entrepreneur (Section 14 of the German Civil Code (BGB)), a legal entity under public law or a special fund under public law.
- (2) The Terms and Conditions of Purchase shall apply, in particular, to the purchase and/or delivery of movable items, irrespective of whether the seller manufactures the goods itself or purchases them from suppliers (Sections 433, 650 BGB). Unless otherwise agreed, these Terms and Conditions of Purchase shall also apply as a framework agreement for similar future contracts, without us having to refer to them again in each individual case.
- (3) These Terms and Conditions of Purchase shall apply exclusively; we shall not recognize any terms and conditions of the Supplier that conflict with or deviate from or supplement our Terms and Conditions of Purchase unless we have expressly consented to the validity of these in writing. This requirement of consent shall apply even if the Supplier makes reference to its general terms and conditions in its documents and we do not expressly object to them.
- (4) All agreements made between us and the Supplier for the purpose of executing the contract shall require our written confirmation to be effective.

§ 2 Conclusion of contract

- (1) Contracts shall be concluded under the terms and conditions stated in our purchase order upon acceptance of the purchase order by the Supplier.
- (2) Without our prior written consent, the Supplier shall not be entitled to assign or otherwise transfer its rights under this contract to a third party in whole or in part.

§ 3 Delivery and delivery dates

- (1) Unless otherwise agreed, all deliveries shall be made DDP (Incoterms 2020) to the Tittmoning plant.
- (2) The delivery must be accompanied by a delivery note stating the date (issue and dispatch), the contents of the delivery (article number and quantity) and our order ID (date and number). If the delivery note is missing or incomplete, we shall not be responsible for any resulting delays in processing and payment. A corresponding dispatch note with the same content must be sent to us separately to the delivery note.
- (3) Unless otherwise agreed, the risk of accidental loss and accidental deterioration of the item shall pass to us upon handover at the place of destination (place of performance). If acceptance has been agreed, this shall be decisive for the transfer of risk. The statutory provisions of the law on contracts for work and services (German Werkvertragsrecht) shall also apply accordingly to any acceptance.
- (4) The delivery date stated on the purchase order shall be binding. The Supplier shall be obliged to inform us in writing and without delay if circumstances arise or become apparent which indicate that the stipulated delivery date cannot be met.
- (5) If the Supplier delivers before the agreed delivery date, we reserve the right to return the goods at the Supplier's expense, insofar as this is reasonable in consideration of all circumstances.
If, in the event of early delivery, no return is made, we shall store the goods at the Supplier's expense and risk until the agreed delivery date. In the event of early delivery, we reserve the right to make payment only on the agreed due dates. We shall accept partial deliveries only upon express agreement.
- (6) If the Supplier does not perform or does not perform within the agreed delivery period or if it is in default, our rights – in particular, to withdraw from the contract and to claim damages – shall be determined in accordance with the statutory provisions. This shall not affect the provisions in Section 2(7).
- (7) If the Supplier is in default, we may – in addition to further statutory claims – demand lump-sum compensation for our damage caused by the default in the amount of 0.25% of the net price per calendar day, but no more than a total of 5%



of the net price of the goods delivered late. We reserve the right to prove that higher damages have been incurred. The Supplier reserves the right to prove that no damage at all or only significantly less damage has been incurred.

§ 4 Prices and terms of payment

- (1) The price stated in the purchase order or otherwise agreed shall be binding. All prices shall be exclusive of statutory value added tax, if applicable. Unless expressly agreed otherwise, the price shall include delivery in accordance with DDP (Incoterms 2020) to the named place of destination.
- (2) For each purchase order, the Supplier is obliged to issue an invoice conforming to the legal requirements within five (5) days after the delivery of the ordered goods. Specifically, we may only process invoices if these – as per the specifications in our purchase order – indicate the order number shown there and are made out to the correct invoice recipient. If the invoice does not comply with the provisions of this clause, we shall not be responsible for any resulting delays in processing and payment.
- (3) Payments on our part shall not imply that the goods are free of defects, therefore do not include a waiver of our claims for defects and consequently do not exclude a later notice of defects.
- (4) We shall make payment within 30 calendar days. If we pay within 14 days of complete delivery and performance (including any agreed acceptance) and receipt of a proper invoice, the Supplier shall grant us a 3% discount on the net amount of the invoice.
- (5) The Supplier shall only have rights of set-off or retention in respect of undisputed or legally established claims.

§ 5 Retention of title by the Supplier

The transfer of ownership of the goods to us shall be unconditional and without regard to payment of the purchase price. If, in an individual case, we accept a transfer of ownership subject to retention of title, the Supplier's retention of title shall expire no later than upon payment of the purchase price for the goods delivered. In such cases, we shall also remain authorized to resell the goods in the ordinary course of business even before payment of the purchase price, in any case with advance assignment of the claim arising therefrom. This shall exclude all other forms of retention of title, in particular, extended retention of title, transferred retention of title and the retention of title extended to further processing.

§ 6 Provision of parts

If we provide parts to the Supplier, we shall retain the title to these. Processing or transformation of these by the Supplier shall be carried out on our behalf. If our goods subject to retention of title are processed with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the value of the item to the other processed items at the time of processing. If the item provided by us is inseparably mixed with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the value of the item subject to retention of title to the other mixed items at the time of mixing. If the mixing takes place in such a way that the Supplier's item must be regarded as the main item, it is deemed agreed that the Supplier shall transfer co-ownership to us on a pro rata basis, and the Supplier shall hold sole ownership or co-ownership on our behalf.

§ 7 Claims for defects

- (1) The statutory provisions and, exclusively in our favor, the following supplements and clarifications shall apply to our rights in the event of material defects and defects of title to the goods (including wrong and short delivery as well as improper assembly/installation or defective instructions) and in the event of other breaches of duty by the Supplier.
- (2) The Supplier shall be liable in accordance with the statutory provisions, in particular, for ensuring that the delivered goods are of the agreed quality at the time of transfer of risk. In any event, any specifications, information in product data sheets and other information which – in particular, by designation or reference in the purchase order – form part of the contract or have been included in the same way as these Terms and Conditions of Purchase shall be deemed to be an agreement on quality. In this respect, it shall be irrelevant whether the information originates from us, from the Supplier or from the manufacturer. The Supplier shall also be liable, in particular, for ensuring that the goods are free



from manufacturing and/or design defects and comply with the latest state of the art and all applicable statutory provisions.

- (3) The statutory provisions (Sections 377, 381 of the German Commercial Code (HGB)) shall apply to the commercial duty to inspect and report defects with the following proviso: Our duty to inspect shall be limited to defects which are openly apparent during our incoming goods inspection under external examination including the delivery documents (e.g. transport damage, wrong and short delivery) or which are recognizable during our quality control as part of the random sampling procedure. If acceptance has been agreed, there shall be no duty to inspect. Our duty to report defects discovered at a later date shall remain unaffected. Notwithstanding our duty to inspect, our complaint (notice of defect) shall in all cases be deemed to have been made in due time and without undue delay if it is sent within five (5) working days of discovery or, in the case of obvious defects, of delivery.
- (4) Without prejudice to our statutory rights and the provisions in clause 3 above, the following shall apply: If the Supplier fails to meet its obligation to provide subsequent performance – at our option, by remedying the defect (rectification) or by delivering an item free of defects (replacement delivery) – within a reasonable period of time set by us, we shall be entitled to remedy the defect ourselves and to demand reimbursement from the Supplier of the expenses required for doing this or a corresponding advance payment. If the subsequent performance by the Supplier has failed or is unreasonable for us (e.g. due to particular urgency, risk to operational safety or threat of disproportionate damage occurring), no deadline need be set; we shall inform the Supplier of such circumstances without undue delay, in advance where possible. In all other respects, we shall be entitled to reduce the purchase price or to withdraw from the contract in accordance with the statutory provisions in the event of a material defect or defect in title. Furthermore, we shall be entitled to claim damages and reimbursement of expenses in accordance with the statutory provisions.

§ 8 Property rights

- (1) The Supplier shall be liable for ensuring that its delivery does not infringe any trademarks, patents, copyrights or other industrial property rights of third parties.
- (2) If a third party brings a claim against us on account of an infringement of its industrial property rights, the Supplier shall be obliged to indemnify us against such claims upon first written request.
- (3) The Supplier's indemnification obligation relates to all expenses necessarily incurred by us arising from or in connection with the claim made by a third party.

§ 9 Product liability

- (1) If the Supplier is responsible for a product defect, it shall be obliged to indemnify us against any third-party claims for damages on first request insofar as the cause lies within its sphere of control and organization and it is itself liable in relation to third parties.
- (2) Within the scope of its liability for damages within the meaning of clause 1, the Supplier shall also be obliged to reimburse any expenses arising from or in connection with recall action carried out by us. We shall inform the Supplier about the content and scope of the recall measures to be carried out – as far as possible and reasonable – and give the Supplier the opportunity to comment. Other statutory claims shall remain unaffected. The Supplier undertakes to maintain a product liability insurance with lump-sum coverage of EUR 10 million per case of personal injury/property damage; if we are entitled to further claims for damages, these shall remain unaffected.

§ 10 Supplier recourse

- (1) In addition to our claims for defects, we shall be entitled to our statutory claims for expenses and recourse within a supply chain (supplier recourse) without limitation. In particular, we shall be entitled to demand from the Supplier exactly the type of subsequent performance (rectification or replacement delivery) that we owe to our customer in the individual case. This shall not restrict our statutory right of choice (Section 439(1) BGB).
- (2) Our claims from supplier recourse shall also apply if the defective goods have been combined with another product or further processed in any other way by us, our customer or a third party, e.g. by incorporation, attachment or installation.



§ 11 Statute of limitation

- (1) The mutual claims of the contracting parties shall become statute-barred in accordance with the statutory provisions, unless otherwise stipulated below.
- (2) Notwithstanding Section 438(1)(3) BGB, the general limitation period for claims for defects shall be three (3) years from transfer of risk. Insofar as acceptance has been agreed, the limitation period shall commence upon acceptance. The three-year limitation period shall apply mutatis mutandis to claims arising from defects of title, whereby the statutory limitation period for claims in rem of third parties for surrender of goods (Section 438(1)(1) BGB) shall remain unaffected; furthermore, claims arising from defects of title shall under no circumstances become statute-barred while the third party is still able to assert the right against us – in particular, in the absence of a statute of limitation.
- (3) The limitation periods of the law on sales including the above extension shall apply – to the extent provided by law – to all contractual claims for defects. Insofar as we are also entitled to non-contractual claims for damages based on a defect, the regular statutory limitation period (Sections 195, 199 BGB) shall apply to this unless the application of the limitation periods of the law on sales gives rise to a longer limitation period in individual cases.

§ 12 Models, drawings, molds, parts provided, etc.

- (1) Models, drawings, standard sheets, print templates, print films, tools, gages, profiles, molds, etc. provided by us shall remain our property. The Supplier must store these carefully, maintain them free of charge, renew them if necessary and return them to us in a usable condition after use. They, as well as the goods manufactured with or according to them, may neither be disclosed to third parties nor passed on to third parties nor used for them or for the Supplier's own purposes without our written consent. These obligations shall also apply after the execution of this contract. The confidentiality obligations shall expire if and to the extent that the manufacturing knowledge contained in the documents provided has become generally known. Contraventions shall oblige the Supplier to pay damages. Special non-disclosure agreements and statutory regulations on the protection of secrets shall remain unaffected.
- (2) The Supplier shall be obliged to use the tools provided by us or manufactured for us exclusively for the preparation of the deliveries and services ordered by us. The Supplier shall be further obliged to insure the tools belonging to us at replacement value at its own expense against fire, water, theft and other damage (e.g. caused by employees). The Supplier must return tools provided by us or manufactured for us at our expense upon first request, no later than upon termination of the business relationship.
- (3) In the event of production difficulties on the part of the Supplier, in particular, if the Supplier fails to meet its contractual obligations or ceases production, we shall be entitled to demand the return of the molds etc. paid for in full or in part by the Supplier for an appropriate fee. The destruction of molds that are no longer required shall only be permitted with our written consent.

§ 13 Place of jurisdiction, place of performance, applicable law

- (1) German law shall apply to the exclusion of international uniform law, in particular, the UN Convention on Contracts for the International Sale of Goods.
- (2) The exclusive place of jurisdiction for all disputes arising from this contractual relationship or in connection with it shall be our registered office in Tittmoning. The same shall apply if the buyer is an entrepreneur within the meaning of Section 14 BGB. However, in all cases, we shall also be entitled to bring an action at the place of performance of the delivery obligation or at the general place of jurisdiction of the buyer. Overriding statutory provisions, in particular, on exclusive jurisdiction, shall remain unaffected.
- (3) Unless otherwise stated in the purchase order, our registered office shall be the place of performance.

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