

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

---

## 1. Scope of Application

These GTCP apply to all individual or framework orders which we (MENCK GmbH) place with suppliers or service providers (in the following jointly: Supplier). Any general business terms and conditions of the Supplier whose content deviates from or contradicts our GTCP do not apply.

## 2. Offer, Order, Acceptance

### Duty of Supplier to Inform on Conclusion of Contract

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.

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.

Our orders and changes or additions to the orders must be in writing.

The Supplier will confirm each order from us in writing. If an order is not confirmed within 10 working days we are entitled to withdraw the order without incurring any costs.

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

## 3. Prices and Terms of Supply

The agreed prices are fixed prices, unless expressly agreed otherwise.

Deliveries are made FCA Supplier's registered office (pursuant to the current version of Incoterms) including packaging.

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

## 4. Delivery Dates, Default

Agreed delivery dates and dates for the provision of services are binding. If delays are to be expected or have occurred the Supplier is obliged to inform us immediately by email and to set a binding subsequent deadline without prejudice to our rights on the grounds of default.

If the Supplier is in default of delivery we are entitled to unrestricted statutory claims, where appropriate including a rescission right and an entitlement to compensation.

## 5. Provision of Material

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 GmbH" (*Eigentum MENCK GmbH*). This material may only be used to execute our order. The loss of the material provided and/or damage to the material provided must be replaced or remedied by the Supplier at its cost.

If the materials provided by us are processed or reworked (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 altering 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/ altered materials at the time of processing/altering.

## 6. Production, Supply, Acceptance of Goods, Notification of Defects

If not otherwise agreed, the Supplier is obliged to manufacture the ordered goods and / or render a service by itself, see also section 2.

The Supplier must ensure that the goods supplied/other service is/are free of defects and corresponds/responds to the specification and the scope of the order item concerned. 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 which there are no accompanying documents or where the documents are incomplete are considered by us to be incomplete.

If the Supplier, after agreement with us, organises the shipment/provision of the service to a place other than our registered office in Kaltenkirchen we must be provided with a shipment note signed by the carrier for the purpose of verifying the invoice.

Acceptance will be subject to accuracy, completeness and suitability for purpose. We will give notice of concealed defects as soon as these are discovered in the ordinary course of business. A notification of defects within three working days (working days are Monday to Friday, with the exception of public holidays) of gaining knowledge of the defects is considered to be in due time.

The payment of the purchase price does not constitute acknowledgement of a defect-free delivery.

## 7. Place of Performance

The place of performance for the delivery and the provision of the service is the delivery address given in the order.

If nothing else is agreed the place of performance is Kaltenkirchen.

## 8. Transfer of Risk, Acquisition of Title

Deviating from the provisions of Incoterms regarding the FCA clause, in the case of purchase agreements the risk only transfers to us on handover of the goods, in the case of contracts for work and services only on our acceptance.

We acquire title in the items listed in the invoice (material and immaterial goods) at the latest on payment of the invoice issued.

## 9. Warranty

Unless agreed otherwise, we are entitled to the statutory warranty claims without restriction. In urgent cases in which, due to the special circumstances of the individual case and taking due consideration of the interests of the Supplier it is unreasonable to set a short deadline (in particular, if there is a risk to operational safety or in order to avert unusually high consequential damage) we are authorised to remedy, purchase replacements or make improvements at the cost of the

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

---

Supplier. During the period in which the delivered item or the service is not in our custody due to subsequent remedy 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.

If the Supplier has to deliver or render services in accordance with our specifications, drawings or other requirements, any deviation of the delivery or service from the requirements of our specifications, drawings or other requirements will constitute a defect.

## 10. Property Rights, Product Liability

The Supplier must ensure that the goods/services supplied do not infringe property rights of third parties. The Supplier shall indemnify us from all direct and indirect claims of third parties arising from product and producer liability which can be attributed to a defect in the item supplied to the extent that the cause is within the Supplier's organisational sphere or the Supplier himself is liable for the defect for other reasons (for example as quasi manufacturer or importer pursuant to section 4 Product Liability Act) or the Supplier is to be regarded as the manufacturer in relation to us (in particular because of an infringement of the obligation in section 2 (1) of these GTCP).

The Supplier is obliged to conclude 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, Payment Conditions

The Supplier will send us the invoice after shipment of the goods / acceptance of the service provided stating all order data. Partial invoices may only be sent if partial deliveries were agreed.

Unless agreed otherwise, payment will be made after 14 days with 3% discount or after 30 days net. The payment deadline begins to run after receipt of the invoice by us, but no earlier than on our acceptance of the goods or our acceptance of the delivery/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.

The Supplier may not set-off or retain any amounts unless his underlying counterclaims are undisputed or final and absolute. 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 or is entitled to rely. 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 injury to life, body or health. 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 section 12. apply accordingly.

## 13. Technical Documentation, Production Aids

Technical documents, tools, production aids, etc. provided by us remain in our ownership; all trade-mark, copyright and other property rights remain with us. 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 to unauthorised parties and access may not be otherwise given to them. The said items may only be duplicated to the extent necessary to execute the order.

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.

## 14. Confidentiality

The Supplier is obliged to keep confidential any commercial and technical information which is not generally known and which has come to its knowledge by virtue of the business relationship, and may not divulge it to any third party. We also undertake to treat any commercial or technical information of the Supplier which is not generally known confidential and will not divulge it to any third party. 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 unless this was caused by a breach of the confidentiality obligation.

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.

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.

## 15. Import and Export Regulations, Customs Duties

We must be provided with the VAT identification number for supplies and services which originate from an EU Member State other than Germany.

In general, the Supplier must provide us with a (long-term) supplier declaration for goods with preferential origin status free of charge.

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

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 provided with export and customs provisions of the country of origin of the goods and services (stating the goods tariff number, country of origin and exact description of the goods) in detail and in writing.

## 16. Dual-Use Goods

If a Supplier delivers goods which are covered by the US export provisions or the EU Dual-Use Regulation it

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

---

must proactively inform us thereof in writing before manufacture, at the latest before shipment of the goods. Also to be taken into consideration are goods which were/will be manufactured outside the USA but with respect to which the portion of US materials used exceeds the minimum threshold.

## **17. Safety, Environment**

The Supplier must provide all supplies and services in such a way that they comply with the statutory provisions, in particular the safety and environmental protection provisions, including the regulation on hazardous substances and the safety recommendations of the competent German expert bodies or expert associations. Relevant certificates, test certificates and documentation must be provided free of charge in accordance with our requirements. The current safety data sheet pursuant to 91/155/EEC must also be provided for hazardous substances on the first delivery of each order. The Supplier warrants that all Products, and the supplies and services to be provided by it correspond to the state-of-the-art technology in terms of energy efficiency.

## **18. Conflict Minerals**

The Supplier ensures that the goods delivered to us do not, to its best knowledge, contain any conflict minerals. The OECD Due Diligence Guidance must also be taken into consideration.

## **19. Choice of Law; Dispute Resolution**

The law of the Federal Republic of Germany shall apply, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG). In the event of a dispute, the Parties will try to settle the dispute by amicable negotiations.

The exclusive place of jurisdiction is our registered office if the Supplier is a merchant, a legal entity under public law or a special public fund, or if it does not have a general place of jurisdiction in Germany.

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