

# GENERAL TERMS AND CONDITIONS

## § 1 General, scope of validity

**(1)** These General Terms and Conditions (GTC) apply to all business dealings with our customers, herein also referred to as the “Buyer”.

**(2)** “Buyer” in the sense of these General Terms and Conditions are natural persons, legal entities or legally-capable partnerships with whom we enter into a business relationship and who are acting at the conclusion of the legal transaction, in the capacity of their commercial activities or their independent profession.

**(3)** Unless agreed otherwise, these General Terms and Conditions, valid at the date of the Buyer’s order or last notified to him in text form, also apply as framework conditions to similar contracts in the future, without us having to refer to these GTC again in each single case.

**(4)** Our GTC apply exclusively. The Buyer’s general conditions which deviate from, contradict or supplement these GTC do not become a component of contract unless we have expressly approved their validity in writing. This requirement of approval applies to every case, for example, even if we deliver without reservation in the knowledge of the Buyer’s conditions.

**(5)** Declarations and notices of a legal nature which are to be submitted to us by the Buyer after conclusion of contract (for example, setting deadlines, notices of defects, declarations of rescission or diminution) require the written form in order to be valid.

**(6)** References to the application of legal regulations have only a clarifying meaning. Legal regulations therefore apply, even without such clarification, unless directly altered or specifically excluded in these GTC.

## § 2 Conclusion of contract

**(1)** Our quotations are free of obligation and non-binding. The same applies even if we provide the buyer with catalogues, technical documentation (for example, drawings, plans, calculations, references to DIN norms),

other product descriptions or documents – in printed and/or electronic formats — to which we reserve rights of title and copyrights.

**(2)** We reserve the right to make technical modifications and changes to form, colour and/or weight within reasonable limits.

**(3)** The Seller’s statements on the condition of the delivery or service (for example, weights, dimensions, consumption values, durability, tolerances and technical data) and our depictions of the same (for example, drawings and illustrations) are only approximations, unless an exact match is a prerequisite for use for the purpose foreseen by contract. They are not guaranteed features, but rather descriptions or labels of the delivery or service. Deviations normal in the trade and changes made due to legal regulations or which represent technical improvements and the replacement of components with equivalent parts are admissible, insofar as they do not impair the use for the purpose foreseen by contract.

**(4)** The Buyer’s order for the goods represents a binding offer of contract. Unless stated otherwise in the order, we are entitled to accept this offer of contract within two weeks of receipt.

**(5)** All agreements entered into between ourselves and the purchaser upon conclusion of the contract are fully set out in writing in the contract documents including these General Terms and Conditions. Our employees are not authorized to enter into verbal agreements that deviate from, or extend beyond, the written agreements.

## § 3 Delivery deadline and default of delivery

**(1)** Delivery dates will be agreed upon individually or will be advised by us upon acceptance of order. Binding delivery dates or deadlines require the written form.

**(2)** Events beyond our control that impede the provision of service or make it unreasonably difficult to perform, such as strikes, lawful lockouts, governmental orders, natural disasters, and other events of force majeure, re-

lease us from performance of the contractual obligations for the duration of the impediment plus a reasonable start-up period. If such an event occurs, we will notify the buyer immediately without delay and advise the foreseeable duration. Should the force majeure last longer than three months, then both parties are entitled to withdraw from the contract. In this case any payment in return already made will immediately be reimbursed.

The preceding legal regulation apply accordingly if we are not supplied on-time by our own suppliers, if we have entered into a concurrent hedge transaction, if neither we nor our supplier is culpable, or if we are not obliged to procurement in an individual case.

**(3)** In all other respects, the onset of default of delivery is governed by statutory provisions.

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

**(1)** Deliveries are made ex-works. Our works are also the place of fulfilment for the delivery and any subsequent fulfilment. At the request of and at the expense of the Buyer, the goods shall be dispatched to another destination (sale by dispatch). Unless agreed otherwise, we are entitled to determine the nature of the shipment (in particular, the transport company, the dispatch route and the packaging) ourselves.

**(2)** The risk of accidental destruction and of accidental deterioration of the goods is transferred to the Buyer at the latest upon their handover. However, in the case of sale by dispatch, the risk of accidental destruction and of accidental deterioration of the goods and the risk of delay is transferred as soon as the goods are handed over to the carrier, the freight forwarder or the person or institute otherwise determined to execute the shipment. Insofar as acceptance of goods has been agreed, this is decisive for the transfer of risk. In all other respects, for any agreed acceptance of goods, the statutory provisions of the law on contracts for work and services applies. Handover or acceptance is deemed equivalent if the buyer is in default of acceptance.

**(3)** Should the Buyer be in default of acceptance and fails to cooperate, or if our delivery is delayed for other

reasons for which the Buyer is responsible, we are entitled to demand recompense for the resulting losses, including added expenses (for example, storage costs). For this we charge a flat-rate reimbursement of 0.5% of the invoice sum per week, starting with the delivery deadline, or – if there is no delivery deadline – upon notification of readiness for shipment of goods, however at a maximum of 10% of the invoice sum. Our legal claims (in particular, recompense for added expenses, appropriate reimbursement and termination) are not affected by this. The Buyer is allowed to prove that we have incurred no losses at all, or considerably lower losses than the foregoing flat-rate.

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

**(1)** Unless agreed otherwise in a stand-alone case, our current prices, valid at the date of conclusion of the contract apply. Prices are ex-works, plus value-added tax at the prevailing rate.

**(2)** If more than four months pass between the conclusion of contract and delivery, the price valid on the date of delivery applies, plus value-added tax at the prevailing rate.

**(3)** In the case of a sale by dispatch, the Buyer bears the costs of transport from the Seller's works and the costs of any transport insurance which he may requires. Any duties, fees, taxes and other public charges shall be borne by the buyer.

**(4)** The purchase price is due and payable within 14 days from the date of invoice and delivery or acceptance of the goods.

**(5)** The Buyer is in default upon expiry of the foregoing payment deadline. During default interest is payable on the purchase price at 9 percentage points above the base interest rate. The Seller reserves the right to pursue additional damages. Our entitlement to commercial maturity interest (§353 HGB (German Commercial Code)) against merchants remains unaffected.

**(6)** The Buyer does not accrue any rights of offsetting or retention unless its claim is undisputed or has been

established by a court of law. If the delivery is defective, the Buyer's counter-rights (in particular, in accordance with § 7, Clause 5, Sentence 2) remain unaffected.

**(7)** If, after completion of contract, it is apparent that our claim to the purchase price is at risk due to the Buyer's inability to pay (for example, because of an application to open insolvency proceedings), we are entitled to refuse performance and — possibly after setting a period of grace — to rescind the contract in accordance with legal regulations (§ 321 BGB (German Civil Code)).

## § 6 Reservation of title

**(1)** The Seller reserves the right of ownership of the sold goods until all of the Seller's present and future claims from the purchase agreement and an on-going business relationship (secured claims) have been paid in full.

**(2)** The goods under reservation of title may not be pledged to third parties or assigned as security until the secured claims have been paid in full. The Buyer must notify us without delay in writing if an application is made to open insolvency proceedings or if third parties take action (for example, seizures) against the goods belonging to us.

**(3)** If the Buyer is culpable of violating the contract (in particular, in case of non-payment of the due purchase price), we are entitled to withdraw from the contract in accordance with legal regulations and/or demand that the goods be returned to us on the basis of the reservation of title. The demand for return does not at the same time mean a declaration of rescission; we are rather entitled to solely demand the return of the goods and to reserve the right of rescission. If the Buyer fails to pay the due purchase price, we may not pursue these rights unless we have previously set the Buyer a reasonable deadline for payment without success or it is not necessary to set such a deadline under legal regulations.

**(4)** Until revocation in accordance with c) below, the Buyer is authorised to re-sell the goods under reservation of title in regular business transactions.

**a)** The reservation of title covers the manufactured goods created by processing, mixing or combining our goods to their full value, whereby we are regarded as the

manufacturer. If third-party ownership rights remain in existence in case of processing, mixing or combining with third-party goods, we acquire co-ownership in the ratio of the invoice value of the processed, mixed or combined goods. In all other cases, the same applies to the manufactured goods as for the goods delivered under reservation of title.

**b)** The buyer hereby assigns in advance to us the claims against third parties arising from the resale of the goods or the manufacture, as security in total or to the amount of any co-ownership share we have in accordance with the foregoing paragraph. We accept the assignment of the claims against third parties. The Buyer's duties stated in paragraph 2 also apply with regard to the assigned claims.

**c)** The Buyer is obliged to treat the reserved goods with care. If maintenance and inspection work is required, the buyer must perform this regularly at its own expense.

## § 7 The Buyer's claims in case of defects

**(1)** Our liability for defects is first and foremost based on the agreement made concerning the quality of the goods. All the manufacturer's product descriptions apply as the agreement concerning the quality of the goods. The Buyer does not receive any quality guarantees from the Seller. Manufacturer's guarantees remain unaffected by this.

**(2)** If quality has not been agreed, legal regulations shall be drawn on to determine whether or not a defect is present (§ 434 Para. 1 Clauses 2 and 3 BGB).

**(3)** The Buyer's claims to a defect require that he has fulfilled its legal duties of examination and complaint (§§ 377, 381 HGB). If a defect is found during the examination or at a later date, this must be notified in writing without delay. Notification is made without delay if it is given within two weeks, whereby compliance with the deadline is deemed fulfilled if notification is sent within this time period. Regardless of this duty of examination and complaint, the Buyer must notify us of obvious defects (including false deliveries and under-deliveries) within two weeks of delivery in writing, whereby here too compliance with the deadline is deemed fulfilled if notification is sent within this time period. If the Buyer fails to properly examine the goods and/or to notify us, our liability for the non-notified defect is excluded.

**(4)** If the delivered goods are defective, we can elect whether we provide subsequent fulfilment by rectifying the defect (rework) or by delivering goods which are free of defects (replacement delivery).

The Seller's right to refuse subsequent fulfilment under the prerequisites of law remains unaffected.

**(5)** We are entitled to make any subsequent fulfilment owed dependent upon the Buyer paying the due purchase price. The Buyer is then entitled to retain a part of the purchase price that is reasonable in relationship to the defect.

**(6)** The buyer must provide us with the necessary time and opportunity required for the owed subsequent fulfilment, in particular he has to hand over the rejected goods for examination purposes. In the event of a replacement delivery the buyer has to return to us the defect goods according to legal regulations.

**(7)** The expenses required to cover the cost of the tests and subsequent fulfilment, especially transport, route, labor and material costs are borne by us, if there is actually a defect. Otherwise we are entitled to compensation from the buyer for the incurred costs (especially test and transport costs) if the request for subsequent fulfilment proves to be unfounded, unless the lack of defect was not apparent to the buyer.

**(8)** If subsequent fulfilment has failed, or the reasonable deadline set by the buyer for subsequent fulfilment has expired or is unnecessary according to statutory regulations, then the buyer can terminate the contract or can reduce the price. However, the buyer has no right of termination of contract if the defect is negligible.

**(9)** The customer shall only be entitled to compensation of expenses incurred i.e. for reimbursement of expenses incurred in vain according to § 8, in all other respects such claims are excluded.

## § 8 Release from liability

**(1)** If the Buyer makes changes to the purchase item after it has been handed over (§ 4, clause 2), he exempts us from any kind of liability (for example, under the Product Liability Act).

**(2)** In particular, although not conclusively, the following are regarded as changes; all changes to the lids, rings or pallets of the purchase item, for example boreholes etc., applying inner packaging and its fastening in/on the purchase item.

**(3)** If the Buyer intends to make changes to the purchase item and we become aware of this prior to fulfilment of contract, we are entitled to hand the purchase item over to the Buyer without stating performance characteristics in print (VDA 4520). The Buyer hereby agrees to this.

## § 9 Other liability

**(1)** Unless otherwise specified in these General Terms and Conditions, including the provisions below, we shall be liable in accordance with statutory regulations for infringing contractual and non-contractual obligations.

**(2)** We are liable for damages — for whatever legal reasons — in the case of intent and gross negligence within the framework of fault-based liability. In case of simple negligence, and on the proviso of a milder extent of liability, we are liable under the provisions of law (e.g. for exercising care in our own affairs) only in the following cases:

**a)** for losses arising from fatalities, physical injuries or harm to health;

**b)** for losses arising from a not inconsiderable violation of a cardinal contractual duty (an obligation whose fulfilment is a prerequisite for enabling the proper execution of the contract in the first place, which the contractual partner regularly trusts and can expect); in this case our liability is nevertheless limited to recompense the foreseeable damages which would typically occur (average damages).

**(3)** The limitations of liability under clause 2 also apply to violations of duty by persons or to the benefit of persons, whose culpability the Seller is responsible for in accordance with legal regulations. They do not apply if we have maliciously concealed a defect and do not apply to the Buyer's claims under product liability laws.

**(4)** In case of an infringement of duty that does not consist of a defect, the Buyer cannot withdraw from or

terminate the contract unless we are culpable for the infringement of duty. The Buyer's free right of termination (in particular according to §§ 651, 649 BGB) is excluded. For the remainder, legal prerequisites and the consequences of law apply.

### § 10 Expiry by limitation of time

**(1)** In deviation to § 438 Para. 1 No. 3 BGB, the general limitation period for claims arising from material defects and legal deficiencies is one year from delivery. If acceptance has been agreed, limitation starts upon acceptance. Buyer's compensation entitlements according to § 9, clause 2, sentence 1 and 2a) as well as according to the Product Liability Law expire exclusively according to the statutory period of limitation. The special statutory provisions on limitations of expiry according to § 438 clause 1 Nr. 2, clause 3, 445b BGB also remain unaffected in their areas of application.

**(2)** The foregoing limitation periods under purchasing law also apply to the Buyer's claims to damages (whether contractual or non-contractual) that are based on a defect in the goods, unless application of regular limitation under law (§§ 195, 199 BGB) would lead to a shorter limitation period in an individual case.

### § 11 Export control

**(1)** The conclusion and execution of cross-border contracts are subject to export control regulations and are subject to legal admissibility under applicable German and EU law; this also applies to applicable US- and any other national laws and regulations, as far as they are not contrary to German or European law.

**(2)** The contracting parties undertake to support each other in the procurement of all information and documents, which are necessary for the assessment of and compliance with export control regulations and restrictions (for example for the purpose of applying for a permit / obtaining any other information from authorities or to comply with disclosure requirements).

**(3)** If we are in doubt with regards to export control res-

trictions, in order to dispel these doubts we are entitled to obtain legally binding advice from the relevant authority (for example a "Zero Notice")

**(4)** If the contract cannot be fulfilled due to applicable export control restrictions, in particular due to non-granting of the necessary approvals by the relevant authorities, either party may withdraw from the contract by written notice to the other party. We are also entitled to withdraw from the contract, if the Buyer does not provide, within a reasonable time period, the necessary information and documents despite being requested to do so.

**(5)** We shall be entitled, but not obliged, to appeal against negative decisions of the relevant authorities or to seek judicial protection in the event of an unduly long administrative procedure.

### § 12 Choice of law, place of jurisdiction, concluding provisions

**(1)** German law applies exclusively to these General Terms and Conditions and to the contractual relationship between us and the Buyer, to the exclusion of international uniform law (in particular, of UN Commercial Law).

**(2)** The exclusive place of jurisdiction — also internationally — for all disputes arising directly or indirectly from the contractual relationship is our respective place of business. For lawsuits initiated by the Buyer this shall be the exclusive place of jurisdiction. However, alternatively we are also entitled to file a law suit at the place of fulfilment of the delivery in accordance with these General Terms and Conditions or at the buyer's general place of jurisdiction. Overriding legal regulations (in particular, concerning exclusive responsibilities) remain unaffected.

In derogation from the above jurisdiction agreement, the following arbitration agreement applies should the buyer have a place of jurisdiction outside the European Union or the Switzerland:

All disputes, which arise from, or in connection with the contract, or the validity of the same, shall be settled in accordance to the rules of arbitration of the German Institute for Arbitration (der Deutschen Institution für

Schiedsgerichtsbarkeit e.V. (DIS)) under exclusion of ordinary legal proceedings. The decision is final and binding for all parties. The arbitration tribunal comprises of one arbitrator if the claim value is less than EUR 50000.- and of three arbitrators if the claim value is at least EUR 50000.-. Place of arbitration is Saarbrücken, Germany. The language of proceedings is English.

**(3)** Should individual provisions in the contract with the Buyer (including these General Terms of Trade) be or become invalid, in full or in part, this shall not affect the remaining provisions.