

General Terms and Conditions of Goebel Porzellan GmbH (not valid for Germany)

§ 1 Definitions

1.1 In the following General Terms and Conditions of Goebel Porzellan GmbH is called the "Supplier". The party contracting with the Supplier is the "Customer" and the contractual relationship to be established is the "Contract".

1.2 The object of the Supplier's contractual obligations, including the sale and delivery of items, is the "Service".

§ 2 Scope of the Terms and Conditions

The Supplier's offers and services are provided solely on the basis of these General Terms and Conditions. They therefore also apply to all future business dealings, even if they should not be again expressly agreed. These Terms and Conditions are deemed accepted by no later than the date of acceptance of the service. The Customer's counter-confirmations that refer to its own terms of business or conditions of purchase are hereby refuted.

§ 3 Orders and acceptance of orders

3.1 The Supplier's offers are made without obligation and are not binding. The Supplier has the right to sell the service on to a third party between the date of offer and acceptance. The Customer's orders are only binding on the Supplier once they have been expressly confirmed by the Supplier or once the Supplier has performed the service.

3.2 The service only has to have the quality stated in writing in the contract. These quality characteristics describing the service are final and conclusive. The Supplier has the right to unilaterally modify quality where required by legislation or if it constitutes a technical improvement provided that the use intended by the contract is not adversely affected. The Customer is responsible for ensuring that the service ordered is suitable and fit for its intended purpose; this applies even if the Supplier advises the Customer on the development in any way or provides any other kind of support.

3.3 If the Supplier should provide the Customer with a specimen or sample before or after the conclusion of the contract it need not display the same qualities as in the contract. The first sentence applies mutatis mutandis to drawings, diagrams, measurements, weights and other data that the Supplier provides to the Customer before or after the conclusion of the contract.

3.4 The Supplier retains full unlimited rights to all estimates, drawings, specimens, samples, diagrams and other documentation ("documentation") which it provides to the Customer. The Customer is not entitled to provide third parties with access to the documentation itself or to its content without the prior written consent of the Supplier. At the request of the Supplier the Customer is obliged to promptly deliver up all documentation in full to the Supplier if it should no longer be required by the Customer in the ordinary course of business or if no order should ultimately be placed by the Customer. Samples and drawings provided to the Supplier by the Customer will only be returned to the latter by the Supplier at the request of the Customer. If no order should be placed, the Supplier will be entitled to destroy the samples and drawings supplied once three months have elapsed from the making of an offer.

§ 4 Advertising; identification marks

If statements should be made in public by the manufacturer, the Supplier, a member of staff or any other assistant in relation to the quality of the service or item sold (e.g. weights, measurements, serviceability, load-bearing capacity, tolerance and technical data), particularly in advertising or on identification marks, it will be assumed that those statements were not fundamental to the conclusion of the contract by the Customer.

§ 5 Prices

5.1 The Supplier's prices are net prices and to be understood ex works. Transport/freight charges, costs for outer packaging, value added tax (if Service is not free of VAT under § 4 of the German Turnover Tax Law ("Umsatzsteuergesetz)) and other costs associated with the implementation of the contract ("additional costs") are not included. Unless stated to the contrary in the contract, all of the Supplier's prices are quoted in Euros. Fixed prices must be expressly agreed between the Supplier and the Customer.

5.2 If the Supplier has incurred additional costs it may obtain reimbursement from the Customer. In the case of transport/freight charges this only applies if, by derogation from clause 5.1, the Supplier is responsible for transportation.

5.3 The price is the price stated by the Supplier or, if it should not be stated in a particular case, the price shown in the Supplier's current price lists on the date of the order. On giving the Customer due notice and before rendering the service, the Supplier has the right to increase the agreed price as necessary having regard to general price trends outside the control of the Supplier (such as variations in exchange rates, currency regulations, customs duty changes or increases in the cost of materials or manufacturing costs) or as made necessary by a change of supplier.

5.4 If the Supplier, without acknowledging any legal liability and for goodwill reasons, should take back a service already rendered the Supplier will be entitled to compensation for its expenditure in the sum of 20% of the invoice figure for the service concerned. That amount will be reduced if the Customer can prove that the amount of expenditure actually incurred is lower than the lump sum stated in the first sentence.

§ 6 Service/delay in providing services; parts to be supplied by the Customer

6.1 Binding or non-binding service dates or periods can be agreed.

6.2 An agreement on service times is only binding if the Supplier expressly states that it intends to be liable for the agreed date/period being exceeded.

6.3 Even if binding dates or periods should be agreed the Supplier will not be responsible for delays in services due to force majeure or incidents that make it impossible or substantially more difficult for the Supplier to render the service, provided that such incidents are not purely temporary - these include, in particular, strikes, lockouts and orders by public authorities, even where they occur in relation to the Supplier's sub-suppliers or their sub-suppliers. They entitle the Supplier to postpone the service by the length of the impediment plus a reasonable start-up period, or to cancel the contract in whole or in part as regards the part not already fulfilled. The first and second sentences apply mutatis mutandis to delays in the provision of services due to documentation, information and parts that the Supplier considers necessary in order to perform the services not being provided by the Customer to the Supplier in good time before the services are to be rendered.

If the Customer is to provide the Supplier with parts, they are to be delivered "free the Supplier's works".

The Customer will provide the Supplier with an additional quantity of parts of the agreed quality in due course consisting of 5-10%, but at least 5%, for scrap purposes - as agreed - so that it is possible for the Supplier to process goods without any interruption.

6.4 If the delay in service should last for longer than one month the Customer will be entitled to cancel the part of the contract not already performed after it has first set a reasonable deadline for compliance.

6.5 If the Supplier should be responsible for non-compliance with binding dates or periods and if it should therefore be in default the Customer will be entitled to claim damages for default in the sum of 0.5% of the invoice value of the service affected by the delay for each full week of the delay up to a maximum, however, of 5% of the invoice value of the service affected by the delay. The amount will be reduced if the Supplier can prove that the amount of damage is actually less than the lump sum stated in the first sentence. Any further claims are excluded unless the delay should be due to the willful act or gross negligence of the Supplier.

6.6 The Supplier is entitled to render partial services at any time unless partial service should be of no interest to the Customer. The Supplier is also entitled to deviate by +- 10% of the quantity agreed in an order. The Supplier is entitled to assign the provision of the service to a third party.

6.7 If a service is to be rendered when called for by the Customer, the Customer will be obliged to address such call to the Supplier in writing, giving a specific description of the service and stating the date of service, not less than four weeks before the service is to be rendered. Modifications required by the Customer after a call has been made will only be taken into account by the Supplier if this should be expressly agreed.

6.8 Deliveries are basically made ex works (Inco terms 2000). In this case the risk of loss passes to the Customer on the date on which the Supplier informs the Customer that the service is ready for collection.

6.9 If the Customer should be in default with acceptance the Supplier will be entitled to claim a lump sum in respect of its expenses in the amount of 0.5% of the invoice value of the service concerned for each full week of delay in acceptance. This amount will be reduced if the Customer can prove that the actual loss incurred is lower than the lump sum stated in the first sentence. None of the Supplier's other claims will be affected.

6.10 If the Supplier should dispatch the goods at the Customer's request, the carriage risks will be borne by the Customer irrespective of who is to be responsible for the transport/freight charges. This particularly applies to consignments or forwarding affected by the Supplier, when no joint liability with the Customer is thereby deemed agreed. If dispatch should be delayed due to circumstances for which the Customer is responsible the risk of loss will pass to the Customer on the date that the goods are ready for dispatch. If the Customer should be in default with its acceptance, the risk of loss will pass to the Customer on the date on which the Supplier offers to hand over the goods.

6.11 If the Supplier should be wholly or partially liable for transport/freight charges, the Supplier will be entitled to designate the route of the consignment as well as the mode of despatch. If the Customer should require a different route and/or a different mode of despatch and if the Supplier should comply with that request, the Customer will bear the difference in cost between the mode of despatch or route required by it and the mode of despatch or route designated by the Supplier.

6.12 In cases under clause 6.10 the Supplier will undertake storage at the Customer's risk and expense.

§ 7 Retention of title

7.1 Until satisfaction of all claims that the Supplier might have against the Customer now or in the future on any legal grounds whatsoever (including the balance of all claims on current account), the Supplier will be afforded the security stated in the following paragraphs, which it may release on request at its own discretion if the value thereof should constantly exceed the amount and value of all claims by more than 20%.

7.2 The Supplier retains title to the goods supplied. Processing and transformation is always carried out for the Supplier as manufacturer, although without any obligation on it. If the Supplier's title should be extinguished by a combining process it is hereby agreed that the Customer's title to the integrated item will pass to the Supplier pro rata according to value (invoice value). The Customer will safeguard the Supplier's title free of charge. Goods in respect of which the Supplier retains title are hereinafter referred to as "retention goods".

7.3 The Customer is entitled to process and sell retention goods in the ordinary course of business provided that it is not in default in relation to the Supplier. Pledging and transfer of title as collateral are prohibited. Claims arising in relation to retention goods (including the balance of all claims on current account) as a result of resale or on any other legal grounds (insurance, tortious acts) are hereby assigned by the Customer to the Supplier in full by way of security. The Supplier affords the Customer revocable authorization to enforce claims assigned to the Supplier on the latter's account in its own name. This enforcement authorization may only be revoked if the Customer does not properly comply with its payment obligations. If so required by the Supplier, the Customer will disclose the assignment and provide it with the necessary information and data.

7.4 In the event of a third party claiming retention goods the Customer will make reference to the Supplier's title and inform the latter immediately. Costs and damage will be borne by the Customer.

7.5 In the event of improper conduct on the part of the Customer - particularly in the case of default with payments - the Supplier will be entitled to recover the retention goods or to require the assignment of the Customer's right of recovery from third parties. Neither recovery nor the pledging of retention goods by the Supplier will constitute cancellation of the contract - unless §§ 488-507 of the BGB [German Civil Code] should apply.

7.6 Cash payments, bank transfers and payments by cheque that are made against a bill of exchange issued by the Supplier and accepted by the Customer will not constitute satisfaction for the purposes of the first sentence until the bill of exchange has been honoured by the drawee and the Supplier has therefore been discharged from liability on the bill of exchange. The agreed retention of title (subject to any other agreed terms) therefore continues until such time as the bill of exchange is honoured in the Supplier's favour.

§ 8 Terms of payment

8.1 The Customer must make payment for the Supplier's Services rendered as follows:

(i) Services within Europe

Payment after Services rendered within 30 days of the invoice date net without deduction.

(ii) Services outside Europe/Overseas

Payment in advance or agreement on irrevocable Letter of Credit. In both cases the Supplier grants to the Customer a 3 % cash discount (for retailers only!)

The date of receipt of the money or of its unreserved credit to the Supplier's account will determine whether payment has been duly made.

8.2 Payment must be made by a transfer to the Supplier. The Supplier is not obliged to accept payment by cheque or bill of exchange; in any event, a cheque or bill of exchange will only be presented by way of satisfaction. Presentation will not lead to any deferment of the claim. The costs associated with realising a cheque or bill of exchange is to be borne by the Customer. If payments should be made by the Customer using resources that it has acquired from the discounting of an acceptor's bill of exchange the claim to payment is not extinguished until the bill of exchange is honoured by the Customer.

8.3 If the Customer should not meet its payment obligation within the deadline stated in clause 8.1 (i) ("arrears") the Supplier may charge interest from the expiry of that period in the sum of 8% above the current base rate of the European Central Bank.

8.4 In the event of arrears the Supplier may demand a one-off payment of 5% of the invoice figure in settlement of the administrative costs incurred. The amount will be reduced if the Customer can prove that the expenditure actually incurred is lower than the lump sum stated in the first sentence.

8.5 If the Customer should fall into arrears with any payments or if circumstances should arise as a result of which the Customer's financial position deteriorates or its creditworthiness is adversely affected, all other claims against the Customer on the part of the Supplier will become due and payable at the same time. The Supplier will then be entitled to cancel the contract or to require the provision of security or payment to be made as and when the service is provided or, on giving prior written notice to the Customer, to postpone the provision of other services until such time as payment is made in full or there is a change in the circumstances stated in the first sentence. A deterioration in the Customer's financial position will be assumed, in particular, if the Customer's cheques or bills of exchange should not be honoured in circumstances for which it is responsible.

8.6 Unless contrary to legislation, the Customer may only offset claims on the part of the Supplier against counterclaims that are not denied, that are confirmed by a final court order or that have reached judgment stage. The same applies to the exercise of a right of retention, including rights under § 369 HGB [German Commercial Code].

8.7 Notwithstanding clause 8.1 (i) the Supplier may also demand payment before rendering a service. Clauses 8.3 and 8.4 will not then apply.

§ 9 Liability for material defects and acceptance

9.1 The criterion for the quality and workmanship of a service specific to the Customer is the type sample or, where a test report is also drawn up in addition to a type sample, the test report approved by the Customer. Unless stated to the contrary below, liability for material defects in the Supplier's services is determined by legislation.

9.2 The limitation period for the Customer's claims in respect of material defects (with the exception for claims of damages) applies to the legal regulations of the Customer's country. The period begins to run on the date of handover to the Customer, irrespective of when the Customer becomes aware of a defect in the service.

9.3 The Customer shall examine the service immediately after handover. Defects noticed when examining a service after handover shall be notified by the Customer to the Supplier in writing immediately or, in the case of other defects, as soon as they are discovered, with that notice describing the defect identified and stating the date of discovery. The Customer can initially only require the Supplier to effect performance at a later date. Performance at a later date may take the form of remedying the defect or supplying a non-defective item, as the Supplier may choose. If performance by the Supplier at a later date should fail, the legislative provisions will apply – with the provision that the Customer will then only have the right to cancel the contract if the service has not already been installed as an integral part of a piece of real estate. In that eventuality the Customer will only be entitled to a reduction in the purchase price. The right to performance at a later date is precluded in the case of immaterial defects.

9.4 Unless provided to the contrary by legislation, claims for material defects are excluded by the Supplier in the following cases in particular:

- (a)** Where the Customer has had modifications made to the service by a third party or has processed the service;
- (b)** Where the Customer disregards certain directions for use given by the Supplier in connection with the service, particularly the processing and/or assembly instructions that are attached or adhered to it, or where it uses accessories or spare parts not originating from the Supplier in connection with the Supplier's services;
- (c)** Where the Customer does not apply the service for its contractually intended purpose or for its normal purpose, does not assemble it faultlessly or does not bring the service into operation properly in accordance with the state of the art or current scientific knowledge.

§ 10 Quantum of damages

10.1 Notwithstanding the legal grounds, the Supplier will only be liable for loss that is caused by a defect in the service itself or by act or omission in the amount of the loss that is foreseeable and typical of the contract and only within the following limits:

- (a)** for intent or gross negligence on the part of the Supplier's legal representatives, members of staff or other assistants: no limit;
- (b)** for culpable infringement of material contractual obligations (cardinal obligations) on the part of the Supplier, its legal representatives or other assistants without intent or gross negligence: limited to the invoice value of the service. Cardinal obligations are those obligations whose fulfillment allow for a proper performance of the contract in the first place and on whose compliance the contracting party can constantly rely on.

10.2 The Supplier will only be liable for loss that is caused by the conduct of a member of staff or assistant if those persons acted in the performance of their duties. The Supplier is also released from that liability if the loss is due to circumstances that it could not avoid even by showing the greatest degree of care and the consequences of which it could not avert (e.g. strikes, force majeure).

10.3 All further liability on the part of the Supplier is excluded. The Supplier is not liable, in particular, for breach of ancillary obligations, lack of commercial success, loss of profits, indirect loss, consequential loss and loss caused by third-party claims against the Customer.

10.4 The limit on liability in clauses 10.1 to 10.3 does not apply to death, personal injuries or damage to health, in case of fraudulent concealment of a defect and in case of a compulsory liability under the Product Liability Act (Produkthaftungsgesetz).

§ 11 Industrial property rights and copyright

11.1 If and insofar as a third party should have justifiable claims against the Customer for infringement of industrial property rights or copyright (hereinafter called "intellectual property rights") as a result of a service developed and/or rendered by the Supplier, the Supplier has the following liability unless provided to the contrary by legislation:

- (a)** The Supplier may choose, at its own expense, to either obtain a right to use the service developed and/or rendered or to alter the service in such a way that the intellectual property right is no longer infringed, to exchange the service if the use of the service on which the contract was based is not thereby impeded, or to withdraw the service and reimburse the Customer for the price paid in respect thereof, less any loss of value of the service that might have occurred. If the Supplier should ultimately be unable to afford the Customer a right of use by way of the measures stated in the first sentence, the Customer will be entitled to cancel the contract on giving reasonable notice;
- (b)** The Supplier is only obliged to take the measures stated in the first sentence of

paragraph (a) if the Customer promptly gives the Supplier written notice of the claims made by the third party, including a description of the infringement, if it does not acknowledge an infringement and if the Customer grants the Supplier full unlimited decision-making powers regarding the legal defence and the conduct of settlement negotiations. If the Customer ceases to use the service in order to mitigate loss or for some other good reason it is obliged to indicate to the third party that the cessation of use does not amount to an acknowledgment of an infringement of intellectual property rights.

11.2 The Customer does not have any claims under clause 11.1 if and insofar as the Customer is responsible for the infringement of intellectual property rights. Nor does the Customer have any claims if and insofar as the infringement of intellectual property rights is caused by the Customer's special requirements, by applications unforeseeable by the Supplier or by the fact that the service is implemented by the Customer subject to modifications or in conjunction with services not rendered by the Supplier.

11.3 The Customer is obliged to support the Supplier to the best of its ability in the defense of claims for infringements of intellectual property rights.

11.4 Conversely, the Customer will indemnify the Supplier in respect of all third-party claims that might be brought against the Supplier for an infringement of an industrial property right or copyright if the infringement is the result of an express instruction from the Customer to the Supplier or if the Customer modifies the service or integrates it in a third party's product.

§ 12 Export controls

12.1 In recognition of American and other (particularly European and German) export control regulations the Customer undertakes to obtain all necessary export licenses and/or other documents at its own expense before exporting products or technical data that it has received from the Supplier. The Customer gives an undertaking to the Supplier in this context to comply with all export control regulations applicable. Performance of the contract is subject to the proviso that all necessary export approvals are granted and that there are no other impediments to its performance caused by German, European or any other relevant export control regulations.

12.2 The Customer undertakes not to directly or indirectly sell, export, re-export, deliver or otherwise transfer such products or technical data to any persons, undertakings or countries if that should be in breach of American or other (particularly European or German) laws or regulations. The Customer undertakes to inform all recipients of such products or technical data of the need to comply with those laws and regulations. Refusal of an export permit does not entitle the Customer to cancel the contract or to claim damages.

§ 13 Venue; proper law; saving clause

13.1 The Customer must not assign the rights and obligations under the contract in existence with the Supplier to a third party without the prior written consent of the Supplier.

13.2 The venue for all disputes between the Supplier and the Customer is the registered office of the Supplier if the Customer is a registered trader, a legal person governed by public law or a separate entity governed by public law. However, the Supplier is entitled to sue the Customer at the latter's registered office. Unless otherwise agreed between the Supplier and the Customer or legally applicable the place of performance is the Supplier's works in Coburg.

13.3 German law shall be applicable exclusively. In case of doubt or invalidity of singular conditions the validity of the other regulations is not affected and the stipulations of §§ 307 – 309 BGB (civil code of Germany) will be applied.

- Any terms and conditions of business of the customer that run counter to these only become part of the contract if agreed upon in writing.

13.4 In case of dispute both parties are free to contact the following mediation body: "Der Online-Schlichter", Bahnhofplatz 3, 77694 Kehl, www.online-schlichter.de Tel: +49 7851/991480, Fax: +49 7851/9914811, E-Mail: mail@online-schlichter.de