

# General Terms and Conditions of Purchase of GPS Gesellschaft für Produkt und Service GmbH & Co. KG

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## I. Application of these General Terms and Conditions

1. All purchases (orders, concluded agreements, call-offs) of GPS Gesellschaft für Produkt und Service GmbH & Co. KG from business partners (Suppliers) who are entrepreneurs within the meaning of section 14 of the German Civil Code (Bürgerliches Gesetzbuch - BGB) shall be governed exclusively by these General Terms and Conditions of Purchase.

2. We shall only accept general terms of the Supplier that conflict with, deviate from or make additions to our General Terms and Conditions of Purchase if we have expressly consented to them in writing. The acceptance of merchandise or services of the Supplier or payment shall not constitute consent.

3. Any references to the applicability of provisions of the law shall solely serve for the purpose of clarification. Even without clarification provisions of the law shall therefore apply unless they have been directly amended or expressly ruled out in these General Terms and Conditions of Purchase.

## II. Conclusion of contracts and amendment of contracts

1. Commissions, orders and call-offs as well as any amendments or additions thereto shall require written form. Verbal agreements shall require our express written confirmation to be effective. The written form requirement shall also be deemed met in the case of communication by e-mail or facsimile.

2. If the Supplier does not accept the order in writing within one week after receipt, we shall even be entitled to revoke it if the Supplier has in the meantime been requested to accept the order. Call-offs in the context of an order and call-off schedule shall become binding unless the Supplier immediately opposes them in writing.

3. The Supplier shall point out any obvious mistakes such as misspellings and calculation errors and any omissions to us for the purpose of correction or completion before accepting the order. If the Supplier fails to point out such mistakes, the contract shall be deemed not concluded.

4. Cost estimates shall be deemed binding and shall not be remunerated, unless expressly agreed otherwise.

## III. Delivery, delivery terms und passage of risk

1. Deviations from commissions, orders and call-offs shall only be admissible after we have given our prior written consent.

2. As a rule, partial deliveries shall be inadmissible, unless we have given our express consent. Unless proven otherwise, the quantities, weights and dimensions established during our incoming goods inspection shall be decisive.

3. Agreed dates and deadlines shall be binding. The date of arrival of the merchandise at our place of business or at the destination explicitly specified by us shall be decisive for compliance with the delivery date or delivery term. The respective destination shall also be the place of performance of the delivery and possible supplementary performance. The

Supplier shall bear the procurement risk, unless expressly agreed otherwise.

4. If the Supplier foresees difficulties concerning production, the prior supply of materials required, compliance with the delivery date or similar circumstances that may impede him from making a timely delivery, the Supplier shall immediately notify us of such circumstances in writing.

5. If agreed delivery dates or terms are not met, the provisions of the law shall apply, unless otherwise agreed. The unconditional acceptance of a belated delivery or performance shall constitute no waiver of compensation claims due to us for the delay.

6. If the Supplier is in default, we may demand a penalty of 0.25 per cent of the net price per completed calendar day but no more than 5 per cent in total of the net price of the belatedly delivered merchandise. We shall be entitled to demand the penalty in addition to performance and as the minimum amount of compensation owed by the vendor pursuant to the provisions of the law; This shall apply without prejudice to the right to claim further damages. If we accept belated performance, we shall claim the penalty at the latest when making the final payment.

7. Unless otherwise agreed, deliveries shall be effected franco domicile to the destination specified by us. The Supplier shall bear all costs and risks involved in transporting the merchandise to the destination and has the obligation to clear the merchandise for import and export, to pay all charges both for export and for import, and to complete all customs formalities.

8. All deliveries shall be accompanied by a delivery note quoting the date (issuance and dispatch), contents of the delivery (product number and quantity) as well as our order reference (date and number). If the delivery note is missing or incomplete, we shall not be liable for resulting delays in handling and payment. We shall immediately be sent a corresponding advice of dispatch with the same contents separately from the delivery note.

9. In addition to the merchandise all the necessary documents such as test certificates, proofs of origin, movement certificates and safety data sheets shall be provided to us. There shall be no entitlement to separate remuneration for this.

10. If the Supplier is responsible for set-up or assembly, the Supplier shall bear all the necessary incidental costs (e.g. travel expenses or the provision of tools) in the absence of any stipulation to the contrary.

11. We shall have the right to use any software that is part of the delivery, including the related documentation, to the extent permitted by law. We may also make back-up copies without an express agreement.

12. The Supplier shall bear the risk of accidental loss and accidental deterioration of the merchandise until the acceptance of delivery by us or a person authorized by us at the place where the merchandise is to be delivered in accordance with the order.

13. Force majeure, disruptions in operations due to no fault of our own, unrest, official measures and other events beyond our control shall release us from our obligation to accept the delivery in good time for the duration of their existence. During such events and within two weeks after they have ended we shall be entitled – without prejudice to other rights – to withdraw from the contract in part or in whole, as far as such events are of a considerable duration and our requirements are substantially reduced due to the need for procurement from

other sources for this reason. The provisions apply correspondingly in the case of labor disputes.

#### **IV. Prices and terms of payment**

1. The agreed prices are fixed prices. They shall cover all services that are necessary for fulfilment of the contract. In the absence of any special agreement, prices shall include packaging and transport costs as well as possible transport and liability insurance.

2. In the absence of any special agreement, the agreed price shall be due for payment within 30 calendar days from receipt of the full delivery and documentation or performance of the service as well as receipt of a due and proper invoice. If we effect payment within 14 calendar days, the vendor shall grant us a discount of 3 per cent on the net invoice total. In the case of a bank transfer the payment shall be deemed timely, if our payment order is received by our bank before expiry of the payment deadline; we shall not be responsible for possible delays caused by the banks involved in the payment process.

3. We owe no default interest. The provisions of law apply to a default in payment.

4. We shall be entitled to exercise set-off and retention rights as well as to plead non-performance of the contract to the extent permitted by law. In particular, we shall be entitled to withhold due payments, as long as we still hold claims due to incomplete or defective performance against the Supplier.

5. The Supplier shall only be entitled to set-off or retention rights due to claims which are uncontested or have been held to be final and absolute by a court of law.

#### **V. Claims for defects**

1. The provisions of the law regarding defects of quality and defects of title – including wrong and short delivery as well as incorrect assembly, inadequate assembly instructions, operating or user manuals, or other breaches of obligations – shall apply including the statutory liability regulations, unless otherwise specified in the following.

2. The provisions of the law (sections 377, 381 of the German Commercial Code (Handelsgesetzbuch - HGB)) shall apply to the commercial obligation to inspect the merchandise and report defects with the following proviso: Acceptance shall be effected subject to an inspection to verify non-defectiveness, in particular correctness and completeness, as far and as soon as this is feasible in the ordinary course of business. Our duty to inspect the merchandise shall be limited to defects that come to light during our incoming goods inspection through a visual inspection including the delivery documents and during our quality inspection using random sample tests. Any detected defects shall be reported by us in the ordinary course of business after their detection. Insofar the Supplier shall waive the objection of delayed notification of defects. This shall apply without prejudice to our duty to report defects that are detected at a later date.

3. By derogation from section 442 (1) sentence 2 of the German Civil Code (Bürgerliches Gesetzbuch – BGB) we shall even be entitled to assert claims for defects if we were unaware of the defect on conclusion of the contract due to gross negligence.

4. We shall have the right to choose the manner of supplementary performance. The Supplier may reject the manner of supplementary performance chosen by us, if it inevitably involves unreasonable costs.

5. Any expenses arising to the Supplier for inspection and supplementary performance (including possible dismantling and installation costs) shall be borne by the Supplier even if it turns out that there was in fact no defect.

6. If the Supplier does not start remedying the defect promptly after our request for remedy, we shall in urgent cases, especially in the event of particular urgency, for the aversion of an imminent danger or prevention of major damage, be entitled to remedy the defect ourselves at the Supplier's expense or have it remedied by a third party and to demand corresponding advance payment for this purpose. If supplementary performance by the Supplier has failed or is unacceptable for us, no deadline shall be required for this.

7. In the case of defects in title the Supplier shall additionally indemnify us against any third-party claims, as far as the Supplier is responsible for the defect in title.

8. Claims for defects shall be subject to a limitation period of 3 years from the date of passage of risk - except in the case of fraudulent intent or the assumption of a guarantee - unless the merchandise has been used for a building, in compliance with its customary use, and has caused the defectiveness thereof. If an acceptance inspection has been agreed the limitation period shall commence on the date of the acceptance inspection. This shall apply without prejudice to the statutory limitation period for claims to the restitution of property of third parties (section 438 (1) (2) of the German Civil Code (Bürgerliches Gesetzbuch - BGB); Claims arising from defects in title shall in no event be subject to a limitation period, as long as the third party can still assert the claim against us – particularly in the absence of limitation.

9. If the Supplier fulfils his obligation to provide a supplementary performance, the limitation period shall commence anew.

#### **VI. Supplier recourse**

1. We shall be entitled without restriction to exercise our statutory rights of recourse within a supply chain (sections 478, 479 BGB) in addition to claims for defects. In particular, we shall be entitled to determine the exact manner of the supplementary performance (repair or replacement) by the Supplier, which we owe to our customer in the individual case. This shall not restrict our statutory right of choice (section 439 (1) BGB).

2. Before we acknowledge or fulfil a claim for defects asserted by our customer, we shall notify the Supplier and request a written comment. If no comment is provided within a reasonable period of time and no amicable solution is achieved, the claim for defects that is actually conceded by us shall be deemed owing to our customer; in this case the burden of proof of the contrary shall rest on the Supplier.

3. Our claims arising from supplier recourse shall even apply if the merchandise has been further processed by us or by one of our customers before its sale to a consumer.

#### **VII. Product liability**

1. In the event that product liability claims are asserted against us, the Supplier shall be obliged to indemnify us against such claims, if and to the extent that the damage was caused by a flaw of the contractual object delivered by the Supplier. However, in cases of fault-based liability this shall only apply if the Supplier is at fault. If the cause of the damage lies within the Supplier's sphere of responsibility, the Supplier must provide evidence that it is not at fault.

2. In cases that fall under clause 1 the Supplier shall bear all costs and expenses, including the costs of legal action arising from or associated with recourse taken by third parties including recall campaigns conducted by us. We shall notify the Supplier of the contents and extent of recall campaigns, giving the Supplier opportunity to comment and to cooperate, and shall communicate with the Supplier about an efficient implementation, unless such notification or involvement of the Supplier is not possible in particularly urgent cases.

3. This provision shall apply regardless of whether the advertising statement was made before or after conclusion of this agreement. This shall apply without prejudice to further statutory claims.

#### **VIII. Rights of withdrawal and termination**

1. We shall be entitled to withdrawal or termination with immediate effect if the Supplier has stopped delivering to its customers, if the Supplier suffers or is likely to suffer a considerable deterioration of its financial circumstances, which endangers the fulfilment of the delivery obligation or (preliminary) insolvency proceedings are initiated against the Supplier, or the Supplier has filed for insolvency, or the Supplier has discontinued its payments. The statutory withdrawal and termination rights shall apply additionally.

2. If the Supplier has already effected a partial performance, we shall only be entitled to withdraw from the entire contract if we have no interest in the partial performance.

3. If we should exercise the above-mentioned contractual withdrawal or termination rights, the Supplier shall compensate us for the damages thus incurred, as far as the Supplier is responsible for the incurrence of withdrawal or termination rights.

#### **IX. Execution on the business premises**

1. Persons who perform work on our business premises in fulfilment of the contract, shall observe the provisions of the respective company rules. We shall accept no liability for accidents that happen to persons on our business premises, unless they were caused by intent or by a grossly negligent violation of obligations by us (our statutory representatives or vicarious agents).

#### **X. Confidentiality and retention of title**

1. We shall retain title and copyrights to the models, containers, samples, illustrations, plans, drawings, calculations, instructions, product descriptions and other records provided by us. They shall only be used, as intended, for the contractual performance and shall be returned to us at our first demand, but at the latest after termination of the contract. They shall be treated confidentially towards third parties; even after termination of the contract. In the Supplier's own business they shall only be made available to such persons who need to know them for the purpose of delivery to us and who are also obliged to treat them confidentially. Without our prior written consent the Supplier shall not be entitled to have third parties perform the services owed by the Supplier. The confidentiality obligation shall only expire if and insofar as the knowledge contained in the provided records has become public domain; this shall also apply after termination of the contract.

2. The above provision shall apply correspondingly also to substances and materials (e.g. software, finished and semi-finished products) as well as to tools, templates, components and other items that we make available to the Supplier for production. Such objects shall be – except where processed –

stored separately and adequately insured against destruction and loss at the Supplier's expense.

3. This shall apply without prejudice to the statutory protection of company and trade secrets. We reserve all rights to information (including copyrights and the right to register intellectual property rights such as patents, utility models, semiconductor protection etc.). To the extent that this information was made available to us by third parties, this reservation of rights shall also apply in favor of such third parties.

4. Processing, mixing and combining (further processing) of provided objects by the Supplier shall be performed on our behalf. The same shall apply in the case of further processing of the delivered merchandise by ourselves, so that we are considered the manufacturer and obtain title to the product at the latest on further processing pursuant to the provisions of law. The Supplier shall store the property for us.

5. Title to the merchandise shall be transferred to us unconditionally and regardless of whether the price has been paid. However, if we should in individual cases accept an offer of the Supplier for transfer of title conditional on the payment of consideration, the Supplier's retention of title shall expire at the latest on the payment of consideration for the delivered merchandise. We shall remain entitled to resell the merchandise in the ordinary course of business even before payment of consideration while assigning the resulting amount receivable in advance (alternatively application of simple retention of title or retention of title extended to resale). At all events, this rules out any other type of retention of title, in particular assigned or extended retentions of title, or retentions of title extended to further processing.

6. If the Supplier suffers difficulties in production, also if the Supplier fails to meet its contractual obligations or discontinues production, we shall be entitled to demand that the models, dies, molds, tools, drawings and further records and objects paid for by us in whole or in part be handed over to us for an appropriate consideration. The destruction of these objects shall only be admissible with our prior written consent.

7. Products that were manufactured using designs made by us such as drawings, models etc. or based on our confidential specifications or with our tools or with tools modelled on our tools, may neither be used by the Supplier itself nor offered or delivered to third parties.

#### **XI. Export and customs regulations**

1. The Supplier shall be obliged to inform us about possible authorization requirements for (re)exporting its merchandise according to German, European, US export and customs regulations, and the export and customs regulations of the country of origin of its merchandise. For this purpose the Supplier shall provide the following information, at least in its offers, order confirmations and invoices, for the relevant items: the export list number pursuant to Annex AL of the German Foreign Trade Regulations (Außenwirtschaftsverordnung) or comparable list items of relevant export lists; for US merchandise the ECCN (Export Control Classification Number) according to the US Export Administration Regulations (EA), the trade policy place of origin of its merchandise and the components thereof, including technology and software; data on transport, storage, production of the merchandise in the USA or with US technology.

2. At our request, the Supplier shall be obliged to provide us with written information about all further export data for its merchandise and the components thereof and to notify us immediately of any changes to the above data in writing.

## **XII. Compliance**

1. The Supplier shall be obliged to comply with the respective provisions of the law governing the treatment of employees, the environment and health and safety at work, and to work on reducing the adverse effects of its activities on human beings and the environment. To this end the Supplier shall, within the scope of its capabilities, set up an environmental management system according to ISO 14001. Moreover, the Supplier shall comply with the principles of the UN Global Compact Initiative, the protection of international human rights, the right to collective bargaining, the abolition of forced labor and child labor, the elimination of discrimination when personnel is engaged and employed, responsibility for the environment and the prevention of corruption.

2. In the event that a supplier repeatedly acts in an unlawful manner and provides no evidence that adequate precautions have been taken to prevent future violations of the law, we reserve the right to withdraw from existing contracts or to terminate them without notice.

## **XIII. General provisions**

1. If any provision of these General Terms and Conditions of Purchase and any concluded further agreements should be or become ineffective, this shall not affect the validity of the remaining General Terms and Conditions of Purchase. The contracting parties shall be obliged to replace the ineffective provision by a ruling that meets their economic interests as far as possible.

2. These General Terms and Conditions of Purchase and the contractual relationship between us and our business partners and suppliers shall be governed by the law of the Federal Republic of Germany to the exclusion of international uniform law, in particular UN sales law.

3. Claims that arise directly or indirectly from the contractual relationship, may only be assigned if we have given our consent.

4. The exclusive and also international legal venue for all legal disputes arising directly or indirectly from a contractual relationship and based on these General Terms and Conditions of Purchase, shall be Koblenz. Regardless of this, however, we shall also be entitled to take legal action at the place of performance of the delivery obligation or at the general legal venue of the Supplier. This shall apply without prejudice to overriding provisions of the law, in particular on exclusive jurisdiction.

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