

# General Conditions of Purchase

last amendment 06.02.2019

**Gleason-Pfauter  
Maschinenfabrik GmbH**

**A purchase contract, contract for work or contract for labour and materials concluded with Gleason-Pfauter Maschinenfabrik GmbH (the "Customer") is only concluded on the basis of these General Conditions of Purchase.**

## **I. Scope of validity**

1. The current version of these General Conditions of Purchase (the "**Conditions of Purchase**") of the Customer applies exclusively to all quotes, orders and agreements concluded by him insofar as no other agreements have been concluded in writing between the Customer and the Supplier (the "**Supplier**", Customer and Supplier also individually or jointly "**Contractual Partners**"). The Conditions of Purchase also apply without express reference to future quotes, orders and agreements.
2. For the currently valid version of the Conditions of Purchase, see. <http://www.gleason.com/ludwigsburg>
3. Divergent General Terms and Conditions of Business also do not apply if they are not expressly objected to in individual cases by the Customer, ordered goods are accepted without reservation or a payment has been effected unconditionally.

## **II. Orders**

1. Orders and call-offs as well as changes and amendments thereto are only valid if the Customer places or confirms them in writing. If the Supplier alters the order, the Customer is not bound by this. An altered confirmation of the order by the Supplier represents a new quote by which the Supplier is bound until 14 days after receipt by the Customer. The Customer must confirm acceptance in writing. Neither the refusal of the Customer to comment on the altered order nor the acceptance of the goods or services by the Customer represents acceptance of a new quote.
2. If the Supplier does not accept the order within 14 days of receipt, the Customer is entitled to cancel the order free of charge. The order is only accepted by the Customer on return of the order confirmation included with the order. The date of receipt of the order by the Supplier and receipt of the order confirmation by the Customer is the date of the postmark. The same applies to the cancellation of the order by the Customer.

## **III. Changes**

1. If, after conclusion of an agreement, it transpires, on implementation of said agreement, that deviations from the originally agreed specification or from the specification and/or quality already provided are necessary or expedient, the Supplier is to inform the Customer of this by writing without delay, including the amended safety data sheet. The Customer then informs the Supplier within 14 days whether the deviations are to be implemented. If the Customer decides to implement the deviation, and if this affects the costs of implementing the agreement, these are to be re-negotiated and adjusted accordingly by the contractual partner. If the Customer decides against implementing the deviation or if he or she does not decide within 14 days, the current contractual agreement remains in force.
2. The Customer can also demand changes in the delivery and service after conclusion of the contract insofar as this can be expected of the Supplier, their interests into account, and is therefore a valid reason for the change. In the case of this contractual change, the effects are to be appropriately considered, in particular with regard to increases or decreases in costs as well as of the delivery dates.

## **IV. Deadlines and consequences of longer and shorter deadlines**

1. Agreed deadlines for deliveries and services are binding. If delays are to be expected, the Supplier is to inform the Customer immediately, stating the reasons and expected duration of the delay. However, such notifications do not mean acceptance of new deadlines by the Customer.
2. Additional costs incurred by an expedited delivery or service in order to observe delivery, service and implementation dates are borne by the Supplier unless he or she can prove that the Customer is responsible for the necessity for the expedited delivery or service.
3. If the Supplier does not deliver or perform within an appropriate period of grace set by the Customer, the Customer is entitled, also without warning, provided that the remaining statutory conditions exist, to reduce payment, to refuse acceptance, to withdraw from the contract or to demand compensation for damages or reimbursement of expenses.

4. The Customer points out that he or she may also be liable for damages in the case of failure to observe agreed service and/or delivery dates, because he or she agrees to service and/or delivery obligations and service and/or delivery dates of his customers which require the punctual and correct service and/or delivery of the Supplier.

5. If the goods are delivered before the delivery date without the agreement of the Customer, or if the service is offered before the service date, there is no obligation of acceptance or payment on the part of the Customer until the agreed delivery and/or service date. The Customer is entitled to return goods delivered before the delivery date or to store them with a third party at the expense and risk of the Supplier.

6. Any agreed contractual penalty is credited against any agreed lump-sum compensation or another claim for default damage, such as any agreed lump-sum compensation on assertion of a specifically calculated damage caused by delay. The Customer reserves the right to demand any agreed contractual penalty due to incorrect fulfilment (§ 341 BGB - German Civil Code). The right to assert a claim for compensation beyond the contractual penalty and the lump-sum compensation remains reserved.

### V. Prices

1. The prices are fixed prices, free to place of destination of the goods, including packaging and other additional costs. They include all expenses relating to the deliveries and services to be provided.

2. The statutory VAT is not included in the price unless expressly otherwise agreed.

### VI. Processing and delivery

1. The Supplier may only award sub-contracts for the full or partial fulfilment of the ordered deliveries and services with the previous written agreement of the Customer insofar as not only the delivery of marketable parts is concerned. This does not affect the sole responsibility of the Supplier to provide correct services. Also in the case of granted permission, the Supplier may only assign deliveries and services to such sub-contractors who are expert, efficient and reliable. This also includes that such sub-contractors observe the statutory provisions, in particular to combat illegal employment, the Posting of Workers Act, the Temporary Lending of Employees Act, the Minimum Wage Act and the provisions of the Social Insurance Act, in particular the payment of contributions. The Supplier is liable for the sub-contractor as for an own vicarious agent pursuant to § 278 BGB.

2. Partial deliveries or partial services require the agreement of the Customer. The same applies to excess or insufficient deliveries or -services.

3. Every delivery is to be accompanied by a delivery note in duplicate, the order/item number, the part no. and the designation of the content according to type and quantity of the Customer. If the goods are delivered directly to a third party, or if the goods are collected from the Supplier by a third party, the shipping instructions of the Customer are to be observed.

4. The Supplier is to observe the provisions of the currently valid version of the packaging ordinance.

### VII. Invoices, payments

1. Every invoice of the Supplier is to be submitted to the Customer, specifying the order and part number.

2. Insofar as no specific agreement has been concluded, payment is to be effected either within 14 calendar days from receipt of a correct invoice and correct delivery or service - whereby the later time is valid in each case - with a deduction of three per cent cash discount on the invoice amount or within 30 calendar days from receipt of the invoice and delivery or service without deduction, whereby the later time is valid.

3. In the case of deliveries or services not in accordance with the contract, in particular defective deliveries or services, the Customer is entitled to retain payment until correct fulfilment without loss of discounts, cash discounts or similar payment reductions.

4. Payments do not represent acceptance of the delivery or service as in accordance with the contract. In the event of faulty or incomplete delivery or service, the Customer is entitled to retain payments of liabilities from the business relationship to an appropriate extent until correct fulfilment irrespective of their other rights.

5. Payment by the Customer is subject to the condition that there are no impediments to it due to national or international regulations of foreign trade law or embargos (and/or other sanctions).

### VIII. Observance of (statutory) regulations, safety, environmental protection

1. At the time of delivery or service, the deliveries and services of the supplier must comply with the recognised technical and scientific rules, all applicable statutory provisions, in particular the safety and environmental protection conditions including the Ordinance on Protection against Hazardous Substances, the ElektroG (WEEE = Waste Electrical and Electronic Equipment) and the safety recommendations of the responsible German specialist bodies or professional associations, e.g. VDE, VDI, DIN. Relevant certificates, test reports and documents are to be included in the delivery by the Supplier free of charge.

2. The Supplier is to determine and observe the current status of the directives and laws valid for the deliveries and services with regard to substance restrictions. In addition, he or she is obliged not to use prohibited substances. Substances to be avoided and hazardous substances are to be specified by the Supplier in accordance with the specifications. Insofar as necessary, the safety data sheets are already to be submitted to the Customer together with the quotes and with the individual initial delivery with the delivery note (at least in German or English). In the event of deviations from the specification originally agreed or from the specification or quality actually delivered so far, the Supplier has to provide the Customer with the altered safety data sheet together with the notification in accordance with Clause III.1. Information on exceeding of substance limitations and delivery of prohibited substances is to be provided to the Customer without delay.

3. On delivery and provision of services, the Supplier is solely responsible for observance of the accident prevention regulations. Protective equipment required by these regulations and any instructions of the manufacturer are to be included in the delivery free of charge.

4. The Supplier ensures that the Supplier and all direct and indirect sub-contractors, including the temporary employment agency, observe the statutory provisions on combatting illegal employment, the Posting of Workers Act, the Temporary Lending of Employees Act and the Minimum Wage Act. With regard to the sub-contractors appointed by the Supplier, he or she will take suitable measures to ensure and check observance of the statutory regulations specified in this Clause VIII.4 by direct or indirect sub-contractors or temporary employment agencies. The Customer reserves the right to carry out relevant checks. If there is a claim against the Customer by employees of the Supplier or any sub-contractors or any temporary employment agencies and/or the social security systems pursuant to § 14 Posting of Workers Act, § 13 Minimum Wage Act or other statutory regulations mandating corresponding liability, the Supplier will fully exempt the Customer from these claims and all related costs and expenses if the Supplier is responsible for the claim of the Customer.

### IX. Code of Conduct for Suppliers

1. The Supplier is obliged to observe the laws and ordinances of the individually applicable jurisdiction(s). In particular, the Supplier will not be involved either actively or passively, directly or indirectly, in any form of bribery, infringement of the basic rights of their employees or child labour. In addition, the Supplier will take responsibility for the health and safety of their employees at the workplace, observe the environmental protection laws and promote observance of this code of conduct by their suppliers in the best way possible.

2. If the Supplier negligently infringes these obligations, the Customer is entitled, regardless of further claims, to withdraw from or terminate the contract. If elimination of the infringement of the obligation is possible, the Customer may only exercise this right when he has granted the Supplier a period of grace to eliminate the infringement of the obligation which has lapsed without success.

### X. Import and export provisions, customs

1. In the case of deliveries and services provided from an EU member state outside of Germany, the EU VAT ID no. of the Supplier is to be specified.

2. Imported goods are to be delivered duty paid. In accordance with the Ordinance (EC) no. 1207/2001 of the Council, the Supplier is obliged at their expense to provide requested declarations and information, to permit inspections by the customs authorities and to provide necessary official verifications.

3. The Supplier is obliged to inform the Customer in detail and in writing of any approval obligations in the case of (re-)exports in accordance with German, European or US export and customs regulations as well as export and customs regulations of the country of origin of the goods.

### **XI. Passing of risk, acceptance, property rights**

1. Irrespective of the agreed pricing, the risk on delivery without installation or assembly passes to the Customer on receipt at the delivery address specified by the Customer and on delivery with installation or assembly on successful acceptance by the Customer.

Commissioning or use does not replace the declaration of acceptance of the Customer. If the goods are collected from the Supplier, the passage of risk is based on the time of collection.

2. The goods are to be transferred to the Customer unconditionally. However, if in individual cases the transfer of the goods is contractually required by the payment of the price (Clause V), an extended reservation of title is deemed to be agreed. However, all other forms of reservation of title, in particular the extended reservation of title, the transferred reservation of title and the reservation of title extended to further processing are excluded.

### **XII. Quality Assurance**

1. If no additional detailed quality assurance agreement has been agreed in writing, the Supplier has to carry out quality assurance relating to their deliveries with relation to the type and scope, the latest state of technology and science and services and provide evidence of this to the Customer on request.

2. At any time during regular business hours of the Supplier, the Customer is entitled to check the production status of the Supplier or of third parties whom the Supplier deploys to fulfil their obligations and in addition to check with the freight forwarder or warehouses also during the production process and to request information on the production status. The Supplier is to ensure that this obligation is met by any sub-contractors.

3. If the Supplier has problems with regard to production or delivering the agreed quality or material properties of the goods, the Supplier is obliged to inform the Customer of this without delay.

### **XIII. Defect claims and recourse**

1. The Customer inspects incoming goods within a reasonable period which is feasible in the proper terms of business by means of random visual inspection for obvious defects. In this case, the Customer is only obliged to inspect the identity of the delivered goods, the observance of the quantity and the presence of obvious defects and clearly visible transport damage. The Customer will report such damage at the latest within four days of detection. If a concealed defect becomes apparent later, the Customer will report this on discovery.

2. In the scope of the above-mentioned Clause XIII.1, the Supplier waives any objection of delayed notification of defects.

3. In urgent cases, in particular in the case of endangering operational safety or prevention of unusually high damage and if the Supplier does not eliminate the defect within a reasonable period of grace, the Customer is entitled, following previous information and expiry of a short period of grace appropriate to the situation, to eliminate the defect themselves at the expense of the Supplier or to have it eliminated by a third party at the expense of the supplier. If the Supplier delivers or provides the service with a delay and the Customer has to eliminate defects immediately in order to avoid considerable disadvantageous consequences from their own delayed delivery, the Customer is entitled, following prior information and expiry of a short period of grace appropriate to the situation, to eliminate the defect themselves at the expense of the Supplier or to have it eliminated by a third party at the expense of the Supplier.

4. The justified claims of the Customer in the case of defects become time-barred after expiry of 24 months since commissioning of the delivery item but at the latest after expiry of 36 months from passing of risk insofar as no longer statutory period of limitation exists.

5. The Supplier exempts the Customer from all claims of third parties in the case of defects of title of the goods delivered by the former if the former is responsible for these.

6. For subsequently delivered parts or repaired parts of the delivery within the period of limitation, the period of limitation begins again insofar as the rectification is not negligible and a not insignificant defect is concerned. This does not apply if the Supplier declares that

the subsequent delivery or rectification does not represent acknowledgement of an obligation to eliminate the defect, for example as the Supplier acts as a gesture of goodwill or to avoid a dispute.

7. The Supplier exempts the Customer from all claims which third parties assert - regardless of the legal basis - due to a material defect or defect of title or other fault of the goods delivered by the former and reimburses the Customer for the necessary costs of the latter's prosecution in this regard. This only applies insofar as the Supplier is responsible for the material defect or defect of title or any other fault. Insofar as the Customer is jointly responsible, § 254 BGB applies accordingly.

8. If the Supplier does not eliminate the defect within the set reasonable extension period, the Customer can, at the latter's discretion, withdraw from the contract or reduce remuneration and claim compensation for damages or reimbursement of expenses.

9. The deliveries or services provided by the Supplier must meet all requirements specified in the contractual documents, in particular plans, drawings or other special requirements where relevant. If the delivery or service deviates from the requirements, the Customer is entitled to the rights specified in Clause XIII.8. Further warranty rights of the Customer remain unaffected.

#### **XIV. Reworking:**

1. Defects of the delivery and/or service claimed during the warranty period, including failure to achieve guaranteed data and the lack of assured properties, are to be eliminated by the Supplier within a reasonable period and also free of charge with regard to all necessary additional costs, on discretion of the Customer by reworking or replacement of the defective parts or new delivery/new production, regardless of whether a purchase or works contract exists.

2. In particular, the Supplier bears all the expenses necessary in relation to the detection of defects and elimination of defects, also insofar as they are incurred by the Customer, in particular necessary examination costs, disassembly and reassembly costs, labour and material costs as well as the necessary transport and other necessary costs when replacing defective parts. This also applies insofar as the necessary expenses are increased due to the fact that the delivery item is transported to a place other than the place of performance but not if this results in disproportionate costs.

#### **XV. Technical documents, tools, means of production**

1. The technical documents, tools, works standard sheets, means of production and other objects remain the property of the former; all trademarks, copyrights and other property rights remain with the Customer. The specified objects, including all copies produced, are to be returned to the Customer immediately after execution of the order. In this respect, the Supplier is not entitled to assert a right of retention. The Supplier may only use the specified objects to execute the order and may not entrust them or otherwise make them available to unauthorised persons.

2. If the Supplier produces the objects specified in Clause XV.1, Section 1 partially or completely at the latter's expense, Clause XV.1 applies accordingly, whereby the Customer acquires (co-)ownership with the payment in the amount of a corresponding proportion of the Customer's share. The Supplier stores these objects for the Customer free of charge. The latter can cancel the works supply contract at any time and acquire the rights in relation to the object with reimbursement of expenses not yet amortised and demand the return of the object.

#### **XVI. Provision of material**

1. Material provided by the Customer remains the property of the Customer and is to be stored separately from the Customer's other property by the Supplier free of charge and with the due care and diligence of a prudent businessperson and marked as property of the Customer. It may only be used to carry out the orders of the Customer. Damage to material provided is to be replaced by the Supplier insofar as the Supplier is responsible for this.

2. If the Supplier processes or reworks the material provided, the Supplier carries out this work for the Customer. The latter becomes the direct owner of the new items thus produced. If the material provided only represents part of the new items, the Customer is entitled to joint ownership of the new items proportionate to the value of the provided material contained therein.

### XVII. Protective rights

1. The Supplier is liable for claims which result in the event of the contractual use of the delivery items from the violation of property rights and property rights registrations (property rights) of third parties insofar as the Supplier is responsible for the infringement.
2. The Supplier exempts the Customer and the Customer's buyers from all claims from the use of such property rights insofar as the Customer is liable pursuant to Clause XVII.1.
3. The contracting parties undertake to inform each other without delay of risks of infringements of which they become aware and to give each other the opportunity to counteract corresponding claims.

### XVIII. Product liability

1. If claims are made against the Customer based on product liability, the Supplier is obliged to exempt the Customer from such claims if and insofar as the damage is caused by a fault in the goods supplied by the Supplier and the Supplier would have to be liable to third parties. However, in cases of fault-based liability, this does not apply insofar as the Supplier is not responsible. In these cases, the Supplier is to exempt the Customer in the corresponding amount from all costs, including the expenses for necessary recalls and the legal costs of necessary prosecution. Otherwise, the statutory provisions apply. Insofar as the Customer is jointly responsible, § 254 BGB applies accordingly.
2. The Supplier undertakes to take out sufficient insurance against risks from product liability and to provide the Customer on request with proof of the insurance cover. Liability of the Supplier to the Customer is not limited by conclusion of the insurance policy and coverage thus offered.

### XIX. Confidentiality

1. The Supplier is obliged to treat as confidential all not apparent commercial and technical details of which he becomes aware due to the business relationship (the "**confidential information**"), also after termination of the business relationship, not to forward them to third parties or use them for own or other purposes in violation of the contract. This confidentiality obligation lapses if and insofar as confidential information have become known generally without an infringement of the confidentiality obligation by the Supplier.
2. All documents, such as drawings, models, tools, templates, samples, diagrams and similar objects may not be given or otherwise made accessible to unauthorised third parties. Copying of such objects is only permitted for operational requirements and copyright regulations. The objects produced with the aid of these means of production may not be forwarded to third parties without the written permission of the Customer. The same also applies to objects and findings which the Supplier has developed or further developed in accordance with the specifications or with the co-operation of the Customer. The above-mentioned regulations apply regardless of who has to bear the costs of the development.
3. The Supplier is to oblige their sub-contractors to observe the obligations of this Clause XIX accordingly.
4. The contractual partners may only advertise their business connection with the prior written permission of the other contractual partner.

### XX. Limitation of liability

1. In principle, the Customer is only liable for claims for compensation of the Supplier based on the violation of life, limb or health or violation of essential contractual obligations (so-called "*cardinal duties*", i.e. duties whose fulfilment make correct implementation of the contract possible in the first place and the observance of which the Supplier can regularly rely) and for other damages based on an intentional or grossly negligent infringement of obligations of the Customer, their legal representatives or vicarious agents and for damages for which liability is provided for in accordance with mandatory statutory provisions.
2. In the event of infringement of essential contractual obligations, the Customer is only liable for the amount of contractually typical, foreseeable damage if this has been caused by simple negligence, unless claims for compensation of the Supplier are involved resulting from violation of life, limb or health or from mandatory statutory regulations.
3. If no case of Clause XX.1 and Clause XX.2 is given, the liability of the Customer in cases of simple negligence for indirect damage which has not occurred on the performance object itself (e.g. loss of profit, indirect consequential damages etc.) as well as direct damage is excluded.

4. The claims for compensation of the Supplier lapse a year after the statutory start of the limitation period. This limitation period does not apply to damage caused by intent or gross negligence, to violation of life, limb or health and insofar as statutory limitation regulations must be applied.
5. Insofar as claims for compensation against the Customer are excluded, this also applies with regard to the personal liability of the Customer's employees.

### **XXI. General provisions**

1. The Supplier is only entitled to the right to offset against the liabilities to which the Customer is entitled insofar as the counter-claims of the latter are legally established, undisputed or recognised by the Customer.
2. The Supplier has no right of retention of the objects which are the property of the Customer.
3. The transfer of rights and obligations of the Supplier from the contractual relationship to third parties requires the written agreement of the Customer in order to be effective.
4. The legal relationship of the contractual partners is exclusively subject to German law to the exclusion of any conflict of laws and the agreement of the United Nations for Contracts for the International Sale of Goods (CISG, UN Convention on the International Sale of Goods).
5. For all claims from the contract, the place of fulfilment is the registered office of the Customer.
6. Unless expressly otherwise agreed between the contractual partners in writing, the sole place of jurisdiction for all disputes from and in connection with the contract is the registered office of the Customer, insofar as the Supplier is a merchant in accordance with HGB, a legal entity of public law or a special fund under public law. The same place of jurisdiction applies if the Supplier has no general domestic place of jurisdiction, moves their usual place of residence or habitual abode from the country following the conclusion of the contract or their usual place of residence is not known at the time the action is filed.
7. If a provision of these conditions of purchase or a provision has not fully or partly become part of the contract in the context of other agreements between the contractual partners, is or becomes ineffective, impracticable or null and void or an inadvertent loophole in these purchase conditions or the other agreements between the contractual partners, the other provisions of these purchase conditions or of the other agreements remain valid. The provision which has become not part of the contract, ineffective, impracticable or null and void is deemed from the beginning to be replaced by the effective and enforceable provision which the contractual partners would have adopted if they had considered this point from the beginning. In this case, the economic interests of both sides are to be appropriately considered. The above sentence applies accordingly in the event of the existence of any inadvertent loopholes.