



# GENERAL TERMS AND CONDITIONS GTC

Ottensteiner Kunststoff GmbH & Co. KG

**General terms and conditions**  
**Ottensteiner Kunststoff GmbH & Co. KG**

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## I. Application

1. These General Terms and Conditions (hereinafter "**GTC**") apply to all legal transactions with Ottensteiner Kunststoff GmbH & Co. KG, Im Garbrock 39, 48683 Ahaus-Ottenstein, 48672 Ahaus (hereinafter "**Supplier**").
2. Any deviating, contradictory or supplementary terms or conditions of the Customer (hereinafter "**Purchaser**") are excluded. Even if known, they shall not become part of the contract unless their validity is expressly agreed in writing.
3. The content of the legal transactions agreed with the Supplier (in particular contracts) shall be determined by the content of the respective contractual declarations (offer and acceptance), these General Terms and Conditions and, if applicable, an additional order confirmation of the Supplier.

## II. Prices

1. The contractually agreed prices are ex works plus value added tax at the statutory rate. All other costs (packaging, transport, insurance etc.) shall be borne by the Purchaser.
2. If it has been agreed that the price is dependent on the weight of the parts, the final price shall be based on the weight of the approved reference samples.

## III. Delivery and acceptance obligations

1. Delivery dates are not binding unless a fixed delivery date has been expressly promised or agreed. The agreement of a binding performance date shall always be subject to the proviso that the Supplier receives any services from upstream suppliers in good time and in accordance with the contract and that the Purchaser has made any advance payment due on time.
2. Partial deliveries are permissible. Deviations from the contractually agreed quantities by 10 % shall be insignificant if this is reasonable for the Purchaser taking into account its interests.
3. In the case of so-called call-off orders (i.e. orders without agreement on a fixed term, the number of quantities to be produced and fixed acceptance dates), the Supplier may demand binding notification of the term, production quantity and acceptance dates no later than 3 months after confirmation of the order. If the Purchaser does not comply with this request within 3 weeks after receipt of the Supplier's request, the Supplier is entitled to set a 2-week extension and to withdraw from the contract after expiry of this extension. Any claims for damages of the Supplier remain unaffected.
4. If the Supplier does not receive, or does not receive in time, for reasons for which he is not responsible, services from third parties which are necessary for the fulfilment of the contractual services to the Purchaser, or if events of force majeure occur, the Supplier shall inform the Purchaser of this in good time. In this case, the Supplier shall be entitled to postpone the agreed performance for the duration of the hindrance. Force Majeure Events may be present in the event of strike, lockout, official intervention, shortage of energy and raw materials, operational hindrances through no fault of the Supplier (e.g. fire, water or machine damage, pandemics) and comparable hindrances for which the Supplier is not responsible.

#### **IV. Provision of materials**

The Purchaser shall be liable in accordance with the statutory provisions for the proper use of such materials, which are to be provided by the Purchaser for the performance of the contractually agreed service by the Supplier. This also applies to defects or damage caused by these materials. The Purchaser shall transfer to the Supplier 105 % of the quantities actually required for performance by the Supplier. If the Purchaser fails to make the materials available (in time), a delivery date that may have been firmly agreed shall be extended by the corresponding period. The rights and claims of the Supplier shall remain unaffected.

#### **V. Packaging, Dispatch, Transfer of Risk**

1. Delivery is ex warehouse, which is also the place of performance for the delivery and any subsequent performance. At the request and expense of the purchaser, the goods will be shipped to another destination (sale to destination). Unless otherwise agreed, the Supplier shall be entitled to determine the type of shipment (in particular transport company, shipping route, packaging) itself.
2. The risk of accidental loss and accidental deterioration of the performance to be rendered by the Supplier shall pass to the Purchaser at the latest upon handover. In the case of mail order purchases, however, the risk of accidental loss and accidental deterioration as well as the risk of delay shall already pass to the customer upon delivery of the service to the forwarding agent, the carrier or the person or institution otherwise designated to carry out the shipment. If acceptance has been agreed, this is decisive for the transfer of risk. The statutory provisions of the law on contracts for work and services shall also apply accordingly to an agreed acceptance. If the Purchaser is in default of acceptance, this shall be deemed equivalent to handover or acceptance.
3. If the Purchaser is in default of acceptance, if it fails to perform a cooperative act or if the Supplier's delivery is delayed for other reasons for which the Purchaser is responsible, the Supplier is entitled to demand compensation for the resulting damage, including additional expenses (e.g. storage costs).
4. At the request (at least in text form) of the Purchaser, the goods shall be exchanged at the Purchaser's expense against storage costs, breakage costs, transport and fire damage and other costs.

#### **VI. Reservation of title**

1. The delivered goods (reserved goods) remain the property of the Supplier until all claims of the Supplier against the Purchaser have been fulfilled, even if the purchase price for specially designated claims has been paid. In the case of a current account, the reserved ownership of the goods subject to retention of title shall serve as security for the Supplier's balance invoice.
2. The treatment, processing or transformation of the reserved goods by the Purchaser is always carried out in the name of and on behalf of the Supplier. In this case, the expectant right of the Purchaser to the reserved goods shall continue in the transformed object. If the

reserved goods are processed together with other items not belonging to the Supplier, the Supplier shall acquire co-ownership of the new item in the ratio of the objective value of the reserved goods to the other processed and handled items at the time of processing and handling. The same applies in the event of mixing. Insofar as the mixing is carried out in such a way that the object of the Purchaser is to be regarded as the main object, it is deemed to be agreed that the Purchaser transfers proportional co-ownership to the Supplier and keeps the sole ownership or co-ownership thus created for the Supplier. In order to secure the claims of the Supplier against the Purchaser, the Purchaser also assigns to the Supplier such claims which accrue to him against a third party through the connection of the reserved goods with a property; the Supplier accepts this assignment already now.

3. The Purchaser may only resell the reserved goods in the ordinary course of business on condition that it also agrees a reservation of title with its customers in accordance with the above paragraphs 1 and 2. The Purchaser is not entitled to dispose of the reserved goods in any other way, in particular pledging and assignment as security.
4. In the event of resale, the Purchaser hereby assigns to the Supplier, as of now and until all claims of the Supplier have been satisfied, the claims arising from the resale and other claims against its customers, including all ancillary rights. At the request of the Supplier, the Purchaser shall be obliged to provide the Supplier with all information and documents required to assert the Supplier's rights against the Purchaser's customers. The Supplier accepts this assignment already now.
5. If the goods subject to retention of title are processed by the Purchaser in accordance with Para. 2 or together with other goods not belonging to the Supplier, the assignment of the purchase price claim shall apply in accordance with para. 4 shall only apply to the amount of the invoice value of the Supplier's reserved goods.
6. If the value of the securities existing for the Supplier exceeds the Supplier's total claims by more than 10%, the Supplier is obliged to release securities of the Supplier's choice to this extent at the request of the Purchaser.
7. The Supplier must be notified immediately of any seizure or confiscation of the reserved goods by third parties. Any intervention costs arising from this shall in any case be borne by the Purchaser.
8. If the Supplier makes use of its retention of title in accordance with the above provisions by taking back goods subject to retention of title, it shall be entitled to sell the goods by private contract or have them auctioned. The taking back of the goods subject to retention of title shall be effected at the proceeds obtained, but at most at the agreed delivery prices. The Supplier reserves the right to further claims for damages, in particular loss of profit.

## VII. Terms of payment

1. All payments shall be made in € (Euro) exclusively to the Supplier.
2. Unless otherwise agreed, the purchase price shall be paid within 14 days from the date of invoice without deduction. Decisive for the date of payment is the receipt of payment by the Supplier.
3. Upon expiry of the payment period, the Purchaser shall be in default. During the period of default, interest shall be charged on the claim for payment at the statutory default interest rate applicable at the time. The Supplier reserves the right to claim further damages caused

by default. The Supplier's claim to the commercial interest on arrears (§ 353 HGB) against merchants remains unaffected.

4. The Supplier shall be entitled to execute or render outstanding deliveries or services only against advance payment or provision of security if, after conclusion of the contract, the Supplier becomes aware of circumstances which are likely to substantially reduce the creditworthiness of the Purchaser and which jeopardise payment of the Supplier's outstanding claims by the Purchaser under the respective contractual relationship.
5. Offsetting against counterclaims of the Purchaser or withholding of payments on account of such claims shall only be permissible if the counterclaims are undisputed or have been declared final and absolute or result from the same order under which the relevant delivery was made.

## **VIII. Warranty**

1. The basis of the warranty is the agreement reached on the quality of the performance owed by the Supplier. The agreement on the quality of the goods shall in particular be deemed to be an offer and confirmation of order as well as all information provided by the Supplier which is the subject of the individual contract, as well as, if applicable, a sample approved by the Purchaser.
2. The Supplier is generally not liable for defects which the Purchaser knew about at the time of the conclusion of the contract or did not know about due to gross negligence. Furthermore, the Purchaser's claims for defects presuppose that he has fulfilled its statutory obligations to examine and give notice of defects (§§ 377, 381 HGB). If a defect is discovered during delivery, inspection or at any later time, this must be reported to the Supplier immediately. If the Purchaser fails to carry out the proper inspection and/or report defects, a warranty for the defect not reported or not reported in time or not properly reported is excluded according to the statutory provisions.
3. If transport damage is visible upon delivery, this must be reported to the transport company and documentation of the damage must be arranged.
4. If the delivered item is defective, the Supplier may initially choose whether to provide subsequent performance by eliminating the defect (rectification of defects) or by delivering a defect-free item (replacement delivery).
5. The Supplier is entitled to make the subsequent performance owed dependent on the Purchaser paying the purchase price due. However, the Purchaser is entitled to retain a reasonable part of the purchase price in relation to the defect.
6. The Purchaser shall give the Supplier the time and opportunity required for the subsequent performance owed, in particular to hand over the rejected goods for inspection purposes. In the event of a replacement delivery, the Purchaser shall return the defective item in accordance with the statutory provisions. Subsequent performance does not include the removal of the defective item or the reinstallation if the supplier was not originally obliged to install it. This does not take into account any obligation of the Supplier to reimburse such costs.
7. The expenses necessary for the purpose of testing and subsequent performance, in particular transport, travel, labour and material costs as well as any dismantling and installation costs shall be borne by the Supplier in accordance with the statutory provisions if a defect is actually present.

8. In urgent cases, e.g. if operational safety is endangered or in order to prevent disproportionate damage, the Purchaser has the right to remedy a defect himself and to demand compensation from the Supplier for the expenses objectively necessary for this purpose. The Supplier must be informed immediately, if possible, beforehand, of any such self-remedy. The right of self-remedy shall not exist if the Supplier would be entitled to refuse a corresponding subsequent performance in accordance with the statutory provisions.
9. The right to withdraw from the contract is excluded in the case of an insignificant defect.

## **IX. Liability**

1. Unless otherwise provided for in these Terms and Conditions of Sale, the Supplier shall be liable in accordance with the statutory provisions in the event of its own breach of contractual and non-contractual obligations.
2. The Supplier shall be liable for damages - regardless of the legal grounds - within the scope of liability for culpable intent and gross negligence. In case of simple negligence, the Supplier is liable, subject to statutory limitations of liability, only:
  - a) for damages resulting from injury to life, body or health,
  - b) for damages resulting from the breach of an essential contractual obligation (obligation whose fulfilment makes the proper execution of the contract possible in the first place and on whose compliance the contractual partner regularly relies and may rely); in this case, however, the liability is limited to the replacement of the foreseeable, typically occurring damage.
3. The limitations of liability resulting from No. 2 shall also apply to breaches of duty by persons for whose fault the Supplier is responsible under statutory provisions. They shall not apply if the Supplier has fraudulently concealed a defect or has assumed a guarantee for the quality of the goods and for claims of the Purchaser under the Product Liability Act.
4. Due to a breach of duty which does not consist of a defect, the Purchaser may only withdraw or terminate the contract if the Purchaser is responsible for the breach of duty. In all other respects, the statutory requirements and legal consequences shall apply.
5. Notwithstanding § 438 para. 1 No. 3 BGB (German Civil Code), the general limitation period for claims arising from defects of quality and title is one year from delivery. If acceptance has been agreed, the limitation period shall commence upon acceptance. Other statutory special regulations on the statute of limitations (in particular § 438 para. 1 No. 1, para. 3, §§ 444, 445b BGB) shall also remain unaffected. However, claims for damages by the Purchaser pursuant to No. 2, sentence 1 and sentence 2, lit. a) as well as under the Product Liability Act shall be subject to the statutory limitation periods.

## **X. Exclusion of Use in Aerospace Applications**

1. The goods supplied by the Supplier are not intended for use in the planning, design, manufacture or supply of aircraft, spacecraft, or any parts thereof. Any such use is expressly prohibited.

2. If the Purchaser intends to use the goods for any such purposes, or if it is otherwise evident that the goods are intended for such purposes, the Purchaser shall notify the Supplier in writing prior to the conclusion of the contract.
3. Upon such notification, any prior declarations of intent by the Supplier relating to the conclusion of a contract shall cease to be binding, and the Supplier reserves the right to refuse to enter into such contract.
4. In the event that the Purchaser uses the goods in violation of this Section, the Purchaser shall indemnify, defend and hold harmless the Supplier, its affiliates, officers, employees and agents from and against any and all claims, liabilities, losses, damages, costs and expenses (including reasonable legal fees) arising out of or in connection with such use.

## **XI. Industrial property rights**

1. The Purchaser shall be liable to the Supplier for the freedom of the ordered deliveries and services from the property rights of third parties, shall indemnify the Supplier from all corresponding claims and shall compensate the Supplier for the damage incurred.
2. Drafts, design proposals and other representations of a technical nature of the Supplier may only be passed on or duplicated with the Supplier's approval.

## **XII. Place of performance and jurisdiction**

1. The place of performance and jurisdiction for all disputes between Supplier and Purchaser is the Supplier's registered office.
2. German law applies exclusively to all contractual relationships between the Supplier and the Purchaser. The UN Sales Convention (CISG) is excluded.

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