

Terms and Conditions of Purchase 01.2017

1. General, scope

- These Terms and Conditions of Purchase shall apply to all agreements of ELAFLEX - Gummi Ehlers GmbH and ELAFLEX HIBY Tanktechnik GmbH & Co. KG (both companies referred to individually in the following as "Buyer") regarding the purchase and/or the delivery of movables, regardless of whether the supplier manufactures the goods itself or buys them from suppliers.
- These Terms and Conditions of Purchase shall apply exclusively. Any deviating, conflicting, or supplemental terms and conditions of the supplier shall not apply. This rule shall also apply even if the Buyer does not object to any terms and conditions of the supplier.

2. Entering into the agreement and delivery date

- Any order by the Buyer is to be confirmed by the supplier in writing without undue delay and with the purchase order number provided (acceptance). Any late acceptance shall be deemed a new offer and shall require acceptance by the Buyer.
- The delivery date stated by the Buyer in the order shall be binding.
- If the supplier cannot meet the stipulated delivery date – for any reasons – then it shall be obligated to inform the Buyer in writing without undue delay.
- In the event of delayed delivery, the Buyer shall be able to demand for each full calendar week a fixed-rate compensation of its delay-related damages in the amount of 1% of the net price of the goods that were delivered late, but no more than 5% of the total net price of the goods delivered late. The Buyer reserves the right to substantiate greater damage. The supplier shall reserve the right to substantiate that no damage or materially less damage occurred. The Buyer expressly reserves the right to assert additional statutory claims.
- Receipt of the goods by the Buyer at the delivery address listed by the Buyer in the order shall be decisive for determining compliance with the delivery date. If the supplier is to perform setup and installation work, then the report of readiness for approval (Anzeige der Abnahmefähigkeit) shall be decisive for determining compliance with the delivery date.

3. Passing of risk and delivery

- The risk of accidental loss or accidental deterioration shall pass to the Buyer upon delivery of the goods to the delivery address listed in the order by the Buyer. Insofar as the supplier is also responsible for the setup or installation of the goods in addition to their delivery, and in the event of the performance of services by the supplier, then the risk shall pass upon approval. The supplier shall have to take out appropriate transportation insurance at its own expense.
- Delivery shall be free domicile. The supplier shall bear the shipping and packaging expenses as well as the expenses for customs formalities and customs.
- A delivery note shall have to be included in the delivery, stating: (i) the issue date and the date of shipment, (ii) the purchase order number and supplier designation, and (iii) the contents of the delivery (article number and amount for each item). If the delivery note is missing or if the information in the delivery note is incomplete, then any delays in processing and payment caused thereby shall not be the responsibility of the Buyer.

4. Prices and terms and conditions of payment

- The price listed in the order shall be binding.
- The price shall include all services and additional services of the supplier (e.g., setup and installation).
- Two copies of the invoices shall have to be issued, listing (i) the issue date and the date of shipment, (ii) the purchase order number and supplier designation, (iii) the delivery date, and (iv) the contents of the delivery (article number and amount for each item). Invoice copies shall have to be identified as duplicates. If the information in the invoice is incomplete, then any delays in payment caused thereby shall not be the responsibility of the Buyer.
- The stipulated price shall be payable within thirty (30) calendar days. If the Buyer renders a payment within fourteen (14) calendar days, then the supplier shall grant an early-payment discount of 3% on the net invoice amount.
- The payment period shall commence as soon as the delivery or service has been completely performed and the Buyer has received a proper invoice. If the supplier must provide material tests, test protocols, quality documents, or other documents, then the completeness of the delivery or service shall assume the receipt of these documents.
- An early-payment discount shall also be permissible if the Buyer offsets charges or withholds payment in the appropriate amount due to defects. In the latter case, the payment period shall commence after complete remedy of defects.

5. Retention of title and confidentiality

- The Buyer shall retain title rights and copyrights to illustrations, plans, drawings, calculations, implementation instructions, product descriptions, and other documents. Such documents shall be used exclusively for the services contractually owed and shall be returned to the Buyer after the completion of the Agreement. These documents as well as the entire content of the Agreement shall be kept secret from third parties even after the Agreement ends. The obligation to maintain confidentiality shall be extinguished only if and to the extent that the knowledge contained in the documents provided has become generally known.
- Clause 5.1 above shall also apply to substances and materials (e.g., software, product parts, finished and semi-finished products) as well as to tools, templates, forms, samples, models, and other objects which the Buyer provides to the supplier for manufacturing. The supplier shall be obligated (i) to use such objects exclusively for the goods ordered by the Buyer and (ii) not to encumber them with any third-party rights without the prior written consent of the Buyer. Such objects shall be stored separately – provided that they are not processed – at the expense of the supplier and shall be insured to the appropriate extent against destruction and loss. The supplier is to perform any necessary maintenance and inspection work on such objects in a timely fashion at its own expense.
- If the supplier breaches its obligations in accordance with Clause 5.1 and Clause 5.2, then the Buyer shall be able to request the return of the documents listed in Clause 5.1 and the objects listed in Clause 5.2. The Buyer shall reserve the right to assert additional rights.
- Without the prior written consent of the Buyer, the supplier shall not refer to its business relationship with the Buyer in any advertising materials, brochures, on its homepage, or otherwise.
- The supplier shall obligate its employees to maintain confidentiality in accordance with Clause 5 herein.
- If tools are manufactured for the Buyer in accordance with individual agreements, then the assumption of tool expenses by the Buyer shall have to be stipulated separately. In this case, the one-time tool price shall encompass all manufacturing expenses, including any corrective measures and sampling.
- The supplier shall process or transmute the objects provided by the Buyer for the Buyer. If the goods owned by the Buyer are processed or transmuted with other objects which are not the property of the Buyer, then the Buyer shall be a (co-) manufacturer as contemplated under § 950 of the Civil Code (the "BGB") and shall acquire joint ownership of the newly created object in proportion to the value of the goods owned by the Buyer (purchase price plus value-added tax) compared to the other objects processed or transmuted at the time of processing or transmutation.
- If the objects provided by the Buyer are inseparably commingled or combined with other objects that do not belong to the Buyer, then the Buyer shall acquire joint ownership of the new object in proportion to the value of the goods owned by the Buyer (purchase price plus value-added tax) compared to the other objects commingled or combined at the time of commingling or combination. If the commingling or combination occurs in such a manner that the other commingled or combined objects of the supplier must be considered the main component, then it shall be deemed as stipulated that the Buyer shall acquire proportional joint ownership.
- The supplier shall store the solely owned or jointly owned property for the Buyer.

6. Warranty, defect rights of the Buyer, product liability

- The supplier guarantees and warrants that all of the goods to be delivered comply with the latest state of the art, the pertinent legal regulations, and the provisions and guidelines of government agencies, employer's liability insurance associations and trade associations.

- The supplier guarantees and warrants that its operational processes comply with the pertinent legal regulations and the provisions and guidelines of government agencies, employer's liability insurance associations and trade associations.
 - The supplier shall be obligated to submit to the Buyer the material safety data sheets that apply to the goods to be delivered by no later than within eight (8) workdays of the receipt of the order. The supplier shall indemnify the Buyer against all recourse claims of third parties if the safety data sheets were not delivered to the Buyer or were delivered late. The same shall apply in the event of any subsequent amendments to the material safety data sheets.
 - The values determined by incoming goods inspection of the Buyer shall be decisive for compliance with guaranteed characteristics, quantities, dimensions, and weights.
 - Regulatory provisions of law shall apply to the rights of the Buyer in the event of material defects or defects of title of the goods (including wrong delivery and short delivery as well as improper assembly, defective assembly instructions, operating instructions or user manuals) and in case of other violation of duties by the supplier, provided nothing else has been stipulated in the following.
 - The legal provisions of §§ 377 and 381 of the Handelsgesetzbuch (the Commercial Code) shall apply to the commercial duty to examine and give notice of defects subject to the following condition: notices of defects shall be deemed to have been made without undue delay and in a timely manner insofar as they are received by the supplier within a period of five (5) working days, commencing with the receipt of the goods by the Buyer; in the case of hidden defects, commencing with their discovery.
 - If the supplier does not fulfill its obligation to supplementary performance – by means of defect elimination (subsequent improvement) or delivery of defect-free goods (replacement delivery) at the discretion of the Buyer – within an appropriate period granted by the Buyer, then the Buyer shall be allowed to remedy the defect itself and to request reimbursement of the expenses for such from the supplier. If remedy by the supplier fails or is unreasonable for the Buyer (e.g., due to particular urgency, risk to operational safety, or impending occurrence of unreasonable damage), then no period for supplementary performance shall have to be set. The Buyer shall inform the supplier of such conditions without undue delay, beforehand if possible.
 - Apart therefrom, in the event of material defect or defective title, the Buyer shall have the right to reduce the purchase price or to withdraw from the Agreement, in accordance with provisions of law, and shall also have a claim for compensatory damages and for reimbursement of expenses in accordance with provisions of law.
 - In derogation of § 438 para. 1 sent. 3 BGB, the general limitation period for defect claims shall be three (3) years from delivery of the goods to the Buyer. Insofar as an acceptance is stipulated, the limitation period shall commence with acceptance.
 - Upon the seller's receipt of a written notification of defect from the Buyer, the period of limitation for defect claims shall be tolled until the supplier (i) rejects the claims of the Buyer or (ii) declares the defect remedied or (iii) otherwise refuses to continue negotiations regarding claims of the Buyer. In the event of replacement delivery or subsequent improvement, the period of limitation for replaced and subsequently improved parts shall begin anew unless based on the behavior of the supplier the Buyer had to proceed from the assumption that the supplier did not consider itself to be obligated to supplementary performance but performed the replacement delivery or subsequent improvement only for the sake of goodwill or similar reasons.
 - The objects delivered are to be identified in accordance with the specifications of the Buyer so that they are permanently recognizable as products of the supplier. The supplier shall be obligated to perform appropriate quality assurance in accordance with the latest state of the art and to substantiate such to the Buyer upon request. For this purpose, a suitable quality assurance agreement shall be entered into, to the extent that the Buyer deems such to be necessary.
 - To the extent that the supplier is responsible for product damage, the supplier shall be obligated to indemnify the Buyer against any third-party claims upon first request to the extent that (i) the cause is within the scope of the supplier's control and organization and (ii) the supplier is personally liable in its external relation to the third parties.
 - Within the scope of its obligation to indemnify, the supplier shall also be obligated to reimburse the Buyer for any expenditures as contemplated under §§ 683, 670 BGB or in accordance with §§ 830, 840, 426 BGB, which expenditures result from or in connection with claims by third parties, including recall actions performed by the Buyer. The Buyer shall inform the supplier regarding the content and scope of the recall measures – to the extent possible and reasonable – and shall give the supplier an opportunity to make a statement. Any additional legal claims shall remain unaffected.
 - The supplier shall be obligated (i) to take out and to maintain product liability insurance with appropriate coverage and (ii) to submit the insurance certificate upon request to the Buyer for inspection.
- ## 7. Property rights
- In accordance with Clause 7.2, the supplier shall assume the responsibility that the goods supplied by it do not infringe upon the intellectual property rights of any third parties in countries of the European Union or in other countries in which it manufactures goods or has goods manufactured.
 - The supplier shall indemnify the Buyer upon first written request against any third-party claims raised due to the infringement of commercial property rights listed in Clause 7.1 and shall reimburse the Buyer for all necessary expenditures in connection with these claims. Such shall not apply to the extent that the supplier substantiates that the supplier is neither responsible for the violation of property rights nor should have known – using the care of a prudent merchant – of the violation at the time of the delivery.
 - The Buyer shall have the right to obtain – at the expense of the supplier – permission from the rights holder for the use of the objects and to be delivered and services in question.
 - Any further legal claims of the Buyer due to defects in title for the delivered goods shall remain unaffected.
- ## 8. Supplier declaration
- To the extent legally possible, in the order confirmation and in the invoice the supplier shall submit a supplier's declaration in accordance with Council Regulation (EC) No. 1207/2001 dated 11 June 2001. In the case of third-country products, the country of origin and the customs number shall also have to be included.
- ## 9. Place of performance
- The place of performance shall be the delivery address listed by the Buyer in the order.
- ## 10. Applicable law and jurisdiction
- The substantive law of the Federal Republic of Germany shall exclusively apply. The provisions of the United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 (CISG) shall be precluded.
 - The jurisdiction shall be in Hamburg, Germany, provided that the supplier is a merchant, a legal person under public law, or a special asset under public law. However, the Buyer shall also have the right to initiate legal proceedings against the supplier at the supplier's place of general jurisdiction.
- ## 11. Final provisions
- In order to be effective, any ancillary agreements, amendments, and/or restatements to these Terms and Conditions of Purchase shall require the written-form. Such shall also apply to any amendments to this written-form clause itself.
 - To the extent that nothing else has been stipulated and that no compulsory provisions of law are opposed thereto, transmission of the signed document via fax or via e-mail shall suffice to maintain the requirement of the written-form, but not, however, other telecommunications means of transmission, e.g., e-mail without a qualified electronic signature as contemplated under 'the German Digital Signature Act'.
 - Should any provision of these Terms and Conditions of Purchase be or become ineffective or unenforceable, then such shall be without prejudice to the validity of the remaining provisions of these Terms and Conditions of Purchase. The contracting partners shall be obligated to replace the ineffective or unenforceable provision with a provision that approximates the business spirit and purpose of the omitted provision as closely as possible in accordance with legal requirements.