

## General Terms and Conditions of Purchase (GTCP) (as of April 2018)

### IEM FörderTechnik GmbH

Divisions: IEM ConveyingSystems

ROS SteelTechnology, ROS ConveyorRollers

#### 1. General

**1.1** These General Terms and Conditions of Purchase (GTCP) apply to all orders, even if no express reference is made to them in contracts, and to orders that are not documented in a purchase agreement. These GTCP specifically apply to deliveries and to works or services. The result of the delivery or service is hereinafter referred to as the delivery item and the time of performance as the time of delivery.

**1.2** In the event of any contradictions between different contractual documents, such documents are to apply in the following order:

- individual orders
- framework order
- delivery call-offs
- supply contract or work contract or service contract
- these General Terms and Conditions of Purchase
- property law of the Federal Republic of Germany

**1.3** The invalidity of individual provisions of these General Terms and Conditions of Purchase does not affect the validity of the remaining provisions.

**1.4** All deliveries, services and offers of our suppliers are made exclusively on the basis of these General Terms and Conditions of Purchase. These GTCP are an integral part of all contracts that we conclude with our suppliers in relation to the deliveries or services they offer. They also apply to all future deliveries, services or offers to the customer or IEM, even if they are not separately agreed again. The terms and conditions of our suppliers or third parties do not apply, even if we do not separately object to the applicability of such terms and conditions in individual cases. Even if we refer to a letter containing, or referring to, terms and conditions of the supplier or a third party, this does not constitute consent to the validity of such terms and conditions. Payments or acceptance of deliveries or services by us do not constitute acceptance of the supplier's terms and conditions; deviating conditions, ancillary agreements, changes or additions only apply insofar as they are expressly accepted by us in writing or electronically.

#### 2. Offer, order and order confirmation

**2.1** The invitation to submit an offer is non-binding for our part. Offers and quotes submitted to us are binding and free of charge, unless an express agreement to the contrary is in place.

**2.2** Orders and agreements are only binding if they are placed or confirmed by our purchasing department in writing or electronically. Orders and/or delivery call-offs are deemed to be accepted unless the supplier objects, in writing or electronically, within three working days of receipt of the order/delivery call-off.

#### 3. Service description

**3.1** The delivery item or the service to be rendered is to comply with the specifications, drawings, plans, static calculations, implementation provisions and other documents specified by us as well as with the provisions applicable in the country of manufacture and in the country of destination (specifically in relation to system projects as well) at the time of delivery. These specifications are guaranteed characteristics of the delivery or service.

**3.2** The supplier guarantees the careful and proper performance of the contract in accordance with the latest developments in science and technology (including developments in the field of safety and occupational health). Moreover, the supplier guarantees the quality and expediency of the delivery and service with regard to material, construction and design and the format of the documentation (operating instructions, drawings, plans, etc.) associated with the delivery.

**3.3** The information and documents associated with the order (e.g. sketches, drawings, plans, static calculations, data) and provisions (e.g. samples, models, tools, devices, moulds and other equipment) are binding on the supplier. However, the supplier is to check the aforementioned for any discrepancies, professionally and immediately, and notify us immediately, in writing or electronically, of any defects identified or suspected. The supplier is to issue a written reminder, without delay, if any of the requisite documents or provisions to be supplied by us are missing.

**3.4** The supplier may not subsequently refer to discrepancies or missing documents or provisions if they have not issued a written reminder in due time or if they have received a remedy within a reasonable period of time.

**3.5** All information and documents (e.g. sketches, drawings, plans, static calculations, data), as well as provisions (e.g. samples, models, tools, devices, moulds and other operating materials) and primary or raw materials, which are supplied or paid for by us, remain our property (or become our property upon payment) insofar as such items are required for the delivery item. They must not be made available or made accessible to third parties and must not be used as part of a delivery to third parties. Vicarious agents and sub-suppliers are to be instructed accordingly.

The supplier is to prepare complete tool documentation and make it available to us in a form to be agreed.

**3.6** Any changes to the subject matter of the contract, the materials used, and the production and testing methods may only be made with our prior written consent.

**3.7** We are also permitted to demand changes to the subject matter of the contract subsequent to conclusion of the contract, insofar as such changes are reasonable to the supplier. With regard to such a change to the contract, due consideration is to be given to the effects on both parties, particularly in relation to any potential additional or reduced costs and extension of delivery deadlines.

**3.8** Our commitment note and our assembly and disassembly conditions apply to work on and for systems set up by us. To document the management of occupational health and safety, the release certificate is to be completed prior to commencing any work. A notice of exemption from construction withholding tax is to be submitted.

#### 4. Documentation

**4.1** The documentation for the delivery item is to be delivered together with the delivery item at the very latest, insofar as no earlier delivery date has been agreed.

**4.2** The documentation is part of the order and is included in the purchase price.

**4.3** In the event of missing, delayed or incomplete documentation, we are entitled, unless otherwise agreed, to withhold at least 5% of the order value until delivery of the complete documentation. However, a minimum of EUR 2,000 will be withheld under such circumstances.

**4.4** An accident leaflet and safety data sheets fully completed in accordance with DIN EN ISO/ASTM 52900 as well as documents required under the Reach Ordinance are to be delivered in good time and in their latest version.

#### 5. Quality and quality control, production and product approval procedures

**5.1** The supplier is to comply with our quality assurance standards for their deliveries and services and apply a suitable quality standard such as QS 9000, ISO/TS 16949 or VDA 6.1 throughout their manufacturing process and acknowledge the underlying standard in writing. Unless otherwise agreed, the best quality vis-à-vis material and design is deemed to be agreed.

**5.2** The supplier is aware of the purpose of the contractual service. They are liable for material defects which adversely affect the suitability of the service for the intended purpose and function.

**5.3** If requested to do so, the supplier is to submit an initial sample from series tools with all requisite documents for appraisal in compliance with the given deadline.

**5.4** The supplier is to take suitable measures to ensure the quality of the materials and preliminary products needed to manufacture the delivery item.

**5.5** The supplier is to keep records of when, how and by whom the delivery items were tested in the course of the manufacturing process and record the results of the required quality tests. The test documents are to be kept for ten years and submitted to us if necessary. The supplier is to instruct sub-suppliers and vicarious agents to the same extent.

**5.6** Insofar as the nature and scope of the test as well as the test equipment and methods have not been agreed between us and the supplier, we are thus prepared to discuss the test with the supplier to determine the required standard of test technology in each case. Such a discussion is to take place at the supplier's request and within the scope of our knowledge, experience and capabilities.

#### 6. Regulations, standards and sub suppliers

**6.1** By accepting the order, the supplier undertakes to comply with all relevant statutory and other regulations applicable at the time of delivery in the country of manufacture and in the country of destination (particularly in relation to systems). This applies, inter alia, to EU regulations, EU directives, safety and environmental protection regulations, the German Equipment Safety Act, accident prevention and other occupational safety regulations as well as regulations regarding the handling of hazardous substances.

**6.2** If the supplier intends to subcontract the delivery item or partial services thereof, our written approval is to be obtained beforehand.

**6.3** Insofar as the supplier has the delivery item or parts thereof manufactured by third parties, the aforementioned conditions are to apply analogously. The supplier is responsible for compliance with the aforementioned provisions by their suppliers and vicarious agents.

**6.4** The supplier undertakes to reimburse the costs, damages and other disadvantages arising from non-compliance with the aforementioned regulations.

#### 7. Property rights

**7.1** The supplier is liable for ensuring that their delivery and service are free of third-party rights and that their delivery and service and the contractual exploitation thereof do not infringe any patents or other third-party property rights domestically or abroad. In this regard, the supplier is to indemnify us against any claims raised by third parties.

**7.2** Claims arising from liability for defects of title prescribe within a period of 36 months from the point at which we become aware or, due to gross negligence, fail to become aware of the underlying breach of duty.

- 7.3** Insofar as the supplier has property rights relating to the application of the delivery item they have delivered, the supplier is to grant us a worldwide, unlimited right of joint use, free of charge, to their property rights to the extent necessary to achieve the purpose of the contract.
- 8. Order number, supplier number, item number**  
Order confirmations, dispatch documents and invoices as well as other correspondence, including electronic transactions, are to bear our complete order number and job number, the supplier number, our material and drawing number and the quantity of material for each purchased part or service. The individual containers of the delivery are to bear our designation of the delivery item. If this information is absent, we reserve the right to invoice costs arising from such an absence or to reject deliveries and invoices. The return transport is at the supplier's expense and risk.
- 9. Packaging, dispatch, transport, delivery, acceptance point, transfer of risk**
- 9.1** To protect against loss or damage and to prevent damage to persons, equipment or other goods, the delivery items are to be packaged and loaded safely at the supplier's expense. The supplier is liable for all the consequences of an error or defect in the packaging. Packaging regulations issued by us do not exempt the supplier in this regard.
- 9.2** Hazardous substances are to be packaged, labelled and transported in accordance with the applicable laws of the respective countries (including transit countries). The dangerous goods classification or, if applicable, the "no dangerous goods" notation is to be indicated on the delivery note.
- 9.3** Where necessary, the CE marking is to be affixed in such a way that it is clearly visible. The declaration of conformity and the hazard analysis are to be included with the delivery.
- 9.4** Each delivery is to be accompanied by a delivery note or packing slip which must meet the aforementioned requirements. If these items are not included, we reserve the right to reject the delivery. In the event that we do not accept delivery items and such items are returned, the return transport occurs at the supplier's expense and risk. The supplier is charged for the equivalent value of the return. This does not cause a default of acceptance on our part.
- 9.5** Delivery is made in accordance with the mode of dispatch stated in the order. The supplier is to bear responsibility for transport insurance until the transfer of risk.
- 9.6** The transfer of risk occurs at the agreed place of performance following acceptance of the delivery item. Insofar as INCOTERMS have been agreed for deliveries, and such terms deviate from those set out here, risk is to be borne in accordance with the provisions of this clause.
- 9.7** Dispatch is to be to the acceptance point or construction site stipulated by us.
- 9.8** The supplier is to inform themselves, beforehand, of the locations and how to get to such locations if the goods are to be delivered to the construction site. We do not accept any liability for damage and costs incurred in relation to delivery to the construction site due to ground conditions or other circumstances. Downtimes may only be claimed separately by the supplier to the extent that such downtimes are caused by us or our vicarious agents intentionally or as a result of gross negligence.
- 9.9** The supplier undertakes to dispose of their waste, packaging etc. on their own authority and at no charge to us. If the supplier does not comply with this agreement, we may carry out the disposal at the supplier's expense without setting any further deadline.
- 10. Prices and payment terms**
- 10.1** Prices are fixed prices, carriage-paid to our acceptance point, including packaging and other ancillary costs unless otherwise agreed.
- 10.2** Unilateral price changes are excluded. An increase in material and raw material prices, wages and salaries, manufacturing and transport costs as well as other price elements subsequent to conclusion of the contract do not constitute an entitlement to change the price.
- 10.3** Notices of defects entitle us to suspend payments or withhold appropriate amounts until the defects have been completely remedied.
- 10.4** Invoices are to be submitted as a single copy, separately from the delivery item after delivery, and separately for each order. The value added tax is to be accounted for in accordance with the applicable regulations.
- 10.5** Unless otherwise agreed, we are to pay the purchase price on the 20th of the following month less a 3% discount or net within 60 days of delivery of the goods and receipt of the invoice. The receipt of our transfer order by our bank is sufficient for the timeliness of the payments due from us.
- 10.6** If the delivery item is received subsequent to the invoice or if the invoice is incomplete, the date of receipt of the delivery item or the date of receipt of the proper invoice is decisive for calculating the discount period.
- 10.7** Payment is to be made subject to invoice verification and complete delivery of the delivery item in its entirety. Our payment does not constitute confirmation of performance of the supplier's contractual obligations nor acceptance of the performance object.
- 10.8** Insofar as we make advance payments to the supplier prior to complete delivery or performance, we are thus entitled to make such payments dependent on the provision of bank guarantees.
- 10.9** The supplier undertakes to reimburse us in the event of overpayments, whereby the supplier cannot invoke the statute of limitations or plead financial loss.
- 10.10** We are entitled to offset the supplier's claims against other existing claims in accordance with the value date.
- 10.11** The supplier is not entitled to assign their claims against us without our prior written consent. We will not unreasonably withhold our consent in this regard.
- 10.12** We acknowledge the supplier's retention of title to the delivery items until full payment of the purchase price. An extended or prolonged retention of title is excluded.
- 10.13** A written reminder is always required for us to be put in default.
- 11. Delivery date and default**
- 11.1** Delivery and performance are to take place on the delivery dates stipulated in the order letter or on the dates determined by us in accordance with §§ 315 BGB (German Civil Code) or delivery and performance are to take place on an on-call basis. Delivery dates are binding. Force majeure is excepted in this regard.
- 11.2** The delivery date is met if the delivery item has arrived at the agreed acceptance point on or before the delivery date. If dispatch of the delivery item is postponed at our request, the delivery date is deemed to have been met if notification of readiness for dispatch is received on or before the delivery date. With regard to contracts for work and services or contracts for work and materials, the delivery date is met if the delivery item is ready for operation and accepted at the place of acceptance on or before the delivery date.
- 11.3** We are permitted to adapt the delivery date to operational requirements. The delivery date may be set anew as a result. In this case and other such cases of prevention of removal, the supplier is to assume responsibility for the proper interim storage and insurance of the delivery items. The supplier is not to charge any separate costs for postponements of deadlines up to a period of 3 months. Appropriate costs are to be agreed for any further deadline postponement after this 3-month period.
- 11.4** Deliveries and services which are reported as being ready for dispatch or ready for assembly prior to the delivery date do not have to be called off or accepted. Partial services or partial deliveries are excluded.
- 11.5** Insofar as delivery or performance is not effected by the given deadline, we are thus entitled to assert all resulting legal claims.
- 11.6** The supplier is to notify us, immediately and in writing or electronically, of any imminent delays in delivery that are apparent to the supplier. The supplier is to state the reasons and duration of the delay, and suggest remedial measures.
- 11.7** In order to avoid imminent delays in delivery, we are entitled to contact the vicarious agents and sub-suppliers of the supplier to the extent that such contact is expedient.
- 11.8** Insofar as the agreed delivery dates are not met, we can thus claim a contractual penalty of 0.1% for each working day of the delay. Such a contractual penalty is not to exceed a total of 5% of the order value as a flat-rate contractual penalty, unless the supplier is not responsible for the reasons giving rise to the delay. The supplier is to bear the risk of default on the part of the supplier's suppliers.
- 11.9** The reservation of the contractual penalty may also be declared in such a way that the forfeited contractual penalty may be deducted from the remuneration owed at the point at which the next payment is due.
- 11.10** Legal claims due to the default in delivery remain unaffected. The contractual penalty forfeited is to be offset against any further claims for damages for default or non-performance.
- 11.11** Additional costs for the expedited transport required to meet delivery deadlines are to be borne by the supplier if such expedition is necessary to avoid higher damages caused by any default.
- 12. Obligation to accept**  
Circumstances of force majeure, in our field of activity or in the field of activity of our suppliers, exempt us from our obligations to accept for the duration of such circumstances and to the extent of the effects thereof. Claims on the part of the supplier for consideration and compensation are excluded in such cases.
- 13. Provisions, transferred documents**
- 13.1** The supplier is liable for the loss, misuse or damage of provisions (e.g. samples, models, tools, devices, moulds and other equipment), documents (e.g. sketches, drawings, plans, static calculations, data) and primary materials or raw materials. Insofar as parts or materials provided are not processed in accordance with the contract, the supplier is, without prejudice to other claims, to reimburse us not only for the costs of the provisions and the procurement thereof, but also the value of the refined delivery item or the costs of restoration.
- 13.2** We reserve the extended retention of title to provisions (e.g. samples, models, tools, devices, moulds and other operating resources), parts, primary materials or raw materials as well as services. This also includes means of production and services which the supplier procures themselves for the manufacture of the delivery item or service, but which are paid for by us. Products and services remain our property during every stage of processing.
- 13.3** With regard to processing with other items owned by third parties, we are thus entitled to co-ownership of the newly manufactured item in the ratio of the value of our provision to the value of all items used in the manufacture and of the expenses incurred by the supplier.
- 13.4** Production equipment owned by us is intended exclusively for our use and is to be stored and maintained by the supplier in a functional condition at all times and insured against fire, water damage and theft at replacement value at the supplier's own expense.
- 13.5** All provisions, parts, primary materials or raw materials are to be marked as our property.
- 13.6** All unprocessed supplies are to be returned immediately after completion of the delivery item without being requested to do so and at the supplier's expense.

- 13.7** We are entitled to demand the surrender of individual or all provisions, parts provided, primary materials or raw materials at any time. Insofar as we order the surrender, the supplier undertakes to carry out such an order immediately and upon first request.
- 13.8** Information and documents (e.g. sketches, drawings, plans, static calculations, data) and provisions (e.g. samples, models, tools, devices, moulds and other equipment) must not be made accessible to third parties. In exceptional cases, written or electronic permission is to be obtained from the customer for a transfer.
- 14. Non-Disclosure**
- 14.1** Our contracts and orders and all associated commercial and technical details are to be kept secret by the supplier. This secrecy obligation specifically applies to all documents (e.g. sketches, drawings, plans, static calculations, data), tools (e.g. samples, models, tools, devices, moulds and other equipment) that are made available to the supplier or are prepared by the supplier according to our specifications. Prices and conditions are also to be kept secret.
- 14.2** The supplier may only provide information about the business relationship with us if we have given our written consent in this regard.
- 15. Liability and warranty**
- 15.1** The supplier's liability, including liability for material defects, is to be governed by statutory provisions, unless otherwise agreed or otherwise regulated in these conditions.
- 15.2** The principles of § 254 BGB (German Civil Code) apply accordingly in relation to any compensation for damages between us and the supplier.
- 15.3** The supplier is liable to us for damages incurred without the need for further evidence to this effect other than an objective breach of duty, the causal connection to the damage incurred, and the extent of the damage.
- 15.4** The supplier undertakes to reimburse us for all costs arising in connection with a material defect, including those costs for which we receive a justifiable invoice from our customers. These costs include, inter alia, costs incurred in the course of troubleshooting, removal of the defective part and installation of the spare part, as well as appraisal, transport and sorting costs. Furthermore, the supplier is to compensate us or our customers for damages resulting from any business interruption, loss of profit and other such losses.
- 15.5** In the event of any failure on the part of the supplier to remedy the defect or to provide a replacement delivery or replacement service, we are thus entitled to remedy the defect ourselves or commission third parties to do so at the supplier's expense. This is in addition to the statutory claims following expiry of a reasonable period set by us in order to avert acute risks or avoid major damage.
- 15.6** Unless a longer period has been agreed or is stipulated by law, in cases in which we use the delivery item for the manufacture of equipment, the limitation period for claims for damages ends 24 months following acceptance of the equipment by our end customer or 36 months following delivery of the equipment, but no later than 42 months following acceptance of the delivery or service by us. In all other cases, such claims become statute-barred 36 months following acceptance of the delivery or service by us.
- 15.7** With regard to parts of the delivery or service that have been replaced or repaired on the basis of claims for defects, the limitation period recommences at the time at which the supplier has completely fulfilled our claims for subsequent performance.
- 15.8** Our claims, which we make against the supplier due to defects as per §§ 478, 479 BGB, remain unaffected and apply insofar as the delivery items cause the defectiveness of the intermediate or end product we manufacture. We may also assert such claims if the end customer is a contractor.
- 15.9** Upon acknowledging receipt of the delivery items and acceptance of the drawings, plans, calculations, data and documents submitted, we do not waive any claims arising from liability for material defects and other such rights.
- 15.10** The official approval of documents or our approval of drawings, calculations and other technical documents do not limit the supplier's sole responsibility for ensuring the absence of defects in the contractual items. The same applies with regard to our instructions, suggestions and recommendations, unless the supplier objects to such instructions, suggestions and recommendations in writing and in due time.
- 15.11** Insofar as a claim is made against us for breach of official safety regulations or for other legal reasons under domestic or foreign law, we are thus entitled to demand reimbursement from the supplier for the damage incurred in accordance with the statutory provisions applicable to us (liability principles), insofar as the supplier's deliveries or services or their conduct were defective and caused the damage. With regard to cases in which recourse is to be expected, we are prepared to notify the supplier of the claims raised against us and the measures we have taken.
- 15.12** The supplier is responsible for any fault on the part of vicarious agents and sub-suppliers in the same way as they are for any fault on their own part. The supplier cannot exempt itself from liability by providing evidence of proper selection and supervision of vicarious agents and sub-suppliers.
- 15.13** Insofar as the supplier is liable, the supplier indemnifies us from all corresponding claims of third parties.
- 15.14** In the event that claims are made against us on the basis of product liability, the supplier undertakes to indemnify us against such claims if and insofar as the damage was caused by a defect in the subject matter of the contract and insofar as the supplier would himself be liable in the external relationship. In such cases, the supplier is to bear all costs and expenses, including the costs of any legal proceedings domestically or abroad.
- 16. Transferability and termination of the contract**
- 16.1** The transfer of rights or obligations arising from the contractual relationship requires our prior written consent. This also applies to the assignment of claims arising against us.
- 16.2** Irrespective of other rights of termination or withdrawal, we are entitled to terminate the contract or to withdraw from the contract, in whole or in part, if the creditworthiness of the supplier or the supplier's ability to deliver deteriorates to such an extent that performance of the contract seems to be endangered, or if the supplier suspends payments or if insolvency proceedings are initiated against the supplier or the opening of such proceedings is rejected due to lack of assets.
- 17. Place of performance, jurisdiction, applicable law**
- 17.1** Place of performance for the deliveries and services is our company headquarters in Kastl (Kemnath) or, otherwise, the acceptance point or construction site stipulated by us. Kastl (Kemnath) is otherwise the place of performance for all other obligations of both parties. The place of performance for our payment obligations is any place in which we have an account with a financial institution.
- 17.2** Place of jurisdiction is Weiden (Germany). We may also bring an action before the competent courts for the supplier's registered office or those courts before which third parties make claims against us for circumstances that are causally connected with the deliveries, services and other such obligations.
- 17.3** German is the contractual language.
- 17.4** The law of the Federal Republic of Germany applies exclusively. The UN Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) is excluded. With regard to the interpretation of delivery clauses, the INCOTERMS in the version valid at the time of conclusion of the contract apply.