

Nürnberg Gummi Babyartikel GmbH & Co. KG
GENERAL CONDITIONS OF EXPORT

1. Sphere of Application

Principally these General Conditions of Export (hereinafter referred to as „GCE“) apply to all deliveries - also future -, services and offers of Nürnberg Gummi Babyartikel GmbH & Co. KG, Breitenloher Weg 6, 91166 Georgensgmünd, Germany, (hereinafter referred to as "Seller"), provided that they have not been modified or excluded expressly and in writing.

All deviating conditions are rejected and shall not form part of any contract, even if the Seller does not declare his rejection expressly and in writing.

2. Conclusion of the Contract, Prices, Packing and Packing Costs, Dispatchment, Transport Insurance

2.1 Any offers of the Seller are without obligation.

If the Seller has fixed a time for acceptance in its written and firm offer, the contract shall be deemed to be concluded, when the Buyer before expiration of such period has dispatched a written acceptance, as long as such acceptance reaches the Seller at least within 3 days after the fixed expiration date. The contractual content is defined by the specification of the Seller. Technical changes are permitted within reasonable limits.

2.2 All prices are for delivery Ex Works of the Seller (Incoterms 2010), German Value Added Tax excluded (refer to 2.3 and 3.1). Buyers from the European Union have to indicate their VAT-Ident.-No. at the formation of the contract. Buyers from outside the European Union are not charged with German VAT.

2.3 Unless otherwise agreed packing shall be at the discretion of the Seller and shall be charged at self-cost. The Buyer is obliged to dispose of all packing materials. The Seller shall be entitled to have the Buyer send back packing materials free of charge.

2.4 The goods are dispatched on charge and at the risk of the Buyer. The Seller shall not provide for the insurance of transport risks.

2.5 Delivered devices and auxiliary means have to be assembled by the Buyer.

3. Delivery, Passing of Risk, Declaration

3.1 Unless otherwise agreed in writing, all deliveries will be effected exclusively by truck FCA 91166 Georgensgmünd, Germany (FCA Incoterms 2010 - refer to no. 2.3). Any agreed deviating trade terms shall be interpreted according to the Incoterms of the International Chamber of Commerce, Paris.

3.2 Partial deliveries are permitted.

4. Time for Delivery, Delay, Cancellation of the Contract

4.1 Any dates of delivery are without obligation and only binding if agreed expressly and in writing. The period of time for delivery begins to run with dispatchment of the sales confirmation, but neither prior to the production of all documents, licences, permits and further formalities which are required of the Buyer, nor before receipt of the agreed advance payments.

4.2 If the Seller is responsible for delay of delivery, the Buyer, after 3 weeks of delay – excluding other claims – is entitled to liquidated damages – if he substantiates that he has incurred damages – for each further full week of delay, payable at a rate of 0,5 % - but not exceeding 5 % in total – calculated on the value of that part of delivery which, as a consequence of the delay, cannot be used as intended. No. 8.2 applies accordingly.

4.3 If the maximum liquidated damages according to no. 4.2 are reached, the Buyer – after he has fixed an additional reasonable period combined with the announcement that acceptance of delivery will be refused - may notify the Seller in writing of the termination of the contract in respect of that part of the goods which are delayed, except where the Seller delivers prior to termination.

4.4 If the Buyer is in delay with an essential contractual obligation, the Seller is entitled to extend the period of time for delivery according to the period of delay. No. 5 applies analogously.

5. Acceptance of Delivery

The Buyer bears all costs of storage, insurance, protection measures etc., arising from any delayed acceptance. Without further proof the Buyer must pay per week of delay liquidated damages of at least 0,5 % of the order value, but not exceeding 5 % in total.

The Seller may demand, by notice in writing, the Buyer to accept delivery within an additional period of 14 days if the Buyer has not accepted delivery at the fixed time of delivery. Nevertheless, this does not affect the Seller's claim to the purchase price.

After expiration of the additional period the Seller is entitled to terminate the contract in whole or partly by notice in writing and claim damages including claims for loss of profit.

6. Payment

6.1 Unless otherwise agreed, all payments must be effected by advance payment or by confirmed documentary letter of credit (or bank guarantee, bond) at least 6 weeks prior to the date of delivery.

The "Uniform Customs and Practices for Documentary Credits (UCD 600)" of the International Chamber of Commerce, Paris, are applicable. All payments shall be effected in EURO without regard to any fluctuations of the currency exchange rate and without any reduction or discount "free pay office" of the Seller.

6.2 In case of late payment, the Seller is entitled to interest from the date on which payment was due. The rate of interest shall be 9 percentage points p.a. above the prime bank rate of the European Central Bank. The Seller in so far may suspend performance of the contract. If the Buyer has not paid the agreed amount within a reasonable additional period not to exceed 1 month after the payment was due, the Seller shall be entitled to terminate the contract by notice in writing and claim compensation for any loss including claims for loss of profit it has incurred.

6.3 (Creditworthiness, delay in payment)

If any particular circumstances create considerable doubts regarding the Buyer's creditworthiness, all claims resulting from the whole business relationship shall become due immediately.

The Seller also then is entitled to demand delivery against advance payment. Sentence 1 applies accordingly regarding Seller's delay in payment for another contract with the Seller.

If payment in instalments is agreed and the Buyer delays more than 10 % of the owed purchase price, the entire purchase price shall become due immediately.

6.4 Any bills of exchange or cheques are only admitted with prior written consent of the Seller and are only deemed to be fulfilment with receipt of the entire payment.

6.5 The Seller is entitled to demand advance payment of the purchase price regarding customer specific products or variations of those, payable 3 weeks prior to start of production at the latest.

7. Liability for Conformity of the Goods

7.1 (Duty of examination and notification)

After acceptance, the Buyer must examine the goods without delay. Therefore he must observe the recognised industry standards. In any case, the Buyer loses the right to rely on a lack of conformity of the goods if it does not give notice to the Seller, exactly specifying the nature of the lack of conformity, as soon as he has discovered it or ought to have discovered it.

After arrangement with the Seller the Buyer is responsible for the securing of all proofs.

7.2 (Handling and storage)

The proof of careful treatment and adequate and dry storage of the goods devolves on the Buyer.

7.3 (Remedy of defects, substitutional delivery)

If the goods do not conform to the contract, the Seller may remedy the lack of conformity at first and at its own discretion within four weeks after the Buyer's request and, even if the defects are substantial, by repair or substitutional delivery.

The Buyer - on reasonable demand and according to the directions of the Seller - is obliged to participate in any repair works. Upon request the Buyer is obliged to send the goods to the Seller for repair.

7.4 (Pro rata reduction, termination of the contract)

If the Seller fails to remedy the lack of conformity according to no. 7.3 by repair or replacement, the Buyer is entitled to a reasonable pro rata reduction of the purchase price. If the lack of conformity is fundamental, the Buyer may fix a final period for fulfilment and after fruitless expiration of such final period demand termination of the contract.

7.5 The Seller is liable for indirect losses only according to the stipulations of no. 8.2.

7.6 (Deviations customary in trade, changes in construction)

Deviations, which are customary in trade, regarding design, colour, equipment, quantities, measures, quality, weights etc. are permitted. Equivalent changes in construction are reserved.

Regarding customer specific items and goods furnished with particular advertising deviations in the delivery volume of up to 10 % more or less are reserved.

7.7 (Observation of Seller's instructions)

Instructions of the Seller about the further storage, treatment, application or maintenance of the goods must be observed by the Buyer, otherwise claims based on defects are not acknowledged.

We recommend that products are stored in a dry, dust-free, frost-free storage room with an ambient temperature below 30°C. The effects of harmful influences such as moisture or direct sunlight should be avoided. Teats made from latex or silicone may be contaminated if they are stored together with rubber or plastic which contains Nitrosamines, PAHs, phthalates etc. Exhaust fumes of engines can also cause contaminations. Such contaminations have to be avoided. If the storage conditions are obeyed products containing latex and water filled teethers can be stored 2 years, cooling pad and heat pad can be stored 3 years, all other products can be stored 5 years.

8. Liability for subsidiary Duties, General Limitation of Liability

8.1 The Seller is only liable for the contractual or pre-contractual secondary duties according to the provisions of nos. 4, 8.2 and no. 11.

8.2 Save as stipulated in nos. 4.2, 4.3 and 7.1 through 7.4, 8, 10 and 11 the Seller shall – without regard to the legal reasons – not be liable for any lack of conformity and damages. This applies to any damages caused by the defect or rights of third parties, including losses of production, profit or other indirect losses, whatsoever, (losses and damages not incurred in the delivered goods themselves).

In case of responsibility for a breach of fundamental contractual obligations the Seller is liable, also in case of gross negligence, but only for typical contractual losses which could have been reasonably foreseen. The Seller in any case is liable, however, for gross negligence, for particularly rendered guarantees, fraud, culpable caused damages to life, body or health or if there is compulsory liability regarding physical injuries or damages to private items under German or foreign product liability laws.

9. Plans, Sales materials, Secrecy

9.1 All rights regarding Seller's drawings, drafts and plans, especially patent-, copy- and invention rights shall remain property of the Seller. All sales materials such as catalogues, samples and sample books, price lists etc. which have been placed at the Buyer's disposal, shall remain property of the Seller and shall be returned to the Seller on demand.

9.2 Any documents pertaining to an offer, such as pictures, drawings, weights, measures, capacities or data on further qualities and other information about the contractual products and services, are only binding approximately. All proprietary and copyrights regarding information of the Seller – also in electronic form – remain with the latter.

9.3 The contractual Parties agree to keep secret all commercial and technical details of their mutual business – if they have been marked as secret or if the interest in confidentiality arises from the circumstances. This also applies to the items mentioned in nos. 9.1 and 9.2, which also shall not be disclosed or made available to any third party.

9.4 The contractual Parties shall also ensure that their contractual partners will be under the same confidentiality obligation as set out in no. 9.3.

9.5 Insofar as the Buyer makes specifications for the design of the contractual products to the Seller (drawings, sketches or other information) such specific design shall be executed at the risk of the Buyer. If through this execution breaches of third party's intellectual property rights (authorship, design or trademark rights) are committed, the Buyer has to indemnify and hold harmless the Seller from any costs and damages.

10. Non-Performance, Impossibility, Inability

As far as the Seller is unable to deliver in whole or partially, the Buyer may terminate the contract by notice in writing to the Seller in respect of that part which is not delivered, save where acceptance of partial performance should be an unreasonable demand. No. 8.2 and 11 apply accordingly.

11. Act of God

11.1 Each party shall not be liable for non-performance, if performance is prevented by circumstances beyond the party's control or especially by one of the following circumstances:

fire, natural disasters, war, seizure, requisition, prohibition of export, embargo or other authority measures, general shortage of materials, restrictions in the use of power, industrial disputes or if a breach of contract of subcontractors is caused by any such circumstances.

11.2 Each party may, by notice in writing, terminate the contract if performance is being prevented for more than 6 months according to no. 11.1.

12. Term of Limitation

All claims of the Buyer based on a lack of conformity with the contract shall be time limited and statute barred within 12 months from passing of risk (no. 3).

The Seller's liability is limited to any lack of conformity, which appears within this period.

This does not affect the lawful time limitation of claims, which occur according to no. 8.2.

13. Retention of Title and Ownership

- 13.1 All delivered goods remain property of the Seller until all his purchase price claims resulting from the underlying contractual relationship are fully paid for, as far as such retention of ownership is valid under the applicable law. If the validity of the retention of ownership is subject to special conditions or regulations in the country of destination, the Buyer is responsible for the observation and compliance with those conditions or regulations. He shall inform the Seller thereof.
- 13.2 The Buyer shall assist the Seller in taking any measures necessary to protect the Seller's ownership and title to the product in the country concerned. The Buyer shall inform the Seller if any dangers regarding the property of the Seller should occur. This applies especially to disposals of third parties or authority measures.
- 13.3 The Seller – after a reminder – is entitled to cancel the contract and to take back any goods delivered under retention of title after fruitless expiration of a reasonable additional period noticed to the Buyer, if the Buyer does not fulfil his contractual obligations, especially if payment is delayed. The Seller is not obliged to fix an additional period if there are legal exceptions.
- 13.4 The Buyer shall insure the delivered goods at his costs against theft, fire, water damages and other risks for the time until full payment is effected.
- 13.5 If the value of all securities exceeds the value of all secured claims by more than 10 % the Seller shall, upon request, give up securities at his discretion.

14. Miscellaneous

- 14.1 All rights and duties of either party are not assignable, except assignments of purchase price claims to banks of the Seller.
- 14.2 Modifications, amendments or further subsidiary agreements to this GCE are required in written form.
- 14.3 Any contract concluded under this GCE shall remain valid although single conditions should be or become invalid.
- 14.4 The Buyer only is entitled to offset claims or to suspend contractual performance regarding claims which have not been denied by the Seller or which have been awarded by the courts.
- 14.5 (Trademarks, trade names, marketing, industrial property of the Seller)
Only with the prior written consent and only in the interest of the Seller the Buyer is allowed to make use of or to have registered any trademarks, trade names or other signs of the Seller.
- 14.6 (Industrial property of third parties)
The Buyer is responsible that industrial property rights of third parties are not infringed due to its directions regarding designs, forms, measures, colours, weights etc.
The Buyer shall indemnify the Seller, including all costs and expenses occurring before and outside the courts and assist the Seller on its demand in any litigation against claims of third parties based on infringement of the aforesaid industrial property rights.

15. Compliance with Law

The Seller is responsible for the compliance with the relevant German regulations, which are decisive unless otherwise agreed and as far as the products are exported from Germany. The observation and implementation of the relevant foreign trade law (e.g. import or foreign exchange licences etc.) and further laws outside Germany is the Buyer's obligation.

16. Place of Performance, Dispute Resolution, Applicable Law

- 16.1 Place of performance shall be – if not otherwise agreed – the works of the Seller in 91166 Georgensgmünd, Germany.
- 16.2 All disputes arising out of or in connection with contracts under these GCE shall be finally settled without recourse to the courts, in accordance with the Rules of Arbitration of the International Chamber of Commerce, Paris, by one or more arbitrators appointed in conformity with the said Rules. The losing Party, as determined by the arbitrators, shall pay all expenses incurred by the prevailing Party in connection with any such dispute. Language of arbitration shall be English. Place of arbitration shall be D-91126 Schwabach, Germany.
- 16.3 Instead the arbitration court provided for in No. 16.2 the competent state courts in D-91166 Georgensgmünd, Germany, shall make final and binding decisions, regarding disputes with Buyers from the European Union or from Iceland, Norway or Switzerland.
- 16.4 The Seller at its discretion is entitled to invoke the state courts at the place of business of the Buyer. In so far the competence of Nos. 16.2 and 16.3 will become obsolete.
- 16.5 All contracts concluded under this GCE shall be subject to the United Nations Convention on Contracts for the International Sale of Goods (CISG) from 11.04.1980.
Subsidiary substantive and procedural law shall be that in force at the Seller's place of business in Germany.

17. Data Protection Law, General Data Protection Regulation (GDPR)

As far as any personal data are processed by the Seller within the scope of the contractual relationship or in preparation of the contract, the Seller shall process these solely within the scope of the statutory provisions, in particular under observation of the provisions of the European General Data Protection Regulation (GDPR) and the EU data protection adjustment and implementation act (Datenschutzanpassungs- und Umsetzungsgesetz EU; BDSG new). The Seller shall process the personal data of the Buyer that the Seller obtains from the Buyer or from any third parties within the scope of contract preparation and execution. These usually are contact details (name, address, phone number, email address), bank and payment transaction details (bank, account details, payment reference, credit card information if applicable), information from publicly available sources, information from databases and credit agencies (e.g. internet, commercial register, rating agency) and other data that the Buyer provides to the Seller freely.

The Seller will transmit the Buyer's personal data to public authorities/public bodies as far as required by predominant legal provisions.

If applicable, the Seller will transmit the Buyer's personal data to companies of the Seller's group of undertakings and to external service providers. The latter may be located outside of the European Economic Area and may not have the same level of the protection of personal data. In such a case, the Seller shall ensure that transmission takes place solely according to the proviso of the statutory provisions.

The Buyer has the right to obtain access to his personal data stored by the Seller, to have inaccurately stored personal data rectified or to change his consent to processing activities at any time, also without stating any reasons, effective for the future, to revoke it, to have processing of his personal data restricted for the future, to object to it or to demand erasure.

The Buyer has the right to lodge a complaint with a data protection authority. The supervisory authority competent for the Seller is the state officer for data protection and freedom of information in Bayern, Wagnmüllerstraße 18, 80538 München.