

# GENERAL CONDITIONS OF PURCHASE OF FRIEDRICH BENIEN GMBH & CO. KG

Version 01/2018

## I. Contents of Contract and its Conclusion

1. These General Conditions of Purchase ("Conditions") shall apply to all – present and future – orders of goods and services and their transactions. Conflicting conditions or any of the Supplier's purchase conditions which differ from these Conditions will not be accepted unless otherwise specified in our contract with the Supplier. If we accept the goods without further objection, this may in no case be considered as our acceptance of Supplier's conditions.
2. These general conditions of purchase shall only apply vis à vis entrepreneurs, governmental entities, or special governmental estates in the meaning of sec. 310 para. 1 BGB (Civil Code).
3. If, for a specific order, special conditions are agreed to which differ from these Conditions then these Conditions are subordinate and supplementary only.
4. The preparation of offers is for us at no charge and not binding.

## II. Prices

The prices agreed to represent free house delivery to the receiving location, including freight, packaging and similar costs. In case of deliveries where we pay the cost, we shall take over only the most favourable freight costs unless we have specified a special type of shipment.

## III. Payment

1. The following payment conditions apply if nothing else has been agreed to: we shall pay invoices either within 14 days with a 3 % cash discount or 30 days without deductions. If the payment conditions of the Supplier are more favourable for us then they apply.
2. Payment and cash discount periods begin with receipt of the invoice, not, however, before receipt of the goods or services nor before their acceptance and, so far as documentation or similar documents belong to the total package, not before they are given to us as specified in the contract.
3. Payments will take place by check or bank transfer. Payment is considered to be on time when the check is put in the mail or the transfer papers are given to the bank on the due date.
4. Our statutory rights regarding set-off and retention shall remain unaffected.
5. Interest may not be requested at the mere maturity of the debt. In any case, we are permitted to prove lower damages due to default than that requested by the Supplier.

## IV. Delivery Deadlines

1. Delivery deadlines and dates are binding. The Supplier shall notify us immediately of imminent delays in delivery.
2. In case of delivery delays we have the right to claims as specified by law. In particular, after the fruitless expiration of an extension of time, we are authorized to request damages instead of the goods or services.
3. The unconditional acceptance of a delayed delivery or service does not constitute a waiver of claims (including any contractual penalties) to which we are entitled due to the delayed delivery or service; this applies until the complete payment of amounts owed by us for the delivery or service in question.

## V. Retention of Title

1. The Supplier's terms covering his retention of title shall apply subject to the condition that title to the goods shall pass to us on the date of payment for such goods. Consequently, the extended forms of the so-called current account retention (Kontokorrentvorbehalt) shall not apply.
2. The Supplier may claim return of the goods on the basis of his retention clause only if he has previously withdrawn from the contract.

## VI. Execution of Deliveries and Transfer of Risk

1. The supplier carries the risk of accidental loss and accidental deterioration, even with prepaid and free house deliveries, until the goods have been handed over at the place of delivery.
2. Partial deliveries require our agreement.
3. Quantities exceeding or less than those ordered are permitted only within the usual trade conditions.
4. The Supplier carries the cost of packaging unless something else has been agreed to in text form. If we carry the cost of packaging in a specific case, this must be charged to us at the lowest cost possible. The requirements to take back packaging are according to the Packaging Regulation of 21.08.1998 resp. the Packaging Act of 05 07.2017.

## VII. Declarations of Origin

Where the Supplier makes a declaration in regard to the origin of the merchandise, the following terms shall apply:

1. The Supplier will allow verification through customs authorities and submit all necessary information as well as any required certification.

2. The Supplier shall compensate us for any damages and losses incurred to us, if and in so far as the competent authorities, due to any deficient certification or impossibility to verify, fail to acknowledge the declared origin, unless he proves that he is not responsible for such consequences.

### **VIII. Warranty Provisions and Statute of Limitations**

1. The Supplier must supply us with goods free of physical and legal defects. The Supplier must take the responsibility that his deliveries and services are according to the recognized rules of technology and that the contractually agreed upon characteristics and standards as well as safety, workers' protection and accident prevention and other laws have been followed.

2. We shall limit the incoming inspection to shipping damage that is apparent externally and to determining that the volume and the part numbers of the ordered goods are correct, at least according to the shipping papers. Discrepancies shall be reported without delay. The Supplier must adapt the quality management system and the quality assurance activities to this limited incoming inspection.

3. Notices of defects are in time if they are received by the Supplier within 10 working days. The deadline for the notice of defects begins as soon as we – or in case of direct deliveries, our customer – have or should have determined that there is a defect.

4. If the goods have a physical defect, we have legal rights of our choice. We can request from the Supplier the refund of the costs we have to carry in relation to our customer, when the defect was present at the time the risk was transferred to us. The Supplier shall have to refund any of our incurred costs of subsequent performance (Sec. 439 para. 2 of the German Civil Code), including costs for finding the defect and sorting costs.

5. In case of imminent danger we are entitled, after giving notice to the seller, to remedy the defects on the seller's cost.

6. Our claims of defects shall be time-barred after 36 month of the passage of risk. The deadline begins with the timely submission of the notice of defects in the sense of the previous § 2. The responsibility of the Supplier for defects ends, however, ten years after delivery of the goods. This limitation does not apply insofar as our claims result from occurrences which the Supplier knew about or which he must have known and did not inform us about.

7. The Supplier transfers to us now – on account of fulfillment – all claims he has against his suppliers resulting from and in connection with deliveries of defective goods or those goods in which promised characteristics are missing. He will supply us with all documents necessary for us to assert those claims.

### **IX. Product Liability and Recall**

1. In the event a product liability claim is asserted against us, the Supplier agrees to hold us harmless from such claims if and to the extent the damage was caused by a defect of the supplies or services. The above indemnification shall not apply if the claim is based on our intentional or grossly negligent breach of duties. If the cause of the damage falls within the area of responsibility of the Supplier, the Supplier shall have the burden of proof to that extent. In the above cases the Supplier assumes all costs and expenses, including the costs for any legal action or a recall campaign. In addition the legal stipulations shall apply. Further damages shall remain unaffected.

2. The Supplier shall maintain a product liability insurance with an adequate minimum insurance amount of € 5 million for each single occurrence of personal and property damage.

### **X. Tooling, Models, Drawings and other Documents**

1. Materials, special packaging, tooling, models, drawings and other documents supplied by or prepared for us remain our property and may only be used to perform our orders. They may not be given to third parties without our approval and must be retained until further notice, at a maximum two years after their last usage, in an orderly condition and then returned to us.

2. The production of, as well as the working on or processing of such tools, models, drawings and other documents which the supplier undertakes are for us as manufacturer, with the result that we acquire title to them.

### **XI. Place of Performance, Jurisdiction, Applicable Law**

1. Unless otherwise agreed to, the place of our warehouse shall be the place of performance for the delivery and our payments.

2. Our principal office shall be the place of jurisdiction. We may, however, sue the Supplier at his place of jurisdiction or at the court which is competent for our branch office with which the contract in question has been concluded.

3. All legal relationships between ourselves and the Supplier shall be governed by the laws of the Federal Republic of Germany supplementing these Conditions, including the provisions of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG).

### **XII. Applicable Version**

In cases of doubt, the German version of these General Conditions of Purchase shall prevail.