

## **General Terms and Conditions of Sale**

### **§ 1 General, Scope**

(1) These General Conditions of Sale (GCS) shall apply to all business relations with our customers (“Buyers”). The GCS shall apply only if Buyer is an enterprise in accordance with Section 14 HGB – Handelsgesetzbuch (“German Civil Code”), a corporate entity under public law or a special fund under public law.

(2) The GCS shall apply in particular to contracts concerning the sale and/or supply of movables (“Goods”), regardless of whether we produce the Goods ourselves or buy from external suppliers (Sections 433, 651 German Civil Code). Unless otherwise agreed, the GCS in the version valid at the time of Buyer’s order or, alternatively, in the version last communicated to the Buyer shall constitute a framework agreement for similar future contracts without any obligation on our part to refer to the GCP in each individual case.

(3) Our GCS shall apply exclusively. Any deviating or opposing or supplementary general terms and conditions of Buyer shall become an integral part of the Contract only if and when we expressly confirm their validity [in writing]. The foregoing requirement shall apply in each and every case, for example even if we accept Buyer’s order without reservation, although we are aware of Buyer’s general terms and conditions.

(4) Any individual agreements made on a case-by-case basis with the Buyer (including collateral agreements, supplements and amendments) shall in all cases take precedence over these GCS. 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 Buyer after conclusion of contract (e.g. setting of deadlines, notice of defect, or notice of rescission of contract, degradation of value) must be submitted in writing in order to be valid.

(6) Any references to the applicability of statutory provisions are for the avoidance of doubt only. Therefore, statutory provisions shall apply even without such clarification unless these GCS directly modify or expressly exclude application of such statutory provisions.

### **§ 2 Conclusion of Contract**

(1) Our offers are non-binding and subject to change without notice. This also applies in case we have provided Buyer with any catalogues, technical documentation (e.g. drawings, plans, calculations, costings, references to DIN standards), other product descriptions or documentation – including in electronic form – in which we reserve proprietary rights or copyright.

(2) The ordering of Goods by Buyer is deemed to be a binding offer of contract. Unless otherwise stipulated by the order we shall be entitled to accept such offer of contract within five (5) days of receipt thereof.

(3) Acceptance can be made in writing (e.g. by order confirmation) or by delivery of the Goods to Buyer.

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

(1) The delivery time is agreed in each case or, respectively, stated by us upon acceptance of the order. If this is not the case, the delivery time shall be approximately 4 weeks after conclusion of contract.

(2) If, for reasons beyond our control, we are unable to adhere to binding delivery periods (non-availability of goods/services), we shall notify Buyer immediately, at the same time stating the estimated new delivery time. If the goods/services continue to be unavailable during the new delivery period, we shall be entitled to withdraw from the Contract in whole or in part; we shall reimburse any consideration for the goods/services already rendered by Buyer without delay. Non-availability of goods/services to that effect shall be deemed to be in particular the failure of our suppliers to perform their delivery obligations to us in due time, if we have concluded a congruent hedging transaction, if neither we nor our supplier is at fault, or, if in a particular case we are not obliged to procure.

(3) The occurrence of our default in delivery shall be governed by the statutory provisions. Buyer shall, however, be required to issue a reminder in all cases. If we are in default of delivery, Buyer is entitled to claim lump-sum compensation for damages caused by delay. The liquidated damages for each completed calendar week of delay shall be 0.5 per cent of the net price (delivery value) but shall not exceed five (5) per cent of the delivery value of the Goods affected by the delay. We reserve the right to prove that Buyer suffered no damage or that the damage incurred is substantially lower than the aforementioned lump sum.

(4) Buyer's rights in accordance with § 8 of these GCS and our statutory rights, in particular in the event of exclusion of performance obligation (e.g. due to the impossibility or unreasonableness of performance and/or supplementary performance), shall remain unaffected.

### **§ 4 Delivery, Passing of Risk, Acceptance Procedure, Default of Acceptance**

(1) Delivery shall be ex works, which shall also be the place of performance for the delivery and any supplementary performance. At Buyer's request and expense the Goods may be sent to a different place of destination (sale to destination according to Buyer's instructions). Unless otherwise agreed we shall be entitled to determine the manner of shipment (in particular the carrier, routing, and packaging).

(2) The risk of accidental loss and accidental degradation of the Goods) shall pass to the Buyer the latest on delivery. In the case of a sale to destination according to Buyer's instructions the risk of accidental loss and accidental degradation of the Goods and the risk of delay passes to the Buyer at handover of the goods to the forwarder, carrier or any other third party carrying out the shipping. 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 an agreed acceptance. If the Buyer is in default of acceptance, this shall be deemed equivalent to transfer and/or acceptance.

(3) If Buyer is in default of acceptance, fails to satisfy its obligations to cooperate or if our delivery is delayed for other reasons for which Buyer is responsible, we shall be entitled to compensation for the resulting damages, including additional expenses (e.g. storage costs). In that case we shall charge lump-sum compensation in the form of liquidated damages to the sum of 50 Euro for each full calendar day, commencing on the deadline for the delivery, or in absence of a deadline, the notification that the Goods are ready for dispatch.

This shall not affect our right to prove higher damages and/or our statutory rights (in particular reimbursement of additional expenses, reasonable compensation, termination of contract); however, the above lump sum shall be offset against any further monetary claims. Buyer retains the right to prove that that we incurred no damage or damages that are substantially lower than the aforementioned lump sum.

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

(1) Unless otherwise agreed on a cases-by-case basis, our current prices at the time of conclusion of Contract shall apply; these are ex works and plus statutory value added tax.

(2) In the case of sale to destination (Section 4 para 1 German Civil Code) Buyer shall bear the transport costs ex warehouse and the costs of any transport insurance he may request. If we do not invoice the actual transport costs incurred in the individual case, a lump sum transport charge (excluding transport insurance) shall be deemed agreed. Any customs duties, fees, taxes and other public charges shall be borne by the Buyer.

(3) The purchase price is due and payable within fourteen (14) days from invoicing and delivery or acceptance of the Goods We are, however, entitled at any time to make a delivery in whole or in part only against payment in advance, even within the framework of an ongoing business relationship. We shall declare such a reservation no later than upon confirming the order.

(4) The Buyer shall be in default upon expiry of the above-mentioned payment period. During the period of default, the interest for late payment on the purchase price shall be paid at the respective applicable statutory default interest rate. We reserve the enforcement of further default damages. Our claim against merchants for commercial default interest (Section 353 German Commercial Code) remains unaffected.

(5) The Buyer may only claim to offsetting and withholding rights on the basis of a legally established or undisputed counterclaim. In case of a defective delivery, Buyer's rights to counterclaims, in particular in accordance with § 7 (6) S. 2 of these GCS, shall remain unaffected.

(6) If it becomes apparent after conclusion of Contract (e.g. as a result of an application for the commencement of insolvency proceedings) that our entitlement to payment of the purchase price is at risk due to Buyer's lack of ability to perform, we shall be entitled to withdraw from the Contract in accordance with the statutory provisions on the withholding of performance (Section 321 German Civil Code). If the Contract is for the production of nonfungible Goods (custom-made items), we may declare withdrawal immediately; this shall not affect the statutory provisions governing the dispensability of setting a deadline.

## **§ 6 Retention of title**

(1) We retain the right of ownership in the Goods sold until such time as all our current and future claims under the Purchase Contract and an ongoing business relationship (secured claims) are paid in full.

(2) Any Goods subject to retention of title may neither be pledged to third parties nor assigned as security unless payment of the secured claims has been made in full. Buyer must notify us immediately in writing of any application for the opening of insolvency proceedings or if any third parties seize or attach (e.g. distraint) Goods belonging to us.

(3) In the event of breach of contract by Buyer, in particular failure to pay the due purchase price, we shall be entitled to withdraw from the Contract in accordance with the statutory provisions /and to demand the return of the Goods on account of our retention of title. If Buyer fails to pay the purchase price that is due, we shall be entitled to assert the above rights only if we have previously unsuccessfully set Buyer a reasonable deadline for payment or if setting such a deadline is not required under the statutory provisions.

(4) Until revocation in accordance with (c) below, Buyer shall be entitled to resell and/or process the Goods which are subject to retention of title in the ordinary course of business. In this case the following provisions shall apply in addition:

(a) The retention of title shall extend to any products arising from the processing, mixing, or combination of our Goods at their full value, in which case we shall be deemed to be the manufacturer. In the event that during the processing, mixing, or combination with any third-party goods the third party's title continues to exist, we shall acquire joint ownership proportional to the invoice value of the processed, mixed, or combined goods. The provisions which apply to Goods delivered subject to retention of title shall also apply to any products generated as above.

(b) Buyer already assigns to us in full or, respectively, in the amount of any co-ownership share in accordance with the above paragraph, any claims against third parties arising from resale of the Goods or the product as stipulated in the foregoing section. We herewith accept such assignment. Buyer's obligations as set forth in Paragraph 2 shall also apply to the assigned claims.

(c) Besides ourselves, Buyer shall also be entitled to collect receivables. We undertake to refrain from collecting the receivables as long as Buyer meets its payment obligations to us, no deficiency to perform on Buyer's part occurs, and we do not exercise our right of retention by exercising a right pursuant to para. 3. However, if this is the case, we shall be entitled to demand that Buyer discloses the assigned receivables and their debtors, provides all particulars required for collection, surrenders the relevant documents and notifies the debtors (third parties) of the assignment. In addition, we shall in this case be entitled to revoke Buyer's authority to resell and process Goods which are subject to retention of title.

(d) If the realizable value of the collateral exceeds our claims by more than ten (10) per cent, we shall at Buyer's request release collateral at our discretion.

## **§ 7 Buyer's Claims for Defects**

(1) Unless otherwise specified below, the statutory provisions shall apply to Buyer's rights in respect of material defects and defects in title (including incorrect or short delivery, and improper assembly or inadequate installation instructions). The special statutory provisions governing the ultimate delivery of Goods to a consumer (right of recourse against supplier pursuant to Sections 478, 479 German Civil Code) shall remain unaffected.

(2) Our liability for defects is primarily based upon the agreement made in respect of the quality of the Goods. The agreement governing the quality of the Goods is deemed to entail all product descriptions which are referred to as such (also descriptions by the manufacturer), which Buyer received before his order, or to the extent that they have been incorporated into the contract in the same manner consistent as these GTS. '

(3) Insofar as the quality has not been agreed, an assessment of whether or not a defect exists shall be made pursuant to the statutory provisions (Section 434 (1) sentences 2 and 3 German Civil Code). We shall, however, not be liable for any public announcements by the manufacturer or any other third party (e.g. promotional statements).

(4) Buyer's claim for defects shall require Buyer to have met its statutory obligations regarding inspection and reporting of defects (Sections 377, 381 German Commercial Code). If a defect is found during the inspection or at a later date, we must immediately be notified in writing. A notification is deemed as immediately if the defect is reported within two (2) weeks, whereby the aforesaid period shall be deemed to have been complied with if the report is dispatched in due time.

Without prejudice to this obligation to inspect and report defects, Buyer shall notify [us of] any obvious defects (including incorrect or short delivery) in writing within two (2) weeks of the date of delivery, whereby the timely dispatch of such notice shall suffice to meet the deadline. We shall not be liable for any defect that has not been reported if Buyer fails to perform the proper inspection and/or the reporting of defects.

(5) If the delivered Goods are defective, Buyer shall initially be entitled to choose to remedy of the defect (subsequent improvement) or delivery of non-defective Goods (replacement delivery). If Buyer does not communicate his choice of his rights, we may set him a reasonable deadline. If Buyer fails to choose within the set deadline, the right to choose passes on to us upon such expiry.

(6) We shall be entitled to make the performance owed by us to remedy the defect conditional on Buyer paying the due purchase price. Buyer shall however be entitled to withhold a reasonable part of the purchase price proportionate to the defect.

(7) Buyer shall allow us the necessary time and opportunity to provide the subsequent performance owed; in particular Buyer shall surrender the Goods subject to a complaint for the purposes of inspection. In the case of a substitute delivery, Buyer shall return the defective Goods to us pursuant to the statutory provisions. Subsequent performance shall entail neither dismantling of the defective Goods nor any reinstallation if we were not originally obliged to perform the installation.

(8) Any expenses required for the inspection and subsequent performance, in particular transport costs, road tolls, labour costs and costs of materials (but no costs of dismantling and installation shall be borne by us if a defect *de facto* exists. Otherwise we shall be entitled to demand from Buyer reimbursement of any costs incurred by us as a result of any unjustified demand for the remedy of defects (in particular inspection and transport costs) unless the absence of any defectiveness was not obvious to Buyer.

(9) In urgent cases, e.g. risk to operational safety or in order to avert disproportionate damages Buyer shall be entitled to remedy the fault itself and to claim from us reimbursement of any expense that is objectively required for this. We must be advised without delay and, if possible, in advance of any such remedy performed by Buyer. No right to self-remedy exists if we would be entitled to refuse any such subsequent performance under the statutory provisions.

(10) If subsequent performance fails or the reasonable deadline to be set by Buyer has elapsed unsuccessfully or is not required under the statutory provisions Buyer may either withdraw from the Contract or reduce the purchase price. The right of withdrawal shall, however, not apply in case of any insignificant defects.

(11) Even in the event of defects, Buyer may claim for damages or, respectively, reimbursement of wasted expenditure only as specified in § 8, and all such claims shall otherwise be excluded.

## **§ 8 Other Liability**

(1) Unless otherwise specified in these GCS, including the provisions below, we shall be liable in the event of a breach of our contractual or noncontractual obligations pursuant to the statutory provisions.

(2) We shall be liable for damages – for whatever legal reason – within the scope of fault-based liability in cases of intent and gross negligence. In case of ordinary negligence, we shall be liable pursuant to the statutory provisions (e.g. the due care and diligence which we exercise in our own affairs), subject to a more lenient liability criterion, only

(a) for damages resulting from injury to life, body, or health,

(b) for damages resulting from the not inconsiderable breach of a material contractual obligation (obligation where proper performance constitutes a sine qua non for execution of the Contract and compliance with which the other party regularly relies on and is entitled to expect); in this case, however, our liability shall be limited to compensation for the foreseeable damage that should typically be expected.

(c) for damages and claims in connection with the violation of data protection regulations.

(3) The limitations of liability resulting from para. 2 shall also apply in the event of breaches of duty by or, respectively, in favour of persons whose culpability we are responsible for under the statutory provisions. They shall not apply if we have maliciously failed to disclose a defect or have assumed a warranty for the condition of the Goods and for any Buyer's claims under the product liability law.

(4) Buyer may withdraw from or cancel the Contract on the grounds of a breach of duty that is not due to a defect only if we are responsible for the breach of duty. Buyer's right to withdraw from or cancel the Contract without cause (in particular pursuant to Sections 651, 649 German Civil Code) is excluded. Otherwise the statutory provisions and legal consequences shall apply.

## **§ 9 Period of Limitation**

(1) Notwithstanding Section 438 (1) No. 3 German Civil Code, the general limitation period for claims for defects shall be one (1) year as from delivery. Insofar as an acceptance procedure has been agreed, the limitation period shall commence upon acceptance.

(2) If, however, the Goods are a building or an object which has been used for a building in accordance with its customary manner of use and which have caused its defectiveness (building material), the period of limitation in accordance with the statutory regulation shall be five (5) years from delivery (Sections 438 para. (1) No. 2 BGB). Other special statutory regulations regarding the statute of limitations (in particular Section 438 (1), (3), Sections 444, 479 German Civil Code) shall also remain unaffected.

(3) The aforementioned statute of limitation periods under the Sales Law shall also apply to Buyer's contractual and non-contractual claims for damages which are based on a defect of the Goods, unless the application of the regular statutory limitation period (Sections 195, 199 German Civil Code) would in individual cases entail a shorter limitation period. Buyer's claims for damages according to Section 8 para 2 S 1 and S 2(a) and according to the German Product Liability Act shall become statute-barred exclusively according to the statutory provisions.

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

(1) These GCS and the contractual relationship between us and Buyer 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 Buyer 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 GCS or any overriding individual agreement, or at Buyer'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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