

GENERAL PURCHASING TERMS AND CONDITIONS

englisch dekor HandelsgmbH & Co KG
(11/2018)

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The following General Purchasing Terms and Conditions (GPC) are applicable to all orders placed with contractors/suppliers (hereinafter jointly referred to as „Supplier“). Conflicting or deviating terms and conditions of the supplier shall only apply if we have expressly acknowledged them in writing. Deviations from the following Purchasing Terms and Conditions require the written form in order to be effective, as does the agreement to deviate from the written form.

2. Offers, Order and Order Confirmation

Offers and cost estimates of the supplier shall in any case be made free of charge and shall not constitute any obligation for englisch dekor HandelsgmbH & Co KG (hereinafter referred to as „englisch dekor“). If the supplier's offer is based on an enquiry from englisch dekor, the supplier must adhere exactly to the enquiry in the offer and, in the event of deviations in the offer from a previous enquiry, must expressly point this out, otherwise these deviations will not become part of the contract. By submitting an offer or accepting our order, the supplier acknowledges our GPC. Binding orders are only placed in writing (letter, fax, PC fax, e-mail). The same applies to order changes. Verbal orders are only valid if we confirm them in writing. The supplier is obliged to confirm each order in writing within 7 days, afterwards the order loses its effect as contract offer.

Our order number must be mentioned on all correspondence. All delays and disadvantages arising from the fact that documents cannot be allocated due to missing order numbers shall be borne by the supplier.

3. Fixed prices, terms of payment and invoicing

All prices stated in the order are fixed prices and, unless expressly agreed otherwise in writing, include all taxes and incidental costs, packaging and transport costs (in particular freight charges, insurance and customs duties). Price changes of any kind require express written confirmation. If the Supplier reduces its prices in the period between order and delivery, the prices valid on the day of delivery shall apply.

The service shall not be deemed to have been rendered in full until the documents/papers specified in the order have been handed over in paper form or electronically. Invoices must contain the order number stated in our order, a description of the delivery and must comply with the statutory requirements. Invoices which have not been properly issued shall not become due and may be rejected by us at any time.

Unless expressly agreed otherwise, our payment period shall be calculated from receipt of the proper invoice, but at the earliest from delivery or acceptance, as follows:

If we receive the properly issued and due invoice from the 1st to the 15th of a month, we will pay it on the 22nd of the same month. If we receive the properly issued and due invoice by the last day of a month, we will pay it on the 7th of the following month each less 4% discount.

A separate invoice shall be issued for each delivery and service, quoting all order data, unless we expressly request a collective invoice. Partial invoices shall only be permissible if expressly agreed.

4. Place of performance, time of performance, terms of delivery

The place of performance for both our services and the return service shall be the registered office of englisch dekor HandelsgmbH & Co KG. The goods purchased by us shall be deemed as a debt to be discharged at creditor's domicile. The supplier therefore bears the costs and the risk of the transport. The risk shall pass to us upon delivery and after unloading of the delivery goods. The necessary delivery documents must be enclosed with each delivery.

The agreed delivery dates and periods are binding. Decisive for the fulfilment of the delivery dates and periods is the receipt of the goods at englisch dekor. If the supplier realises that the agreed delivery dates or periods cannot be met, he must inform us immediately, stating the reasons and the expected duration of the delay, otherwise the supplier cannot invoke the obstacle. If agreed dates or deadlines are not met due to circumstances for which the supplier is responsible, we are entitled to withdraw from the contract after setting a reasonable period of extension and/or to claim damages. The Supplier shall reimburse all additional costs incurred due to a delay in delivery/service for which the Supplier is responsible. Acceptance of the delayed delivery/service shall not constitute a waiver of any other claims.

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At our reasonable discretion, we shall be entitled to demand from the Supplier the professional disposal of packaging material free of charge to us. The goods shall be transported at the supplier's risk, in particular the supplier shall be liable for damage due to defective packaging. The risk for the return transport from us to the supplier - for whatever reason - as well as the renewed delivery to us shall be borne by the supplier.

5. Inspection of the delivery items, quality control

The supplier is obliged to carry out suitable outgoing inspections of the delivery items and in particular to inspect them for completeness, functionality and flawless quality. We are entitled to inspect the delivered goods. In the event of complaints, we are entitled - without prejudice to other claims - to reject the delivered goods completely and to return them to the supplier at the supplier's expense and risk. If we discover defects upon acceptance of a delivery or at any time thereafter, we shall notify such defects in writing within a reasonable period after discovery. Acceptance of a delivery and payment of the invoice shall not be deemed as acceptance of a delivery as being in accordance with the contract.

6. Warranty

All goods shall be manufactured and delivered in a flawless and professional manner, taking into account the existing rules of technology and other agreements. The statutory warranty periods shall apply, but these shall not commence until the goods have been sold to the last recipient of the goods. Exclusions of liability on the part of the supplier, in particular from the title warranty or damages, shall not be accepted unless these have been expressly agreed with us in writing. We are free to choose within the warranty remedies without being bound to a certain order. Insofar as we insist on repair or replacement, we are entitled to withhold the entire payment until complete fulfilment of the owed delivery/service.

The warranty period shall be interrupted by any written notice of defects and shall begin anew after each rectification of defects or replacement delivery or service for the defective item in question. The reversal of the burden of proof after 10 years from handover in accordance with § 933a Para. 3 ABGB does not apply.

We are not obliged to give notice of defects, §§ 377 and 378 UGB are expressly excluded.

7. Claims for damages, product liability

The Supplier shall be liable without limitation - even in the case of slight negligence - for all (consequential) damages caused by the delivery of defective goods or defective performance. This shall also apply to claims under the Product Liability Act. We do not accept the exclusion of a subrogation/recovery receivable on our part pursuant to § 12 PHG. In this connection, the supplier shall indemnify and hold us harmless in all cases, regardless of whether he is at fault or not. In addition, the supplier is obliged to inform us immediately of the respective manufacturer, importer and/or sub-supplier upon request and to provide us immediately and free of charge with all documents and evidence useful for defence against product liability claims of third parties.

We shall only be liable for claims for damages due to intentional or grossly negligent behaviour. The supplier shall bear the burden of proof for the existence of gross negligence.

8. Withdrawal, Returns

We are entitled to withdraw from the contract in particular in the event of default in delivery, in the event of irreparable defects or in the event of default on the part of the supplier in the fulfilment of its warranty obligations and in the event of the insolvency of the supplier. If such circumstances exist and if these circumstances are either particularly serious or occur repeatedly, we may also withdraw from other contracts with the supplier concerned. In addition, we have the right - apart from these justified contract withdrawals - to demand at any time the interruption of the further execution of the order or to cancel the contract, this against payment of a cancellation fee of 3% of the purchase price. If, however, the actual damage incurred is less, only the lesser amount shall be reimbursed.

In the event of a justified withdrawal from the contract, we are entitled to delay the entire performance irrespective of any usability of the partial services rendered. If we are entitled to return the object of the contract,

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we are entitled that the supplier removes the object free of charge. We may have the goods removed and returned at the supplier's expense if the supplier does not immediately comply with a corresponding request. If we incur expenses as a result of the delayed removal, these shall be reimbursed by the supplier regardless of fault.

9. Confidentiality, disclosure of documents to third parties, data

The supplier is obliged to treat all business and trade secrets which become known within the scope of our business relationship, in particular our order and all related commercial and technical details (e.g. drawings, samples, models, technical specifications) confidentially and to make them accessible to third parties only with our prior written consent and only to the extent necessary for the performance of the contract.

The supplier undertakes to comply with the rules and the applicable regulations of data protection. This applies in particular to the protection of personal data of our customers, employees and business partners. The data protection declaration available on our homepage www.englisch.at applies.

10. Complaint

The supplier undertakes to inspect the defective goods within 10 working days of notification by us of a product complaint and/or product damage and to make a written statement. In general, the supplier agrees to support us in the best possible way and without unnecessary delays in the reporting, handling and settlement of complaints and product damage as well as in the response to customer complaints and insurance enquiries by providing information, opinions, investigations, analyses, etc. The goods complained about by us or by our customers can be inspected in our warehouses or, at the request of the supplier, can be sent to the address specified by the supplier at the supplier's expense and risk. If it is recognisable that the reason for the complaint is attributable to the sphere of the supplier, the supplier is obliged to reimburse the replacement costs and consequential damages associated with the complaint. Exchange cost invoices issued to us will thus be passed on to the supplier without any obligation on our part to check the content.

11. Offsetting, transfer of rights and obligations

Claims on our part can be set off against claims of the supplier. The supplier is not entitled to offset against our claims unless this is mandatory by law.

We are entitled to transfer rights and obligations arising from this contract to third parties with discharging effect without the supplier's separate consent. This transfer shall not give rise to any right of termination or withdrawal on the part of the supplier. Without our prior written consent, the supplier is not entitled to transfer rights and obligations arising from the contractual relationship to third parties.

12. Applicable law and place of jurisdiction

Austrian law applies exclusively. The conflict rules of international private law and the UN Convention on Contracts for the International Sale of Goods are not applicable. The competent court in Vienna shall have exclusive jurisdiction to decide all disputes arising from the business relationship.

13. Other

In the course of fulfilling the contractual obligations and with regard to these GPC, we as well as the supplier are obliged to cooperate and, in particular, to forward all information and documents necessary for fulfilling the contractual relationship and the orders. Should individual provisions of these General Purchasing Terms and Conditions (GPC) be or become invalid, the remaining provisions shall remain valid. Invalid provisions shall be replaced by such permissible provisions which come closest to the agreed intention of the parties.