

## **GemPSI Terms and Conditions of Purchase for Business Customers**

As of: 17/11/2017

### **Section 1 Validity**

(1)

These general terms and conditions of purchase shall apply exclusively for all deliveries, services and offers of the vendor. They are an integral part of all contracts that we conclude with our suppliers regarding the sale and/or the delivery of movable items.

Our general terms and conditions of purchase shall also apply to all future deliveries, services and offers to us, even if this has not been not separately agreed to again.

(2)

Vendors' terms and conditions do not apply, even if we do not separately object to their validity in isolated cases. Even if we refer to a letter that contains the general terms and conditions of the vendor or a third party or refer to them, this does not constitute any agreement with the validity of these general terms and conditions.

### **Section 2 Orders and Commissions**

If our offer does not expressly contain a period for acceptance, then we agree that our offer is binding until two weeks after the offer date. The receipt of the declaration of acceptance at our premises is decisive for the question if the acceptance will be regarded as punctual or not.

### **Section 3 Prices, payment conditions, invoice**

(1)

The price stated in the order is binding. All prices already include statutory VAT, if the VAT is not separately shown. Unless agreed otherwise, the price also includes delivery and transport to the address named in the agreement as well as packaging.

(2)

Unless agreed otherwise, we shall pay the purchase price within 30 days net of the delivery of the goods and the receipt of the invoice. The receipt of our transaction order by our bank is decisive for the question if our payment is regarded as punctual or not. In case of payment within 14 days, a 2% discount shall be granted.

(3)

In case of payment of default, we shall owe default interest in the amount of 5 per cent above the basic rate of interest pursuant to Section 247 of the German Civil Code (BGB).

#### **Section 4 Performance, delivery, transfer of risk**

(1)

The delivery deadline stated in the order is binding. The vendor is obliged to immediately notify us in writing if they cannot meet the agreed deadline.

(2)

The delivery has to be made to the place stated in the order.

(3)

The risk is only transferred to us, even if shipment is agreed to, when the goods are handed over at the agreed place pursuant to current Incoterms.

#### **Section 5 Property rights and copyrights, confidentiality and retention of title**

(1)

We reserve property rights and copyrights on orders and commissions we have issued including those on images, drawings, calculations, descriptions and other documentation such as tools, devices and models that we have made available to the vendor. The documentation and objects are to be used exclusively to perform contractual services. The documentation and objects are to be kept confidential from third parties for a duration of 5 years after the end of the agreement. The obligation to confidentiality dissolves if and when the knowledge contained in the documentation and objects becomes common knowledge. The vendor is to completely return this documentation and these objects to us upon our request if they are no longer necessary for ordinary business activities or if negotiations do not lead to closing an agreement. In this case, any copies made by the vendor are to be destroyed; an exception to this is retention in accordance with statutory retention regulations and storing data for backup purposes as part of customary data backup procedures.

(2)

Tools, devices and models that are invoiced separately to us by the vendor and for which we have paid in full become part of our property. The vendor is obligated upon request to issue the objects to us if they are no longer required to fulfil the agreement concluded with us.

(3)

The vendor's retention of title is only valid if they are in regard to our payment obligation for the product that the vendor is retaining as the vendor's property. Extended or prolonged retention of title is not permitted.

## **Section 6 Guarantee**

(1)

In case of defects, statutory-based claims apply.

(2)

Notwithstanding these, the guarantee period for contractual claims for defects is 3 years starting with the transfer of risk. If an acceptance is agreed upon, then the guarantee period begins with the acceptance.

The 3-year guaranty period also applies to claims arising from legal deficiencies. The statute of limitations of 30 years for the restitution of property claims of third parties (Section 438 (1) (1) BGB) remains unaffected.

If we are also entitled to non-contractual compensation claims due to a defect, then the regular statute of limitation applies (Sections 195, 199 BGB), if a longer guarantee period due to the application of purchase rights does not apply. 3(3)

a)

*We will check the goods for any defects within a reasonable amount of time.*

*If an acceptance was agreed to, there is no inspection obligation.*

b)

*Regardless of our inspection obligation, a notification of defects is seen as punctual if we report these to the vendor within 8 working days from the receipt of the goods at our premises or in case of immediately apparent defects within 5 days from the receipt of the goods at our premises. Any report of hidden material defects is seen as timely if the notification is made to the vendor within 5 working days after discovering the defects.*

## **Section 7 Product liability**

(1)

The vendor is responsible for all valid claims made by third parties due to personal injury or damage to property and is obligated to release us from liability if the cause is within the vendor's organisation and area of competence and the vendor itself is liable to the third party. Within the framework of the vendor's release obligation, the vendor shall refund expenditures that arise from or in the context of utilisation claims of third parties including any recall campaigns we conduct. We will inform the vendor of the content and scope of all recall campaigns in advance and give the vendor the opportunity to make a statement and corrections as far as this is possible and reasonable.

(2)

Further statutory claims remain unaffected.

(3)

The vendor will take out and maintain product liability insurance with a coverage amount of at least 5 million EUR per instance of personal injury/property damage.

## **Section 8 Legal deficiencies**

(1)

The vendor guarantees that no industrial property rights of third parties will be violated in the countries where the vendor manufactures or has manufactured the goods delivered to us. The vendor agrees to indemnify us against all claims that third parties raise against us due to violation of industrial property rights by the goods delivered to us and to refund to us all necessary expenditures in connection with these claims. This claim is not valid if the vendor proves that the vendor is not responsible for the violation of industrial property rights or could not have known about the violation even when applying sound business diligence at the time of the delivery.

(2)

Statutory claims due to legal deficiencies of the goods delivered to us remain unaffected.

## **Section 9 Spare parts**

The vendor is obliged to provide spare parts for the goods delivered to us for a duration of at least 10 years after delivery, unless otherwise agreed. If the vendor intends to stop the production of spare parts for the goods delivered to us, then the vendor shall inform us of this at least 12 months in advance.

## **Section 10 Place of performance, place of jurisdiction and applicable law**

The place of performance and exclusive place of jurisdiction for all conflicts arising from this contractual relationship is ...

The laws of the Federal Republic of Germany apply, excluding the UN Convention on Contracts for the International Sale of Goods (CISG).