

Terms and Conditions of GTM Testing and Metrology GmbH(GTM)

GTM expressly rejects any additional or contradictory Terms and Conditions in Quotes, Order Acceptance Documents or Confirmations from the supplier.

I. Applicability, contradictory terms and conditions, and quote

1. These Terms and Conditions (hereinafter referred to as “T&Cs”) shall apply exclusively. Different terms and conditions of the Supplier or other agreements that deviate from these T&Cs shall apply only if they have been expressly acknowledged by GTM in text form within the meaning of § 126 b German Civil Code (on paper or via electronic data transmission) on the conclusion of the Contract. This written form requirement shall not apply to amendments or additions agreed after the conclusion of the Contract.
2. Purchase orders shall be valid only with a handwritten signature, with the exception of orders sent via data transmission or EDP printouts. GTM is bound to its purchase orders for a period of ten working days (Saturday is not a working day).
3. Notwithstanding the above, when the Supplier accepts a purchase order in text form or begins to provide the goods/services that are the object of the purchase order, the Supplier is deemed to have accepted said purchase order from GTM as well as these T&Cs in their entirety without change. Any accepted purchase order or any otherwise agreed contract on the delivery of contractual items will be referred to as a “Supply Contract” within the meaning of these T&Cs.
4. These T&Cs apply solely to persons who are professionally active in a commercial or self-employed capacity (“entrepreneurs”).

II. Scope of services and special obligations of the Supplier

1. The Supplier’s scope of services shall be based, in particular, on the agreed specifications and descriptions of features, the purchase order from GTM, and these T&Cs in the aforementioned order of precedence.
2. The Supplier shall check all information and any materials given to it for the execution of the Supply Contract (free issue materials), to ensure their suitability for the purpose intended by GTM and its end customer. If the Supplier finds that changes or corrections to the contractual items or free issue materials are required or advisable, it shall notify GTM to this effect without delay. The Supplier shall ensure that it is aware in good time of all significant data and circumstances relevant to the fulfilment of its contractual obligations, and of the intended use of the supplied items by GTM.

III. Information and free issue materials from GTM

1. GTM shall retain ownership and all copyrights, other intellectual proprietary rights and rights of use to diagrams, drawings, calculations, and other documents or materials that it makes available to the Supplier (free issue materials).
2. Free issue materials shall be processed for GTM and free issue parts shall be assembled for GTM. GTM shall have co-ownership of products manufactured using these parts and materials, in the same ratio as the value of the free issue materials to the value of the complete product. The Supplier shall therefore keep the complete product for GTM. The product, which is co-owned by GTM, shall neither be pledged to third parties nor pledged as security. The Supplier is under obligation to notify GTM immediately in writing or in text form regarding seizures or other interventions by third parties in respect of the products are co-owned by GTM.

IV. Change requests and duty to seek approval in respect of contracts for work and job order production

1. In respect of contracts for work and job order production, GTM shall be entitled at any time to demand that the Supplier make changes to the contractual items to be produced. These shall then be implemented without delay on the basis of these T&Cs. If the agreed costs of the contractual items or agreed deadlines can not be adhered to as a result, the Supplier shall notify GTM to this effect without delay, and shall work to adapt the agreed terms and conditions under consideration of both parties’ mutual interests.

2. Before starting the agreed production of the contractual items, the Supplier shall submit all production documents to GTM for its approval. Approval of the documents does not release the Supplier from its contractual obligations or from liability toward GTM or third parties.
3. Changes by the Supplier to approved contractual items and production processes shall require new prior approval from GTM. To this aim, the Supplier shall submit planned changes to GTM for approval as early as possible, but at least one month before the planned change is introduced.

V. Prices/Payment terms

1. Unless billing by units based on negotiated hourly rates has been expressly agreed in text form, the agreed prices shall be fixed flat-rate prices – on delivery of tangible items to our plant/warehouse in Ulm in accordance with INCOTERMS 2010 DDP – plus the applicable statutory sales tax.
2. Unless other payment terms have been agreed, the purchase price shall be paid within 14 days, counting from the provision of goods/services in accordance with the Contract, including documentation and receipt of a proper and verifiable invoice, with 3% cash discount, or within 30 days net.
3. Submitted invoices shall state the invoice date, supplier number, purchase order number, part number, quantity, and unit price. The invoice shall also contain all authorized details for an input tax deduction, in particular the tax number or sales tax ID, invoice number and other mandatory details of a supplier invoice pursuant to the relevant statutory regulations. If the invoice does not contain the above mentioned data, GTM is not obliged to pay the sales tax shown. If GTM is refused the input tax deduction due to an invoice that is not proper, the Supplier shall refund the sales tax paid by GTM.
4. Payments do not imply acknowledgment that the delivery conforms to the Contract.

VI. Delivery time, delivery and transfer of risk

1. The delivery time specified in the purchase order is binding. On-time delivery means that the delivery must have been received at the receipt point specified by GTM.
2. The Supplier shall notify GTM of each shipment immediately on the date of shipping by means of a delivery note in text form.
3. GTM is not obliged to accept contractual items delivered before the agreed delivery date. The Supplier shall bear the risk of loss and deterioration for contractual items delivered before the delivery date.
4. GTM is entitled to return any overdeliveries at the expense of the Supplier. The Supplier shall bear the risk of loss and deterioration of overdeliveries, unless GTM or its lawful agents or vicarious agents have caused the loss or deterioration through intent or gross negligence.
5. Unless otherwise specified by GTM, the Supplier shall enclose a delivery note with each delivery. The delivery note shall contain the purchase order number, item number, and supplier number. Likewise, documents required by GTM on the basis of more detailed specifications, such as technical documentation, shall be attached in text form.
6. Delivery shall be made to our plant/warehouse in Ulm in accordance with INCOTERMS 2010 DDP, free domicile (transfer of risk), including transport insurance, packaging, and all ancillary costs.
7. GTM reserves the right to appoint a carrier for the purpose of transport. This carrier is not a vicarious agent of GTM; GTM shall be responsible solely for possible errors in selection.

VII. Retention of title of the Supplier

1. GTM shall not accept any extension or expansion of the Supplier's retention of title in respect of the acquisition of ownership by GTM.

VIII. Duty to notify of the Supplier, delays and compensation

1. The Supplier is under obligation to notify GTM immediately in text form if circumstances arise or are foreseen by the Supplier that would prevent adherence to the agreed delivery time, quantity or quality.
2. Such notification does not under any circumstances release the Supplier from its obligations regarding delays in services. Therefore, GTM continues to hold all rights arising from the Supply Contract resulting from or in connection with the delay by the Supplier, despite a postponement of delivery dates.
3. In the event of a delay by the Supplier in the performance of its contractual obligations (including technical documentation, for example), GTM shall be entitled to demand lump-sum compensation from the Supplier.

The amount shall be 0.2% of the value of the delayed service for each started working day of the delay, but shall not exceed 5% of the value of the delayed service, unless the Supplier proves that damages are lower or GTM proves that damages are higher. The agreement and enforcement of lump-sum compensation shall not affect other claims and rights to which GTM is entitled under the applicable law. Any lump-sum compensation paid by the Supplier shall be credited against any further claims for damages by GTM.

4. The unconditional acceptance of a delayed delivery or service by GTM does not imply that it waives its entitlement to claim for damages.

IX. Quality management/Incoming goods inspection/Obligation to notify in respect of defects

1. The Supplier undertakes to continually monitor the quality of its output. To this end, the Supplier shall use a quality assurance system, of which proof shall be submitted to GTM upon request and which shall be optimized if necessary.
2. GTM also has a quality assurance system and, in accordance with the quality standard, aims to adapt its own incoming goods inspection so as to avoid complete duplicate checks.
3. GTM shall check the identity, quantity and quality of a reasonable random sample of contractual items and inspect the delivery for visible transport damage. GTM shall immediately notify the Supplier in respect of any visible defects found. GTM shall notify the Supplier of any non-obvious defects not discovered during this inspection immediately, as soon as they are identified during the normal course of business.

X. Warranty

1. The Supplier guarantees that all contractual items that it delivers:
 - a. conform to the specifications, samples, drawings, and other requirements specifically demanded of it
 - b. are free from defects, particularly in terms of design, manufacture and material
 - c. are of market and industry-standard quality
 - d. do not infringe the rights of third parties due to their delivery, normal use or any other use, and
 - e. are suitable for the specific purpose for which GTM ordered them.
2. The Supplier guarantees that its supplied items include everything that is required for smooth, compliant, reliable and cost-effective use, particularly in conjunction with the machines and systems to be produced or already produced by GTM, that they are suitable for the intended purpose, and that they conform to the latest science and technology standards. In providing the services, the Supplier shall observe all relevant standards, laws and legal provisions under the applicable law, and shall adhere to the generally recognized safety regulations and the corresponding GTM standards.
3. If the aforementioned warranties are not met and the contractual items are therefore defective, GTM shall be entitled either to demand that the Supplier repair the contractual items at his own risk and expense or replace them with contractual items that are free from defects, at its discretion. If the Supplier does not meet this obligation despite a reasonable period of grace, or if immediate action is required in order to prevent further damage, GTM shall be entitled to repair the contractual items itself or have them repaired by third parties, at the Supplier's expense.
4. The Supplier shall reimburse GTM for all costs incurred or yet to be incurred in connection with the repair or the replacement of the defective contractual items.
5. The warranty period shall be 24 months from the transfer of risk to GTM. If GTM and the Supplier have agreed on an acceptance test for the contractual items, or if this is required by the applicable law, the warranty period shall be 24 months from the acceptance test. Claims from GTM that originated within this warranty period shall expire six months after the claim was made, at the earliest, but not before the end of the agreed limitation period.
6. This shall not affect further or additional statutory or contractual claims on the part of GTM.
7. The place of performance for warranty claims is the place in which the contractual items are located at the time the defect is detected.

XI. Proprietary rights of third parties

1. The Supplier guarantees that the supplied contractual items are free from the rights of third parties and that their intended commercial use by GTM or its customers does not violate the proprietary rights of third parties.
2. The Supplier shall indemnify GTM in full against all third party claims in relation to the violation of proprietary rights. In particular, the Supplier shall compensate GTM for damages in the event that further processing, delivery or use by GTM or its customers is prohibited due to a violation of proprietary rights. Alternatively, the Supplier shall purchase a license from the owner of the proprietary rights, at GTM's discretion.
3. The aforementioned indemnity obligation shall not apply if the violation of proprietary rights solely affects concrete instructions (e.g., technical drawings and specifications) from GTM.

XII. Liability, indemnity, and insurance cover

1. The Supplier is obligated to indemnify GTM when first requested to do so from all claims originating directly or indirectly (including claims pertaining to death, personal injury, health, ownership or arising from other rights), and from damages, costs, expenses and losses – including the costs of any legal dispute or any necessary modifications or recalls – that were caused by the delivery of defective contractual items or the violation of another contractual obligation. This shall not apply if the Supplier is not at fault, where liability is based on fault under the law.
2. If the Supplier needs to perform work on the premises of GTM or one of its customers, the Supplier shall take all the necessary precautions to prevent harm to persons or damage to property during the course of this work. The Supplier shall reimburse GTM or indemnify GTM against all damages, costs and expenses incurred due to the Supplier's work on the premises, unless the Supplier was not at fault.
3. The Supplier shall be liable for the fault of employees or subcontractors to the same extent as for itself.
4. The Supplier is under obligation to take out and secure industry-standard insurance cover that is appropriate in amount and legal basis, and shall submit proof of such insurance to GTM on request. The Supplier hereby assigns in advance all its payment claims against the insurer to GTM, insofar as they result from damages in connection with the subject matter of the Contract. GTM hereby accepts this assignment. The Supplier's liability is not limited by the taking out of insurance cover and the assignment of insurance claims.
5. This shall not affect further or additional statutory or contractual claims on the part of GTM.

XIII. Assignment of claims

1. An assignment of claims is only permitted with the approval of GTM in text form.

XIV. Use of subcontractors

1. The Supplier may use a subcontractor to perform services due. The subcontractor must be reliable and well qualified to perform the services due.
2. The Supplier shall place the subcontractor under obligation to adhere to the agreements with GTM, and in particular to agree to the obligations in Clause 15.
3. In the event that the Supplier defaults and claims are asserted against GTM by third parties, the Supplier shall release GTM from any such claims when first requested to do so.

XV. Personnel of the Supplier, minimum wage

1. The Supplier shall always make its deliveries and perform its services using its own employees, who are employed for the performance of the services and instructed in accordance with the statutory provisions.
2. The Supplier hereby undertakes to ensure that it will comply with labor, social insurance, and taxation laws and other obligations in respect of its employees or any agency workers it may employ, in particular in relation to the minimum wage law. The obligations of the Supplier pursuant to the minimum wage law include, but are not limited to, the obligation to pay a wage at least equivalent to the statutory minimum wage no later than the due dates stipulated by the minimum wage law, the obligation to record the beginning, end, and duration of daily working hours, and the obligation to keep these records.
3. The Supplier undertakes to submit proof, through suitable documentation (e.g., separate bank transfer slips), of its fulfilment of the aforementioned obligations, in particular in respect of the payment of the minimum wage to its employees or to the employees of subcontractors, whenever requested to do so.

4. In the event of a violation of obligations arising from the minimum wage law on the part of the Supplier or one of its subcontractors, and of claims against GTM by third parties as a result of this violation, the Supplier shall indemnify GTM against all such claims and undertakes to pay the resulting damages itself.

XVI. Applicable law and place of jurisdiction

1. The Contract and the customer-supplier relationships arising from it shall be subject to the substantive law of the Federal Republic of Germany. The validity of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded.
2. The sole place of jurisdiction for any disputes arising in connection with or from this Contract shall be GTM's place of business. GTM is entitled to bring legal action against the Supplier at the competent court at its place of business.