

**1. Scope of Application**

- 1.1 These General Terms and Conditions (GTC) shall apply to all business relations with our contractors or customers (hereinafter also referred to as "Buyer"). The GTC shall only apply if the Buyer is an entrepreneur (§ 14 German Civil Code), a legal entity under public law or a special fund under public law.
- 1.2 These GTC are an integral part of all contracts with our customers. Any conflicting terms and conditions of purchase or other terms and conditions of the Buyer shall be ineffective, even if we do not expressly object to them. Deviating, opposing or supplementary general terms and conditions of the Buyer shall only become part of the contract if and to the extent that we have expressly consented to their validity. This requirement of consent shall apply in any case, for example even if we carry out the delivery or service to the Buyer unconditionally in knowledge of the Buyer's general terms and conditions or if we refer to a letter containing or referring to the terms and conditions of the Buyer or a third party.

**2. Offers, conclusion of contract**

- 2.1 Unless agreed otherwise, our offers are always non-binding and subject to change.
- 2.2 All contracts are concluded only upon receipt of the written order confirmation, or at the latest upon execution of the delivery. We reserve the right to correct printing errors and mistakes.
- 2.3 The conclusion of the contract shall in each case be subject to timely and defect-free self-delivery by our subcontractors or suppliers. However, this shall only apply in the event that we have concluded congruent hedging transactions with our suppliers and that we are not responsible for the non-timely delivery or the non-defective self-delivery. Any unavailability of the service of our suppliers shall be notified to the Buyer without undue delay.
- 2.4 The condition of the goods shall only be deemed to be the product description. On the contrary, public statements, recommendations or advertising statements on our part or by the manufacturer do not constitute an agreement as to the condition of the goods.
- 2.5 The provision of samples is generally always subject to a charge. Samples only serve to specify the condition and do not constitute a guarantee.

**3. Prices**

- 3.1 Unless otherwise agreed in the individual case, the prices listed in quotations and/or order confirmations shall be ex warehouse, freight forward, plus packaging and plus statutory value added tax; in the case of export deliveries, plus customs duty and plus fees and other public charges.
- 3.2 In the case of a sale by dispatch, the Buyer shall bear the transport costs ex warehouse and the costs of any transport insurance that he may require. We do not take back transport packaging and all other packaging in accordance to the packaging regulations; they become property of the Buyer; excluded are pallets and stillages.
- 3.3 Prices are subject to change without notice. The prices valid on the day of placing the order shall be invoiced.

**4. Delivery**

- 4.1 Delivery periods are subject to change unless they are agreed individually or stated as binding by us when accepting the order. If delivery has been agreed, the delivery periods and delivery dates refer to the time of

handover to the forwarding agent, carrier or other third party commissioned with the transport.

- 4.2 We shall be entitled to make partial deliveries and render partial services if the partial delivery is usable for the Buyer within the scope of the contractual intended purpose and the delivery of the remaining ordered goods is ensured and the Buyer does not thereby have to bear significant additional expenses or additional costs, unless we declare that we are prepared to bear such costs.
- 4.3 The occurrence of delay in our delivery shall be determined in accordance with the legal regulations. In any case, however, a formal warning by the Buyer is required.
- 4.4 The rights of the Buyer pursuant to Section 10. (Liability, Limitation of Liability) of these GTC and our legal rights, in particular in the event of exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of performance and/or supplementary performance) shall remain unaffected.
- 4.5 We shall not be liable for impossibility of delivery or for delays in delivery insofar as these are caused by force majeure or other events unforeseeable at the time of formation of contract (e.g. operational disruptions of all kinds, difficulties in the procurement of materials or energy, transport delays, strikes, lawful lockouts, shortage of labor, shortage of energy or raw materials, difficulties in obtaining necessary official permits, official measures or the failure of suppliers to deliver, to deliver correctly or to deliver on time) for which we are not responsible. If such events make it considerably more difficult or impossible for us to deliver or perform and if the hindrance is not only of temporary nature, the Buyer shall be entitled to withdraw from the contract. In the event of hindrances of temporary duration, agreed delivery and performance periods shall be extended or the delivery and performance dates shall be postponed by the time of the hindrance plus a reasonable start-up period. If the Buyer cannot reasonably be expected to accept the delivery or service as a result of the delay, he may withdraw from the contract by means of an immediate written notice to us. In this case, claims for damages are excluded on both sides.

**5. Passing of risk, Acceptance**

- 5.1 The risk of accidental loss and accidental deterioration of the goods shall pass to the Buyer at the latest upon handover of the goods. In the case of sale by dispatch, however, the risk of accidental loss and accidental deterioration of the goods shall already pass upon delivery of the goods to the forwarding agent, the carrier or the person or institution otherwise designated to carry out the delivery. If acceptance has been agreed upon, this is decisive regarding the passing of risk. The handover or acceptance shall be deemed equivalent if the Buyer is in default of acceptance.
- 5.2 If the Buyer is in default of acceptance, fails to cooperate or if our delivery is delayed for other reasons for which the Buyer is responsible, we shall be entitled to demand compensation for the resulting damages including additional expenses (e.g. storage costs). The proof of further damages and our legal claims shall remain unaffected. The Buyer shall be entitled to prove that we have not suffered any damages at all or only significantly less damages.

**6. Payment**

- 6.1 All invoices are payable net within the payment period stated on the invoice, in each case as of the date of the invoice, unless agreed otherwise. If the payment deadline is exceeded, the Buyer shall owe interest on arrears in the amount of the statutory interest rate applicable at the time. We reserve the right to claim further damage caused by a delay. With respect to merchants, our claim to the commercial due date interest rate (§ 353 German Commercial Code) shall remain unaffected.
- 6.2 The Buyer shall not be entitled to withhold the purchase price due to its own disputed counterclaims or to set off counterclaims that are not acknowledged or have not been legally ascertained or to assert any right of withholding. Circumstances which become apparent after conclusion of the contract and which are likely to give rise to doubts about the creditworthiness of the Buyer shall result in immediate due date of all our outstanding claims. We shall be entitled to demand advance payment for unfulfilled delivery contracts or to withdraw from the contract while excluding any claims for damages against us.
- 7. Retention of title**
- 7.1 We retain title to the delivery items until receipt of all payments arising from the business relationship with the Buyer. The retention of title also extends to the recognized balance insofar as we book claims against the Buyer to current account (current account retention).
- 7.2 In case of breach of contract by the Buyer, in particular in case of arrears of payment, we shall be entitled to take back the delivery items after having set a reasonable deadline; the Buyer shall be obliged to return the delivery items. The taking back of the delivery items by us shall always constitute a rescission of the contract. The seizure of the delivery items shall also always constitute a rescission of the contract. In the event of seizures or other interventions by third parties, the Buyer must notify us immediately in writing so that we can take legal action in accordance with § 771 ZPO (German Code of Civil Procedure). Insofar as the third party is unable to reimburse us for the court and out-of-court costs of a lawsuit pursuant to § 771 ZPO (German Code of Civil Procedure), the Buyer shall be liable for the loss incurred by us.
- 7.3 The Buyer is entitled to resell the delivery items in the ordinary course of business; however, he hereby assigns to us all claims in the amount of the final invoice amount (including VAT) accruing to him from the resale against his customers or against third parties, irrespective of whether the delivery items have been resold without or after processing. The Buyer shall be authorized to collect this claim even after its assignment. Our right to collect the claim directly by ourselves shall remain unaffected; however, we undertake not to collect the claim as long as the Buyer duly fulfills his payment obligations and is not in arrears of payment. In this case, we may demand that the Buyer informs us of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment.
- 7.4 The processing or transformation of the delivery items by the Buyer shall always be carried out on our behalf. If the delivery item is processed with other items not belonging to us, we shall acquire co-ownership of the new items in the ratio of the value of the delivery items to the other processed items at the time of processing. In all other respects, the same shall apply to the items created by processing as to the goods subject to retention of title. The Buyer is obliged to treat our sole or joint property with care. Insofar as maintenance and inspection work is required, the Buyer shall carry out such work regularly at its own expense.
- 7.5 If the delivery items are inseparably combined or mixed with other items not belonging to us, we shall acquire co-ownership of the new items in the ratio of the value of the delivery items to the other combined or mixed items at the time of combination or mixing. If the combination or mixing is affected in such a way that the Buyer's items are to be regarded as the main items, it shall be deemed agreed that the Buyer transfers co-ownership to us on a pro rata basis. The Buyer keeps the sole ownership or the co-ownership for us.
- 7.6 The Buyer also assigns to us the claims to secure our claims against him which accrue to him against a third party as a result of the connection of the delivery items with a piece of real estate.
- 7.7 We undertake to release securities upon request of the Buyer to which we are entitled to the extent that their value exceeds the value of the claims to be secured by more than 10%, provided that these have not yet been settled.
- 8. Returns**
- We will not accept returns of defect-free shipments for credit, unless the return is made with our prior written consent. In the case of agreed returns of defect-free deliveries, we shall charge a share of the costs for the processing of the returns. The returns have to be free of charge and in perfect condition. Special orders are always excluded from the possibility of return.
- 9. Warranty, claims for defects**
- 9.1 For the rights of the Buyer in case of material defects and defects of title (including wrong and short delivery as well as improper assembly or defective assembly instructions), legal provisions shall apply, unless otherwise stipulated in the following. In all cases, legal regulations remain unaffected in case of end delivery of the goods to a consumer (supplier recourse according to §§ 478, 479 German Civil Code).
- 9.2 Visible defects must be notified in writing immediately after delivery, hidden defects immediately after discovery, all stating the exact reasons. The assertion of any defects is excluded after the expiry of ten days since receipt of the goods (exclusion period). The defective item must be carefully packed and sent to us free of charge for inspection. In the event of legitimate and timely complaints, the Buyer shall receive, at our discretion, rectification of defects, free exchange of goods or a credit note against return of the goods; If rectification and exchange of goods are not possible or unreasonable, the Buyer may withdraw from the contract or reduce the purchase price of those goods. Claims for damages of any kind, including those due to alleged late deliveries, are excluded, unless the damage was caused intentionally or by gross negligence.
- 9.3 We shall be entitled to make supplementary performance dependent on the Buyer paying the consideration due. However, the Buyer shall be entitled to retain a reasonable part of the purchase price in relation to the defect.
- 9.4 The warranty shall not apply if the Buyer modifies the goods or has them modified by third parties without our consent and the rectification of the defect is thereby rendered impossible or unreasonably difficult. In any case, the Buyer shall bear the additional costs of remedying the defect resulting from the modification.
- 10. Liability, Limitation of Liability**
- 10.1 We shall only be liable for damages - irrespective of the legal grounds - in case of intention and gross negligence. In the event of simple negligence, we shall only be liable
- a) for damages resulting from injury to life, body or health,

- b) for damages resulting from the violation of essential contractual obligations (obligation, the fulfillment of which enables the proper execution of the contract in the first place and on the compliance with which the Buyer regularly relies on and may rely on). In this case, however, our liability shall be limited to compensation for the foreseeable, typically occurring damage.
- 10.2 The limitations of liability resulting from the above paragraph shall not apply insofar as we fraudulently concealed a defect or guaranteed the quality of the goods. The same shall apply to claims of the Buyer under the German Product Liability Act (*ProdHaftG*).
  - 10.3 The above limitations of liability shall not apply in connection with a delay on our part in an agreed short selling.
  - 10.4 § 478 of the German Civil Code (recourse of the company) remains unaffected.

## **11. Property rights, intellectual property**

- 11.1 Each contracting party shall notify the other contracting party in writing without undue delay, at least in text form, if claims are asserted against it due to the infringement of industrial property rights or copyrights of third parties.
- 11.2 In the case that the goods infringe an industrial property right or copyright of a third party, we shall, at our discretion and at our expense, modify or replace the goods in such a way that the rights of third parties are no longer infringed, but the goods continue to fulfill the contractually agreed functions, or obtain the right of use for the Buyer by concluding a license agreement. If we do not succeed in doing so within a reasonable period of time, the Buyer shall be entitled to rescind the contract or to reduce the purchase price appropriately. Any claims for damages shall be subject to the provisions in Section 10 (Liability, Limitation of Liability).
- 11.3 In the event of infringements of rights by products of other manufacturers supplied by us, we shall, at our discretion, assert our claims against the manufacturers or pre-suppliers for the account of the Buyer or assign them to the Buyer. In such cases, claims against us in accordance with this Clause 11 (Property rights, intellectual property) shall only exist if the judicial enforcement of the aforementioned claims against the manufacturers and pre-suppliers has been unsuccessful or is futile, for example, due to insolvency.

## **12. Applicable Law**

These GTC and all legal relationships between us and the Buyer shall be governed by the laws of the Federal Republic of Germany, excluding the provisions of private international law and international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods (CISG). Requirements and effects of the retention of title according to clause 7 are subject to the law of the respective location of the items, insofar as the choice of law made in favor of German law is inadmissible or ineffective thereafter.

## **13. Place of performance/jurisdiction**

The exclusive - also international - place of performance and jurisdiction for both parties shall be our registered office in Germany in accordance with our Articles of Association. However, we are also entitled to bring an action at the general place of jurisdiction of the Buyer.

## **14. Miscellaneous**

- 14.1 Legally relevant declarations and notifications to be made to us by the Buyer after conclusion of the contract (e.g. setting of deadlines, reminders, declarations of withdrawal)

must be made in writing to be effective (§ 126 German Civil Code).

- 14.2 Verbal commitments on our part prior to the conclusion of this contract are not legally binding. Verbal agreements of the contracting parties shall be replaced by the written contract, unless it is expressly stated in each case that they shall continue to be binding.
- 14.3 Should any present or future provision of this contract be or become invalid/void or unenforceable in whole or in part for reasons other than those set out in Sections 305 to 310 of the German Civil Code, this shall not affect the validity of the remaining provisions of this contract unless, taking into account the following provisions, performance of the contract would cause unreasonable hardship to one party. The same shall apply if a gap requiring supplementation arises after conclusion of this contract. The parties shall replace the invalid/void/unenforceable provision or loophole requiring supplementation by a valid provision which corresponds in its legal and economic content to the invalid or void or unenforceable provision and to the overall purpose of the contract.