

GOK

Komponenten • Lösungen • Systeme



Supply and Payment Conditions

Marktbreit, October 2019

Supply and Payment Conditions

§ 1: General conditions

1. Our entire supply and service, especially also in the future, are conducted exclusively under our following conditions. Additional side agreements or alterations of these conditions require the written form to be valid.
2. If the purchaser cites terms of business diverging from these, they are only binding for us, if they were accepted by us in writing. Neither the completion of supply and service, nor an omitted objection constitutes an acceptance of the purchaser's terms of business. If individual conditions or individual supply- and payment conditions of an executed agreement between the parties are ineffective, the remaining parts of the executed agreement will not be affected. The only case, where this is not applicable is, if the adherence to the agreement constitutes an unreasonable hardship for one of the parties. As soon as possible, the parties to the agreement will replace the ineffective condition with an effective condition, which is economically closest to the ineffective condition.

§ 2: Documents of GOK

We retain unlimited title to our copyright and exploitation right for business documents of GOK, such as quotes, models, drawings, stencils, templates, samples, tools and other manufacturing equipment as well as other written documentation. These documents can only be made available to outside third parties or used for third parties upon our prior approval. They are to be returned to us immediately upon request.

§ 3: Supply

1. Delivery terms are only binding, if explicitly agreed in writing.
2. The delivery term is complied with, if the goods have left works at the time of the expiration of the delivery term or if readiness for shipment has been announced.
3. In case of force majeure, measures in the course of industrial action (especially strike or lock-out), service failure by sub-suppliers, where we are not at fault, as well as other unforeseeable and non-culpable circumstances, the delivery term will be extended appropriately. If the above mentioned circumstances make supply impossible or unreasonable for us, we can withdraw from the agreement. The purchaser is entitled to withdraw from the agreement if, due to the delay, the acceptance is no longer reasonable. In important cases, we will notify the purchaser immediately regarding the occurrence of the mentioned circumstances.
4. Compensation claims by the purchaser due to delays in supply, as well as compensation claims instead of service, which exceed the limit mentioned in Nr. 4, are excluded in all cases of delayed supply, even after the expiry of any possible supply term set by us. The only case, where this is not applicable is, if we are compulsory liable in the case of intent, gross negligence or injury to life, body or health. An amendment of the onus of proof to the detriment of the purchaser is not associated herewith. The purchaser may withdraw from the agreement only within the scope of the legal regulations, if the delay in supply is to be due to our fault.
5. Upon our request, the purchaser is obligated to declare within an appropriate time, whether he will withdraw from the agreement due to the delay in supply and/or demands compensation instead of service or insists on supply.
6. If dispatch or delivery of the purchased goods are being delayed at the purchaser's request by more than one month from the notice of readiness for shipment, we will charge the purchaser a storage fee of 0.5 % of the price of the goods stored, not exceeding a total of 5 % for every month or part thereof. The right to prove higher or lower storage costs remains unaffected for both parties to the agreement.

§ 4: Reservation of title

1. Goods supplied by us remain our property (reserved goods) up to the payment of all claims, especially the respective balance claims from the business connection with the purchaser.
2. If the purchaser treats or processes the reserved goods, he will do so for us as manufacturers in the sense of § 950 German Civil Code, without any obligations arising for us. The treated and processed goods are deemed reserved goods in the sense of Nr. 1 above.
3. In case of the reserved goods being processed, connected or mixed by the purchaser with other goods, we are entitled to co-ownership of the newly created objects at the ratio of the invoice value of the reserved goods compared with the invoice value of the other utilised goods. If the reserved goods are combined with other objects to a common object and if the other object is to be deemed the main object, the purchaser is obligated to assign to us a pro-rata co-ownership, if the main object belongs to him.
4. The purchaser is entitled to on-sell the goods in the course of normal business or otherwise use the reserved goods. The purchaser is prohibited to otherwise utilise the reserved goods, especially for pledges or chattel mortgage.
5. The purchaser's claims resulting from the on-selling of the reserved goods are herewith assigned to us. The assigned claims will serve as security to the same extent as the reserved goods.
6. If the reserved goods are on-sold by the purchaser together with other goods, which were not supplied by us, the assignment of claims resulting from the on-selling is valid only for the invoiced amount of the reserved goods. In case of co-ownership, the assignment covers only our pro-rata co-ownership according to Nr. 3 above.

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7. The purchaser is authorised only revocable, and in the course of normal business, to recover the assigned claims.
8. We will only invoke our right of veto, if the purchaser has neglected his payment obligations toward us or in case of other circumstances, which jeopardise our claims due to the deterioration of the credit status of the purchaser. In this case, the purchaser is obligated at our request, to immediately inform his customers of the assignation to us and provide us with the necessary information and documents for the recovery.
9. In case of failure to comply with the payment conditions, unauthorised disposal of the reserved goods, a significant deterioration of the purchaser's asset situation, bill-of-exchange or cheque protest or if the purchaser himself or a third party applies for insolvency of the purchaser, we are entitled to prohibit the treatment and processing, as well as the on-selling of the reserved goods. In cases such as these, we are also entitled to confiscate the reserved goods and for this purpose enter the premises of the purchaser, request appropriate information as well as gain necessary access to his accounting records. The claim for return, but not the simple redemption of the reserved goods, constitutes the withdrawal from the agreement.
10. If the value of the security interests owed to us exceed our claims in total by more than 10 %, we will, on the purchaser's request, relinquish a suitable part of the security interests at our choice.
11. The purchaser has to notify us immediately regarding impending or executed attachments as well as assertion of third party rights on the reserved goods and/or the claims assigned to us.

§ 5: Dispatch and transfer of risk

1. The dispatch is ex-works at the expense and risk of the purchaser. This also applies, if and insofar the dispatch is conducted with our own means of transport. Transport insurance is only taken out at the request of the purchaser and at the purchaser's expense.
2. If the dispatch is delayed due to circumstances, for which the purchaser is responsible, the risk is transferred to the purchaser upon receipt of the note of readiness for dispatch. Upon notification of deadline and its unsuccessful expiry, we are entitled to dispose of the delivery-object and supply the purchaser at an appropriately extended term.
3. We are entitled to partial deliveries of reasonable volume.

§ 6: Prices

1. Unless otherwise agreed, all prices are net plus VAT at the applicable rate on the date of dispatch. Prices are applicable for delivery ex works excluding packaging.
2. Prices are subject to change and are duty unpaid. Invoicing occurs according to the prices relevant at the date of dispatch.
3. If the goods are dispatched to another Member State of the European Union, the purchaser is obligated to provide us with his VAT ID number applicable for the delivery and his branch of trade prior to dispatch.

§ 7: Payment conditions

1. Our invoices are payable without deduction within 30 days of the invoice date. If these terms are exceeded, we are entitled to charge default interest in accordance with the legal regulations. We reserve the right to transmit our invoices by letter mail or electronically, by e-mail or EDI.
2. The purchaser is only entitled to withhold payment or set off possible counter claims, if these were accepted by us in writing or if they have been legally determined.
3. Default of payment by the purchaser or any other risk to our claim due to the deterioration of the purchaser's credit status permit us, to immediately call in all existing claims resulting from the entire business connection - regardless of term of maturity - or demand appropriate securities. In such a case, we are further entitled to carry out pending deliveries only against appropriate cash advance or securities.
4. We may offset all claims, which we have against the purchaser, against all claims, which the purchaser has against us.

§ 8: Liability for material defect

1. Those goods, which show a material defect within the statute of limitation, are to be repaired or delivered anew free of charge at our choice, provided that the cause of the material defect existed at the time of risk transfer. If we rectify the defects in such a case, it does not constitute an acknowledgement of the purchaser's right to claim.
2. The material defects claims shall lapse within 12 months after delivery to a entrepreneur. However, this does not apply in the case, where the law prescribes longer terms due to a right of recourse in accordance with § 479 sub paragraph 1 German Civil Code.
3. The purchaser has to give notice of a defect in writing immediately.
4. In any case, the purchaser has to provide us with an opportunity to rectify the defect within an appropriate timeframe.

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5. In the case of a notice of material defects, the purchaser may only withhold payment to the extent of an appropriate ratio to the material defects occurred. The purchaser may only withhold payment, if a notice of material defects has been asserted and if it is justified. If a notice of material defect is unjustified, we are entitled to demand reimbursement from the purchaser for any costs incurred.
6. If a rectification of the defects fails, the purchaser may - regardless of any compensation claims in accordance with § 10 - withdraw from the agreement or reduce the payment.
7. Claims based on defects do not exist in the following cases:
 - a) insignificant variance from the agreed consistency or
 - b) insignificant impairment of usability or
 - c) natural wear and tear or
 - d) damages incurred subsequently to the transfer of risk, due to incorrect or negligent treatment, excessive load, unsuitable maintenance resources, inadequate installation or due to particular outside influences, which are not provided for according to the agreement.
 - e) If the purchaser or a third party performs any improper alterations or repairs to the goods supplied by us or on other products which have repercussions on the goods supplied by us; there are no claims based on defect for those and the consequences arising from them.
8. A legal right of recourse by the purchasers against us only exist to the extent, as the purchaser has not entered into any additional agreements with his buyer, which exceed the legal claims of defect. The following clause is applicable to the extent of the purchaser's right of recourse against us.
9. Claims by the purchaser for expenses incurred due to the purpose of rectification, especially transport-, shipping- and handling-, labour- and material costs are excluded, if the expenses were increased due to the supplied object being moved to a place different from the purchaser's place of delivery, unless the transfer complies with its usage in accordance with regulations.
10. § 10 applies for any compensation claims. Further or other claims by the purchaser against us and our vicarious agents due to a material default, as those regulated under § 10, are excluded.

§ 9: Impossibility; Adaptation of contracts

1. If the supply is impossible, the purchaser is entitled to claim compensation, unless we are not responsible for the impossibility. However, the compensation of the purchaser is limited to 5 % of the value of that part of the delivery, which was not supplied or could not be otherwise used due to the impossibility. However, this limitation does not apply in case of intent, gross negligence or in cases of injury of life, body or health or any other compulsory liability. This does not incorporate an adaptation of the onus of proof to the detriment of the purchaser. The purchaser's right of withdrawal from the agreement remains unaffected.
2. If unexpected events, which could not be predicted, considerably influence the economic significance or the content of the delivery or our organisation, the agreement will be adapted accordingly in good faith. If we can not economically justify this we have the right to withdraw from the agreement. In such a case we are obligated to notify the purchaser in writing following our realisation of the extent of the occurrence, even in such a case, where an extended delivery term was agreed upon with the purchaser initially.

§ 10: Further, other claims of compensation

1. Claims for compensation and -expenditure by the purchaser, regardless of the legal foundation, especially due to violation of duties resulting from the agreement and due to unauthorised activity are excluded.
2. This does not apply if we are compulsory liable, i.e. according to the Product Liability Act, in cases of intent, gross negligence, injury to life, body, health or due to the violation of significant contractual duties. However, the compensation claim for violation of significant contractual duties is limited to contractually typical, predictable damages, unless they represent intent or gross negligence or pertain to injury of life, body or health. This does not incorporate an adaptation of the onus of proof to the detriment of the purchaser.
3. Such claims for compensation, as far as the purchaser is entitled to them in accordance with this § 10, expire with the expiration of the statute of limitation applicable for material defect claims as described in § 8.

§ 11: Taking back and environmentally friendly disposal of electronic devices

1. The Customer is obligated to properly dispose of the electronic devices of the "GOK" brand delivered to them at their own expense in accordance with the provisions in the Elektro- und Elektronikgerätegesetz (ElektroG) [Electrical and Electronic Equipment Act] after termination of the use thereof. Thus, "GOK Regler- und Armaturen-Gesellschaft mbH & Co. KG" is exempt from the obligations under Sec. 10 para. 2 ElektroG and third-party claims connected thereto.
2. If the Customer fails to contractually obligate third parties to whom they forward our electronic devices to assume the disposal obligation and to pass on obligations, the Customer shall be obligated to take back the supplied electronic devices at their own expense and to properly dispose of them in accordance with the statutory provisions after termination of the use thereof.

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3. The claim of "GOK Regler- und Armaturen-Gesellschaft mbH & Co. KG" to assumption of the obligation to dispose of electronic devices of the "GOK" brand in compliance with statutory provisions by the Customer supplied by GOK shall not lapse before two years after final termination of the use of the electronic devices supplied to the Customer by us. The two-year period of expiry suspension shall commence no earlier than on the date on which we receive a written communication on the termination of use by our Customer.

§ 12: Place of performance and jurisdiction

1. Place of performance is Marktbreit, if the parties are registered traders.
2. The place of jurisdiction for all disputes under this contractual relationship shall be Marktbreit to the extent it is a dispute with a Vollkaufmann [registered trader under German law]. However, we are entitled to also raise claim at the purchaser's place of business.
3. The law of the Federal Republic of Germany applies for all legal relationships between the purchaser and us under exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG) from the 11.04.1980.

As of: October 2019