

General Terms and Conditions of Sale

§ 1 Scope of application, form

(1) The following General Terms and Conditions of Sale (GTCS) apply to all our business relationships with our customers (hereinafter referred to as "Purchaser"). The GTCS shall only apply if the Purchaser is an entrepreneur (§ 14 of the 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 supply of movable goods (hereinafter referred to as "goods"), irrespective of whether we produce the goods ourselves or purchase these from suppliers (§§ 433, 651 BGB). Unless agreed otherwise, these GTCS shall apply in the version applicable at the time of order placement by the Purchaser and/or in any case in the version last supplied to them in text format, as a framework agreement, also for any future contracts of the same type, without us having to make specific reference to these in each individual case.

(3) Our GTCS shall apply exclusively. Any deviating, contradictory or supplementary general terms and conditions from the Purchaser shall only become part of the contract in cases where we have expressly agreed to their validity. This written consent is required in all cases, for example, even if we acknowledge the Purchaser's General Term and Conditions and supply the goods to them without reservation.

(4) Individual agreements with the Purchaser (including additional agreements, supplements and amendments) shall take priority over these GTCS. The contents of such agreements shall require a written contract or our written confirmation in order to be valid, subject to proof to the contrary.

(5) Legal declarations and notices that the Purchaser is required to submit in relation to the contract (e.g. deadlines, notices of defects, declarations of withdrawal or reduction) shall only be effective in written or text form (e.g. letter, email, fax). Any legal provisions governing form and other proof, in particular concerning doubt over the legitimacy of the party making the declaration, shall remain unaffected.

(6) References to the validity of legal provisions are made for clarification purposes only. Even if this sort of clarification is not provided, legal provisions shall apply unless directly amended or expressly excluded within these GTCS.

§ 2 Conclusion of contract

(1) Our offers are subject to change and are non-binding. This also applies if we provide the Purchaser with catalogues, technical documentation (e.g. samples, drawings), other product descriptions or documents – including in electronic form – for which we hold the propriety rights and copyrights.

(2) Placement of the order by the Purchaser shall be considered a binding offer. Unless otherwise stated in the order, we shall be entitled to accept this contract offer within two weeks of receipt.

(3) Acceptance can take place either in writing (e.g. by way of an order confirmation) or by delivering the goods to the Purchaser.

§ 3 Delivery date and delay in delivery

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

(2) If we cannot observe binding delivery dates for reasons not attributable to us (non-availability of performance), we shall inform the Purchaser of this immediately and at the same time inform them of the expected new delivery date. In the event of non-availability of performance within the new delivery period, we shall be entitled to withdraw from the contract either completely or partially; we shall then refund any payment made by the Purchaser immediately. Non-availability of performance to this effect in particular includes cases where our supplier fails to deliver to us in good time if we have concluded a congruent hedging transaction, no fault can be attributed either to us or our suppliers or we do not have a procurement obligation in the individual case.

(3) A default in delivery on our part is determined in accordance with the legal provisions. However, the Purchaser must issue a reminder in every case. We reserve the right to prove that the Purchaser has suffered no loss at all or only a substantially smaller loss than the specified lump sum.

(4) The rights of the Purchaser in accordance with § 8 of these GTCS and our statutory rights, particularly concerning the exclusion of our obligation to provide performance (e.g. if the performance and/or supplementary performance cannot or cannot reasonably be provided), remain unaffected.

§ 4 Delivery, transfer of risk, default of acceptance, delivery times

(1) Delivery is from stock (ex warehouse), which is also the place of performance for the delivery and any supplementary performance. At the Purchaser's request and own cost, the goods can be sent to a different destination (sale by dispatch). Unless agreed otherwise, we are entitled to determine the means by which the goods are shipped (in particular with regard to the carrier, route and packaging). Quantities, dimensions, weights and colours are subject to the standard tolerances of the industry.

(2) The risk of accidental damage to or deterioration of the goods is transferred to the Purchaser at the latest when the goods are handed over. In the case of sale by dispatch, however, the risk of accidental damage to or deterioration of the goods and the risk of a delayed delivery are transferred when the goods are delivered to the logistics company, the freight forwarder or any other person or entity tasked with delivering the goods. Insofar as acceptance is agreed, this is taken as the point of transfer of risk. In other respects, too, the legal provisions of the law governing works and services apply to the agreed acceptance process accordingly. The same applies to the handover and acceptance process in the event that the Purchaser is in default of acceptance.

(3) If the Purchaser is in default of acceptance or fails to provide necessary cooperation, or if our delivery is delayed for other reasons attributable to the Purchaser, we shall be entitled to demand compensation for the resulting damages (e.g. storage costs). The Purchaser has the right to demonstrate that no damages or significantly less serious damages have been incurred.

§ 5 Prices and terms of payment

(1) Unless agreed otherwise in individual cases, our prices current at the time of contract conclusion (ex warehouse plus statutory VAT) shall apply.

(2) In the event of a sale by dispatch (§ 4 (1)), the Purchaser shall pay the cost of transportation from the warehouse and the cost of any transportation insurance requested by them. Any duties, fees, taxes and other public charges shall be paid by the Purchaser.

(3) Unless agreed otherwise in individual cases, the purchase price must be paid within 10 days with a 2% discount, within 30 days net following invoicing and delivery or acceptance of the goods. However, we are entitled at any time, including within an ongoing business relationship, to provide a delivery in whole or in part only after prepayment. We shall declare reservations of this nature upon order confirmation at the latest.

(4) The Purchaser is deemed to be in default upon expiry of the aforementioned payment term. Interest is paid on the purchase price at the applicable statutory rate during the period of default. We reserve the right to bring additional claims for damages caused by arrears. Our right to charge commercial default interest (§ 353 of the German Commercial Code (HGB)) remains unaffected.

(5) The Purchaser is entitled to offset or withhold payment only to the extent that their claim can be ascertained as legally valid or undisputed. In the case of defects in the delivery, the opposing rights of the Purchaser, in particular in accordance with § 7 (6) (2) of these GTCS, remain unaffected.

(6) If, after conclusion of the contract, it becomes apparent that our claim for the purchase price is endangered due to the Purchaser's inability to perform (e.g. by an application to open insolvency proceedings), we shall be entitled – in accordance with the provisions of law – to withhold performance and – if necessary after setting a deadline – to withdraw from the contract (§ 321 BGB). In the case of contracts for the manufacture of non-fungible goods (custom-built products), we may withdraw immediately; this shall not affect the legal provisions regarding the dispensability of setting a deadline.

§ 6 Retention of title

(1) The sold goods shall remain our property until full payment of all our current and future claims from the purchase contract and an ongoing business relationship (secured claims) has been made.

(2) The goods subject to retention of title may not be pledged to third parties or assigned as collateral before full payment of the secured claims has been made. The Purchaser must inform us in writing immediately if an application is filed for the opening of insolvency proceedings or if third parties access goods belonging to us (e.g. seizures).

(3) If the Purchaser acts in breach of contract, particularly in the event of non-payment of the purchase price due, we shall be entitled under the statutory regulations to withdraw from the contract and/or to demand the goods on the basis of retention of title. The request for goods to be returned does not represent our withdrawal from the contract; rather, we are entitled to request that the goods be returned while retaining the right to withdraw. Should the Purchaser fail to pay the purchase price due, we may only exercise these rights if we have previously set a grace period for the Purchaser to make the payment and this grace period has expired without remedy, or the setting of such a deadline is unnecessary under the terms of the legal provisions.

(4) As part of the ordinary course of business, the Purchaser is authorised, up until withdrawal from the contract in accordance with (c), to sell and/or process goods for which there is retention of title. In this case, the following supplementary provisions apply.

(a) The retention of title extends to the full value of the outcome of any processing of our goods or if these goods are combined or connected in any way. We are considered to be the manufacturer in this instance. Should our goods be processed, combined or connected to a third party's goods, where the third party's right of ownership exists, we shall apply for co-ownership in proportion with the invoice value of the processed, combined or connected goods. Furthermore, the same provisions apply to these outcomes as to the goods delivered with retention of title.

(b) As collateral, the Purchaser shall assign to us all receivables from third parties resulting from the further sale of goods or outcomes either in total or in proportion to our share of the co-ownership in accordance with the preceding paragraph. We accept the assignment. The obligations of the Purchaser, as stated in para. 2, shall also apply in view of the assigned claims.

(c) The Purchaser remains authorised to collect the receivables in addition to us. We shall not collect receivables provided that the Purchaser fulfils their payment obligations to us, there are no problems regarding their ability to perform and we do not exercise the retention of title by asserting a right in accordance with para. 3. However, should any of these circumstances arise, we can request that the Purchaser inform us of the assigned receivables and their debtors, provide all the information required for the collection of receivables, provide the relevant documentation and inform the debtors (third parties) of the assignment. In this case, we are also entitled to revoke the Purchaser's authorisation to the onward sale and processing of the goods under the retention of title.

(d) If the realisable value of our collateral exceeds our receivables by more than 10%, we shall release collateral of our choice at the Purchaser's request.

§ 7 Warranty claims of the Purchaser

(1) Unless stipulated otherwise below, the statutory regulations shall apply to the rights of the Purchaser in the case of defects of quality and title (including incorrect delivery, shortfall in delivery, improper assembly or inadequate assembly instructions). The special legal provisions concerning the final delivery of the unprocessed goods to a consumer remain unaffected in all cases, including where the consumer has further processed the goods (supplier recourse according to §§ 478 BGB). Claims arising out of supplier recourse are excluded if the defective goods have been further processed by the Purchaser or another entrepreneur, e.g. installing the goods in a another product.

(2) The primary basis of our liability for defects shall be the agreement made concerning the quality of the goods. All product descriptions that form part of the individual contract or that we have published (in particular, in catalogues or on our website) are considered agreements on the nature of the goods.

(3) If no agreements were concluded concerning the condition of the goods, statutory regulations must be used as a basis to determine whether the goods are defective or not (§ 434 (1) p. 2 and 3 BGB). We shall not be held liable, however, for any public statements by the manufacturer or other third parties (e.g. from advertisements).

(4) The warranty claims of the Purchaser assume compliance with their statutory notification obligations (§§ 377, 381 HGB). In the event that a defect is discovered during the inspection or at a later point in time, we must be notified in writing without delay. In any case, obvious defects must be reported in writing within five working days of delivery and defects that are not detected during inspection must be reported in writing within the same deadline from the date of discovery. If the Purchaser fails to carry out the proper inspection and/or report of defects, our liability for the defect – which was not reported, was not reported on time or was not reported properly – shall be excluded.

(5) If the delivered item is defective, we may initially decide whether we wish to provide supplementary performance by remedying the defect (supplementary performance) or by delivering an item that is free of defects (replacement delivery). Our right to refuse supplementary performance in accordance with legal requirements remains unaffected.

(6) We are entitled to make the necessary supplementary performance dependent upon the Purchaser paying the purchase price due. However, the Purchaser is entitled to withhold an appropriate portion of the purchase price in accordance with the extent of the defect.

(7) The Purchaser must give us time and occasion to provide supplementary performance and must hand over the goods in question for inspection purposes. In the event that a replacement delivery is provided, the Purchaser must return the defective goods to us in accordance with the legal provisions. Supplementary performance does not include the removal or reinstallation of the defective goods, unless the installation was originally carried out by us.

(8) The expenses necessary for the purpose of inspection and supplementary performance, in particular transport, travel, labour and material costs as well as, if applicable, removal and installation costs, shall be borne or reimbursed by us in accordance with the statutory provisions if a defect actually exists. Otherwise, we can demand compensation from the Purchaser for the costs that we incurred from the unjustified request for rectification (inspection and transportation costs in particular), unless the lack of defectiveness was not apparent to the Purchaser.

(9) In urgent cases, e.g. when operational safety is at risk or to prevent disproportionate damage, the Purchaser has the right to remedy the defect themselves and to demand compensation from us for the expenses objectively required for this. We must be informed immediately, if possible in advance, of such action carried out by the Purchaser. The Purchaser's right to take action does not exist if we would be entitled to refuse supplementary performance in accordance with the statutory provisions.

(10) If supplementary performance has failed or a reasonable period to be set by the Purchaser for such performance has expired without success or is dispensable according to the statutory provisions, the Purchaser can 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) If use of the goods supplied leads to an infringement of industrial property rights or domestic copyright, we shall, at our own expense, procure for the Purchaser, in principle, the right to continue to use the goods supplied or modify the goods supplied in a manner reasonably acceptable to them in such a way that such an infringement ceases to exist. If this is not possible under reasonable economic conditions or within a reasonable deadline, the Purchaser shall be entitled to withdraw from the contract. Furthermore, we shall indemnify the Purchaser against any undisputed or legally enforceable claims of the respective holders of the intellectual property rights. Our obligations in this regard are final and conclusive, subject to the provisions contained in § 8, in the event of an infringement of industrial property rights and copyright.

(12) Even in the case of defects, claims to reimburse for damages or wasted expenditure asserted by the Purchaser shall only apply pursuant to § 8 and are otherwise excluded.

§ 8 Other liability

(1) Unless stipulated otherwise in these GTCS, including the following provisions, we shall be liable for infringement of contractual and non-contractual obligations in accordance with the legal provisions.

(2) We shall be liable for damages – on whatever legal grounds – within the scope of liability for intent and gross negligence. In the event of simple negligence, we shall only be liable subject to a milder standard of liability in accordance with statutory provisions (e.g. for diligence in our own affairs)

a) for damages resulting from injury to life, limb or health,

b) for damages resulting from a significant breach of a material contractual obligation (obligation the fulfilment of which is essential for the proper performance of the contract and on whose compliance the contractual partner regularly relies and may rely); in this case, however, our liability is limited to compensation for the foreseeable, typically occurring damage.

(3) The limitations of liability arising from para. 2 also apply in the event of breaches of obligations by or for the benefit of individuals for whose culpability we are responsible under law. They do not apply if we have fraudulently concealed a defect or assumed a guarantee for the quality of the goods and for claims of the Purchaser under the Product Liability Act.

(4) In the event of a breach of a contractual obligation that is not related to a defect, the Purchaser may only withdraw from or terminate the contract if we are responsible for the breach. A free right of termination on the part of the Purchaser is excluded (in particular according to §§ 651, 649 BGB). The legal requirements and consequences apply in all other respects.

§ 9 Limitation period

(1) Notwithstanding § 438 (1) (3) BGB, the general limitation period for claims arising from defects of quality and title is one year from delivery. If acceptance has been agreed, the period of limitation begins with this acceptance.

(2) The above-mentioned limitation periods under commercial law shall also apply to contractual and non-contractual claims for damages from the Purchaser, when they are based on a defect in the goods, unless the application of the regular statute of limitations (§§ 195, 199, BGB) would result in a shorter limitation period in the individual case. However, compensation claims on the part of the Purchaser under § 8 (2) (1 and 2 (a)) and under the Product Liability Act shall lapse exclusively in accordance with the legal provisions.

§ 10 Choice of law and place of jurisdiction

(1) With regard to these GTCS and the contractual relationship between us and the Purchaser, the law of the Federal Republic of Germany applies to the exclusion of international uniform law, in particular the UN law on sales.

(2) If the Purchaser is a merchant within the meaning of the German Commercial Code, 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, directly or indirectly, is our headquarters in Kierspe, Germany. The same applies if the Purchaser is an entrepreneur within the meaning of § 14 BGB. However, we are also entitled in all cases to file a suit at the place of performance for the delivery obligation in accordance with these GTCS or an overriding individual agreement, or at the general place of jurisdiction of the Purchaser. Overriding legal provisions, in particular concerning exclusive jurisdictions, remain unaffected.