

General Purchase Conditions

The following terms and conditions are applicable for all business conducted by Graph-Tech AG (hereafter GT) with its suppliers (of goods, services, etc.), insofar as nothing else has been agreed in writing and until new purchase conditions are agreed in writing. These purchase conditions take precedence over any contradictory terms and conditions of business. Terms and conditions are only applicable insofar as GT expressly agrees to these.

1. General

1.1 All correspondence (invoices, order data, Notifications of dispatch, delivery notes, order confirmations, proofs, etc.) must have the order number, order items, item number, quantities and correct address.

1.3 Any forwarding of GT orders to third parties requires prior written permission from GT.

1.4 Any change or cancellation of these purchase conditions must be made in writing.

1.5 In the event that individual provisions of these general purchasing conditions are ineffective or become ineffective, this does not affect the effectiveness of the other provisions. Instead of the ineffective provision, an effective provision must enter into force, which GT and the contractual partner would have agreed to had they known of the deficiency at the time of concluding the contract, in order to achieve the same or at least a similar economic benefit. This same applies for the filling of contractual gaps.

2. Delivery

2.1 Deliveries must always be made with a delivery note including the order reference, insofar as no other written agreement has been made. The supplier supplies the purchase object in accordance with Incoterms 2010 DAP or DDP and in suitable packaging to the agreed destination. Losses due to transport damage because of insufficient packaging shall be borne by the supplier in full.

2.2 If several destinations have been agreed for the order, the supplier must issue separate dispatch notifications.

2.3 There must be, in particular with order-related deliveries, no short shipments or over shipments. Short shipments or over shipments must be agreed beforehand in writing.

3. Delivery dates

3.1 Agreed delivery dates are considered fixed dates and are due on the agreed delivery date at the destination. GT must be notified of any delays to delivery, stating the reasons and the expected duration.

3.2 Partial deliveries and early deliveries are only permitted with the written consent of GT.

3.4 If the supplier is delayed, GT is entitled to statutory claims. The claim for supply only ceases in all cases if GT claims damages due to non-fulfilment or withdraws from the contract. Unconditional acceptance of a late delivery does not mean that any claims for a replacement are waived.

4. Benefit, danger and ownership

4.1 Benefit, danger and ownership of the supplied goods is transferred to GT upon acceptance of the delivery at the agreed place of performance.

5. Prices

5.1 The prices are fixed up to and including the last partial delivery and contain all additional costs, in particular transport, packaging, public information to be stated and, in the case of delivery to foreign countries, customs clearance, however without value-added tax.

5.2 Prices other than those on the order from GT and price amendments and conditions in relation to this are only binding if and to the extent that these have been expressly agreed by GT in writing.

5.3 Invoices must state the value-added tax separately and be clear and easy to understand. The order reference must be stated. Invoices that have not been issued correctly are considered not received and will be returned by GT.

6. Payment conditions

6.1 GT pays the invoices from the supplier at the end of the month following the month of receipt of invoice or if paid within 30 days with a 2% early payment discount, unless otherwise agreed.

6.2 The payment deadline starts at the earliest on the date of receipt of the original invoice, however not before the goods, free of defects, have been received.

7. Guarantee / warranty

7.1 The supplier provides, regardless of any agreed assurance that may be provided in individual cases going beyond this, a guarantee that the goods are free of defects including without limitation defects in workmanship and materials on delivery and during the warranty period and that they correspond to the agreed specification and are fit for purpose including any purpose for which the goods are advertised or for which such goods are commonly used or that the supplier ought reasonably have known that GT required, the assured properties, the state of the art and current Swiss and international laws and have the valid testing marks.

7.2 GT shall check the supplied purchase object as soon as possible, without being tied to any deadline period. With deliveries of a certified quality, GT assumes that there is no need for a quality-specific check of incoming goods in terms of quantity and quality.

7.3 If the same type of defect occurs with more than 5% of the delivery (epidemic fault), GT is entitled to reject the complete delivery and claim for these defects.

7.4 The provision of payments is not considered authorisation of the delivery. In the event of a defect that occurs during the guarantee period, including the lack of an assured property, GT has in addition to statutory claims, the right to, at its discretion, have the defect rectified free of charge immediately, to cancel the contract, reduce the purchase price or to demand a replacement delivery. If the defect with the supplied good is not immediately rectified by the supplier or it has or will be installed somewhere, GT is also entitled to rectify the defect itself at the cost of the supplier or to have a third party do this.

7.5 The guarantee period for any defect is two years from delivery of the goods. Reclamation for defects can be made at any time during this period. The time period for warranty claims and guarantee claims is three years from the delivery of the goods. With subsequent work carried out and/or a replacement delivery, the guarantee and time period for the revised and/or replacement goods starts again.

8. Intellectual property rights of third parties

8.1 The supplier is also liable in the event that they goods it supplies breach the intellectual property rights (including but not limited to copyright, trademarks both registered and unregistered, patents, design rights, industrial design rights or other rights) of third parties. The supplier indemnifies GT and its buyers of any possible claims that may result from the breach of protected rights.

8.2 Claims in relation to this expire 3 months after any statutory limitation period for corresponding third-party claims, or if later after 10 years from the date of supply.

9. Product liability

9.1 The supplier indemnifies GT of all claims from third parties, in full and shall compensate GT for any damages incurred that arise from due to the failure of the goods supplied to meet the requirements applicable to them or failing to prevent damage in relation to the delivery provided by the supplier.

9.2 GT will in turn inform the supplier of any such claims immediately, whereby any delayed information does not lead to a loss of rights. GT has the right to make claims against the supplier, including after the expiry of any time periods, on the basis of relevant product liability laws.

9.3 The supplier shall not make changes to the specification, materials used, formulation or any other material element of the goods without GT's written agreement. Such agreement not to be unreasonably withheld.

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9.4 The supplier undertakes to take out product liability insurance with a sufficient amount of cover.

10. Confidentiality

10.1 The supplier shall keep confidential and shall not use (except in the proper performance of its obligations under this Agreement) or disclose without the prior written consent of GT, any technical, business, financial, or commercial information, or other information of a confidential nature acquired as a result of any communications between GT and the supplier relating to this Agreement, any order, or the products. All such confidential information (including any copies) shall remain the property of GT and shall, if in tangible form, be promptly returned or destroyed by the Supplier on request by GT.

10.2 Drawings, models, samples and similar objects provided by Graph-Tech to the Supplier must not be provided or made accessible to unauthorized third parties. The replication of such objects shall only be permissible within the boundaries of the law on copyright and to the extent required for the Supplier to fulfil its obligations.

The duty of confidentiality under this clause 10 shall not apply to information that at the time of disclosure was already in the public domain (other than due to a breach of this clause) or is required to be disclosed by statute, any order of a court of competent jurisdiction or an appropriate regulatory authority.

11. Accident prevention and environmental protection

11.1 Supply is in accordance with relevant regulations in Switzerland and the European Union and the latest respective version of generally-accepted rules for safety, occupational health, ergonomics, regulations from professional organisations and regulations on environmental protection.

11.2 For materials (substances, preparations) and objects (such as goods, parts, technical devices, contaminated empty containers), that may cause danger to the life or health of people, the environment or other objects due to their nature, properties or condition and which thus require special handling in terms of packaging, transport, storage, handling or disposal due to regulations, the supplier shall provide to GT, together with the offer, a completed safety datasheet in accordance with Article 38 of the Swiss Substances Act (systematic collection of Federal Law 814.013) and an appropriate accident note sheet (transport).

11.3 In the event of changes to the materials or the legal situation, the supplier shall provide GT with updated data sheets and note sheet.

12. Place of performance

The place of performance for all deliveries is the destination stipulated by GT. If no destination is given, the domicile of the respective GT Company is the place of performance.

13. Contract language / interpretation

The language of the contract is German or English. In the event of questions in relation to the interpretation of these terms and conditions of business, the German version is decisive. Translation into a second language is for the purposes of information only.

14. Applicable law and place of jurisdiction

14.1 For the relationship between the supplier and GT, only substantive Swiss law is applicable, in particular the Swiss Code of Obligations (OR); the United Nations Convention on contracts for the international sale of goods of 11 April 1980 (the Vienna Convention) does not apply.

14.2 The place of jurisdiction for all disputes arising from agreements and all individual transactions is Oftringen.

14.3 GT does however reserve the right to submit claims against suppliers at the place of their registered office.