



## General Terms and Conditions of Sale and Delivery of Arno Graul GmbH

Valid as of May 1, 2022

### 1. Scope

- (1) These General Terms and Conditions of Sale and Delivery (GTC) apply to all contracts (hereinafter: "Contracts") concluded by Arno Graul GmbH (hereinafter: "we") with companies as defined by Section 14 German Civil Code (BGB), a legal person under public law or a special fund under public law (hereinafter: "Customer") and will apply in particular to Contracts for the sale and/or delivery of goods (hereinafter "Goods") as well as services provided in connection therewith. The GTC do not apply to consumers within the meaning of Section 13 BGB. We hereby expressly reject the validity of any purchasing conditions or other conditions used by the Customer; these do not form part of the Contract even if we execute the Contracts without reservation in the knowledge of purchasing conditions or other conditions used by the Customer which are contrary to or different from these GTC.
- (2) Deviations from and additions to these GTC are only valid with our express written confirmation and only apply to the Contract for which they have been agreed. This also applies to the assumption of guarantees.
- (3) Our GTC also apply as a framework agreement for all future offers and Contracts for the sale and/or delivery of movable items with the same Customer, without the need for us to refer to them again in every case.

### 2. Offers, Conclusion of Contracts, Right to Make Changes

- (1) Our offers are always subject to change and non-binding. The Customer's purchase order constitutes an offer to enter into a binding agreement. Unless otherwise indicated in the purchase order, we are entitled to accept this offer of an agreement within 14 calendar days from receipt by us. The Contract comes into effect in accordance with our order confirmation unless the Customer rejects the order confirmation within five (5) calendar days.
- (2) We reserve all rights of ownership and copyright in respect of illustrations, drawings, calculations and other files and documentation. The Customer may not make these available to third parties without our prior written consent. This applies in particular to files and documents that are marked confidential. Documents such as e.g. templates, brochures, catalogues, illustrations, drawings and indications of weight and size are only approximate guides unless declared, expressly and in writing, to be binding.
- (3) We reserve the right to make minor changes to the Goods that are customary in the trade. In addition, we are entitled to modify the Goods where this is necessary as a result of a technical development in the production process and/or the Goods, and the modification is reasonable for the Customer.

### 3. Prices, Terms of Payment and Delay in Payment

- (1) Unless otherwise agreed in writing, our prices current at the time of conclusion of the Contract will always apply. All prices apply "ex works" (EXW INCOTERMS 2020) and are exclusive of packaging, the applicable value added tax and other taxes, customs duty, fees and charges, unless otherwise agreed in writing.
- (2) We reserve the right to modify the prices if, following conclusion of the Contract, there is a reduction or increase in costs, particularly due to wage agreements, changes in the price of materials and energy or changes in transport costs, unless execution of the Contract is due to take place within four months of conclusion of the Contract. The Customer will be furnished with proof of cost increases upon request.
- (3) Unless otherwise agreed in writing, invoices are due for payment within 14 calendar days of delivery and receipt of the invoice by the Customer, without deductions.

- (4) Unless otherwise agreed in writing, bills of exchange and cheques are not permitted methods of payment.
- (5) The Customer is only entitled to a set-off or retention, even after due notice of defects, if its counter-claims have been upheld by a final court judgement, are undisputed or are reciprocal (synallagmatic) to the main claim so that, in the case of defective Goods, the Customer's counter-claims, particularly under Clause 8 (8), sentence 2 of these GTC, remain unaffected.
- (6) In the event that, following conclusion of the Contract, there is a significant deterioration or change in the Customer's financial circumstances, which jeopardises our right to counter-performance, or if such a situation already existed for the Customer at the time of conclusion of the Contract but only becomes known to us subsequently, we may refuse to effect performance until counter-performance has been completed. A significant deterioration is particularly likely in the event of enforcement measures against the Customer, rejection of a major loan, the issuing of bad cheques and bill protests. In such cases, we can impose on the Customer a reasonable time limit for counter-performance or provision of security concurrent to our own performance. If counter-performance or provision of security is not then effected, we are entitled to rescind the Contract. This applies without prejudice to our other statutory rights.

#### 4. Delivery Dates and Performance Periods

- (1) Delivery dates and performance periods are only binding if we confirm this expressly and in writing. Commencement of the delivery period requires clarification of all technical questions between the contracting parties.
- (2) Delivery dates and performance periods will be extended by a reasonable amount if the Customer fails to comply on time with its duty to cooperate, or requires changes to the Goods. The Customer is in particular responsible for providing us with all the documents, information, templates, samples and other information and items, which it is required to submit, on time and in the correct format, and, where applicable, to create the technical, structural, staffing and organisational conditions for deployment of the Goods or similar services (e.g. assembly, installation, entry into service, set-up/adjustment).
- (3) Compliance with delivery dates and performance periods is subject to the proviso that we receive correct and on-time delivery from our own suppliers. We will notify the Customer as soon as possible of any impending delays.
- (4) External occurrences that are unrelated to business operations and cannot be averted even by exercising the utmost reasonable care (hereinafter: Force Majeure), in particular floods, earthquakes and other natural disasters, disease, epidemics, pandemics, war, civil disturbance, embargoes and other official measures or restrictions, will release the contracting parties from their performance obligations for the duration of the disruption and to the extent of its effects.
- (5) The contracting party that is prevented from effecting contractual performance due to Force Majeure is obliged (i) to notify the other party, where reasonable in writing and without delay, of the occurrence of Force Majeure and regularly report in writing on its likely impact, (ii) to take all reasonable measures to avert the obstruction of contractual performance and bring it to an end and (iii) to take all reasonable measures to mitigate the consequences of the Force Majeure for the other respective party.
- (6) Where the occurrences releasing the parties from their performance obligations continue for longer than eight (8) weeks, or if it is likely that the said occurrences will last longer than eight (8) weeks, the respective recipient of performance will be entitled to rescind the Contract that is affected by the said occurrences. Insofar as the Contract is a continuing obligation, the respective recipient of performance is entitled to effect extraordinary termination accordingly.

#### 5. Delivery and Transfer of Risk

- (1) Deliveries will be "ex works" (EXW INCOTERMS 2020), unless otherwise agreed in writing.



- (2) Partial deliveries are permitted provided that this is reasonable for the Customer.
- (3) Where it is agreed, by way of an exception, that we are to effect shipment, we will send the Goods to the destination specified by the Customer. This will take place at the Customer's expense - including as regards the packaging. We are entitled to specify the shipping method (in particular the transport company and shipping route) and packaging according to our duly exercised discretion. In the cases referred to in sentence 1 of this clause, risk will pass to the Customer upon receipt by the Customer of our notification of readiness for dispatch or - if the latter is not provided for in the Contract - no later than on hand-over of the Goods to the freight forwarder, carrier or other transport agent. This also applies where partial deliveries take place or if we have also assumed performance of other services (e.g. shipping, transport or installation).
- (4) Where it is agreed, by way of an exception, that we are to effect delivery, the Customer will provide expert personnel and any necessary technical equipment (e.g. forklift) in good time to ensure that unloading takes place in a manner consistent with the Contract. The Customer will ensure that the transport vehicle can drive straight to the unloading point and that it can be unloaded there without delay. If these conditions are not met, the Customer will bear the resulting additional expenditure and loss.
- (5) If the Customer culpably breaches its duty to cooperate and thereby delays delivery of the Goods or is in default of acceptance, the Customer will bear the resulting additional expenditure. This includes, in particular, storage costs amounting to at least 0.5% of the net invoice amount for the relevant Goods for every month or part thereof, and any other damages arising. We expressly reserve the right to assert further claims.
- (6) In the event of default on acceptance or delay in delivery for which the Customer is responsible (e.g. culpable breach of duty to cooperate), the risk of accidental destruction or deterioration of the Goods will pass to the Customer.

## 6. Delayed Delivery

- (1) In the event of delayed delivery, we are liable in accordance with the statutory provisions provided the Contract is a forward transaction (i.e. "time is of the essence" contract) or the Customer no longer has any interest in further execution of the Contract. In this case, our liability is limited to foreseeable loss which is typical of such Contracts provided we have not acted with intent, and no loss of life, physical injury or damage to health has occurred.
- (2) In other respects, in the case of delayed delivery, the Customer may, in addition to performance, claim compensation for any loss arising from the delay. This right to damages in addition to performance is, however, limited to 0.5% of the net invoice amount for the relevant delivery for each full week of delay up to a total maximum of 5% of the net invoice amount for the relevant delivery, provided we have not acted with intent or gross negligence, and no loss of life, physical injury or damage to health has occurred. This applies without prejudice to the Customer's right to rescind the Contract following the expiry of a reasonable extension of time and/or to claim damages for non-performance pursuant to Clause 11.

## 7. Reservation of Title

- (1) We reserve title to the delivered Goods (hereinafter: "Reserved Goods") until payment in full of all our current and future claims under the Contract and under an ongoing business relationship (secured claims).
- (2) Reserved Goods must not be pledged or assigned by way of security. In the event of an attachment or other third-party interference with the Reserved Goods, the Customer must notify us in writing, without delay, so that we can bring third-party opposition proceedings under Section 771 Code of Civil Procedure (ZPO), and take other measures to safeguard title to the Reserved Goods. The Customer will support us in the safeguarding and enforcement of our rights of ownership. Insofar as the third party is unable to reimburse the in-court or out-of-court



costs incurred by us in respect of a claim under Section 771 ZPO, the Customer will be liable for the deficit.

- (3) If the Reserved Goods are combined or inextricably mixed with other items which do not belong to us, we will acquire a co-ownership share of the new item in the same proportion which the value of the Reserved Goods (invoice amount including value added tax) bears to the other combined or mixed Goods at the time of the combining or mixing. If the Goods are combined or mixed in such a way that an item belonging to the Customer is considered to be the principal item, it is deemed to be agreed that the Customer will assign to us a co-ownership share of the new item in the same proportion which the value of the Reserved Goods (invoice amount including value added tax) bears to the other combined or mixed Goods at the time of the combining or mixing. We hereby accept the assignment.
- (4) If the Reserved Goods are combined or inextricably mixed with other items which do not belong to us, and the Goods are combined or mixed in such a way that an item belonging to a third party is considered to be the principal item, the Customer hereby assigns to us the claims to which it is entitled by way of remuneration for the combining or mixing, together with all ancillary rights, but only in the same proportion which the value of the Reserved Goods (invoice amount including value added tax) bears to any other items also combined or mixed with the principal item as part of the said combining or mixing at the time thereof. We hereby accept this assignment.
- (5) If the Reserved Goods are processed or transformed by the Customer, such work is always deemed to have been undertaken on our behalf, in our name and for our account as manufacturer and we are deemed to acquire title to or – if the processing or transformation is undertaken using materials from several owners or if the value of the newly created item is higher than the value of the Reserved Goods – a co-ownership share of the newly created item in the same proportion which the value of the Reserved Goods (invoice amount including value added tax) bears to this newly created item. In the event that, for any reason, such acquisition of title or of a co-ownership share by us fails to take effect, the Customer hereby assigns to us by way of security its future title to or (in the aforesaid proportion) co-ownership share of the newly created item; we hereby accept this assignment.
- (6) The Customer must store the Reserved Goods of which we have sole or shared ownership, free of charge, on our behalf. The Customer is obliged to handle the Reserved Goods with care; in particular, it is obliged to insure them adequately at replacement value, against fire, water and theft, at its own expense.
- (7) The Customer is entitled to sell the Reserved Goods in the ordinary course of business. The Customer hereby assigns to us its claims arising from the resale of the Reserved Goods, irrespective of whether or not they have been processed, combined or mixed, in the amount of our claim arising under the Contract relating to the Goods. We hereby accept this assignment. Subject to revocation, the Customer is entitled to recover the assigned receivables. This applies without prejudice to our own right to recover receivables. We will not recover the receivables ourselves or revoke the authorisation to effect recovery as long as the Customer meets its payment obligations and does not default on payment. At our request, based on reasonable grounds, the Customer is obliged to notify its customers of the assignment and to provide us with the information and documents necessary for us to assert our rights.

## 8. Material Defects

- (1) The Customer must examine the Goods upon receipt, without delay, provided this is feasible in the ordinary course of business, and notify us in writing of any visible defects without delay but in any case within no more than five (5) working days of delivery. Defects that were not visible during the properly executed incoming Goods inspection must be reported to us in writing by the Customer, without delay, but in any case within no more than three (3) working days of discovery. Otherwise the delivered Goods are deemed to have been approved unless the defect was fraudulently concealed by us.
- (2) Where, in the exceptional case, it is agreed that we are to effect shipment and the delivery is incomplete or transport damage is visible externally, the Customer must inform the transport

company of this upon delivery. Transport damage that is not externally visible must be reported to the transport company within seven (7) days of delivery in text form (e.g. by fax, letter or email). In any case the Customer must notify us of such report without delay.

- (3) Unless otherwise agreed, the contractually agreed characteristics of the Goods will be determined exclusively according to the agreed product specifications. The fitness of the Goods for a specific purpose has not been agreed unless a different rule is expressly concluded with the Customer in this regard. The contractually agreed characteristics of the Goods are not based on objective requirements such as their suitability for the usual purpose or features that are customary for items of this sort. Features of models and samples are only binding insofar as they have been expressly agreed as characteristics of the Goods; such agreement must be in writing. Details of characteristics and shelf life as well as other details, only constitute guarantees (within the meaning of Section 443 German Civil Code) if they have been agreed and identified as such. A guarantee requires written confirmation by our management board.
- (4) In the case of material defects, we are entitled to effect subsequent performance within a reasonable extension of time set by the Customer. We can choose the type of subsequent performance. The Customer is entitled to rescind the Contract or reduce the purchase price if subsequent performance fails, is unreasonable for the Customer, is refused by us or is not carried out within the reasonable time limit set by the Customer. Rescission is excluded solely in the case of minor defects.
- (5) In the case of subsequent performance, we are obliged to bear the necessary costs of subsequent performance insofar as these are not increased by the fact that the defective Goods were taken to a place other than the place of performance, unless the change of location corresponds to the agreed use of the Goods.
- (6) At our request, the Customer will send us the rejected Goods for inspection. If the Goods are in fact defective, we will bear the transport costs subject to Clause 8 (5). If the Goods are not defective, the Customer will bear the transport costs and all other costs resulting from the unjustified complaint.
- (7) Insofar as we were not originally obliged to install the Goods, subsequent performance does not include either de-installation of the defective Goods or re-installation of the defect-free Goods. In this case, the costs of de-installation and re-installation do not constitute costs of subsequent performance and will not be borne by us in the context of subsequent performance.
- (8) We are entitled to make subsequent performance dependent upon payment by the Customer of the price due. The Customer is however entitled to retain a reasonable proportion of the price in respect of the defect.
- (9) There is no right to claim for defects where the condition of the Goods deteriorates due to
  - unsuitable or improper storage,
  - unsuitable or improper transport,
  - use of unsuitable operating materials,
  - an improper modification of the Goods or
  - any other incorrect or improper use or treatmentby the Customer. Incorrect or improper use or treatment of the Goods exists, in particular, where the Customer disregards the information on correct use contained in our tender documents or in the operating instructions.
- (10) There is also no right to claim for defects insofar as deterioration of the Goods results from a change in the Goods that is typical for the specific type of Goods and for the way the Goods function (e.g. wear and tear typical for the Goods).
- (11) The Customer only has recourse to us under Section 445a German Civil Code (BGB) where the end-customer is a consumer or as far as we are responsible for the defect.

(12) The Customer is only entitled to claim damages in accordance with the mandatory statutory provisions and Clause 11 below.

#### 9. Defects in Title

- (1) Insofar as third-party rights conflict with the contractually agreed use of the Goods, the Customer must inform us in writing, without delay, of the assertion of any such third-party rights and grant us all authorisations and powers necessary to defend the Goods against the asserted third-party rights, at its own expense.
- (2) Insofar as third-party rights conflict with the contractually agreed use of the Goods, we will, at our own discretion, use suitable measures to eliminate the third-party rights or their assertion, acquire the licenses from the third party for the Customer at our own expense, or replace the Goods such that they no longer infringe third-party rights, if and insofar as this does not impair the contractual conformity of the Goods.
- (3) The Customer is entitled to rescind the Contract or reduce the purchase price if subsequent performance under Clause 9 (2) is unreasonable for the Customer, is refused by us or if we fail to comply with the request to effect subsequent performance within a reasonable time limit set by the Customer. Rescission is excluded for purely minor impairments of the contractually agreed use of the Goods.
- (4) Claims for a breach of third-party intellectual property rights or copyright are excluded if the breach results from instructions given by the Customer, or from an unauthorised change by the Customer, or from use of the Goods by the Customer in a manner not consistent with the Contract.
- (5) A right to claim for damages in accordance with the statutory provisions and the provisions of Clause 11 only exists insofar as we were aware of the conflicting third-party rights or should have been aware of them.

#### 10. Limitation Period for Defect Claims

- (1) Claims due to material defects and defects in title will lapse on expiry of twelve (12) months from delivery of the Goods to the Customer. This does not apply (i) to any claims covered by Clause 11 or (ii) to Goods which constitute a building or which, in accordance with their customary use, have been used in a building and have caused it to be defective; in cases (i) and (ii) the statutory provisions apply.
- (2) Claims in the context of recourse under Sections 445a and 445b BGB will lapse on expiry of twelve (12) months from delivery of the Goods to the Customer. This does not apply (i) where the end Customer is a consumer or (ii) as far as we are responsible for the defect (iii) to any claims covered by Clause 11, in which case the statutory provisions on lapse of time will apply.

#### 11. Liability

- (1) We are liable without limitation where we, our statutory representatives or vicarious agents are culpable for loss of life, physical injury and damage to health.
- (2) We are liable for our own intentional acts and gross negligence and for the intentional acts and gross negligence of our statutory representatives and vicarious agents. Liability is however limited to foreseeable loss typical for such contracts provided that we or our statutory representatives and vicarious agents have not acted with intent, and the circumstances pursuant to Clause 11 (1) do not exist.
- (3) We are also liable for the culpable breach, by us, our statutory representatives or vicarious agents, of obligations which are material for fulfilling the Contract and on which the Customer relies and is entitled to rely on being fulfilled. Liability is however limited to foreseeable loss typical for such contracts provided that we, our statutory representatives and vicarious agents have not acted with intent, and the circumstances pursuant to Clause 11 (1) do not exist.



- (4) We are also liable in the event of the fraudulent concealment of a defect and where we have assumed a guarantee (within the meaning of Section 443 German Civil Code). In the latter case, the level of liability depends on the terms of the guarantee. We are also liable in cases of mandatory statutory liability such as the German Product Liability Act (Produkthaftungsgesetz).
- (5) Otherwise our liability - irrespective of the legal grounds - is excluded unless otherwise specified in these GTC.
- (6) To the extent that our liability is precluded or limited by the terms of the foregoing provisions, the same also applies to the personal liability of our executive bodies, statutory representatives, employees, staff and vicarious agents.
- (7) The Customer must notify us and consult with us, comprehensively and without delay, insofar as it intends to bring a claim against us pursuant to the foregoing provisions. The Customer must give us, without delay, an opportunity to investigate the claim.

## 12. Choice of Law and Jurisdiction

- (1) These GTC and the Contracts are subject to the laws of the Federal Republic of Germany with the exclusion of the UN Convention on the International Sale of Goods (CISG).
- (2) The competent courts in the location of our registered office have sole jurisdiction for all disputes regarding the rights and duties under these GTC and the Contracts, including as regards their validity. We are nevertheless entitled to bring an action against the Customer in the court with general jurisdiction over the Customer.

## 13. Additional Provisions for the Delivery of Chemicals

- (1) Where deliveries involve galvanizing baths or other chemicals, Clause 8(1) of these GTC applies.
- (2) Where, as part of our services, we set up or regenerate baths, the Customer must, without delay following performance, check that our work complies with the Contract and confirm such compliance where applicable. If the Customer confirms compliance with the Contract despite being aware of a defect in our performance of the work, the Customer is only entitled to any claim for defects pursuant to these GTC, or under statutory provisions that apply in addition to the GTC, if the Customer has expressly reserved any such rights on confirmation.
- (3) Rights to claim for defects do not exist insofar as the condition of the newly set up or regenerated baths, or of the supplied chemicals, deteriorates due to inappropriate mixing with other chemicals by the Customer; Clause 8 (9) of these GTC also applies to newly set up or regenerated baths and supplied chemicals.

## 14. Advice, Planning, Statutory Provisions

- (1) Where we advise the Customer in connection with the conclusion of the Contract we will do so to the best of our knowledge. Details and information about the suitability and application of the Goods are non-binding and do not release the Customer from carrying out its own examinations and tests regarding the suitability of the delivered Goods for the intended purposes unless we have expressly assumed an obligation to carry out advisory services.
- (2) Insofar as we develop equipment or installations jointly with the Customer, we are not obliged to achieve a specific development result unless we have expressly agreed on an obligation to achieve a specific development result with the Customer.
- (3) The Customer is responsible for checking whether operations involving the Goods requires an official permit and whether operations comply with public law provisions.

## 15. Installation and Other Services



Where, under an agreement with the Customer, we provide installation or other services, the "General Terms and Conditions of Service of Arno Graul GmbH" will also apply.

#### 16. Miscellaneous Provisions

- (1) The Customer is not entitled to assign rights and duties under the Contract to third parties without our prior written consent.
- (2) Text form within the meaning of these GTC corresponds to text form pursuant to Section 126b German Civil Code (e.g. letter, email and fax).
- (3) Amendments and additions to these GTC must be in writing in order to be valid. This also applies to amendments to the requirement of the written form.
- (4) The invalidity or impracticability of one or more provisions of these GTC is without prejudice to the validity of the other provisions of these GTC. The same applies in the event that a necessary provision is missing from these GTC. The contracting parties will replace the invalid or impracticable provision with a lawful and practicable provision which comes closest in economic terms to the meaning and purpose of the invalid or impracticable provision. If these GTC prove to be incomplete, the contracting parties will conclude an agreement with the content which they would have agreed in line with these GTC if they had known of the omission when they concluded the Contract.