

General Terms of Sale and Delivery - GGB Tristar Suisse SA

1. General

- 1.1 The Buyer accepts the present General Terms of Sale and Delivery of GGB Tristar Suisse SA as an integral part of the contract on which its orders at GGB Tristar Suisse SA (hereinafter "Supplier") are based on as well as an integral part of each individual order.
- 1.2 The present General Terms of Sale and Delivery are binding if declared applicable in the offer, the framework agreement, or the acceptance of the order. They apply exclusively and indefinitely, as long as they are not modified by written agreement. They also apply even if Supplier delivers the goods to Buyer without reservation and in knowledge of contradictory or deviating terms and conditions of Buyer. Deviating terms and conditions of Buyer are not part of the contract, even if Supplier does not expressly object to them. Deviating terms and conditions of Buyer apply only, if and as far as they have been expressly accepted by Supplier in writing.
- 1.3 Should any provision of the present General Terms of Sale and Delivery be or become invalid or contain a loophole, the validity of the remaining provisions shall remain unaffected. Any invalid provision shall be replaced by a valid provision that comes as close as possible to the economic purpose intended by the parties. The same shall apply in case of a loophole.
- 1.4 The present General Terms of Sale and Delivery are a consistent translation of the German version and are provided for convenience purposes only. In case of dispute or contradictions, the German version of the General Terms of Sale and Delivery prevails.

2. Offers by Supplier

Offers by Supplier, including those made in writing, by telephone, in personal conversations, via the Internet (particularly in a web shop of the Supplier), by fax, or by email, are deemed to be non-binding and without obligation, if and insofar as they are not explicitly and demonstrably designated as "binding" and (cumulatively) do not contain a deadline for acceptance, and are directed exclusively to business customers domiciled in Switzerland or Liechtenstein. Brochures and catalogues of Supplier in particular shall not be binding unless otherwise agreed upon.

3. Acceptance respectively Order by Buyer

- 3.1 The acceptance of non-binding offers of Supplier by Buyer does not constitute a binding contract, but is deemed to be an order subject to acceptance. With acceptance or order by Buyer, the present General Terms of Sale and Delivery are deemed to be accepted by Buyer.
- 3.2 Should a query by Buyer be qualified as an offer, it is deemed being an order subject to acceptance.

4. Acceptance by Supplier

- 4.1 The contract shall be concluded upon receipt of written confirmation of acceptance of the order (Acceptance of Order) of Supplier by Buyer. Delivery itself is deemed to be an Acceptance of Order.
- 4.2 Should Buyer request a change to an already accepted order or should Buyer consider the written Acceptance of Order as diverging in substance, Buyer shall notify so in writing immediately after receipt of Acceptance of Order. Supplier shall inform Buyer within two weeks whether the notified change is possible and what impact it has on the order, dates and prices. A possible offer by Supplier for such change of the order shall be binding for two weeks. In case benefits and risks have already been transferred for certain products, the original contract shall apply to such products.

5. Scope of Deliveries and Services

The deliveries and services provided by Supplier are listed in the Acceptance of Order limitatively.

6. Prices and Payment

- 6.1 All prices are - subject to deviating written information in the Supplier's offer (e.g. the price list) or any other written agreement - net, ex works (EXW D-74078 Heilbronn, Incoterms 2010), excluding packaging, in Swiss francs (CHF) and are to be paid within 30 days from date of invoice without deductions (in particular without cash discount deductions). Certain services (in particular the procurement of tooling) are only offered by the Supplier against payment in advance.
- 6.2 Modification of the prices, which are due to price increases by suppliers, change of exchange rates, delays, wage changes or other events, are expressly reserved. An appropriate price adjustment occurs particularly if the delivery time is extended ex post due to a reason listed in Section 9 (Delivery, Delivery Time, and Delivery Delay) or if the documentation supplied by Buyer was incomplete or did not correspond to the actual circumstances.
- 6.3 Packaging may not be returned to Supplier. However should packaging have been designated as property of Supplier, it shall be returned carriage paid by Buyer to the place of dispatch of Supplier.
- 6.4 The payments shall be made at the domicile of Supplier without any deductions, expenses, taxes, levies, fees, duties and/or the like. Buyer is not entitled to set-off any counter-claims against claims of Supplier. Buyer shall not assign claims against Supplier. Payments are due and to be paid despite a possible notice of defect or a possible counterclaim. Buyer is not entitled to retain any payment. Supplier is entitled to refuse to remedy possible defects as long as Buyer has not complied with its payment obligations. The purchase price is due for payment, even if Buyer is in default of acceptance.

7. Delay in Payment

- 7.1 To assess the timeliness of payment, the date of receipt of payment at Supplier's is decisive. In case of failure to comply with the payment deadline, Buyer shall be in default without further notice. Buyer in default of payment shall owe a default interest of 7% of the invoice amount per annum. Additionally, collection expenses in the amount of CHF 20.00 will be charged for every reminder.
- 7.2 In case of any delay in payment or in case of liquidity problems of Buyer, Supplier is entitled to request full advance payment for further deliveries and is entitled to deliver against advance payment even if other payment terms have been agreed upon at the conclusion of contract and this without being in default itself.
- 7.3 Upon Buyer's delay in payment, any and all claims of Supplier become due immediately. Buyer's non-compliance with payment terms shall authorise Supplier to rescind the contract and to claim damages. Supplier is also entitled to rescind the contract and to recover the products from Buyer, if Buyer already took possession of the products before full payment of the purchase price. Buyer does not have a lien on the products.
- 7.4 If, after the conclusion of contract, Supplier becomes aware of circumstances, which question the creditworthiness of Buyer, or should there be a significant threat to Suppliers claim for payment due to financial collapse of Buyer, or should there be a delay in payment by Buyer, Supplier shall be entitled to claim advance payment or security within reasonable time and to refuse to deliver until such demands are fulfilled. In case of refusal of Buyer or in case of lapse of the time set by Supplier, Supplier shall be entitled to terminate the contract in whole or in part without being in default itself and to claim damages for non-performance.

8. Place of Performance and Transfer of Benefits and Risks

- 8.1 Place of performance for any services under the contract shall be at Supplier's main registered office. Benefits and risks shall pass on Buyer at the time of shipment ex works (EXW D-74078 Heilbronn, Incoterms 2010) at the latest. Shipment shall be at the sole expense and risk of Buyer. Insurance of goods and delivery against loss or damage shall be the sole responsibility of Buyer.
- 8.2 Should the shipment be delayed at Buyer's request or for other reasons, which Supplier is not responsible for, the risk shall pass on Buyer at the originally intended time of delivery ex works (EXW D-74078 Heilbronn, Incoterms 2010). From this point on, the products shall be stored on account and risk of Buyer and – upon Buyers request – be insured at Buyer's costs.

9. Delivery, Delivery Time, Delivery Delay

- 9.1 The delivery period starts as soon as the contract has been concluded and all the product requirements and technical issues have been resolved.

- 9.2 The delivery period is generally non-binding and only serves as an estimate of the expected delivery date. However Supplier makes every effort to deliver the agreed products to Buyer within the delivery period specified in the Acceptance of Order. The delivery deadline is met if, before its expiration, dispatch has taken place or the readiness for dispatch notice has been sent to Buyer.
- 9.3 The delivery period shall be extended appropriately if:
- a) the information necessary for the fulfilment of the contract is not received by Supplier in time, or if Buyer subsequently changes an existing order causing delays in deliveries or services;
 - b) hindrances occur which Supplier cannot avert despite due care, regardless of whether they arise in the person of Supplier of Buyer or of a third party. Such hindrances include without limitation late or defective supply of necessary raw materials or semi-finished or finished products, significant business interruptions, waste, epidemics, mobilization, war, riots, accidents, labour conflicts, regulatory actions or omissions, natural events etc.;
 - c) Buyer defaults in its contractual obligations, in particular if Buyer fails to comply with the terms of payment.
- 9.4 A (depending on the contractual regulation) possible damage caused by late delivery shall in any case be limited to the value of the affected (partial) delivery. Expressly excluded are any consequential damages caused by delay, indirect damages, costs for covering purchases, lost profits and damages resulting from business interruption. Buyer shall not be entitled to withdraw from contract due to late delivery.
- 9.5 Should Buyer be in default of acceptance or of any other obligation to co-operate, Supplier shall be entitled to prioritise orders of third-parties and to adequately extend the delivery period. Without prejudice to any further claims, Supplier shall be entitled to claim for compensation of the damages suffered, including any additional expenses.
- 9.6 Partial deliveries are permitted, provided that they do not result in disadvantages for the use.
- 9.7 Call-off orders have to be placed in a way that the final delivery may be carried out within 12 months after order date. After this period, storing expenses and interests will be charged.

10. Acceptance of Delivery, Shipping, Transportation, Insurance

- 10.1 Should Buyer refuse acceptance of delivery, the purchase price shall be due immediately, regardless of whether the products were already transferred to Buyer or not. Supplier is not obliged to proceed to a deposit of the products. Supplier may refrain from executing the order instead and claim a contractual penalty in the amount of the purchase price from Buyer. The right to claim further damages remains reserved.
- 10.2 Buyer shall inform Supplier on due time as to special requests regarding shipping, transport and insurance. Transport is at the expense and risk of Buyer.
- 10.3.1 Insurance against damages of any kind is the sole responsibility of Buyer.

11. Inspection and Notice of Defects

- 11.1 Supplier will perform an ordinary inspection of the products before shipment. In case Buyer should request more detailed inspections, they shall be especially agreed upon and executed at Buyer's costs.
- 11.2 Buyer shall inspect the products and services in detail within 14 days after receipt and shall within the same period notify Supplier any defects and/or quantity deviations beyond industry standard tolerance. Such obligation to inspect and notify shall not be limited to externally visible defects. Notice of defects shall be in writing and contain detailed specifications as to any and all alleged defects and possible evidence shall be attached thereto. If notice of defects is provided within the notice period, the products are deemed to be free of defects in all their functions and the delivery shall be considered as accepted.
- 11.3 Buyer has no rights and claims out of defective products or services other than those explicitly mentioned in sections 11 and 12 (Warranty, Liability for Defects) of the present Terms of Sale and Delivery.

12. Representations, Warranty, Liability for Defects

- 12.1 Subject to the following provisions, the statutory warranty regulations shall apply.
- 12.2 Any and all warranty claims shall be subject to a timely and valid notice of defects in accordance with Section 11 (Inspection and Notice of Defects) and shall become time-barred within 6 months after the transfer of benefits and risks.
- 12.3 Vested characteristics shall only be those which have been explicitly designated as such in the specifications and drawings (Representations).
- 12.4 Supplier's warranty and liability shall not extend to damages which are not proven to have occurred due to poor materials, faulty design, or poor workmanship, e.g. due to natural wear, improper maintenance, transport, failure to comply with operating instructions, excessive strain, unsuitable equipment, chemical or electrolytic influences, construction or installation work not executed by Supplier, as well as due to other reasons beyond Supplier's control. Supplier does not provide any warranty for any products or semi-finished products supplied by third parties or for the compliance of the products with provisions of public, union and private law at the place of delivery or place of destination.
- 12.5 Should a product turn out to be defective and Supplier become liable under warranty according to the abovementioned conditions, Supplier shall be entitled to choose either to replace the defective products, respectively to deliver products free of defaults ex works (EXW D-74078 Heilbronn, Incoterms 2010), to accept the reduced value of the defective products, or to repair the defective products. Any additional claims of Buyer resulting from defective products, in particular claims for damages (including consequential damages and indirect damages) and withdrawal from the contract are excluded. Also excluded is an execution by substitution through a third party at the expenses of Supplier.
- 12.6 Should Supplier choose to repair defective products, Buyer shall give Supplier the opportunity to do so. At Supplier's request and only with Supplier's consent, defective parts shall be returned to Supplier at Buyer's expenses and in the state of delivery, preferably in their original packaging.
- 12.7 Buyer shall have no further rights and claims resulting from defects in material, construction or design as well as due to lack of vested characteristics.

13. Exclusion of further Liability / Indemnification

- 13.1 Unless stipulated otherwise within the present General Terms of Sale and Delivery, Supplier shall only be liable for damages directly resulting from Supplier's delivery of defective products or from other reasons imputable to Supplier, as follows:
- a) Supplier's liability for damages shall only be given if Supplier is at fault.
 - b) Supplier's liability shall be excluded where Buyer has effectively limited its own liability towards its customers or where Buyer could have limited it but refrained from doing so. Any limitation of liability towards third parties of Buyer shall also cover Supplier as far as legally admissible.
 - c) Claims of Buyer shall be excluded where damages are caused by Buyer's failure to comply with operating, maintenance and/or installation instructions, unsuitable or improper use, improper or careless handling, normal wear, or faulty repair.
 - d) Supplier shall not be liable for Buyer's measures of damage prevention (e.g. product recalls) respectively only to the extent provided by mandatory law.
 - e) Buyer shall immediately and fully inform and consult Supplier in case it intends to hold Supplier liable. Buyer shall give Supplier opportunity to inspect the damageable event.
- The principles set forth in this section shall be applicable even if there is no or insufficient insurance. Product liability of Supplier is excluded to the extent permitted by law.
- 13.2 Any and all contractual breaches and their legal consequences as well as all claims by Buyer against Supplier, no matter on what legal grounds they are asserted, are definitively settled by these terms and conditions. Excluded in particular and without limitation are any not expressly mentioned claims on the part of Buyer against Supplier for indemnification, damages, reduction of purchase price, cancellation of the contract or withdrawal from the contract. In no case Buyer shall be entitled to assert claims for compensation for damages, which did not arise to the product itself, such as loss of production, loss of use, loss of orders, loss of profit and other direct or indirect damages.

14. Retention of Title

- 14.1 Supplier shall retain title on any and all products delivered until their full payment. Supplier shall be entitled to reclaim products already delivered and Buyer shall be obliged to hand over such products. Supplier shall not lose title on products that have been processed or resold by Buyer, but establish joint title in the value of the outstanding amount. Buyer shall maintain joint title in the name of Supplier. Buyer shall at its own expenses insure and maintain the products until full payment of the purchase price. In addition, Buyer shall take any and all measures to ensure that Supplier's title is neither impaired nor repealed.
- 14.2 With the conclusion of the contract Buyer assigns to Supplier any claims against its customers resulting from the resale of the products. Buyer shall be entitled to enforce such claims after they have been assigned. Supplier's entitlement to enforce such claims itself remains unaffected, but Supplier shall not enforce such claims as long as Buyer complies with its payment obligations and without being in delay in payment. Should Buyer not comply, Supplier shall be entitled to claim from Buyer all and any information as to the claims assigned and its corresponding debtors as well as any and all information necessary for enforcement of such claims, to hand over the relevant documents and to inform the debtors about the assignment.
- 14.3 Buyer shall contribute to taking the measures necessary to protect the property of Supplier. With the conclusion of the contract Buyer particularly, but without limitation, agrees to and grants Supplier the right to register the retention of title with the relevant registry.
- 14.4 Buyer shall neither pledge nor transfer by way of security the products delivered. In case of distraint, forfeiture or other disposal by third parties, Buyer shall immediately notify Supplier and provide it with all information and documents necessary to protect its rights. Debt enforcement officials or third parties shall be informed of Supplier's retention of title.

15. Property Rights and Intellectual Property Rights

- 15.1 Any documents and samples handed over as part of the offer remain the sole property of Supplier. No third party shall be granted access to these documents and samples without Supplier's prior consent.
- 15.2 Supplier reserves its property rights and intellectual property rights on any drawings, calculations and other documents. This also applies to written documents which are marked as "confidential". Buyer shall obtain written approval by Supplier before handing over such documents to any third parties.
- 15.3 Each party shall inform the other party immediately after becoming aware of any risk of infringement or alleged infringement of property rights and shall give each other opportunity to counter such claims. The aforementioned clauses as to the limitation of liability shall apply accordingly.

16. Tooling

Tools and equipment shall remain the exclusive property of Supplier. Costs for tools caused by changes to the drawings are at Buyer's sole expense. If there are no new orders placed within 5 years, tools and equipment may be destroyed.

17. Information and Disclosure

Each party shall draw the other party's attention to special technical requirements of an order and to legal, regulatory and other requirements at the place of destination if such requirements are of importance for the export and usage of the products. Each party shall duly inform the other party about obstacles, which might endanger the timely fulfilment of the contract or which might result in inexpedient solutions.

18. Confidentiality, Nondisclosure

- 18.1 The contractual partners shall retain as strictly confidential all commercial and technical information obtained in connection with the business relationship which is not generally known. The same obligation shall be imposed on subcontractors and/or other third parties. The business relationship and its content shall be kept secret from third parties.
- 18.2 Drawings, models, templates, samples and similar items shall neither be handed over to unauthorized third parties nor otherwise made accessible. The reproduction of such items shall only be allowed within the scope of operational requirements and copyright provisions.

19. Changes to the General Terms of Sale and Delivery

The respective General Terms of Sale and Delivery become effective at the time the contract is concluded.

Subsequent changes or amendments to the General Terms of Sale and Delivery shall form an integral part of the contract, if Buyer does not object to the changed provisions within 30 (thirty) days after taking note of them.

20. Place of Jurisdiction and Applicable Law

20.1 Any dispute shall at first be settled by mutual agreement among the contractual partners.

20.2 Exclusive place of jurisdiction shall be the competent courts at **Supplier's main registered office** (currently Bettlach, Switzerland). Supplier only shall additionally have the right to prosecute Buyer at its registered office or at any other ordinary jurisdiction.

20.3 The contract shall be governed exclusively by the **substantive laws of Switzerland** excluding the provisions of international private law (to the exception of Art. 116 PILA, which allows such an express choice of law) and the United Nation convention on contracts for the international sale of goods CISG.

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