



General terms of Sale and Delivery (GTS)

of C. Otto Gehrckens GmbH & Co. KG
Gehrstücken 9, 25421 Pinneberg, Germany

Section 1

General information - Scope - Written form - Assignment

- (1) These general terms of sale and delivery (GTS) apply to all of our business relationships with customers ("Buyers") and form an integral part of all of our contract offers and contracts. Our GTS only apply if the Buyer is an entrepreneur in accordance with Section 14, BGB (German Civil Code), a corporate body under public law or a public law special fund.
- (2) Our GTS apply exclusively; they also apply to all future business with the Buyer. We do not acknowledge any contrary, supplementary conditions, or conditions of the Buyer or a third party, which deviate from our GTS, unless we have explicitly agreed to their validity in writing.
- (3) Our GTS apply in particular for contracts for the sale and/or delivery of movables ("goods"), regardless of whether we produce the goods ourselves or purchase them from suppliers. Provided nothing else has been explicitly agreed, the GTS apply in the version valid at the time the buyer places the order, or in any version sent recently in text form, as a general agreement for future contracts of this kind, without needing to be referred to in each individual case.
- (4) Any agreements concluded with the Buyer (including side agreements, supplements and amendments) which are made in individual cases, have priority over these GTS. A written contract or written confirmation from us is authoritative for the content of any agreements of this kind, subject to proof of the contrary.
- (5) The assignment of claims against us to third parties is excluded. Section 354a HGB (German Commercial Code) remains unaffected by this.

Section 2

Information, consultation, changes to the goods

- (1) Technical information and consultation associated with our deliveries and services are provided based on our previous experience. Any values and performance specifications have been calculated at laboratory conditions, are not individual and are only approximate relevant average values.
- (2) If we provide any technical information of this kind or advice, and this information or advice is not part of the contractually agreed scope of services due by us, this is done free-of-charge and without any liability.
- (3) Subject to an explicit agreement, we also assume no obligation to precisely adhere to these values, performance specifications and application options. In particular, our declarations about this (e.g. concerning the weight, dimensions, practical values, load capacities, tolerances and technical data) as well as our depictions thereof (e.g. diagrams and drawings) are not guaranteed quality features, but descriptions or identification for the delivery or service.
- (4) Trade-standard deviations and deviations made due to legal provisions or which represent technical improvements, as well as the replacement of components with components of the same quality, are permitted, provided they do not affect the contractually-intended purpose.



Section 3 Offers / Conclusion of contract / Copyrights

- (1) Our offers are non-binding and subject to alternation, unless they have been explicitly marked as binding or contain a specific term of acceptance.
- (2) A contract only comes into effect for orders, offers or bookings upon our written confirmation of the order or by the performance of the service. If orders, offers or bookings of the Buyer are not confirmed or executed by us within fourteen days, they are deemed to have been rejected. If our order confirmation deviates from the order, offer or booking of the Buyer, then the order confirmation is authoritative, unless the Buyer objects to the order confirmation within seven working days of receipt.
- (3) The written purchase agreement is solely authoritative for all legal relationships between us and the Buyer, including these GTS. Verbal acceptances and statements issued by us before the conclusion of the contract (in particular technical descriptions and other details in offers, brochures on the internet and other information) are not legally-binding and verbal agreements of the contract parties shall be replaced by the written contract, provided nothing explicitly arises from it that the verbal agreements remain binding.
- (4) Amendments to orders require a change agreement at least in text form, and are only possible in exceptions and only if production has not yet started. Any costs for changes to the order requested by the Buyer shall be borne by the Buyer.
- (5) We reserve the property rights and copyrights on offer documentation, diagrams, images, calculations and other documentation. They are not allowed to be made available to third parties.

Section 4 Delivery / Delivery time / Deviations in quantities / Packaging / Tools

- (1) Provided the order confirmation does not specify anything else, "ex works" delivery is agreed.
- (2) Terms and deadlines suggested by us for deliveries and services are only approximate, unless a specific term or fixed deadline is explicitly accepted or agreed. If dispatching has been agreed, the delivery times and deadlines refer to the time of the hand-over to the freight forwarder, haulier or other third-party commissioned with the transport.
- (3) Without prejudice to our rights due to a default by the Buyer, we can demand the extension of delivery and service periods, or the postponement of delivery and service deadlines, if the Buyer does not meet its contractual obligations to us.
- (4) Packaging is charged by us at cost price. Transport packaging, and all other packaging according to the specifications of the packaging regulations, is not collected; excluded from this are Euro pallets and pallet cages. The Buyer is obliged to ensure the packaging is disposed of at its own expense.
- (5) The method of shipment, means of shipping and packaging are subject to our obligatory discretion, in the absence of specific agreements.
- (6) For delivered quantities, surplus or short deliveries deviating by up to 10% from the agreed quantity are permitted - assuming that the purchase price is adjusted accordingly.
- (7) Tools and moulds made by us or on our behalf for the production of goods remain exclusively our property, in consideration of our construction work, even if the costs for their production are fully or partially borne by the Buyer.



Section 5

Prices and payment terms

- (1) Provided nothing else has been explicitly stated, all prices are quoted in EUROS, ex works, and excluding the legally-applicable VAT; the VAT is charged on the invoicing date at the legally-applicable rate, and stated separately on the invoice.
- (2) Payments of the purchase price are to be paid in cash or by wire transfer within 14 days with a 2% discount, or within 30 days net. They are deemed to be settled on the date the amount is freely available to us. The risk of the method of payment is to be borne by the Buyer.
- (3) Other forms of payment require a separate agreement, usually in text form. The costs incurred by both parties are to be borne by the Buyer.
- (4) A discount is only granted if all due payment obligations from previous services have been met.
- (5) No discount is granted for cash on delivery shipments.
- (6) The Buyer only has a right to offsetting or a right of retention due to recognised, uncontested or legally-established claims or titles.

Section 6

Obligation to deliver and cooperate

- (1) The scope of our obligation to deliver is based exclusively on the contract concluded and these GTS. Changes to construction, form and colour, which are due to an improvement in technology or legislative requirements remain reserved, provided the changes are not major or unreasonable for the Buyer in any other way.
- (2) We are permitted to make partial deliveries, if the partial deliveries can be used by the Buyer within the scope of the intended contractual purpose, if the delivery of the remaining ordered goods is ensured and the Buyer does not incur any considerable extra work or extra costs as a result (unless we declare that we are prepared to take on these costs).
- (3) The specification or agreement of delivery times or delivery dates is generally conditional to the cooperation of the Buyer in accordance with this contract. The observation of our obligation to deliver requires the obligations of the Buyer to be met on time and properly.
- (4) If we do not receive supplies, even though we have placed orders with reliable suppliers, we are released from our obligation to provide a service and can withdraw from the contract. In this case, we will notify the Buyer immediately about the non-availability, or the late availability of the contractual item or delivery. The burden of proof to prove that we are responsible for a breach of duty associated with the procurement of the contractual item lies with the Buyer.
- (5) If it turns out, after the conclusion of the contract, that the Buyer has not provided a sufficient guarantee about its solvency and our payment claim is endangered, we are permitted to delay the delivery until the Buyer has made the payment or provided a security for it. If the payment of security is not made within 12 working days of a payment reminder, we are permitted to withdraw from the contract.
- (6) If the Buyer is in default of the delivery request, acceptance or collection, or if it is responsible for a delay in delivery or supply, we are permitted, regardless of other claims, to demand a flat-rate fee at standard local storage rates, regardless of whether we store the goods ourselves or with a third party. The Buyer has the right to prove that no damage, or less damage, has been incurred.
- (7) In the event of force majeure, strikes, lock-outs or similar unforeseen events, which prevent an order being executed, we are not bound to the agreed delivery time for the duration of the obstruction.



Section 7

Delivery delays

- (1) If the agreed deadline cannot be met by us or our suppliers, due to conditions which we are not under our control, the deadline shall be extended accordingly. We will notify the Buyer immediately about a case of this kind. If the preventative conditions continue to exist one month after the expiry of the agreed delivery time, both parties can withdraw from the contract. Further claims due to the delivery time being exceeded, for reasons which are not our fault, are excluded.
- (2) In the event of a delivery delay which is our fault, the Buyer is permitted to demand lump-sum default compensation of 3% of the affected delivery value for each completed week, up to a maximum of 12% of the delivery value, if the Buyer incurs damage due to the delay. Furthermore, the Buyer can set a suitable grace period for us in writing (text form is sufficient) which must amount to at least 15 days. After this deadline has expired without effect, the Buyer is permitted to withdraw from the contract or to demand compensation instead of delivery. The liability for damages due to a delivery delay is subject to the regulations on defects and liability in Sections 9 and 10.

Section 8

Place of performance

The place of performance for all obligations arising from this contractual relationship is our registered office.

Section 9

Notice of defects / Claims for defects / Warranty period

- (1) We only assume warranties as part of individual and explicit contractual agreements.
- (2) With regards to defects, the Buyer first has to meet the inspection and objection obligations in Section 337, HGB. This also applies if the Buyer is an entrepreneur as per Section 14, BGB, and the order was placed as part of its commercial or independent business activities.
- (3) The legal warranty period for new goods is limited to one year from the transfer of risk, although at the latest from delivery, provided mandatory legal provisions do not intend a longer period of limitation.
- (4) The basis for our liability for defects is, in particular, the agreement concluded about the quality of the goods. This includes all product specifications which are the subject matter of the individual contracts.
- (5) The Buyer cannot derive any other rights from defects which only affect the value and usability of the goods in a minor way, or do not affect them at all. In particular, no guarantee is provided in the following cases, if they are not our responsibility:

Unsuitable or improper use; incorrect construction of the contractual item by the Buyer; incorrect assembly by the Buyer or a third party; natural wear and tear; incorrect or negligent handling; incorrect, improper or excessive storage; unsuitable conditions of use (temperature, pressure, media) for the contractual item; electro-chemical or electrical influences.
- (6) If the goods have a defect upon the transfer of risk, we are obliged and have the right to provide supplementary performance. The supplementary performance is done at our discretion by a remedy of the defect or replacement delivery. The costs for the supplementary performance, in particular the transport, infrastructure, work and material costs are to be borne by us within the scope of the legal provisions, if there is actually a defect. Otherwise, we can demand



compensation from the Buyer due to unauthorised requests for defect rectification (in particular the costs associated with verification and transportation), unless the lack of a defect could not have been noticed by the Buyer. Our right to reject supplementary performance based on the legal requirements remains unaffected by this.

- (7) If the supplementary performance fails, is not done within a suitable deadline set by the Buyer, or is rejected, the Buyer is permitted, at its discretion, to withdraw from the contract, to demand a decrease of the purchase price (reduction) or - within the limits of the following paragraphs - to demand compensation instead of the service.
- (8) In the event of entrepreneur's recourse (Section 445a, BGB) it is suspected that no defect was present at the time of the transfer of risk to the Buyer, if the Buyer performed an examination properly as per paragraph 2 above but did not notify us of any defect, unless this suspicion is inconsistent with the type of item or the defect.
- (9) If the Buyer asserts rights of recourse, it has to treat them as if it had taken all the legally permissible contractual opportunities concerning its contract partner (e.g. refusal of the supplementary performance due to disproportionality or a restriction of the reimbursement of expenses to a suitable amount).
- (10) We exclude used goods from the warranty; we are only responsible for defects if we have explicitly provided a warranty.

Section 10 Liability

- (1) Our liability for compensation, whatever the legal grounds, is limited to the specifications of this section (10), in the event of fault.
- (2) We are not liable in the event of simple negligence by our committees, legal representatives, employees or other vicarious agents, provided it does not concern a violation of material contractual obligations. Material contractual obligations are, in particular, those whose fulfilment allows the proper execution of the contract, and on which the Buyer can regularly rely on being observed.
- (3) If we are liable for compensation on merit as per Section 10 (2), this liability is limited to the damage which we could have foreseen as a possible consequence of a contract violation upon the conclusion of the contract, or which we should have been able to foresee by applying due diligence. Indirect damage and consequential damage, which are due to defects to the goods, are also only eligible for compensation, if this damage could be typically expected when the contractual item is used as intended.
- (4) In the event of liability for simple negligence, our obligation to provide compensation for material and asset damage is limited to EUR 10,000,000 per damage event, even if it concerns a violation of a material contractual obligation.
- (5) The afore-mentioned liability disclaimers and restrictions apply to the same extent for our committees, legal representatives, employees and other vicarious agents.
- (6) If we provide technical advice about the application and corresponding information or advice which is not part of the contractually-agreed scope of service, this is done free-of-charge and without any liability.
- (7) The restrictions of this section (10) do not apply to our liability due to wilful misconduct, for guaranteed characteristics, due to injury to life, limb or health, or according to the product liability law.



- (8) If we provide lump-sum compensation for delay completion, this is to be offset against any compensation claims according to this section (10).

Section 11 Confidentiality / Data privacy

- (1) Providing nothing else has been explicitly agreed in writing, the information provided to us in connection with an order is not deemed to be confidential, unless the confidentiality is evident.
- (2) We would like to point out, that we save data (including personal data) from the contractual relationship as per the GDPR (Art. 6, paragraph 1b) for the purposes of data processing and reserve the right to transfer data to third parties (e.g. insurance companies) if this is necessary for the execution of the contract. Under no circumstances will we use, sell or transfer this data to other third parties outside of our company.
- (3) In addition, we refer to the following with regards to data protection:

Contact details: We, i.e. C. Otto Gehrckens GmbH & Co. KG, are responsible for data protection, (for the address and contact details see below). Our Data Protection Officer can be contacted at the e-mail address dsb-cog@cog.de under the contact details below.

Purpose of processing and legal basis: All deliveries contractually require that the Buyer sends us personal data (hereinafter "data"). We process this data for the purpose of concluding and executing the contract (including the legal prosecution and debt collection) on the basis of the data protection law provisions as per Art. 6, paragraph 1 b) GDPR. Furthermore, we process the data on the basis of the data protection law provisions to protect our justified interests (in particular Art. 6, paragraph 1 f) GDPR). A justified interest exists here - according to the specifications of the following regulations - in avoiding bad debt losses from third parties and the transfer of company and product information to the Buyer.

Data categories: We process the following categories of data: master data, communication data, contract and consumption data, receivables data, and any payment and default information.

Third party recipients: Data is allowed to be transferred - even before the conclusion of the contract - taking into account the applicable regulations, to credit agencies - for example Bürgel or SCHUFA - in order to prevent bad debt losses by third parties or us, e.g. to collect probability values for a bad debt loss, or to transfer uncontested or legally-established claims of the supplier, where the Buyer finds itself in default. The credit agencies also save the transferred data, to be able to provide their associated contract partners with the data within the scope of the assessment of the risk of bad debt loss. This provision of data is, however, only done if the contract partners associated with the credit agency could have a justified interest in the transfer of the data. The credit agency can transfer address data to evaluate the credit worthiness of debtors. The Buyer can receive information from the credit agent regarding the data saved about its person. In the event of debt collection, data can be transferred to the following categories of recipients, if this is necessary to collect the claim: assignees, credit agencies, debt collection companies, garnishees, registration offices, courts, bailiffs and legal attorneys.

Company and product information: We use data based on the provisions of the data protection law (in particular Art. 6, paragraph 1 f) GDPR), to send information about our company, our product and other services to the Buyer, where applicable by post - observing Section 7, paragraph 3, UWG (Act against Unfair Competition).

Data storage period: We will delete the data immediately if we are obliged to do so, in particular if we no longer need data for the purpose it was collected for, and the deletion does not



contradict any storage obligations. Regardless of this, a check is performed every three years to see whether it is possible to delete the data.

Buyer's rights of revocation: The Buyer can reject the processing of data for the purpose specified in "Company and product information" at any time, with effect for the future. Regardless of this, the Buyer is entitled to a right of revocation as per Art. 14, paragraph 2 c) in connection with Art. 21 GDPR against the processing as per Art. 6, paragraph 1 f) GDPR. The revocation can be addressed to our Data Protection Officer (see the contact details under contact details) or to us (see the contact details below).

Other rights of the Buyer: Due to the existence of legal regulations (in particular the GDPR) the Buyer is entitled to the following rights: The right to information, correction, deletion, restriction of processing and data portability. In addition, the Buyer can also complain to the supervisory authorities about the processing of its data. The address for the supervisory authorities responsible for us is: Unabhängiges Landeszentrum für Datenschutz (Independent State Centre for Data Protection) Schleswig-Holstein, Holstenstraße 98, 24103 Kiel, tel. +49 (0) 431 988 1200, fax +49 (0)431 988 1223, e-mail: mail@datenschutzzentrum.de, website: www.datenschutzzentrum.de.

Other data protection law-related declarations can be viewed on our website at www.cog.de/en/data-protection/.

Section 12 Retention of title

- (1) We reserve the ownership of the delivered goods until our associated claim against the Buyer has been settled (simple retention of title).
- (2) The Buyer shall hereby assign to us, by way of security, claims amounting to our claim, which it accrues from any re-sale of the goods subject to retention of title to a customer or a third party. The same applies to any claims which take the place of the good subject to the retention of title, or arise otherwise with regards to the goods subject to the retention of title, such as insurance claims or claims from tortious acts due to loss or destruction. The assignments are hereby accepted by us. The Buyer remains irrevocably authorised to collect these claims, even after the assignment. Our authority to collect the claims ourselves remains unaffected by this; however, we will not assert this right, if the Buyer properly meets its payment obligations and other obligations. On request, the Buyer has to notify us of the assigned claims and their debtors, has to provide all the details necessary for the collection, hand over all the associated documentation and notify the debtor of the assignment. We are authorised to also notify the Buyer's debtors ourselves about the assignment.
- (3) In the event of behaviour by the Buyer which violates this contract, in particular a default of payment, we are permitted to withdraw from the contract and the Buyer is obliged to return the goods subject to a retention of title to us ("enforcement event"). In the event of enforcement, the Buyer permits us irrevocably to visit its business and storage premises without hindrance, and to take back the goods subject to retention of title.
- (4) The Buyer is permitted, if and to the extent that a retention of title exists, not to assign the goods subject to a retention of title for security or to pledge them, without our consent. The conclusion of financing agreements (e.g. leasing), which include the assignment of our rights of retention, requires our prior written consent, unless the agreement obliges the financing institute to pay us the due share of the purchase price directly.
- (5) With pledges and other access by third parties to the goods subject to retention of title, the Buyer has to inform these third parties immediately of our ownership of the goods, and notify us



immediately in writing (text form is sufficient), and send us copies of any relevant documents. The Buyer is not permitted to make agreements with its customers which could affect our rights.

Section 13 Miscellaneous

- (1) The invalidity of individual provisions of our GTS does not affect the validity of the remaining provisions. If the contract or these GTS contain gaps, legally-valid regulations shall be agreed to fill these gaps, which the contract partners would have agreed according to the business objective of the contract and the purpose of these GTS, if they had known about the gaps.
- (2) If the Buyer is a business person, a corporate body under public law or a public law special fund, or if the Buyer does not have its general place of residence in the Federal Republic of Germany, the place of jurisdiction for any disputes arising from the business relationship between us and the Buyer shall be either our registered office, or the registered office of the Buyer, at our discretion. In the event of lawsuits against the Buyer, however, our registered office is the exclusive place of residence. Mandatory legal provisions about exclusive places of jurisdiction remain unaffected by this regulation.
- (3) The law of the Federal Republic of Germany applies exclusively, excluding the UN Convention on Contracts for the International Sale of Goods (CISG), and the rules on the conflict of law of German International Private Law.

Pinneberg, July 2018

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