

General Terms and Conditions of Purchase of Georg Utz GmbH



1. Validity

Our general terms and conditions of purchase apply exclusively; we shall not accept any terms of the supplier which derogate from these unless we have expressly agreed to their validity in writing. Our terms and conditions of purchase shall also apply if we unconditionally accept the delivery of the supplier in the knowledge of derogating terms of the supplier. Our terms and conditions of purchase apply only to entrepreneurs, legal entities under public law and to public-law special funds.

2. Order

Orders are always issued by us in writing. Verbally-issued orders and amendments are only effective if they are confirmed by us in writing. The supplier shall immediately confirm orders in writing. If no written confirmation is received within 10 days, the order can be withdrawn. Changes to orders can only be made in writing.

3. Price

The price stated in the order is binding. All prices include statutory VAT unless this is shown separately. Unless otherwise agreed in an individual case, the price includes all services and ancillary services provided by the supplier (e.g. assembly, installation) as well as all ancillary costs (e.g. correct packaging, transport costs, including possible transport and liability insurance). If prices are not stated on the order or are not agreed upon by both parties, the supplier has to offer the best price on the market and inform us of this in writing. Acceptance of the price by us is necessary for the conclusion of a contract.

4. Delivery

Unless otherwise agreed in writing, the delivery shall be made DDP, Schütthorf Incoterms 2020. In order to carry out transportation, the supplier must notify us when the goods are ready for dispatch. The transportation risk shall be insured by the contractor. The supplier shall provide all evidence (e.g. proof of origin, supplier's declarations, etc.) which is necessary for us to obtain customs' duty or other benefits. The supplier is not entitled, without our prior written consent, to provide the service owed by him through by third parties (e.g. subcontractors). On request, the supplier shall provide evidence of certifications considered usual in the industry. The supply hereby agrees irrevocably that the contract can be taken over by a company affiliated with us (Section 15 AktG (German Stock Corporation Act)). Partial deliveries require our approval.

5. Delivery Note/Documents

Each shipment must be accompanied by a delivery note/documents on which all markings specified in our order are stated, in particular order numbers, article numbers, the item number, cost centres and the ordering party. Partial and residual deliveries are to be specially marked. In the event of a breach of the labelling requirements, a processing fee of €50.00 shall become due for each case of infringement for the associated increase in the amount of work required. The supplier shall have the right to have the appropriateness of the amount of the processing fee determined by a court decision. Any processing fees paid shall be offset against claims for damages.

6. Delivery Time

Delivery dates and deadlines specified in the order are binding. The delivery time begins with the order date. Any delays which occur are to be reported immediately upon becoming known.

The acceptance of a delayed delivery does not constitute a waiver of any claims for compensation. We are entitled - in addition to further claims - to demand all-inclusive damages for default at the level of 1% per completed week, however

only up to a maximum of 5% of the delivery or service value. Further legal claims (rescission and compensation in lieu of performance) are reserved. The supplier has the right to prove to us that no damage or less damage has occurred as a result of the delay.

7. Transfer of Risk and Transfer of Ownership

The risk of accidental loss and accidental deterioration of the goods shall pass to us upon transfer at the place of performance. If an acceptance test has been agreed, this shall be decisive for the transfer of risk.

The transfer of ownership of the goods to us must be carried out unconditionally and without regard for the payment of the price. However, if in an individual case we accept a conditional offer for the transfer of ownership by the seller based on the purchase price payment, the seller's retention of title shall expire at the latest upon the payment of the purchase price for the delivered goods. In the normal course of business, we remain authorized to resell the goods, subject to the advance assignment of the resulting claim (alternatively, the validity of the simple retention of title extended to the resale). This also excludes all other forms of retention of title, in particular the retention of title which is extended, transferred and prolonged for further processing.

8. Warranty and Notice of Defects

The supplier guarantees, regardless of fault, that the goods shall have the agreed properties upon transfer of the risk to us. With respect to agreement on the properties, the particular product descriptions shall apply which are the subject of the contract in question – in particular by designation or reference in our order – or which are included in the contract in the same way as these general terms and conditions of purchase. It makes no difference whether the product description comes from us, from the supplier or from the manufacturer. Notwithstanding Section 442 para 1 sentence 2 BGB (German Civil Code), we shall also have unrestricted claims to defects if the defect remained unknown at the time of conclusion of the contract due to gross negligence. The statutory provisions (Sections 377, 381 HGB (German Commercial Code)) apply to the commercial obligation to inspect and give notice of defects, with the following proviso: Our obligation to inspect is limited to defects which become evident during our incoming goods inspection on external examination, including the delivery documents (e.g. transport damage, incorrect and short delivery), or by means of our quality control in the random sampling procedure. Insofar as an acceptance test has been agreed, there is no inspection obligation. Furthermore, this also depends to what extent an inspection is feasible in consideration of the circumstances of the individual case in the normal course of business.

Our obligation to give notice of defects for subsequently discovered defects remains unaffected. Without prejudice to our obligation to inspect, our complaint (notification of defects) shall at all events be deemed to be immediate and on time if it is received within 5 working days of the discovery or, in the case of obvious defects, of the delivery to the supplier. The costs incurred by the supplier for the purposes of the inspection and rectification (including possible removal and assembly costs) shall also be borne by the supplier if it is found that no defect actually existed. Our liability for damages in the case of unauthorised rectification of the defect remains unaffected; to this extent, however, we shall only be liable if we have recognised or failed to recognise, in a grossly negligent manner, that there was no defect.

If the seller does not fulfil his obligation to supplementary performance – at our discretion by removal of the defect (rectification) or by the delivery of a defect-free object (replacement delivery) – within a reasonable period set by us, we can rectify the defect ourselves and require compensation from the supplier of the

expenses required for this or an appropriate advance payment. If the supplementary performance by the supplier has failed or is unacceptable to us (e.g. due to particular urgency, endangerment of operational safety or the imminent occurrence of disproportionate damage), no deadline shall be required; we shall inform the seller without delay of the occurrence of such circumstances and, if possible, in advance.

We are also entitled to a reduction of the purchase price or withdrawal from the contract in accordance with the legal regulations in the event of a material defect or a defect of title. Furthermore, we are also entitled to compensation for damages and the reimbursement of expenses in accordance with statutory provisions.

The limitation period for claims arising out of material defects shall be 36 months from the transfer of risk in accordance with Article 7.

9. Producer's Liability

If the supplier is responsible for damage to a product, he shall indemnify us from claims of third parties if the cause lies within his domain and organisational area and he is himself liable in the external relationship. Within the framework of his indemnity obligation, the supplier shall reimburse expenses pursuant to Sections 683, 670 of the German Civil Code (BGB) arising out of or in connection with the use of the services of third parties, including recall actions carried out by us. Where it is both feasible and reasonable, we will inform the supplier about the content and extent of the recall measures and give him the opportunity to comment. Any further statutory claims remain unaffected.

The supplier shall take out and maintain product liability insurance with a flatrate cover sum of at least EUR 10 million per claim for personal injury/material damage.

10. Payment

For each order, a simple invoice is to be submitted with all obligatory details pursuant to Section 14 USTG (VAT Act). Payment shall be due within 14 days with a 3% discount or 30 days net. The deadlines shall begin upon the receipt of the invoice or, if the goods arrive after the invoice, upon the receipt of the goods. A discount deduction is also permitted if we offset or withhold payment due to defects. Payments shall not constitute acknowledgement of the delivery or service as being in accordance with the contract. The assignment of claims against us to third parties is excluded.

We shall not be responsible for any interest payable after the due date.

The seller has an offset or retention right only on the basis of legally determined or undisputed counterclaims.

11. Force Majeure

Any circumstances for which we are not responsible, such as disruptions to operations not caused by us, raw material or energy shortages, fire or floods (force majeure) which result in a significant reduction in our requirements, entitle us to withdraw from the contract in full or in part, insofar as the hindrance is expected to continue for a long time. We shall immediately notify the supplier if a case of force majeure occurs. Claims for damages by the supplier are excluded in the case of force majeure.

12. Industrial Property Rights

The supplier guarantees that no rights of third parties are infringing in connection with his delivery. If a third party makes a claim against us in this respect, the supplier shall then be obliged to indemnify us with regard to these claims upon the first written request. In the case of claims for damages by the third party, the supplier shall have the right to prove that he has not caused the infringement of the rights of the third party.

We shall not be entitled to enter into any agreements with the third party – without the consent of the supplier – with regard to the asserted claim, and in particular to

conclude a compromise agreement. The supplier's indemnification obligation refers to all expenses necessarily incurred by us from or in connection with the services provided by a third party.

The statutory period of limitation shall be 36 months, calculated from the passing of risk pursuant to Article 7.

13. Confidentiality and Manufacturing Equipment

Models, samples, drawings, leaflets, other documents, data, etc., and tools which we make available to the supplier (referred to collectively as „objects“) shall remain our property. Their return can be requested by us at any time and they are to be returned automatically to us after the contract has ended. They may only be used for the order. The supplier is obliged to maintain the strictest levels of confidentiality with respect to all of the above-mentioned objects which have been received. They may only be disclosed to third parties with our express consent. The obligation to maintain confidentiality shall also apply after the completion of this contract. It shall expire, however, if and to the extent that the manufacturing knowledge contained in the transferred illustrations, drawings, calculations and other documents has become generally known or was known to the supplier prior to the transfer.

The supplier expressly undertakes not to reproduce or imitate our models, samples or drawings as well as our products or to have them duplicated or imitated by third parties. Insofar as the supplier produces the aforementioned objects for us and at our expense, the above provision shall apply accordingly, whereby we shall become (co-) owners as soon as we have paid our share of the production costs. The supplier is obliged to look after, maintain and make good normal wear of the aforementioned objects free of charge.

14. Data Protection

We collect and process personal data as Controller in the meaning of Art. 4 no. 7 GDPR within the scope of these General Terms and Conditions as Controller for the purpose of contract performance. This particularly includes data such as name, address, E-Mail-addresses, payment data or ordered goods which we received during the ordering process. Data is collected in accordance with the relevant data protection stipulations in the EU General Data Protection Regulation 2016/679 („GDPR“), the Datenschutz-Anpassungs- und Umsetzungsgesetz EU („BDSG-neu“) data protection adaptation and implementation act EU) as well as other additional data protection laws. Personal data is transmitted to third parties only in case of necessary compliance with a legal obligation or for the purpose of order performance, e.g. payment processing. We provide further information on data protection in our privacy policy on our website www.utzgroup.de/datenschutz

15. Other Provisions

The place of performance is our company headquarters in Schütthorf. For these terms and conditions of purchase and all legal relations between us and the supplier, the substantive law of the Federal Republic of Germany applies to the exclusion of German international law and the United Nations Convention on Contracts for the International Sale of Goods. The prerequisites and effects of the retention of title are subject to the law at the particular place of storage of the item insofar as the adopted choice of law is inadmissible or ineffective in favour of German law. The exclusive – also international – place of jurisdiction for all disputes arising out of the contractual relationship is our place of business in Schütthorf or, at our discretion, the general place of jurisdiction of the supplier.

Georg Utz GmbH, Schütthorf

April 2020