

**General Terms and Conditions of Purchase  
of the GINDUMAC GmbH**

*Status: 2023/03/09*

**1. Scope**

- 1.1 All deliveries, services and offers of suppliers of GINDUMAC GmbH, Trippstadter Straße 110, 67663 Kaiserslautern, Federal Republic of Germany, Commercial Register entry: AG Kaiserslautern, HRB 32086 ("**GM**"), shall be made exclusively on the basis of these General Terms and Conditions of Purchase ("**GTC**"). They are an integral part of all contracts concluded with the suppliers for the deliveries or services offered by them (the "**Deliverables**"). In particular, all purchases of machinery are also covered by the GTC.
- 1.2 These GTC shall also apply to all future transactions between the contracting parties as well as if GM should accept the delivery without reservation in the knowledge of deviating or conflicting terms and conditions.
- 1.3 The supplier acknowledges the exclusive applicability of these GTC by (i) submitting a binding offer in accordance with Clause 2.1, (ii) accepting GM's order in accordance with Clause 2.2 or (iii) having already given its consent in the context of the marketing process of the Deliverables.

**2. Order and acceptance**

- 2.1 Unless expressly agreed otherwise, the issuance of a pro forma invoice by the Supplier shall be deemed to be a binding offer to enter into a purchase contract in accordance with these GTC and the applicable statutory provisions (the "**Purchase Contract**"). Upon written confirmation by GM, this offer is accepted and the Purchase Agreement becomes effective and binding. Alternatively, GM is free to waive the written confirmation and to pay the purchase price directly (be it as partial or full payment). This payment serves as proof of the will to accept the offer and immediately leads to the conclusion of the Purchase Contract. The Purchase Contract is thus concluded upon effectiveness of the payment, irrespective of any orders or deliveries. Any terms and conditions of the supplier deviating from or supplementing these GTC shall only apply if they have been expressly accepted by GM in writing. No verbal subsidiary agreements have been made.
- 2.2 In exceptional cases, GM may initiate an offer to conclude a Purchase Contract by means of an order. Such an order is deemed to be a binding offer at the earliest upon written confirmation. To the extent that an order of GM does not expressly contain a binding period, the supplier is required to confirm this order within a period of one week from the date of the order (acceptance). The receipt of the written order confirmation by GM is decisive for the timely acceptance. Deviations from the order must be clearly indicated in the order confirmation; they are deemed to be a new offer which requires acceptance by GM. GM's purchase orders and the Supplier's order confirmations satisfy the written form requirement if they are transmitted by fax or e-mail.

### 3. Reservation

- 3.1 The parties may agree on the binding reservation of the intended Deliverable prior to the conclusion of a Purchase Contract. In this case, the GM shall be granted an exclusive and cost-free option right to conclude the Purchase Contract on the terms and conditions set out in the purchase order and these GTC. The option right must be exercised by the GM in text form towards the supplier within a maximum of 100 (one hundred) days after the commencement of the reservation.
- 3.2 Insofar as the supplier does not observe GM's option right, e.g. sells the Deliverable to a third party within the duration of the option right, the supplier shall pay GM liquidated damages. Unless otherwise agreed, this shall amount to 5% of the purchase price of the Deliverable determined in accordance with the reservation. GM expressly reserves the right to claim further damages.

### 4. Prices and terms of payment

- 4.1 The contract price is a fixed price.
- 4.2 All prices are net prices plus the statutory value added tax. Unless otherwise agreed in writing, the fixed price includes all services and ancillary services of the supplier (e.g. assembly, installation) as well as all ancillary costs (e.g. for proper packaging, transport including any transport and liability insurance, customs clearance for imports).
- 4.3 Invoices shall be issued immediately after delivery. Unless otherwise agreed, the invoice shall contain at least the following information: Item name, item description (incl. specification), item price, quantity, invoice amount, place of delivery (in accordance with INCOTERMS 2020), delivery date, contact person at the supplier and terms of payment. If applicable and not previously communicated in writing, any restrictions in the functionality of the Deliverable as well as any third-party rights to the Deliverable must also be communicated at the latest when the invoice is issued. Invoices are not payable as long as these details are missing.
- 4.4 Unless explicitly agreed otherwise, payment shall be made either (i) within 7 days after complete delivery and performance and receipt of a proper invoice deducting a 3% discount or (ii) within 30 days net.
- 4.5 GM does not owe any interest on the due date. The statutory provisions shall apply to the occurrence of default in payment, whereby, in derogation thereof, a written reminder by the supplier shall be required in any case.
- 4.6 GM is entitled to set-off and retention rights as well as the defence of contractual non-performance to the extent provided by law. GM is in particular entitled to withhold due payments as long as GM is still entitled to claims from incomplete or defective performances against the supplier. The supplier shall have a right of set-off or retention only on the basis of counterclaims which have become res judicata or are undisputed.

- 4.7 The supplier is not entitled to assign its claims against GM to third parties without the prior written consent of GM.
- 4.8 Reservations concerning price or delivery time are subject to the explicit written confirmation of GM.

## 5. Delivery

- 5.1 All delivery dates stated in the Purchase Contract or otherwise agreed are binding. Early deliveries and partial deliveries are only permissible in agreement with the GM.
- 5.2 The supplier agrees to temporarily store the Deliverable free of charge until it is collected by GM.
- 5.3 The date of provision at the place of provision (in accordance with the agreed INCOTERMS) or, if otherwise agreed, the date of receipt of the Deliverable at the agreed place of delivery (in accordance with the agreed INCOTERMS) shall be decisive for compliance with the delivery period.
- 5.4 The supplier is obliged to inform GM immediately of any impending or already occurred delay in the provision or the agreed delivery date, the causes and their expected duration. The occurrence of a delay in delivery remains unaffected by this.
- 5.5 In the event of a delay in delivery, GM shall be entitled to all statutory claims. The provisions of Clause 5.7 remain unaffected. The unconditional acceptance of a delayed delivery or service does not constitute a waiver of the claims to which GM is entitled due to the delayed delivery.
- 5.6 In case of delays in delivery, GM is entitled to claim a contractual penalty in the amount of 0.5%, maximum 5%, of the respective purchase price of the relevant Deliverable stipulated in the Purchase Contract for each commenced week of delay in delivery. GM is entitled to claim the contractual penalty in addition to the performance and as a minimum amount of damages owed by the supplier according to the statutory provisions; the assertion of further damages remains unaffected.
- 5.7 GM may, at its sole discretion, require the Supplier to postpone the delivery of the Deliverable for a period of up to two hundred (200) days. In this case, GM's obligation to pay for the Deliverable will be postponed for the same period. In the event of such postponement, the supplier shall be entitled, unless the postponement is due to the supplier's fault, neglect or delay, to claim reimbursement of all work in progress and/or costs (including storage of the Deliverable) directly and unavoidably incurred by the supplier in connection with the postponement. The supplier shall provide evidence of its claim by means of valid invoices which do not contain any profit mark-up or profit compensation. The supplier shall submit its full claim under this Clause 5.7 within forty-five (45) days of being notified of the postponement.

GM shall in no event be liable to the supplier for any loss of profit, loss of use, loss of trading revenue or consequential or indirect loss arising in connection with or as a result of such postponement.

## 6. Transfer of risk

- 6.1 The risk of accidental loss or accidental deterioration of the Deliverable shall only pass to GM upon proper handover at the agreed place of provision or delivery.
- 6.2 Insofar as the Deliverable is collected by GM at the agreed place of provision, the latter shall bear the costs of packaging and of any transport insurance to be taken out.
- 6.3 If the Deliverable is not collected by GM but delivered by the supplier, the supplier shall pack the Deliverable in such a way that damage during normal handling is excluded. In this case, the supplier shall bear the costs of packaging and transport insurance.
- 6.4 With regard to packaging, the supplier shall observe the relevant statutory provisions, in particular the Packaging Ordinance. If the supplier requests the return of packaging materials, this must be clearly indicated on the delivery documents. In the absence of such indications, GM is entitled to dispose of the empties at the supplier's expense. The same applies to one-way packaging.
- 6.5 The efficient use of energy is an important part of GM's corporate philosophy. The environmentally conscious and careful use of natural resources as well as energy-saving and environmentally compatible processes are obligatory. Upon GM's request, the supplier shall provide data sheets for the evaluation of energy efficiency. All applicable laws and regulations on environmental protection and environmental compatibility must be complied with by the supplier.
- 6.6 Upon delivery of the delivery item, GM will check its functionality and other faultlessness. The supplier shall cooperate to the extent required in each case.
- 6.7 In the event that the supplier has to deliver the Deliverable, it shall be accepted subject to inspection for freedom from defects, insofar as and as soon as this is possible in the ordinary course of business.
- 6.8 The supplier waives the objection of delayed notification of defects in accordance with § 377 HGB (German Commercial Code) insofar as the defect is not obvious or easily recognisable.

## 7. Warranty, guarantee

- 7.1 The Deliverables to be delivered shall comply with the order specifications. The supplier guarantees (i) the functional capability of the Deliverable, (ii) the performance data and other properties contained in the Purchase Contract.
- 7.2 GM is entitled to the statutory warranty rights without limitation. In particular, the latter is entitled to demand, at its option, rectification of the defect or delivery of a defect-free item or compensation for damages.
- 7.3 If the supplier fails to fulfil its obligation under Clause 7.2 within the reasonable time limit set by GM, GM may remedy the defect itself and claim from the supplier reimbursement of the expenses incurred or a corresponding advance payment. If the supplementary performance by the supplier has failed or is unreasonable for GM (e.g. due to particular urgency, endangerment of operational safety or imminent occurrence of disproportionate damage), no deadline needs to be set; GM shall inform the supplier of such circumstances without undue delay, if possible in advance.
- 7.4 If GM incurs costs as a result of defective delivery, in particular due to the associated subsequent performance, e.g. transport, travel, labour and material costs, these shall be borne by the supplier.
- 7.5 In the absence of any agreement or statutory provision to the contrary, warranty claims for defects shall become statute-barred 36 months after delivery in the case of new goods and 24 months after delivery in the case of used goods. Upon receipt of the written notice of defects by the supplier, the limitation of warranty claims is suspended until the supplier rejects GM's claims or declares the defect eliminated.
- 7.6 The warranty period shall start anew for all parts replaced or repaired during the warranty period at the time of replacement or acceptance of subsequent performance.

## 8. Defects of title

- 8.1 The supplier warrants that the delivery item is delivered free of third party rights and that no third party rights are infringed by the delivery. In this respect, he shall indemnify GM against all possible claims of third parties upon first request.
- 8.2 Claims arising from defects of title shall become statute-barred in accordance with the provisions of Clause 7.5.

## 9. Notice and due diligence

- 9.1 The supplier warrants that the items and services to be delivered comply with the relevant statutory regulations and standards (e.g. DIN standards, EC standards, etc.), the respective state of the art and the respectively applicable safety regulations. If necessary and where applicable, they shall bear the CE mark or a comparable certification feature. A corresponding certificate of conformity must be presented to GM without being requested to do so.
- 9.2 If GM has informed the supplier of the intended use of the Deliverables, or if this intended use is recognisable to the supplier even without express reference, the supplier is obliged to inform GM without delay if the Deliverables of the supplier are not suitable for fulfilling this intended use.
- 9.3 The Supplier shall draw GM's attention to any special treatment and disposal requirements not generally known as well as to any associated costs with each delivery.
- 9.4 The contracting parties shall inform each other without delay of any risks of infringement that become known and counteract corresponding claims by mutual agreement. Subsequently detected safety-relevant defects, which are identified on the basis of product observations, must be reported to GM without request and without delay even after the expiry of the warranty period.
- 9.5 The supplier must inform GM immediately of any changes in its corporate and financial circumstances if these may affect or jeopardise the fulfilment of the Purchase Contract.

## 10. Product liability

- 10.1 The supplier is obliged, insofar as he is the producer of the Deliverable (original equipment manufacturer, abbreviated to OEM) and/or importer, to indemnify GM from any liability towards third parties or from claims of third parties arising from the production, delivery, storage or use of the Deliverable item upon first request. The indemnity obligation does not apply if the claim is based on gross negligence or intentional breach of duty by GM.
- 10.2 If the supplier is the producer (OEM) and/or importer of the Deliverable, it shall reimburse GM for all necessary expenses and costs, including reasonable legal fees, incurred in connection with a claim under Clause 10. 1.
- 10.3 To the extent that the supplier is not the producer (OEM) and/or importer of the delivery item, the supplier shall assign to GM all warranty and damage claims existing against the respective producer or importer.
- 10.4 If GM and/or one of its customers is obliged to carry out a recall action towards third parties due to a defect of a product delivered by the supplier, the supplier, insofar as it is the producer (OEM) and/or importer of the delivery item, shall bear the costs associated with the recall action.

## 11. Provisions

- 11.1 Items of any kind provided by GM to the supplier remain the property of GM. They may only be used for the provision of the ordered goods and services.
- 11.2 The supplier is obliged to treat the items handed over to him by GM with care, to store them separately and to maintain them at his own expense as well as to insure them sufficiently and to prove this to GM upon request.
- 11.3 Insofar as items provided by GM are processed or transformed by the supplier into a new movable item, GM shall be deemed to be the manufacturer. In the event of a combination or inseparable mixing with other items, GM shall acquire co-ownership of the new item in proportion to the value which the items had at the time of the combination or mixing. If the combination or mixing is carried out in such a way that the objects of the supplier are to be regarded as the main object, it is agreed that the supplier shall transfer co-ownership to the customer on a pro rata basis. In this case, the supplier shall hold the co-ownership in safe custody for GM.

## 12. Confidentiality

- 1.1 The supplier undertakes to keep confidential any commercial and technical information and documents which are not generally known and which become known to him through the business relationship and to use them exclusively for the performance of the contract concluded or to be concluded with GM.

## 13. Export regulations and compliance

- 13.1 The supplier is obliged to comply with all requirements of the applicable national and international customs and foreign trade law and to provide on the order confirmation, invoice and delivery note all information required by GM for compliance with national and international customs and foreign trade law. The information required in this respect includes in particular the indication of the export list number and/or ECCN number as well as the statistical goods number.
- 13.2 The supplier undertakes to comply with the laws of the respective jurisdiction as well as with GM's Code of Conduct (as amended from time to time).
- 13.3 The supplier shall, as far as applicable, comply with the statutory provisions of the Minimum Wage Act or a comparable statutory regulation (MiLoG) as amended from time to time, in particular settle and pay the statutory minimum wage to its employees in due time. The supplier shall indemnify GM against all claims of third parties (in particular employees, social security institutions and tax authorities) based on a breach of its obligations under the MiLoG. The same shall apply in the event of a violation of the MiLoG by subcontractors and/or rental companies commissioned by the supplier or their subcontractors.

#### **14. Force majeure**

- 14.1 Force majeure, such as interruptions of operations through no fault of GM, riots, official measures and other unavoidable events, such as pandemics, epidemics, mobilisation, war, civil war, acts of terrorism, insurrection, political unrest, revolutions, sabotage, embargo, accidents, labour disputes, unforeseeable major transport and supply chain difficulties and natural disasters, shall release GM from its obligation to accept ordered goods or services in due time for the duration of the event. However, both parties are obliged to provide each other with the necessary and reasonable information without delay and to temporarily adjust their obligation to the changed circumstances, in particular possibly changed market requirements. During such events, as well as within two weeks after their end, GM is entitled - without prejudice to its other rights - to withdraw from the Purchase Contract in whole or in part in the event that an adjustment is not possible.
- 14.2 In the event of withdrawal, GM is entitled to demand the return of any advance payments made. There is no obligation to pay damages in this case.

#### **15. Place of performance, place of jurisdiction, applicable law**

- 15.1 The place of performance is the place of receipt designated by GM.
- 15.2 If the supplier is a businessman, a legal entity under public law or a special fund under public law or if it has no general place of jurisdiction in the Federal Republic of Germany, the place of jurisdiction for any disputes arising from the business relationship between GM and the supplier shall be, at the discretion of GM, its registered office in Kaiserslautern or the registered office of the supplier. In such cases, however, the place of business of GM in Kaiserslautern shall be the exclusive place of jurisdiction for actions against GM. Mandatory statutory provisions on exclusive places of jurisdiction shall remain unaffected by this provision.
- 15.3 The law of the Federal Republic of Germany shall apply. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (UN Sales Convention) shall not apply.