

## **General Sales Terms and Conditions**

### **§ 1 Scope**

#### 1.1

These General Sales Terms and Conditions (GSTC) apply to all our business relations with our customers ("Buyer(s)"). These General Sales Terms and Conditions only apply if the Buyer is an entrepreneur as defined in §14 of the German Civil Code (BGB), a legal entity organised under public law, or a special public fund.

#### 1.2

These GSC apply in particular to contracts for the sale and/or delivery of movable objects ("goods"), irrespective of whether we manufacture the goods ourselves or purchase them from suppliers (§§ 433, 651 BGB). Unless otherwise agreed, the GSC in the version valid at the time of the Buyer's order or at least in the version last communicated in text form shall also apply as a framework agreement for similar future contracts, without having to refer to them again in each individual case.

#### 1.3

Our GSC apply exclusively. Any differing, conflicting or additional Buyer General Terms and Conditions apply to any contract only if we have expressly agreed to the same. This requirement of consent shall apply in every eventuality, for example also if we agree without reservation to make a delivery in full knowledge of the Buyer's GTC.

#### 1.4

(Any individual agreements made with the Buyer (including additional or supplementary agreements or amendments to these terms) shall always take precedence over these terms. Subject to evidence to the contrary, a written contract or written confirmation on our part shall be authoritative for the content of such agreements.

#### 1.5

Legally relevant declarations and notifications of the Buyer with regard to the contract (e.g. setting of a deadline, notification of defects, withdrawal or reduction) must be made in writing, i.e. in written or text form (e.g. letter, email, fax). Legal formal requirements and further evidence, in particular in cases of doubt as to the declarant's legitimation, remain unaffected.

#### 1.6

References to the validity of the statutory regulations are only for purposes of clarification. Even without such clarification, the statutory provisions apply, unless directly modified or expressly excluded by these GSC.

### **§2 Conclusion of the contract**

## 2.1

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

## 2.2

When Buyers place orders, these are binding offers to enter into a contract with us. Unless otherwise stated in the order, we are entitled to accept this contractual offer within 14 days of its receipt.

## 2.3

The acceptance can be made either in writing (with an order confirmation) or by delivering the goods to the Buyer.

### **§3 Delivery time and delays**

#### 3.1

The delivery deadline will be agreed on a case-by-case basis or otherwise stipulated by us when it accepts the order.

#### 3.2

If we cannot meet binding delivery deadlines for reasons that are beyond our control, we will notify the Buyer immediately and indicate the expected new delivery deadline at that time. If the delivery cannot be made within the new delivery period, we are entitled to withdraw from the contract in whole or in part; any payments already made by the Buyer will be refunded immediately. Such unavailability in this sense shall apply especially if our supplier is late in making its delivery to us, if we have made a congruent transaction to cover our expected orders and if neither our supplier nor we are responsible for said delay, or if we are not otherwise obliged to procure the delivery in the particular instance.

#### 3.3

The occurrence of our delay in delivery is determined by law. In any case, the Buyer must first issue us a reminder. If we are in default of delivery, the Buyer may demand a flat amount of damages for the same. The lump-sum compensation equals 0.5% of the net price (order value) for each completed calendar week of delay up to a maximum of 5% of the order value of the delayed goods. We reserve the right to provide evidence that the Buyer has not incurred any damage or considerably lower damage than the above lump sum.

#### 3.4

The Buyer's rights pursuant to §8 herein and our legal rights, especially to exclude any obligation to make delivery (for example, because said delivery or remedy is impossible or unreasonable) shall both remain unaffected.

## **§ 4 Delivery, Transfer of Risk, Inspection, Failure to Accept Delivery**

### 4.1

Delivery shall be ex warehouse, where the place of performance for the delivery and any subsequent performance shall also be the place of performance. At the Buyer's request and expense, the goods will be shipped to another destination. Unless otherwise agreed, we are entitled to determine the type of shipment (in particular, the transport company, shipping method, and packaging).

### 4.2

The risk of accidental loss and accidental deterioration of the goods shall pass to the Buyer when the goods are transferred to the Buyer. However, for sales of goods to be shipped to the Buyer, the risk of accidental loss and accidental deterioration of the goods and the risk of delay passes to the Buyer once the goods are handed over to the forwarder, carrier or other person or organisation carrying out the shipping. If an inspection of the goods has been agreed upon, this is decisive for the transfer of risk. For the rest, the statutory provisions of work contract law shall apply as an agreed inspection of the goods. The handover or inspection shall be deemed rendered even if the Buyer fails to accept delivery.

### 4.3

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). For this we charge the costs arising from storage, but at least 0.5% of the invoice amount for each month, beginning with the delivery period or - in the absence of a delivery period - with the notification that the goods are ready for dispatch.

Our right to demonstrate that we have incurred higher demands and our other legal rights to reimbursement (especially for additional expenses, reasonable damages, termination of contract) remain unaffected; the flat damages as described above shall be included in any further monetary claims. The Buyer has the right to provide evidence that we have not incurred any damage or considerably lower damage than the above lump sum.

## **§ 5 Pricing and payment terms**

### 5.1

Unless otherwise specifically agreed, our current prices in effect at the time the contract is signed shall apply, ex works, plus statutory VAT.

### 5.2

In the case of the sales shipment (§ 4 para. 1), the Buyer bears the transport costs ex warehouse and the costs of any transport insurance desired by the Buyer. If we do not charge the actual transport costs incurred in the individual case, a lump sum for transport costs (excluding transport

insurance) of EUR 7.50 plus statutory VAT shall be deemed agreed. Any duties, fees, taxes and other government levies are payable by the Buyer.

### 5.3

The purchase price shall be due and payable within 14 days from the invoice and delivery or inspection of the goods. However, even in the context of an ongoing business relationship, we are entitled at any time to make a delivery in whole or in part only against prepayment. We declare a corresponding reservation at the latest with our order confirmation.

### 5.4

If the above-mentioned term of payment expires, the Buyer will be in default. The purchase price shall accrue interest at the applicable statutory default interest rate for the duration of the delay. We reserve the right to claim further delay damages. Our right to claim to the commercial maturity interest (§ 353 HGB) against retailers shall remain unaffected.

### 5.5

The Buyer has no right to offsets or retention unless its counterclaims are undisputed or legally binding by court order. In the event of defects in the delivery, the Buyer's counter-rights shall remain unaffected, in particular in accordance with § 2. § 7 para. 6 sentence 2 of these General Sales Terms and Conditions shall remain unaffected.

### 5.6

If it becomes apparent after conclusion of the contract (e.g. by filing for insolvency proceedings) that our claim to the purchase price is endangered by the Buyer's inability to pay, we are entitled to refuse performance and - if necessary after setting a deadline - to withdraw from the contract (§ 321 BGB). For contracts made for the manufacture of custom items, we can declare such withdrawal immediately, with the statutory provisions concerning the dispensability of setting a deadline remaining unaffected.

## **§ 6 Retention of Title**

### 6.1

We shall retain title on all goods sold until full payment of all present and future claims under the present purchase agreement and all ongoing business transactions (secured claims).

### 6.2

The goods subject to retention of title may not be pledged to third parties or assigned as collateral until the secured claims have been paid in full. The Buyer must notify the Seller in writing without delay if a request is made to open insolvency proceedings, or if third parties gain access (e.g. seizures) to the goods belonging to the Seller.

### 6.3

If the Buyer acts in violation of the contract, especially in the case of non-payment of the purchase price due, we are entitled to demand the return of the goods on grounds of retention of title and to withdraw from the contract. The requirement to surrender does not include the declaration of withdrawal at the same time; further, we are entitled to demand only the goods and to withhold the withdrawal. If the Buyer does not pay the purchase price due, we may assert these rights only if we have previously set the Buyer an appropriate deadline for payment to no avail or if setting such deadline may be waived according to the provisions of law.

#### 6.4

The Buyer is authorised, until further notice pursuant to (6.4.3) below, to sell the goods subject to retention of title or process them further in the ordinary course of business. If this is the case, the following provisions shall apply.

##### 6.4.1

The retention of title extends to the full value of the products resulting from the processing, mixing or combination of our products, whereby we shall be deemed manufacturer. If, in the case of processing, mixing or connection with goods of third parties, their ownership rights persist, we acquire co-ownership in the ratio of the invoice values of the processed, mixed or connected goods. In all other cases, the same shall apply to the resulting product as to the goods delivered subject to retention of title.

##### 6.4.2

The Buyer assigns any claims against third parties arising from the resale of the goods or products, in total or in the amount of our possible co-ownership share, to us as a security pursuant to the aforementioned paragraph. We herewith accept this assignment. The Buyer obligations mentioned in para. 6.2 shall also apply in respect of the assigned claims.

##### 6.4.3

In addition to us, the Buyer shall remain entitled to collect these claims. We undertake not to collect the claim as long as the Buyer meets his payment obligations to us, there is no defect in his performance and we do not exercise the retention of title by exercising a right in accordance with para. 6.3. If this is the case, we can demand that the Buyer inform us of the assigned claims and their debtors, provide all information necessary for collection, hand over the relevant documents, and inform the debtors (third parties) of the assignment. In addition, in this case we are entitled to revoke the authority of the Buyer to resell and process the goods under retention of title.

##### 6.4.4

If the realisable value of the securities exceeds our claims by more than 10%, we will release securities at our discretion at the Buyer's request.

## **§7 Warranty claims by the Buyer**

### 7.1

The rights of the customer in the event of any defect in the quality or title (including any wrong deliveries and short deliveries as well as improper or defective assembly) shall be governed by the statutory provisions, unless otherwise stipulated below. In all cases, the statutory special regulations remain unaffected when the unprocessed goods are finally delivered to a consumer, even if the consumer has processed them further (supplier recourse in accordance with §§ 478 BGB). Claims from supplier recourse are excluded if the defective goods have been further processed by the Buyer or another company, e.g. by installation in another product.

## 7.2

The basis for any claim for defects shall be first and foremost the agreement regarding the condition/quality of the goods. All product descriptions which are the subject matter of the individual contract or which have been made public by us (in particular in catalogues or on our Internet homepage) are regarded as an agreement on the quality of the goods.

## 7.3

Insofar as the nature of the defect has not been agreed upon, the statutory provisions shall determine whether a defect exists or not (§ 434 para. 1 p. 2 and 3 BGB). However, we assume no liability for public statements of the manufacturer or other third parties (e.g. advertising).

## 7.4

The ability of the Buyer to make warranty claims requires its compliance with its statutory obligation per §§371, 381 HGB to examine the goods and give notice of any non-conformity. If a defect appears during delivery, inspection or at any later point in time, this must be reported to us immediately in writing. In any case, obvious defects must be reported in writing within five working days of delivery and defects not visible during the inspection within the same period of time after discovery. If the Buyer fails to carry out a proper inspection and/or report a defect, our liability for the defect not or not in time or not properly reported shall be excluded in accordance with the statutory provisions.

## 7.5

If the delivered goods are defective, we may at our discretion remedy said defect by repair or by delivering a replacement product free of defects. Our statutory right to refuse remedy remains unaffected.

## 7.6

We are entitled to make the remedy conditional on the payment of the purchase price by the Buyer. However, the Buyer is entitled to retain a reasonable portion of the purchase price relative to the defective part of the delivery.

## 7.7

The Buyer shall allow us the necessary time and opportunity for due remedial performance and shall in particular hand over the goods concerned for inspection. In the case of a replacement

delivery, the Buyer shall return the defective goods as required by law. The supplementary performance does not include the removal of the defective item or the re-installation if we were originally not obliged to install.

#### 7.8

We shall bear or reimburse the expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labour and material costs as well as any removal and installation costs in accordance with the statutory provisions if a defect actually exists. Otherwise we can demand reimbursement from the Buyer for the costs arising from the unjustified request to remedy the defect (in particular testing and transport costs), unless the lack of defectiveness was not apparent to the Buyer.

#### 7.9

In urgent cases, if, for example, the safety of operations is at stake, or in order to avoid disproportionate damage, the Buyer has the right to remedy the defect repair himself and to demand compensation for the objectively required expenses. We shall be informed of such activities as soon as possible, if possible prior to the repair. The Buyer's right to rectify defects shall not exist if we would be entitled to refuse the relevant remedial performance in accordance with the statutory regulations.

#### 7.10

The Buyer may withdraw from the contract or reduce the purchase price if the remedy fails or if a reasonable deadline for the remedy set by the Buyer expires unsuccessfully or is not required according to the statutory provisions. There shall, however, be no right to withdraw if the defect is negligible.

#### 7.11

Any claims from the Buyer for damages or reimbursement of expenses incurred shall only be asserted in accordance with § 8 and are otherwise excluded.

### **§ 8 Other Liability**

#### 8.1

Unless set out otherwise in these General Sales Terms and Conditions and in the following provisions, we shall be liable in accordance with the statutory provisions for a breach of contractual and non-contractual duties.

#### 8.2

We will be liable for damages – irrespective of their legal grounds – in cases of intent or 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)

### 8.2.1

for damages resulting from injury to life, body or health;

### 8.2.2

for damage resulting from the breach of material contractual obligations (obligation the proper fulfilment of which constitutes a condition sine qua non and on the fulfilment of which the customer regularly relies and may rely); in this case our liability is however limited to the reimbursement of the foreseeable, typically occurring damages.

### 8.3

Those from items resulting limitations of liability in 8.2 shall also apply to breaches of duty by or in favour of persons whose fault we are responsible for in accordance with statutory provisions. 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 Buyer under the Product Liability Act.

### 8.4

In case of any breach of duty other than relating to defects, the Buyer shall only be entitled to withdraw from or terminate the contract if we are responsible for said breach. A free right of termination for the Buyer (especially pursuant to §§ 651, 649 BGB [German Civil Code]) is excluded. In all other respects, the statutory requirements and legal consequences shall apply.

## **§ 9 Statute of Limitations**

### 9.1

Notwithstanding section § 438 para. 1 No. 3 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 commences upon acceptance.

### 9.2

If, however, the goods are a building or an object that has been used for a building in accordance with its normal use and which has caused its defectiveness (building material), the limitation period of the statutory regulation is 5 years from the date of delivery (§ 438 para. 1 no. 2 BGB). Other special statutory regulations on the statute of limitations remain unaffected (in particular § 438 para. 1 No. 1, par. 3, §§ 444, 445b BGB).

### 9.3

The above limitation based on sales law also applies to any contractual and non-contractual claims for damages made by the Buyer such as may rest on a defect in the goods unless the application of the regular statutory limitation period in §§195, 199 BGB would result in a shorter limitation period in the specific instance. For claims for damages of the Buyer pursuant to § 8 para. 2 sentence 1 and § 8.2.1 and under the Product Liability Act, however, the statute of limitations shall apply exclusively under the statutory limitation periods.

## **§ 10 Applicable law and jurisdiction**

### 10.1

The laws of the Federal Republic of Germany shall apply to these Terms and General Sales Terms and Conditions and the contractual relationship between us and the Buyer to the exclusion of international uniform law, in particular the UN Sales Convention.

### 10.2

If the Buyer is a merchant as defined under HGB (German Commercial Code), a legal entity under public law, or a special public fund, whether domestic or foreign, the exclusive jurisdiction for any disputes arising directly or indirectly under this contract shall be our headquarters in Essen. The same applies if the Buyer is an entrepreneur, as defined in § 14 BGB. However, in all cases we are also entitled to bring an action at the place of performance of the delivery obligation in accordance with these General Sales Terms and Conditions or a prior individual agreement or at the general place of jurisdiction of the Buyer. Statutory provisions that have precedence, in particular regarding exclusive responsibilities, remain unaffected.