

## General Sales Conditions with alternative provisions in the case of defect rights and retention of title

### § 1 General provisions

(1) These General Sales Conditions shall apply to all our business relationships with our customers (hereinafter referred to as: "Buyer"). The General Sales Conditions shall only apply if the Buyer 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 Sales Conditions shall apply in particular to contracts for the sale and/or delivery of movable Goods (hereinafter also referred to as: "Goods"), regardless of whether we manufacture the Goods ourselves or purchase them from suppliers (§§ 433, 651 BGB). The General Sales Conditions in their respective version shall also apply as a framework agreement for future contracts for the sale and/or delivery of movable Goods with the same Buyer, without us having to refer to them again in each individual case; in this case we shall inform the Buyer immediately of any changes to our General Sales Conditions.

(3) Our General Sales Conditions shall apply exclusively. Any of the Buyer'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. This requirement for consent shall apply in all cases, even if, for example, we carry out the delivery to the Buyer without reservation in the knowledge of the Buyer'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 Sales Conditions. A written contract or our written confirmation shall be definitive for the content of such agreements.

(5) Legally relevant declarations and notifications to be made to us by the Buyer after conclusion of the contract (for example, setting deadlines, notifications of defects, declaration of withdrawal or reduction) must be made in writing to be effective.

(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 Sales Conditions.

### § 2 Conclusion of contract

(1) Our offers are subject to change and non-binding. This shall also apply if we have provided the Buyer with catalogues, technical documentation (for example, drawings, plans, calculations, references to DIN standards), other product descriptions or documents – also in electronic form – to which we reserve ownership rights and copyrights.

(2) The order of the Goods by the Buyer is considered a binding offer of contract. Unless otherwise stated in the order, we are entitled to accept this offer of contract within 5 days after we have received it.

(3) Acceptance can be declared either in writing (for example, 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 when accepting the order.

(2) If we are unable to meet binding delivery deadlines for reasons outside our reasonable control (non-availability of performance of service), we shall inform the Buyer of this immediately and at the same time inform them of the expected new delivery time. If the service is not available even within the new delivery period, we shall be entitled to withdraw from the contract in whole or in part; we shall reimburse without delay any consideration already paid by the Buyer. A case of non-availability of the service in this sense shall in particular be the non-punctual self-supply by our supplier, if we have concluded a congruent covering transaction, neither we nor our supplier are at fault or we are not obliged to procure in individual cases.

(3) Whether our delivery shall be deemed delayed shall be determined in accordance with statutory provisions. In any case, however, a reminder from the Buyer is required.

(4) The rights of the Buyer in accordance with § 8 of these General Sales Conditions and our statutory rights, in particular in the event of an exclusion of the obligation to perform the service (for example, if performance and/or subsequent performance of service shall be impossible or unreasonable) shall remain unaffected.

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

(1) Delivery shall be ex works, which shall also be the place of performance. The Goods will be shipped to another destination (sale to destination) at the request and expense of the Buyer. Unless otherwise agreed, we shall be entitled to determine the type of shipment (in particular, the transport company, shipping route, packaging) ourselves.

(2) The risk of accidental loss and accidental deterioration of the Goods shall pass to the Buyer at the latest upon delivery. However, in the case of sale by delivery to a place other than the place of performance, the risk of accidental loss and accidental deterioration of the Goods as well as the risk of delay shall pass to the Buyer upon delivery of the Goods to the forwarding agent, the carrier or any other person or institution designated to carry out the shipment. Transfer of risk passes when acceptance has been agreed. Statutory provisions of the law on contracts for work and services shall also apply accordingly to an agreed acceptance. If the Buyer is in default of acceptance, handover or acceptance shall be deemed to have happened.

(3) If the Buyer is in default of acceptance, if they fail 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 (for example, storage costs). We shall charge compensation per calendar day for this, beginning with the delivery time or – in the absence of a delivery time – with the notification that the Goods are ready for dispatch.

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

(1) Unless otherwise agreed in individual cases, our prices in force at the time of conclusion of the contract shall apply ex works, plus statutory value added tax.

(2) In the case of sale by delivery to a place other than the place of performance (§ 4 para. 1), the Buyer shall bear the transport costs ex works and the costs of any transport insurance required by the Buyer. All customs duties, fees, taxes and other public charges shall be borne by the Buyer. We do not take back transport packaging and all other packaging in accordance with the German Packaging Ordinance; these become the Buyer's property, with the exception of pallets.

(3) If the agreed payment period shall pass, the Buyer shall be in default. During the period of default, the purchase price shall bear interest at the statutory default interest rate applicable at the time. We reserve the right to claim for any further damages caused by delay. Our entitlement to commercial interest on maturity (§ 353 HGB (German Commercial Code)) remains unaffected with respect to merchants.

(4) The Buyer shall only be entitled to set-off or rights of retention to the extent that their claim has been legally established or is undisputed. In the event of defects in the delivery, the Buyer's counter rights, in particular in accordance with § 7 para. 6 clause 2 of these General Sales Conditions, shall remain unaffected.

(5) If, after conclusion of the contract, it becomes apparent that our receipt of the purchase price is jeopardised by the Buyer's inability to pay (for example, due to an application to commence insolvency proceedings), we shall be entitled to refuse performance in accordance with the statutory provisions and – if necessary after setting a deadline – to withdraw from the contract (§ 321 BGB). In the case of contracts for the manufacture of unacceptable items (custom-made products), we can declare our withdrawal immediately; statutory regulations regarding when setting a deadline is unnecessary shall remain unaffected.

## **§ 6 Retention of title**

- (1) We reserve title to the Goods sold until all our present and future claims arising from the purchase contract and an ongoing business relationship (secured claims) have been paid in full.
- (2) The Goods subject to retention of title may not be pledged to third parties or transferred by way of security before full payment of the claims hereby secured. The Buyer must inform us immediately in writing if and to the extent that third parties have access to the Goods belonging to us.
- (3) If the Buyer acts in breach of contract, in particular if they fail to pay the due purchase price, we shall be entitled to withdraw from the contract in accordance with statutory provisions and/or to demand the return of the Goods on the basis of reservation of title. The demand for the return of goods does not automatically simultaneously include a declaration of withdrawal; we remain entitled to demand only the return of the Goods and to separately reserve the right to withdraw from the contract. If the Buyer does not pay the due purchase price, we may only assert these rights if we have previously set the Buyer a reasonable deadline for payment which is not met, or if such setting of a deadline is unnecessary according to statutory provisions.
- (4) The Buyer is authorised to resell and/or process the Goods subject to retention of title in the ordinary course of business. In this case the following provisions shall apply in addition.
- (a) Retention of title extends to the full value of the products resulting from the processing, mixing or combination of our Goods, whereby we are considered 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 the ratio of the invoice values of the processed, mixed or combined Goods. Otherwise, the same applies to the resulting product as to the Goods delivered under reservation of title.
- (b) The Buyer hereby assigns to us as security all claims against third parties arising from the resale of the Goods or product, either in full or in the amount of our possible co-ownership share in accordance with the above paragraph. We accept the assignment. The obligations of the Buyer mentioned in paragraph 2 shall also apply in consideration of the assigned claims.
- (c) The Buyer remains authorised to collect the claim, as do we as well. We undertake not to collect the claim as long as the Buyer meets their payment obligations to us, is not in default of payment, no application for opening insolvency proceedings has been filed and there is no other barrier to their ability to pay. If this is the case, however, we can demand that the Buyer informs us of the assigned claims and their debtors, provides all information necessary for collection, hands over relevant documents and informs the debtors (third parties) of the assignment.
- (d) If the realisable value of the securities exceeds our claims by more than 10%, at the request of the Buyer we shall release securities of our choice.

## **§ 7 Claims for defects of the Buyer**

- (1) Statutory provisions shall apply for the rights of the Buyer in the event of material defects and defects of title (including wrong and short delivery as well as improper assembly or faulty assembly instructions), unless otherwise provided for in the following. In all cases, statutory special regulations for final delivery of the Goods to a consumer (supplier recourse according to §§ 478, 479 BGB) remain unaffected.
- (2) Our liability for defects is above all based on the agreement reached on the quality of the Goods. All product descriptions which are the subject of the individual contract are deemed to be an agreement on the quality of the Goods; this shall apply irrespective of whether the product description comes from the Buyer, the manufacturer or from us.
- (3) Insofar as the quality has not been agreed upon, the statutory regulation shall be applied to determine whether a defect is present or not (§ 434 para. 1 clauses 2 and 3 BGB). However, we accept no liability for public statements made by the manufacturer or other third parties (for example, advertising statements).

- (4) The Buyer's claims for defects presuppose that they have complied with their statutory obligations to inspect and give notice of defects (§§ 377, 381 HGB). If a defect is discovered during the inspection or later, we must be notified of this in writing without delay. Notification is deemed to be without delay if it is made within two weeks. In this respect, timely dispatch of the notification is sufficient to meet the deadline. Irrespective of this obligation to examine and give notice of defects, the Buyer must give written notice of obvious defects (including wrong and short delivery) within two weeks of delivery. In this case too, timely dispatch of the notification is sufficient to comply with the deadline. If the Buyer fails to carry out the proper inspection and/or report defects, we accept no liability for defects not reported.
- (5) If the delivered item is defective, we may initially choose whether we provide subsequent performance by eliminating the defect (rectification) or by delivering a defect-free item (replacement). Our right to refuse subsequent performance under statutory conditions remains unaffected.
- (6) We are entitled to make the subsequent performance owed dependent on the Buyer paying the purchase price due. However, the Buyer is entitled to retain a reasonable proportion of the purchase price in relation to the defect.
- (7) The Buyer shall give us the time and opportunity necessary for the subsequent performance owed, in particular to hand over the Goods complained about for inspection purposes. In the event of a replacement delivery, the Buyer must return the defective item to us in accordance with statutory provisions. Subsequent performance does not include the removal of the defective item or reinstallation if we were not originally obliged to install it.
- (8) Expenses incurred for the purpose of testing and subsequent performance, in particular transport, travel, labour and material costs (excluding removal and installation costs), shall be borne by us if a defect actually exists. If, however, a demand for rectification of defects by the Buyer turns out to be unjustified, we can demand reimbursement of costs incurred from the Buyer.
- (9) In urgent cases, for example if operational safety is endangered or in order to prevent disproportionate damage, the Buyer has the right to remedy the defect themselves and to demand compensation from us for reasonable expenses necessary for this. We are to be informed immediately, if possible beforehand, of such self-remedy. There shall be no right of self-remedy if we would be entitled to refuse a corresponding subsequent performance in accordance with statutory provisions.
- (10) If the supplementary performance has failed or a reasonable period of time to be set by the Buyer for the supplementary performance has expired without success or is unnecessary according to statutory provisions, the Buyer may withdraw from the purchase contract or reduce the purchase price. No right of withdrawal exists however in the case of an insignificant defect.
- (11) The Buyer may only assert claims for damages or compensation for wasted expenditure in accordance with § 8. Claims shall be excluded in all other respects.

## **§ 8 Other liability**

(1) Unless otherwise provided for in these General Sales Conditions, including the following provisions, we shall be liable for any breach of contractual and non-contractual obligations in accordance with relevant statutory provisions.

(2) We shall be liable for damages – irrespective of the legal grounds – in the event of intent and gross negligence. In the event of simple negligence we shall be liable only

- a) for damages resulting from injury to life, body or health
- b) for damages resulting from the breach of an essential contractual obligation (obligation whose fulfilment is essential for the proper execution 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 resulting from paragraph 2 shall not apply if we have fraudulently concealed a defect or have given a guarantee for the quality of the Goods. The same applies to claims of the Buyer under the Product Liability Act.

(4) The Buyer may only withdraw or terminate the contract due to a breach of duty which does not consist of a defect if we are responsible for the breach of duty. Free rights of termination of the Buyer (in particular according to §§ 651, 649 BGB) are excluded. Apart from this, statutory provisions shall apply.

### **§ 9 Statute of limitations**

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

(2) The aforementioned limitation period of the right of purchase shall also apply to contractual and non-contractual claims for damages of the Buyer which are based on a defect of the Goods, unless the application of the regular statutory limitation period (§§ 195, 199 BGB) would lead to a shorter limitation period in individual cases. The limitation periods stipulated under product liability law remain unaffected in all cases. Otherwise, the statutory limitation periods shall apply exclusively to the Buyer's claims for damages pursuant to § 8.

### **§ 10 Governing law and place of jurisdiction**

(1) These General Sales Conditions and the legal relationship between us and the Buyer 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. The prerequisites and effects of the reservation of title in accordance with § 6 are subject to the law of the respective storage location of the item, insofar as the choice of law made in favour of German law is inadmissible or ineffective.

(2) If the Buyer 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 directly or indirectly from the contractual relationship shall be our registered office in Hornberg-Niederwasser. However, we are also entitled to bring an action at the general place of jurisdiction of the Buyer.