

Terms of Sale and Supply of GEGGUS GmbH in Weingarten

As of 09/2015

I. Scope of Application

The supplies and services of GEGGUS GmbH shall exclusively be subject to the general terms of sale and supply outlined below. They shall apply only vis-à-vis merchants and entrepreneurs as defined in Section 14 BGB (German Civil Code) and shall also apply to any future business with the principal. Unless GEGGUS GmbH has explicitly agreed to their validity, any terms that conflict with or deviate from them shall not apply. The terms and conditions set out below will also apply when GEGGUS GmbH / its authorized representative renders services subject to no special conditions while having knowledge of regulations of the customer that conflict with or deviate from these terms.

Our terms of sale and supply as currently valid are retrievable in a storable file at www.geggus.com/ajgb

II Offer, Conclusion of Contract and Specification of Services

1. Any offers made by GEGGUS GmbH are non-binding and deemed to be an invitation for the buyer to submit to GEGGUS GmbH a respective offer. A contract will be concluded upon the buyer's purchase order (offer) and acceptance by GEGGUS GmbH. If the latter deviates from the purchase order, this shall be deemed a new offer by GEGGUS GmbH that is subject to confirmation.
2. If the customer orders goods electronically, receipt of the purchase order will be confirmed as quickly as possible. The confirmation of receipt shall not constitute a binding acceptance of the purchase order. The confirmation of receipt may be combined with the declaration of acceptance.
3. The technical data and descriptions of the individual product information, marketing materials and technical data sheets or any specifications by the manufacturer or its assistants within the meaning of Section 434 (1) no. 3 BGB shall not constitute guarantees as to the quality or durability of the goods to be supplied by GEGGUS GmbH unless particular specifications are agreed in an individual contract.
For sales according to samples or models, such samples or models describe only professional sample production and do not constitute a guarantee for the quality or durability of the goods to be supplied by GEGGUS GmbH.
4. GEGGUS GmbH will provide technical advice on application to the best of their knowledge. The specifications and information provided on the suitability and application of the goods shall not exempt the buyer from conducting their own examinations and tests regarding the products' suitability for the intended procedures and purposes.
5. GEGGUS GmbH reserves rights of ownership and copyright in illustrations, drawings, calculations and any other documents; these must not be made accessible to third parties. In particular, this shall apply to any written documents designated as confidential; the customer must explicitly obtain GEGGUS GmbH's written consent before forwarding them to third parties.

III. Prices, Terms of Payment and Set-Off

1. All prices are ex works not including packaging. All prices are in euros unless otherwise specified and do not include VAT. VAT will be invoiced separately at the rate applicable at the time as set out in the respective tax law regulations.
2. Any indications as to prices and services as well as any other declarations or warranties shall be binding upon GEGGUS GmbH only if made in writing or confirmed by GEGGUS GmbH.
3. The agreed prices shall only apply to the individual order concluded.
4. GEGGUS GmbH shall be entitled to adequately increase the agreed prices if costs increase after the conclusion of contract, particularly due to the conclusion of collective agreements or material price increases. Evidence of such will be provided upon request.
5. Unless the order confirmation provides otherwise, the purchase price shall be due for payment within 5 days from the date of the invoice. Any deduction of a discount shall be subject to separate written agreement.
6. Delivery shall be deemed to have been effected with the notification of readiness for dispatch if delivery is delayed for reasons for which the principal is at fault.
7. Payment deadlines shall be deemed to have been met when GEGGUS GmbH can dispose of the amount within the deadline. At the discretion of GEGGUS GmbH, payments may be offset against other, outstanding claims.
8. Cheques and – where payment by bill of exchange has been agreed – bills of exchange will be accepted on account of payment. Any discount, collection charges or interest must be reimbursed to GEGGUS GmbH without delay.
9. Offsetting or retention on the part of the principal shall be excluded unless the claim for offsetting or retention is undisputed or has been established by a court of law. GEGGUS GmbH shall be entitled to prevent the exercising of the right of retention by providing a security – or bank guarantee.
10. If the principal is in arrears with their payment obligation as a whole or in part, the principal shall pay interest for arrears of payment – from that date – amounting to 9 percentage points annually above the prime lending rate of the European Central Bank notwithstanding all rights of GEGGUS GmbH unless GEGGUS GmbH furnishes proof of any further damage incurred.
11. If the principal discontinues their payments, if there is overlevverage or if the opening of settlement or insolvency proceedings is applied for or if the principal is in arrears with cashing due bills of exchange or cheques, the total claim of GEGGUS GmbH will become due immediately. The same shall apply in the case of any other essential deterioration of the principal's financial condition. In such cases, GEGGUS GmbH shall be entitled to request the furnishment of sufficient securities or to withdraw from the contract.

IV. Delivery

1. Unless a fixed date transaction has been explicitly agreed in writing, any agreed delivery deadlines shall be deemed approximate only.
Any indication as to delivery periods will, as a general rule, be subject to the principal's cooperation in accordance with the contract.
If, nevertheless, agreed delivery deadlines are exceeded for circumstances for which GEGGUS GmbH is at fault, the principal may, after futile expiry of a period of grace set by the principal in writing that must be of at least 15 business days, withdraw from the contract or demand damages. Withdrawal from the contract must be declared in writing. The obligations as to damages are governed by no. VII 6 et seq., X no. 1 et seq.
2. GEGGUS GmbH will be in arrears only after an adequate period of grace of at least 15 business days set by the principal. In cases of force majeure or any other unforeseeable, extraordinary circumstances for which GEGGUS GmbH is not at fault, including but not limited to interruptions of operations through fire, water or similar conditions, the failure of production facilities or machines, exceeding of delivery deadlines or non-delivery by other suppliers as well as interruptions of operations due to shortages of raw material or energy, strike, lockout, government action, GEGGUS GmbH – to the extent they are prevented from performing their obligations in a timely manner due to the afore-mentioned circumstances with no fault of their own – shall be entitled to postpone the supply and / or provision of service for the duration of the impediment and an adequate recovery period. If this delays supply or the provision of services for more than one month, both GEGGUS GmbH as well as the principal shall be entitled to withdraw from the contract in writing with respect to the defects affected by the supply disturbance, excluding any and all claims for damages (subject to no. VII no. 6 et seq., X no. 1 et seq.).
3. GEGGUS GmbH shall be entitled to effect partial supply and partial performance of services within the agreed supply and performance of service times if the principal can reasonably be expected to accept this.
4. Compliance with the supply and performance of the service obligations of GEGGUS GmbH requires timely and due compliance with the required acts of cooperation on the part of the principal.
5. If the principal is in delay with request for delivery, taking delivery or collection, or if the principal is at fault with a delay in shipping or service, GEGGUS GmbH shall be entitled without prejudice to any other claims to demand a lump-sum fee amounting to the storage costs customary in the place, regardless of whether the goods are stored at GEGGUS GmbH's premises or those of a

third party. The principal shall reserve the right to establish that no damage or a lesser degree of damage has occurred.

V. Shipping

Unless explicitly agreed otherwise in writing between GEGGUS GmbH and the principal, shipping will be ex works and the shipment will have to be collected there by the principal at the principal's risk and cost. In this case, the risk of accidental loss of or accidental damage to the goods ordered under the contract will pass to the principal after they have been made available for collection upon the principal's receipt of the notification of availability for collection. In all other respects, the risk of accidental loss of and accidental damage to the ordered items will pass to the principal upon handover to the carrier. This shall also apply to deliveries freight paid and deliveries insured for transport by GEGGUS GmbH.

VI. Retention of Title

1. We shall retain title in our services until complete payment of any and all claims we have against the principal from the business relationship. These claims also include cheques and bills receivable as well as claims from a current account.
2. The principal shall be obliged to treat with due care the goods under retention of title for the retention period and to have any necessary maintenance work or inspections carried out by expert personnel at the principal's cost. In particular, the principal shall be obliged to insure the goods adequately in the amount of the original value at their own cost against any damage from fire, water or theft. Already now, the principal shall assign to us all claims for damages under that insurance contract. We hereby accept the assignment. If assignment is not admissible, the principal hereby irrevocably instructs their insurer to effect payments, if any only to us. Any further claims of ours shall remain unaffected. Upon request, the principal shall furnish evidence to us of the insurance contract.
3. The principal shall be permitted to sell the goods subject to retention of title only within the framework of the ordinary course of business. The principal shall not be entitled to pledge or assign as security, or make any other dispositions that compromise our title, the goods subject to retention of title. The principal shall notify us immediately in writing of seizure or any other intervention on the part of third parties and provide all required information, inform the third party of our title and support our steps to protect the goods subject to retention of title. The principal shall bear all costs for which they are at fault that must be paid to suspend such intervention and recover the goods to the extent that they cannot be collected from the third party.
4. Already now, the principal shall assign to us any claims from the resale of the goods along with any and all ancillary rights, and regardless of whether the goods subject to retention of title are resold without or after processing. Already now, we accept this assignment. If assignment is not admissible, the principal hereby irrevocably instructs the third party debtor to effect payments, if any only to us. The principal shall have revocable authority to collect the claims assigned to us as trustee. The collected amounts must immediately be paid to us. If the principal fails to duly meet their payment obligations vis-à-vis us, is in arrears with payment, discontinues their payments or if there is an application to open insolvency proceedings on the principal's assets, we shall be entitled to revoke the customer's authority of collection as well as the principal's right of resale. Resale of the claims shall be subject to our prior consent. The principal's authority of collection shall expire upon notification of assignment to the third party debtor. We may demand that the principal make known the assigned claims and their debtors, provide all information necessary for collection, deliver the respective documents and notify the debtors of the assignment when the authority of collection is revoked.
5. In the event that the principal's claims from the resale are incorporated into a current account, the principal hereby irrevocably assigns to us their claims from the current account vis-à-vis their contractual partner in the amount of the purchase price including VAT that was agreed for the resold goods subject to retention of title.
6. Provided that after withdrawal from the contract we assert our claims to handover of the goods, the principal shall provide us immediate access to the goods subject to retention of title, send us a detailed list of the existing goods subject to retention of title, separate the goods for us and hand them over to us upon our request.
7. Processing or transformation of the goods subject to retention of title by the principal shall always be done for us. The principal's expectant right to the goods subject to retention of title will continue to exist in the processed or transformed items. If the goods are processed, connected or mixed with other items that do not belong to us, we will require co-ownership in the new item pro rata of the value of the goods supplied to the other processed items at the time of processing. The principal will store the new items free of charge for us. In all other respects, the same provisions shall apply to the item created through processing, transformation or connection as apply to the goods subject to retention of title.
8. Upon the principal's request, we shall be obliged to release the securities to which we are entitled in so far as the realizable value of the securities, taking into account the usual downward valuation adjustment by banks, exceeds our claims from the business relationship with the principal by more than 10 %. The valuation must be made based on the invoice value of the goods subject to retention of title and on the basis of the nominal value in the case of receivables.
9. The principal hereby grants us a respective right of security for the delivery of goods to other legal systems in which the provision as to retention of title under this section does not have the same security effect as in the Federal Republic of Germany. If this requires any other declarations or acts, the principal will make such declarations or acts. The principal will support any steps necessary and helpful for the effectiveness and enforceability of such security rights.

VII. Claims of the Principal in the Case of Defects / Damage

1. The principal shall be obliged to make written notification of any obvious material defects, incorrect supplies or quantity deviations immediately, at the latest however 8 days from receipt of the goods by the principal. Any hidden defects must be reported in writing to GEGGUS GmbH immediately, and in no case later than within 8 days from their discovery. If the principal does not make such notification, the goods shall be deemed accepted. In all other respects, Sections 377 et seq. HGB (German Commercial Code) shall apply.
2. In particular, the principal shall check – if necessary by test processing – whether the material delivered is free from defects and complies with their purchase order. Goods against which a complaint has been made may be processed only upon the written consent of GEGGUS GmbH.
3. Any complaints of hidden defects shall be excluded after three months from the passing of the risk to the principal under V and shall be deemed late in so far as the principal could have been reasonably expected to identify them.
4. GEGGUS GmbH shall be entitled and obliged to effect subsequent performance if there is a material defect in the goods at the time of the passing of the risk. At the discretion of GEGGUS GmbH, subsequent performance will be effected either by way of remedying the defects or by replacement. GEGGUS GmbH will bear the costs for subsequent performance, including but not limited to transport, travel, workmanship and materials costs. GEGGUS GmbH shall be entitled to deny subsequent performance if these costs amount to more than 50 % of the supply value.
5. If subsequent performance fails, is not effected within an adequate period set by the principal or is denied, the principal, at their discretion, shall be entitled to withdraw from the contract or demand a reduction of the purchase price in an amount equivalent to the cost of the defect or – within the limits of the below – demand damages in lieu of performance.
6. The principal's statutory right to withdraw from the contract in the case of a defect shall not be contingent upon fault on the part of GEGGUS GmbH. In other cases, the principal may withdraw from the contract only if there is a breach of obligation for which GEGGUS GmbH is at fault.
7. If a material defect results in damage, GEGGUS GmbH shall be liable under the statutory provisions provided the damage is damage from injury to life,

body or health, the damage is governed by the German Product Liability Act ("Produkthaftungsgesetz") or is due to intent or gross negligence.

8. Provided that the damage is due to a culpable violation of an essential contractual obligation or a cardinal obligation without the existence of gross negligence or intent, GEGGUS GmbH shall be liable only for the foreseeable damage typical of this type of contract.

Cardinal obligations are obligations whose performance makes the due implementation of the contract possible in the first place and on whose performance the contractual partner routinely relies and may rely.

9. Any further contractual claims or claims under tort of the principal shall be excluded. In particular, GEGGUS GmbH will not be liable for damage which has not occurred to the ordered item itself, including but not limited to loss of profit or other financial loss of the principal.

VIII. Other Liability

1. Any further claims for damages of the principal, irrespective of their cause in law, in particular for the infringement of other obligations under the obligations or under tort, shall be excluded under the application of number VII, numbers 6-9. The above provisions shall not imply a reversal of the burden of proof to the detriment of the principal.
2. Claims to damages, if any, will become statute-barred within the same time as material defects.
3. In the case of an infringement of a precontractual obligation or of an impediment to performance already existent upon conclusion of the contract (Sections 311 (2), 311 a BGB), GEGGUS GmbH's obligation to pay compensation will be limited to the damage incurred as a result of relying on a defective declaration (negative interest).
4. For damage or fruitless expenditures caused by consultancy or the provision of information not to be remunerated separately, GEGGUS GmbH will be liable in the case of intentional or grossly negligent violations of obligations unless such violation of obligation constitutes a material defect as defined in Section 434 BGB of the goods supplied by GEGGUS GmbH.
5. To the extent that the liability of GEGGUS GmbH is excluded or limited, this will apply also to the personal liability of GEGGUS GmbH's salaried employees, workers, members of staff, representatives and persons employed by them in performing contractual obligations.

IX. Industrial Property Rights and Copyrights / Defects in Title

1. Unless agreed otherwise, GEGGUS GmbH shall be obliged to effect the supply in the country of the place of delivery free from industrial property rights or copyrights of third parties (hereinafter referred to as property rights). If a third party raises justified claims against the principal for the violation of property rights by supplies made by GEGGUS GmbH and used in accordance with the contract, GEGGUS GmbH will be liable vis-à-vis the principal within the deadline stipulated in number X number 1 in the following manner:
 - a) GEGGUS GmbH will, at their discretion and at their costs, either obtain property rights for the respective supplies, change them in a way that they no longer violate the property rights or replace them. If GEGGUS GmbH is not able to do this on adequate terms, the principal will have the statutory right to withdrawal from the contract or reduction of price.
 - b) The obligation of GEGGUS GmbH to pay damages is governed by number VIII.
 - c) The above-mentioned obligations of GEGGUS GmbH will exist only if the principal immediately informs GEGGUS GmbH in writing of the claims raised by the third party, does not recognize the infringement and GEGGUS GmbH reserves all defensive measures and settlement proceedings. If the principal discontinues the use of the supply in order to limit the damage or for other reasons, the principal will be obliged to notify the third party that the discontinuation of use is not connected to an acknowledgement of a property-right violation.
2. Any claims of the principal shall be excluded if the principal is at fault with the property right violation.
3. Moreover, any claims of the principal shall be excluded if the property-right violation is caused by particular specifications by the principal, by an application GEGGUS GmbH could not have foreseen or by the fact that the principal has transformed the supply or used it in conjunction with products not supplied by GEGGUS GmbH.
4. The provisions of number VII. of this agreement shall apply accordingly if there are defects in title.
5. Any further or other claims for a defect in title of the principal than those provided for in this number IX. against GEGGUS GmbH and persons employed by them in performing their contractual obligations shall be excluded.

X. Limitation of Actions

1. Claims for material defects shall become statute-barred after one year. That period of one year starts upon the passing of the risk as specified in V unless the law provides for longer periods under Sections 438 (1) no. 2 (items for buildings), 479 (1) (recourse claims) and 634 a (1) no. 2 (construction defects) BGB.
2. Subject to Sections 438 (1) no. 2, 479 B, the limitation period for claims to damages for a defect shall be one year.
3. The principal's claims for newly manufactured items supplied by GEGGUS GmbH which have been used for a building in accordance with their usual application method and have caused the building's defectiveness shall become statute-barred within five years from the statutory start of the limitation period.
4. The provisions of number 1 to 3 shall apply neither to the limitation of the principal's claims for injury to life, body or health nor to the limitation of claims under the German Product Liability Act and for defects in title of the goods supplied by GEGGUS GmbH which exist in the form of a right in rem of a third party on the basis of which handing over of the goods supplied by GEGGUS GmbH may be demanded. Moreover, they shall not apply to the limitation of the principal's claims that are founded on GEGGUS GmbH having fraudulently concealed defects in the goods supplied by them or GEGGUS GmbH having intentionally violated an obligation or violated an obligation due to gross negligence. The statutory limitation periods shall also apply to the limitation of these claims in the cases stipulated in this section if GEGGUS GmbH has expressly assumed a guarantee for the quality of the item.

XI. Place of Performance and Place of Jurisdiction, Governing Law, Written Form and Miscellaneous

1. Unless there are conflicting statutory provisions, the place of performance and exclusive place of jurisdiction for all claims between GEGGUS GmbH and merchant or legal entities under public law or special funds under public law shall be the registered office of GEGGUS GmbH. The aforementioned place of jurisdiction shall also be agreed in cases where the principal's registered office or establishment is in a foreign country. However, GEGGUS GmbH shall be entitled to instigate legal proceedings against a principal at the latter's statutory place of jurisdiction. The agreement as to the place of jurisdiction shall also apply to claims based on bills of exchange or cheques.
2. The law of the Federal Republic of Germany shall exclusively govern the legal relations between GEGGUS GmbH and the principal. The application of the provisions on the international sale of goods (CISG-UN Sales Convention) and German private international law shall explicitly be excluded.
3. In the case of supply via sea routes, the INCOTERMS shall apply in their latest version.
4. All modifications of and amendments to the contract must be made in writing and signed to become effective. This requirement has also been met when the contractual partners send documents in text form, in particular via fax or email, unless provided otherwise for individual declarations. The requirement for the written form may be waived in writing only.
5. If a term of these conditions and the agreement concluded is or becomes ineffective, this fact shall have no effect on the validity of the remainder of these conditions. The contractual partners shall be obliged to replace the ineffective terms by one which comes as close as possible to its economic intent.