

## I. General

1. These General Terms and Conditions of Business (“**GTCs**”) constitute an integral part of all contracts with our commercial customers (“**Buyer**”). The GTCs shall only apply in case the Buyer is an entrepreneur (*Unternehmer* in the meaning of Section 14 of the German Civil Code (*Bürgerliches Gesetzbuch – BGB*)), a legal entity under public law (*juristische Person des öffentlichen Rechts*) or a special fund under public law (*öffentlich-rechtliches Sondervermögen*).
2. The GTCs in particular apply to contracts for the sale and/or delivery of chattels (“**Goods**”), irrespective of whether we manufacture the Goods ourselves or purchase them from suppliers (§§ 433, 650 BGB). Unless otherwise agreed, the GTCs also apply as amended at the time of the Buyer’s order or in any event as last communicated to the Buyer in writing (*Textform*) as a master agreement to future contracts of the same kind, without us being required to refer to them again in each individual case.
3. Our GTCs apply exclusively. We accept any general terms and conditions of business of the Buyer which conflict with or deviate from these GTCs only if we have explicitly consented to their application. This consent requirement applies in all cases, even if, for example, we make delivery to the Buyer without reservation despite being aware of such general terms and conditions of business of the Buyer.
4. Any legally relevant statements or notices made or given by the Buyer with regard to the contract (e.g. to set a time limit, to notify defects, to rescind the contract or to reduce the purchase price) shall be made or given in writing, i.e. in written form with handwritten signature (*Schriftform*) or without such signature (*Textform*) (e.g. by letter, e-mail, fax). Any statutory form requirements and other proof, especially in case of doubt regarding

the authority of the declaring party, shall not be affected hereby.

5. Any information regarding the application of statutory provisions is for clarification purposes only. The statutory provisions therefore apply even without such a clarification, unless directly modified or explicitly excluded in these GTCs.

## II. Conclusion of Contract

1. Our offers are subject to change (*freibleibend*) and not binding (*unverbindlich*), unless they are expressly marked as binding or contain a specific period of acceptance. This even applies where we have provided the Buyer with catalogues, technical documentation or other product specifications or documents. We reserve any and all rights to the catalogues, technical documentation or other product specifications or documents.
2. The Buyer’s order for the Goods shall be deemed to be a binding offer of contract. Unless otherwise stated in the order, we shall be entitled to accept this contractual offer within 7 days of its receipt by us. The foregoing shall also apply to any additions or amendments to any binding orders.
3. Acceptance of a contract offer can either be declared in writing (e.g. by order confirmation) or by delivery of the Goods to the Buyer.

## III. Delivery period and delay in delivery

1. The delivery period is agreed upon individually between us and the Buyer or is specified by us when the order is accepted. If the dispatch of the ordered Goods has been agreed, delivery periods and delivery dates refer to the time of handing over the Goods to the forwarding agent (*Spediteur*), carrier (*Frachtführer*) or any other third person responsible for the transport.
2. If we are unable to meet binding delivery periods for any reason for which we are not responsible (e.g. unavailability of

performance), we will inform the Buyer about this immediately and, at the same time, communicate the expected new delivery period. If performance continues to be unavailable even within the new delivery period, we are entitled to rescind the contract in whole or in part; any consideration already paid by the Buyer will be refunded by us without undue delay. Unavailability of performance for the purposes of this provision in particular includes a failure of our suppliers to make delivery to us in due time provided that we have concluded a congruent transaction to cover expected orders, neither we nor our supplier is at fault or we are not obliged to procure in an individual case.

3. The occurrence of default in delivery by us is governed by the statutory provisions. In any event, however, the Buyer is required to first send a reminder.
4. The Buyer's rights under section VIII of these GTCs and our statutory rights, in particular when we are not obliged to perform anymore (e.g. as a result of performance and/or subsequent performance being impossible or unreasonable), shall not be affected.

#### **IV. Delivery, transfer of risks, acceptance, default of acceptance**

1. Delivery will be made ex warehouse which is also the place of performance for the delivery and subsequent performance, if any. If so requested by the Buyer, the Goods will be shipped to a different destination at the Buyer's expense (*Versendungskauf*). Unless otherwise agreed, we are entitled to determine the kind of shipment (including transport company, transport route and packaging).
2. The risk of accidental loss or accidental deterioration of the Goods passes to the Buyer on delivery of the Goods, at the latest. In case of a sale involving shipment to a place other than the place of performance (*Versendungskauf*), however, the risk of accidental loss or accidental deterioration of the Goods

and the risk of delay already pass when the Goods are handed over to the forwarding agent (*Spediteur*), carrier (*Frachtführer*) or other person or entity designated to perform shipment whereby the start of the loading process is decisive. Where an acceptance (*Abnahme*) has been agreed, such acceptance shall be decisive for the passing of risk. The statutory provisions applicable to contracts for work and services (*Werkvertrag*) shall also apply accordingly to an agreed acceptance in all other respects. If the Buyer is in default of acceptance, this shall be deemed equivalent to handover or acceptance. If delivery, handover or acceptance is delayed as a result of circumstances caused by the Buyer, the risk shall pass to the Buyer on the day on which the Goods are ready for delivery and we have notified the Buyer accordingly.

3. If the Buyer defaults in accepting delivery or if the Buyer fails to cooperate or if our delivery delays for any other reason for which the Buyer is responsible, we are entitled to claim compensation of any damage resulting therefrom including any additional expenses (such as storage costs). The Buyer shall be entitled to prove that either no damage has occurred to us at all or only a significantly lower damage.

#### **V. Prices and terms of payment**

1. Unless otherwise agreed in individual cases, our prices valid at the time of conclusion of the contract shall apply, namely ex warehouse, without packaging, freight, postage or insurance, plus statutory VAT.
2. In the event of a sale of the Goods involving shipment of the Goods to a place other than the place of performance (*Versendungskauf*, section IV, para. 1), the costs of transport ex warehouse and the costs of any transport insurance requested by the Buyer are at the expense of the Buyer. All customs duties, fees, taxes, and other public levies shall be paid by the Buyer.

3. If the delivery period for ordered Goods is more than four (4) months, we reserve the right to increase the price agreed in accordance with the increase in our costs (e.g. increases in prices of raw materials, labour costs, customs duties, taxes, etc.). If the price increases by more than 5%, the Buyer is entitled to rescind the contract, and notice of such rescission has to be given in writing within one week of receipt of the information regarding the price increase.
4. Unless otherwise agreed, the agreed purchase price is due and payable within 14 days from invoicing and delivery or acceptance of the Goods. However, we are entitled at any time to carry out a delivery in whole or part only against advance payment, even in the course of an ongoing business relationship. We will declare such a proviso at the latest when confirming the order.
5. After expiry of the aforementioned term for payment the Buyer will be in default of payment. During the period of delay in payment, default interest is payable on the purchase price in the amount of the applicable statutory interest rate. We reserve the right to assert further damages based on such default. In dealings with merchants (*Kaufleuten*), our right to claim commercial default interest (Section 353 of the German Commercial Code (Handelsgesetzbuch – HGB)) shall not be affected.
6. The offsetting with counterclaims of the Buyer or the withholding of payments due to such claims is only permissible if these claims are undisputed or legally established or result from the same order under which the respective delivery was made.
7. If it becomes apparent after conclusion of the contract (e.g. through an application to open insolvency proceedings) that our claim to the purchase price is at risk as a result of an insufficient ability of the Buyer to perform, we are entitled to refuse performance in accordance with the statutory provisions and - if necessary after setting a deadline - to withdraw from the contract (§ 321 BGB). If the contract

is for the manufacture of a unique item (single piece production - *Einzelanfertigung*), we can withdraw from the contract immediately; the statutory provisions regarding the dispensability of setting a time limit shall not be affected.

## VI. Retention of title

1. We reserve title to the Goods sold until all present and future claims of us under the sales contract and any ongoing business relationship ("**Secured Claims**") have been settled in full.
2. Until full settlement of all Secured Claims, the Goods subject to a reservation of title may neither be pledged nor transferred by way of security to any third party. The Buyer shall inform us in writing without undue delay if a petition for the opening of insolvency proceedings has been filed or in the event of a third party access to the Goods belonging to us (e.g. attachments).
3. In the event of a failure of the Buyer to comply with the contract, in particular by failing to pay the purchase price due, we are entitled to rescind the contract in accordance with the statutory provisions and/or to demand on the basis of its reservation of title that the Goods be returned. The demand for a return of the Goods does not at the same time include the declaration of withdrawal; we are rather entitled to only demand the return of the Goods and to reserve the right to rescind the contract. If the Buyer fails to pay the purchase price due, we may only assert these rights after we have previously set the Buyer a reasonable time limit for payment without success or if such a time limit is dispensable according to the statutory provisions.
4. Until revocation according to (c) below, the Buyer is entitled 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 reservation of title extends to the products created by processing, mixing or

combining of our Goods at their full value, with us being 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 proportion to the invoice values of the processed, mixed or combined Goods. In all other respects, the product created is subject to the same rules and provisions as the Goods delivered under reservation of title.

- b) By way of security, the Buyer hereby assigns to us all claims against third parties resulting from a resale of the Goods or the product created in their entirety or in accordance with our co-ownership share as per the preceding paragraph. We accept the assignment. The obligations of the Buyer referred to in subsection 2 also apply with respect to the claims assigned.
- c) The Buyer remains entitled to collect the claim beside us. We undertake to not collect the claim as long as the Buyer meets the Buyer's payment obligations towards us, there is no lack of ability of the Buyer to perform, and we do not assert the reservation of title by exercising any of its rights under subsection 3. If that is the case, however, we can demand that the Buyer discloses to us the claims assigned and the relevant debtors, provides all information required for collection, hands over the relevant documentation and informs the debtors (third parties) of the assignment. We are also entitled in this case to revoke the Buyer's authorisation to resell and further process the Goods subject to reservation of title.
- d) If the realisable value of security exceeds the amount of our claims by more than 10%, we will release security of our choice at the Buyer's request.

## VII. Rights of the Buyer in the event of defects

1. The rights of the Buyer in the event of material defects (*Sachmangel*) or defects of title (*Rechtsmangel*) (including the delivery of wrong items or insufficient quantities and improper assembly or defective assembly instructions) shall be governed by the statutory provisions, unless otherwise provided below. The special provisions of law applicable in case of a final delivery of unprocessed Goods to consumers shall not be affected in any event, even if the consumer has further processed the Goods (supplier recourse (*Lieferantenregress*) in accordance with Section 478 of the German Civil Code). Claims under supplier recourse are excluded if the defective Goods were further processed by the Buyer or another entrepreneur, for example by incorporation into another product.
2. The basis of our liability for defects is primarily the agreement reached on the quality of the Goods. All product descriptions and manufacturer information which are the subject matter of the individual contract or which were made public by us (in particular in catalogues or on our Internet homepage) at the time of the conclusion of the contract shall be deemed to be an agreement on the quality of the Goods.
3. Where no specific quality has been agreed, the existence or non-existence of a defect has to be determined according to the statutory rule (Section 434 (1) sentences 2 and 3 of the German Civil Code). However, we assume no liability for public statements of the manufacturer or any other third parties (e.g. advertising statements) to which the Buyer has not pointed out to us that these have been decisive for his purchase.
4. The Buyer's rights in case of defects are subject to the condition that the Buyer has complied with the statutory obligations to inspect the Goods and to notify defects (Sections 377, 381 of the German Commercial Code). In the case of Goods which are intended for

installation or other further processing, an inspection must in all cases be carried out immediately before installation or further processing. If a defect is discovered at delivery, during inspection or at any time thereafter, we shall be notified of such defect in writing without undue delay. In any event, obvious defects must be reported within five (5) working days from delivery and defects not detectable during inspection within the same period from the time of detection. If the Buyer fails to properly inspect the Goods and/or to notify defects, our liability for any defect not notified or not notified in time or not properly notified is excluded in accordance with the statutory provisions.

5. If the item delivered is defective, we can first choose whether to make subsequent performance (*Nacherfüllung*) by rectifying the defect (repair – *Nachbesserung*) or by delivering an item free of defects (substitute delivery – *Ersatzlieferung*). Our right to refuse subsequent performance where the statutory requirements are fulfilled shall not be affected.
6. We are entitled to make subsequent performance conditional upon the Buyer's payment of the purchase price due. However, the Buyer is entitled to retain such portion of the purchase price which is appropriate in relation to the defect.
7. The Buyer shall give us the time and opportunity required for the subsequent performance owed and in particular to hand over the item complained about for examination. In case of substitute delivery, the Buyer shall return the defective item to us in accordance with the statutory provisions. Subsequent performance does not include the removal of the defective item or its reinstallation if we were not originally obliged to install it.
8. The expenses necessary for examination and subsequent performance, in particular costs of transport, road user charges, costs of labour and materials and, if applicable, removal and installation, will be paid or reimbursed by us in accordance with the statutory provisions, provided that a defect actually exists.

Otherwise we can demand from the Buyer reimbursement of the costs incurred as a result of the unjustified demand for a rectification of defects (in particular costs of examination and transport), unless it was impossible for the Buyer to determine the lack of defectiveness.

9. If subsequent performance has failed or if the time limit to be fixed by the Buyer for subsequent performance has expired without success or if such period is dispensable pursuant to the statutory provisions, the Buyer can rescind the sales contract or reduce the purchase price. However, the Buyer is not entitled to rescind the contract if the defect is insignificant.
10. Even in the event of defects the Buyer is entitled to claim damages or reimbursement of futile expenses only in accordance with section VIII; otherwise, such claims are excluded.

#### **VIII. Other liability**

1. Even in the case of defects, the Buyer's claims for damages or compensation for futile expenditure shall only exist in accordance with the provisions of this Section VIII. and shall otherwise be excluded.
2. We are liable for damages – irrespective of the legal basis – within the scope of fault-based liability (*Verschuldenshaftung*) in the event of intent or gross negligence. In case of slight negligence, we shall only be liable, subject to statutory limitations of liability (e.g. care in our own affairs; insignificant breach of duty), for
  - a) damage resulting from injury to life, body or health,
  - b) damage resulting from the breach of a material contractual duty (a duty the fulfilment of which enables the proper performance of the contract in the first place and on the fulfilment of which the other party to the contract usually relies and may rely); in this case, however, our liability is limited

to compensation of the foreseeable damage typically arising.

3. The limitations of liability resulting from subsection 2 also apply to breaches of duty by or in favour of persons for whose fault we are responsible pursuant to the statutory provisions. They do not apply if we have fraudulently concealed a defect or assumed a guarantee for the quality of the Goods or to claims of the Buyer under the Product Liability Act (*Produkthaftungsgesetz*).
4. In the event of a breach of duty which does not consist in a defect, the Buyer can rescind or terminate the contract only if we are responsible for the breach of duty. The right of the Buyer to terminate at discretion (in particular under Sections 650, 648 of the German Civil Code) is excluded. In all other respects, the statutory requirements and legal consequences apply.

#### **IX. Limitation**

1. In deviation from Section 438 (1) No. 3 of the German Civil Code, the general limitation period for claims arising from material defects or defects of title is one year from delivery. Where an acceptance has been agreed, the limitation period begins to run upon acceptance.
2. The limitation periods applicable under sales law stated above also apply to contractual and non-contractual claims of the Buyer for damages which are based on a defect of the Goods, unless the application of the usual statutory limitation period (Sections 195, 199 of the German Civil Code) would, in an individual case, result in a shorter limitation period. However, claims of the Buyer for damages under section VIII subsec. 2, sentence 1 and sentence 2(a) or under the Product Liability Act become statute-barred only in accordance with the statutory limitation periods.

#### **X. Applicable law; jurisdiction**

1. These GTCs and the contractual relationship between us and the Buyer are governed by the laws of the Federal Republic of Germany, to the exclusion of international uniform law, in particular the United Nations Convention on Contracts for the International Sale of Goods (CISG).
2. If the Buyer is a merchant (*Kaufmann*) within the meaning of the German Commercial Code (*HGB*), a legal entity under public law (*juristische Person des öffentlichen Rechts*) or a special fund under public law (*öffentlich-rechtliches Sondervermögen*), the courts at our principal place of business in Remscheid, Germany, shall have exclusive – including international – jurisdiction over all disputes directly or indirectly arising from the contractual relationship. The same applies accordingly if the Buyer is an entrepreneur as defined in Section 14 of the German Civil Code (*BGB*). However, we are in all cases also entitled to take legal action at the place of performance for the delivery obligation as provided by these GTCs or an overriding individual agreement or at the Buyer's place of general jurisdiction. Any overriding statutory provisions, in particular on exclusive jurisdiction, shall not be affected.