



## General Terms and Conditions of Sale

### § 1 Scope, form

(1) The current General Terms and Conditions of Sale (GTCS) apply to all our business relations with our customers ("Purchasers"). The GTCS apply only if the Purchaser is a corporation (§ 14 German Civil Code, BGB), a legal person under public law or a public-law special fund.

(2) The GTCS apply in particular to contracts for the sale and/or delivery of movable items ("goods") irrespective of whether we produce the goods ourselves or purchase these from components suppliers (§§ 433, 650, German Civil Code, BGB). In the absence of any agreement to the contrary, the GTCS apply in the form valid at the time of the Purchaser's order or, at the least, in the last version communicated to the Purchaser in text form as a framework agreement, including for similar future contracts, without it being necessary for us to refer to them again in each individual case.

(3) Our GTCS apply exclusively. Deviating, conflicting or supplementary General Terms and Conditions of Business of the Purchaser shall only be incorporated in the contract provided and to the extent that we have expressly consented to their validity. This requirement for consent applies in all cases, for example if we perform delivery to the Purchaser without reservation while being aware of the Purchaser's General Terms and Conditions of Business.

(4) Any individual agreements made with the Purchaser (including ancillary agreements, extensions and modifications) always take precedence over these GTCS. Subject to proof to the contrary, the contents of any such agreements are subject to a written contract or our written confirmation.

(5) Legally-relevant declarations and notifications by the Purchaser regarding the contract (e.g. definition of deadlines, notification of defects, withdrawal or reduction) must be submitted in writing, i.e. in written or text form (e.g. letter, e-mail, fax). Formal legal requirements and other proofs, in particular in the case of doubts concerning the legitimation of the party making the declaration, remain unaffected by this.

(6) References to the validity of statutory provisions are provided only by way of clarification. Statutory provisions therefore apply even without such clarifications unless directly modified or expressly excluded by these GTCS.

### § 2 Conclusion of contract

(1) Our offers are subject to change without notice and non-binding. This also applies if we have provided to the Purchaser catalogs, technical documentation (e.g. drawings, plans, computations, calculations, references to DIN standards), other product descriptions or documents – including in electronic form – for which we reserve to ourselves ownership and copyright.

(2) The order of the goods by the Purchaser is considered to constitute a binding contractual offer. Unless indicated otherwise in the order, we are entitled to accept this contractual offer within one week of its receipt by us.

(3) Acceptance can be expressed either in writing (e.g. in the form of an order confirmation) or through delivery of the goods to the Purchaser.

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### § 3 Delivery times and delivery delays

- (1) The delivery time is agreed individually or is specified by us on acceptance of the order.
- (2) If we are unable to adhere to binding delivery times for reasons beyond our control (unavailability of goods or services) then we will inform the Purchaser of this immediately and will, at the same time, notify the Purchaser of the expected new delivery time. If the goods or services are also not available within the new delivery time then we are entitled to withdraw from the contract, either wholly or partially. Any compensation already provided by the Purchaser will be returned without delay. A case of unavailability of goods or services as understood here is deemed to exist, in particular, in the event of non-delivery to us by our supplier with whom we have concluded a matching contract which covers the order requirements, when neither we nor our supplier are at fault or if we, in the individual case in question, have no obligation to perform procurement.
- (3) The starting date of our delivery delay is determined in accordance with statutory provisions. In all cases, however, a reminder is required from the Purchaser.
- (4) The Purchaser's rights in accordance with § 8 of the present GTCS and our own legal rights, in particular in the event of the exclusion of the performance obligation (e.g. due to the impossibility or unreasonableness of performance and/or subsequent performance), remain unaffected.

### § 4 Delivery, transfer of risk, acceptance, delay in acceptance

- (1) Delivery is performed ex-warehouse irrespective of the place of performance for the delivery and any subsequent performance. At the Purchaser's request and at the Purchaser's own expense, the goods may be shipped to another destination (sales shipment). In the absence of any agreement to the contrary, we are entitled to determine ourselves the nature of the shipment (in particular the transport company, transport route, packaging).
- (2) The risk of accidental loss and accidental deterioration of the goods is transferred to the Purchaser at the latest at the time when they are handed over. However, in the case of a sales shipment, the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay are transferred at the time the goods are supplied to the forwarder, carrier or any other person or organization entrusted with the shipment of the goods. If an acceptance operation has been agreed, then this determines the transfer of risk. The statutory provisions of the law on contracts for work and services also apply accordingly if an acceptance operation has been agreed. If there is a delay in the performance of acceptance by the Purchaser then this shall be deemed equivalent to transfer or acceptance.
- (3) If the Purchaser is delayed in performing acceptance, fails to cooperate or if our shipment is delayed for other reasons for which the Purchaser is responsible then we are entitled to demand compensation for the resulting loss or damage, including any additional expenses (e.g. storage costs).

Our right to prove greater loss or damages and our statutory claims (in particular compensation for additional expenses, reasonable compensation, termination) shall remain unaffected; however, the lump sum amount shall be set off against further monetary claims. The Purchaser shall be entitled to provide evidence that we have incurred no loss or damage or loss or damage only of a substantially smaller amount than the above lump sum amount.

### § 5 Prices and conditions of payment

- (1) Unless agreed otherwise in any individual case, our current prices at the time of conclusion of the contract shall apply ex-warehouse plus statutory value added tax.
- (2) In the case of a sales shipment (§ 4 para. 1), the Purchaser shall bear the transport costs ex-warehouse together with any transport insurance desired by the Purchaser. Any customs duties, charges, taxes and other official levies shall be borne by the Purchaser.
- (3) The purchase price is due and payable within 30 days of issue of invoice and delivery or acceptance of the goods. However, we are entitled at any time, and even within the framework of an ongoing business relationship, to perform delivery in whole or in part only against advance payment. We will issue a notification of any such reservation at the latest with the order confirmation.

(4) On expiry of the above payment period, the Purchaser shall be in default of payment. During the period of default, interest shall be charged on the purchase price at the currently applicable legal interest rate. We reserve the right to assert any claim for further compensation in respect of defaults in payment. With respect to merchants, our claim to the regular interest payable on due date (§ 353 German Commercial Code, HGB) shall remain unaffected.

(5) The Purchaser shall only be entitled to rights of set-off or retention insofar as the corresponding claim has been legally established or is undisputed. In the events of any defects in the delivery, the Purchaser's opposing rights, in particular as set out in § 7 para. 6 sentence 2 of these GTCS, shall remain unaffected.

(6) If after conclusion of the contract, it becomes apparent (e.g. through an application for the opening of insolvency proceedings), that our claim to the purchase price is jeopardized due to an inability to pay on the part of the Purchaser then we shall be entitled to refuse performance in accordance with the statutory provisions and - if necessary after setting a deadline - to withdraw from the contract (§ 321 German Civil Code, BGB). In the case of contracts for the manufacture of non-substitutable items (custom-made products), we can declare our withdrawal immediately; the legal provisions regarding the absence of a need to set a deadline remain unaffected.

## **§ 6 Retention of ownership**

(1) We retain ownership of the sold goods until all our current and future claims arising out of the purchase contract and our ongoing business relationship (secured claims) have been paid in full.

(2) The goods subject to retention of ownership may not be pledged to third parties or assigned by way of security until the secured claims have been paid in full. The Purchaser must inform us immediately in writing if an application for the opening of insolvency proceedings is lodged or if third parties have access (e.g. seizure) to goods belonging to us.

(3) If the Purchaser acts in breach of contract, and in particular in the event of the non-payment of the due purchase price, we shall, in accordance with the statutory provisions, be entitled to withdraw from the contract and/or to demand return of the goods in the light of our retention of ownership. The demand for the return of goods does not automatically imply withdrawal; instead we are entitled simply to demand the return of the goods and reserve the right of withdrawal. If the Purchaser fails to pay the due purchase price, we may only assert these rights if we have first unsuccessfully set a reasonable deadline for payment by the Purchaser or if the setting of such a deadline can be dispensed with in accordance with statutory provisions.

(4) Until revocation according to (c) below, the Purchaser is authorized to resell and/or process the goods subject to retention of ownership in the ordinary course of business. In this case, the following provisions also apply.

(a) The retention of ownership includes the products resulting from the processing, mixing or combination of our goods at their full value, in which case we shall be deemed to be the manufacturer. If, in cases where our goods are processed, mixed or combined with those of third parties, the right of ownership of any such third party is maintained, then we shall acquire co-ownership in proportion to the invoice value of the processed, mixed or combined goods. Otherwise, the same shall apply to the resulting product as to the goods delivered under retention of ownership.

(b) The Purchaser hereby assigns to us by way of security any claims against third parties arising from the resale of the goods or the product, either in full or to the extent of any proportional co-ownership pertaining to us in accordance with the above paragraph. We shall accept the assignment. The obligations of the Purchaser as set out in para. 2 shall also apply in consideration of the assigned claims

(c) The Purchaser is, in addition to ourselves, authorized to collect such claims. We undertake not to collect the claim as long as the Purchaser respects its obligations of payment to us, the Purchaser's ability to pay is not impaired and we do not assert the retention of ownership through the exercise of a right in accordance with para. 3. However, should such a case arise than we can demand that the Purchaser notifies us of the assigned claims and corresponding debtors, provides all the information necessary for their collection, supplies the relevant documents and notifies the debtors (third parties) of this assignment. In addition, we are, in such cases, entitled to revoke the Purchaser's authorization to sell and process the goods subject to retention of ownership.

(d) If the realizable value of the securities exceeds our claims by more than 10%, then we shall release securities of our choice on the Purchaser's request.

## § 7 Purchaser's claims for defects

(1) Unless specified otherwise below, the statutory provisions shall apply to the Purchaser's rights in regard of material defects and defects of title (including wrong and short delivery as well as improper assembly or faulty assembly instructions). In all cases, the statutory special regulations remain unaffected in the case of final delivery of the unprocessed goods to a consumer, even if the consumer has processed them further (supplier recourse according to §§ 478 German Civil Code, BGB) Claims on the basis of supplier recourse are excluded if the defective goods have been further processed by the Purchaser or by another company, e.g. through incorporation in another product.

(2) The agreement arrived at regarding the characteristics of the goods form the primary basis for our liability for defects. All the product descriptions and manufacturer's specifications which are the object of the individual contract or were made public by us at the time of conclusion of the contract (in particular in catalogs and on our Internet homepage) are considered to constitute an agreement concerning the characteristics of the goods.

(3) If the characteristics have not been agreed then it is necessary to assess whether or not a defect exists in accordance with the statutory provisions (§ 434 para. 1 sentence 2 and 3 German Civil Code, BGB). However, we do not accept any liability in respect of public statements made by the manufacturer or other third parties (e.g. advertising statements) which the Purchaser has not indicated to us as being a determining factor in its purchase decision.

(4) We accept no liability in respect of defects of which the Purchaser is aware at the time of the conclusion of the contract or of which it is unaware due to gross negligence (§ 442 German Civil Code, BGB). In addition, claims for defects on the part of the Purchaser will only be entertained provided that it has complied with its statutory obligations to inspect and give notice of defects (§§ 377, 381 German Commercial Code, HGB). In the case of building materials and other goods intended for installation or other further processing, an inspection must always be carried out immediately before processing. If a defect is identified on delivery, on inspection or at any other subsequent point then this must be notified to us immediately in writing. In all cases, evident defects must be reported in writing within **2 working days** of delivery and defects not detectable during inspection must be reported in writing within the same period following their discovery. If the Purchaser fails to perform a proper inspection and/or to report defects then our liability in respect of the defects that are not reported or are not reported in good time or not reported properly shall be excluded in accordance with the statutory provisions. A reduced period of **24 hours** as of delivery applies to **transport damage** that is identifiable on a proper inspection.

(5) If the delivered item is defective, we can first choose whether to provide subsequent performance by eliminating the defect (rectification of defects) or by delivering a defect-free item (replacement delivery). Our right to perform subsequent performance under the statutory provisions remains unaffected.

(6) We are entitled to make due subsequent performance dependent on payment of the due purchase price by the Purchaser. However, the Purchaser is entitled to withhold an amount of the purchase price judged proportionate to the defect in question.

(7) The Purchaser must allow us the time and opportunity needed for the due subsequent performance and, in particular, must provide us with the goods forming the object of the complaint for examination. In the case of replacement delivery, the Purchaser must return the defective item to us in accordance with statutory provisions. Subsequent performance includes neither the dismounting of the defective item nor its renewed installation unless we were originally obliged to perform installation.

(8) We will bear the expenses necessarily incurred for the purposes of examination and subsequent performance, in particular transport, travel, labor and material costs as well as dismounting and installation costs if applicable, or reimburse such expenses in accordance with the statutory provisions provided that a defect actually exists. If no defect exists then we may demand reimbursement by the Purchaser of the costs resulting from the unjustified request to eliminate defects (in particular examination and transport costs) unless it was not possible for the Purchaser to identify that no defect was present.

(9) In urgent cases, e.g. in the event of a risk to operational safety or in order to prevent disproportionate damage, the Purchaser is entitled to eliminate the defect itself and demand compensation from us for the expenses objectively required for this purpose. We are to be informed immediately, if possible in advance, of any such defect elimination work performed by the Purchaser. The Purchaser's right to undertake such work does not exist if we would be entitled to refuse a corresponding subsequent performance in accordance with the statutory provisions.

(10) If subsequent performance fails or a reasonable period of time to be set by the Purchaser for subsequent performance has expired without success or is dispensable according to statutory provisions, the Purchaser may withdraw from the purchase contract or reduce the purchase price. However, there is no right of withdrawal in the case of insignificant defects.

(11) Claims by the Purchaser for loss or damage or the reimbursement of futile expenses are, including in the case of defects, permitted only subject to the provisions set out in § 8 and are otherwise excluded.

## **§ 8 Other liability**

(1) Unless indicated otherwise in the present GTCS, including the provisions below, our liability in the event of a breach of contractual and non-contractual obligations is governed by the statutory provisions.

(2) We shall be liable for compensation – irrespective of the legal basis – within the scope of liability for intent or gross negligence. In the case of simple negligence, we shall only be liable, subject to statutory limitations of liability (e.g. diligence in our own affairs; minor breach of obligations), for

a) damages resulting from loss of life, bodily injury or damage to health,

b) damages resulting from the violation of a major contractual obligation (obligation the fulfillment of which is necessary for the execution of the contract and on the adherence to which the contractual partner relies and may rely on a regular basis). However, in this case our liability is limited to the reimbursement of the foreseeable, typically occurring damage.

(3) The limitations of liability resulting from para. 2 shall also apply to third parties and to infringements of obligations by persons (including to their own advantage) whose culpability we are responsible for in the light of statutory provisions. They do not apply if a defect has been maliciously concealed or if a guarantee for the characteristics of the goods has been assumed for claims of the Purchaser under the Product Liability Act.

(4) In the event of the infringement of an obligation which does not consist in a defect then the Purchaser may withdraw or terminate the contract if we are responsible for the infringement. A free right of termination on the part of the Purchaser (in particular in accordance with §§ 650, 648 German Civil Code, BGB) is excluded. In all other respects, the statutory provisions and legal consequences apply.

## **§ 9 Period of limitation**

(1) Notwithstanding § 438 (1) no. 3 of the German Civil Code, BGB, the general limitation period for warranty claims from defects of quality and title shall be one year from delivery of goods. If acceptance has been agreed, the limitation period shall commence upon acceptance.

(2) The above periods of limitation under commercial law also apply in respect of contractual and non-contractual claims for loss or damage on the part of the Purchaser which are based on a defect of the goods, except in cases where the application of the regular statutory limitation period (§§ 195, 199 German Civil Code, BGB) would result in a shorter limitation period in individual cases. Claims in respect of loss or damage on the part of the Purchaser in accordance with § 8 para. 2 sentence 1 and sentence 2(a) as well as in accordance with the Product Liability Act expire only after the statutory limitation periods.

## **§ 10 Choice of law and place of jurisdiction**

(1) The law of the Federal Republic of Germany shall apply to these GTCS and the contractual relationship between us and the Purchaser, to the exclusion of international uniform law, and in particular the UN Convention on Contracts for the International Sale of Goods.

(2) If the Purchaser is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a public-law special fund, the exclusive - including international - place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is our registered office in Erding. The same applies if the Purchaser is a corporation within the meaning of § 14 German Civil Code, BGB. Nevertheless, we are also in all cases entitled to bring an action at the place of performance of the delivery obligation in accordance with these GTCS or a prior individual agreement or at the general place of jurisdiction of the Purchaser. Statutory provisions which take precedence, in particular regarding exclusive jurisdiction, remain unaffected.