

# General Terms and Conditions of Purchase

## 1 SCOPE, FORM

- (1) These General Terms and Conditions of Purchase (GTP) shall apply to all business relations with our business partners and suppliers ("Seller"). The AEB shall only apply if the Seller is an entrepreneur (§ 14 BGB), a legal entity under public law or a special fund under public law.
- (2) The AEB shall apply in particular to contracts for the sale and/or delivery of movable goods ("Goods"), irrespective of whether the Seller manufactures the Goods himself or purchases them from suppliers (Sections 433, 651 BGB). Unless otherwise agreed, the AEBs in the version valid at the time of the Buyer's order or, in any case, in the version most recently communicated to him in text form, shall apply as a framework agreement also for similar future contracts, without us having to refer to them again in each individual case.
- (3) These AEB shall apply exclusively. Deviating, conflicting or supplementary General Terms and Conditions of Business of the Seller shall only become part of the contract if and insofar as we have expressly agreed to their validity in writing. This consent requirement shall also apply if we accept the Seller's deliveries without reservation in the knowledge of the Seller's General Terms and Conditions of Business. If we refer to a letter which contains or refers to the terms and conditions of the seller or third parties, this does not constitute agreement with the validity of those terms and conditions.
- (4) Individual agreements made with the Seller in individual cases (including collateral agreements, supplements and amendments) shall take precedence over these GTC. Subject to proof to the contrary, a written contract or our written confirmation shall be decisive for the content of such agreements.
- (5) Legally relevant declarations and notifications of the Seller in relation to the contract (e.g. setting of a deadline, reminder, withdrawal) must be made in writing or text form (e.g. letter, e-mail, fax). Statutory formal requirements and further evidence, in particular in the event of doubts about the legitimacy of the person making the declaration, remain unaffected.
- (6) References to the validity of statutory provisions shall only have clarifying significance. Even without such clarification, the statutory provisions shall therefore apply unless they are directly amended or expressly excluded in these GPC.
- The customer is a consumer insofar as the purpose of the services and activities ordered cannot be predominantly attributed to his commercial or independent professional activity. On the other hand, an entrepreneur is any natural or legal person or partnership with legal capacity that acts in the exercise of its commercial or independent professional activity when concluding the contract.

## 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 2 weeks or, in particular, to execute it without reservation by dispatching the goods (acceptance).
- (3) Receipt of the declaration of acceptance by us shall be decisive for timely acceptance. A delayed acceptance shall be deemed a new offer and requires our acceptance.

## 3 DELIVERY 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 otherwise, it shall be 2 weeks from the conclusion of the contract.
- (2) The Seller is obliged to inform us immediately in writing of any imminent or actual failure to meet a delivery date, the reasons for such failure and the expected duration of the delay. The occurrence of the delay in delivery shall remain unaffected by this.
- (3) If the Seller does not perform his services or does not perform them within the agreed delivery period or if he is in default, our rights - in particular to withdraw from the contract and claim damages - shall be determined in accordance with the statutory provisions. The regulations in paragraph 4 remain unaffected.
- (4) 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 significantly lower damage has been incurred.

## 4 PERFORMANCE, 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 Seller is not entitled to make partial deliveries without our prior consent.
- (3) Within Germany, delivery shall be made "free domicile" to the place specified in the order. If the place of destination is not specified and nothing else has been agreed, delivery shall be made to our registered office in Allstedt. 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).

- (4) The delivery shall 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.
- (5) 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.
- (6) The statutory provisions shall apply to the occurrence of our default of acceptance. However, the Seller must also expressly offer us his service if a specific or determinable calendar period has been agreed for an action or cooperation on our part (e.g. provision of material).
- (7) If we are in default of acceptance, the Seller shall be entitled to demand compensation for 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 provided by 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) Insofar as, according to the agreement reached, the price does not include packaging and the remuneration for the packaging - not only provided on loan - is not expressly determined, it shall be charged at the verifiable cost price. At our request, the Seller shall take back the packaging at his own expense.
- (4) The agreed price shall be due for payment within 30 calendar days of 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 payment deadline; we shall not be responsible for delays caused by the banks involved in the payment process.
- (5) We do not owe any interest on maturity. The statutory provisions shall apply to default of payment.
- (6) We shall be entitled to rights of set-off and retention as well as the defence 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.

- (7) The Seller shall only have a right of set-off or retention on the basis of counterclaims that have been determined as legally binding or are undisputed.

## **6 SECRECY AND RETENTION OF TITLE**

- (1) We reserve the property rights and copyrights to all orders, contracts and illustrations, plans, drawings, calculations, execution instructions, product descriptions and other documents made available to the Seller. Such documents shall be used exclusively for the contractual performance and shall be returned to us after completion of the contract. Copies made by the Seller of such documents are to be destroyed; the only exceptions to this are storage within the scope of statutory retention obligations and the storage of data for backup purposes within the scope of the usual data backup. The documents must be kept secret from third parties, even after termination of the contract. The obligation to maintain secrecy shall only expire if and insofar as the knowledge contained in the documents provided has become generally known.
- (2) Tools, devices, templates, strokes, materials and models which we make available to the Seller or which are manufactured for contractual purposes and are invoiced to us separately by the Seller shall remain our property or shall become our property. They shall be marked by the Seller as our property and shall be carefully stored at the Seller's expense, adequately secured against damage of any kind (e.g. destruction and loss) and used only for the purposes of the contract. The costs of their maintenance and repair shall be borne by the contracting parties - in the absence of any other agreement - in equal parts. However, insofar as these costs are attributable to defects in such items manufactured by the seller or to improper use by the seller, his employees or other vicarious agents, they shall be borne solely by the seller. The Seller shall immediately report to us all not only insignificant damage to these items. Upon request, he shall be obliged to return the objects to us in proper condition if they are no longer required by him to fulfil the contracts concluded with us.
- (3) Any processing, mixing or combination (further processing) of provided objects 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 in accordance with the statutory provisions at the latest when the goods are further processed.
- (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 in individual cases an offer of transfer of title from the Seller conditional upon payment of the purchase price, the Seller's reservation of title shall expire at the latest upon payment of the purchase price for the delivered goods. In the ordinary course of business, we shall remain authorised to resell the goods in advance of payment of the purchase price and to assign the resulting claim in advance (alternatively, 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 AND WARRANTY CLAIMS

- (1) The statutory provisions shall apply to our rights in the event of material defects and defects of title of the goods (including wrong 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) We do not waive warranty claims by accepting or approving samples and specimens submitted.
- (3) 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 of transfer of risk 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 GPC 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.
- (4) The Seller warrants that the goods are delivered free of third party rights and that no third party rights are infringed by the delivery. In this respect, the Seller shall indemnify us against any claims by third parties on first request.
- (5) Notwithstanding § 442 para. 1 sentence 2 of the German Civil Code (BGB), we shall be entitled without restriction to claims for defects even if the defect remained unknown to us at the time of conclusion of the contract due to gross negligence.
- (6) For the commercial duty of inspection and notification of defects, the statutory provisions (§§ 377, 381 HGB) shall apply with the following proviso:
- (a) Our obligation to inspect is limited to defects which are openly apparent during our incoming goods inspection under external examination including the delivery documents (e.g. transport damage, wrong and short delivery) or which are recognisable during our quality control in a random sampling procedure.
  - (b) If acceptance has been agreed, there is no obligation to inspect.
  - (c) 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.
  - (d) 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 5 working days of discovery or, in the case of obvious defects, of delivery.
- (7) Subsequent performance shall also include the removal of the defective goods and their reinstallation, provided that the goods have been installed in another item in accordance with their intended purpose. The costs incurred by the Seller for the purpose of testing and subsequent performance (including any dismantling and reinstallation costs) shall be borne by the Seller 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, in this respect we shall only be liable if we have recognised or grossly negligently failed to recognise that there was no defect.

- (8) If the Seller does not fulfil his obligation of 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 deadline need be set; we shall inform the Seller of such circumstances without delay, if possible in advance.
- (9) Otherwise, in the event of a material defect or defect in title, we shall be 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) In addition to claims for defects, we shall be entitled without restriction to our legally determined rights of recourse within a supply chain (supplier recourse according to §§ 478, 479 BGB). 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 §§ 478 para. 2, 439 para. 2 BGB), we shall notify the Seller and request a written statement, briefly explaining the facts of the case. If the statement is not made within a reasonable period of time and if no amicable solution is brought about, 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 counter evidence.
- (3) Our claims arising from supplier recourse shall also apply if the goods have been further processed by us or one of our customers prior to their sale to a consumer, e.g. by installation in another product.

## **9 PRODUCER LIABILITY**

- (1) If the Seller is responsible for a product damage, he shall indemnify us from any liability towards third parties or claims of third parties which have arisen through the manufacture, delivery, storage or use of the delivered goods to the extent that the cause lies within his sphere of control and organisation 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 (German Civil Code) 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 shall remain unaffected.

- (3) The indemnification and reimbursement obligation shall not apply if the underlying event is demonstrably based on grossly negligent or intentional misconduct by us or one of our employees, representatives, vicarious agents or companies affiliated with us.
- (4) The Seller is obliged to take out at his own expense a product liability insurance policy, which, unless otherwise agreed in individual cases, does not have to cover the risk of recall or punitive or similar damages, with a lump-sum coverage of at least EUR 1 million per personal injury or damage to property, and to maintain it for the duration of this contract. Any further claims for damages remain unaffected.

## **10 INDUSTRIAL PROPERTY RIGHTS**

- (1) According to paragraph 2, the Seller warrants that the products delivered by him do not infringe any industrial property rights of third parties in countries of the European Union or other countries in which he manufactures the products or has them manufactured.
- (2) The Seller shall be obliged to indemnify us against all claims which third parties assert against us on account of the infringement of industrial property rights referred to in paragraph 1 and to reimburse us for all necessary expenses in connection with such claims. This claim shall not exist insofar as the Seller proves that he is neither responsible for the infringement of industrial property rights nor should have been aware of it at the time of delivery if he had exercised due commercial care.
- (3) Our further legal claims due to defects of title of the products delivered to us shall remain unaffected.

## **11 SPARE PARTS**

- (1) The seller is obliged to keep spare parts for the products delivered to us for a period of at least 3 years after delivery.
- (2) If the Seller intends to discontinue the production of spare parts for the products delivered to us, he shall notify us immediately after the decision on discontinuation. This decision - subject to paragraph 1 - must be at least 6 months before production is discontinued.

## **12 SECRECY**

- (1) The Seller is obliged to keep the conditions of the order and all information and documents (with the exception of publicly accessible information) made available to him for this purpose confidential for a period of 2 years after conclusion of the contract and to use them only for the execution of the order. He shall return them to us immediately upon request after dealing with any enquiries or after completion of orders.

- (2) Without our prior written consent, the Seller may not refer to the business relationship in advertising material, brochures, etc. and may not exhibit items manufactured for us.
- (3) The Seller shall oblige his subcontractors in accordance with this § 12.

### **13 ASSIGNMENT**

- The seller is not entitled to assign his claims from the contractual relationship to third parties. This does not apply insofar as monetary claims are involved.

### **14 LIMITATION YEARS**

- (1) The mutual claims of the contracting parties shall become statute-barred in accordance with the statutory provisions, unless otherwise provided for below.
- (2) Notwithstanding § 438 (1) No. 3 BGB (German Civil Code), 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 period of limitation shall apply accordingly to claims arising from defects of title, whereby the statutory period of limitation 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 time-barred as long as the third party can still assert the right - in particular in the absence of a limitation period - against us.
- (3) Upon receipt of our written notification of defects by the Seller, the limitation of warranty claims shall be suspended until the Seller rejects our claims or declares the defect to be remedied or refuses to continue negotiations on our claims. In the case of replacement delivery and rectification of defects, the warranty obligation for replaced and repaired parts shall begin anew, unless we had to assume, based on the behaviour of the Seller, that the Seller did not feel obliged to take such action, but only carried out the replacement delivery or rectification of defects as a gesture of goodwill or for similar reasons.
- (4) The limitation periods of the right of purchase including the above extension shall apply - to the statutory extent - to all contractual claims for defects. Insofar as we are also entitled to non-contractual claims for damages due to a defect, the statutory regular limitation period (§§ 195, 199 BGB) shall apply here, unless the application of the limitation periods of the law of sale leads to a longer limitation period in an individual case.

### **15 CHOICE OF LAW AND JURISDICTION**

- (1) These GPC and the contractual relationship between us and the Seller shall be governed by the law of the Federal Republic of Germany to the exclusion of international uniform law, in particular the UN Sales Convention.
- (2) If the 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 exclusive - also international - place of jurisdiction for all disputes arising from the contractual relationship shall be our registered office in Allstedt. The same applies if the buyer

is an entrepreneur within the meaning of § 14 BGB. In all cases, however, we shall also be entitled to bring an action at the place of performance of the delivery obligation in accordance with these General Terms and Conditions or a prior individual agreement or at the general place of jurisdiction of the Seller. Priority statutory provisions, in particular regarding exclusive jurisdiction, shall remain unaffected.

- (3) The invalidity of individual provisions of these GPC shall not affect the validity of the remaining provisions. Ineffective provisions shall be deemed to be replaced by such effective provisions that are suitable to realise the economic purpose of the omitted provision as far as possible. The same applies to any loopholes in this contract.