

## **General Terms and Conditions of Purchase**

### **§ 1 Scope, form**

(1) The present General Terms and Conditions of Purchase (GTCP) apply to all of our business relationships with our sellers ("Seller"). The GTCP apply only if the Seller is an entrepreneur (§ 14 BGB [German Civil Code]), a legal entity under public law, or a special fund under public law.

(2) In particular, the GTCP apply to contracts regarding the sale and/or delivery of movable items ("Goods"), regardless of whether the seller manufactures the Goods himself or purchases them from suppliers (§§ 433, 650 BGB). Unless otherwise agreed, the GTCP shall also apply to equivalent future contracts in the current version at the time of our order, and/or in any case in the most recent version provided to the Seller in text form as a framework agreement, without the need for us to make any additional reference to them in each case.

(3) Our GTCP apply exclusively. Any deviating, conflicting or supplementary General Terms and Conditions of the Seller shall only become part of the contract if and to the extent that we have explicitly agreed to their validity in writing, i.e. in written or text form (e.g. a letter, email, fax). This agreement requirement applies in every case, for instance even if we receive delivery of the seller outright and in full knowledge of the Seller's General Terms and Conditions.

(4) Individual agreements established with the seller in each case (including ancillary agreements, additions and amendments) shall always take precedence over these GTCP. Subject to proof to the contrary, a written contract and/or our written confirmation shall be definitive regarding the content of such agreements.

(5) Legally relevant declarations and notifications by the Seller regarding the contract (e.g. deadlines, reminder, cancellation) must be submitted in writing. Statutory formal requirements and further proof, particularly in case of doubt regarding identification of the declaring party, shall remain unaffected.

(6) Any references to the applicability of statutory provisions are provided only for clarification purposes. Even without such clarification, therefore, the statutory provisions apply unless they have been directly modified or explicitly excluded in these GTCP.

### **§ 2 Conclusion of contract**

(1) Our order shall be deemed binding at the earliest upon written submission or confirmation. The Seller shall notify us of obvious errors (e.g. typing and calculation errors) and incompleteness of the order including the order documents for the purpose of correction or completion before acceptance; otherwise the contract shall be deemed not to have been concluded.

(2) The seller is obliged to confirm our order in writing within a period of five working days or, in particular, to execute it without reservation by dispatching the goods (acceptance).

(3) A delayed acceptance is considered a new offer and requires our acceptance.

### **§ 3 Delivery time and delay in delivery**

(1) The delivery time stated by us in the order is binding. If the delivery time is not stated in the order and has not been agreed upon otherwise, it shall be two weeks from conclusion of the contract. The Seller is obliged to inform us immediately in writing if he cannot be expected to comply with the agreed delivery times - for whatever reason.

(2) If the Seller does not perform his service or does not perform it within the agreed delivery time or if he is in default, our rights - in particular to withdraw from the contract and to claim damages - shall be governed by the statutory provisions. The regulations in paragraph 3 remain unaffected.

(3) If the Seller is in default, we may - in addition to further statutory claims - demand lump-sum compensation for our damage caused by default in the amount of 1% of the net price per completed calendar week, but not more than a total of 5% of the net price of the goods delivered late. We reserve the right to prove that higher damages have been incurred. The seller reserves the right to prove that no damage at all or only a considerably lower damage has occurred.

#### **§ 4 Service, delivery, transfer of risk, default of acceptance**

(1) Without our prior written consent, the Seller shall not be entitled to have the performance owed by him rendered by third parties (e.g. subcontractors). The Seller shall bear the procurement risk for his services, unless otherwise agreed in individual cases (e.g. limitation to stock).

(2) The delivery within Germany is "free buyer's address" to the place indicated in the order. If the place of destination is not specified and nothing else has been agreed upon, delivery shall be made to our registered office in 83083 Riedering. The respective destination is also the place of performance for the delivery and any subsequent performance (obligation to be performed at the place of performance).

(3) The delivery must be accompanied by a delivery note stating the date (issue and dispatch), the contents of the delivery (article number and quantity) and our order identification (date and number). If the delivery note is missing or incomplete, we are not responsible for any delays in processing and payment resulting from this. Separated from the delivery note, a corresponding dispatch note with the same content must be sent to us.

(4) The risk of accidental loss and accidental deterioration of the goods shall pass to us upon delivery at the place of performance. If acceptance has been agreed, this shall be decisive for the transfer of risk. The statutory provisions of the law on contracts for work and services shall also apply accordingly in the case of acceptance. If we are in default of acceptance, this shall be deemed equivalent to handover or acceptance.

(5) The statutory provisions shall apply to the occurrence of our default of acceptance. However, the Seller must also expressly offer us his services if a specific or determinable calendar period has been agreed for an action or cooperation on our part (e.g. provision of material). If we are in default of acceptance, the Seller may demand compensation for his additional expenses in accordance with the statutory provisions (§ 304 BGB). If the contract relates to an unacceptable item to be manufactured by the Seller (individual production), the Seller shall only be entitled to further rights if we are obliged to cooperate and are responsible for the failure to cooperate.

#### **§ 5 Prices and payment conditions**

(1) The price stated in the order is binding. All prices include statutory value added tax, unless this is shown separately.

(2) Unless otherwise agreed in individual cases, the price includes all services and ancillary services of the Seller (e.g. assembly, installation) as well as all ancillary costs (e.g. proper packaging, transport costs including any transport and liability insurance).

(3) The agreed price is due for payment within 30 calendar days from complete delivery and performance (including any agreed acceptance) and receipt of a proper invoice. If we make payment within 14 calendar days, the Seller shall grant us a 3% discount on the net amount of the invoice. In the case of bank transfer, payment shall be deemed to have been made on time if our bank receives our transfer order before the expiry of the payment deadline; we shall not be responsible for delays caused by the banks involved in the payment process.

(4) We do not owe any maturity interest. The statutory provisions shall apply to default of payment.

(5) We are entitled to set-off and retention rights as well as the defense of non-performance of the contract to the extent permitted by law. In particular, we shall be entitled to withhold due payments as long as we are still entitled to claims against the Seller arising from incomplete or defective performance.

(6) The seller has a right of set-off or retention only because of legally binding or undisputed counterclaims.

#### **§ 6 Secrecy and reservation of title**

(1) We reserve the property rights and copyrights to illustrations, plans, drawings, calculations, execution instructions, product descriptions and other documents. Such documents shall be used exclusively for the contractual performance and shall be returned to us after completion of the contract. The documents must be kept secret from third parties, even after termination of the contract. The obligation to maintain secrecy shall not expire until and insofar as the knowledge contained in the documents provided has become generally known.

(2) The above provision shall apply accordingly to substances and materials (e.g. software, finished and semi-finished products) as well as to tools, templates, samples and other items which we provide to the Seller for production. Such items shall - as long as they are not processed - be stored separately at the expense of the Seller and insured to a reasonable extent against destruction and loss.

(3) Any processing, mixing or combination (further processing) of provided items by the Seller shall be carried out for us. The same shall apply if the goods supplied are further processed by us, so that we shall be deemed to be the manufacturer and shall acquire title to the product at the latest upon further processing in accordance with the statutory provisions.

(4) The transfer of ownership of the goods to us must take place unconditionally and without regard to the payment of the price. If, however, we accept an offer of transfer of title from the seller in individual cases, which is conditional on payment of the purchase price, the seller's reservation of title shall expire at the latest upon payment of the purchase price for the goods delivered. In the ordinary course of business, we shall remain authorized to resell the goods in advance of payment of the purchase price and to assign the resulting claim (alternatively, the simple reservation of title extended to resale). This excludes all other forms of retention of title, in particular the extended, the forwarded and the extended retention of title for further processing.

## **§ 7 Defective delivery**

(1) The statutory provisions shall apply to our rights in the event of material defects and defects of title of the goods (including incorrect and short delivery as well as improper assembly, defective assembly, operating or operating instructions) and in the event of other breaches of duty by the Seller, unless otherwise stipulated below.

(2) In accordance with the statutory provisions, the Seller shall be liable in particular for ensuring that the goods have the agreed quality at the time the risk passes to us. In any case, those product descriptions which - in particular by designation or reference in our order - are the subject matter of the respective contract or have been included in the contract in the same way as these GTPC shall be deemed to be an agreement on the quality. It makes no difference whether the product description originates from us, the seller or the manufacturer.

(3) Notwithstanding § 442 para. 1 sentence 2 BGB, we shall be entitled to claims for defects without restriction even if the defect remained unknown to us at the time of conclusion of the contract due to gross negligence.

(4) For the commercial duty of inspection and notification of defects, the statutory provisions (§§ 377, 381 HGB) shall apply with the following proviso: Our duty of inspection shall be limited to defects which become apparent during our incoming goods inspection under external examination including the delivery documents (e.g. transport damage, wrong and short delivery) or which are recognizable during our quality control by random sampling. Insofar as acceptance has been agreed, there is no obligation to examine the goods. Otherwise, it depends on the extent to which an inspection is feasible in the normal course of business, taking into account the circumstances of the individual case. Our obligation to give notice of defects discovered later remains unaffected. Irrespective of our duty to inspect, our complaint (notification of defects) shall in any case be deemed to be prompt and timely if it is sent within 7 working days of discovery or, in the case of obvious defects, of delivery.

(5) Subsequent performance shall also include the removal of the defective goods and their reinstallation, provided that the goods have been installed in or attached to another item in accordance with their nature and intended use; our statutory claim to reimbursement of corresponding expenses shall remain unaffected. The Seller shall bear the expenses necessary for the purpose of inspection and subsequent performance even if it turns out that there was actually no defect. Our liability for damages in the event of unjustified requests for the removal of defects shall remain unaffected; however, we shall only be liable in this respect if we have recognized or grossly negligently failed to recognize that there was no defect.

(6) Notwithstanding our statutory rights and the provisions in para. 5, the following shall apply: If the Seller does not fulfil his obligation to provide subsequent performance - at our discretion either by remedying the defect (subsequent improvement) or by delivering a defect-free item (replacement delivery) - within a reasonable period of time set by us, we may remedy the defect ourselves and demand reimbursement of the necessary expenses or a corresponding advance payment from the Seller. If the subsequent performance by the Seller has failed or is unreasonable for us (e.g. due to particular urgency, endangerment of operational safety or imminent occurrence of disproportionate

damage), no time limit need be set; we shall inform the Seller of such circumstances without delay, if possible in advance.

(7) Otherwise, in the event of a material defect or defect in title, we are entitled to reduce the purchase price or to withdraw from the contract in accordance with the statutory provisions. In addition, we shall be entitled to compensation for damages and expenses in accordance with the statutory provisions.

## **§ 8 Supplier regress**

(1) Our legally determined rights of recourse within a supply chain (supplier recourse in accordance with §§ 445a, 445b, 478 BGB) are available to us without restriction in addition to the claims for defects. In particular, we are entitled to demand from the Seller exactly the type of subsequent performance (repair or replacement) that we owe to our customer in the individual case. Our legal right of choice (§ 439 para. 1 BGB) is not restricted by this.

(2) Before we acknowledge or fulfil a claim for defects asserted by our customer (including reimbursement of expenses in accordance with §§ 445a para. 1, 439 para. 2 and 3 BGB), we shall notify the Seller and request a written statement, giving a brief description of the facts of the case. If a substantiated statement is not made within a reasonable period of time and no amicable solution is reached, the claim for defects actually granted by us shall be deemed to be owed to our customer. In this case, the Seller shall be responsible for providing proof to the contrary.

(3) Our claims from supplier recourse also apply if the defective goods have been further processed by us or another entrepreneur, e.g. by installation in another product.

## **§ 9 Producer's liability**

(1) If the Seller is responsible for a product damage, he shall indemnify us from third party claims to the extent that the cause lies within his sphere of control and organization and he himself is liable in the external relationship.

(2) Within the scope of his obligation to indemnify, the Seller shall reimburse expenses pursuant to §§ 683, 670 BGB which arise from or in connection with a third-party claim, including recall actions carried out by us. We shall inform the Seller - as far as possible and reasonable - about the content and scope of recall measures and give him the opportunity to comment. Further legal claims remain unaffected.

(3) Unless otherwise agreed, the Seller shall take out and maintain product liability insurance with a lump sum coverage of at least five million EUR per personal injury/property damage.

## **§ 10 Limitation period**

(1) The mutual claims of the contracting parties shall become statute-barred in accordance with the statutory provisions, unless otherwise stipulated below.

(2) Notwithstanding § 438 (1) No. 3 BGB, the general limitation period for claims for defects is 3 years from the transfer of risk. If acceptance has been agreed, the limitation period shall commence upon acceptance. The 3-year limitation period shall also apply mutatis mutandis to claims arising from defects of title, whereby the statutory limitation period for third-party claims for surrender in rem (§ 438 para. 1 No. 1 BGB) shall remain unaffected; moreover, claims arising from defects of title shall not be subject to a limitation period under any circumstances as long as the third party can still assert the right - in particular in the absence of a limitation period - against us.

(3) The limitation periods of the purchase right including the above extension apply - to the extent permitted by law - to all contractual claims for defects. Insofar as we are also entitled to non-contractual claims for damages due to a defect, the regular statutory limitation period (§§ 195, 199 BGB) shall apply here, unless the application of the limitation periods of the law on sales leads to a longer limitation period in individual cases.

## **§ 11 Choice of law, place of jurisdiction and priority German version**

(1) These GTCP and the contractual relationship between us and the Seller are subject to the laws of the Federal Republic of Germany to the exclusion of international uniform law, particularly the UN Convention on Contracts for the International Sale of Goods.

(2) If the Buyer is an entrepreneur in the sense of the German Commercial Code, a legal entity under public law, or a special fund under public law, the exclusive (including international) place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be our

registered place of business in 83083 Riedering, Germany. The same applies correspondingly if the Buyer is an entrepreneur in the sense of § 14 BGB. However, in all cases we shall also be entitled to bring an action at the place of performance of the delivery obligation in accordance with these GTCP or a prior individual agreement or at the general place of jurisdiction of the Seller. Prior-ranking statutory provisions, particularly regarding exclusive jurisdiction, shall remain unaffected.

(3) In the event of difficulties of interpretation, the German text of these GTCP shall prevail.