

# General Terms and Conditions of Purchase (GTCP) of MENCK GmbH

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## 1. Scope of Application

(1) These General Terms and Conditions of Purchase ("GTCP") apply to all individual orders and/or framework orders for goods and/or services placed by MENCK GmbH ("we" or "us") with suppliers and/or service providers (in the following jointly: "Supplier").

(2) Any general business terms and conditions of the Supplier whose content deviates from or contradicts our GTCP do not apply, unless we have expressly consented in writing. This shall also apply if we accept the goods without reservation in spite of the knowledge that the Supplier's general terms and conditions conflict with or deviate from these GTCP.

(3) These GTCP shall also apply to all future transactions with the Supplier without the need to expressly incorporate them by reference in each individual case.

## 2. Conclusion of Contract, Supplier's Duty to Inform upon Conclusion of Contract

(1) A contract between us and the Supplier is concluded when the Supplier accepts our order without any changes.

(2) In case of any deviations between the provisions of an order placed by us and these GTCP, the provisions of our order shall apply.

(3) Offers and cost estimates from a Supplier are free of charge for us. If the Supplier does not by itself manufacture a good to be delivered and/or render a service but uses a third company for this purpose and only trades the goods, it must make reference to this fact in the offer or at the latest on conclusion of the contract. If no such reference is made and if, at the time of conclusion of the contract, we have no reason to believe that the Supplier is not the manufacturer, the Supplier is deemed to be the manufacturer in relation to us.

(4) If we order a product similar to a product we have already ordered from and been supplied with by the Supplier, the Supplier must inform us, at the latest when accepting the order, of any changes to the product and of the production steps and production sites made in the meantime.

(5) Our orders and changes or additions to the orders must be made in text form.

(6) The Supplier shall confirm each order from us in text form without undue delay, but no later than within ten (10) working days from receipt. If an order is not confirmed within ten (10) working days from receipt, it shall be deemed rejected.

A belated acceptance shall be deemed a new offer by the Supplier and shall require acceptance by us.

(7) If a Supplier confirms our individual or framework order (acceptance) it is obliged to execute the delivery.

## 3. Prices and Terms of Supply

(1) The agreed prices are fixed prices including packaging and shipping costs and excluding VAT, unless expressly agreed otherwise.

(2) Unless expressly agreed otherwise, deliveries shall be made FCA (pursuant to the current version of Incoterms) at the Supplier's registered office.

(3) Part deliveries/services are only permitted with our prior consent and notification thereof must be provided before shipment.

## 4. Delivery Dates, Default

(1) Agreed delivery dates and agreed dates for the provision of services are binding. Upon expiry of the agreed delivery date, the Supplier shall automatically be in default.

(2) If delays are to be expected or have occurred the Supplier is obliged to inform us thereof immediately in text form and to set a binding subsequent deadline for the delivery without prejudice to our rights on the grounds of default.

(3) If the Supplier is in default of delivery we are entitled to all statutory rights, including a rescission right and a right to claim compensation.

## 5. Provision of Material

(1) Material provided by us remains our property. It must be stored separately by the Supplier free of charge and with the due care of a prudent businessman and marked as "property of MENCK" (*Eigentum MENCK*). The Supplier shall at its own expense provide for sufficient insurance coverage against accidental destruction or loss of the materials provided by us. This material may only be used to execute our orders. The loss of the material provided and/or damage to the material provided must be notified to us without undue delay and replaced or remedied by the Supplier at its own costs.

(2) If the materials provided by us are processed or transformed (section 950 German Civil Code) this will be done on our behalf as manufacturer so that we directly acquire title in the newly created item. If processing or transformation is carried out from materials belonging to several owners – we will acquire co-ownership (fractional ownership) of the newly created item with the ratio of the value of the materials provided to the value of the other processed/transformed materials at the time of processing/transformation.

## 6. Terms of Delivery, Incoming Goods Inspection, Notification of Defects

(1) If not otherwise agreed in writing, the Supplier is obliged to manufacture the ordered goods and/or render the service by itself.

(2) Each shipment must be accompanied by delivery note indicating our order data. If further documents are required under the order, these must also be delivered in full and without separate request. Deliveries for

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which there are no accompanying documents or where the documents are incomplete are considered by us to be incomplete.

(3) If the Supplier, after prior coordination with us, organises the shipment to a place other than our registered office in Kaltenkirchen (Germany) we must be provided with a shipment note signed by the carrier for the purpose of verifying the invoice.

(4) Acceptance of the goods delivered will be subject to accuracy, completeness and suitability for the use intended under the contract.

(5) After receipt of the goods, we shall inspect the goods within the ordinary course of business for deviations in quality and quantity only. The incoming goods inspection shall be limited to obvious damages to the goods that can be detected by visual inspection of the transport packaging or random samples (e.g., damage to the transport packaging, incorrect or incomplete delivery).

(6) Defects which are recognisable during the incoming goods inspection (apparent defects) shall be reported to the Supplier immediately after delivery. Defects which are not recognisable during the incoming goods inspection (hidden defects) shall be notified to the Supplier immediately after their discovery during the ordinary course of business. A notification of defects within five (5) working days (working days are Monday to Friday, with the exception of public holidays) after delivery (in case of apparent defects) or after discovery of the defects (in case of hidden defects) shall be deemed to be in due time.

(7) If a more detailed inspection of the delivered goods is necessary due to the delivery of defective goods, the Supplier shall bear all associated costs.

(8) Payment does not constitute an acceptance of the goods/services as being in accordance with the contract.

## 7. Place of Performance

The place of performance for the delivery and/or the provision of the service is the place given in the order. If the place of performance is neither specified in our order nor otherwise agreed with the Supplier, the place of performance is the registered office of Menck GmbH in Kaltenkirchen (Germany).

## 8. Transfer of Risk, Retention of Title

(1) Deviating from the provisions of clause 3(2) of these GTCP the risk of damage and accidental loss of the goods shall only transfer to us on handover of the goods at the place of performance (see clause 7 of these GTCP), in the case of acceptance provided by law or agreed by contract, the risk shall only pass to us upon acceptance of the performance by us.

(2) Deliveries shall be made without retention of title. If deliveries are made under retention of title, the Supplier's retention of title expires at the latest upon payment of the purchase price for the delivered goods. Any extended retention of title (*erweiterter oder verlängerter Eigentumsvorbehalt*) shall be excluded.

## 9. Warranty, Liability for Defects, Limitation Period

(1) The Supplier warrants that the goods supplied and/or the services provided are state of the art and free from material defects and defects in title.

(2) If the Supplier shall deliver the goods and/or provide the services in accordance with our specifications, drawings or other requirements, any deviation of the delivery from the requirements of our specifications, drawings or other requirements will constitute a defect in the goods delivered and/or the services provided.

(3) If the delivered goods and/or services provided are defective, the Supplier shall remedy the defect at our discretion free of charge by repair or replacement ("Subsequent Performance"). We are entitled to the statutory warranty rights according to the German Civil Code without restrictions.

(4) If a reasonable grace period for Subsequent Performance has expired unsuccessfully or if in urgent cases in which, due to the special circumstances of the individual case it is unreasonable to set a grace period, we are authorised to repair the defective goods ourselves or have it repaired by a third party and claim the costs from the Supplier.

(5) Irrespective of section 442(1) sentence 2 of the German Civil Code, we shall also be entitled to the statutory warranty rights if the defect remained unknown to us at the time of conclusion of the contract due to gross negligence.

(6) In case of an unjustified request to remedy a defect, we shall only be liable to the Supplier if we recognised, or were grossly negligent in not recognising, that a defect did not actually exist.

(7) During the period in which the delivered goods are not in our custody due to Subsequent Performance being carried out, the Supplier bears the risk of loss. In the event of loss, the Supplier must supply us with the replacement free of charge.

(8) The limitation period for warranty claims/claims for defects shall be three years from the transfer of risk unless longer limitation periods are prescribed by law.

## 10. Intellectual Property Rights, Indemnification, Product Recall, Insurance

(1) The Supplier must ensure that the goods/services supplied and their contractual use by us do not infringe intellectual property rights of third parties.

(2) The Supplier shall indemnify and hold us harmless against any claims made against us by third parties arising from the infringement of intellectual property rights.

(3) The Supplier shall indemnify and hold us harmless against all personal injury or property damage caused by a defect in the item supplied to us.

(4) If we are obliged to conduct a recall campaign due to the delivery of defective goods by the Supplier, all

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cost, expenses, and liabilities associated with such recall campaign shall be borne by the Supplier.

(5) The Supplier is obliged to conclude and maintain adequate business liability and product liability insurance. The Supplier must provide us with a copy of the valid insurance policy at our request free of charge.

## 11. Invoicing, Terms of Payment, Set-off, Right of Retention

(1) The Supplier shall send us the invoice after shipment of the goods/acceptance of the service provided stating all order data. The Invoice shall be sent electronically by the Supplier to the e-mail address specified in our order. If the e-mail address is not specified in the order and nothing else has been agreed with the Supplier, the Supplier shall request the relevant e-mail address from us.

(2) All order confirmations, delivery documents and invoices of the Supplier shall include our order number, article number, delivery quantity and delivery address. If the Supplier fails to comply with this obligation and this leads to delays in our processing of such documents in the ordinary course of business, the payment periods specified in clause 11(5) of these GTCP shall be extended by the period of the delay.

(3) We must be provided with the EU VAT identification number on every invoice provided to us if the Supplier has its registered office in an EU Member State other than Germany.

(4) Partial invoices may only be sent if partial deliveries were agreed.

(5) Unless agreed otherwise, payment shall be made within fourteen (14) days with 3% discount or within thirty (30) days net. The payment deadline begins to run after receipt of the invoice by us, but no earlier than with delivery of the goods at the place of performance (see clause 7 of these GTCP) or our acceptance of the service. Should corrections to the invoices/invoice amounts be necessary due to the operational processes the Supplier is obliged to provide corresponding credit notes or a new invoice.

(6) We are entitled to exercise set-off and retention rights to the extent provided by the statutory provisions. The Supplier may not set-off or retain any amounts unless his underlying counterclaims are undisputed, finally determined by a court or have been accepted by us. In addition, retention rights are excluded if they are not based on the same contractual relationship.

## 12. Liability

Claims for damages of any kind against us and our statutory representatives and vicarious agents are excluded except in cases of intent or gross negligence or if the infringement of a cardinal duty. For the purpose of these terms and conditions cardinal duties are those duties which are essential for proper performance of the contract and on whose fulfilment the Supplier generally relies on or is entitled to rely on. Apart from cases of intent, liability is restricted, however, to the compensation of foreseeable damages typical for this type of contract. The above liability limitations and

exclusions do not apply to liability under the Product Liability Act (*Produkthaftungsgesetz*) or in cases of bodily injury or death. If the Supplier does not assert a compensation claim but a claim to reimbursement of expenses (section 284 German Civil Code), all provisions of this clause 12 apply accordingly.

## 13. Right of Withdrawal, Termination

(1) We are entitled to terminate the order for convenience in whole or in part by giving the Supplier thirty (30) calendar days written notice. In such event we shall pay to the Supplier the value of the delivered but unpaid goods and/or services (provided that such goods and/or services comply with the order and do not have any defects) and proven direct costs reasonably incurred by the Supplier for undelivered goods and/or services. No further compensation will be due to the Supplier.

(2) In the event of Supplier's breach of the order, which is not remedied within forty eight (48) hours from our notification, or such longer or such shorter period reasonably to be granted by us in view of the circumstances involved, we are entitled to terminate or rescind the order and to require the Supplier to indemnify and hold us harmless for any such damages as may have been sustained by us as a result of the Supplier's breach of the order.

(3) We may further terminate the order by notification in text form with immediate effect if (i) an injunction is issued against the Supplier, with material effect on the performance of the order; or (ii) there is a material deterioration in the financial or economic situation of the Supplier or its liquidation is resolved (by its owners or partners or shareholders); or (iii) the Supplier ceases or threatens to cease to carry on a substantial part of its business, whether voluntarily or involuntarily, and this adversely affects or threatens to adversely affect its ability to perform its obligations under the order; or (iv) there is a change of control of the Supplier.

(4) Upon termination according to this clause 13, the Supplier shall immediately at its own cost transfer to us any goods or partly finished goods or any other work results, including complete documentation for the ordered goods and/or services, and shall transfer to us the corresponding intellectual properties.

(5) This GTCP shall not limit either party's right provided by applicable law to terminate the order for cause. All rights and remedies under this GTCP are cumulative and are not exclusive.

## 14. Technical Documentation, Production Aids

(1) Technical documents, tools, production aids, etc. provided by us to the Supplier remain our property; all trademarks, copyrights and other intellectual property rights thereof remain with us.

(2) If we demand their return such items/documents must be returned immediately with all duplicates prepared. The Supplier is not entitled to assert any retention right. These items/documents may only be used to execute the order and may not be handed over

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to unauthorised parties and access may not be otherwise given to them.

(3) The said items/documents may only be duplicated to the extent necessary to execute the order.

(4) Until the return of these items/documents to us the Supplier must carefully handle the items and documents made available by us and ensure that they are not used by unauthorised third parties.

## 15. Confidentiality

(1) The Supplier is obliged to keep strictly confidential – also for a period of five years from the expiry of the contract – all business and trade secrets as well as all proprietary commercial and technical information which has come to its knowledge by virtue of the business relationship with us and may not divulge it to any third party.

(2) The confidentiality obligation does not apply to information which was in the public domain when the contract was concluded or which entered the public domain after the contract was concluded, which was already known to the supplier without a confidentiality obligation prior to its disclosure by us, which the Supplier has demonstrably developed without using confidential information, or of which it has otherwise obtained knowledge in a lawful manner without a breach of a confidentiality obligation.

(3) Publications concerning the orders and/or the services to be provided by the Supplier and the reference thereto as against third parties require our prior written consent.

(4) References in advertising material and other publications to the business relationships with us also require our prior written consent. This includes the use of MENCK lettering, MENCK logos and MENCK product information and images of MENCK products and data.

## 16. Import and Export Regulations, Customs Duties

(1) The Supplier must provide us with a (long-term) supplier's declaration for goods with preferential origin status in accordance with section 62 of the Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 ("Regulation (EU) 2015/2447") free of charge. If the Supplier is unable to provide a long-term supplier's declaration in accordance with Art. 62 Regulation (EU) 2015/2447, the Supplier shall inform us thereof before handing over the goods sold to us. The Supplier shall compensate us for any damage we suffer as a result of the Supplier having declared the origin of the goods incorrectly or the competent authority being unable to verify the origin of the goods due to incorrect or missing certification. This shall not apply if the Supplier proves that he is not at fault.

(2) The Supplier undertakes to comply with the applicable foreign trade regulations (in particular the import and export control and customs provisions).

(3) If the goods/services are imported by us the Supplier is obliged to issue the required declarations

and information at its own costs, to permit the customs authorities to carry out inspections and to provide the necessary official confirmations. The Supplier is also obliged to inform us of any license duties for (re-)exports in the respective export and customs provisions. We also must be notified in writing of the applicable export and customs provisions of the country of origin of the goods and/or services (stating the goods tariff number, country of origin and exact description of the goods).

## 17. Dual-Use Goods

If a Supplier delivers goods which are covered by the applicable US export provisions or the Regulation (EU) 2021/821 of the European Parliament and of the Council dated 20 May 2021 ("EU Dual-Use Regulation") it must proactively inform us thereof in writing before manufacture, at the latest before shipment of the goods. This shall also apply to goods which were/will be manufactured outside the USA but with respect to which the portion of US materials used exceeds the applicable minimum threshold.

## 18. Compliance

The Supplier shall comply with the Supplier Code of Conduct of Menck, which is available at <https://acteon.com/marine-foundations/menck/supplier-lounge/> and which we will provide to the Supplier upon request. The Supplier shall comply with the principles of corporate social responsibility set out therein.

## 19. Miscellaneous

(1) If single or several terms of these GTCP turn out to be or become invalid or void, whether in whole or in part, the validity of the remaining terms of these Purchase Terms shall not be affected hereby. The invalid or void terms shall automatically be replaced by such valid terms which, as closely as possible, reflect the economic purpose of the invalid or void term originally intended by the parties. The same shall apply in case of a gap or omission.

(2) The law of the Federal Republic of Germany shall exclusively apply to these GTCP as well as the contractual relationship between us and the Supplier, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).

(3) In the event of a dispute, the parties will try to settle the dispute by amicable negotiations.

(4) The exclusive place of jurisdiction for all legal disputes arising from or in connection with the contractual relationship between us and the Supplier is our registered office.

If the Supplier has its registered office abroad the claimant is entitled to take recourse to the arbitral tribunal of the German Institution of Arbitration (Deutsche Institution für Schiedsgerichtsbarkeit e.V., DIS) instead of the state courts. Should this be the case, the arbitral tribunal has exclusive jurisdiction. The dispute will be settled in accordance with the Arbitration Rules of the Deutsche Institution für Schiedsgerichtsbarkeit e.V. (DIS). The place of arbitration is Hamburg. The language of the

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proceedings shall be German. The arbitral tribunal will consist of three arbitrators.