

## **General Terms and Conditions (GTC)**

### **§ 1 Applicability, Form, Documents**

(1) These General Terms and Conditions ("GTC") shall apply to the entire business relationship with our customer („Purchaser"). In particular, these GTC shall apply to sales and/or delivery contracts of movable goods no matter if we manufacture the goods by ourselves or purchasing them partially or entirely from our sub-suppliers (§§ 433, 651 of the German Civil Code). Unless otherwise agreed, these GTC shall apply in the version at the time of Purchaser's latest order and also to any similar contracts in the future without any need of making express reference to the GTC or agreement thereon in each case.

(2) Our GTC shall apply exclusively. Different or additional terms and conditions of Purchaser are expressly rejected unless explicitly confirmed by us in writing. When we deliver goods or render other services this shall in no way be construed as acceptance of additional or different terms and conditions of Purchaser.

(3) Legal declarations and notices of Purchaser pertaining to the sales/delivery contract (e.g. setting legal deadlines, notification of quality defects, withdrawal from contract etc.) require text form according to § 126b German Civil Code (i.e. e-mail, facsimile).

(4) We reserve all proprietary rights and copyrights to catalogs provided to Purchaser, including in electronic form, technical documentation (such as drawings, plans, calculations, calculations), other product descriptions or documents. These documents shall not be made accessible to any third parties without our prior written consent.

### **§ 2 Conclusion of Contract**

Our offers are non-committal and non-binding. Purchaser's order is considered as binding contract offer. Unless otherwise stated in such order, we are entitled to accept this contract offer within two weeks of its receipt (order confirmation).

### **§ 3 Time of Delivery and Delay of Delivery**

(1) The delivery period is individually to be agreed or specified by us upon acceptance of the order (order confirmation).

(2) Business disruption for which we are not responsible, in particular but not limited to strikes / workouts and lockouts as well as cases of force majeure, which are based on an unforeseeable and / or a non-culpable event and lead to serious breakdowns (this also applies to our sub-suppliers) shall extend the delivery time accordingly.

(3) If we cannot comply with binding delivery deadlines for reasons for which we are not responsible (unavailability of the service), we will inform the Purchaser without undue delay and at the same time notify the expected new delivery time. If the delivery/service is not available within the new delivery period, we are entitled to withdraw from the contract in whole or in part; we will reimburse immediately any consideration paid by the Purchaser, if any. A case of non-availability of the service is in particular the non-timely self-delivery by our supplier(s) provided that we have entered into a congruent purchase contract and neither we nor our supplier is at fault or if we are not obliged to ensure procurement in a specific case.

(4) Default of delivery is governed by the statutory provisions. In any case, a reminder from the Purchaser is required. If we are in delay of delivery, the Purchaser can demand a lump sum payment as liquidated damages. The lump sum for each completed calendar week of default amounts to 0.5% of the delivery value (net price), but in total no more than 5%. We reserve the right to prove that the Purchaser did not suffer any damage or lesser damage.

(5) The rights of the Purchaser in accordance with § 9 of these Terms and Conditions and our statutory rights, in particular in case of an exclusion of the obligation to perform remain unaffected.

### **§ 4 Delivery, Pass on Risk, Receiving Goods, Acceptance of Performance, Default in Acceptance**

(1) Delivery is *ex works*. Upon Purchaser's request, goods can be sent to another location at Purchaser's cost (Shipping Purchase). Unless otherwise agreed, we may, at our discretion, choose way of transportation, carrier/cargo company and packaging.

(2) We are allowed to make partial deliveries, unless they are unreasonable to accept for the Purchaser.

(3) Purchaser may not refuse to receive goods due to minor defects.

(4) If the Purchaser is in default of acceptance, fails to cooperate, or delays our delivery for other reasons attributable to Purchaser, we shall be entitled to demand compensation for any resulting damage including additional expenses (e.g. storage costs). In this regard, we may charge a lump sum payment of 0.5% of the net order value per each calendar day, but no more than 10% of the net order value, starting with the delivery date or - in the absence of a delivery period - with the notification of readiness for dispatch of the goods. We are entitled to prove higher damages; our legal rights (in particular compensation for additional expenditure, reasonable compensation, termination) shall remain unaffected. The lump sum, however, is to be credited to the exceeding

claim for damages. The Purchaser is free to prove that we have incurred no or less damage than the lump sum amount.

#### **§ 5 Prices and Payment Conditions, Right of Retention, Set-off**

(1) Unless otherwise agreed, our actual prices at the time of conclusion of contract shall apply. The prices are ex works plus any statutory VAT.

(2) In the event of a Shipping Purchase (§ 4 (1) sentence 2), Purchaser bears the transport costs ex warehouse and the costs of a transport insurance (if insurance is requested by Purchaser). Any duties, fees, taxes and other public charges shall be borne by the buyer.

(3) The purchasing price shall be paid within 30 days of invoicing and delivery or acceptance of performance as the case may be. However, we are entitled to request total or partial prepayment at any time. Such request will be made with our order confirmation at the latest. If Purchaser fails to pay within the time specified before, we are entitled to charge for interests of delay according to statutory provisions without being required to set a reminder for payment.

(4) If, after the contract is entered into, it becomes apparent that our entitlement to consideration (purchase/service price payment) is jeopardized by Purchaser (e.g. by application for insolvency proceedings), we may refuse to render our performance or – after setting a deadline, if needed – to rescind the contract (§ 321 German Civil Code). However, our right to refuse performance shall not apply if consideration is made or security is granted by Purchaser.

(5) Purchaser shall have no right to set off or retention unless the underlying counterclaims have been conclusively determined by a court or expressly acknowledged by us. In case of defective delivery, however, the Purchaser shall have all legal rights under statutory provisions.

#### **§ 6 Retention of Title**

(1) The items pertaining to the Supplies ("Retained Goods") shall remain our property until each and every claim of us against the Purchaser on account of the business relationship has been fulfilled. If the combined value of our security interests exceeds the value of all secured claims by more than 10%, we shall release a corresponding part of the security interest if so requested by the Purchaser; we shall be entitled to choose which security interest to release.

(2) For the duration of the retention of title, the Purchaser may not pledge the Retained Goods or use them as security, and resale shall be possible only for resellers in the ordinary course of their business and only on condition that the reseller receives payment from its customer or makes the transfer of property to the customer dependent upon the customer fulfilling its obligation to effect payment.

(3) Should Purchaser resell Retained Goods, Purchaser assigns to us, already today, all claims Purchaser will have against its customers out of the resale, including any collateral rights and all balance claims, as security, without any subsequent declarations to this effect being necessary. If the Retained Goods are sold on together with other items and no individual price has been agreed with respect to the Retained Goods, Purchaser shall assign to us such fraction of the total price claim as is attributable to the price of the Retained Goods invoiced by us.

(4) a) Purchaser may process, amalgamate or combine Retained Goods with other items. Processing is made for us. Purchaser shall store the new item thus created for us, exercising the due care of a diligent business person. The new items are considered as Retained Goods.

b) Already today, we and Purchaser agree that if Retained Goods are combined or amalgamated with other items that are not the property of us, we shall acquire co-ownership in the new item in proportion of the value of the Retained Goods combined or amalgamated to the other items at the time of combination or amalgamation. In this respect, the new items are considered as Retained Goods.

c) The provisions on the assignment of claims according to (3) above shall also apply to the new item. The assignment, however, shall only apply to the amount corresponding to the value invoiced by us for the Retained Goods that have been processed, combined or amalgamated.

d) Where Purchaser combines Retained Goods with real estate or movable goods, it shall, without any further declaration being necessary to this effect, also assign to us as security its claim to consideration for the combination, including all collateral rights for the pro-rat amount of the value the combined Retained Goods have on the other combined items at the time of the combination.

(5) Until further notice, Purchaser may collect assigned claims relating to the resale. We are entitled to withdraw Purchaser's permission to collect funds for good reason, including, but not limited to delayed payment, suspension of payments, start of insolvency proceedings, protest or justified indications for overindebtedness or pending insolvency of Purchaser. In addition, we may, upon expiry of an adequate period of notice disclose the assignment, realize the claims assigned and demand that Purchaser informs its customer of the assignment.

(6) The Purchaser shall inform us forthwith of any seizure or other act of intervention by third parties. If a reasonable interest can be proven, Purchaser shall, without undue delay, provide us with the information and/or documents necessary to assert the claims Purchaser has against its customers.

(7) Where the Purchaser fails to fulfill its duties, fails to make payment due, or otherwise violates its obligations we shall be entitled to rescind the contract and take back the Retained Goods in the case of continued failure following expiry of a reasonable remedy period set by us; the statutory provisions providing that a remedy period is not needed shall be unaffected. The Purchaser shall be obliged to return the Retained Goods. The fact that we take back Retained Goods and/or exercises the retention of title, or has the Retained Goods seized, shall not be construed to constitute a rescission of the contract, unless we so expressly declare.

## **§ 7 Quality Defects**

(1) Unless otherwise provided hereunder, the Purchaser shall have all statutory rights in case of quality defects. Special terms that apply to end-deliveries to consumers shall not be affected.

(2) We do not assume any liability for public statement of third parties (e.g. advertisement). The same applies to defects that were caused by improper handling, external influences, ingress of liquids, incorrect connection or improper or wrongful operation by the Purchaser or a third party, furthermore damage caused by force majeure (e.g. lightning strikes), due to overvoltage, static discharges, radio interference, caused by the use of used, unsuitable or leaking batteries, defects due to wear or due to overstressing of mechanical parts or due to contamination as well as damage caused by defective data storage devices or programming errors. Parts not securely fixed with our product/device (such as memory cards, memory batteries, batteries, power supplies) are excluded from any warranty.

(3) If the goods are defective, we can choose whether we provide supplementary performance by rectifying the defect (rectification) or by delivering a defect-free item (replacement). Our right to refuse supplementary performance under statutory provisions shall remain unaffected.

(4) We are entitled to make subsequent performance owed dependent on the Purchaser paying the purchase price due. Purchaser, however, is entitled to retain a portion of the purchase price which is reasonable in relation to the defect.

(5) Purchaser shall grant us reasonable time and opportunity for supplementary performance, in particular to hand over the rejected goods for inspection purposes. In the event of delivery of new goods, Purchaser shall be obliged to return the defective goods according to legal provisions. In case of replacement, Purchaser shall to return the defective item according to the legal regulations.

(6) Purchaser's claims for damages or reimbursement of futile expenses in connection with the delivery of defective goods are limited to § 9 of these GTC; in all other cases they are excluded.

## **§ 8 Industrial Property Rights; Legal Defects**

(1) Unless otherwise agreed, we are obliged to deliver goods free of industrial property rights and copyrights of third parties (hereinafter: property rights) only in the country of the place of delivery. If a third party asserts legitimate claims against the Purchaser due to the infringement of property rights by deliveries made by us in accordance with the contract, we shall be liable to the Purchaser within the period specified in § 10 (1) as follows:

(a) We will, at our discretion, either obtain a right of use at our expense for the deliveries in question, modify them so that the property right will not be violated, or exchange them. If this is not possible for us on reasonable terms, the Purchaser is entitled to the statutory right of withdrawal or reduction of payment.

(b) Our obligation to pay damages is governed by § 9 hereunder.

(c). Our aforementioned obligations shall exist only if the Purchaser notifies us immediately in writing of the claims asserted by the third party, does not acknowledge an infringement and reserves all defensive measures and settlement negotiations. If the Purchaser suspends the use of or stops the delivery for mitigation or other important reasons, he is obliged to inform the third party that this shall be in no way an acknowledgment of an infringement of property rights.

(2) Claims of the Purchaser are excluded to the extent Purchaser is responsible for the infringement.

(3) Claims of the Purchaser are excluded further, if/to the extent the violation of third parties' property rights is caused by specific requirements of the Purchaser, by an unforeseeable application or by the fact that the our delivery is changed by the Purchaser or used together with products not supplied by us.

(4) In the case of infringement of property rights, the provisions of § 7 (1) sentence 2, (4) and (5) sentence 2 shall apply mutatis mutandis to the claims of Purchaser pursuant to subsection 1 (a) above.

(5) In case of other legal defects, the provisions of § 8 shall apply mutatis mutandis.

(6) Other possible claims of the Purchaser against us and our agents due to a legal defect are excluded.

## **§ 9 Other Liability**

(1) We are liable in all cases of contractual and non-contractual liability for intent and gross negligence for damages or reimbursement of futile expenses in accordance with statutory provisions.

(2) In other cases, unless otherwise stipulated in § 9 (3), we shall be liable only in the case of a breach of a material contractual obligation (so-called cardinal duty). A contractual obligation is essential if their fulfillment

enables the proper execution of the contract in the first place and on the compliance of which the Purchaser may typically rely on. In this case, however, our liability is limited to the replacement of the contract-typical damage foreseeable at the conclusion of contract. In all other cases the liability – except for § 9 (3) – is excluded.

(3) The above limitations of liability shall not apply in the case of injury to life, limb or health, for a defect after assuming a guarantee for the condition of the object and for fraudulently concealed defects. The liability under the Product Liability Act remains unaffected.

(4) Insofar as our liability is excluded or limited, this also applies to the personal liability of our employees, representatives and agents.

#### **§ 10 Warranty Period; Statute of Limitation**

(1) The warranty period for claims resulting from delivery of defective goods is two (2) years for new products and one (1) year for used products.

(2) Such warranty period applies also to all contractual and other claims for damages of Purchaser which are based on delivery of defective goods. This shall not apply to Purchaser's claims for damages according to § 9 (1) and (3); these claims are regulated by the statutory limitation periods.

#### **§ 11 Repair Conditions (outside the warranty)**

(1) Unless a cost estimate is expressly requested, the repair shall be carried out against calculation of our cost rate valid on the day the order is placed. If the repair is not made based on a cost estimate, we will charge the actual costs incurred. If our service is carried out at the premises of the Purchaser or third parties, the travel times and costs are to be borne by Purchaser. The costs for the return of repair equipment and packaging costs are to be borne by Purchaser as well. Unless otherwise agreed, repair services require advance payment, cash or cash on delivery payment.

(2) The warranty period for the repair service provided is one (1) year from the statutory limitation period.

(3) § 9 and § 10 (2) of these GTC apply mutatis mutandis.

#### **§ 12 Conditional Performance**

The performance of this contract is conditional upon that no hindrances attributable to German, US or otherwise applicable national, EU or international rules of foreign trade law or any embargos or other sanctions exist. The Purchaser shall provide any information and documents required for export, transport and import purposes.

#### **§ 13 Miscellaneous**

(1) These GTC and the contractual relationship and its interpretation shall solely be governed by German law to the exclusion of the United Nations Convention on contracts for the International Sale of Goods (CISG).

(2) Exclusive jurisdiction for all and any disputes arising from or in connection with these GTC and/or the contractual relationship shall be our principle place of business. However, we may sue Purchaser at Purchaser's principle place of business.

(3) The invalidity of any provision of these GTC shall not affect the validity of the other provisions. The Parties shall replace any invalid provision by one which is valid and comes closest to the economic purpose of that of the invalid provision. The same applies to a gap in the contract.