



## **General Purchase Terms and Conditions GfE-Group Companies (GPT&C)**

### **1. General / Scope of Validity**

1.1 The following Purchase Terms and Conditions apply to the following companies of the GfE –group: GfE Gesellschaft für Elektrometallurgie mbH, GfE Metalle und Materialien GmbH and GfE Fremat GmbH („Purchaser“).

1.2 The following Purchase Terms and Conditions are the basis of all deliveries of products or services between the parties – hereinafter referred to as Purchaser (GfE) and Supplier. The Supplier accepts these Terms and Conditions as binding. Opposing terms and conditions of Supplier are not accepted by Purchaser.

1.3 Unconditional performance of the contract, in particular unconditional acceptance by Purchaser, do not constitute acceptance of opposing terms and conditions of Supplier.

1.4 Deviating provisions require an explicit written agreement between the parties to be effective. Verbal declarations prior to or upon closing of the contract are only valid, if confirmed in writing.

### **2. Offer / Order / Order Confirmation**

2.1 Supplier's offer shall be open for acceptance for four weeks.

2.2 Offers and cost estimates are free of charge.

2.3 All orders, amendments and changes require written form to be effective. Any telephonic or other form of order requires a subsequent written confirmation by way of a written order of Purchaser or a written confirmation of the order by Supplier to be effective.

2.4 Supplier needs to confirm the order in writing. Prior to the receipt of the order confirmation the Purchaser can revoke the order at any time. Changes and amendments to an order of Purchaser made in a confirmation of Supplier are invalid, unless confirmed by Purchaser in writing within 1 week of receipt of the order confirmation.

2.5 Delivery dates mentioned in a Purchase order are fixed and time is of the essence („Fixgeschäft“) with regard to separate orders, call orders under master agreements or in a continuous business relationship between Purchaser and Supplier.

2.6 Purchaser may request changes to the product or service even after closing of the contract, if this is reasonable for Supplier. The effect on delivery dates, increase or decrease in prices shall be adequately considered by both parties. Purchaser may request, that excess or deficiencies in product deliveries or services up to 5 % of the order total be subject to the agreed upon contract terms without a change in the unit price.

### **3. Prices and Payment Terms**

3.1 The price shown in the order is binding. Unless otherwise agreed in writing the price includes delivery “DDP (Incoterms 2010)“ Purchaser's designated address. Return of packaging requires a separate agreement.

3.2 The order prices are net prices. The value added tax (Mwst.) applicable at the time of delivery shall be stated separately in the invoice. Prices include adequate packaging (acc. to 9.), the provision of usual test certificates, instructions for use, assembly, maintenance and repair as well as and spare part listings.



#### **4. Invoices**

4.1 Unless otherwise agreed all invoices shall be issued two-fold (original + copy) addressed to the address of Purchaser mentioned in the order.

4.2 The invoices must include the following data:

- Full name and address of Supplier and Purchaser
- Tax number and sales tax identification number
- Date of issue of invoice
- Serial number of invoice
- Amount and trade name of the product delivered or type and scope of other service
- Date of delivery or other service
- Supplier number
- Order number
- Article number
- EAN-number (European Article Number)
- Packing list number

In the event the invoice is not complete, Purchaser is not liable for any default in payment resulting therefrom. The same applies, if the content of the invoice does not comply with the order/call.

#### **5. Payment**

5.1 Unless otherwise agreed, Purchaser may choose among the following payment terms:

- within 30 days less 3 % discount or
- within 90 days net (without deduction).

5.2 The payment term starts with the receipt of the goods / services, the required documents and the invoice, but no earlier than the agreed delivery date.

5.3 Purchaser is entitled to set-off all counterclaims or exercise all legal withholding rights without any restrictions.

5.4 Partial deliveries / services shall only be separately invoiced, if contractually agreed. The same applies to installment payments.

#### **6. Assignment of Claims**

Claims against Purchaser can only be assigned to third parties with the written consent of Purchaser. Set-offs with claims of Purchaser are generally not permitted, unless the claims of Supplier are undisputed, acknowledged or established in court. The same applies to retention rights of Supplier.

#### **7. Delivery Dates / Delivery Default**

7.1 The agreed upon delivery / performance dates are binding, their observance is a main contractual obligation of Supplier. Any delays in delivery / performance shall be communicated to Purchaser immediately. In case of default Purchaser is entitled to all statutory rights without restriction.

7.2 In case of non-observance of delivery dates for reasons within Supplier's responsibility, Purchaser has the right to charge a contractual penalty in the amount of 0.5 % of the gross sales price for each started week of delay for late or non-deliveries /

services, not exceeding 10 % of the respective gross sales price. In the event of a delivery prior to the agreed upon delivery date, Purchaser can charge 2 % of the order value (of the partial amount delivered) for increased storage cost.

7.3 In case of a withdrawal from the contract due to a delivery default the Purchaser may send back all partial deliveries or deliveries made after the cancellation at Supplier's cost and risk. Purchaser is also entitled to accept partial deliveries already effected and cancel only outstanding deliveries.

7.4 In the event Supplier does not deliver or perform within a reasonable make good period determined by Purchaser, Purchaser is entitled upon expiration of such period to engage a third party to fulfill the contract and claim compensation of the necessary cost and additional expenses from Supplier. Moreover, Purchaser has the right to claim damages in lieu of performance. The right of Supplier to make good and the obligation of Purchaser to accept performance cease as soon as Purchaser upon expiration of the make good period has arranged for substitution or claimed damages in lieu of performance.

## **8. Delivery / Delivery Note / Freight Documents**

8.1 Supplier must perform in person and is not permitted to assign the order to third parties without Purchaser's consent. All deliveries of goods must be accompanied by packing list, containing the order dates of Purchaser and the name of Supplier. Packing lists, freight documents and inspection certificates must be identifiable as such and accompany the goods. If the above data cannot be determined in the packing lists, freight documents and inspection certificates, Purchaser has the right to decline acceptance.

8.2 Partial delivery / performance is only permitted with the consent of Purchaser. If Purchaser accepts partial delivery / performance, he is entitled to declare acceptance only after complete fulfillment of the delivery / performance by Supplier.

8.3 Deliveries shall be effected DDP (Incoterms 2010) Purchaser's designated address. Supplier bears the cost of transportation insurance. The transfer of risk in contracts for work services is exclusively provided for in § 644 para.1, sentence 1 and 2 BGB (German Civil Code).

## **9. Packaging and Dispatch Provisions**

9.1 The following dispatch provisions have to be complied with:

- Separate packaging resp. packaging unit as agreed; in general Supplier shall provide all goods or the separate packaging free of charge with the usual customer EAN-Code, if technically possible due to the nature of the goods.
- Carton packaging as agreed; cardboard boxes need to have at least on one side the following markings: name of goods, contents (pieces, sets), EAN-Code. The name or other markings identifying the manufacturer and declarations of origin on the outer carton are to be avoided.
- Palette packaging shall be exclusively on palettes (Euro- or one-way-palette), with goods not jutting out on the sides. The maximum gross height of a palette shall not exceed 220 cm. Any change of these dispatch provisions after issue of the order requires the written information and approval of the parties. Upon specific request of Purchaser a palette frame shall be attached to the lower part of the palette as a handling protection.

9.2 Any non-compliance with the above dispatch provisions may result in a refusal of acceptance or in re-packaging or re-marking (e.g. EAN-Code) by Purchaser. The Supplier will be charged the cost resulting therefrom. This applies to all expenses of Purchaser resulting from incorrect deliveries. Purchaser may additionally charge a lump-sum service fee in the amount of EUR 150.00.

9.3 Supplier is in principal liable for all transportation damage resulting from insufficient packaging (inside and outside).

9.4 Compliance with Packaging Directive 94/62/EG has to be guaranteed.

#### **10. Composition / Origin / Safety of Products**

10.1 Supplier warrants that its deliveries comply with the provisions of Directive EG No. 1907/2006 for the Registration, Evaluation, Approval and Restriction of Chemical Substances (REACH-Directive) as amended. Substances contained in the products of Supplier are pre-registered resp. upon expiration of the transition period registered, to the extent required by the provisions of the REACH-Directive. Supplier shall provide the Safety Data Sheets acc. to the REACH-Directive resp. the information required by Art. 32 REACH-Directive. Upon request Supplier shall also provide the information according to Art. 33 REACH-Directive.

Supplier moreover warrants not to deliver products that contain

- forbidden substances acc. to Appendix XVII of the REACH-Directive as amended;
- substances on the Global Automotive Declarable Substance List (GADSL) as amended (see [www.gadsl.org](http://www.gadsl.org));
- substances acc. to RoHS (2011/65/EG) for products acc. to their scope of application
- substances acc. to Directive 76/769/EEC as amended.

In case the product delivered contains substances listed on the so-called "Candidate List of Substances of Very High Concern" ("SVHC-Listing") acc. to the REACH-Directive, Supplier is obliged to immediately inform Purchaser. This also applies in case of ongoing deliveries, if substances are included in the listing that so far have not been listed. The currently valid listing can be found under [http://echa.europa.eu/chem\\_data/authorisation\\_process/candidate\\_list\\_table\\_en.asp](http://echa.europa.eu/chem_data/authorisation_process/candidate_list_table_en.asp).

Furthermore products must not contain mercury, asbestos or radioactive material.

In case these substances should be contained in the products delivered by Supplier, Purchaser has to be informed in writing prior to delivery providing the substance and the identification number (e.g., CAS) and a current Safety Data Sheet of the product to be delivered. Delivery of such products requires a special clearance by Purchaser.

Supplier also warrants compliance with the DMF-Decision 2009/251/EG.

Supplier indemnifies Purchaser against any and all liability resulting from any non-compliance of the above provisions by Supplier resp. shall reimburse Purchaser all expenses arising from or connected with Supplier's non-compliance with the Directives.

10.2 Supplier warrants that the products delivered resp. separate parts of the products do not originate in the regions of conflict of the Democratic Republic of Congo or its neighboring countries. These parts of products shall in particular include gold, coltan, cassiterite, wolframite and their derivatives like tantalum, tin or tungsten (Dodd-Frank Act – Section 1502).

10.3 In case of planned changes in production procedures, in the supply of parts or material for the agreed delivery products, of relocation of production sites, changes in the procedures or equipment of product inspection or other actions, which may have an effect on the quality or safety of the delivery products, Supplier has to timely inform Purchaser prior to delivery. Supplier must not change specifications or production procedures agreed upon in writing without the approval of Purchaser. All changes, requiring approval or not, have to be documented and disclosed upon request.

## **11. Risk**

11.1 The risk of incidental deterioration or destruction of the delivery goods / performance is transferred upon Purchaser upon acceptance of delivery or service.

11.2 Supplier carries the risk up to the place of delivery resp. up to the agreed place of performance and the acceptance of service at that place.

## **12. Acceptance**

12.1 Upon Supplier's complete fulfillment of the contracted services and work performance, they shall be accepted by Purchaser in a formal acceptance protocol.

12.2 Supplier has to inform Purchaser in writing when he is ready to make the completed service available. Upon receipt of such notice, Purchaser is entitled to inspect the work product for a reasonable period, at a minimum 14 days. Acceptance shall be declared, if the above inspection shows no defects of the service or work product, that would otherwise affect the fitness of the product for the contractually intended purpose more than insignificantly.

12.3 Notwithstanding a declaration of acceptance Supplier shall remove all defects detected in the inspection and/or stated in the acceptance protocol without delay.

## **13. Notification of Defects**

13.1 Purchaser will notify Supplier about obvious defects of the delivery or performance without delay after they have been established in the usual course of operations. Supplier waives any objection of late defect notification for defects notified by Purchaser within two weeks.

13.2 In the event a defect can only be established during use or treatment, the notification of such defect shall be made within two weeks of such establishment. Purchaser is not obliged to perform any further inspections or notifications.

13.3 Each notification of defect blocks the period of limitation.

## **14. Warranty**

14.1 Supplier warrants, that he will deliver the goods in workmanship and quality in accordance with the offer, the samples submitted to Purchaser with the offer or order and the written agreements, like e. g. purchase specifications and /or a list of required tasks. Supplier warrants, that the goods comply with the state of the art and all applicable regulations and provisions of the law. This includes in particular all special provisions (e.g., TÜV/GS, CE, DLMBG, VDE, TKG), as well as all standards valid in the European Union. The above warranties are also applicable to goods of foreign origin.

14.2 Supplier's warranties for material defects of all products / services shall be valid for 24 months after delivery / acceptance. Under this warranty defects shall be removed free of charge upon Purchaser's choice by making good or delivery of a substitute, wear and tear excepted. If defects cannot be made good in two working days, Supplier shall make a substitute available free of charge until the defect is removed. In the event the product or service made good results in another defect notification or Purchaser refuses to accept the make good results, Purchaser has the unrestricted right to reduction in price or withdrawal from contract and surrogate performance by third party. Purchaser has no obligation to accept additional make good attempts. Moreover, Purchaser is entitled to claim damages to the extent prescribed by law.

14.3 In case of an onward delivery of the product by Purchaser the warranty period starts only with the date of delivery to the final customer. This shall extend the warranty period to a maximum of 36 months after the delivery to Purchaser.

## **15. Samples**

Upon the special request of Purchaser, Supplier shall provide in case of new products or initial orders at the latest upon the issue of the order, free of charge, a reasonable number of original samples (with the respective packaging and inspection certificate). If requested by Purchaser, Supplier shall also make samples available free of charge for additional inspection purposes.

## **16. Product Liability / Indemnification / Liability Insurance**

16.1 In case Supplier is liable for damages caused by the products, he is obliged to indemnify Purchaser upon first demand against all third-party claims for damages to the extent caused in Supplier's area of responsibility and organizational control and to the extent Supplier is also liable to Purchaser directly.

16.2 In this context Supplier is also liable to reimburse Purchaser's possible expenses according to §§ 683, 670 BGB (German Civil Code) resulting from a re-call action implemented by Purchaser. As far as possible and reasonable, Supplier shall be informed about the scope and contents of the necessary re-call actions and given the opportunity to comment.

16.3 Supplier covenants to maintain a product liability insurance with a coverage of a minimum amount of EUR 5 million – lump sum - per event of bodily injury or property damage. Possible additional claims for damages of Purchaser shall remain unaffected.

## **17. Intellectual Property Rights**

17.1 Supplier warrants, that rights of third parties are not infringed in connection with its delivery / performance hereunder.

17.2 In case a corresponding third-party claim is raised against Purchaser, Supplier is obliged to indemnify Purchaser upon first written demand against such claims. Purchaser is not entitled to enter into any agreements, in particular a settlement, without the consent of Supplier.

17.3 The indemnity obligation of Supplier shall cover all expenses of Purchaser arising necessarily from or in connection with the third-party claims.

## **18. Title**

18.1 Title of and to all deliveries / services of Supplier hereunder must be free and clear of retention of title / collateral, liens or other encumbrances. Any such restriction of title is null and void, even without the explicit contradiction of Purchaser and notwithstanding that the order confirmation or invoice may purport to establish a limitation of title. The acceptance of an order by Supplier is deemed to be the consent that the goods to be delivered are his unencumbered property.

18.2 Upon acceptance Purchaser acquires the unencumbered title to the delivery goods / services.

## **19. Provision of Tools, Material, Documents**

19.1 Tools provided by Purchaser remain his property. Supplier shall use the tools exclusively in the production of goods ordered by Purchaser. Supplier is obligated at his own cost to insure the tools owned by Purchaser at their original value against damage from fire, water and theft. Supplier is also responsible to timely implement all necessary inspection and maintenance work at his cost. Purchaser shall be immediately informed about any tooling failure.

19.2 All materials, documents and information, made available by Purchaser for orders to be fulfilled by Supplier remain in any case the property of Purchaser and shall be marked accordingly.



19.3 In the event material provided by Purchaser is treated, changed, connected or commingled with other material, Purchaser acquires full title in the new goods. Supplier keeps it free of charge in custody for Purchaser.

## **20. Confidentiality**

Supplier shall keep all images, drawings, calculations and other documents and information strictly confidential and shall disclose such information to third parties only with the explicit approval of Purchaser. This confidentiality obligation shall survive the expiration of the respective contract and ceases only if and to the extent the production know-how contained in the images, drawings, calculations and other documents is public knowledge. All parts and documents shall be returned to Purchaser after the respective order has been carried out.

## **21. Customs / Export Control**

All delivery and transaction documents shall contain the following information:

- Number of the customs tariff of the country of dispatch
- Country of origin
- Information about a preferential origin of the product; if yes, attach the necessary long-term declaration of Supplier
- Notice whether the product or delivered goods are covered by the Export List resp. the EG-Dual-Use-Directive; if yes, advise necessary listing number
- Information, whether the product or delivered goods are in addition subject to US-Export Control regulations; if yes, advise the required ECCN.

## **22. Termination**

Purchaser shall be entitled to terminate the contract in the event Supplier's assets are collateralized, banks, credit institutions or credit insurers issue unfavorable information, Supplier's assets are subject to insolvency proceedings or Supplier has ceased to make payments.

## **23. Force Majeure**

23.1 "Force Majeure" shall mean events such as war, pandemic, natural disasters or other unforeseeable events for which the affected party is not responsible for.

23.2 Supplier shall inform Purchaser without undue delay of any interruptions in production and delivery or other impediments to performance affecting Supplier due to Force Majeure, as well as of the expected duration thereof.

23.3 In the event of Force Majeure preventing Purchaser from accepting delivery, as well as all other impediments to acceptance for which Purchaser is not responsible for, the respective delivery, acceptance and payment dates shall be extended according to the duration of such impediment plus a reasonable start-up period. In such cases, Purchaser shall not be in default of acceptance.

23.4 If the respective event of Force Majeure (affecting Supplier or Purchaser) lasts one month or longer, Purchaser may demand that the parties agree in good faith on reasonable adjustments to the contract or order. If the respective event of Force Majeure (affecting Supplier or Purchaser) lasts two months or longer, Purchaser may rescind the affected contract or order by means of a written notice.

23.5 If an event of Force Majeure (a) has a material effect on Purchaser's production (e.g. reduction or interruption of production due to shortage of energy or raw materials) or (b) leads to material disruptions in the Purchaser's sales market (such as loss of a customer, collapse of sales volumes by more than 10%, price drop of more than 5% in the sales market), Purchaser may demand that the parties agree in good faith on reasonable adjustments to the contract or order (e.g. reduction of prices or purchase volumes agreed between Purchaser and Supplier). The same applies if the parties have agreed on fixed prices and the event of Force Majeure leads to a general decline by more than 5% of market prices for the Supplier's products or for the related general product categories.



26.6 Clauses 23.2 to 23.5 shall apply accordingly, despite knowledge of the Corona pandemic and the Ukraine war, in the case of effects of these events including government measures in connection therewith (e.g. interruption or reduction of the gas supply).

#### **24. Place of Performance, Law, Venue**

24.1 The place of performance for all deliveries and services shall be the place of acceptance designated by Purchaser.

24.2 The exclusive venue for all disputes shall be the registered office of the respective entity of Purchaser, notwithstanding Purchaser's right to sue Supplier at his registered office.

24.3 The laws of the Federal Republic of Germany shall be exclusively applicable, excluding its choice of law rules. The provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) are not applicable and expressly excluded.

#### **25. Miscellaneous**

In the event any provision in these General Purchase Terms and Conditions or in other agreements is or becomes invalid, the validity of all other provisions or agreements shall not be affected.

This English version of these GPT&C is provided solely for convenience. In case of any discrepancy between the English and the German version, the latter shall prevail.

November 2022, Copyright GfE