

# General Terms and Conditions of Sale



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## **§ 1 Scope, Form**

(1) These General Terms and Conditions of Sale (GTCS) shall apply to all our business relations with our customers ("Buyers"). The GTCS shall only apply if the Buyer is a merchant (§ 14 German Civil Code (BGB)), a legal entity under public law or a special fund under public law.

(2) The GTCS apply in particular to contracts for the sale and/or delivery of movable goods ("Goods"), irrespective of whether we manufacture the Goods ourselves or purchase them from suppliers (§§ 433, 650 German Civil Code (BGB)). Unless otherwise agreed, the GTCS in the version valid at the time of the Buyer's order, or in any case in the version last notified to the Buyer in text form, shall also apply as a framework agreement for similar future contracts without our having to refer to them again explicitly in each individual case.

(3) Our GTCS shall apply exclusively. Deviating, conflicting 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 application. This requirement of consent shall apply in any case, for example even if we carry out the delivery to the Buyer without reservation while being aware of the Buyer's GTCS.

(4) Individual agreements made with the Buyer in individual cases (including collateral agreements, supplements and amendments) shall in any case take precedence over these GTCS. A written contract or our written confirmation shall be authoritative for the content of such agreements, being subject to potential proof to the contrary.

(5) Legally relevant declarations and notifications by the Buyer with regard to the contract (e.g. setting of deadlines, notification of defects, withdrawal from contract or granting of price reductions) shall be made in writing, i.e. in written or text form (e.g. letter, e-mail, fax). Legal formal requirements and further proof, in particular in the case of doubts about the legitimacy of the person making the declaration, shall remain unaffected.

(6) References to the applicability of statutory provisions shall only be of a clarifying nature. Even without such clarification, the statutory provisions shall always apply unless they are directly amended or expressly excluded in these GTCS.

## **§ 2 Conclusion of Contract**

(1) Our offers are subject to change and non-binding.

(2) Order of the Goods by the Buyer shall be deemed a binding offer of contract. Unless otherwise stated in the order, we shall be entitled to accept this contract offer within 10 days of its receipt by us.

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

## **§ 3 Delivery Period and Delay in Delivery**

(1) The delivery period shall be agreed individually or specified by us upon acceptance of the order.

(2) If we are unable to meet binding delivery deadlines for reasons which we are not responsible for (non-availability of the service), we shall inform the Buyer of this without delay and at the same time notify the Buyer of the expected new delivery deadline. If the service cannot be provided within the new delivery period either, we shall be entitled to withdraw from the contract in whole or in part; we shall immediately refund any amount already paid by the Buyer. A case of non-availability of the service in this context shall be deemed to be in particular the non-timely self-delivery by our supplier if we have concluded a congruent hedging transaction, if neither we nor our supplier are at fault or if we are not obliged to procure in the individual case.

(3) The occurrence of our delay in delivery shall be determined in accordance with the relevant legal provisions. In any case, however, a reminder by the Buyer is required. If we are in default of delivery, the Buyer may demand lump-sum compensation for the damage caused by the delay. The lump-sum compensation shall amount to 0.5% of the net price (delivery value) for each completed calendar week of the delay, but in total not more than 5% of the delivery value of the goods for which delivery is delayed. We reserve the right to prove that the Buyer has not suffered any damage at all or that the damage is significantly less than the aforementioned lump sum.

(4) The rights of the Buyer pursuant to § 8 of these GTCS and our statutory rights, in particular in the event of an exclusion of the obligation to perform the service (e.g. due to impossibility or unreasonableness of performance and/or supplementary performance), shall remain unaffected.

#### **§ 4 Delivery, Transfer of Risk, Acceptance, Default of Acceptance**

(1) Delivery shall be made ex-warehouse, which is also the place of performance for the delivery and any supplementary performance. At the Buyer's request and expense, the goods shall be shipped to another destination (mail order purchase). Unless otherwise agreed, we shall be entitled to determine the type of shipping (in particular transport company, shipping routes, packaging) ourselves.

(2) The risk of accidental loss and accidental deterioration of the goods shall pass to the Buyer upon handover at the latest. In the case of mail order purchase, however, the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay shall already pass upon delivery of the goods to the forwarding agent, the carrier or any other person or institution designated to carry out the shipment. Insofar as acceptance has been agreed, this shall be decisive for the transfer of risk. In all other respects, the statutory provisions of the law on contracts for work and labor shall also apply mutatis mutandis to an agreed acceptance. Handover or acceptance shall also be deemed fulfilled if the Buyer is in default of acceptance.

(3) 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 damage including additional expenses (e.g. storage costs).

#### **§ 5 Prices and Terms of Payment**

(1) Unless otherwise agreed in individual cases, our current prices at the time of conclusion of the contract shall apply, namely ex-warehouse and plus statutory value added tax.

(2) In the case of mail purchase order (§ 4 (1) ), the Buyer shall bear the transport costs ex-warehouse and the costs of any transport insurance requested by the Buyer, if applicable.

(3) The purchase price shall be due and payable within 14 days of invoicing and delivery or acceptance of the Goods.

If a payment from the buyer is insufficient to settle all outstanding claims of the seller against the buyer, the buyer's payment will be applied to the seller's claims in order of priority, starting with the oldest outstanding claim. In the case of multiple claims of the same age, each of these claims will be proportionally offset by the buyer's payment. This sequence of settlement applies in particular even if the buyer specifies a different order of settlement or makes a payment in the exact amount of an outstanding claim that is not the oldest. The settlement order also takes precedence when the seller grants the buyer the possibility of a cash discount for settling a claim. The buyer can only take advantage of such a discount if, at the time of payment, no older claim than the discounted claim is outstanding.

However, we reserve the right, even within an ongoing business relationship, to carry out a delivery entirely or partially against advance payment at any time.

This authorization applies without exception – even if the contracting parties have agreed on different payment terms individually, or if we have previously sent the buyer an order confirmation containing different payment conditions.

In such cases, payment is due immediately upon invoicing. Once payment has been credited to our account, we will promptly dispatch the ordered goods. If the amount has not been credited to the supplier's account within 30 days, we reserve the right to unilaterally withdraw from the purchase contract with immediate effect.

This entitlement applies both to goods in stock that are ready for immediate delivery and, in particular, to goods that are manufactured according to customer specifications only after the contract has been concluded (order and order confirmation).

(4) Upon expiration of the aforementioned payment deadline, the Buyer shall be in default. During the period of default, interest shall be charged on the purchase price at the statutory default interest rate applicable at the time. The default interest rate is 8 percentage points above the base interest rate. We reserve the right to assert further damage caused by default. With respect to merchants, our claim to the commercial due date interest rate (§ 353 German Commercial Code (HGB)) shall remain unaffected.

(5) The Buyer shall only be entitled to rights of set-off or retention to the extent that its claim has been legally established or is undisputed. In the event of defects in the delivery, the Buyer's counter-rights shall remain unaffected, in particular pursuant to § 7 (6) Sent. 2 of these GTCS.

(6) If, after conclusion of the contract, it becomes apparent (e.g. by filing for insolvency proceedings) that our claim to the purchase price is jeopardized by the Buyer's inability to settle payment, we shall be entitled to refuse performance in accordance with the statutory provisions and - if applicable, after setting a deadline - to withdraw from the contract (§ 321 German Civil Code (BGB)). In the case of contracts for the manufacture of non-fungible items (custom-made items), we may declare withdrawal immediately; the statutory provisions on the dispensability of setting a deadline shall remain unaffected.

#### **§ 6 Retention of Title**

(1) We shall retain title to the goods sold until full payment of all our present and future claims arising from the purchase contract and an ongoing business relationship (secured claims).

The buyer is obliged to insure the delivered goods against damage, including fire and water damage, as well as against theft, for the duration of the retention of title and to present the corresponding insurance policies to the seller for inspection upon request.

(2) The goods subject to retention of title may neither be pledged to third parties nor assigned as security before full payment of the secured claims. The Buyer must notify us immediately in writing if an application is made to open insolvency proceedings or if third parties (e.g., during attachment proceedings) obtain access to the goods belonging to us.

(3) In the event of a conduct by the Buyer that constitutes a breach of contract, in particular in the event of non-payment of the purchase price due, we shall be entitled to withdraw from the contract in accordance with the statutory provisions and/or to demand return of the goods on the basis of retention of title.

The demand for return does not at the same time include the declaration of withdrawal; we are rather entitled to demand only the return of the goods and to reserve the right to withdraw from the contract. If the Buyer does not pay the purchase price due, we may only assert these rights if we have previously set the Buyer a reasonable deadline for payment without success or if setting such a deadline is dispensable according to statutory provisions.

(4) Except after revocation in accordance with (c) below, the Buyer shall be authorized to resell and/or process the goods subject to retention of title in the regular course of business. In this case, the following provisions shall apply in addition:

(a) The retention of title shall extend to the products resulting from the processing, mixing or combination of our goods at their full value, whereby we shall be deemed to be the manufacturer. If, in the event of processing, mixing or combining with goods of third parties, their right of ownership remains, we shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined goods. Apart from that, the same terms and conditions shall apply to the resulting product as to the goods delivered under retention of title.

(b) By way of security, the Buyer hereby assigns to us in total or, if applicable, in the amount of our co-ownership share any claims against third parties arising from the resale of the Goods or the product, in accordance with the preceding paragraph. We hereby accept the assignment. The obligations of the Buyer stated under item (2) of this paragraph shall also apply in respect of the assigned claims.

(c) The Buyer shall remain authorized to collect the claim in addition to us. We commit to not collect the claim as long as the Buyer meets his payment obligations towards us, there is no deficiency in his ability to settle payment and we do not assert the retention of title by exercising a right pursuant to item (3). In the latter cases, however, we may demand that the Buyer shall inform us of the assigned claims and their debtors, provide us with all information necessary for collection, hand over the relevant documents and inform the debtors (third parties) of the assignment. In addition, we shall be entitled in such cases to revoke the Buyer's authorization to further sell and process the goods subject to retention of title.

(d) If the realizable value of the securities exceeds our claims by more than 10%, we shall release securities of our choice at the Buyer's request.

## **§ 7 Claims for Defects by the Buyer**

(1) The statutory provisions shall apply to the Buyer's rights in the event of material defects and defects of title (including wrong delivery and insufficient delivery as well as improper assembly or faulty assembly instructions), unless otherwise stipulated below. In all cases, special statutory provisions shall remain unaffected in the case of final delivery of the unprocessed goods to a consumer, even if the consumer has processed them further (supplier's recourse pursuant to §§ 478 German Civil Code (BGB)). Claims from supplier recourse are excluded if the defective goods have been further processed by the Buyer or another merchant, e.g. by incorporation into another product.

(2) The basis of our liability for defects is above all the agreement reached on the applicable quality of the goods to be delivered. All product descriptions and manufacturer's specifications which are subject of an individual contract or which were publicly announced by us (in particular in catalogs or on our website) at the time of the conclusion of the contract shall be deemed to be an agreement on the quality of the goods.

(3) Insofar as the quality has not been agreed, it shall be assessed in accordance with the statutory regulations whether a defect exists or not (§ 434 (1) Sent. 2 and 3 German Civil Code (BGB)). However, we shall not assume any liability for public statements made by the manufacturer or other third parties (e.g. advertising statements) of which the Buyer has not made us aware as being decisive for the purchase.

(4) As a matter of principle, we shall not be liable for defects of which the Buyer is aware at the time of conclusion of the contract or is not aware due to gross negligence (§ 442 German Civil Code (BGB)). Furthermore, the Buyer's claims for defects presuppose that he has complied with his statutory obligations to inspect and give notice of defects (§§ 377, 381 German Commercial Code (HGB)). If a defect becomes apparent upon delivery, inspection or at any later time, we must be notified thereof in writing without delay. In any case, obvious defects shall be notified to us in writing within 5 working days of delivery and defects not apparent on inspection within the same period of time from discovery. If the Buyer fails to carry out the proper inspection and/or to give notice of defects, our liability for the defect not notified, or not notified in time, or not notified properly, shall be excluded in accordance with the statutory provisions.

(5) If the delivered item is defective, we may initially choose whether to provide supplementary performance by remedying the defect (subsequent improvement) or by delivering an item free of defects (replacement delivery). Our right to refuse supplementary performance under the statutory conditions shall remain unaffected.

(6) We shall be entitled to make the supplementary performance owed dependent on the Buyer paying the purchase price due. The Buyer shall, however, be entitled to retain a reasonable part of the purchase price in relation to the nature of the defect.

(7) The Buyer shall give us the time and opportunity necessary for the supplementary performance owed, in particular to hand over the goods complained about for inspection purposes. In the event of a replacement delivery, the Buyer shall return the defective item to us in accordance with the statutory provisions. Supplementary performance shall neither include the removal of the defective item nor the re-installation if we were not originally obliged to install the item.

(8) We shall bear or reimburse the expenses required for the purpose of inspection and supplementary performance, in particular transport, travel, labor and material costs and, if applicable, removal and installation costs, in accordance with the statutory provisions, provided a defect is indeed existent. Otherwise, we may demand from the Buyer reimbursement of the costs incurred as a result of the unjustified request to remedy the defect (in particular inspection and transport costs), unless the lack of defectiveness was not recognizable to the Buyer.

(9) In urgent cases, e.g. if operational safety is at risk or to prevent disproportionate damage, the Buyer shall have the right to remedy the defect itself and to demand reimbursement from us for the expenses objectively necessary for this purpose. We are to be informed immediately of such a self-remedy, if possible in advance. The right of self-remedy shall not exist if according to the statutory provisions we would be entitled to refuse a corresponding supplementary performance.

(10) If the supplementary performance has failed or a reasonable period to be set by the Buyer for the supplementary performance has expired without any action taken or if such a period is dispensable according to the statutory provisions, the Buyer may withdraw from the purchase contract or reduce the purchase price. In the case of an insignificant defect, however, there is no right of withdrawal.

(11) Claims by the Buyer for damages or reimbursement of futile expenses shall, also in the event of defects, exist only in accordance with § 8 and shall otherwise be excluded.

## **§ 8 Other liability**

(1) Insofar as nothing to the contrary arises from these GTCS including the following provisions, we shall be liable in accordance with the statutory provisions in the event of a breach of contractual and non-contractual obligations.

(2) We shall be liable for damages - irrespective of the legal reasons - within the scope of fault-based liability in the event of intent and gross negligence. In the case of simple negligence, we shall be liable, subject to statutory limitations of liability (e.g. reasonable prudence in business affairs; insignificant breach of duty), only for:

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

b) damages resulting from the breach of an essential contractual obligation (obligations the fulfillment of which enables the proper execution of the contract in the first place and on whose observance the contractual partner regularly and reasonably relies on); in this case, however, our liability shall be limited to the compensation of foreseeably and typically occurring damage.

(3) The limitations of liability resulting from item (2) shall also apply to third parties as well as to breaches of duty by natural persons (also in their favor) whose wrongdoing we are responsible for according to statutory provisions. They shall not apply insofar as a defect was concealed with bad intent or a guarantee for the quality of the goods was assumed. Neither shall they apply for claims by the Buyer under the German Product Liability Act (Produkthaftungsgesetz).

(4) Following a breach of duty that does not consist of a defect, the Buyer may only withdraw from or terminate the contract if we are responsible for the breach of duty. An unconditional right of termination by the Buyer (in particular according to §§ 650, 648 German Civil Code (BGB)) is excluded. In all other respects, the statutory requirements and legal consequences shall apply.

## **§ 9 Limitation**

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

(2) If the Goods are a work of construction or an object which has been used for a work of construction in accordance with its customary use and has caused the defectiveness of the work of construction (building material), the limitation period shall be 5 years from delivery in accordance with the statutory provision (§ 438 (1) No. 2 German Civil Code (BGB)). Other special statutory provisions on the limitation period (in particular § 438 (1) No. 1, (3), §§ 444, 445b German Civil Code (BGB)) shall also remain unaffected.

(3) The above limitation periods of the sale of goods law shall also apply to contractual and non-contractual claims for damages by the Buyer based on a defect of the Goods, unless the application of the regular statutory limitation period (§§ 195, 199 German Civil Code (BGB)) would lead to a shorter limitation period in individual cases. Claims for damages by the Buyer pursuant to § 8 (2) Sent. 1 and Sent. 2(a) as well as pursuant to the German Product Liability Act (Produkthaftungsgesetz) shall become time-barred exclusively in accordance with the statutory limitation periods.

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

(1) The law of the Federal Republic of Germany shall apply to these GTCS and the contractual relationship between us and the Buyer to the exclusion of international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods.

(2) If the Buyer is a merchant within the scope of the German Commercial Code (HGB), a legal entity under public law or a special fund under public law, the exclusive - also international - place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be the place of our registered office, Paderborn. The same shall apply if the Buyer is a merchant within the scope of § 14 of the German Civil Code (BGB). However, we shall also be entitled in all cases to bring an action at the place of performance of the delivery obligation in accordance with these GTCS or a prior individual agreement, or respectively at the general place of jurisdiction of the Buyer. Overriding statutory provisions, in particular on exclusive competent jurisdiction, shall remain unaffected.

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