

## § 1 General provisions and scope of applicability

- (1) These General Terms and Conditions of Sale (GTC) apply to all our business relationships with our customers (hereinafter referred to as “buyers”). These GTC only apply if the buyer is a company (Article 14 of the German Civil Code (Bürgerliches Gesetzbuch – BGB)), a legal person under public law or a public special fund.
- (2) The GTC apply, in particular, for contracts on the sale and/or delivery of movable items (hereinafter also referred to as “goods”), irrespective of whether we produce the goods ourselves or purchase them from suppliers (Articles 433, 651 BGB). They apply in their current version as a master agreement also for future contracts with the same buyer on the sale and/or delivery of movable items, without us having to refer to them again in each individual case. In such a situation we shall inform the buyer of any amendments without delay.
- (3) Our GTC apply exclusively. Differing, contradictory or supplementary general terms and conditions of business of the buyer shall only form a part of the contract if and to the extent that we have explicitly agreed to their applicability. This consent requirement applies in any event including, for example, if we carry out the delivery to the buyer without any reservations being aware of its general terms and conditions of business.
- (4) Individual arrangements with the buyer made in an individual case (including additional agreements, additions or amendments) shall in any event take precedence over these GTC. For the content of such arrangements a written contract /our written confirmation shall be decisive.
- (5) Legally relevant declarations or notifications to be made/given with respect to us by the buyer after the conclusion of the contract (e.g. setting time limits, defect notices, declarations of rescission or price reduction) must be in writing in order to be effective.
- (6) References to the applicability of statutory regulations are for the purposes of clarification only. The statutory regulations therefore apply also without such a clarification, insofar as they are not directly amended or explicitly excluded in these GTC.

## § 2 Concluding a contract

- (1) Our offers are subject to confirmation and non-binding. This also applies if we have provided the buyer with catalogues, technical documentation (e.g. drawings, plans, calculations, references to DIN standards), other product descriptions or documents, including in electronic form, to which we reserve ownership and copyrights.
- (2) The order of the goods by the buyer shall be deemed to be a binding contract offer. Unless indicated otherwise by the order, we shall have the right to accept that contract offer within 14 days from the date of receipt by us.
- (3) We may declare acceptance either in writing (for example by way of an order confirmation) or by delivering the goods to the buyer.

## § 3 Delivery period and late delivery

- (1) The delivery period shall be individually agreed or specified by us upon acceptance of the order. If this is not the case, the delivery period amounts to approximately eight weeks from the conclusion of the contract.
- (2) If we cannot adhere to binding delivery periods for reasons for which we are not responsible (unavailability of the performance), we shall promptly inform the buyer to that effect and at the same time notify it of the expected new delivery period. If the performance is also unavailable within the new delivery period, we shall have the right to entirely or partially rescind the contract, whereupon we shall promptly reimburse any counterperformance already rendered by the buyer. Unavailability of the performance in this sense includes failure by our own suppliers to punctually make delivery, if we have concluded a congruent covering transaction, neither we nor our supplier are at fault or we are not obliged to effect a procurement in an individual case.
- (3) The occurrence of a delay in making delivery shall be determined in accordance with the provisions of law. However, in any event a reminder by the buyer shall be required. If we are late in making delivery, the buyer will be able to demand flat compensation for its resulting losses. The flat compensation shall amount, for each completed calendar week of delay, to 0.5% of the net price (delivery value) and a maximum of 5% of the delivery value of the goods delivered late. We shall have the right to provide proof that the buyer did not incur any losses or only incurred significantly lower losses than the above-mentioned flat compensation.

- (4) The buyer's rights under § 8 of these GTC and our statutory rights, particularly in the event of an exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of the performance and/or supplementary performance), remain unaffected.

#### § 4 Delivery, transfer of risk, acceptance, default of acceptance

- (1) Delivery shall occur ex warehouse or ex manufacturer's factory in the case of drop shipments, which shall also be the place of performance. At the buyer's request and expense the goods will be shipped to a different destination (mail order purchase). Unless otherwise agreed, we shall have the right to determine ourselves how the shipment is carried out (in particular the transport company, shipping route and packing).
- (2) The risk of accidental loss and accidental deterioration of the goods shall transfer at the latest when the goods are handed over to the buyer. In the case of a mail order purchase, however, the risk of accidental destruction or accidental deterioration of the goods and the risk of delay shall transfer already upon the handover of the goods to the forwarder, the carrier or other person or organisation appointed to carry out the shipment. If an acceptance is agreed, it shall be decisive for the transfer of risk. Also otherwise the provisions of work contract law apply accordingly for an agreed acceptance. The buyer defaulting on acceptance shall be deemed equivalent to handover/acceptance.
- (3) If the buyer defaults on acceptance or fails to take cooperative action or if our delivery is delayed for other reasons for which the buyer is responsible, we shall have the right to demand compensation for the resulting losses, including additional expenses (e.g. storage costs). For this we shall charge flat compensation in the amount of 0.5% of the sale price per calendar week up to a maximum of 10% in the event of final failure to accept, beginning with the delivery deadline or, in the absence of a delivery deadline, upon notification that the goods are ready to be shipped.
- (4) The right to provide proof of higher losses and our statutory claims (particularly reimbursement of additional expenses, reasonable compensation, termination) remain unaffected. However, the flat compensation shall be credited to further pecuniary claims. The buyer shall have the right to provide proof that we did not incur any losses or only incurred significantly lower losses than the above-mentioned flat compensation.

#### § 5 Prices and payment terms

- (1) Unless otherwise agreed in an individual case, our current prices upon the conclusion of the contract are effective, ex warehouse and subject to the addition of statutory VAT.
- (2) In the case of a mail order purchase (§ 4 par. 1), the buyer shall bear the transportation costs (including packaging costs) ex warehouse and the costs of any transit insurance requested by the buyer. According to our choice, either the costs actually incurred in an individual case or an appropriate flat transportation costs fee (excluding transit insurance) will be invoiced as transportation costs. Any customs duties, fees, taxes and other public charges shall be borne by the buyer. Transport packaging and any other packaging in accordance with the German Packaging Regulation (Verpackungsordnung) will not be taken back by us and shall become the property of the buyer, except for pallets.
- (3) The purchase price shall be due and payable within 14 days from the moment when the invoice is issued and the goods are delivered/accepted. However, in the case of contracts with a delivery value of more than €1,000 we shall have the right to demand an advance payment in the amount of 50 % of the purchase price. The advance payment shall be due and payable within 14 days from the invoice date.
- (4) When the above time limit for payment ends the buyer shall be deemed to be in default. The purchase price shall bear interest during the period of default at the currently applicable statutory default interest rate. We reserve the right to assert claims for more far-reaching default compensation. Our entitlement to commercial due date interest with respect to traders (Article 353 of the German Commercial Code (Handelsgesetzbuch – HGB)) remains unaffected.
- (5) The buyer shall only have set off rights or rights of retention to the extent that its claim has been established with legally binding effect or is undisputed. In the event of defects in the delivery the buyer's counterclaims, in particular under § 7 par. 6 sentence 2 of these GTC, shall remain unaffected.
- (6) If it becomes clear after the conclusion of the contract that our claim to the purchase price is jeopardised due to insufficient financial capacity of the buyer (e.g. due to an application for the initiation of insolvency proceedings), we shall have the right under the provisions of law to refuse the performance and, possibly after setting a time limit, to rescind the contract (Article 321 BGB). With regard to contracts on the manufacture of non-substitutable goods (custom manufacturing) we will be able to declare rescission immediately. The provisions of law on the dispensability of setting a time limit remain unaffected.

## § 6 Retention of ownership

- (1) We shall retain the ownership title to the sold goods until payment has been in full of all our current and future receivables stemming from the purchase contract and an ongoing business relationship (secured receivables).
- (2) The goods subject to retention of ownership may not be pledged to third parties or assigned as security before payment of the secured receivables has been made in full. The buyer must promptly notify us in writing if and insofar as any interventions of third parties occur with respect to the goods belonging to us.
- (3) In the event of conduct by the buyer in breach of contract, particularly failure to make payment of the due purchase price, we shall have the right, pursuant to the provisions of law, to rescind the contract and/or demand the surrender of the goods based on the retention of ownership. The demand of the surrender of the goods does not also include a declaration of rescission. Rather, we shall have the right to only demand the surrender of the goods and reserve the right to rescission. If the buyer fails to pay the due purchase price, we will only be able to assert these rights if we have previously ineffectively set the buyer a reasonable time limit for the payment or if setting such a time limit is dispensable under the provisions of law.
- (4) The buyer is authorised to resell and/or process the goods subject to retention of ownership in the course of its normal business, in which case the following provisions shall apply on a supplementary basis:
  - (a) The retention of ownership shall also extend to outcomes which result from the processing, combination or connection of our goods, at the full value thereof, in which case we shall be considered to be the manufacturer. In the event of processing, combination or connection with goods of third parties with ownership rights, we shall acquire joint ownership proportionally to the invoice values of the processed, combined or connected goods. Otherwise, the same conditions apply to the resulting product as to the delivered goods subject to retention of title.
  - (b) The buyer already now assigns to us as security any claims against third parties that arise from the resale of the goods or outcome, either in their entirety or in the amount of our share in joint ownership (if applicable) according to the preceding paragraph. We accept that assignment. The obligations of the buyer provided for in paragraph 2 shall also apply with regard to the assigned claims.
  - (c) The buyer shall remain authorised alongside us to collect the claim. We undertake not to collect the claim as long as the buyer fulfils its payment obligations towards us, does not delay in making payment, no application is filed for insolvency proceedings to be initiated and there is no other deficiency in its ability to pay. However, if this is indeed the case, we may demand that the buyer inform us of the assigned claims and the debtors, provide us with all the information necessary to collect the claim and the relevant documents and notify the debtors (third parties) of the assignment.
  - (d) If the realisable value of the security exceeds our claims by more than 10%, at the buyer's request we shall release security, according to our choice.

## § 7 Claims for defects of the buyer

- (1) For the rights of the buyer in the event of material or legal defects (including incorrect or short deliveries or improper installation or defective installation instructions) the provisions of law apply, unless provided otherwise below. In all events the special statutory regulations on final delivery of goods to a consumer (suppliers' recourse under Articles 478, 479 BGB) remain unaffected.
- (2) The basis for our liability for defects is, above all, the agreement made on the quality/characteristics of the goods. The agreement on the quality/characteristics of the goods is deemed to be all product descriptions being the subject of the individual contract. It makes no difference in this context whether the product description originates from the buyer, from the manufacturer or from us.
- (3) If the quality/characteristics have not been agreed, a judgement shall be made in accordance with provisions of law as to whether a defect exists or not. (Section 434 para. 1 sentence 2 and 3 BGB – German Civil Code). However, we accept no liability for public statements of the manufacturer or other third parties (e.g. advertising messages).
- (4) The buyer's claims for defects are subject to the condition that it has fulfilled its statutory inspection and complaint obligations (Articles 377 and 381 HGB). If a defect is identified during the inspection or later, the buyer must promptly notify us to that effect in writing. Notification will be deemed to be prompt if it is given within two weeks, and the time limit will be deemed to have been complied with if the notice is dispatched on time. Irrespective of that obligation to carry out an inspection and give notice of defects, the buyer must give notice in writing of obvious defects (including incorrect or short deliveries) within two weeks from the delivery date. In this case too it is

sufficient for the notice to be sent on time for the time limit to be deemed to have been complied with. If the buyer fails to carry out a correct inspection and/or give notice of defects, we shall not be liable for the defects of which we have not been notified.

- (5) If a delivered item is defective we may first decide whether we will provide a supplementary performance by eliminating the defect (repair) or by delivering an item free of defects (replacement delivery). Our right to refuse the supplementary performance under the relevant statutory conditions remains unaffected.
- (6) We have the right to make the due supplementary performance conditional on the buyer paying the due purchase price. However, the buyer shall have the right to withhold an appropriate portion of the purchase price in proportion to the defect.
- (7) The buyer must provide us with the necessary time and opportunity to satisfy the supplementary claim. In particular, it must hand over the goods being the subject of the complaint for the purpose of examination. If we provide a replacement delivery, the buyer must return the defective item to us in accordance with the provisions of law. The supplementary performance includes neither de-installation of the defective item nor re-installation if we were not originally obliged to install it.
- (8) Any outlays which are necessary for the purpose of the examination and supplementary performance, particularly transport, travel, labour and material expenses (excluding de-installation and installations costs), shall be borne by us, provided that a defect actually exists. However, if a buyer's request that we eliminate a defect turns out to be unjustified, we may demand that it compensate us for the related costs.
- (9) In urgent cases, for example if operational safety is at risk or in order to avert disproportionate losses, the buyer shall have the right to eliminate the defect itself and demand compensation from us for the expenses which are objectively necessary for that purpose. The buyer must promptly notify us of such self-repairs, if possible in advance. The right of self-repair shall not exist if we would be entitled to refuse an appropriate supplementary performance under the provisions of law.
- (10) If the supplementary performance fails or a reasonable time limit to be set by the buyer for the supplementary performance has expired ineffectively or is dispensable in accordance with the provisions of law, the buyer will be able to rescind the purchase contract or reduce the purchase price. However, in the event of an insignificant defect there shall be no rescission right.
- (11) Claims of the buyer for compensation for losses or needless expenses shall only exist in accordance with § 8 and are otherwise excluded.

## § 8 Other liability

- (1) Unless otherwise provided for in these GTC, including the following provisions, we shall be liable in the event of a breach of contractual or non-contractual obligations in accordance with the relevant provisions of law.
- (2) We shall be liable for compensation for losses, irrespective of the legal basis, in the event of wilful misconduct or gross negligence. In the event of simple negligence we shall only be liable:
  - (a) for losses resulting from loss of life or injury to the body or health;
  - (b) for losses resulting from a breach of a material contractual obligation (an obligation whose fulfilment makes it possible to correctly perform the contract at all and upon whose fulfilment the contract partner has generally relied and can rely); however, in this case our liability shall be limited to compensation for the foreseeable, typically occurring losses.
- (3) The limitations of liability provided for in paragraph 2 shall not apply if we have fraudulently concealed a defect or provided a warranty for the quality/characteristics of the goods. The same applies to claims of the buyer under the German Product Liability Act (Produkthaftungsgesetz).
- (4) The buyer may only rescind or terminate the contract due to a breach of obligation which does not consist of a defect if we are responsible for the breach of obligation. A free right of termination of the buyer (particularly under Articles 651 and 649 BGB) is excluded. Otherwise the statutory requirements and legal consequences apply.

## § 9 Time limitation of claims

- (1) Notwithstanding Article 438 par. 1 No. 3 BGB, the general time limitation period for claims stemming from material or legal defects amounts to one year from delivery. If an acceptance has been agreed, the time limitation period shall begin upon acceptance.

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- (2) This does not affect the special statutory provisions on claims for restitution of property of third parties (Article 438.1 No. 1 BGB), regarding wilful deceit on the part of the seller (Article 438.3 BGB) or on claims regarding suppliers' recourse in the case of final delivery to a consumer (Article 479 BGB).
- (3) The above time limitation periods under sale of goods laws also apply to contractual and non-contractual claims for compensation of the buyer which are based on a defect in the goods, unless the application of the regular statutory time limitation (Articles 195 and 199 BGB) would lead to a shorter time limitation period in an individual case. The limitation periods under the German Product Liability Act in any event remain unaffected. Otherwise, for claims for compensation for losses of the buyer under § 8 the statutory time limitation periods apply exclusively.

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

- (1) For these GTC and the contractual relationships between us and the buyer the laws of the Federal Republic of Germany apply, to the exclusion of uniform international law, particularly the UN Convention on Contracts for the International Sale of Goods. Conditions and effects of the retention of ownership under § 6 are subject to the laws of the respective place of storage of the goods, insofar as under that law the choice of German law is impermissible or ineffective.
- (2) If the buyer is a trader in the meaning of the German Commercial Code, a legal person under public law or a special fund under public law, our registered office in Bremen is the exclusive, including international, place of jurisdiction for all disputes stemming either directly or indirectly from the contractual relationship. However, we shall also have the right to sue the buyer in its general place of jurisdiction.

#### **§ 11 Applicable version**

In case of doubt the German version of these General Terms and Conditions of Sale shall be decisive.

Bremen, May 2012