

## **GENERAL TERMS AND CONDITIONS OF PURCHASE**

of

**GPS Glasproduktions-Service GmbH, Ruhrglasstrasse 50, 45329 Essen**

**Last revised: 1th December 2012**

**All orders and purchases will be made exclusively in accordance with these terms and conditions of purchase.**

### **1. General**

All orders placed and enquires made by GPS Glasproduktions-Service GmbH (hereinafter referred to as the "customer") will be exclusively on the basis of these general terms and conditions of purchase (hereinafter referred to as "GTC"). By accepting the order and/or completing an order, the supplier or service provider (hereinafter referred to as "supplier") acknowledges these GTC. Purchase contracts, contracts for labour and materials and all other contracts (hereinafter referred to as "contracts"), in which the customer is involved as the buyer or recipient of the service, will therefore only be formed with the inclusion of these GTC. They also apply to all future business relationships with the supplier, even if they have not been expressly agreed to again. The general terms and conditions of the supplier will not be part of the contract, even if the customer does not expressly object to them. They will also not apply even if the customer accepts the delivery or service without any further reservation while aware of the supplier's terms and conditions. Additional agreements and terms and conditions in enquiries, offers, order confirmations or other documents from the supplier that differ from the provisions below in these GTC will only become part of the contract if the customer expressly confirmed their applicability in writing. These GTC only apply to traders, businesses, legal persons under public law and special assets under public law.

### **2. Offer / acceptance**

The supplier undertakes to accept orders and confirm them in writing within a reasonable period of time, and within no more than two weeks. Until the respective order confirmation has been received by the customer, the customer has the right to freely cancel its orders. Any order confirmation in deviation with the order will not be accepted by the customer, even if the customer does not expressly object to the deviating order confirmation, unless the customer expressly confirms in writing that it agrees to the deviations.

### **3. Delivery and delivery dates**

Delivery will be free to the customer's works or the receiving location specified by the customer in the respective order, unless otherwise is agreed in writing. The dates and deadlines specified in the order are bindingly agreed, unless the supplier has expressly objected to these in writing or the customer has agreed different dates and deadlines with the supplier. If the customer has not stated any dates and deadlines in the order, the dates and deadlines specified by the supplier are bindingly agreed. When determining whether agreed dates and deadlines have been met, the time the goods are received at the receiving location specified by the customer, the time the service was performed or, where applicable, the time of successful acceptance are relevant. If the supplier realises that the agreed dates cannot be met, it has to inform the customer of this immediately in writing stating the reasons and the length of the delay. The supplier's duty to deliver/provide the service on time is not affected by this. If the agreed dates cannot be met due to a circumstance for which the supplier is not responsible, the customer has the right to demand from the supplier, in addition to performance, as a minimum sum the payment of a contract penalty. This will be for each week of default started 0.5 %, but in total no more than 5 % of the net order value of the part of the overall delivery or service which cannot be performed on time or as per the contract as a result of the default. Other statutory rights of the customer, in particular the right to make a further claim for additional compensation for damages, remain unaffected. The contract penalty will be charged up against any possible claim for compensation for damages due to default. The supplier is free to prove that no or much lower damages have been incurred than the contract penalty. If the customer accepts the late delivery or service, the customer must claim the contract penalty at the latest when the final payment is made.

### **4. Packaging, transport, transfer of risk and ownership**

The goods are to be protected from damage by appropriate packaging and transport. The supplier must comply with the customer's packaging guidelines.

The goods will be transported at the supplier's risk. The risk of any deterioration, including accidental loss, remains with the supplier until delivery to the receiving location requested by the customer. The supplier must observe any guidelines regarding delivery procedures on the customer's premises.

Ownership of the delivered goods will be transferred to the customer upon their handover. Any extended retention of title by the supplier will not be recognised by the customer.

## **5. Quality, warranty**

For its deliveries and services, the supplier has to comply with the relevant legal statutory regulations, generally accepted engineering standards, the applicable safety regulations as amended and the technical data, specifications and quality standards specified in the order or in designs or agreed elsewhere in writing. The supplier has to perform thorough final inspections to ensure that there are no defects in terms of quality and dimensions. The customer only has a duty to inspect the delivered goods after full delivery and only for any deviations in identity and quantity and for any externally identifiable transport damage. For the rest, the customer only has a duty to perform technical function tests and any other inspections in the form of random sample tests if this is possible for the delivered item in the normal course of business. If, following this, the customer has a duty to notify a defect in a given case, the notification will have been made in good time if it is received by the supplier within 14 working days of full delivery of the goods in the case of noticeable defects and within 14 working days of a hidden defect being identified or being identifiable in a dutiful inspection.

For defects of quality or title or in the absence of guaranteed properties in the supplier's goods or services performed by the supplier, the customer will be entitled to its statutory rights without limitation. When supplying machinery, the supplier in particular has to confirm in writing or attach the manufacturer's confirmation in writing that this machinery complies with the European Machinery Directive 2006/42/EC of the 17 May 2006. An EU declaration of conformity has to accompany each machine and the CE marking has to be affixed to each machine.

The warranty period is 36 months, unless the customer has expressly agreed otherwise in writing with the supplier or the law for the product to be provided by the supplier or the work to be performed by the supplier provides for a longer warranty period. The warranty period will start at the earliest with the handover of the goods to the customer or the third party specified by the customer at the receiving location specified by the customer. If an acceptance inspection is necessary, the warranty period will start with the time of acceptance stated by the customer in the declaration of acceptance. The warranty period will be extended by the time that the defective item or defective work cannot be used as intended due to the defect. In the event of supplementary performance, the original warranty period for the replacement or newly delivered parts, or for the newly produced work, will start anew.

If a claim is made against the customer by a third party due to a defect in the item supplied by the supplier or a product fault in the item supplied by the supplier requiring compensation, the supplier has to indemnify the customer against all claims resulting from this and actively support the customer in its defence against such claims. For this purpose the supplier has to retain all records and documents relating to the delivery for a period of at least 15 years from receipt of the delivery at the customer and hand these over to the customer at the first time of asking. The customer also has the right to demand compensation for the losses incurred by the customer including reasonable legal costs. These losses also include the costs of any precautionary recall action, if this is in the interest of the customer's customers or if this is appropriate according to the customer's best judgment to protect external third parties. The contract partner will also have to compensate the customer for the costs of such a recall action after the warranty period has expired, if the recall action is taken by the customer due to an official order or to prevent risk to the life and limb of the product users or external third parties.

## **6. Property rights, confidentiality**

The supplier will be liable for ensuring that the delivery or service is free from the rights of third parties and that no property rights of third parties (e.g. copyrights, patents, registered designs, design patents, commercial labelling rights and trademark rights) are infringed by their use. If the property rights of third parties are infringed by the delivery or service, the supplier will have a duty in the first instance to ensure by obtaining the rights or by modifying the delivered item or service, if this is reasonable for the customer, that the rights are no longer infringed. If a third party makes a claim against the customer due to an alleged infringement of such rights, the supplier will immediately indemnify the customer against this and bear all of the costs incurred by the customer as a result of this. This will not apply if the customer concludes an agreement with the third party concerning its claim without the supplier's consent, and in particular agrees a settlement, or if the supplier is not responsible for the property right infringement. The supplier has to provide the customer with all of the information and documents required for the defence immediately and free of charge.

If the goods ordered by the customer are produced based on its specifications, drawings, drafts or patterns or using tools provided by the customer, these will remain the property of the customer and all other rights to these, in particular copyrights and other industrial property rights will be retained, even if not exclusively, by the customer. The supplier has to keep the customer's information and documents confidential, including after the contract has come to an end, and place its staff and representatives under the same obligation to maintain confidentiality. The information and documents may only be disclosed to third parties with the customer's prior consent in writing. The supplier does not have the right to use the information, ideas or any other know-how contained in this for purposes other than the preparation of an offer or performance of the contract for the customer; it in particular does not have to right to offer to third parties products produced for the customer on the basis of this information.

The latter and the obligation to maintain confidentiality will only not apply if the information, ideas or any other know-how was already known to the contract partner before it was received from the customer or if the contract partner obtains this at a later date by other lawful means. Models, dies, tools or any other means of production paid for by the customer or provided to the supplier may only be used for deliveries and services for third parties with the customer's prior consent in writing. All documents, production equipment and tools of the customer are to be returned to the customer together with any copies produced at any time at the request of the customer, and at the latest without request with the delivery of the remaining balance of the order. The supplier does not have any right of lien or retention here.

#### **7. Prices, payment and assignment of receivables**

The agreed prices are fixed prices with free delivery to the customer's registered office or other receiving location specified in the order and include statutory VAT, transport and packaging costs, unless otherwise has been expressly agreed in writing. If the packaging has been charged based on a prior agreement, the customer will have the right to return this at the supplier's cost and deduct the full value of the packaging from the invoice. Unless otherwise has been agreed in writing, payment by the customer will be due within 14 days with a 3 % early payment discount or within 30 days net of in each case receipt of the invoice and the goods (the later of the two dates is relevant) or of acceptance and completion of the service, providing the customer does not have any complaints about the delivery/service. The payment will be made by transfer or cheque, as the customer chooses. In the event of a faulty delivery or service, the customer will have the right to retain an appropriate amount of the payment while retaining its right to an early payment discount until the due performance has taken place.

The supplier does not have the right to assign its claims against the customer to a third party or to arrange for its claims to be collected by a third party without the customer's prior consent in writing, which the customer will not unreasonably refuse to give. If the supplier for its part supplies under an extended retention of title, the consent required in the previous sentence will be considered to have been given. If the supplier assigns its claims without the customer's consent to a third party, the assignment will nonetheless be effective. The customer may, though, pay the supplier or the third party as it chooses with discharging effect.

#### **8. Tool costs**

The costs of the tools and equipment required for the production of the ordered goods and their maintenance, repair and replacement will be borne by the supplier, unless otherwise has been agreed in writing by the customer and the supplier.

#### **9. Subcontracts**

If the supplier agrees to process (by way of a subcontract) goods provided by the customer or any other items (hereinafter referred to as "subcontracted goods"), the following will apply additionally:

The supplier has to inspect the subcontracted goods immediately upon receipt for any transport damage, defects, wrong deliveries and shortages and inform the customer immediately in writing of any complaints. The supplier may only process subcontracted goods that are free from defects. At the same time it has to ensure that the intended use of the subcontracted goods is not affected or put at risk by the processing. If the supplier fails to meet these obligations, the supplier will have to compensate the customer for all losses incurred as a result (e.g. due to the loss of warranty claims against its pre-suppliers). In the event of a breach of the aforementioned duties to inspect and notify complaints, the supplier will also be liable to the customer for faults in the products supplied by the supplier to the customer and the work produced by the supplier, including if these faults are due to defects in the goods provided by the customer.

#### **10. Place of fulfilment, place of jurisdiction**

The place of fulfilment for all obligations under the respective contract is the customer's registered office or the receiving location specified by the customer. If the supplier is a trader in the sense of the German Commercial Code (Handelsgesetzbuch, HGB), the sole place of jurisdiction for any disputes relating to the contract is Essen. The customer has the right, though, to bring an action against the supplier at another place of jurisdiction.

#### **11. Applicable law**

For the contract and its performance, the law of the Federal Republic of Germany applies to the exclusion of the Vienna Convention (United Nations Convention on Contracts for the International Sale of Goods (CISG)).

#### **12. Salvatorius clause**

If any provision in this contract should be or become invalid, ineffective or unenforceable, this will not affect the effectiveness of the remaining provisions. The invalid, ineffective or unenforceable provision is to be replaced by the effective and enforceable provision which is closest to the economic purpose originally pursued. The same will apply if there is a gap in the contract.