

1. Scope of application

These General Terms of Export (hereinafter GTE) apply in principle to all including future deliveries, performance and offers of GEALAN Fenster-Systeme GmbH, Hofer Straße 80, 95145 Oberkotzau, Germany (hereinafter Supplier), unless these are expressly amended or excluded in writing. Deviating general terms of business shall not be recognized and are not part of the agreement even if the Supplier has not expressly objected to them in writing. The latest version of the "International Commercial Terms" (Incoterms) published by the International Chamber of Commerce and Industry shall apply.

2. Conclusion of contract, documents, prices, packaging and packing costs, shipping, transportation insurance

2.1. Offers made by the Supplier are non-binding. If the Supplier has set a period for acceptance when submitting his written and binding offer, the contract shall be considered to be in force if the Orderer has sent a written declaration of acceptance before this period expires, provided this declaration is received at the latest within three (3) calendar days after this period has expired. The Supplier's technical specifications shall be authoritative for the contents of the contract.

2.2. Information in data sheets and documents belonging to the offer as well as illustrations, drawings, specifications of weights and dimensions, descriptions of performance and other properties as well as other information on contractual products and performance shall not represent an assurance of properties.

Specific properties of the goods to be delivered shall be considered as guaranteed only if this has been expressly agreed in writing. Reference to standards or agreed specifications alone shall only be regarded as further description of goods or performance respectively and shall not be an assurance of properties.

2.3. Unless otherwise and expressly agreed, the prices are quoted according to the price lists that are valid for each Orderer. All prices are quoted ex works of the Supplier (EXW Incoterms 2010) and are exclusive of German turnover tax and packaging costs (cf. 3.1). Orderers from within the European Union must indicate their turnover tax identity number at the time the contract is concluded. Orderers (recipients) from outside the European Union are not charged turnover tax.

2.4. Unless subject to special agreement, packaging shall be at the choice and discretion of the Supplier and charged additionally. The Orderer is responsible for disposal of the packaging. The Supplier shall be entitled to demand return of packaging material freight paid to the point of dispatch or its works. In particular, this shall apply to containers and pallets borrowed from the Supplier and thus remain the property of the Supplier.

2.5. Goods are shipped at the Orderer's account and risk.

3. Delivery, transfer of risk, customs clearance

3.1. Unless otherwise agreed in writing, all deliveries shall be exclusively ex works of the Supplier in Germany (EXW Incoterms 2010 - cf. 2.3).

3.2. Part deliveries are possible.

4. Time of delivery, delays, cancellation

4.1. Indicated delivery times are approximate delivery times and only binding if they have been expressly agreed in writing.

The delivery period commences with the dispatch of the order confirmation, but not before the documents, licenses, permits and other formalities to be obtained by the Orderer have been supplied or before the agreed advance payments have been made.

4.2. In the case of a delay in delivery for which the Supplier is responsible, the Orderer - provided he can prove that he has incurred damage thereby - can after a period of three (3) weeks has expired claim a lump sum of delay compensation for each additional completed week of the delay amounting to 0.5% - but at most 5% - of the value of the part of the delivery that cannot be used as intended as a result of the delay, with the exclusion of all further claims. Section 7.5 shall apply accordingly.

4.3. If the maximum amount of the compensation pursuant to section 4.2 is reached, after setting an appropriate additional period of time with warning that delivery will otherwise be refused, the Orderer shall be allowed - taking account of the legal exceptions

and within the scope of the legal regulations - to announce that he will cancel the agreement regarding the delayed part of delivery unless the Supplier has rendered performance beforehand.

4.4. If the Orderer is in default of some essential obligation from the contract relationship, the Supplier shall be entitled to extend the term of delivery by that period by which the Orderer is in default. Section 5 shall apply accordingly. Essential contractual obligations are obligations that protect the contractual legal position of each contracting party that are granted under the contract in terms of content and purpose. In addition, contractual obligations whose fulfillment allow for the proper performance of the contract in the first place and upon which the contracting party has always relied on and may rely on shall also be deemed as essential.

5. Acceptance

Even if deliveries do not show significant defects, the Orderer shall accept delivery without prejudice to his rights arising from product defects. The Orderer shall bear all costs of storage, insurance, protective measures, etc. arising due to delayed acceptance of the delivery. Without further proof the Orderer shall pay at least 0.5% of the order value for each week of the delay, however not more than 5%.

The Supplier may set the Orderer a suitable period for acceptance in writing if the Orderer does not accept delivery at the time of delivery. The Supplier's right to demand payment of the purchase price shall remain unaffected.

After expiry of this period the Supplier shall be entitled to cancel the agreement in part or in full by written declaration and demand compensation.

6. Payment

6.1. Unless otherwise agreed, all payments shall be made in the form of prepayment or submission of an irrevocable and confirmed letter of credit (or by agreement with bank guarantee) two (2) weeks prior to the delivery date at the latest. The "Uniform Customs and Practice for Documentary Credits" of the International Chamber of Commerce, Paris, shall apply. All payments are in EURO and "paid to the point of payment" of the Supplier without deductions and shall not be affected by any currency fluctuations.

6.2. If payment has not been made on time, the Supplier shall be entitled to charge interest at a rate of 9 % p.a. above the basic Interest rate of the European Central Bank from the day the payment becomes due. The Supplier may in such a case suspend execution of the agreement. In the event of late payment a flat rate of 40,- EUR has to be paid by the orderer as compensation. The right to claim higher compensation is reserved.

If the Orderer has failed to render the agreed payment within a suitable additional period of time, but at the latest within one month after it has become due, the Supplier may declare cancellation of the agreement by means of written announcement and demand indemnity from the Orderer.

6.3. If certain circumstances give rise to significant doubts regarding the creditworthiness of the Orderer, all claims from the business relationship between the Orderer and the Supplier shall become due immediately and the Supplier shall be entitled to demand cash in advance for all deliveries, as well as cash in advance before production go-ahead.

Sentence 1 shall also apply in the case the Orderer is in default of payment and in the case of insolvency of the Orderer due to any other agreement.

If a part payment method has been agreed and the Orderer is in arrears of payment of more than 10% of the outstanding purchase price, the entire remaining amount still outstanding shall become due for payment immediately.

6.4. In the case of customer-specific products (custom-made) or variations of these, the Supplier shall in all cases be entitled to demand down payment of two thirds of the agreed purchase price, payable three (3) weeks before commencement of production at the latest. The Supplier is free to charge the Orderer prorated preproduction and additional costs.

7. Responsibility for contractual conformity of the delivered goods (material defects and defects of title)

7.1. (Duty to Examine and Obligation to Give Notice of Defects immediately on Receipt of Goods)

The Orderer shall examine the goods immediately on receipt, and shall do so according to the accepted rules of technology. The Orderer shall in every case

lose the right to claim non-conformity with the contract if he fails to inform the Supplier about the defects immediately in writing, along with a precise description of these, after he has discovered the defects or should have discovered them. After agreement with the Supplier, the Orderer shall be responsible for providing all evidence.

7.2. (Care and Storage)

The Orderer shall be responsible for providing evidence of due care and correct storage of the delivered goods.

7.3. (Subsequent Improvement or Compensation Delivery)

If the goods are not in compliance with the contract, even in the case of significant defects, the Supplier shall initially be entitled to choose if he wants to carry out improvement work or arrange a compensation delivery within an appropriate period of time, i.e. within a period of about two (2) weeks for goods in stock and six (6) weeks for special items after request of the Orderer.

The improvement work may also be carried out by the Orderer by agreement with the Supplier. The Orderer is obliged to contribute towards improvement of the faulty goods to a reasonable extent against refund of expenses and according to the Supplier's instructions. Should the improvement work of any defects fail, the Orderer shall be entitled to withdraw from the contract within the scope of statutory provisions - if applicable after prior setting a deadline.

In the case of insignificant defects, the Orderer shall only be entitled to reduce the purchase price (section 440, 323 V s.2 German Civil Code).

7.4. (Reduction of Purchase Price)

If the Supplier fails to remedy an infringement of the agreement in accordance with section 7.3 by subsequent improvement or compensation delivery, the contracting parties agree on an appropriate reduction of the purchase price.

7.5. (Exclusion of Further Damage caused by Defects and Consequential Damage caused by Defects)

Unless regulated in sections 4.2, 4.3 and 7.1 to 7.4, 9. and 10., the Supplier shall not be responsible for any infringement of the agreement, damage and breaches of duty of his statutory representatives and vicarious agents, irrespective of the legal grounds for such infringement. This shall apply to all damage caused by defects and consequential damage caused by defects, in particular to damage which cannot be eliminated by subsequent improvement or compensation delivery or to damage not occurred on the delivery item itself, including loss of production and loss of profit.

In the case of infringement of essential contract obligations and thus obligations whose fulfillment allow for a proper execution of the contract in the first place and upon which the Orderer may regularly rely on their compliance, the Supplier shall be liable for any degree of fault, whereas liability in the case of infringement of essential contract obligations shall be restricted to damage that is typical of contracts and reasonably foreseeable.

However, in all cases the Supplier shall be liable for intent and gross negligence, including intent and gross negligence of his statutory representatives and vicarious agents, and for specially provided guarantees, for cases of fraudulent intent, in case of injury to life, limb and health for any degree of fault or when liability is due for personal injuries or material damage to privately used objects according to product liability law.

7.6. (Deviations Usual in Commercial Practice, Constructive Modifications)

Deviations regarding quantities (up to 10%, and up to 20% for custom-made products), dimensions, quality, weights, etc. and the like are permitted. The right to equivalent constructive modifications shall remain reserved.

7.7. (Compliance with Supplier's Instructions)

The Orderer shall comply with the Supplier's instructions regarding the conditions or use of the contractual products. Otherwise, claims for defects shall not be accepted.

8. Equipment, plans, sales documentation, confidentiality

8.1. The Supplier shall be entitled to retain at his own discretion equipment manufactured for special (customer-specific) parts for one year after the last order has been executed.

8.2. All rights to the models, tools, equipment, drawings, designs and plans manufactured by the Supplier, in particular patent rights, copyrights and rights of the inventor, belong exclusively to the Supplier.

All sales documents such as catalogues, pattern books, price lists, etc., provided to the Orderer by the Supplier shall remain the property of the Supplier and shall be returned on request.

8.3. The documents belonging to an offer such as illustrations, drawings, specifications of weights and dimensions, descriptions of performance and other properties as well as other information on contractual products and performance shall only be deemed as approximate and not binding. The Supplier retains all property rights and copyrights regarding the information he has provided, including that provided in electronic form.

8.4. The contractual parties agree to maintain strict confidentiality regarding all commercial and technical details of their mutual business relationship, until such information has come into the public domain. The confidentiality obligation shall also apply to the objects and information mentioned in sections 8.2 and 8.3, which may not be copied or disclosed or otherwise made available to any third party without prior proper authorization.

8.5. The contractual parties shall enjoin their subcontractors to undertake a similar confidentiality obligation to that described in section 8.4.

9. Responsibility for secondary obligations

The Supplier shall be responsible for fulfilment of contractual or pre-contractual secondary obligations only in accordance with the provisions of sections 4, 7.5 and section 11.

10. Non-delivery, impossibility, inability to perform
In the event that it is impossible for the Supplier to render performance, the statutory regulations (in particular sections 275, 323, 326 German Civil Code) shall apply to the Orderer's rights regarding rescission and damages. The restrictions mentioned in sections 7.5, 9 and 11 shall apply accordingly.

11. Force majeure

11.1. Each party shall not be responsible for non-fulfilment of its obligations if such non-fulfilment is due to some impediment beyond each party's control or is attributable to the following circumstances:

Fire, natural disasters, war, confiscation/seizure, export prohibition, embargo or other official measures, general scarcity of raw materials, restriction of energy consumption, labour disputes or if suppliers are in breach of contract for such reasons.

11.2. Each party shall be entitled to cancel the agreement by written declaration if execution of the agreement is prevented for a period of more than six (6) months in accordance with section 11.1.

12. Other responsibility of the Supplier

Unless otherwise set forth in these GTE, all further contractual or statutory claims against the Supplier, in particular claims for cancellation of contract, reductions or compensation for damage of any type, including for damage not affecting the delivered goods themselves, are excluded. Sentences 3 and 4 of section 7.5 apply accordingly.

13. Statute of limitations

All claims of the Orderer due to infringement of the agreement are limited to a period of twelve (12) months from the transfer of risk (section 3). The responsibility of the Supplier is restricted to infringements of the agreement arising within this period of limitation.

The statute of limitations applicable to wilful, grossly negligent or malicious behaviour on the side of the Supplier or his vicarious agents to legal claims arising from the product liability law, to claims for damages to life, limb and health because of defects for which the Supplier is responsible and to an installation of the delivered products in buildings [§438, paragraph 1, sent. 2, German Civil Code (BGB)] as well as in the case of delivery recourse (§§ 478, 479 German Civil Code) shall remain unaffected.

14. Retention of title

14.1. All delivered goods shall remain the property of the Supplier until all claims from the business relationship have been settled in full. This shall also apply if individual or all claims of the Supplier are included in a current account and the balance has been established and acknowledged.

The Orderer shall be entitled to resell the goods that remained the property of the Supplier (goods subject to retention of title) in the ordinary course of business or to further process these goods. The Orderer already assigns in advance all claims arising from the resale to the Supplier. This shall also apply if the goods subject to retention of title have become the property of third parties by means of processing, due to the connection with real estate or by other legal reasons for the acquisition of ownership.

If the total amount of the assigned claims exceeds the purchase price due by more than 10%, the Supplier shall be obliged to reassign all claims exceeding the limit of 10%.

14.2. The Orderer shall support the Supplier in all measures necessary to protect the Supplier's property in the country in question. In particular, the Orderer shall inform the Supplier immediately on special requirements to protect his property in the country in question. The Orderer shall inform the Supplier immediately if any risks affecting his property arise. This applies specifically to dispositions of third parties or official measures.

14.3. The Orderer shall be entitled to resell the goods subject to retention of title in the ordinary course of business. Thus, the Orderer assigns in advance his claims arising from the resale of the goods under retention of title in the ordinary course of business to the Supplier, namely up to the final invoice amount (incl. VAT) agreed with the Supplier. This assignment shall be irrespective of the fact whether the goods have been resold without being processed or after processing. The Orderer shall remain entitled to collect the claims.

14.4. Any treatment and processing or transformation of the delivered goods shall be made in the name and on behalf of the Supplier. In the case the goods are processed together with other items that do not belong to the Supplier, the Supplier shall acquire the joint ownership of the new product in proportion of the value of the goods under the retention of title (total invoice amount incl. VAT) of the Supplier at the value of the acquisition price of the other processed goods at the time of processing. The same applies in the case the goods are mixed or combined with real estate.

14.5. The Supplier shall be obliged to release securities to which he is entitled on request of the Orderer if the value of the securities exceeds the value of the claims to be secured by more than 10%.

14.6. The Orderer shall support the Supplier in all measures necessary to protect the Supplier's property. The Orderer shall inform the Supplier immediately if the Supplier's property is endangered. In particular, this applies to dispositions by third parties or official measures (attachment, seizure, etc).

14.7. The Orderer shall take out at his own cost insurance for the delivered goods against theft, fire and water damage and other risks for the period until the purchase price has been paid in full.

14.8. If the Orderer breaches the contract, particularly in the case of default of payment, after prior reminder or a seriously threatening insolvency respectively, the Supplier shall be entitled to take back the goods under retention of title and the Orderer shall be entitled to release these goods. In this case the Supplier shall issue a credit note for the following amounts:

The total invoice amount shall be credited if saleable goods are taken back. The so-called "crumb value (Krumelwert)" for PVC shall be credited if non-saleable goods are taken back. In both cases a handling fee of 10% will be charged. The Supplier reserves the right to invoice the Orderer for disposal cost if non-saleable goods are taken back.

This regulation shall also apply if goods under retention of title are taken back that are in ongoing insolvency proceedings.

15. Miscellaneous

15.1. Contractual rights and obligations of the Orderer cannot be transferred except for assignment of purchase price claims to the Supplier's banks.

15.2. Amendments, supplements and other side agreements to these GTE or to agreements reached between the parties must be in writing.

15.3. An agreement concluded on the basis of these GTE shall remain otherwise binding even if certain terms and conditions are found to be void or ineffective.

15.4. The Orderer shall be entitled to rights of retention or set-off only with regard to undisputed or legally established claims.

15.5. (Supplier's Trademarks, Trade Names, Marketing, Industrial Property Rights)

The Orderer may use or register trademarks, trade names and other signs and copyrights/industrial property rights of the manufacturer only with prior written permission and only in the interest of the Supplier.

15.6. (Third Party Industrial Property Rights)

The Orderer is responsible for ensuring that no third party industrial property rights are violated due to his instructions regarding forms, dimensions, colours, weights, etc. The Orderer shall release the Supplier in the case of any third party claims due to infringement of the aforementioned industrial property rights including all court and out-of-court costs and shall, when requested, support the Supplier in any litigation.

16. Reservation of Right of Modification of these General Terms of Export

The Supplier is entitled to amend these GTE in the case that a change in the legal situation or jurisdiction of the Supreme Court leads to an impairment of equivalence in relations or to a regulatory gap and thus it becomes necessary to amend these GTE. The amended GTE shall be emailed or mailed to the Orderer one month before they become valid at the latest. If the Orderer does not contradict the amended GTE within 2 weeks after receipt, the new version of the GTE is deemed accepted. The Orderer will be informed about this 2-week period by a notice that announces the amendment of the GTE.

17. Compliance with Law

The Supplier is responsible for compliance with relevant provisions of German law, unless the matter is regulated by agreement, when products manufactured in Germany are exported.

Compliance with and execution of the relevant provisions of German law on foreign trade (e.g. import licenses, currency transfer permits, etc.) and all other laws applicable outside the Federal Republic of Germany are within the Orderer's area of responsibility.

18. Place of performance, language used for the contract, place of jurisdiction, applicable law

18.1. Place of performance is the official place of business of the Supplier unless another place of performance arises from the nature of obligation.

18.2. German is used as contract language.

18.3. All disputes arising from or in connection with agreements based on these GTE shall finally be settled with exclusion of due recourse to law and under the regulations of conciliation and arbitration of the International Chamber of Commerce in Paris by one or more arbitrators appointed according to these regulations. Place of arbitration is 95030 Hof, Germany.

18.4. Instead of the responsible arbitration court of jurisdiction pursuant to section 18.3, the state courts with jurisdiction in 95030 Hof, Germany, will decide alone and finally when the matter affects Orderers with an official place of business in one of the member states of the European Union or in the zone of the European Free Trade Association (EFTA, particularly Iceland, Liechtenstein, Norway, Switzerland).

18.5. The Supplier shall in all cases also be entitled to appeal to the state courts at the official place of business of the Orderer. The regulation of court of jurisdiction pursuant to sections 18.2 and 18.3 shall accordingly not apply.

18.6. All agreements concluded on the basis of these terms are subject to German law with the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

19. Data processing

For information on regulations regarding data protection, please see the privacy policy at www.gealan.de.

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