

General Terms and Conditions of Purchase (GTCP) of Pokolm Frästechnik GmbH & Co. KG

§ 1 Scope, form, precedence

(1) These General Terms and Conditions of Purchase (GTCP) apply to all business relationships, contracts and other agreements with our business partners and suppliers ("Seller"). They shall only apply if the Seller is an entrepreneur (Section 14 of the German Civil Code (BGB)), a legal entity under public law or a special fund under public law.

(2) The GPC apply in particular to contracts for the sale and/or delivery of movable goods ("Goods"), irrespective of whether the Seller manufactures the Goods itself or purchases them from suppliers (Sections 433 and 650 BGB). Unless otherwise agreed, the GPC in the version valid at the time of the order or in any case in the version last communicated to the Seller in text form shall also apply as a framework agreement for future contracts without us having to refer to them again in each individual case. In the event of an ongoing business relationship, subsequent orders, including those placed verbally, shall be deemed to have been placed in accordance with these GPC.

(3) These GTCP shall apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the seller shall only become part of the contract if and to the extent that we have expressly agreed to their validity in writing. This requirement of consent shall also apply if we accept the Seller's delivery without reservation in the knowledge of deviating terms and conditions of the Seller or if the Seller refers to its GTC and we do not expressly object.

(4) Individual written agreements with the Seller (e.g. framework supply agreements, quality assurance agreements) and details in our order shall take precedence over these GPC. In case of doubt, trade clauses shall be interpreted in accordance with the Incoterms® in the version valid at the time of conclusion of the contract.

(5) Legally relevant declarations and notifications by the seller (e.g. setting of deadlines, reminders, withdrawal) as well as all agreements must be made in writing. Written form within the meaning of these GTCP includes written and text form (e.g. letter, e-mail, fax). Statutory formal requirements and further evidence, in particular in the event of doubts about the legitimacy of the declaring party, shall remain unaffected.

(6) References to the validity of statutory provisions are for clarification purposes only.

§ 2 Enquiries, offers, conclusion of contract

(1) Our inquiries are non-binding. If the supplier deviates from our inquiry in his offer, he must expressly point this out. Offers and the preparatory work required for this (e.g. samples, plans) are free of charge for us.

(2) Our order shall be deemed binding at the earliest upon written submission or confirmation. The seller must notify us of obvious errors (e.g. typing or calculation errors) and incompleteness of the order before acceptance; otherwise the contract shall be deemed not to have been concluded.

(3) The seller is obliged to confirm our order in writing within a period of 5 working days or to execute it without reservation (acceptance). Delayed acceptance shall be deemed a new offer and requires our acceptance.

(4) Our order number must be quoted in all documents relating to the order (order confirmation, delivery bill, invoice, etc.). If the supplier fails to do so, we shall not be responsible for delays in processing.

§ 3 Delivery time, delay in delivery

(1) The delivery time specified by us in the order is binding. If no delivery time has been agreed, it shall be 1 week from conclusion of the contract. Partial deliveries require our consent.

(2) The seller is obliged to inform us immediately in writing, stating the reasons and the expected duration, if he is likely to be unable to meet agreed delivery times. The obligation to comply with the delivery time remains unaffected by this.

(3) If the seller is in default, our rights (in particular withdrawal, compensation) shall be determined in accordance with the statutory provisions. The seller's right to prove that he is not responsible for the breach of duty remains unaffected. A grace period is not required if a fixed date has been agreed. The unconditional acceptance of a delayed delivery shall not constitute a waiver of our rights.

(4) In the event of a delay in delivery, we may - in addition to further statutory claims - demand lump-sum compensation for our damage caused by the delay in the amount of 1% of the net price per completed calendar week, but not more than 5% of the net price of the goods delivered late in total. We reserve the right to claim higher damages if we can provide corresponding proof. The seller reserves the right to prove that no or only significantly less damage has been incurred. The assertion of the contractual penalty in addition to fulfillment is possible; the reservation must be declared within 10 working days of receipt of the delayed delivery at the latest.

§ 4 Performance, delivery, transfer of risk, default of acceptance

(1) The Seller is not entitled to have the service performed by third parties (e.g. subcontractors) without our prior written consent. He shall bear the procurement risk, unless otherwise agreed.

(2) Delivery shall be "free domicile" (DAP according to Incoterms®) to the place specified in the order, including unloading and proper packaging. If no place is specified, delivery shall be made to our place of business. The place of destination is the place of performance (debt to be discharged at creditor's domicile). Shipping, packaging and any transportation insurance costs shall be borne by the seller. The delivery must comply with the applicable safety, packaging and dangerous goods regulations.

(3) The delivery must be accompanied by a delivery bill with the date, content (article number, quantity) and our order identification. Missing or incomplete delivery bills shall not lead to our liability for processing or payment delays. A separate dispatch note with the same content must be sent to us. The invoice shall not be deemed to be a dispatch note.

(4) The risk of accidental loss and accidental deterioration shall pass to us upon handover at the place of performance. If acceptance has been agreed, this shall be decisive.

(5) The statutory provisions shall apply to our default of acceptance. The Seller must offer its performance even if a fixed time for our cooperation has been agreed. In the event of default of acceptance, the Seller may demand compensation for its additional expenses in accordance with § 304 BGB. He shall only be entitled to further rights in the case of custom-made products if we have undertaken to cooperate and are responsible for our failure to do so.

(6) Delivery before the agreed date may only be made with our consent. Payment periods shall commence at the earliest on the agreed delivery date. We are entitled to return or store goods delivered too early at the supplier's expense and risk.

(7) In the case of deliveries from abroad, the Seller shall enclose the necessary preference certificates and export licenses free of charge or procure them at its own expense.

§ 5 Prices, terms of payment, invoice

(1) The price stated in the order is a binding fixed price. All prices are inclusive of statutory VAT (if not shown separately) and inclusive of all services, ancillary services (e.g. assembly) and additional costs (e.g. packaging, transportation, insurance). Delivery/service (including acceptance, if applicable) and receipt of a proper invoice. If payment is made within 14 days, the seller shall grant us a 3% discount on the net amount. The timeliness of the payment shall be deemed to have been made if the transfer is made before the expiry of the deadline. Payment does not imply recognition of defects.

(3) We do not owe any interest on arrears. The statutory provisions shall apply to late payment.

(4) We shall be entitled to rights of set-off and retention to the extent permitted by law. In particular, we may withhold payments as long as we are entitled to claims arising from incomplete or defective services.

(5) The Seller shall only have a right of set-off or retention on the basis of legally established or undisputed counterclaims.

§ 6 Invoicing

(1) Invoices must be sent to us by e-mail to the following address (rechnungseingang@pokolm.com) within 3 working days of delivery at the latest.

(2) Invoices shall state the order number, date of order, delivery quantity and delivery address as stated in the order, as well as VAT.

(3) If the supplier violates the aforementioned obligations in paragraphs (1) and (2), we shall not be responsible for delays in processing.

§ 7 Confidentiality, documents, retention of title

(1) We reserve the property rights and copyrights to illustrations, plans, drawings, calculations, instructions for execution, product descriptions and other documents provided by us. They may only be used for the contractual performance, may not be reproduced and may not be made accessible to third parties. They must be returned after completion of the contract or upon request. The confidentiality obligation shall also apply after the end of the contract until the knowledge contained therein is generally known. Special confidentiality agreements and statutory regulations remain unaffected. The Seller undertakes to maintain all our trade and business secrets.

(2) This shall apply accordingly to substances, materials, tools, templates, samples etc. which we provide. These are to be stored separately at the seller's expense and adequately insured against destruction/loss.

(3) Any processing, mixing or combining of items provided by the seller shall be carried out on our behalf. In the event of further processing of the delivered goods by us, we shall be deemed to be the manufacturer and shall acquire ownership in accordance with the statutory provisions.

(4) The transfer of ownership of the goods to us must take place unconditionally and without regard to the price payment. We do not recognize simple, prolonged or extended reservations of title by the seller. If, in individual cases, we accept an offer of transfer of title conditional on payment of the purchase price, the reservation of title shall expire at the latest upon payment of the purchase price. We shall remain authorized to resell the goods in the ordinary course of business with advance assignment of the claim.

(5) We shall be provided free of charge with drawings of wear parts not manufactured in series, which we may use for the manufacture of spare parts or for modifications (including by third parties).

§ 8 Claims for defects, duty to inspect

(1) The statutory provisions and the following supplements shall apply to our rights in the event of material defects and defects of title as well as other breaches of duty. The Seller shall be liable for ensuring that the goods have the agreed quality, correspond to the state of the art and are free of defects upon transfer of risk. Product descriptions which are the subject matter of the contract or which have been included in the same way as these GPC shall be deemed to be the agreed quality, irrespective of their origin (buyer, seller, manufacturer).

(2) In the case of goods with digital elements, the seller is responsible for providing and updating the content in accordance with the quality agreement or product description.

(3) There is no obligation on our part to inspect the goods upon conclusion of the contract. In partial deviation from § 442 para. 1 sentence 2 BGB, we shall also be entitled to claims for defects in the event of grossly negligent ignorance.

(4) The following applies to the commercial obligation to inspect and give notice of defects (§§ 377, 381 HGB): Our inspection is limited to externally recognizable defects upon receipt of the goods (e.g. transport damage, incorrect/short delivery) or quality defects that can be determined by random sampling.

If acceptance has been agreed, the obligation to inspect shall not apply. Notices of defects shall be deemed to have been made in good time if they are sent within 2 weeks of receipt of the goods in the case of obvious defects and within 2 weeks of discovery in the case of hidden defects.

(5) The statutory provisions (§§ 377, 381 HGB) shall apply to the commercial obligation to inspect and give notice of defects with the following proviso: Our obligation to inspect shall be limited to defects which become apparent during our incoming goods inspection under external examination including the delivery documents (e.g. transport damage, incorrect and short delivery) or which are recognizable during our quality control in the random sampling procedure.

§ 9 Subsequent performance, self-remedy, supplier recourse

(1) Subsequent performance shall be effected at our discretion by remedying the defect or delivering a new item. It shall also include the removal/installation of the defective goods, provided that they have been installed as intended. Our claim to reimbursement of the removal/installation costs remains unaffected. The Seller shall bear all costs of inspection and subsequent performance (including removal/installation), even if it turns out that there was no defect, unless we have made an unjustified request to remedy the defect and recognized this or failed to recognize it due to gross negligence.

(2) If the seller does not fulfill its obligation to provide subsequent performance within the deadline, we may remedy the defect ourselves and demand reimbursement of the expenses or an advance payment. There is no need to set a deadline if subsequent performance has failed or is unreasonable (e.g. particular urgency); we shall inform the seller immediately. If the seller rectifies the defect, the limitation period for the same defect or the consequences of the rectification shall begin anew.

(3) We shall be entitled to our statutory rights of recourse within the supply chain (Sections 478, 445a, 445b BGB etc.) without restriction. We may demand from the Seller the type of subsequent performance that we owe to our customer. Our statutory right to choose remains unaffected.

(4) Before we acknowledge or fulfill a claim for defects asserted by our customer, we shall notify the seller with a request for a statement. If no substantiated statement is made in due time and no agreement is reached, the claim granted by us shall be deemed to be owed; the seller shall be responsible for providing evidence to the contrary.

(5) Our claims arising from supplier recourse shall also apply after the goods have been combined or further processed.

(6) Otherwise, in the event of defects, we shall be entitled to the statutory rights of reduction or withdrawal as well as compensation for damages and expenses.

§ 10 Producer liability, insurance

(1) If the seller is responsible for product damage, he shall indemnify us against third-party claims if the cause lies within his sphere of control and organization and he himself is liable in relation to third parties.

(2) As part of the indemnification, the seller must reimburse expenses in accordance with §§ 683, 670 BGB or §§ 830, 840, 426 BGB which arise from or in connection with a claim by third parties, including recall actions carried out by us. We shall inform the seller of recall measures as far as possible and give him the opportunity to comment. Further legal claims remain unaffected.

(3) The Seller shall take out and maintain product liability insurance with a lump sum cover of at least EUR 10 million for personal injury/property damage.

§ 11 Statute of limitations

(1) The reciprocal claims shall become time-barred in accordance with the statutory provisions, unless otherwise stipulated below.

(2) Notwithstanding Section 438 (1) No. 3 BGB, the general limitation period for claims for defects is 36 months (3 years) from the transfer of risk or acceptance. This also applies to claims arising from defects of title, whereby the statutory period for third-party claims for restitution in rem (Section 438 (1) No. 1 BGB) remains unaffected. Furthermore, claims arising from defects of title shall not become time-barred as long as the third party can still assert the right against us.

(3) The limitation periods under sales law, including the above extension, shall apply to all contractual claims for defects. Insofar as we are also entitled to noncontractual claims for damages due to a defect, the regular statutory limitation period (§§ 195, 199 BGB) shall apply, unless the period under sales law is longer.

§ 12 Rights of third parties

The seller guarantees that no rights of third parties are infringed in connection with his delivery. If claims are asserted against us by a third party for this reason, the Seller shall be obliged to indemnify us comprehensively against the claims of the third party. We are not entitled to enter into agreements with the third party without the Seller's consent. The obligation to indemnify includes all necessary expenses arising from the claim. We are obliged to undertake the defense against any claims at the instruction and expense of the seller.

§ 13 Choice of law, place of performance, place of jurisdiction

(1) The law of the Federal Republic of Germany shall apply to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

(2) Unless otherwise specified, the place of performance for deliveries is our registered office.

(3) If the seller is a merchant, a legal entity under public law or a special fund under public law, the exclusive place of jurisdiction shall be our place of business. However, we are also entitled to sue the seller at the place of performance of the delivery or at his general place of jurisdiction. Overriding statutory provisions shall remain unaffected.