



General Conditions of Purchase of C. Otto Gehrckens GmbH & Co. KG

1. Scope and Form

1.1. Contracts of C. Otto Gehrckens GmbH & Co. KG ("COG"), which are concerned with purchases, particularly contracts of sale, contracts of work and services, contracts of manufacture and supply, service contracts or other contracts concerning supply or services ("contracts") shall be concluded in accordance with these General Conditions of Purchase ("GCP"). This shall also apply to contracts which COG concludes in the name of and on behalf of third parties.

1.2. Differing, conflicting or supplementary conditions of business of those concluding the above-mentioned contracts with COG ("AN") shall only apply if and to the extent that COG has consented to these in writing. Lack of response by COG shall not count as recognition of these, even after such conditions have been received or if COG accepts contractual performance without reservation in cognisance of differing, conflicting or supplementary business conditions of AN.

1.3. Receipt of order and fulfilment of the order of COG shall be deemed as recognition of these GCP. If AN does not wish to recognise certain of these conditions or the GCP in total, it must expressly revoke these to COG in writing (e.g., by letter, email, fax).

1.4. Individual agreements concluded with AN on a case-by-case basis (including ancillary agreements, supplements and amendments) shall take priority over these GCP under any circumstances. The contents of such agreements shall be determined by a written contract or written confirmation from COG, subject to proof of the contrary.

1.5. Legal declarations and notifications relating to contracts entered into (e.g. setting of notice periods, payment reminders, withdrawal) are to be made to COG in writing at the least. This shall not affect formal statutory provisions and other proofs, particularly when the authorisation of the declaring party is in doubt.

2. Offer and Acceptance

2.1. Offers made by COG, particularly commissions and orders, may be cancelled by COG at any time until the order confirmation of AN is received.

2.2. AN shall be bound to confirm the offers of COG in writing at the least, within an appropriate period (two [2] weeks at the latest) after receipt of the offer, or to execute them without reservation. Delayed acceptance/confirmation shall be considered as a new offer requiring acceptance by COG in writing at the least.

2.3. Order confirmations which deviate from the offer shall require confirmation by COG in writing at the least. If this confirmation is not made within two [2] weeks, a contract shall not come about. Lack of response shall not be counted as consent. Receipt of deliveries or services, or payment, shall not substitute for the declaration of acceptance.

2.4. Prices indicated in offers made by COG do not include the VAT applicable in the given case, but do include all additional costs (especially costs of transport, customs, packaging, insurance, returning and disposal of packaging), unless otherwise expressly stated in the offer.

2.5. COG shall not be charged for the checking of its offers or for offers made and submitted by AN.

2.6. COG shall accept offers made by AN solely by declaration in writing at the least.

3. Place of performance, delivery and performance, notification of defects and acceptance

3.1. Place of performance for all obligations arising out of contractual relations is the registered address of COG.

3.2. Premature deliveries and partial performance may be refused if they are not in the interests of COG.



3.3. Delivery notes are to be affixed to the outside of packaging and must include the order number, article description and components number, delivery amount and state any attached certificates/documents as well as notifications of any partial deliveries. Goods originating outside the European Community as well as deliveries pertaining to these are to be designated as such. If any of the above-mentioned obligations are infringed, COG shall be entitled to refuse acceptance, unless AN is not responsible for the infringement. If the delivery note is missing or incomplete, COG shall not be responsible for any delays in processing or payment that result.

3.4. The statutory provisions (Secs. 377, 381 of the German Commercial Code [HGB]) shall apply to the commercial duty to examine and notify with the following proviso: COG's duty of examination shall be limited to defects that become manifest when checked upon receipt under external assessment including of the delivery documents (e.g., damage in transit, mistaken delivery or delivery of an insufficient quantity) or which are identifiable during quality control spot checks. To the extent that acceptance is agreed or necessary, there shall be no duty of examination. It shall otherwise depend on the extent to which an examination is feasible with regard to the circumstances of the case in hand according to the regular course of business. The duty of notification for defects discovered later shall remain unaffected. Notwithstanding the duty of examination, notification (notification of defects) shall be considered immediate and timely if it is given within 5 working days from discovery, or from delivery in the case of manifest defects. Defects may be reported at a later point in time if the circumstances of the case in question justify it.

3.5. The issuing of receipts of payment towards services or AN shall not constitute a waiver of possible warranty claims or other claims.

3.6. AN is not authorised to undertake supply or performance due within the scope of the contract by means of third parties or to have these undertaken by third parties without prior written consent from COG.

3.7. If existing components of a piece of work or other material are replaced whilst fulfilling the contract, COG shall be notified of this without delay. The replaced parts or materials are to be kept for 30 days after the primary contractual duties incumbent upon AN have been fulfilled. If COG does not request their return within this period of time, AN is to destroy the parts or other materials at its own cost and furnish evidence of their destruction to COG. Re-using them in any way is absolutely excluded.

3.8. AN shall be obliged to make available at no extra charge and to the extent requested by COG all service handbooks, service notices, service information letters and other information which are necessary in order for COG to use, service or repair the goods or services as intended or agreed. Later amendments to these documents shall also be included in this obligation.

3.9. To the extent that acceptance is required or has been agreed, acceptance of the work shall be made solely by the express written declaration of COG. Such a declaration by COG shall only be effective in law if signed by two members of COG staff with representative authority. Acceptance of the work without reservation shall not lead to the loss of warranty claims or other rights (except upon knowledge of the defect) or to COG's claims to contractual penalties. Despite acceptance, COG shall be entitled to assert contractual penalties which may have lapsed until final payment is made.

3.10. With regard to long-term business relations, AN shall notify COG without delay of changes to the company of AN, in particular those relating to organisation, location or in fabrication/manufacture, that affect the quality of supply or services.

4. Transport, delivery and performance time, default and passing of risk

4.1. AN shall bear the cost of delivery, in particular packaging costs, the costs of shipping and transport insurance as well as costs of returning packaging, provided that COG requests return. If AN does not take it back within the specified period, COG may dispose of it itself or by means of third parties. AN shall bear the costs incurred hereby.

4.2. AN shall notify COG in writing of actual or imminent delays in delivery immediately after becoming aware of them, stating the contract number, date of the contract, causes of the delay as well as the expected delivery date. Receipt of this notification shall not constitute an extension of the agreed time for performance and shall not affect falling into default, unless COG expressly consents to such an extension in writing. If notification is



not made or is incomplete, AN shall be responsible for any losses that occur thereby unless it has not acted in a culpable manner.

4.3. Losses caused by delayed deliveries of AN shall entitle COG to assert claims for damages if the statutory conditions are fulfilled. If AN is in default, COG may, in addition to further statutory claims, demand a reimbursement of loss due to delay amounting to a lump sum of 0.25% of the net contractual amount for each complete calendar day; this may, however, not exceed 5% of the net contractual amount of the goods which were delivered late. COG reserves the right to prove that greater loss has been incurred. AN reserves the right to prove that no loss at all or only substantially less loss has been incurred.

4.4. AN shall bear the risk of loss, accidental destruction or accidental deterioration until complete delivery of the goods or services to COG or until COG has accepted the work at the place of fulfilment.

5. Defective performance, assurances, warranty, manufacturer's liability and statute of limitations

5.1. AN shall undertake to render performance without defect. It shall be obliged in particular:

- to use solely the materials stated in the contract or otherwise agreed and to observe the measurements and amounts given by COG according to the contract. Deviations shall only be allowed with the prior written consent of COG;
- to include in delivery the certificates, documents as well as other documentation stated in the contract which are necessary for the use of the goods according to the contractual purpose or the necessity of which arises from the contractual purpose of use;
- to take care that goods or services conform to the statutory provisions of the Federal Republic of Germany, especially to safety provisions, as well as other relevant provisions relating to accident prevention, protection of the environment and occupational safety, and to the recognised technical regulations;
- to take care that goods or services do not infringe third party commercial property rights and are also not encumbered with other third party rights. In the case of liability, AN shall release COG from third party claims which are brought against COG for breach of commercial property rights on the basis of the goods or service of AN. The obligation to release shall extend in particular to all costs incurred by COG necessary for legal defence as well as to payments of damages it has to make. In the event that claims are brought by third parties, COG shall be entitled to require from AN an appropriate security up to the expected amount of the loss.

If the above-mentioned obligations are culpably breached, COG shall be furthermore entitled to require a contractual penalty from AN amounting to 5% of the net contractual amount. The contractual penalty shall be counted against damages which AN is due to pay.

5.3. Deinstallation of the defective product and re-installation at COG or one of its customers shall form part of subsequent fulfilment provided that the product was installed in another object according to its intended purpose. Costs incurred by AN for the purposes of examination and subsequent fulfilment (including any deinstallation and installation costs) shall be borne by the same if it turns out that no defect actually exists. The liability of COG for damages due to unjustified claims to rectify defects shall remain unaffected; COG shall, however, only be liable if it has recognised or did not recognise with gross negligence that no defect existed.

5.4. If AN does not fulfil its obligation to subsequent fulfilment (either by rectifying the defect (subsequent rectification) or by supplying an article without defect (substitute delivery) at the discretion of COG) within an appropriate period as set by COG, COG may rectify the defect itself and request from AN damages for the necessary expenses incurred or require a commensurate advance payment. If subsequent fulfilment by AN fails or if it is not reasonable with respect to COG (e.g., due to particular urgency, risk to the safety of operations or the imminent occurrence of disproportionate loss or damage), no deadline need be set; COG will notify AN without delay of such circumstances, beforehand if possible.

5.5. Claims of COG for damages shall not be limited to the interests of fulfilment. The obligation to pay damages shall also include all costs, fees and expenses in particular.

5.6. In case of liability, AN shall release COG from all third party claims based on defective goods or services of AN.



5.7. If AN is responsible for loss or damage to products, it shall release COG from third party claims to the extent that the cause originates in its sphere of control and organisation and that it is itself liable to third parties.

5.8. AN shall undertake to take out and maintain appropriate third party and product liability insurance to the extent of its activities for COG. Proof of insurance shall be furnished to COG upon request – including after the contract has been fulfilled. If such insurance policies are not concluded, COG shall be entitled to require that AN should take out and provide evidence of such insurance policies by a deadline. If this does not occur within the set deadline, COG shall be entitled to withdraw from the contract and to require damages in lieu of and/or in addition to performance. Notwithstanding this, COG shall be entitled to require a contractual penalty from AN amounting to 5% of the net contractual amount if AN does not furnish proof within an appropriate deadline set by COG, unless AN is not responsible for the failure to furnish proof.

5.9. Warranty claims of COG against AN shall expire as follows:

- Warranty claims due to material defects shall expire in three [3] years after complete performance, handover or acceptance at the place of performance. The expiry period of three years shall also apply to claims arising out of legal defects; the statute of limitations for third party real rights to return (Sec. 438(1) No.1 of the German Civil Code [BGB]) shall remain unaffected; claims arising out of legal defects shall not expire in any case as long as the third party is still able to assert the right against COG (particularly if it has not yet expired).
- Notwithstanding Sec. 438(1) Nr.2 BGB, warranty claims due to material defects based on defects to buildings and things which have been used for a building according to their typical purpose of use and which have caused its defectiveness shall expire in six [6] years from acceptance or handover.
- Any other longer statutes of limitation shall remain unaffected.

5.10. The expiration of warranty claims is blocked once written notification of the defect by COG is received by AN. When substitute delivery is made or defects are rectified, the expiry period for substitute and subsequently rectified parts shall begin again unless COG had to conclude from the conduct of AN that the latter was not obliged to do so but only undertook substitute delivery or rectified the defects out of goodwill or for similar reasons.

5.11. If the law provides for a postponed beginning to the expiry period, the law shall apply, particularly if claims for damages based on an injury to life, the body, health or liberty are concerned.

6. Recourse of suppliers

6.1 COG is entitled to the statutory claims to recourse within delivery chains without restriction (Secs. 445a, 445b, 478 of the BGB), in addition to the claims due to defects. In particular, COG is entitled to require exactly the kind of substitute fulfilment (subsequent rectification or substitute delivery) which it owes its customer in any individual case. The statutory right of COG to selection (Sec. 439(1) of the BGB) shall remain unaffected.

6.2. Before COG recognises or fulfils a claim for defects (including restitution of expenses pursuant to Secs. 445a(1), 439(2),(3) of the BGB) asserted by a customer, COG shall notify AN, briefly describe the matter and request a written response. If a substantiated response is not made within an appropriate period and if a mutually agreeable solution is not achieved, the claim for defects actually granted by COG shall count as owed to its customer. In this case, proof to the contrary shall be incumbent upon AN.

6.3. Claims of COG arising out of the recourse of suppliers shall also apply if the product was processed further (e.g. by installation in another object) before it was sold by COG or one of its customers.

7. Invoicing, payment, offsets and retention

7.1. Invoices are to be generated stating the order number, order items, date of order and amounts with individual and item prices according to the billing address stated in the contract. They must conform to the provisions of tax law, especially VAT tax law. Invoices for partial deliveries are to be designated as such. Invoices which deviate from the first or second sentences shall lead to COG gaining a right of retention.



7.2. Payments shall be made by COG 30 days after complete delivery/provision of service by AN, or, if COG only receives an invoice or equivalent payment schedule after the delivery or service of AN has been received, 30 days after receipt by COG of this invoice or payment schedule. If AN performs before the agreed time, this shall not lead to its claim for payment becoming due earlier. In the absence of other agreements, partial invoices shall only be settled after the contract has been completely fulfilled. If payment is made within 21 days of complete execution of the contract and receipt of the invoice, COG shall be entitled to deduct a three percent discount from the claim for payment of AN.

7.3. COG shall not owe interest on maturity.

7.4. AN shall not be entitled to offsets or rights of retention as long these have not been established as being effective in law or are uncontested.

8. Further processing and retention of ownership

8.1. Processing, mixture or combination (further processing) by AN of supplied objects shall be undertaken on behalf of COG. The same shall apply when COG further processes supplied goods so that COG shall be deemed the manufacturer and shall acquire ownership of the product according to the statutory provisions upon further processing at the latest.

8.2. Transfer of ownership of the goods to COG shall occur without conditions or regard to payment of the price. If, however, on a case-by-case basis COG accepts an offer of AN to transfer ownership which is contingent upon payment of the purchase price, the right of AN to retention of ownership of the supplied goods shall lapse upon payment of the purchase price at the latest. Even before payment of the purchase price, COG shall remain entitled to sell the goods on in the regular course of business if the claims which arise out of this are assigned beforehand. All other forms of retention of ownership are hereby absolutely excluded, in particular extended and transferred retention of ownership, and that extended to further processing.

9. Export control law

9.1. The Parties shall recognise that undertaking contractually obliged performance may be subject to the export control laws of the European Union and the Federal Republic of Germany (collectively "export control law").

9.2. Each Party shall recognise the mutual obligation to conform to applicable export control law that may apply as part of executing the contract. As part of this obligation, AN shall render assurance that it will observe applicable export control law when undertaking the contractually obliged performance in favour of COG.

9.3. Before undertaking contractually obliged performance, AN shall inform COG of the correct export classification of the goods utilised for performance and shall make all the information necessary for this available to COG. Upon request AN shall assist COG as appropriate in order to ensure export control law is observed. As part of this assistance, AN shall inform COG whether undertaking a particular contractually required performance requires an export licence pursuant to the applicable export control law and whether COG has to make particular documents available in order to procure the export licence.

9.4. For every undertaking of contractually required performance for which an export licence is required by export control law, AN shall provide COG with the appropriate licence free of charge within the agreed performance period.

10. Licencing

If AN undertakes paid research and development on behalf of COG pursuant to a contract, by concluding the contract it shall transfer to COG all rights to the results gained, including the rights to any discoveries and copyrightable works, and shall be obliged to undertake everything necessary to enable this transfer of rights. Inasmuch as a complete transfer of rights is not possible, AN shall concede to COG in respect of these results exclusive, irrevocable, world-wide, transferable and sub-licenceable rights of use and sale, which shall be valid for the entire duration of copyright, for every kind of purpose and possible use in the field of business of COG.



11. Compliance

11.1. AN shall guarantee that

- contracts concluded with COG and business relations entered into on the basis of these, as well as activities undertaken by AN in this regard, do not and will not violate any laws in connection with bribery and/or corruption, particularly the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and its related provisions for implementation, or cause COG to break such laws, and furthermore, that AN will observe the applicable laws and the provisions of this Contract in connection with performing its services at all times during the term of the contract,
- neither AN nor another person with the knowledge of AN, in particular members of staff or sub-contractors of AN, has offered or will offer, either directly or indirectly, payment in money or in kind, loans, gifts, donations or any other kind of payment of value to the benefit of a responsible person or employee of a state authority, state agency, state enterprise, state international organisation, a political candidate, political party or functionary of such or a person acting in an official capacity for the above (collectively "public officials") or any other person, in order to obtain an illegal benefit.

11.2. Notwithstanding other rights, COG shall be entitled to terminate this Contract and all appendices as well as any other contractual relations without prior notice completely or partially if COG becomes aware or the suspicion arises that AN is in breach of the obligations of this clause and/or the information supplied in the suppliers' questionnaire is inaccurate.

12. Corporate social responsibility and duties to staff

12.1 AN shall be obliged to observe the 10 principles of the UN Global Compact as well as the 4 Core Labour Standards of the International Labour Organisation (ILO) as a substantial contractual obligation. COG expects AN to request the same from its suppliers.

12.2 AN shall be obliged to observe the statutory provisions on combating illicit labour, the Employee Secondment Act [AEntG], the Provision of Temporary Employees Act [AÜG], the Minimum Wage Act [MiLoG], and the provisions of social security law, and only to engage sub-contractors and other third parties that also commit themselves to this.

12.3 AN shall be obliged to release COG from all third party claims, particularly those of employees, civil authorities, social insurance agencies, trade associations, professional organisations and federations, which are made in connection with failure to observe the obligations of Clause 12.3. If AN violates the stated statutory duties, this shall also entitle COG to terminate the contract for good cause without the requirement of a caution or warning of termination. The same shall apply if a sub-contractor of AN repeatedly violates these obligations. COG expressly reserves the right to further claims for damages.

13. Confidentiality, supplied materials and assignment

13.1. Contractual relations and all information disclosed by COG to AN in the course of their initiation and execution are to be treated by AN confidentially and may not be made public or made accessible to third parties without the prior written consent of COG. AN shall be obliged to use this information only for the purposes of the contract. This shall not apply to the extent that the contract or the stated information

- was already known to AN before disclosure or was publicly known, or
- becomes publicly known after disclosure without AN breaching the terms of the contract, or
- AN is obliged by law or the authorities to disclose the information to third parties.

13.2. COG shall retain the right of ownership to and copyright of all illustrations, plans, designs, calculations, instructions, product descriptions and other documentation. Such documentation is to be used solely for the contractual services and is to be returned upon request of COG once the contract has been fulfilled. Conditions of the order as well as all information and documentation made available for this purpose shall be kept secret from third parties, even after the contract has ended. This duty to confidentiality shall only lapse if and to the extent that the knowledge contained in the disclosed documentation is generally known.



13.3. The previous provision shall apply correspondingly to substances and materials as well as to tools, templates, patterns and other objects which COG supplies to AN for manufacturing. As long as they are not processed, such objects are to be kept separate at AN's expense, and to be secured against destruction and loss to an appropriate extent.

13.4. AN may not refer to business connections on advertising material, brochures, etc. or exhibit objects fabricated for COG without the prior written consent of COG. AN shall inform the sub-contractors it engages accordingly.

13.5. AN shall not be entitled to assign its claims arising out of these contractual relations to third parties. This shall not apply to the extent that monetary claims are concerned.

14. Confidentiality and data protection

14.1 In the absence of other express written agreements, information made available to COG in connection with an order shall not be treated as confidential unless confidentiality is obvious.

14.2 COG hereby points out that COG stores data (including personal data) arising out of contractual relations according to the GDPR (Art. 6(1b)) for the purposes of data processing and reserves the right to transfer data to third parties (e.g. insurance companies) to the extent this is necessary for the execution of the contract. Under no circumstances will COG use, sell or transfer this data to other third parties outside of the company.

14.3 With regard to data protection, COG otherwise refers to the following:

Contact details: C. Otto Gehrckens GmbH & Co. KG is responsible for data protection (see below for address and contact details). Our Data Protection Officer can be contacted using the contact details above and at the email address: dsb-cog@cod.de.

Purpose of processing and legal basis: Deliveries may contractually require that AN transfers personal data (hereinafter "data") to COG. COG processes this data for the purpose of concluding and executing the contract (including legal prosecution and debt collection) on the basis of the provisions of data protection law according to Art. 6(1b) of the GDPR. Furthermore, COG processes data on the basis of the provisions of data protection law to protect our justified interests (particularly Art. 6(1f) of the GDPR). A justified interest exists (according to the following regulations) in avoiding bad debt losses to third parties or ourselves and in the transfer of company and product information to AN.

Data categories: COG processes the following categories of data: customer data, communication data, contract information and information on consumption, information on receivables, and any payment and default information.

Third party recipients: Data may be transferred to credit agencies e.g., Bürgel or SCHUFA, in accordance with relevant regulations (even prior to conclusion of the contract), in order to prevent bad debt losses to third parties or us, e.g. to collect probability information on bad debt loss or to transfer uncontested or legally effective claims of suppliers, with whom AN is in default. Credit agencies also store the data transferred to them in order to be able to make them available to their associated contractual partners as part of assessment of the risk of bad debt loss. These data are, however, only made available if the contractual partner associated with the credit agency could have a justified interest in the transfer of the data. The credit agency may transfer address information in order to evaluate the creditworthiness of debtors. AN may receive information from the credit agency on the data saved about it. In the event of debt collection, data may be transferred to the following categories of recipients provided that this is necessary to collect the claim: assignees, credit agencies, debt collection agencies, third-party debtors, residents' registration offices, courts, bailiffs and lawyers.

Company and product information: Based on the provisions of data protection law (particularly Art. 6(1f) of the GDPR), COG uses data to send information about our company, our products and our other services to AN by post or electronically in accordance with Sec. 7(3) of the Unfair Competition Act [UWG].

Length of data storage: COG erases the data immediately if COG is obliged to do so, in particular if COG no longer requires the data for the purposes for which it was collected, and if erasing does not conflict with any duties to store them. Regardless of this, a check to see whether data can be erased is carried out every three years.



Rights of AN to revoke: AN can revoke the processing of data by COG for the purpose specified in "Company and product information" at any time, with effect for the future. Regardless of this, AN is entitled to a right of revocation according to Art. 14(2c) in conjunction with Art. 21 of the GDPR against the processing according to Art. 6(1f) of the GDPR. Revocation can be addressed to the COG Data Protection Officer (see above for contact details) or to COG (see end for contact details).

Other rights of AN: If the statutory regulations apply (those of the GDPR in particular), AN is entitled to the following rights: the right to information, correction, deletion, restriction of processing and data portability. In addition, AN can also lodge a complaint with the supervisory authority about the processing of its data. The address of the supervisory authority responsible for COG (at the time these GCP were formulated) 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, email: mail@datenschutzzentrum.de, website: www.datenschutzzentrum.de.

Further details of our data protection policy can be found on our website at: www.cog.de/datenschutz/.

15. Place of jurisdiction, selection of jurisdiction, salvatory clause and contractual language

15.1. If AN is a merchant as defined by the German Commercial Code [HGB], a juridical person of public law or a special fund in public law, the sole (including international) place of jurisdiction shall be the registered address of COG for all disputes arising out of the contract or in connection with it. COG shall, however, also be entitled in any circumstances to litigate at the place where the supply or service is being fulfilled or at the place of an overriding individual agreement or at the general place of jurisdiction of AN. Overriding statutory provisions, particularly those on exclusive competences, shall remain unaffected.

15.2. The law of the Federal Republic of Germany shall apply solely to these GCP and all legal relations between COG and AN to the exclusion of the provisions of international private law. The UN Sales Convention (CISG) shall be excluded.

15.3. Should individual provisions of the contract or these GCP or parts of it be or become ineffective, this shall not affect the effectiveness of the remaining provisions or those of the contract.

15.4. In case of conflicts between the English and German versions of these GCP, the German version shall take precedence.

Pinneberg, August 2019

C. Otto Gehrckens GmbH & Co. KG

Gehrstücken 9
25421 Pinneberg

Tel. +49 4101/ 5002 - 0
Fax: +49 4101 - 5002 83

www.cog.de
info@cog.de