

Terms and Conditions for Delivery and Services

I. Application

1. These Terms and Conditions for Delivery and Services – in the following referred to as “T&C” - of the companies Gubesch Engineering & Production GmbH, (Bahnhofswald 2, 91448 Emskirchen), Gubesch Prototypes & Tools GmbH (Bergstr. 34, 91489 Wilhelmsdorf), Gubesch Thermoforming GmbH (Industriestraße 1, 91489 Wilhelmsdorf) and Gubesch ROM S.R.L. (Strada Industriei nr. 10, 420160 Bistrita) – in the following individually referred to as “Supplier” - apply to all business relationships between the Supplier and its customer Nevertheless, these T&C are applicable only to customer which are business persons, legal entities under public law or of public utilities or separate public legal assets.
2. These terms are valid in respect to on-going business and also future business, even if not expressly stated, as long as these terms have been referred to at the occasion of a previous Supplier confirmed order.
3. Business terms of the customer do not apply, even if not expressly disagreed with by the Supplier, unless the Supplier has expressly agreed to them in writing. The regulations governing distance selling to customers are not transferable to commercial business relationships, not even in corresponding situations.
4. Should any one clause be or become void, the validity of the remaining clauses is not affected.

II. Prices

1. In the absence of a different arrangement prices shall be considered to be ex works, excluding freight, customs or import duties or ancillary export charges and packing, plus VAT, applied at the legally prescribed rate.
2. Should after submission of the offer, (or after confirmation of the order prior to delivery) a major cost factor - such as the cost of materials, energy, or labour - vary by more than 3%, either party may request a price adjustment. The adjustment shall be determined according to the applicable cost factor in respect of the total price.
3. Previous prices do not bind the Supplier in subsequent orders.

III. Orders, Delivery and Acceptance Obligations, Force Majeure

1. Orders become binding only after the Supplier has confirmed the order. If the customer does not disagree with the content of the order confirmation within 7 days, the contract shall become binding under the conditions listed in the confirmation, even if due to a transmission, communication or clerical error the conditions differ from the original agreement.

Variations and additions to the offer must be made in writing. All offers and tenders are subject to alterations, unless they are explicitly marked as fixed. Quantities or sizes are, unless expressly specified as binding, non-binding approximate values.
2. Delivery dates or delivery terms are not binding, unless explicitly agreed upon as binding. In any case delivery schedules commence with the receipt of documentation, necessary for the execution of the order, down payment or the timely provision of materials, if such were agreed. The supply deadline is considered fulfilled upon receipt of the delivery advice note, even when the actual delivery is delayed or has become impossible, provided the Supplier did not cause the delay.
3. The Supplier reserves the right to improve or change the design and model of the goods.
4. If an agreed delivery was not completed on time due to the direct fault of the Supplier, the customer must, in each case, allow an appropriate period of grace.
5. Reasonable partial delivery is deemed acceptable.
6. The Supplier may demand a firm commitment to on-call contract periods, manufacturing quantities and delivery schedules three months after receipt of an order at the latest. If the customer is unwilling to make such a commitment within three weeks, the Supplier is entitled, after further extension of two weeks, to withdraw from the contract after expiration of the latest deadline and/or demand compensation.
7. If the customer fails to duly accept a delivery, the Supplier is not bound by any regulation regarding re-sale and may freely dispose of any delivery items after prior notification of the customer, regardless of any other rights or regulations governing disposal sales.
8. The Supplier may delay delivery because of force majeure for the duration of the difficulties, including an appropriate time for a return to normalcy, or in the case of non-completion of a delivery rescinds the contract wholly or in part. As force majeure qualify strikes, lockouts or unforeseeable and unavoidable situations, such as breakdowns or transport delays or interruptions, lack of raw materials or energy through no fault of the Supplier, which, notwithstanding all reasonable efforts, render on-time delivery by the Supplier impossible. This also is the case when the aforementioned delays occur after previous delays or when delays occur with a sub-contractor.

The customer may request the Supplier to declare within two weeks, whether a cancellation of the contract or a late delivery within a suitable period of grace is appropriate. If the Supplier does not respond to the request, the customer may rescind not yet completed parts of the contract.

The Supplier shall inform the customer without delay when force majeure, as defined in clause 1 has occurred. The Supplier is obliged to minimize the inconvenience to the customer; if necessary, he may have to hand over the forms for the duration of the obstruction.

IV. Terms of Payment

1. All payments are to be made in € (EURO). In the absence of a different arrangement the purchase price for supplies or other services is to be paid immediately after receipt of invoice without deduction. Payment shall be deemed to have been effected on the date at which the amount in question is at Suppliers disposal. Non-dedicated payments will be off-set against the oldest account due.
2. If the agreed payment period is exceeded the Supplier shall be entitled to charge default interest from the due date at a rate of 9 percentage points over and above the applicable base rate as per § 247 BGB (German Civil Law Code), unless the Supplier proves higher damages. In particular, the customer is obliged to reimburse all fees, charges and expenses incurred in asserting Suppliers legal rights in and out of Germany
3. Cheques or bills of exchange are only acceptable with expressly written agreement and only to discharge existing obligations. All costs, associated with these forms of payment, shall be borne by the customer.
4. The customer may offset an account or exercise his right to withhold payment only if his claims are indisputable or established in law.
5. Sustained non-compliance with the terms of payment or circumstances that raise serious doubts as to the creditworthiness of the customer will result in claims for all payments falling due immediately. After the fruitless expiry of an appropriate period of grace the Supplier is also entitled to demand advance payment for all outstanding deliveries and even to cancel the contract.
6. The Supplier is entitled to assign any claims against customers to a third party.
7. The Supplier may off-set any claims he has against the customer against all claims, the customer has against the Supplier.

V. Packaging, Dispatch, Risk Transfer and Acceptance Delays

1. In the absence of a different arrangement, the Supplier chooses the packaging, mode of transport and transport route. The Supplier is entitled to conduct his

shipping business by commissioning his selected dispatcher under the customary agreed conditions.

2. The transport risk transfers to the customer upon goods leaving the works, even if delivery: "freight paid" is agreed. If the customer delays a delivery, the risk transfers to the customer as soon as the dispatch advice note has been issued.
3. If requested in writing by the customer, goods shall be insured at the customer's expense, for the risk coverage requested.
4. In case of default of acceptance by the customer, the supplier is entitled to store the goods at the expense and risk of the customer at its own discretion and may invoice these as if delivered. If the Supplier stores the goods, he is entitled to compensation for storage costs to the value of 0.5% of the invoiced value of the stored goods for each commenced week of storage. The customer is entitled to proof that substantially lower or no storage costs occurred. Higher storage costs and/or damages may be claimed if proven by Supplier. The Parties statutory rights regarding the exclusion of the obligation to perform (especially in the event of impossibility) remain unaffected.

VI. Reservation of Property Rights

1. Deliveries remain the property of the Supplier until all claims of the Supplier against the customer have been met. For account customers the reserved property rights to the delivered goods (reserved ownership of goods) are in force as security for the Supplier until the balance has been paid in full. If payments are made by means of a bill of exchange, then reserved ownership is not transferred until the bill of exchange has been cleared.
2. Further processing or treatment of goods supplied by the customer may only be carried out by excluding the ownership rights of the customer according to § 950 BGB (German Civil Code) as contracted by the Supplier. The Supplier becomes co-owner of the thus produced goods to the proportional value of the net sale price to the net post-manufacturing processed cost of the thus produced goods, which serve as reserved ownership goods to secure the property claims of the Supplier as per clause 1.
3. For further processing by the customer (in combination or addition) with other goods not owned by the Supplier, § 947, 948 BGB (German Civil Code) are applicable, resulting in proportional co-ownership by the Supplier in the resulting goods, which are now considered reserved ownership goods.
4. The re-sale of reserved ownership goods by the customer is only permissible as part of normal commercial practice and on condition that the customer reaches an agreement with the Supplier regarding reserved ownership goods as defined in

clauses 1 to 3. The customer is not entitled to take any other action in respect of reserved ownership goods, in particular pawning, or using the goods as security.

5. The customer relinquishes herewith already now all claims to the Supplier, which may result from the re-sale of goods and all other justifiable claims, including associated rights to his customers. The customer is duty-bound upon request to inform the Supplier immediately and supply all necessary documentation to secure the rights of the Supplier against the customers of the customer.
6. When reserved property is re-sold by the customer after further processing action in combination or addition with other goods, not owned by the Supplier, as outlined in clause 2 and/or 3 above, the customer relinquishes all purchase price claims according to clause 5 to the account value of the reserved ownership goods of the Supplier.
7. Should the value of the securities held by the Supplier exceed the total billed value of the goods by more than 10% the Supplier must release such securities to a commensurate value; the Supplier may nominate the securities to be released.
8. The Supplier must be notified without delay of any confiscation or seizure of reserved ownership goods by a third party. All associated costs due to such intervention are to be borne by the customer to the extent that costs are not borne by third parties.
9. Should the Supplier, taking action according to the above clauses, make use of his right to take back the reserved ownership goods, the Supplier is entitled to an unencumbered sale or auction of said goods. The value of the returned reserved ownership goods shall be as sold or auctioned and no higher than the agreed supply price. Further claims for compensation, in particular compensation for loss of earnings, are reserved.

VII. Warranty for Material Defects

1. The quality and design of the products is defined by the product description or agreed out-turn samples, which the Supplier can submit to the customer for evaluation. Apart from that No. XII clause 1 applies. Any reference to technical standards is an aid to define product quality and is not to be interpreted as a definition of product integrity. The usual industry standard tolerances apply. In the absence of a written agreement, the production shall be executed with standard industry materials and according to agreed production processes. In the absence of an agreement, generally accepted production processes will be used. Minor, technically unavoidable deviations in quality, colour, height, width, weight or equipment do not constitute defects.

2. If the Supplier has advised the customer outside its contractual obligation, he shall be liable for the functionality and suitability of the delivery item only when an explicit warranty was previously given.
3. Defects are to be notified in writing without delay. Hidden defects are to be notified immediately after discovery. In either case the warranty is limited to a period of twelve months after risk transfer, unless agreed differently.
4. If defects are proven the Supplier is obliged to subsequent fulfilment (at his discretion either by rectifying or replacing the faulty product). The customer is entitled to reduce the purchase price or rescind the contract, if the Supplier does not fulfil this obligation within a reasonable period, or if a subsequent fulfilment failed repeatedly. Both parties will have the right to rescind the contract, when subsequent fulfilment is impossible or unconscionable. Further claims, especially reimbursement of incurred costs or compensation and damages due to the faults are covered under general liability limitations according to No. VIII. Replaced parts are to be returned to the Supplier at his request and cost.
5. Unauthorized re-working and improper handling of parts result in the loss of any right to claim compensation for defective parts. After prior consultation with the Supplier or if the Supplier fails to provide subsequent fulfilment only, the customer is entitled to repair defective parts to avoid excessive damage, and as a consequence to demand reimbursement of appropriate costs.
6. Normal wear and tear caused by normal usage does not provide the right to make warranty claims.
7. Unless the requirements of § 478 BGB (German Civil Code) are met, the §§ 445a, 445b BGB are expressly excluded. If the requirements of § 478 BGB are met, a right to recourse claims according to provisions §§ 445a, 445b BGB exists only to the extent of a rightful claim by the consumer and to the limit of statutory provisions but not to any arrangement of goodwill, unless explicitly agreed between customer and Supplier in the individual case.

In any event the customer will only be entitled to claim recourse, if he is in compliance with its duties, in particular in compliance with the notification duties.

VIII. General Limitations of Liability

1. The Supplier's liability is limited only to cases in which he, his leading employees or sub-contractors are guilty of culpable intent, gross negligence or injury to life, limb and health.

2. The statutory product liability (German “Produkthaftungsgesetz”) is unaffected as well as any liability in respect of the legal fulfilment in regard of a product guaranty, if such was explicitly given.
3. Unaffected also is the liability in the case of culpable neglect of major contractual obligations. In This regard the liability is restricted (except for cases of VIII. 1.) to foreseeable direct damages commonly encountered in contracts. Major contractual obligations shall be understood to cover fundamental, elementary obligations resulting from the contract relationship, which are important to the orderly and proper execution of the contract and substantially influence the relationship of trust between the contract partners, especially the supply and important reporting obligations.
4. However, this implies no change in the requirement of proof to the disadvantage of the purchaser.
5. Due to a breach of duty which does not consist of a defect, the customer may only rescind or terminate the contract if the Supplier is responsible for the breach of duty. An unrestricted right of the customer of termination of contract, in particular according to §§ 651, 649 BGB. (German Civil Code) is excluded. Apart from that the statutory requirements and legal consequences apply.

IX. Forms (Tooling)

1. The price for forms also contains the one-off costs for the making of patterns, but does not contain the costs for test and processing procedures, nor costs incurred by customer initiated alterations. Any further patterns required by the Supplier are at his own costs.
2. The Supplier has and retains ownership of all forms made by the Supplier for the customer or by a contracted third party, unless agreed to differently. Forms shall be used only for customer orders, if expressly agreed, provided the customer adheres to payment and acceptance obligations. The Supplier is obliged to replace the forms free of charge only when the required production quantity necessitates its replacement; the provisions for liability under VIII remain unaffected. The Supplier’s obligation to store the forms expires two years from the last delivery of parts produced with the forms. The customer shall be notified before their disposal.
3. Where a delivery contract is terminated, and the forms were not or not fully paid and are not amortized on the part of the supplier, the supplier is entitled to invoice the remaining amortization amount immediately.
4. If it is agreed contractually that the property of the forms shall be transferred to the customer, such transfer shall be made not before full payment of their purchase price .The actual transfer of forms to the customer is replaced by the storage of the said forms to the benefit of the customer. Irrespective of the customer’s legal right

of surrender and the lifetime of the forms, the Supplier is entitled to exclusive possession of same until the end of the contract period. The Supplier shall mark the forms as outside property and insure said property at the customer's request and expense.

5. The liability of the Supplier in respect of storage, care and maintenance of forms owned by the customer as per clause No. 4 and/or forms loaned by the customer to the Supplier, the liability of the supplier regarding storage and maintenance is limited to the care applied to its own property. Costs for maintenance and insurance are born by the customer. The obligations of the Supplier cease when, after completion of the contract and a corresponding request, the customer fails to collect the forms within an appropriate period. The Supplier has the right to withhold the forms as long as the customer has not complied with the full extent of its contractual obligation.

X. Design/Mock-up/Documentation

1. The Supplier retains the sole ownership and copyrights of the drafts, documentation, sketches, drawings and other documents. Inasmuch as the customer provides patterns and ideas, the Supplier receives a co-copyright to the extent to which the pattern or concept was fashioned by the Supplier.
2. If no order results, the customer is obliged to return to the Supplier without delay all provided documentation, including any copies made. Digital copies are to be permanently destroyed.
3. If the customer provided models, ideas specifications etc., he has to indemnify and hold harmless the Supplier from and against any possible claims of third parties in regard of the usage of such intellectual property.
4. Any produced drafts, drawings, mock-ups and similar by the Supplier remain the property of the Supplier, even if the customer was charged production costs.

XI. Provision of Materials

1. If the customer supplies production materials, said materials are to be delivered at the customer's own cost and risk, on time and in good order and a quantity premium of at least 5%.
2. If the above provision is not complied with, the delivery deadline shall slip accordingly. The customer has to bear any additional costs, including extra costs incurred due to breaks in production, except in the case of force majeure.

XII. Rights to Commercial Protection and Legal Limitation

1. For all deliveries based on drawings, models, patterns or parts supplied by the customer, the customer warrants that the commercial rights of third parties in the country for which the goods are being manufactured are not injured. The Supplier may draw the customer's attention to known laws, but is not obliged to undertake investigations. The customer shall indemnify and hold harmless the Supplier from and against any claims of a third party at first request, and furthermore shall pay compensation for any resulting damage. The Supplier is entitled to stop all work – without any examination of the legal position – until the legal position has been clarified by the customer after an injunction by the third party to protect the commercial rights of the third party has been issued. If the continuation of the contract should become untenable to the Supplier, the Supplier may rescind the contract.
2. Any drawings and patterns that were made available to the Supplier, but did not result in a contract, shall be returned when requested; else the Supplier is entitled to destroy the same three months after the issue of the quote or tender. The same obligation applies also to the customer. The party entitled to dispose, shall inform the other party of the intention prior to doing so and in good time.
3. The Supplier retains all property rights, copyrights and, if applicable, rights to commercial protection, in particular the rights of utilization and exploitation of models, forms, facilities, designs and drawings made by him or for him under contract by a third party. If requested, the customer shall return all records, documentation, forms, patterns or models, including all copies made thereof, to the Supplier without delay.
4. For all other legal product limitations No. VII respectively applies.

XIII. Pure Food Manufacturing Practices and Recycling Materials

1. If a product is intended to come into contact with food stuffs, the customer shall be responsible for ascertaining in advance the suitability of the used materials for specific foods.
2. Raw materials shall be carefully selected by the Supplier to be recyclable. Regenerative plastics may, however, exhibit greater variation of surface characteristics from one charge to another, such as colour, purity, odour and physical or chemical properties, which the customer may not claim as a fault. However, the Supplier, if requested, shall relinquish possible claims of sub-Suppliers to the customer; but the Supplier does not guarantee the continuance of these claims.

XIV. General

Should a provision of this Agreement be or become void or impracticable, or should this Agreement have a gap, this does not affect the validity and practicability of the remaining provisions of this Agreement. The Parties are obliged, in order to replace the invalid provision or to fill the gap, to agree on the valid provision that most closely approximates the provision in question or that most closely approximates the economic purpose of this Agreement.

XIV. Production and Legal Venue

1. The production venue is the works of the Supplier.
2. Legal venue at the Supplier's discretion is the principal office of the Supplier or the customer.
3. German law applies exclusively, excluding its conflict of laws provisions and the UN-Convention on Contracts for the International Sale of Goods.