General Conditions of Purchase of RAMPF Formen GmbH
Version: September 2016

§ 1 General, scope

(1) These general conditions of purchase (GCP) apply to all commercial relationships with our business partners and suppliers ("sellers"). The GCP only applies if the selling company (§ 14 of the BGB [German Civil Code]) is a legal entity under public law or a special fund under public law.

(2) The GCP apply in particular to contracts concerning the sale and/or the delivery of movable items ("goods") regardless of whether the seller itself manufactured the goods or bought them from suppliers (s. 433, 651 of the BGB). Provided nothing else is agreed, the GCP, in the version applicable at the time of our order, or at least in the version last submitted to the seller in text form, is considered to be the framework agreement, and also for similar future contracts, without us having to point this out again in each individual case.

(3) This GCP applies exclusively. Differing, contradictory or supplementary general terms and conditions on the part of the seller shall only become part of the contract if and when we expressly agree to their validity in writing. This requirement for our consent applies in all cases; and also, for example, if we accept the seller's deliveries without reservation in the knowledge of its general terms and conditions.

(4) Individual agreements made with the seller in certain cases (including oral agreements, additions and changes) have priority over this GCP in all cases. Subject to evidence to the contrary, a written contract or our written confirmation is decisive for the content of such agreements.

(5) Legally relevant declarations and notifications, which must be submitted to us by the seller after conclusion of the agreement (e.g. setting deadlines, reminders, withdrawal declaration) shall only be effective in writing.

(6) References to the validity of statutory regulations shall only have clarifying significance. Even without such a clarification, statutory regulations shall of course apply unless they are directly amended or explicitly excluded in this GCP.

§ 2 Contract conclusion

(1) Our order is considered to be binding upon written submission or confirmation at the earliest. Prior to acceptance, the seller must notify us of obvious errors in (e.g. spelling mistakes and miscalculations) and the incompleteness of orders, including the order documentation, for the purpose of correcting mistakes and filling in gaps; otherwise the contract shall not be considered concluded.

(2) The seller is requested to confirm our order in writing within a period of 10 days. Alternatively, this can simply be performed by expediting the goods without reservation (acceptance).

A delayed acceptance is considered to be a new offer and, in turn, requires our acceptance.

§ 3 Delivery times and delays

(1) The delivery deadline specified by us in the order is binding. If a delivery time is not specified in the order, or has not been otherwise agreed, the deadline shall be 2 weeks from conclusion of contract. The seller is obligated to inform us in writing without delay if it anticipates it will not be able to meet the agreed delivery deadline, irrespective of the reasons.

(2) If the seller fails to fulfil its obligation, fails to do so by the agreed delivery deadline or falls into arrears, then our rights shall be determined – especially with regard to withdrawal and compensation for damages – based on the statutory regulations. The regulations in para. 3 remain unaffected.

(3) If the seller is in arrears, in addition to further legal claims, we are entitled to demand a flat rate of compensation for the default damage incurred by us amounting to 1% of the net price of the delayed goods for each full calendar week that lapses, but no more than 5% in total. We reserve the right to prove that a higher loss has arisen. The seller reserves the right to establish that either no loss has been incurred or that the loss incurred is significantly lower than the fixed amount.

§ 4 Performance, delivery, transfer of risk, default of acceptance

(1) The seller is not entitled to have services for which it is in arrears performed by third parties (e.g. subcontractors) without our prior written agreement. The seller bears the procurement risk for its services unless something else is agreed to in individual circumstances (e.g. restrictions to supply).

(2) Deliveries are made "carriage paid" within Germany to the location specified in the order. If the destination is not specified and nothing else has been agreed, then the delivery must be made to our business address in 89604 Allmendingen (Federal Republic of Germany). The destination in question is also the place of fulfilment of the delivery and any supplementary performance (debt to be discharged at creditor's domicile).

(3) A delivery note specifying the date (of issue and dispatch), content of the delivery (article number and quantity) and our order ID (date and number) must be enclosed with the delivery. If the delivery note is missing, or is incomplete, then we shall not be responsible for any resulting delays in processing or payment. A corresponding shipping notification must be sent to us separately from the delivery note but with identical contents.

(4) The risk of accidental loss or accidental worsening of the items shall be transferred to us when the goods are handed over. If acceptance has been agreed, this is decisive in terms of the transfer of risk. In all other respects the statutory regulations of German contract law for work and labour apply upon acceptance. Transfer or acceptance is still deemed to have occurred if we are late with acceptance.

(5) Statutory regulations apply for when we become in default of acceptance. The seller must still expressly offer us its service if a specific or specifiable calendar date is agreed for an action or collaboration on our part (e.g. the supply of material). If we fall into default of acceptance, then the seller may demand compensation for any additional costs it incurs in line with statutory regulations (s. 304 of the BGB). If the contract concerns a non-fungible item to be produced by the seller (made to specification), then further rights are only available to the seller if we have committed ourselves to collaboration and have to take responsibility for ceasing it.

§ 5 Prices and terms of payment

(1) The price specified in the order is binding. All prices are inclusive of statutory VAT if this is not shown separately.

(2) Provided nothing else has been agreed to in individual cases, the price includes all services and supplementary services of the seller (e.g. assembly, installation, etc.) and all additional costs (e.g. proper packing, transport costs, including any transportation and liability insurance).

(3) The agreed price becomes payable within 30 calendar days from full delivery and performance (including any agreed acceptance), as well receipt of a proper invoice. If we make payments within 14 calendar days, the seller shall grant us a 3% reduction of the net invoice amount. In the case of bank transfers, payments are promptly made if our transaction order is executed at our bank prior to the payment deadline ending. We will not be held responsible for the delays of banks involved with the payment transactions.

(4) We will pay no interest on arrears. Statutory regulations apply to payment defaults.

(5) We are entitled to offsetting and retention rights and pleas of non-performance of the contract to the extent the law permits. In particular, we are entitled to retain due payments if we are still entitled to claims against the seller resulting from incomplete of deficient deliveries.

(6) The seller has offsetting and retention rights only where there are legally established or undisputed counter-claims.

§ 6 Confidentiality and reservation of title

(1) We reserve the rights of title and copyright to illustrations, diagrams, drawings, calculations, implementation instructions, product descriptions and other documents. Such documents are to be used exclusively for contractual performance and returned to us upon completion of the contract. Secrecy over such documentation must be maintained with respect to third parties– even after the contract has ended. This obligation of confidentiality shall only end if and when the knowledge contained within the documents handed over has become common knowledge.

(2) The above term applies to substances and materials (e.g. software, finished and semi-finished products) as well as tools, templates, samples and other items which we supply to the seller for production. Provided such items are not processed, they are to be stored away separately and insured against destruction and loss to an appropriate extent at the seller's cost.

(3) Processing, mixing or binding (further processing) supplied items by the seller is done for our benefit. The same applies in the case of the further processing by us of delivered goods, so that we are considered to be the manufacturer and acquire ownership of the product in accordance with statutory regulations by the time of further processing at the latest.

(4) The transfer of ownership to us is mandatory and must occur irrespective of the payment of the price. However, if in certain cases we accept an offer by the seller concerning transfer of ownership conditionally based on payment of the purchase price, the seller's reservation of title expires when the purchase price for the delivered good is paid at the latest. We remain authorised to sell on the goods within the ordinary course of business even before purchase price payment in the event of advance assignments of claims derived from them (alternatively, simple reservation of title extended to the re-sale is valid). In any case, all other forms of reservation of title are excluded; especially extended or transferred reservation of title, and that which is extended up to further processing.

§ 7 Defective deliveries

(1) In terms of our rights in the event of material defects and defects of title with respect to goods (including incorrect and short deliveries, as well as incorrect assembly and defective assembly/operating instructions) and other obligation violations by the seller, statutory regulations apply unless nothing else is determined below.

(2) According to statutory regulations, the seller is liable in particular for ensuring goods have the agreed level of quality during transfer of risk to us. Those product descriptions which are the object of the respective contract or have been included in the contract in the same way as this GCP – especially if they are named or referred to in our order – are considered to be an agreement on quality and condition in all cases. In this regard, it makes no difference if the product description originates from us, the seller or the manufacturer.

(3) In deviation of s. 442 para. 1 p. 2 of the BGB, we are also entitled to unrestricted claims for defects even if we remain unaware of the defect upon contract conclusion as a result of gross negligence.

(4) Statutory regulations (s. 377, 381 German Commercial Code [HGB]) apply to the commercial obligation of examination and notification of defects with the following conditions: Our obligation of examination is limited to defects which become perceptible and evident in our goods receiving inspection with external examination, including shipping documents, as well as in our quality control during random sample testing (e.g. transport damage, incorrect and short deliveries). If no acceptance is agreed there is no obligation of examination. Otherwise, it depends on the extent to which an examination is feasible in consideration of the circumstances of the case in hand within the ordinary course of business.
Our obligation to give notice of defects discovered at a later date remains unaffected. In all cases, our notice (announcement of defects) is considered prompt and immediate if it is received by the seller within 8 working days.

(5) Costs expended by the seller for the purpose of inspection and supplementary performance (including any disassembly or installation costs) must still be borne by it if it transpires that no defects in fact existed. Our liability for compensation for damages remains unaffected in the event of unjustified demands for the rectification of defects. In this regard, however, we are only liable if we realised that there was no defect, or did not realise this due to gross negligence.

(6) If the seller fails to meet its obligation for supplementary performance – based on our choice, through the rectification of the defect (subsequent improvement) or through the delivery of a defect-free item (replacement delivery) – within an appropriate time period set by us, then we can remedy the defect ourselves and demand compensation from the seller for the costs involved and/or commensurate expenses. If the supplementary performance by the seller fails or is unacceptable to us (e.g. due to particular urgency, a threat being posed to operational safety or the imminent occurrence of disproportionate damage), no time limit shall be set. We will notify the seller of such circumstances without delay, possibly in advance.

(7) In all other respects, we are entitled to reduce the purchase price or withdraw from the contract in the event of material defects and defects of title in line with statutory regulations. Furthermore, we have a claim to compensation for costs and damages according to statutory regulations.

§ 8 Supplier recourse

(1) In addition to claims for defects, we are entitled to our legally defined claims for recourse (supplier's redress in accordance with s. 478 and 479 of the BGB) without restriction. We are especially entitled to demand the exact type of supplementary performance (subsequent improvement or replacement delivery) from the seller which we owe to our customers in each individual case. Our statutory right to choose (s. 439 para. 1 of the BGB) is not restricted as a result.

(2) Before we recognise or concede to a claim for defects raised by our customers (including reimbursement for expenses as per s. 478 para. 2, 439 para. 2 of the BGB), we will notify the seller and ask for a written statement with a brief outline of the facts. If the statement does not arrive within an appropriate time, and if an amicable solution cannot be found, then the claim for defects which we actually hold will instead be held by our customer. In such a case, the onus of proof lies with the seller.

(3) Our claims from supplier recourse also apply if the goods have been further processed prior to their resale to a consumer by us or one of our customers (e.g. through integration into another product).

§ 9 Manufacturer's liability

(1) If the manufacturer is responsible for an instance of product damage, it must indemnify us of claims from third parties to the extent that the source is within its field of control and organisation and it alone is liable in relation to third parties.

(2) As part of its obligation for indemnification, the seller must reimburse expenses as per s. 683, 670 of the BGB resulting from or in relation to the claims of third parties, including call-back measures taken by us. We will notify the seller of content and scope of call-back measures – provided this is reasonable and feasible – and provide it with the opportunity to state its position. Any further legal claims remain unaffected.

(3) The seller must acquire and maintain product liability insurance with a flat-rate coverage amount of at least €10m per person / instance of property damage.

§ 10 Statute of limitations

(1) The reciprocal claims of the contractual partners shall become time-barred in accordance with statutory regulations, provided nothing else is determined below.

(2) In deviation of s. 438 para. 1 no. 3 of the BGB, the general period of limitation for claims for defects is 3 years from the point of transfer of risk. If acceptance is agreed, the time period starts upon acceptance. The 3-year period of limitation also applies to claims based on defects of title, whereby the statutory period of limitation for claims in rem for the restitution of property of third parties (s. 438 para. 1 no. 1 of the BGB) remains unaffected. Furthermore, claims based on defects of title are never time-barred if the third party can still enforce their claims – especially in the absence of the statute of limitations – against us.

(3) Limitation periods under the law governing the sale of goods, including the aforementioned extension apply – to the statutory extent – for all contractual claims for defects. If we are also entitled to extra-contractual claims for compensation for damage due to a defect, the usual statutory period of limitation applies to this (s. 195 and 199 of the BGB) unless the application of the periods of limitation of the law governing the sale of goods leads to a longer period of limitation in certain cases.

§ 11 Applicable law and place of jurisdiction

(1) The law of the Federal Republic of Germany applies to this GCP and the legal relationships between us and the seller under exclusion of international uniform law, especially the UN Convention on Contracts for the International Sale of Goods (CISG).

(2) If the seller is a merchant in the sense of the German Commercial Code (HGB), a legal entity under public law or a special fund under public law, the sole court responsible, even internationally, for all disputes arising from this contractual relationship is where our company headquarters are based in 89604 Allmendingen (Federal Republic of Germany). In any event, we are also entitled to file suits at the place of fulfilment of the delivery obligation – as defined in this GCP or in accordance with an overriding written agreement – or at the seller's general place of jurisdiction. Overriding statutory regulations, particularly regarding exclusive competence, remain unaffected.