

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

### **§ 1 General, Scope**

(1) These General Conditions of Purchase (GCP) shall apply to all business relations with our business partners and suppliers ("Sellers"). The GCP shall apply only if Seller is an enterprise in accordance with Section 14 German Civil Code, a corporate entity under public law or a special fund under public law.

(2) The GCP shall apply in particular to contracts concerning the sale and/or supply of movables ("Goods") Unless otherwise agreed, the GCP in the version valid at the time of customer's order or alternatively in the version last communicated to the customer shall constitute a framework agreement for similar future contracts without any obligation on our part to refer to the GCP in each case.

(3) These GCP shall apply exclusively. Seller's deviating, conflicting or supplementary general terms and conditions shall become part of the contract only if and when we have expressly consented to their application in writing. This requirement of consent shall apply in any case, e.g. even if we accept the Seller's deliveries without reservation in full knowledge of the Seller's General Terms and Conditions.

(4) Any individual agreements made on a case-by-case basis with the Seller (including collateral agreements, supplements and amendments) shall in all cases take precedence over these GCP. A written contract or, respectively, our written confirmation shall be binding with regard to the content of such agreements, unless there is evidence to the contrary.

(5) Legally relevant representations and notifications required to be made to us by Seller after conclusion of contract (e.g. setting of deadlines, payment reminders, or notice of rescission of contract) must be submitted in writing in order to be valid.

### **§ 2 Conclusion of Contract**

(1) Our order shall be deemed binding no sooner than three days from receipt of the order confirmation. Seller shall notify us of any obvious errors (e.g. spelling mistakes and miscalculations) and missing data in the order and/or the order documents for the purpose of correction or completion; the contract shall otherwise be deemed not to have been concluded.

(2) Seller is obliged to confirm our order in writing within seven (7) days or to execute the order without reservation by dispatching the Goods (acceptance).

A delayed acceptance is considered as a new offer and is deemed to require our acceptance.

### **§ 3 Delivery Time and Default in Delivery**

(1) The delivery time stipulated by us on the order shall be binding. If the delivery time is neither stated on the order nor otherwise agreed, it shall be two (2) weeks from conclusion of contract. Seller undertakes to notify us immediately in writing if, for whatever reason, it assumes it will be unable to meet the agreed delivery time.

(2) If Seller does not deliver performance, does not deliver performance within the agreed period or is in default, our rights shall be governed by the statutory provisions. The provisions of the following §3 shall remain unaffected.

(3) If Seller is in default, we shall be permitted to demand a compensation for breach of contract amounting to one per (1) cent of the net price for each full calendar week, the sum total of which, however, shall not exceed five (5) per cent of the net price of the delayed Goods. We reserve the right to prove that a higher damage was incurred. The Seller retains the right to prove that no damage at all or only considerably less damage was incurred.

### **§ 4 Performance, Delivery, Transfer of Risk, Delay of Acceptance**

(1) Seller shall not be entitled to have third parties (e.g. Subcontractors) deliver any performance that Seller is obligated to deliver without our prior written consent. The procurement risk for the performance shall be Seller's responsibility, unless otherwise agreed in any given case (e.g. limitation to goods in stock).

(2) Delivery throughout Germany shall be effected carriage free to the place stated on the order. If no destination is stated and nothing else is agreed, delivery shall be made to our registered office in Plettenberg. The place of destination shall also be the place of performance for delivery and for any supplementary performance (obligation to perform).

(3) The delivery shall be accompanied by a delivery note, which states the date (issue and dispatch), content of the delivery (article number and quantity) as well as our order data (date and number) and the item number. We cannot be held responsible for any delays in processing or payment for deliveries if the delivery note is missing or incomplete. A corresponding dispatch note with the same content shall be sent to us separately from the delivery note.

(4) The risk of accidental loss and accidental degradation of the Goods shall pass to us on delivery at the place of performance. If an acceptance procedure has been agreed, it shall be decisive for the passing of risk. The statutory provisions in respect of contracts for work shall also apply to acceptance. If we are in default of acceptance, this shall be deemed equivalent to transfer and/or acceptance.

(5) The statutory provisions shall apply to the occurrence of default of acceptance on our part. However, Seller shall be obliged to expressly offer its services even if a defined or definable calendar period has been agreed for any act or collaboration on our part (e.g. furnishing of materials). If we are in default of acceptance, Seller shall be entitled to claim compensation for additional expenditure in accordance with the statutory provisions (Section 304 German Civil Code). If the contract relates to a non-fungible article to be produced by Seller (onetime/custom production), Seller shall have further rights only if we have agreed to collaborate and are responsible for failing to collaborate.

## **§ 5 Prices and terms of payment**

(1) The price stated in the order is binding. All prices are net and are exclusive of VAT unless VAT is shown separately.

(2) Unless otherwise agreed on a case-by-case basis, the price shall be inclusive of all deliveries, performance and ancillary services provided by Seller (e.g. assembly and installation), and all additional costs (e.g. proper packaging, transport costs including any transport and liability insurance).

(3) Payment of the agreed price is due within thirty (30) calendar days from complete delivery and performance (including any acceptance procedure that may have been agreed) and delivery of a proper invoice. If we pay within fourteen (14) calendar days, Seller shall grant us a discount of three (3) per cent on the net invoice amount. If payment is made by bank transfer, it shall be deemed punctual if our remittance order is received by our bank prior to expiry of the payment deadline; we cannot be held responsible for any delays caused by the banks involved in the payment process.

(4) We do not owe any interest on overdue payments. The statutory provisions shall apply in respect of default in payment.

(5) We shall be entitled to the rights of setoff and retention and the right to plead the defence of non-fulfilment of contract to the extent permitted by law. In particular, we shall be entitled to retain any due payments as long as we are still entitled to claims against Seller for incomplete or defective performance.

(6) The Seller may only claim to offsetting and withholding rights on the basis of legally established or undisputed counterclaims.

## **§ 6 Retention of title**

(1) Any processing, mixing or combination (further processing) of items supplied by the Seller shall be carried out on our behalf. The same applies to further processing of the delivered goods by us, so that we considered to be the manufacturer and acquire ownership of the Goods in accordance with the statutory provisions at the latest with the further processing.

(2) The transfer of ownership of the Goods to us must take place unconditionally and regardless of the payment of the price. However, if we accept an offer by the Seller to transfer ownership conditional on the payment of the purchase price on a case-by-case basis, the Seller's retention of ownership shall terminate no later than upon payment of the purchase price for the delivered Goods. We shall be entitled to resell the Goods in the ordinary course of business even before payment of the purchase price subject to advance assignment of the relevant receivables (alternatively, simple extended retention of ownership to apply to resale of the Goods.) Any other type of retention of ownership shall be excluded, particularly extended or transferred retention of ownership or any extension to cover processing of the Goods.

## **§ 7 Defective delivery**

(1) Unless otherwise specified below, the statutory requirements shall apply to our rights with regard to material defects and defects in title of the Goods (including wrong and short delivery, improper assembly or installation, inadequate installation or operating instructions), and in case of other breaches of duty on the part of Seller.

(2) In accordance with the statutory regulations, Seller shall be particularly liable for the Goods having the agreed properties at the time of passing of risk. The agreement on the properties of the Goods shall be deemed to be the product descriptions that are the subject of the relevant contract, particularly through designation or reference on our order, or which are incorporated into the contract in the same way as these GCP. It is irrelevant whether the product description comes from us, from Seller, or from the manufacturer.

(3) Notwithstanding Section 442 (1) Sentence 2 German Civil Code, we shall be entitled without limitation to claims for defects if we were unaware of the defect at the time of conclusion of contract as a result of gross negligence.

(4) The commercial duty to inspect the Goods and notify Seller of any defects shall be governed by the statutory provisions of Sections 377, 381 German Commercial Code, save that our duty to inspect shall be limited to defects that are obvious from a visual inspection during our incoming goods inspection, including inspection of the delivery notes, and/or our quality control during random sample testing (e.g. damage in transit, wrong and short delivery). Insofar as an acceptance procedure has been agreed, there shall be no inspection obligation. Apart from that, it will depend on the extent to which an inspection would be expedient in accordance with proper business practice, taking into account the circumstances of the individual case.

Our obligation to give notice of defects discovered later shall remain unaffected. In all cases our complaint (notice of defect) shall be deemed to be without delay and in due time if it is received by Seller within twenty (20) days.

(5) Any costs incurred by the Seller for the purpose of inspection and subsequent performance (including any dismantling and installation costs) shall be borne by the Supplier even if it turns out that in fact no defect existed. Our liability for damages in the event of an unjustified demand to remedy defects shall remain unaffected; in this respect though we shall only be liable if we have recognised or grossly negligently failed to recognise that no defect existed.

(6) If Seller fails to honour its obligation to supplementary performance – at our discretion either by rectifying the defect (repair) or by supplying a non-defective item (substitute delivery) – within a reasonable period of time set by us, we shall be entitled to rectify the defect ourselves and demand from Seller reimbursement of the costs required or an appropriate advance payment. If supplementary performance by Seller has failed or is unacceptable to us (e.g. because of particular urgency, risk to operational safety, or imminent occurrence of disproportionate damages), we shall not be obliged to set a deadline; we shall notify Seller of such circumstances immediately and, if possible, in advance.

(7) In the event of a defect in quality or title we shall additionally be entitled to a reduction of the purchase price or rescission from the contract in accordance with the statutory provisions. In addition, we shall be entitled to claim damages and reimbursement of expenses in accordance with the statutory provisions.

## **§ 8 Recourse against Seller**

(1) In addition to the claims for defects we shall be fully and unrestrictedly entitled to our statutory right of recourse within the supply chain (supplier recourse in accordance with Sections 478, 479 German Civil Code). In particular we shall be entitled to demand from Seller exactly the type of supplementary performance (remedy of defects or replacement) that we owe to our customer in the given case. This shall not restrict our statutory option (Section 439 (1) German Civil Code).

(2) Before we accept or meet a claim for defects made by our customer (including reimbursement of expenses in accordance with Sections 478 (2), 439 (2) German Civil Code), we shall contact Seller with a brief description of the circumstances of the case and ask for a written statement. If such statement is not made within a reasonable period of time and no mutually acceptable solution is reached, the claim for defects actually granted by us shall be deemed to be owed to our customer; in which case, the Seller shall be obliged to provide proof to the contrary.

(3) Our claims from recourse against Seller shall apply even if the Goods have been processed by us or by one of our customers, e.g. by way of incorporation into another product, prior to their sale to a consumer.

### **§ 9 Manufacturer's Liability**

(1) If Seller is responsible for a product defect, Seller shall indemnify us for third-party claims insofar as the cause is within Seller's sphere of control and organisation and Seller itself is liable to third parties.

(2) Within the scope of his obligation to indemnify, to indemnify, Seller shall reimburse any expenses in accordance with Sections 683, 670 German Civil Code that arise from or in connection with a third-party claim, including any product recall carried out by us. We shall notify Seller of the content and scope of any recall programme – as far as this is possible and reasonable – and give Seller the opportunity to comment. Any additional statutory claims shall remain unaffected.

(3) The Seller shall take out and maintain product liability insurance with a lump sum coverage of at least EUR 5 million per personal injury/property damage.

### **§ 10 Period of Limitation**

(1) The mutual claims of the Parties to the contract shall become time-barred in accordance with the statutory provisions unless otherwise specified below.

(2) Notwithstanding Section 438 (1) No. 3 German Civil Code, the general limitation period for claims for defects shall be three (3) years as from passing of risk. Insofar as an acceptance procedure has been agreed, the limitation period shall commence upon acceptance. The three-year limitation period shall also apply mutatis mutandis to any claims for defects in title without affecting the statutory limitation period for material claims for the restitution of property of third parties (Section 438 (1) No. 1 German Civil Code); claims on the grounds of defects in title shall not become statute-barred as long as the third party is still entitled to assert the right against us, in particular in the absence of limitation.

(3) The limitation periods pursuant to the laws governing the sale of goods, including the above-mentioned extension, shall apply to the extent permitted by law to all contractual claims for defects. Insofar as we are also entitled to non-contractual compensation, the regular statutory limitation period (Sections 195, 199 German Civil Code) shall apply unless the application of the limitation periods of the law governing the sale of goods results in a longer period of limitation in any individual case.

## **§ 11 Applicable Law and Place of Jurisdiction**

(1) These GCP and the contractual relationship between us and Seller shall be governed by the law of the Federal Republic of Germany, excluding international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods.

(2) If Seller is a merchant within the meaning of the German Commercial Code, a legal entity under public law, or a special fund under public law, the sole legal venue for any disputes, inclusive of any international disputes, arising from the contractual relationship shall be our registered office in Plettenberg. The same shall apply if the Buyer is a company within the meaning of Section 14 German Civil Code. In all cases, however, we shall always be entitled to bring an action at the place of performance of the delivery obligation in accordance with these GCP or any overriding individual agreement, or at Seller's general place of jurisdiction. Overriding statutory provisions, in particular in respect of exclusive judicial competence, shall remain unaffected.

Should any inconsistency arise between the translated version and the German version, the German version shall prevail.

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