

Gummiwerk KRAIBURG GmbH & Co. KG Standard Terms and Conditions

A. General

1. These Standard Terms and Conditions (STC) apply to all our present and future business relations with enterprises within the meaning of § 310 of the BGB¹ (hereinafter: "Purchaser/s").
Purchasers' standard terms and conditions at variance with them apply only if we have expressly assented to them in writing.
2. Individual agreements made in a particular case (including subsidiary agreements, additions and amendments) take precedence over these STC. The content of such agreements is validated by a written contract or our written acknowledgement.
3. Even without specific affirmation the statutory provisions, where not directly modified or expressly precluded in these STC, apply in addition.

B. Conclusion of contract

1. Our tenders are without engagement. The contract is formed only by acceptance of the Purchaser's order. This applies even if we have handed over to the Purchaser technical documents (e.g. drawings, data-sheets, specifications), other forms of product description or data and information – including that in electronic form – to which we reserve ownership and intellectual property rights.
2. We reserve the right in our acceptance to deviations from the Purchaser's order customary in the industry (e.g. by order acknowledgement); such deviations do not affect conclusion of contract.

C. Delivery terms

1. If we cannot meet binding delivery deadlines for reasons outside our control (non-availability of contract goods/services, e.g. due to failure of self-supply by our suppliers), we will inform the Purchaser promptly and specify a new delivery deadline appropriate in the circumstances. If the contract goods/services are not available even in the new delivery period, we are entitled to withdraw from the contract in whole or in part; we will refund promptly any payment already made in respect of the goods/services. Our statutory rights (e.g. exemption from the obligation to perform) and the Purchaser's rights under these STC are unaffected.
2. Failure to deliver on our part eventuates as provided for under the law. In each case one demand for payment from the Purchaser is however required.
3. Delivery is made at our discretion ex-works or branch establishment (place of fulfilment) by the mode of shipment most favourable for us. Additional costs for a mode of shipment stipulated by the Purchaser are borne by the Purchaser. We charge for packing at cost.
4. Goods are shipped at the risk (loss, deterioration, delay) of the Purchaser. If a shipment is delayed for reasons outside our control, the risk passes at the time notice is given of readiness for shipment. Statutory passage of risk due to default in accepting delivery is unaffected.

D. Prices and payment terms

1. The purchase price is due and payable within 14 days from invoicing and delivery of the goods. On expiry of the payment period the Purchaser is in default. During the default period interest must be paid on the purchase price – further-reaching rights being reserved – at the statutory rate for interest on defaulted payment applicable at the time.
2. The Purchaser is entitled to set-off or retention rights only where the counterclaim concerned has been established in law or accepted by us.
3. If our claim to payment is jeopardised by the Purchaser's inability to pay (e.g. application for the opening of insolvency proceedings), we are entitled as provided for under the law to refuse performance and – after setting a time limit if appropriate – to withdraw from the contract (§321 BGB). In the case of special manufactures we may withdraw immediately. The statutory provisions concerning the dispensability of setting a time limit are unaffected.

E. Reservation of ownership

1. Until all our present and future outstanding accounts have been paid in full we reserve ownership of the goods.
2. Where there is dereliction of duty, non-payment of the purchase price in particular, we are entitled to withdraw from the contract and / or reclaim the goods as provided for under the law.
The request to surrender the goods does not in itself constitute a declaration of withdrawal; we are entitled only to reclaim the goods and reserve the right to withdraw. In the event of non-payment of the purchase price we will assert these rights only after a reasonable final period for payment has expired fruitlessly or is legally dispensable.
3. The Purchaser may process and / or sell the goods in the course of orderly business.
In this case the provisions below also apply.
 - 3.1. Reservation of ownership extends to products created by processing, mixing or combining, where we are deemed the manufacturer.
Where third-party ownership rights remain, we acquire co-ownership in the ratio of our share in the value of the goods. The products are furthermore deemed reserved goods.
 - 3.2. The Purchaser assigns to us now by way of security all trade debts arising from reselling the goods in total or to the extent of our co-ownership share. We accept the assignment.
The Purchaser's obligations stated in Section 2 also apply with respect to the assigned trade debts.
The Purchaser is authorised in addition to us to collect these debts.
 - 3.3. Where the value of the securities exceeds our debt claims by more than 10% we will at the Purchaser's request release securities of our choosing.

¹ German Civil Code (Tr.).

F. Purchaser's claims in respect of defects

1. We accept liability in accordance with statutory provisions for the goods being free from material defects and defects in title (including incorrect and short delivery), unless otherwise stated below.
The statutory provisions governing supplier recourse are in no case affected.
2. Only those product descriptions which are the subject matter of the individual contract are deemed quality stipulations. Supplementary to the statutory provisions the goods are also free from material defects if they possess characteristics which the Purchaser may expect on the basis of the product description supplied by us. We accept no liability for public statements by third parties (e.g. advertising messages).
3. The Purchaser' claims in respect of defects are contingent on his having fulfilled his statutory obligations to investigate and file complaint. The Purchaser must give us the requisite time and opportunity to examine the reported defect; he must in particular hand the goods over to us for this purpose.
4. If the goods are defective, we can choose whether to make good the discharge of our obligations by rectifying the defect (remediation) or by supplying defect-free goods (replacement). Our statutory refusal right is unaffected.
5. Where the making good has failed or a time limit for making good to be set by the Purchaser has elapsed to no avail or is dispensable under the law, the Purchaser may withdraw from the purchase contract or reduce the purchase price. In the case of a minor defect there is no right of withdrawal.
6. Claims by the Purchaser to compensation for loss / for fruitless expenditure subsist only if defined by the provisions below; they are otherwise precluded.

G. Other liability

1. We are liable to compensate for loss – on whatever legal basis – only where there is intention or gross negligence. Where there is even mild negligence we are nevertheless liable
 - for loss arising from injury to life, limb or health;
 - for loss arising from breach of a material contractual obligation; in this case our liability is however limited to making good the foreseeable, typically occurring loss.The foregoing limitations of liability do not apply if we have been maliciously silent regarding a defect or have given a warranty. The same applies to claims by the Purchaser under the Product Liability Act.
2. Outside our liability for defects the Purchaser has a withdrawal or termination right only on the grounds of a breach of obligation for which we are responsible; a free right of termination (e.g. as per §§ 651, 649 BGB) is in particular precluded. Withdrawal or termination must be declared in writing. The statutory requirements and legal consequences otherwise apply.
3. Liability for durability is accepted only if storage accords with DIN 7716; see use-by date on product label.

H. Limitation period

1. § 438 Para 1 No. 3 BGB notwithstanding, the standard limitation period for claims in respect of material defects and defects in title is one year from delivery.
2. For buildings and building materials the limitation period is two years from delivery. The special limitation provisions of statutory supplier recourse are unaffected and apply in the Purchaser's favour even where the service rendered to the consumer is based not on a purchase contract but on a service contract with a five-year limitation period.
3. In all cases the statutory provisions governing real-property recovery claims by third parties, supplier recourse and cases of intention to deceive are unaffected.
4. Where because of or in consequence of a defect we owe the Purchaser contractually stipulated compensation, this is subject to the full statutory limitation periods under the law of purchase (§ 438 BGB).
These limitation periods also apply to competing non-contractual compensation claims unless in the particular case application of the regular statutory limitation period (§§ 195, 199 BGB) results in a shortened limitation period. The limitation periods under the Product Liability Act are unaffected.

I. Choice of law and legal venue

1. The laws of the Federal Republic of Germany apply to the exclusion of all international and supranational regulations governing (contract) law, the CISG in particular. The prerequisites for and effects of reservation of ownership are governed by the law applicable where the goods are stored at the time.
Cross-frontier contracts are governed by the international rules for the interpretation of the most common forms of contract in international trade (INCOTERMS) in the edition applicable at the time
2. Vis-à-vis traders the sole legal venue – even internationally – is the Traunstein regional court². We are however also entitled to bring an action at the Purchaser's normal legal venue.

Last revised: August 2003

² Landgericht: superior court with first-instance jurisdiction in commercial matters (Tr.).