


Formblatt General Conditions of Purchase	Dokument-ID: ZE-FB-08	
	Version: V 1.0	
	Rev. datum: 09-06-2020	

Gebr. Märklin & Cie. GmbH General Conditions of Purchase

1 Validity; scope; form

(1) These General Conditions of Purchase (hereafter “**GCP**”) apply to all business relationships between us, Gebr. Märklin & Cie. GmbH, Stuttgarter Straße 55-57, 73033 Göppingen, Germany, and our suppliers (“**Supplier**”). The GCP only apply if the Supplier is an entrepreneur as defined by section 14 BGB [*Bürgerliches Gesetzbuch*, German Civil Code].

(2) The GCP apply specifically to contracts for the sale of movable property (“**Goods**”), regardless of whether the Supplier produces the Goods itself or in turn purchases them from suppliers. Unless otherwise agreed, these GCP also apply as a framework agreement to equivalent future contracts in the version in force at the time we place our order, or at any rate in the version that was last communicated to the Supplier in writing, without the need to make reference to it again in each individual case.

(3) These GCP apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the Supplier only become part of the contract if and to the extent that we have expressly agreed to their application. This requirement to obtain our express agreement always applies, including if e.g. we are aware of the Supplier’s general terms and conditions and accept the Supplier’s deliveries without reservation.

(4) Individual agreements made with the Supplier in individual cases (including side agreements, additions and amendments) prevail over these GCP. Subject to evidence to the contrary, a contract or our confirmation will form the basis of these agreements.

(5) Legally relevant statements and notices by the Supplier in relation to the contract (e.g. deadlines, reminders, withdrawals from the contract) must be made in writing. Formal requirements prescribed by law remain unaffected and we reserve the right to request further evidence, particularly if the authority of the declaring party is in doubt.

2 Conclusion of the contract

(1) Offers provided to us by the Supplier, including samples, are free of charge and non-binding.

(2) Our order will become binding once we expressly place it or receive confirmation in writing. Any obvious errors (e.g. spelling or calculation error; compliance with legal or regulatory provisions) and incompleteness of the order, including the order documents, must be pointed out to us by the Supplier immediately to allow us to correct or complete the order; otherwise the contract will be regarded as not concluded.

(3) The Supplier must accept our order in writing within a period of 14 days.


(4) Delayed acceptance will be regarded as a new offer and requires our acceptance.

3 Delivery time and late delivery

(1) The delivery time we specify in the order is binding. If the delivery time is not specified in the order and has not been otherwise agreed, it is 4 weeks from conclusion of the contract. The Supplier must immediately notify us in writing if it anticipates that it will not be able to comply with agreed delivery times.

(2) If the Supplier fails to perform its services on time or at all or within the agreed delivery time or defaults, our rights – specifically to withdraw from the contract and to compensation – are determined by the statutory provisions. The provisions in subsection (3) remain unaffected.

(3) If the Supplier fails to deliver on time, we may – in addition to our statutory claims – demand flat-rate compensation for the damage caused by the delay in the amount of 1% of the net price per complete calendar week, but no more than a total of 5% of the net price of the Goods that were not delivered on time. We reserve the right to demonstrate that the damage incurred by us exceeds this amount. The Supplier reserves the right to demonstrate that no damage or only significantly lower damage was incurred by us.


<h1>Formblatt</h1> <h2>General Conditions of Purchase</h2>	Dokument-ID: ZE-FB-08	
	Version: V 1.0	
	Rev. datum: 09-06-2020	

4 Performance, delivery, passage of risk, late acceptance

- (1) The Supplier may not perform the services owed by it by commissioning third parties (e.g. subcontractors) without our prior written agreement. The Supplier bears the procurement risk for its services unless otherwise agreed in individual cases (e.g. supply subject to stock availability).
- (2) The Goods must comply with all legal and regulatory product safety requirements. The Supplier must fully complete our manufacturer's declaration, send it back to us and comply with the guidelines therein.
- (3) The Supplier must comply with our specifications regarding quality and quantity. If the Supplier deviates from our specifications, it must expressly point out these deviations to us.
- (4) The delivery will be made free of charge to the place specified in the order. If no destination has been specified or otherwise agreed, delivery must be made to our place of business in Göppingen. The destination specified is also the place of performance for delivery and for any cure performance (obligation to perform at our place of business).
- (5) A delivery note must be enclosed with the delivery which details the date (issue and delivery), contents of the delivery (Märklin product number and quantity), our order identification (date, order number), Supplier's VAT number and the material code number. If the delivery note is missing or incomplete, we will not be responsible for any resulting delays to processing and payment. Separately to the delivery note, an advice note with the same content must be sent to us.
- (6) The risk of accidental loss and accidental deterioration of the item passes to us on delivery at the place of performance. If a handover has been agreed, the risk will pass at the time of handover. Furthermore, the statutory provisions of service contract laws still apply accordingly. If we fail to accept, this will be regarded as delivery or acceptance, as applicable.
- (7) If we fail to accept, the statutory provisions shall apply. However, the Supplier must expressly offer its performance to us even if we have agreed that a particular action or contribution on our part (e.g. provision of materials) will take place at a defined or definable time. If the contract relates to a unique item to be produced by the Supplier (individual production), the Supplier only has further rights if we have agreed to contribute and are responsible for our failure to contribute.

5 Prices and payment terms

- (1) The price specified in the order is binding. All prices are inclusive of statutory value added tax unless this is set out separately. Invoices must be issued in the currency of the order. When submitting an invoice, the order number, item, parts number, quantity and unit price as well as quantity per delivery must be specified. Interim, partial, semi-final and final invoices must be indicated as such and numbered consecutively. Invoices without a particular indication will be regarded as final invoices.
- (2) Unless otherwise agreed in individual cases, the price includes all services and ancillary services by the Supplier (e.g. assembly, installation) and all additional costs (e.g. proper packaging, transport costs including transport and liability insurance, if applicable).
- (3) The agreed price becomes due for payment within 30 calendar days of complete delivery and performance (including handover, if agreed) and receipt of a valid invoice. If payment is made within 14 calendar days, the Supplier will grant us a 3% discount on the net amount of the invoice. For payment by bank transfer, the payment has been made on time if our transfer order is received by our bank before the payment deadline expires; we are not responsible for delays caused by the banks that are involved in the payment process.
- (4) No interest will be due by us. In case of late payment, the statutory provisions apply.
- (5) We may rely on our rights of set-off and retention and the defence of failed performance (*Einrede des nicht erfüllten Vertrages*) to the extent permitted by law. In particular, we are entitled to withhold payment as long as we have outstanding claims against the Supplier for incomplete or defective performance.

<h1>Formblatt</h1> <h2>General Conditions of Purchase</h2>	Dokument-ID: ZE-FB-08	
	Version: V 1.0	
	Rev. datum: 09-06-2020	

(6) The Supplier's right of set-off or retention is limited to counterclaims that have been confirmed by a legal ruling or are undisputed. Claims by the Supplier may only be assigned to third parties with our prior written agreement.

6 Supplies; retention of title

(1) Any processing, mixing or combination ("**Further Processing**") of items provided by the Supplier shall be carried out on our behalf. The same applies to further processing of the delivered goods by us, so that we are deemed to be the manufacturer and acquire ownership of the product in accordance with the statutory provisions at the latest upon further processing.

(2) The transfer of ownership of the Goods to us must occur unconditionally and irrespective of the payment of the price. However, if we accept an offer by the Supplier that is conditional upon the payment of the purchase price in an individual case, the Supplier's retention of title expires upon payment of the purchase price for the delivered goods at the latest. We retain the right to resell the Goods in the ordinary course of business even before payment of the purchase price by assigning the claim resulting from this resale in advance (in the alternative, application of the simple retention of title which is extended to the resale). In any event, all other forms of retention of title, particularly extended and assigned retention of title and retention of title which is extended to Further Processing are excluded.

7 Quality; quality control

(1) The Supplier warrants that the contractual deliveries and services comply with the agreed technical data, are produced from the raw materials specified in the documentation, are free from material and manufacturing defects, perform the functions agreed in full and are free from defects which remove or diminish their value or suitability for normal use or for use according to the contract. If no materials have been agreed, the contractual deliveries and services must be manufactured from the most suitable materials.


(2) The Goods comply with the generally recognized codes of practice and the state of the art, all safety and protective regulations, particularly the accident prevention and health and safety regulations, safety-related rules, applicable standard specifications, DIN, DIN EN, VDE [*Verband deutscher Elektrotechnik, Elektronik und Informationstechnik*, German Association for Electrical, Electronic and Information Technologies], VDI [*Verein deutscher Ingenieure*, Association of German Engineers] and other standards, and the requirements listed in the current version of the manufacturer's declaration. The Supplier must fill our manufacturer's declaration and send it back to us.

(3) Before delivery, the Supplier must assess compliance with the abovementioned requirements by means of suitable quality control measures that correspond to the state of the art. Upon us so requesting, the Supplier shall provide evidence of such assessment.

(4) The Supplier must carefully check the documents provided to it for the purpose of performing the contract. If there are indications that suggest that the delivery agreement cannot be complied with in part or at all regarding the scope of delivery, or the purpose of the order, which is apparent to the Supplier, will not or cannot be achieved in part or at all, the Supplier must communicate these concerns to us in detail before beginning performance of the contract.

(5) Irrespective of initial sample testing or approval, the Supplier must continuously monitor the quality of the delivery items. Possible agreements with us on quality assurance measures do not release the Supplier from its responsibility for the quality of the product. The Supplier must examine the outgoing Goods – and apply any examination criteria agreed with us. Examination certificates in which examination results are recorded must be presented upon request.

(6) The parties agree to inform each other of possibilities to implement quality improvement measures. Should we consider it necessary, the Supplier will enter into a quality assurance agreement with us.

<h1>Formblatt</h1> <h2>General Conditions of Purchase</h2>	Dokument-ID: ZE-FB-08	
	Version: V 1.0	
	Rev. datum: 09-06-2020	

8 Defective delivery; defect documentation

(1) The statutory provisions apply to our rights in case of defects in quality and title (including wrong or short delivery and improper assembly, operating or usage instructions) and other breaches of duty by the Supplier, unless otherwise stipulated below. According to the statutory provisions, the Supplier is liable if the Goods are not of the agreed quality when risk passes to us.

(2) We will notify the Supplier of a defective delivery of production goods by means of a defect report. We may request a 4D report from the Supplier. If we request a 4D report from the Supplier, the Supplier must return this to us in full and with details of suitable remedial measures within 10 working days.

(3) Regardless of section 442(1), second sentence BGB, we are entitled to claim for defects without restriction even if the defect remained unknown to us at the time the contract was concluded due to gross negligence.

(4) The statutory provisions apply to the commercial examination and notification obligations (sections 377, 381 HGB [*Handelsgesetzbuch*, German Commercial Code]) with the following limitation: our examination obligation is limited to defects that become clearly apparent during the external inspection, including inspection of the delivery documents, which forms part our examination of incoming goods (e.g. transport damage, wrong and insufficient delivery), or defects that are discernible during the sampling procedure which forms part of our quality control. If a handover has been agreed, the examination obligation does not apply. Otherwise, the determining factor is whether an examination during the ordinary course of business is possible in light of the circumstances of the individual case. Our notification obligation regarding defects that are discovered later remains unaffected. Irrespective of our examination obligation, our notification (defect notification) will be regarded as prompt and timely if it is sent within seven working days of discovery or, in the case of obvious defects, of delivery.

(5) If the examination of incoming goods reveals that the individual items examined are defective, we will give the Supplier the opportunity to examine the entire batch delivered for defects. If the Supplier refuses or does not respond to our request, we will examine the entire batch ourselves. The Supplier agrees to reimburse the resulting additional costs of the entire examination.


(6) The obligation to cure performance includes disassembly and reassembly of the defective Goods if the Goods were incorporated into another object or attached to another object in accordance with their type and intended purpose; our statutory right to reimbursement of relevant expenses remains unaffected. The Supplier must bear the expenses required to examine the Goods and cure performance even if it turns out that there was no actual defect. Our liability for damage arising from unjustified demands to remedy defects remains unaffected; however, we are only liable in this regard if we were aware or were grossly negligent to not be aware that there were no defects.

(7) Notwithstanding our statutory rights and the provisions of subsection (5), if the Supplier does not comply with its cure obligation – at our choice by either removing the defect (rectification) or delivering an item free of defects (replacement delivery) – within a reasonable period established by us, we may remove the defect ourselves and demand reimbursement of the expenses required or an appropriate advance payment. If the Supplier did not comply with its cure obligation or if it is unreasonable to us (e.g. because of particular urgency, risk to operational safety or risk of disproportionate damage), a period to cure need not be granted; we will inform the Supplier of such circumstances immediately, if possible before they occur.

(8) Furthermore, in case of a defect in quality or title we are entitled to a reduction in the purchase price or to withdraw from the contract in accordance with the statutory provisions. In addition, we are entitled to compensation for damage and expenses in accordance with the statutory provisions.

9 Supplier's recourse

(1) In addition to the claims for defects, we may rely on our statutory rights to recourse within a supply chain (supplier's recourse in accordance with sections 445a, 445b, 478 BGB) without restriction. In particular, we may demand that the Supplier use the particular kind of cure (rectification or replacement delivery) that we

<h1>Formblatt</h1> <h2>General Conditions of Purchase</h2>	Dokument-ID: ZE-FB-08	
	Version: V 1.0	
	Rev. datum: 09-06-2020	

owe to our buyer in each case. This does not restrict our statutory right to choose the kind of cure (section 439, paragraph 1 BGB).

(2) Before we accept or meet a defect claim asserted by our buyer (including reimbursement of expenses as per sections 445(1), 439(2) and (3) BGB), we will notify the Supplier, briefly summarise the facts and ask the Supplier to comment in writing. If the Supplier does not provide a substantive comment within a reasonable period and no amicable solution is found either, the defect claim will be regarded as owed to the buyer if we actually grant it. The Supplier will bear the burden of providing evidence to the contrary.

(3) Our claims to supplier's recourse also apply if the defective Goods were further processed by us or another entrepreneur, e.g. by incorporating them into another product.

10 Manufacturer's liability

(1) If the Supplier is responsible for a product defect, it must indemnify us against claims by third parties to the extent that the cause for the defect is within its sphere of control organisation and the Supplier is liable in relation to third parties.

(2) As part of its indemnity obligation, the Supplier must reimburse us for expenses resulting from or in connection with claims by third parties, including in relation to recall campaigns conducted by us, in accordance with sections 683, 670 BGB. To the extent possible and reasonable, we will inform the Supplier of any recall campaigns and give the Supplier the opportunity to comment. Additional statutory rights remain unaffected.

(3) The Supplier must purchase and maintain product liability insurance for a flat sum insured of EUR 10 million per personal injury/property damage. The insurance must also cover the risk of recall in an appropriate amount. Upon us so requesting, the Supplier shall provide the insurance contract.

11 Limitation period

(1) The statutory provisions on the statute of limitations apply to mutual claims of the parties, unless otherwise stipulated below.

(2) Disregarding section 438(1)(3) BGB the general limitation period for defect claims is three years from the passing of risk. If a handover is agreed, the limitation period starts running from the handover. The three-year limitation period also applies to claims for defects in title, but the statutory limitation period for real rights of a third party for return of the item (section 438(1)(1) BGB) remains unaffected; in addition, claims for defects in title will not become time-barred under any circumstances as long as the third party can still assert the right against us – especially by reason of it not being time-barred yet.

(3) The limitation periods of sales law including the above extensions apply – to the extent stipulated by law – to all contractual defect claims. If we have non-contractual claims for damages due to a defect, the regular statutory limitation period applies (sections 195, 199 BGB), unless the application of the limitation periods under sales law leads to a longer limitation period in a particular case.


12 Intellectual property rights

(1) The Supplier acknowledges our intellectual property rights to all our documents and samples, particularly supplies, designs, plans, drawings, moulds, models, production data, production materials and processes, quality control plans and other know-how and information ("**Intellectual Property Rights**"). The Supplier will neither register Intellectual Property Rights itself nor support third parties in doing so. This also applies if we have not yet applied to register new creations for the applicable intellectual property right.

(2) The Supplier must not disclose or make available Intellectual Property Rights to third parties in any form without our express prior approval.

(3) Use of the Märklin name as well as our logos and signs by the Supplier requires our express prior written consent.

(4) Any parts and/or components of any kind that we provide to the Supplier remain our property; this applies even if the Supplier processes or assembles them. They may only be used for the purpose of fulfilling a specific

<h1>Formblatt</h1> <h2>General Conditions of Purchase</h2>	Dokument-ID: ZE-FB-08	
	Version: V 1.0	
	Rev. datum: 09-06-2020	

order. They shall not be disclosed to third parties. If the Supplier loses or damages such parts and/or components through improper use, this must be notified to us immediately. The Supplier bears the reasonable costs of replacement.

(5) The Supplier warrants that its deliveries do not infringe the rights of third parties and agrees to indemnify us immediately on request against claims by third parties which are based on such infringement. This does not apply if the Supplier acted in accordance with our instructions and specifications and was not aware and could not be expected to be aware of the infringement.

13 Special provisions for moulds and tools

(1) The production of tools, moulds, models, plans and designs (“**Moulds and Tools**”) by the Supplier on our behalf is always for our benefit. The Supplier grants us all the necessary rights to the Moulds and Tools so that our legal status is as it would have been if we had produced the Moulds and Tools ourselves. At our request, the Supplier will issue all necessary declarations and provide all assistance if this is required to fully grant us the rights.

(2) Ownership of the Moulds and Tools that the Supplier manufactures for us transfers to us upon payment in full of the agreed remuneration (less any justified reduction). Should the moulds and tools still be in the Supplier's possession at this time, the Supplier shall then own the moulds and tools for us (constructive delivery, *Besitzkonstitut*).

(3) The Supplier will attach our mark to the Moulds and Tools at our express request. Size and method will be mutually agreed between the parties.

14 Confidentiality of trade secrets

(1) We reserve our proprietary rights and, if applicable, copyright in all images, plans, drawings, calculations, standard operating procedures, product descriptions, information and other documents that we provide to the Supplier in connection with an order or a prospective order as well as in substances and materials (e.g. software, finished and semi-finished products), tools, templates, samples and other items that we provide to the Supplier for the purposes of production (collectively “**Trade Secrets**”). Such Trade Secrets may only be used to perform the contractual services and must be returned to us after performance of the contract or destroyed at our request. The Supplier agrees to keep confidential all Trade Secrets obtained from us or our clients in connection with the initiation and performance of the contract for an indefinite period and to only use them as intended for the purposes of the contract. Trade Secrets must be kept secret from third parties, even after our business relationship has ended. The confidentiality obligation only expires if and to the extent that the knowledge contained in the Trade Secrets has become common knowledge.

(2) Trade Secrets must be stored separately at the Supplier's expense until they are returned and must be adequately protected and insured against disclosure to third parties, destruction and loss.


15 Data protection; compliance

(1) The Supplier agrees to comply with the statutory data protection provisions with the diligence of a reasonable businessperson. In particular, the Supplier will take all necessary technical and organisational measures according to the state of the art to protect Trade Secrets against unauthorised access by third parties, loss, damage or duplication.

(2) The Supplier shall instruct all its employees in accordance with the applicable data protection provisions and commit them to confidentiality in writing. The Supplier shall provide these statements to us upon request.

(3) The Supplier agrees to comply with the applicable statutory national and European law provisions (particularly environmental protection, health and safety, *Sicherheitsüberprüfungsgesetz* [German Security Clearance Check Act], *Verordnung über gefährliche Stoffe* [German Hazardous Substance Regulations]).

(4) The Supplier will implement and comply with the compliance requirements according to our rules, which are enclosed as Annex.

Formblatt General Conditions of Purchase	Dokument-ID: ZE-FB-08	
	Version: V 1.0	
	Rev. datum: 09-06-2020	

16 Governing law and jurisdiction; Annex

(1) The law of the Federal Republic of Germany applies to these GCP and to the contractual relationship between us and the Supplier under exclusion of uniform international law, particularly the United Nations Convention on Contracts for the International Sale of Goods.

(2) If the Supplier is a merchant as defined by the *Handelsgesetzbuch* [German Commercial Code], a legal person under public law (*juristische Person des öffentlichen Rechts*) or a special fund under public law (*öffentlich-rechtliches Sondervermögen*), the exclusive place of jurisdiction – including internationally – for all disputes arising from the contractual relationship is our place of business Göppingen, Germany. The same applies if the Supplier is an entrepreneur as defined by section 14 BGB. However, we are entitled in all cases to bring a claim at the place of performance of the delivery obligation in accordance with these GCP or a prevailing individual agreement, or at the Supplier’s place of general jurisdiction. Overriding statutory provisions, particularly on exclusive jurisdiction, remain unaffected.

(3) The enclosed Annex “Compliance requirements” forms an integral part hereof.