

**General Terms and Conditions of Purchase (GTP) of the SPIES Group of Companies (hereinafter referred to as SPIES) Status: May 2020**

**1. Scope of application**

**1.1** These General Terms and Conditions of Purchase (GTP) shall apply to all deliveries and services of business partners and suppliers of all legal entities and companies of the SPIES Group, hereinafter referred to as "Supplier". They are especially valid for contracts of the following users:

- SPIES Kunststoffe GmbH
- SPIES Formen- und Werkzeugbau GmbH
- SPIES GmbH & Co KG

**1.2** Our GTP shall only apply if the Supplier is an entrepreneur within the meaning of § 14 BGB (German Civil Code) or a legal entity under public law or a special fund under public law. They apply in particular to contracts for the purchase and/or delivery of movable goods or rights (hereinafter referred to as goods), irrespective of whether the Supplier manufactures the goods himself or purchases them from suppliers with or without further processing. In their respective current version, they shall also apply to future contracts with the same Supplier without explicit renewed reference. We shall inform the Supplier immediately in the event of changes to our terms and conditions.

**1.3** Our GTP shall apply exclusively; conflicting, supplementary or deviating terms and conditions of the Supplier shall expressly not apply, even if we accept the Supplier's delivery without reservation in the knowledge of conflicting terms and conditions of the Supplier.

**1.4** Individual agreements with the Supplier (including collateral agreements, supplements and amendments) shall take precedence over our GTP, provided that they are at least in writing.

**1.5** Legally relevant declarations of any kind, setting of deadlines, reminders, declarations of withdrawal must be in writing to be effective. The list of text form requirements in our terms and conditions is therefore only exemplary and not exhaustive.

**2. Conclusion and scope of the contract, rights and obligations of the Supplier**

**2.1** Orders from us are only legally binding if they are in writing. The Supplier must notify us in writing of obvious errors and incompleteness of the order including order documents for the purpose of correction or completion prior to its acceptance, otherwise the contract shall be deemed not to have been concluded.

**2.2** If the Supplier does not immediately accept the order in writing, we shall be entitled to revoke it. If the Supplier accepts the order with deviations, these must be clearly pointed out in the acceptance. In this case, a contract shall only be concluded if we agree to these deviations in writing. A delayed acceptance shall be deemed a new offer and requires our acceptance.

**2.3** In the case of informal, i.e. oral or telephone business transactions, the written order shall be deemed a commercial letter of confirmation from us.

**2.4** Unless otherwise agreed, delivery call-offs for continuous obligations shall become binding if the Supplier does not object in writing within two working days (6-day week) of receipt of the delivery call-off.

**2.5** Cost estimates are binding and not to be remunerated, unless otherwise expressly agreed upon individually in writing.

**2.6** SPIES can also demand changes to the delivery item after the conclusion of the contract, as far as this is reasonable for the Supplier. In case of such a change of contract, the effects on both sides, especially with regard to additional or reduced costs, product quality as well as delivery dates have to be considered appropriately.

**2.7** The supplies and services are to be produced and delivered by the Supplier as manufacturer in accordance with the latest state of the art. They must comply with the statutory and other provisions of the Federal Republic of Germany, the EU and those countries to which the deliveries and services are further distributed by us or by our customers, the latter insofar as we point this out before conclusion of the contract.

**2.8** The Supplier **guarantees** that his deliveries and services do not contain any substances prohibited in the EU.

**2.9** The transfer of ownership of any delivered goods to SPIES must be made unconditionally and without regard to the payment of the purchase price. We object to any current account reservation.

**2.10** SPIES reserves the property rights and copyrights to illustrations, plans, drawings, invoices, execution instructions, product descriptions and other documents such as means of production etc. As far as they are essential for the fulfilment of the contract, the Supplier is obliged to check and point out discrepancies, errors, contradictions or other defects within the scope of his technical qualification. The Supplier bears the sole responsibility for his planning and calculations for the contractual services even if we **release** them by approval.

**2.11** The Supplier undertakes to use all documents exclusively for the execution of the contract for SPIES, **not to make them available** for his own or third party purposes and not to make them available to third parties **unless approved by us in writing**.

**2.12** The same applies to fabrics and materials as well as to tools, templates, samples and other items that SPIES provides to the Supplier for the production of contractual products. Such objects have to be stored separately at the expense of the Supplier and have to be insured to a reasonable extent against destruction and loss (**all-risk insurance**) at replacement value and have

to be used exclusively for the performance of the contract with SPIES.

**2.13** The involvement of subcontractors requires our prior written consent.

**2.14** Subcontractors shall be named in the offer by name and with their registered office, including the respective scope of delivery and performance.

**2.15** The Supplier has to ensure by appropriate agreements, at least in writing, that a subcontractor approved by SPIES, as well as the Supplier himself, complies with all tasks and obligations assumed and has to prove this to SPIES upon request.

**2.16** SPIES is entitled to conclude contracts with subcontractors for other deliveries and services.

**2.17** All documents of SPIES have to be handed over to SPIES on first request without right of retention or have to be deleted after request.

### **3. Special confidentiality / developments and rights**

**3.1** The Supplier must treat the conclusion of the contract, its contents and scope confidentially even after the end of the contract and is not authorized to advertise the business relationship without prior consent of SPIES.

**3.2** The Supplier undertakes to keep secret all information and documents **marked as confidential** by SPIES (e.g. technical and other data, measured values, calculations, documentation, know-how, drawings in so far as they are not public knowledge), not to make them accessible to third parties without our consent and to use them only for the purpose of executing the respective order for SPIES. They are considered a trade secret.

**3.3** In the case of research, development, design, engineering and other orders that involve the development of a technical problem solution for us, all inventions / developments of the Supplier that he makes / wins in the fulfilment of the contract are the sole property of SPIES, regardless of the question of the property right capacity. This also includes the right to protect the special rights by appropriate registration. The same applies to new technical know-how that is not part of the state of the art. We grant the Supplier a simple right of use of these rights for the purpose of fulfilling the contract. The Supplier will claim inventions of his employees upon request of SPIES. The Supplier undertakes to inform SPIES in writing about the employee invention and the technical know-how within 2 weeks. SPIES shall bear the costs according to the German Employee Invention Act **if SPIES claims the invention**. In all other respects, the transfer of rights is covered by the contract prices.

### **4. Scope of delivery, obligation to deliver subsequently, delivery time, delay, contractual penalty**

**4.1** All deliveries shall be made free SPIES business location, duty paid, including packaging and plus transport insurance at the expense of the Supplier.

Unless otherwise agreed in writing, **DDP (Incoterms 2020) shall be deemed to be agreed.**

**4.2** Partial deliveries or partial services and early deliveries are only permissible if agreed accordingly. SPIES is not obliged to accept partial deliveries or partial services without prior agreement.

**4.3** The deliveries shall be accompanied by detailed accompanying documents, from which the exact description of the goods, the part numbers, the order numbers, the quantities as well as the certificates on inspections carried out by the Supplier can be seen. SPIES shall not be held responsible for delays in processing and payment resulting from incomplete information. In case of missing shipping documents, especially certificates of origin or proofs according to VAT law, we reserve the right to refuse acceptance of the goods at the expense and risk of the Supplier. With each delivery, the Supplier has to issue and hand over in writing a corresponding declaration of identity and a test certificate of conformity per delivery/service. He undertakes to provide us, free of charge and in good time before delivery, with all necessary product information, such as operating instructions, maintenance instructions, assembly drawings, etc., safety data sheets, processing instructions, instructions for use, etc., in German and English and to provide us with all information and documents necessary for proper operation in accordance with the law. The Supplier shall notify us immediately in writing of any subsequent changes and updates to the above-mentioned product information and shall also make them available to us free of charge and in good time.

**4.4** The Supplier is obliged to keep **necessary** spare parts in stock for the period of the normal service life of the delivery items and to deliver them within a reasonable time, as is customary in the business relationship. Furthermore, the Supplier is obliged to inform us immediately in writing when he stops the production of spare parts, so that SPIES can purchase sufficient spare parts. The Supplier is obliged to inform SPIES in writing at least 6 months before the cessation of production, so that SPIES can order spare parts for stocking up to the required extent.

**4.5** The Supplier is obliged to document his function and quality control and to keep it for at least 10 years since the last delivery. **He owes a 100 % output control.** The Supplier guarantees the availability of his products for a period of at least **5 years** since the last delivery.

**4.6** Agreed delivery dates and deadlines are binding. Decisive for the observance of the delivery date or delivery period is the receipt of the goods or services at the place of receipt specified by SPIES in the order. We can reject excess or short deliveries at the risk and expense of the **Supplier**.

**4.7** Even in the case of continuous call-offs, we expressly object to a reservation of self-supply by the Supplier, who **bears** the procurement risk for his services and the material risk until we accept the delivery. We object to any embargo clause and any reservation of performance.

Delays in delivery must be notified immediately in writing, stating the reasons and the expected duration of the delay.

**4.8** In case of a delay in delivery, SPIES is entitled to the legal rights and claims. In particular, SPIES can declare the withdrawal from the contract in case of delay of the Supplier and, in addition, claim damages for non-performance.

**4.9** In case of delay in delivery, SPIES is - in addition to further legal claims - entitled to demand lump-sum compensation for the damage caused by delay in the amount of 0.3% of the net order value per working day (6 days week), but not exceeding 5% of the total net order value of the delivery. SPIES reserves the right to prove higher damages. The Supplier reserves the right to prove that no damage at all or only a considerably lower damage has been caused.

## **5. Prices and terms of payment**

**5.1** The prices stated in the order are fixed prices including all additional costs. The prices are net prices and include delivery "free domicile" (DDP, Incoterms 2020), as well as packaging, transport liability insurance, customs clearance including ancillary customs costs and any necessary assembly/installation. We expressly object to claims for price increases by the Supplier in the case of continuous obligations, even if there is a period of more than 4 months between conclusion of the contract and delivery. Upon request of SPIES, the Supplier has to take back and dispose of packaging material at his own expense.

**5.2** The agreed price is due within 30 calendar days from complete delivery and performance (including any agreed acceptance) and receipt of a properly issued invoice, which must contain all order codes and item numbers from our order. If SPIES makes payment within 14 days after due date, the Supplier shall grant SPIES a 3% discount. In case of bank transfer, payment shall be deemed to be on time if SPIES instructs the bank to make the payment before the due date. SPIES does not owe any interest on the due date, the interest on arrears is 5% per annum above the base rate. In any case, a written reminder by the Supplier is necessary for the occurrence of default.

**5.3** Payments shall not constitute recognition of the delivery or service as being in accordance with the contract; they shall also be made subject to the reservation of invoice and goods inspection.

**5.4** In the event of defective delivery or service, including wrong delivery or underperformance, SPIES is entitled to withhold payments in an appropriate amount. SPIES shall be entitled to set-off and retention rights as well as the defence of non-performance of the contract to the extent permitted by law. In particular, SPIES is entitled to withhold due payments also from the current account in an appropriate amount as long as SPIES is still entitled to claims from incomplete or defective performance against the Supplier from the same business relationship.

**5.5** The Supplier shall only be entitled to a right of set-

off or retention on the basis of counterclaims which have been established as final and absolute or are undisputed, or only insofar as the claims are in a reciprocal relationship.

## **6. Quality control / warranties / liability / limitation period / audits / controls**

**6.1** Production tests and inspections do not release the Supplier from his performance and warranty obligations. Nor do they constitute an anticipated incoming goods inspection. The Supplier owes a 100% output inspection.

**6.2** The inspection by SPIES is limited to defects that become apparent upon receipt of goods under external inspection, including the delivery documents, as well as during internal quality control by random sampling (e.g. transport damage, wrong and short deliveries). If acceptance has been agreed, there is no obligation to inspect. In all cases, our complaint shall be deemed to be immediate and timely if it is received by the Supplier within 2 weeks of the defect being detected.

**6.3** For all material defects and defects of title, including incorrect and short delivery, improper assembly, defective assembly, operating or instruction manual and other breaches of duty by the Supplier, the statutory provisions shall expressly apply, unless otherwise provided for below: According to the legal regulations, the Supplier is especially liable for the goods having the agreed quality at the time of transfer of risk to SPIES. The product descriptions and our specifications in the order shall be considered as agreement on the quality, irrespective of whether the product description is provided by SPIES or the Supplier. Contrary to § 442 para. 1 s. 2 BGB (German Civil Code), SPIES is entitled to claims for defects in full even if the defect remained unknown to SPIES at the time of conclusion of the contract due to gross negligence.

**6.4** SPIES shall be entitled to the statutory claims arising from liability for defects in full. We object to any limitation of liability with regard to the legal rights of recourse, in particular from §§ 439 para. 3, 439 para. 2 BGB (German Civil Code). In any case, SPIES shall be entitled to demand at its own discretion either removal of defects or replacement delivery. In this case, all expenses for the removal of defects or replacement delivery have to be borne by the Supplier, this includes also installation and removal costs including other additional costs in this context, which arise because the defective delivery has been further processed and possibly installed at third parties and has to be removed again. We expressly reserve the right to claim damages, in particular the right to claim damages in lieu of performance or in addition to withdrawal from the contract.

**6.5** The costs incurred by us and our customers for the purpose of inspection and rectification (including any dismantling and installation costs and transport/freight costs) shall be borne by the Supplier even if it is established after inspection that the defect was due to

the defectiveness of the product. Our liability for damages in the event of unjustified requests for rectification of defects shall remain unaffected; however, in this respect we shall only be liable if we have recognised or grossly negligently failed to recognise that there was no defect.

**6.6** If the Supplier does not remedy the defect immediately after SPIES' request, SPIES has the right in urgent cases, especially to avoid acute dangers or major damages, to carry out the remedy itself or have it carried out by a third party at the expense of the Supplier, notwithstanding the right of SPIES to arrange for the replacement itself in the aforementioned urgent cases at the expense of the Supplier. We are also entitled to demand a reasonable advance payment for the execution of such measures.

**6.7** Claims for defects - regardless of the legal grounds - shall become statute-barred 36 months after delivery, subject to longer statutory limitation periods, in particular for deliveries of building materials. If acceptance has been agreed, the limitation period shall commence upon acceptance of the overall performance. The limitation period for any claims arising from the infringement of industrial property rights shall be 3 years. It only begins with our knowledge of such claims against us. It shall be 10 years at the longest.

**6.8** We shall be entitled, after giving 3 days' notice, during production and prior to delivery, to inspect the quality of the material used, the accuracy of dimensions and quantities and other quality of the manufactured parts as well as compliance with the other provisions of our order at the Supplier's works and those of his subcontractors. The material costs for the production tests and inspections shall be borne by the Supplier if there is a reason for such tests or inspections for us or if defects are found which would have impaired / prevented the fulfilment of the contract.

### **7. Third party property rights**

**7.1** The Supplier warrants that the subject matter of the contract is free from third-party rights. In case of violation of third party rights, the Supplier shall indemnify SPIES from all claims on first demand.

**7.2** SPIES shall immediately inform the Supplier of any claims asserted by third parties.

**7.3** If the exploitation or use of the delivery item by SPIES is impaired as a result of existing third party property rights, the Supplier shall, at his own expense, either obtain the appropriate approval or modify or equally manufacture/exchange the service in such a way that the exploitation or use of the delivery is no longer impeded by third party property rights and at the same time complies with the contractual agreements. The modification or exchange must be reasonable for SPIES.

### **8. Product liability**

**8.1** In the event that a claim is made against SPIES on the basis of product liability, the Supplier is obliged to

indemnify SPIES from such claims, if and insofar as the damage has been caused in whole or in part by a defect of the subject matter of the contract delivered by the Supplier.

**8.2** In the cases of clause 8.1, the Supplier shall assume all costs and expenses, including costs of any legal action or recall campaign. In all other respects the statutory provisions shall apply.

**8.3** The Supplier is obliged to maintain a product liability insurance with an appropriate sum insured during the term of the contract and for the period of warranty and the right to make subsequent purchases in accordance with section 4.2 and to provide evidence of this on request.

**8.4** Should recall/exchange actions, public warnings, legal action or other precautionary measures be necessary within the scope of this liability, the Supplier shall finance the costs and expenses incurred by us in advance; we shall be obliged to invoice after execution. We will inform the Supplier about the content and scope of the measures - as far as possible and reasonable.

### **9. Rights and obligations in connection with provisions**

**9.1** SPIES reserves the right of ownership of any tools that SPIES may provide to the Supplier. If SPIES provides the Supplier with parts, the Supplier will carry out processing and remodelling for SPIES. If these reserved goods are processed with other objects not belonging to SPIES, SPIES shall acquire co-ownership of the new object in proportion of the value of the object (purchase price plus VAT) to the other objects at the time of processing. Any processing, mixing or combination (further processing) with objects provided by SPIES shall be carried out by the Supplier for SPIES. The same shall apply to further processing of the delivered goods by SPIES, so that SPIES shall be considered as manufacturer and shall acquire ownership of the delivered product at the latest with the further processing according to the legal regulations.

**9.2** If the item provided by SPIES is inseparably mixed with other items not belonging to SPIES, SPIES shall acquire co-ownership of the new item in the ratio of the value of the item subject to retention of title (purchase price plus VAT) to the other mixed items at the time of mixing. If the mixing is done in such a way that the object of the Supplier is to be considered as the main object, it is agreed that the Supplier transfers proportionate ownership to SPIES; the Supplier keeps the sole ownership or the co-ownership for SPIES.

### **10. Legal consequences in case of force majeure**

**10.1** SPIES is not responsible for the non-performance of bindingly agreed acceptances, if SPIES proves that the non-performance is due to an obstacle beyond its control and that it cannot reasonably be expected to take the obstacle into consideration at the time of conclusion of the contract or to avoid or overcome the obstacle or its consequences (Force Majeure is an

unavoidable event, these are natural disasters, earthquakes, floods, storms, volcanic eruptions, low coincidence, riots, blockade, fire, civil war, embargo, hostage-taking, war, revolution, sabotage, strikes (if these occur at a third party), terrorism, traffic accidents, pandemics / epidemics, production disruptions). If the non-fulfilment is based on the non-fulfilment by a third party which SPIES uses for the fulfilment of the contract, it is only exempt from liability, i.e. does not have to accept, if SPIES is exempt according to sentence 1 and the third party itself would also be exempt according to sentence 1, if sentence 1 would apply to it. The exemption applies in principle for the period for which the impediment exists. In these cases SPIES is obliged to inform the Supplier about the obstacle and its effects on its ability to fulfil. The obligation to inform has to be fulfilled immediately since the knowledge of the obstacle. Failure to comply with this notification obligation within a reasonable period of time will result in SPIES being liable for the damages resulting from the failure to receive the notification. The exemption mechanisms in this clause are exhaustive. National law shall only apply subordinately in addition, in case of contradictions this contract shall prevail.

**10.2** If the conditions of the aforementioned paragraph 10.1 are met, SPIES is released from the obligation to take delivery in the above sense and from any claims for damages. If there is the possibility to postpone the acceptance to a later date and if this is reasonable for SPIES, the Supplier is entitled to deliver the contractual products at the later date to be specified by SPIES and SPIES is obliged to accept them. If it can be proved that this possibility does not exist, SPIES is authorized to terminate the contractual relationship in whole or in part without damages. SPIES shall provide proof of this.

#### **11. Supplier's duty of notification, premature termination of the contract in case of suspension of payments, insolvency**

**11.1** The Supplier must immediately inform SPIES in writing of any transfer of contract and/or any change of company name, transfer of registered office and change of ownership of more than 50% of the Supplier.

**11.2** If the Supplier stops payments or if a compulsory execution is levied on his assets and not stopped within a period of three weeks, or if a temporary insolvency administrator is appointed or insolvency proceedings are opened on his assets, or if bill or cheque protests are made against the Supplier, SPIES is entitled to terminate the contract in whole or in part without penalty and without notice.

**11.3** In the event of termination of the contract, the deliveries made up to that point shall only be invoiced at contract prices to the extent that they can be used for the intended purpose. The damage incurred by SPIES will be taken into account in the settlement.

#### **12. Applicable law/court of jurisdiction/place of performance/final provisions**

**12.1** The law of the Federal Republic of Germany shall apply between the parties. The provisions of the UN Sales Convention (CISG) are excluded.

**12.2** Place of jurisdiction for all disputes is Melle. SPIES is further entitled, at its own discretion, to sue the Supplier at the court of his place of business or branch or at the court of the place of performance.

**12.3** The place of performance for all deliveries and services under this contract is Melle.

**12.4** The Supplier agrees that SPIES may store, process and, if necessary, transmit to third parties company and personal data of the Supplier and his employees for the purpose of processing the transaction, as far as this is necessary in the course of processing the contract and shall ensure that the appropriate consents are obtained. We guarantee compliance with the provisions of the GDPR.

**12.5** Should individual parts of these GTP be or become legally ineffective, the effectiveness of the remaining provisions shall not be affected thereby. The invalid provision shall be replaced by a valid provision which comes closest to the economic purpose of the invalid provision.