

GENERAL PURCHASING CONDITIONS OF GRÖMO GmbH & Co. KG

valid as of 1 December 2020

1. Scope, general points

1.1. Our General Purchasing Conditions (GPC) apply to all our business relationships with our suppliers, if these are enterprises (Section 14 of the German Civil Code - BGB), legal entities of public law institutions or special asset funds under public law within the meaning of Section 310 Chapter 1 BGB. They apply to the purchase of movable items as well as the procurement of work services (both hereinafter referred to as "goods") by us, without taking into consideration whether the supplier manufactures the goods itself or purchases them from third parties.

1.2. In the course of business between our suppliers and us, only our AEBs shall apply. We do not recognise General Terms and Conditions opposed to or deviating from our AEBs of the supplier, unless we have expressly agreed to their validity at least in text form. This requirement for approval also applies if we accept the services of the supplier without reservation in the knowledge of opposed AEBs or AEBs deviating from our General Terms and conditions.

1.3. Unless otherwise agreed, our AEBs shall apply in the version valid at the time of the order as a framework agreement also for future equivalent contracts, without us having to point these out repeatedly in each case.

1.4. Individual agreements made with the supplier in individual cases (including collateral agreements, supplements and amendments) will in all cases take precedence over these GPC. Subject to proof to the contrary, the content of such agreements will be governed by a contract, at least in text form, or by our confirmation, which must at least be in text form.

2. Conclusion of contract

2.1. Our orders are only binding if they are placed at least in text form. The supplier must draw our attention to obvious errors (e.g. spelling or numerical mistakes), incompleteness or contradictions of the order including the order documents for the purposes of correction or completion before acceptance.

2.2. Our orders are to be interpreted as an offer to conclude a contract; subject to clause 2.3., the contract will be concluded when this offer is confirmed by the supplier.

2.3. If requested by us however, the supplier must initially provide us with an offer free of charge in accordance with our descriptions and specifications. If this would deviate from our descriptions and specifications, he must expressly indicate this in text form so that it is clearly recognisable. Each deviation requires our approval at least in text form. Provided the supplier provides an offer in accordance with the regulations of this clause, the contract is concluded upon our acceptance, which requires at least the text form.

3. Prices, payment conditions, late payment, prohibition of transfer, rights of compensation and retention

3.1. The prices evidenced in the order are net prices and are binding. Price increases after the conclusion of the contract are excluded. VAT must also be paid if this is due.

3.2. Delivery is free of charge (DDP Incoterms 2020) to the address specified in the order, provided nothing else has been agreed upon, at least in text form.

3.3. Provided nothing else is agreed upon at least in text form, we will pay the purchase price or the compensation within 14 calendar days after complete delivery and receipt of an invoice eligible for input tax reduction minus the 3% discount. For the timeliness of the payment, the receipt of the transfer request by our bank is decisive.

3.4. We do not owe any due-date interest (in accordance with § 353 HGB). The claim of the supplier for payment of late payment interest remains unaffected by this. For the entry of our late payment, the legal provisions shall apply, in any case however a reminder from the supplier is required. In the event of late payment, we will owe late payment interest in the amount of five percentage points over the base interest rate in effect at the time.

3.5. Demands from the contractual relationship may not be transferred or pledged either in full or in part to third parties by the supplier without our consent in writing. § 354 a HGB remains unaffected.

3.6. The supplier is owed a right to compensation or retention only due to counter-requests which have been determined to be legally binding, uncontested or due for a decision to be made.

4. Delivery deadlines, delivery delays, delivery quantities

4.1. The delivery deadlines specified by us are binding. The supplier is obligated to inform us immediately at least in writing if circumstances should arise or if he should become aware of the fact that he will not be able to adhere to the delivery deadline.

4.2. If the supplier does not render his service, does not do so within the delivery deadline, or is delayed in doing so, the legal claims are owed to us. The following clause 4.3 remains unaffected.

4.3. In the case of delivery delays, we – besides further legal claims – are entitled to request the general delay damage in the amount of 1% of the delivery value per full week of delay,

but no more than 5% in total of the net price of the goods delivered late. We reserve the right to prove that we have incurred a higher damage. The supplier has the right to prove to us that due to the delay no or a significantly lower damage has been caused.

4.4. The delivery quantities specified by us are binding. Additional, insufficient or partial deliveries can be rejected.

5. Warranty, obligation to give notice of defects

5.1. The statutory provisions will apply to our rights in the event of material defects and defects of title of the goods (including wrong and short delivery as well as improper assembly or faulty assembly, operating or user instructions) and in the event of other breaches of duty by the supplier, unless otherwise provided for below.

5.2. The supplier will be liable in particular for ensuring that the goods have the agreed quality at the time of transfer of risk. If, particularly due to identification or reference in our order or by agreement, specifications or other documents (e.g. product descriptions, drawings, illustrations, etc.) provided, are objects of the contract in question or are, like these GPC, incorporated into the contract (hereinafter collectively referred to as "contractual documents"), the goods must be of the quality specified therein. The goods must be unencumbered by third-party rights.

5.3. Provided a commercial obligation to inspect and make a complaint is pertinent, the legal provisions will apply (Sections 377, 381 of the German Commercial Code - HGB) with the following proviso:

Our inspection obligation is limited to deficiencies which manifest during our incoming goods inspection under external assessment including the delivery documents and during our quality inspections in the sampling procedure (e.g. transit damage, incorrect or deficient delivery). Provided an acceptance is agreed, there is no inspection obligation. Other than this, it is a case of to what extent an inspection is feasible taking into consideration the circumstances of the individual case in accordance with proper business operations.

Our obligation to make a complaint (notification of defects) for deficiencies discovered later remains unaffected. In all cases, our complaint, which does not require any special form, will be deemed to have been received without undue delay and on time if it is received within 10 working days after we make the seller aware of the deficiency.

5.4. Within the scope of subsequent performance, we will be entitled to demand from the supplier, at our discretion, either elimination of the defect or delivery of a defect-free item. Subsequent performance will also include the deinstallation and reinstallation of the defective goods, provided that the goods have been installed in, or attached to, another item in accordance with their nature and intended use; our legal claim to reimbursement of the expenses incurred thereby will remain unaffected.

The supplier will bear the expenses necessary for the purpose of inspection and subsequent performance even if it turns out that there was actually no defect. Our liability for damages in the event of unjustified requests for the elimination of defects will remain unaffected; however, in this respect we will be liable only if we have recognised or failed to recognise due to gross negligence that there was no defect.

5.5. Without prejudice to our legal rights and the provisions in the above clause 5.4., the following will apply: If the supplier does not fulfil its obligations to subsequently fulfil the order (clause 5.4.) within an appropriate deadline to be determined by us, we can rectify the deficiencies ourselves and require the supplier to reimburse us for the expense incurred or make a corresponding advance payment. If subsequent fulfilment by the supplier fails or cannot reasonably be carried out by us (e.g. due to particular urgency, endangerment of operating safety or the threat of occurrence of disproportionate damage), no deadline needs to be set; we will immediately inform the supplier of such circumstances.

5.6. Furthermore, we will, in accordance with the legal provisions, be entitled in the case of a material or legal deficiency to reduce the purchase price or to withdraw from the contract. Furthermore, we will, in accordance with the legal provisions, have the right to compensation for damage and expense incurred.

6. Supplier recourse, fault, warranty periods

6.1. We will be entitled without limitation to assert statutory compensation claims within a supply chain (supplier recourse in accordance with Sections 445a, 445b, 478 BGB). In particular, we will be entitled to demand from the supplier exactly the type of subsequent performance (repair or replacement) that we owe our customer in the individual case. Our statutory right of choice (Section 439 (1) BGB) is not restricted by this. Before we acknowledge or fulfil a claim for defects asserted by our customer (including for reimbursement of expenses in accordance with Sections 445 (a)(1), 439(2) and (3) BGB), we will notify the supplier and request a written statement, briefly explaining the facts of the case. If a substantiated statement is not forthcoming within a reasonable period of time and no amicable solution is brought about, the claim for defects actually granted by us will be deemed to be owed to our customer. In this case, the supplier will be responsible for providing proof to the contrary.

6.2. The supplier is liable for intent and any kind of negligence, including his representatives, commissioned parties, assistants or vicarious agents and in particular bears the procurement risk. The liability cannot be restricted to the total value.

6.3. Provided the law does not prescribe any longer deadlines, our warranty claims expire 36 months after the beginning of the legal expiration deadline.

7. Confidentiality, reference to business relationship, rights to order-related documents

7.1. The supplier is obligated to maintain secrecy about the conditions of the order as well as all information and documents provided for this purpose (raw material, product descriptions, calculations, drawings, illustrations and other documents, provided these are not publicly accessible) for a time frame of 3 years after conclusion of the contract. They are only to be used for the delivery on the basis of our order. They may not be made accessible to third parties without our express consent in writing. After completion of requests or after processing of the order, such documents must be returned to us without request without any reproductions being made regardless of what kind.

7.2. Without our prior approval, at least in text form, the supplier may not draw attention to the business relationship in advertising material, brochures, etc.

7.3. We retain ownership and copyrights to our raw material and product descriptions, calculations, drawings, illustrations, plans and other documents. Without the express approval at least in writing, these may not be used for the supplier's own purposes or the purposes of third party.

8. Product liability, exemption

8.1. If the supplier is responsible for damage to the product, he must relieve us from the claims of third parties the first time this is requested, when the cause is in his area of control and organisation and he himself is liable in the exterior relationship.

8.2. As part of his obligation to grant release, the supplier is also obligated to reimburse us with the costs in accordance with §§ 683, 670 BGB, which result from or in connection with a third-party claim including a replacement and recall action carried out by us or our customers. We will inform the supplier about the contents and scope of the planned recall measures – provided this is possible and reasonable – and give him the opportunity to provide a written statement. Subsequent claims on our behalf remain unaffected.

8.3. The supplier will take out and maintain product liability insurance with a coverage sum of at least €2.5 million per claim for personal injury/material damage. Lower coverage sums requested by the supplier must be agreed with us on a case-by-case basis. Any additional damage compensation claims on our behalf remain unaffected by this.

9. Commercial protection rights, copyrights

9.1. The supplier ensures that due to the delivery and use of the delivered goods, no third-party protection rights in countries of the European Union or other countries in which he manufactures the products or has the products manufactured are impinged upon.

9.2. If claims are made to us by third parties due to a protection right breach according to no. 1, which has arisen through the intended use of the delivered goods, the supplier must release us from these claims upon first written request, send us all necessary information and reimburse us of all necessary expense in connection with this claim, provided the supplier does not prove that he is not responsible for the breach of obligations underlying the protection right breach. Further claims, particularly also due to material or legal defects of the goods delivered to us, remain unaffected.

9.3. The use of our brand names, logos or photos and representations of Grömo products on the Internet or in other electronic or digital communication networks or in the form of television or radio transmissions or in print media requires an additional agreement with us concerning such use, at least in text form.

10. Title retention, transfer of ownership

10.1. If we provide objects or materials to the supplier for further processing, mixing or connection ("merchandise under retention") and a processing, mixing or connection of our merchandise under retention is carried out by the supplier for us, we reserve the ownership and copyrights to the merchandise under retention for ourselves.

In the case of a processing, mixing or connection of our merchandise under retention with other objects or materials not belonging to us, we acquire the co-ownership of the new object in the proportion of the value of our merchandise under retention (purchase price plus VAT) to the other processed/mixed/connected objects or materials at the time of the processing/mixing/connection.

Provided the securing rights owed to us in accordance with no. 1 exceeds the value of our merchandise under retention by over 20%, we will approve the securing rights at the supplier's request accordingly.

10.2. The transfer of the goods into our ownership must take place without taking into consideration the payment of the purchase price. If in individual cases we accept an offer of the supplier for transfer of ownership determined by the purchase price payment, the title retention of the supply becomes void at the latest with the purchase price payment for the delivered goods.

10.3. We retain the right even before paying the purchase price to sell the goods on in a proper business transaction transferring our requirements arising as a result of this in advance and to process the goods, for assistance therefore a simple title retention of the supplier extended to the onward sale applies. All other forms of title retention are in any case excluded.

11. Place of fulfilment, court of jurisdiction, contractual language, data processing, severability clause

11.1. The place of fulfilment for all duties resulting from the contractual relationship is Marktoberdorf.

11.2. If the customer is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special asset fund under public law, the exclusive and international place of jurisdiction will be Marktoberdorf, where our headquarters are located, for all disputes resulting directly or indirectly from the contractual relationship. We also have the right to open proceedings at the place of general jurisdiction of the buyer.

11.3. The law of the Federal Republic of Germany applies. International private law and the UN Convention on Contracts for the International Sale of Goods (CISG) are excluded.

11.4. Even if the supplier is in possession of a translation of these GPC in another language, the German version will be exclusively authoritative.

11.5. In the event that the supplier has supplied us with data related to persons, this data will be utilized, processed for the business transaction, saved and passed on to other connected companies, as well as if deemed necessary given to affiliated- and service companies. With regard to the detailed rules for processing data, we refer to our data protection regulations at https://www.groemo.com/en/data_protection.

11.6. If individual stipulations of these AEBs for the business transactions are or should become invalid then the rest of the stipulations are not affected. Any invalid provision is to be replaced by that valid and permissible provision which most closely corresponds with the invalid provision in terms of its meaning and purpose.

Grömo GmbH & Co. KG
Röntgenring 2
D-87616 Marktoberdorf