

## **Glatfelter [Glatfelter Gernsbach GmbH & Co. KG (Germany)] Conditions of Purchase (Goods and Services)**

### **1. Definitions**

- 1.1 “Conditions” means these conditions of purchase.
- 1.2 “Contract” means a contract for the sale and purchase of the Goods and the supply and acquisition of the Services as set out in the Order and accepted by the Seller or otherwise agreed upon between the parties.
- 1.3 “Defective Goods” means Goods that are delivered in breach of the warranties set forth in clause 4.1.
- 1.4 “Defective Services” means Services that are performed in breach of the warranties set forth in clause 4.1.
- 1.5 “Goods” means the articles, materials, plant, equipment (including any part or parts of them) described in an Order to be supplied by the Seller.
- 1.6 “Law” means any legislation, order, directive or other legal or regulatory requirement in any relevant jurisdiction, which applies to the Goods or Services, each as may be amended from time to time.
- 1.7 “Order” means the Purchaser’s official instructions to the Seller in writing to supply the Goods or supply Services (including any Goods to be delivered in the performance of such services). Where the Purchaser’s Order conflicts with the terms of these Conditions, the Order shall prevail.
- 1.8 “Project Manager” means the person appointed by the Purchaser to act as the Purchaser’s representative for the purpose of a Contract.
- 1.9 “Purchaser” means Glatfelter [Glatfelter Gernsbach GmbH & Co. KG (Germany)].
- 1.10 “Seller” means the person, firm or company with whom an Order is placed.
- 1.11 “Services” means the work to be executed in accordance with an Order and includes the provision by the Seller of all labour, plant, materials, equipment and the like required to execute such work.

### **2. Offer and Acceptance**

- 2.1 An Order made by the Purchaser shall constitute an offer on the part of the Purchaser to buy Goods or Services subject to these Conditions. An Order will be accepted by the Seller by return of the acknowledgment of an

Order form or other similar acceptance in writing or by the actual execution of an Order.

2.2 The acceptance of an Order by the Seller will be deemed to be acknowledgment by the Seller that these Conditions shall apply to the Contract.

2.3 The Order will lapse unless unconditionally accepted by the Seller within 7 days of its date.

### 3. **Applicability**

3.1 These Conditions shall apply exclusively to any Order and any Contract. Any deviating terms and conditions endorsed upon, delivered with or contained in the Seller's quotation, acknowledgement or acceptance of an Order, specification or other document and the Seller shall not be binding upon Purchaser, unless expressly accepted by authorised representatives of the Purchaser in writing. No variation to the Order or these Conditions shall be binding unless agreed in writing between authorised representatives of the Purchaser and the Seller. The foregoing shall also apply in case the Purchaser accepts delivery without reservation in knowledge of deviating terms and conditions of Seller.

3.2 These Conditions shall apply to any future business transactions between Purchaser and Seller.

### 4. **Warranty**

4.1 The Seller warrants and undertakes to the Purchaser that

4.1.1 the Goods or Services will be supplied strictly in accordance with the Order, including (i) any description or specification set out in the Order; (ii) any quotation referred to therein; (iii) any samples or patterns; and (iv) the specified quality, quantity and description;

4.1.2 the Goods will be of merchantable quality and fit for their purpose;

4.1.3 the Goods will be free from defects in design, material and workmanship;

4.1.4 the Services will be performed by appropriately qualified and trained personnel with all due care and diligence and to such a high standard of quality as it is reasonable for the Purchaser to expect in all circumstances; and

4.1.5 the Goods or Services will comply with the relevant Laws.

- 4.2 The Seller undertakes that the Goods supplied shall be of the best available design, of the very best quality and workmanship, of the highest standard in the industry fit for their purposes.
- 4.3 The Purchaser shall not be liable for any excess costs or charges arising from deviations from the specifications or quantities set out or referred to in the Order.
- 4.4 Within reasonable time upon receipt, Purchaser shall inspect incoming Goods and the results of Services with respect to externally apparent defects and externally apparent deviations in identity or volume only. The Purchaser shall notify Seller of apparently Defective Products or Defective Services within ten (10) business days. Latently Defective Products or Defective Services shall be notified within ten (10) business days upon recognition of the defect. The Purchaser reserves the right to reject Defective Goods or the results of Defective Services, unless the rejection would be unreasonable. The Purchaser may, but shall not be obliged to, return any rejected Goods at the Seller's risk and expense.
- 4.5 The Purchaser is, at its sole discretion and at Seller's cost, entitled to request remediation of Defective Goods or request replacement of Defective Goods. In case of Defective Services, the Purchaser is entitled to claim re-performance. Upon the fruitless expiry of a reasonable period set by the Purchaser for the remediation or the replacement of Defective Goods or the re-performance of Defective Services, the Purchaser is entitled to statutory warranty claims, including the right to withdraw from a Contract, to reduce the Purchase Price, to claim damages and/or to remediate or replace Defective Products or to re-perform Defective Services at Seller's costs.
- 4.6 In urgent cases, Purchaser is entitled to remediate or replace Defective Products or to re-perform Defective Services at Seller's costs without setting a reasonable period to Seller.
- 4.7 The general warranty period is 36 months unless required otherwise by mandatory Law.

## **5. Indemnity/ Intellectual Property Rights**

- 5.1 The Seller shall indemnify the Purchaser and any of its agents, contractors, customers or associated companies in full against all liability, loss, damages, costs and expenses (including reasonable legal expenses) awarded against or incurred or paid by the Purchaser, or which the Purchaser may be held liable to third parties, as a result of or in connection with:

- 5.1.1 breach of any warranty or undertaking given by the Seller in relation to those Goods or the Services whether under a Contract or otherwise;
- 5.1.2 claims in respect of breach of a Contract or any statutory duty;
- 5.1.3 claims arising out of product liability if such claims are based on Defective Goods or Defective Services provided by the Seller (which also includes damages due to public warnings or recalls);
- 5.1.4 the negligent failure or delay in performance of the terms of a Contract by the Seller or its agents or representatives;
- 5.1.5 any claim that the Goods infringe, or that their use or resale infringes any patent, trade mark, design or copyright (whether or not registered), trade name or other intellectual property right belonging to any third party.

Seller is liable for its employees and other persons used to perform its obligation under a Contract (*Erfüllungsgehilfen*).

- 5.2 Nothing in this agreement shall restrict or limit the liability of Seller for consequential damages and lost profits, negligent breaches of contract or any losses accruing as a result of personal injury or death arising or the fraud or fraudulent misrepresentation.
- 5.3 Any drawings, samples or other documents and aids which the Purchaser makes available to the Seller for the execution of the purchase shall remain Purchaser's property. They may only be used in accordance with their intended purpose and shall be returned to the Purchaser upon request at any time. The Purchaser also reserves the copy right with regard to every painting, drawing, calculation, description and other document provided to the Seller.

## 6. **Force Majeure**

Neither the Seller nor the Purchaser shall be liable to the other or be deemed to be in breach of a Contract by reason of any delay in performing or failure to perform any of their respective obligations in relation to the provision of the Goods or the performance of the Services if the delay or failure was beyond that party's reasonable control provided however, that if a cause beyond the reasonable control of the Seller causes a delay in fulfilling an Order of more than thirty (30) days, the Purchaser shall be entitled to cancel the Order with the Seller in whole or in part and obtain the Goods or Services from a third party without incurring any liability whatsoever to the Seller under the Order or a Contract. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond either party's reasonable control, accident, civil commotion, riot, war, fire, lock-outs, strikes, industrial disputes (whether involving employees of

the Purchaser, the Seller or a third party), acts of God, explosions, floods, or restrictions, prohibitions or measures of any kind on the part of any governmental or parliamentary authority.

## **7. Delivery**

- 7.1 A separate invoice in respect of each Order shall be sent by the Seller to the Purchaser upon dispatch of the Goods showing inter alia the number and date of the order. All deliveries shall be made to the place or places and at the time or times specified in the Order and shall be accompanied by a delivery note showing the Order number and in the case of part delivery the outstanding balance remaining to be delivered. The Goods shall be properly marked and shall be appropriately packed and protected against damage and deterioration in transit and shall be delivered, insured and carriage paid in accordance with the Purchaser's instructions, if any. The Seller shall be obliged to return packaging materials at its own costs.
- 7.2 Unless otherwise agreed in writing between the Purchaser and the Seller, all time limits and dates of delivery of the Goods or performance of the Services under a Contract shall be binding.
- 7.3 The Seller shall be obliged to immediately notify the Purchaser as soon as it becomes clear that the agreed time limits or dates cannot be met on time, while indicating both the reason and the prospective duration of the delay.
- 7.4 In case of culpable delay in performance by Seller, the Purchaser shall be entitled to contractual penalty to the amount of 0.5% of the order value per week, but not exceeding the total amount of 5% of the order value. This shall not affect the Purchaser's right to claim higher actual damages, provided that the contractual penalty shall be credited against such damages.
- 7.5 Upon the fruitless expiry of a reasonable period set by the Purchaser for the delivery of Goods or performance of the Services, the Purchaser is entitled to statutory warranty claims, including the right to withdraw from a Contract, to reduce the Purchase Price and/or to claim damages.
- 7.6 The unconditional acceptance of a delayed delivery of Goods or performance of Services does not constitute a waiver of claims.
- 7.7 In the event that Goods arrive earlier than agreed, the Purchaser reserves the right to return the Goods or to store the Goods until the agreed delivery date, both at Seller's costs and risk. This shall not apply in case the return or the storage at Seller's costs and risk would be unreasonable.

## 8. **Insurance**

- 8.1 During the term of a Contract, the Seller shall maintain in force with a reputable insurance company insurance which is adequate, in the Purchaser's reasonable opinion, to cover the Seller's full liability under a Contract.
- 8.2 The Seller shall, on the Purchaser's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium. Such right of inspection shall not discharge the Seller in any way from its duty to comply with its obligations hereunder.
- 8.3 The Seller shall at his own cost insure:
- 8.3.1 all Goods up to the point when delivery is complete in accordance with clause 9; and
- 8.3.2 all Goods delivered to him by the Purchaser for repair or servicing from the time of collection or receiving them until re-delivery in accordance with the instructions of the Purchaser,
- in each case for their replacement value against loss, damage or destruction resulting from any insurable risk which can be reasonably contemplated as affecting the Goods.

## 9. **Title and Risk**

- 9.1 Unless expressly otherwise agreed in a Contract or herein, the Goods shall be delivered DDP (pursuant to the most current version of the Incoterms) to the destination determined by Purchaser.
- 9.2 Place of performance shall be the destination specified in the Order.
- 9.3 The Goods shall remain at the Seller's risk until the arrival of delivery at the place of destination.
- 9.4 Any retention of title rights to Goods or Services shall be invalid except with prior written consent of an authorized officer of the Purchaser. This shall also apply to special forms of retention of title, in particular assigned, subsequent and extended retention of title.

## 10. **Price and Payment**

- 10.1 The price stated in the Order is inclusive of all costs and expenses including packaging, packing, transportation and insurance costs as well as customs duties and charges. No variation in the price of the Goods or Services will be accepted for any reason whatsoever except with the prior written consent of an authorized officer of the Purchaser.

- 10.2 Where the Goods are subject to value added tax or any other taxes or duties the amount legally demandable is to be rendered as a separate item of account.
- 10.3 Unless otherwise agreed, all payments shall be made within 60 days.
- The payment period shall begin on the agreed date, but not before receipt of the goods and the invoice. If the goods and the invoice are received on different dates, the payment period shall not begin until receipt of both the goods and the invoice.
- 10.4 The Purchaser reserves the right to set-off any payment claims against Seller under a Contract or any other legal relationship, whether relating to the supply of Goods or Services or otherwise, against payment claims of Seller against Purchaser due or becoming due.
- 10.5 When invoices subject to discount are not posted on the date thereof, the discount period will be calculated from the date an acceptable invoice is received by the Purchaser.
- 10.6 In case of a delay of payment the Purchaser shall owe default interests to the amount of three percentage points above the base rate of the European Central Bank according to Sec. 247 of the German Civil Code (BGB).

## 11. **Cancellation**

- 11.1 When the Purchaser cannot use the Goods or Services anymore due to circumstances occurring after placing an Order, the Purchaser shall have the right to cancel the Order in whole or in part by giving the Seller notice thereof in writing while indicating the reason of cancellation. In such event, the Purchaser shall (except where the Order has been cancelled due to breach by the Seller) pay the Seller a fair and reasonable sum for all materials used and work done up to the time of the cancellation whereupon the property in such materials shall pass to the Purchaser. The Purchaser shall not be liable for any other loss including consequential or indirect loss suffered by the Seller or any third party as a result of such cancellation.
- 11.2 If, at any time after the entering into a Contract, the Seller ceases its payments, a preliminary insolvency administrator of the assets of Seller is appointed, an insolvency proceeding on the assets of Seller is opened or rejected due to insufficient assets, the Purchaser is entitled to terminate a Contract in its entirety or partly without giving rise to any claims of Seller against the Purchaser.

## 12. **Assignment**

- 12.1 The Seller shall not without the prior written consent of the Purchaser assign or sub-contract any part of a Contract (except for materials and minor details the makers or suppliers of which are specified in the Order). Any such consent shall be conditional upon the assignee or sub-contractor accepting these Conditions and shall not, in the case of sub-contracting, relieve the Seller of his obligations under a Contract.
- 12.2 The Seller is not entitled to assign claims under a Contract to third parties. The provisions of Section 354a of the German Commercial Code (*Handelsgesetzbuch*) shall not be affected by the foregoing sentence.
- 12.3 The Purchaser may assign any rights arising under a Contract to any third party.

## 13. **Advertisement**

The Seller shall not, without the previous written consent of the Purchaser, advertise or otherwise disclose that the Seller supplies or has supplied to the Purchaser or the content of a Contract.

## 14. **Confidentiality**

- 14.1 The Seller shall procure that the Seller, its agents, employees and sub-contractors shall treat any Order and all designs, drawings, specifications and confidential information supplied therewith by the Purchaser or its agents, employees or sub-contractors and shall not disclose the same to any third party without the Purchaser's prior written consent or otherwise infringe any copyright, patent, trade mark, registered design or other intellectual property right vested in the Purchaser.
- 14.2 The Seller shall restrict the disclosure of any such information to its employees, agents or sub-contractors who have a need to know the same for the purposes of discharging the Seller's obligations to the Purchaser.

## 15. **Conditions applicable to the provision of Services**

- 15.1 Prior to commencing the Services the Seller shall contact the Project Manager to obtain permission to commence work.
- 15.2 When the Services are being carried out on any site of the Purchaser the Seller shall ensure that any site rules, site regulations, permit to work requirements are strictly complied with.
- 15.3 The Purchaser reserves the right to request at any time a change of the ordered Services in writing. All such changes shall be valued at the rates set out in a Contract. If a Contract does not contain rates applicable to

such changes then reasonable values shall be agreed between the Purchaser and the Seller, which shall provide the Purchaser with whatever supporting evidence the Purchaser may reasonably require to enable such reasonable values to be determined and which must have regard to any restrictive Laws affecting wages and prices in force from time to time.

- 15.4 It is the Seller's responsibility to provide appropriate protective clothing where necessary for the protection of its personnel while carrying out the Services and the cost to the Seller of providing such clothing shall be deemed to have been included in the price.
- 15.5 On completion of the Services the Seller shall clear away and remove from the site/premises all equipment, surplus materials and rubbish and leave site/premises in a clean and tidy condition.
- 15.6 If the Project Manager shall at any time be dissatisfied with the performance or conduct of any employee of the Seller engaged in a Contract the Seller shall if the Project Manager so requires cease to employ such employee to carrying out the Services.
- 15.7 The Seller shall be responsible for the safe keeping and maintenance in good working order of any equipment issued by the Purchaser to the Seller.
- 15.8 The Seller shall make good any loss of or damage to such equipment at his own expense and shall ensure its return at the end of the use in good condition fair wear and tear excepted.
- 15.9 The Services shall be carried out with proper regard to safety and the Seller shall at its sole expense observe and conform to all Laws applicable to the provision of the Services.
- 15.10 The „Guidelines for the Stay of External Personnel on the Premises“ that are available in the internet under [www.glatfelter.com/customer\\_support/](http://www.glatfelter.com/customer_support/) form an integral part of the Contract between Seller and Purchaser.

## 16. **General**

- 16.1 Each right or remedy of the Purchaser under a Contract does not exclude or limit other statutory right of the Purchaser.
- 16.2 Failure or delay by the Purchaser in enforcing or partially enforcing any provision of a Contract shall not be construed as a waiver of any of its rights under a Contract.
- 16.3 Any waiver by the Purchaser of any claims under a Contract against the Seller shall not be deemed a waiver of any other contractual or statutory rights.

- 16.4 The parties to a Contract do not intend that any term of a Contract (other than clause 5.1) shall be enforceable by virtue of sec. 328 (1) BGB by any person that is not a party to it.
- 16.5 If a dispute arises under a Contract, representatives of the parties shall attempt in good faith to resolve such dispute. If they cannot resolve such dispute within 10 days (or such other period as they agree), the dispute shall be referred to the senior management of the Seller and the Purchaser, who shall attempt in good faith to resolve such dispute within a further 10 days. The parties' right to enforce at any time claims interim injunctive relief shall remain unaffected.
- 16.6 The formation, existence, construction, performance, validity and all other aspects of a Contract shall be governed by German law, excluding the German conflict of laws rules and the provisions of the UN Convention on Contracts for the International Sale of Goods (CISG). The parties submit to the exclusive jurisdiction of the courts of Baden-Baden. Notwithstanding the foregoing, the Purchaser is entitled to bring suit against the Seller at the Seller's seat.
- 16.7 Nothing in a Contract is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 16.8 A Contract constitutes the entire agreement between the Seller and the Purchaser relating to the sale and purchase of the Goods and/or Services.
- 16.9 Amendments of a Contract need to be approved by both parties in writing. This shall also apply with regard to the waiver of the written form requirement.
- 16.10 The Purchaser reserves the right to refuse access to any Seller Party to the Purchaser's premises. Access will only be granted to the extent necessary for the proper performance of the Seller's obligations.
- 16.11 If any clause of these Conditions is, becomes, or is deemed invalid, illegal or unenforceable in any jurisdiction, such clause will be deemed amended to conform to the intention of the parties. If it cannot be so amended without materially altering the intention of the parties, it will be struck out and the remainder of these Conditions will remain in full force and effect.