

# **General Terms and Conditions of Sale with Alternative Provisions Regarding Rights in Case of Defects and Retention of Title**

## **§ 1 General Provisions, Scope of Application**

(1) These General Terms and Conditions of Sale (GTC) apply to all our business relationships with our customers (hereinafter: “Buyer”). The GTC apply only if the Buyer is an entrepreneur (Section 14 of the German Civil Code (BGB)), a legal entity under public law, or a special fund under public law.

(2) The GTC apply in particular to contracts for the sale and/or delivery of movable goods (hereinafter also: “Goods”), regardless of whether we manufacture the Goods ourselves or purchase them from suppliers (Sections 433, 651 BGB). The GTC, in their current version, shall also serve as a framework agreement for future contracts regarding the sale and/or delivery of movable goods with the same buyer, without our having to refer to them again in each individual case; in such a case, we shall immediately inform the buyer of any changes to our GTC.

(3) Our GTC apply exclusively. Any deviating, conflicting, or supplementary general terms and conditions of the buyer shall only become part of the contract to the extent that we have expressly agreed to their validity. This requirement for consent applies in all cases, for example, even if we carry out the delivery to the buyer without reservation while being aware of the buyer’s general terms and conditions.

(4) Individual agreements made with the buyer on a case-by-case basis (including ancillary agreements, supplements, and amendments) shall in all cases take precedence over these General Terms and Conditions. For the content of such agreements, a written contract or our written confirmation shall be decisive.

(5) Legally relevant declarations and notifications to be made by the buyer to us after the conclusion of the contract (e.g., setting of deadlines, notices of defects, declarations of withdrawal or reduction) must be in writing to be effective.

(6) References to the applicability of statutory provisions are for clarification purposes only. Therefore, even without such clarification, the statutory provisions apply insofar as they are not directly amended or expressly excluded in these GTC.

## **§ 2 Conclusion of the Contract**

(1) Our offers are subject to change and non-binding. This also applies if we have provided the buyer with catalogs, technical documentation (e.g., drawings, plans, calculations, cost estimates, references to DIN standards), other product descriptions, or documents, including in electronic form—to which we reserve ownership and copyright rights.

(2) The buyer’s order for the goods shall be deemed a binding offer to enter into a contract. Unless otherwise specified in the order, we are entitled to accept this offer within 5 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 upon individually or specified by us upon acceptance of the order.

(2) If we are unable to meet binding delivery deadlines for reasons beyond our control (unavailability of the goods), we shall inform the buyer thereof without delay and simultaneously notify the buyer of the expected new delivery period. If the service is still unavailable within the new delivery period, we are entitled to withdraw from the contract in whole or in part; we will immediately refund any consideration already paid by the buyer. A case of unavailability of the service in this sense includes, in particular, the failure of our supplier to deliver to us on time, provided that we have concluded a corresponding covering transaction, neither we nor our supplier are at fault, or we are not obligated to procure the goods in the specific case.

(3) The occurrence of our delay in delivery is determined in accordance with statutory provisions. In any case, however, a reminder from the buyer is required.

(4) The buyer's rights pursuant to § 8 of these General Terms and Conditions and our statutory rights, in particular in the event of an exclusion of the obligation to perform (e.g., due to impossibility or unreasonableness of performance and/or subsequent performance), remain unaffected.

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

(1) Delivery is ex works, which is also the place of performance. At the request and expense of the buyer, the goods will be shipped to another destination (sale by delivery). Unless otherwise agreed, we are entitled to determine the method of shipment (in particular the carrier, route, and packaging) ourselves.

(2) The risk of accidental loss and accidental deterioration of the goods passes to the buyer no later than upon delivery. In the case of a sale by delivery, however, the risk of accidental loss and accidental deterioration of the goods, as well as the risk of delay, passes to the buyer upon delivery of the goods to the forwarding agent, the carrier, or any other person or entity designated to carry out the shipment. If an acceptance has been agreed upon, this shall be decisive for the transfer of risk. In all other respects, the statutory provisions of the law governing contracts for work and services shall apply mutatis mutandis to an agreed acceptance. Delivery or acceptance shall be deemed to have taken place even 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 attributable to the buyer, we are entitled to claim compensation for the resulting damages, including additional expenses (e.g., storage costs). For this, we shall charge compensation per calendar day, beginning with the delivery period or—in the absence of a delivery period—with notification that the goods are ready for shipment.

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

(1) Unless otherwise agreed in individual cases, our prices in effect at the time of contract conclusion shall apply, ex works, plus applicable sales tax.

(2) In the case of a sale by delivery (§ 4 (1)), the buyer shall bear the shipping costs ex works and the costs of any shipping insurance requested by the buyer. Any customs duties, fees,

taxes, and other public charges shall be borne by the buyer. We do not accept returns of transport packaging or any other packaging subject to the Packaging Ordinance; such packaging becomes the property of the buyer, except for pallets.

(3) The buyer shall be in default upon expiration of the agreed payment term. Interest shall accrue on the purchase price at the applicable statutory default interest rate during the period of default. We reserve the right to claim further damages resulting from default. Against merchants, our claim to commercial due date interest (§ 353 HGB) remains unaffected.

(4) The buyer is entitled to rights of set-off or retention only to the extent that his claim has been legally established or is undisputed. In the event of defects in the delivery, the buyer's counterclaims, in particular pursuant to § 7 (6) sentence 2 of these General Terms and Conditions, remain unaffected.

(5) If, after the conclusion of the contract, it becomes apparent that our claim to the purchase price is at risk due to the buyer's inability to pay (e.g., due to a petition for the opening of insolvency proceedings), we are entitled, in accordance with statutory provisions, to withhold performance and—if necessary, after setting a deadline—to withdraw from the contract (Section 321 BGB). In the case of contracts for the manufacture of non-fungible goods (custom-made items), we may declare our withdrawal immediately; the statutory provisions regarding the dispensability of setting a deadline remain unaffected.

#### **§ 6 Retention of Title**

(1) Until full payment of all our current and future claims arising from the purchase agreement and an ongoing business relationship (secured claims), we retain title to the goods sold.

(2) The goods subject to retention of title may not be pledged to third parties or transferred as security prior to full payment of the secured claims. The buyer must notify us immediately in writing if and to the extent that third parties assert claims against the goods belonging to us.

(3) In the event of conduct by the buyer in breach of contract, in particular failure to pay the due purchase price, we are entitled, in accordance with statutory provisions, to withdraw from the contract and/or to demand the return of the goods on the basis of the retention of title. The demand for return does not simultaneously constitute a declaration of withdrawal; rather, we are entitled merely to demand the return of the goods and to reserve the right to withdraw. If the buyer fails to pay the purchase price due, we may assert these rights only if we have previously set the buyer a reasonable deadline for payment without success or if such a deadline is not required under statutory provisions.

(4) The buyer is authorized 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) The retention of title extends to the products created through processing, mixing, or combining our goods to their full value, whereby we are deemed the manufacturer. If, in the event of processing, mixing, or combining with goods of third parties, their right of ownership remains in effect, we shall acquire co-ownership in proportion to the invoice values of the processed, mixed, or combined goods. In all other respects, the same shall apply to the resulting product as to the goods delivered under the title.

(b) The buyer hereby assigns to us as security all claims against third parties arising from the resale of the goods or the resulting product, either in full or in the amount of our share of co-ownership pursuant to the preceding paragraph. We accept the assignment. The obligations of the buyer set forth in paragraph 2 also apply with respect to the assigned claims.

(c) The buyer remains authorized, alongside us, to collect the claim. We undertake not to collect the claim as long as the buyer fulfills its payment obligations to us, is not in default of payment, no petition for the opening of insolvency proceedings has been filed, and there is no other impairment of its ability to perform. However, if this is the case, we may demand that the buyer disclose to us the assigned claims and their debtors, provide all information necessary for collection, hand over the relevant documents, and notify the debtors (third parties) of the assignment.

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

## **§ 7 Buyer's Claims for Defects**

(1) The buyer's rights in the event of material defects or defects of title (including incorrect or incomplete delivery, as well as improper installation or defective installation instructions) are governed by the statutory provisions, unless otherwise specified below. In all cases, the special statutory provisions regarding final delivery of the goods to a consumer remain unaffected (supplier recourse pursuant to §§ 478, 479 BGB).

(2) The basis of our liability for defects is, above all, the agreement made regarding the quality of the goods. All product descriptions that are the subject of the individual contract; it makes no difference whether the product description originates from the buyer, the manufacturer, or us.

(3) Insofar as the quality has not been agreed upon, the statutory provisions shall apply to determine whether a defect exists or not (Section 434(1) sentences 2 and 3 of the German Civil Code (BGB)). However, we assume no liability for public statements made by the manufacturer or other third parties (e.g., advertising claims).

(4) The buyer's claims for defects are contingent upon the buyer having fulfilled its statutory obligations to inspect and give notice of defects (Sections 377, 381 of the German Commercial Code (HGB)). If a defect is discovered during the inspection or at a later date, we must be notified of this in writing without delay. Notification is deemed to be "immediate" if it is made within two weeks, whereby timely dispatch of the notification suffices to meet the deadline. Irrespective of this duty to inspect and notify, the buyer must notify us in writing of obvious defects (including incorrect or short deliveries) in writing within two weeks of delivery,

whereby, again, timely dispatch of the notice is sufficient to meet the deadline. If the buyer fails to conduct a proper inspection and/or report defects, our liability for the unreported defect is excluded.

(5) If the delivered item is defective, we may initially choose whether to provide subsequent performance by rectifying the defect (repair) or by delivering a defect-free item (replacement delivery). Our right to refuse subsequent performance under statutory conditions remains unaffected.

(6) We are entitled to make the owed subsequent performance contingent upon the buyer paying the due purchase price. However, the buyer is entitled to withhold a portion of the purchase price that is reasonable in relation to the defect.

(7) The buyer must give us the time and opportunity necessary to perform the required remedial action, in particular by handing over the goods subject to complaint for inspection. 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 either the removal of the defective item or its reinstallation, if we were not originally obligated to install it.

(8) We shall bear the expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labor, and material costs (excluding removal and reinstallation costs), if a defect actually exists. However, if a request by the buyer to remedy a defect proves to be unjustified, we may demand reimbursement from the buyer for the costs incurred as a result.

(9) In urgent cases, e.g., where operational safety is at risk or to prevent disproportionate damage, the buyer has the right to remedy the defect themselves and to demand reimbursement from us for the expenses objectively necessary for this purpose. We must be notified of such self-remedy immediately, if possible, in advance. The right to remedy the defect oneself does not apply if we are entitled to refuse corresponding subsequent performance in accordance with statutory provisions.

(10) If the subsequent performance has failed, or if a reasonable period for subsequent performance to be set by the buyer has expired without result or is not required under statutory provisions, the buyer may rescind the purchase contract or reduce the purchase price. However, in the case of a minor defect, there is no right of rescission.

(11) The buyer's claims for damages or reimbursement of futile expenses shall exist only in accordance with § 8 and are otherwise excluded.

## **§ 8 Other Liability**

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

(2) We are liable for damages—regardless of the legal basis—in cases of intent and gross negligence. In cases of simple negligence, we are liable only

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

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

(3) The limitations of liability arising from paragraph 2 shall not apply to the extent that we have fraudulently concealed a defect or have assumed a guarantee for the quality of the goods. The same applies to claims by the buyer under the Product Liability Act.

(4) In the event of a breach of duty that does not consist of a defect, the buyer may only withdraw from the contract or terminate it if we are responsible for the breach of duty. A discretionary right of termination on the

part of the buyer (in particular pursuant to Sections 651, 649 of the German Civil Code (BGB)) is excluded. In all other respects, the statutory requirements and legal consequences apply.

## **§ 9 Statute of Limitations**

(1) Notwithstanding § 438(1)(3) of the German Civil Code (BGB), the general statute of limitations for claims arising from material defects and defects of title is one year from delivery. If acceptance has been agreed upon, the statute of limitations begins upon acceptance.

(2) The above limitation period under sales law also applies to contractual and non-contractual claims for damages by the buyer arising from a defect in the goods, unless the application of the standard statutory limitation period (Sections 195, 199 of the German Civil Code (BGB)) would result in a shorter limitation period in individual cases. The limitation periods under the Product Liability Act remain unaffected in any case. Otherwise, for the Buyer's claims for damages pursuant to § 8, only the statutory limitation periods apply.