

General Purchasing Conditions

§ 1 Scope, form

(1) These General Purchasing Conditions shall apply to all business relationships with our business partners and suppliers ("Seller"). The General Purchasing Conditions shall only apply if the Seller is an entrepreneur (as defined by § 14 BGB (German Civil Code)), a legal entity under public law or a special fund under public law.

(2) The General Purchasing Conditions shall apply in particular to contracts for the sale and/or delivery of movable Goods ("Goods"), irrespective of whether the Seller manufactures the Goods themselves or purchases them from suppliers (§§ 433, 651 BGB). Unless otherwise agreed, the General Purchasing Conditions shall apply in the version valid at the time of the Buyer's order or, if applicable, in the version most recently communicated to them in written form. They shall also apply as a framework agreement for similar future contracts, without us having to refer to them again in each individual case.

(3) These General Purchasing Conditions shall apply exclusively. Any of the Seller's General Terms and Conditions that deviate, conflict or supplement these General Purchasing Conditions shall only become part of the contract if and insofar as we have expressly agreed to their validity in writing. This requirement for consent shall apply in all cases, even if, for example, we accept the Seller's deliveries without reservation even where we have knowledge of the Seller's General Terms and Conditions.

(4) In specific cases, individual agreements made with our contractual partners (including ancillary agreements, supplements and amendments) shall take priority over these General Purchasing Conditions. Subject to proof to the contrary, a written contract or our written confirmation shall be definitive for the content of such agreements.

(5) Legally relevant declarations and notifications of the Seller in relation to the contract (for example, setting a deadline, reminder, withdrawal) must be made in written or text form (for example, by letter, e-mail, fax or similar). Statutory formal requirements and further evidence, in particular in the event of doubts about the legitimacy of the person making the declaration, shall remain unaffected.

(6) References to the validity of statutory provisions shall only have clarifying significance. Statutory provisions shall therefore apply even in the absence of such clarification, insofar as they are not directly amended or expressly excluded in these General Purchasing Conditions.

§ 2 Conclusion of contract

(1) Our order shall be deemed binding no earlier than upon written submission or confirmation. The Seller shall notify us of obvious errors (for example, typing and calculation errors) and incompleteness of the order, including the order documentation, for the purpose of correction or completion before acceptance; otherwise the contract shall be deemed not to have been entered into.

(2) The Seller shall be obliged to confirm our order in writing within a period of 5 days or, specifically, by fulfilling it without reservation by dispatching the Goods (Acceptance). Delayed Acceptance shall be considered a new offer and requires our agreement.

§ 3 Delivery time and delay in delivery

(1) The delivery time stated by us in the order shall be binding. The Seller is obliged to inform us immediately in writing if they expect to be unable – for whatever reason – to meet agreed delivery times.

(2) If the Seller does not perform their services or does not perform them within the agreed delivery period or if they are in default, our rights – in particular to withdrawal and compensation – shall be determined in accordance with statutory provisions. The provisions of paragraph 3 shall remain unaffected.

(3) If the Seller is in default, we may – in addition to further legal claims – claim compensation for damage to us caused by default at a flat-rate of 1% of the net price per completed calendar week, but not to exceed 5% of the total net price of the Goods delivered late. We reserve the right to prove that damages actually incurred are at a higher level. The Seller retains the right to prove that no damage at all or considerably lesser damage has been caused.

§ 4 Performance of service, delivery, transfer of risk, default of acceptance

(1) The Seller shall not be entitled to have services contracted to them performed by third parties (for example, subcontractors) without our prior written consent. The Seller bears the procurement risk for their services, unless otherwise agreed in individual cases (for example, limitations on stock).

(2) Within Germany, delivery shall be made “free to the door” to the place specified in the order. If the place of destination is not specified and no other arrangements have been made, delivery shall be made to our registered office in Hornberg-Niederwasser. The respective place of destination is also the place of performance for the delivery and any subsequent performance (obligation to be performed at the place of performance).

(3) The delivery shall be accompanied by a delivery note stating the date (issue and dispatch), the contents of the delivery (item number and quantity) and our order identification (date and number). We are not responsible for consequent delays in processing and payment if the delivery note is missing or incomplete. A corresponding dispatch note with the same content shall be sent to us separate to the delivery note.

(4) The risk of accidental loss and accidental deterioration of the item shall pass to us upon delivery at the place of performance. Transfer of risk passes when acceptance has been agreed. Statutory provisions relating to contracts for work and services shall also apply accordingly in the case of acceptance. If we are in default of acceptance, handover or acceptance shall be deemed to have happened.

(5) Statutory provisions shall apply in the event of our default of acceptance. However, the Seller must also expressly offer us their performance of service if a specific or determinable calendar period has been agreed for an action or involvement on our part (for example, provision of material). If we are in default of acceptance, the Seller may demand compensation for their additional expenses in accordance with the statutory provisions (§ 304 BGB). If the contract relates to an unacceptable item to be manufactured by the Seller (bespoke 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 terms of payment

(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 shall include all services and ancillary services provided by the Seller (for example, assembly, installation) as well as all ancillary costs (for example, proper packaging, transport costs including any transport and liability insurance).

(3) The agreed price is payable within 30 calendar days after complete delivery and performance of service (including acceptance as agreed) and after receipt of a correct invoice. If we make payment within 10 calendar days, the contractual partner will allow a 2% discount on the net invoice amount. Bank transfer payments are considered to be made on time if our transfer order is received by our bank before the payment deadline; we shall not be held responsible for delays caused by the banks involved in the payment process.

(4) No overdue interest shall be payable. Statutory provisions shall apply to default of payment.

(5) 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 there remain outstanding claims from incomplete or defective services against the Seller.

(6) The Seller has a right of set-off or retention only in the case of counter-claims which have been legally established or are undisputed.

§ 6 Confidentiality and retention of title

(1) We reserve the property rights and copyrights to illustrations, plans, drawings, calculations, execution instructions, product descriptions and other documents. Such documents are to be used exclusively for the contractual performance and shall be returned to us on completion of the contract. They must not be revealed to third parties, including after the end of the contract. The obligation of confidentiality shall expire only if and to the extent that the knowledge contained in the documents provided is already in the public domain.

(2) The above provision shall apply mutatis mutandis to substances and materials (for example, software, finished and semi-finished products) as well as to tools, templates, samples and other items which we provide to the Seller for production. Such items are – as long as they are not being processed – to be stored separately at the expense of the Seller and insured for an appropriate sum against any destruction and loss.

(3) Any processing, mixing or combination (further processing) of provided items by the Seller shall be carried out for our benefit. The same shall apply if the delivered Goods are processed by us to the extent that we are considered the manufacturer and we shall acquire ownership of the product no later than on completion of this processing in accordance with statutory provisions.

(4) Transfer of ownership of the Goods to us shall be unconditional and without regard to payment of the amount due. However, if we accept an offer of transfer of title from the Seller in individual cases conditional upon payment of the purchase price, the Seller's reservation of title shall expire no later than upon payment of the purchase price for the delivered Goods. We remain authorised to resell the Goods in the ordinary course of business even before payment of the purchase price, with advance assignment of the resultant proceeds (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

(1) Statutory provisions shall apply to our rights in the event of material defects and defects of title of the Goods (including incorrect and short delivery as well as improper assembly, defective assembly, operating or instruction manuals) and in the event of other breaches of duty by the Seller, unless otherwise provided for below.

(2) In accordance with statutory provisions, the Seller shall be liable in particular for ensuring that the Goods are of the agreed quality at the time of the transfer of risk to us. In any event, product descriptions which – in particular by designation or reference in our order – are the subject matter of the respective contract or have been incorporated into the contract in the same way as these General Purchasing Conditions shall be deemed to be an agreement on quality. This shall apply irrespective of whether the product description comes from us, the Seller or the manufacturer.

(3) Notwithstanding § 442 para. 1 clause 2 BGB, we shall be entitled to claims for defects due to gross negligence without restriction, even if the defect remained unknown to us at the time of conclusion of the contract.

(4) Statutory provisions (§§ 377, 381 HGB (German Commercial Code)) shall apply to the commercial duty to examine and give notice of defects with the following proviso: Our obligation to inspect is limited to defects which are readily apparent during our incoming Goods inspection under external examination, including the delivery documents (for example, transport damage, incorrect and short delivery), or which are recognisable during our quality control by random sampling. Insofar as acceptance has been agreed, there is no duty to inspect. It otherwise

depends on the extent to which investigation is feasible in the ordinary course of business, taking into account the circumstances of the individual case. Our obligation to give notice of defects discovered later remains unaffected. Notwithstanding 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.

(5) 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 Seller shall bear costs incurred by the Seller for the purpose of inspection and subsequent performance (including any dismantling and installation costs) even if it is subsequently found that no defect actually existed. Our liability for damages in the event of unjustified requests for the removal of defects remains unaffected; however, in this respect we are only liable if we have recognised or grossly negligently failed to recognise that there was no defect.

(6) If the Seller does not fulfil their obligation to provide subsequent performance – either by remedying the defect (subsequent improvement) or by delivering a defect-free item (replacement delivery) at our absolute discretion – 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 we find it unreasonable for us (for example, 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.

(7) 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 statutory provisions. In addition, we are entitled to compensation for damages and expenses in accordance with statutory provisions.

§ 8 Supplier recourse

(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 exactly the type of subsequent performance (repair or replacement) from the Seller that we owe to our customer in the individual case. Our statutory 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, giving a brief description of the facts. If the statement is not made within a reasonable period of time and if no solution shall have been mutually agreed, the claim for defects actually granted by us shall be deemed to be owed to our customer; in this case, the onus shall be on the Seller to provide proof to the contrary.

(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, for example, by installation in another product.

§ 9 Manufacturer liability

(1) If the Seller is responsible for a product damage, they shall indemnify us from third party claims to the extent that the cause is within their sphere of control and organisation and they are liable themselves in this external relationship.

(2) Within the scope of their obligation to indemnify, the Seller shall reimburse expenses pursuant to §§ 683, 670 BGB which arise from or in connection with a third-party claim, including recall actions carried out by us. We shall inform the Seller about the content and scope of recall measures – as far as possible and reasonable – and give them the opportunity to comment. Further legal claims remain unaffected.

(3) The Seller shall take out and maintain product liability insurance with a sum insured of at least € 5 million per personal injury/property damage.

§ 10 Statute of limitations

(1) Mutual claims of the contracting parties shall become statute-barred in accordance with the statutory provisions, unless otherwise provided for below.

(2) Notwithstanding § 438 para. 1 No. 3 BGB, the general limitation period for claims for defects is 3 years from the transfer of risk. Insofar as 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 material claims for restitution of property of third parties (§ 438 para. 1 No. 1 BGB) shall remain unaffected; furthermore, claims arising from defects of title shall in no case become statute-barred as long as the third party can still assert the right – in particular in the absence of a period of limitation – against us.

(3) The statute of limitations 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 regular statutory limitation period (§§ 195, 199 BGB) shall apply here, unless the application of the limitation periods of the law on sales leads to a longer limitation period in an individual case.

§ 11 Governing law and place of jurisdiction

(1) These General Purchasing Conditions and the contractual relationship between us and the Seller shall be governed by the law of the Federal Republic of Germany, excluding international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods.

(2) If the Seller is a merchant as defined in 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 Hornberg-Niederwasser. The same applies if the Buyer is an entrepreneur as defined by § 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 Purchasing Conditions or a prior individual agreement or at the general place of jurisdiction of the Seller. Priority statutory provisions, in particular those concerning exclusive jurisdiction, shall remain unaffected.