



## GENERAL TERMS AND CONDITIONS OF PURCHASING

### § 1 Scope, form

- (1) These General Terms of Purchasing (GTP) apply for all business relationships with our business partners and suppliers (“Vendors”).
- (2) The GTP apply in particular for contracts concerning the sale and/or supply of movable property (“goods”), regardless of whether the Vendor manufactures the goods himself or purchases them from suppliers (sections 433, 650 BGB - German Civil Code). Unless otherwise agreed, the HTP apply in the version valid at the time of the order of the Purchaser or, at the least, in the version most recently communicated to him in text form, as framework agreement, also for future contracts of the same kind, without the requirement for us to refer to it again in each individual case.
- (3) These GTP apply exclusively. Deviating, contradictory or supplementary general terms and conditions of the Vendor shall only comprise a component of the contract when, and to the extent that, we have expressly agreed to their validity in writing. This requirement for authorization applies in any case, for example, also where the Vendor refers to his GTC in the scope of order confirmation and we do not expressly contradict this.
- (4) Individual agreements (e.g., framework supply agreements, quality assurance agreements) and statements in our order have priority over the GTP. In case of doubt, commercial terms are to be interpreted in accordance with the Incoterms® published by the International Chamber of Commerce in Paris in the version valid at the time of conclusion of contract.
- (5) Legally relevant declarations and notifications of the Vendor relating to the contract (e.g., setting of deadlines, reminder, withdrawal) are to be submitted in writing. Written form as per these GTP includes written and text form (e.g., letter, e-mail, fax). Statutory legislative provisions and other supporting documents, in particular in case of doubt regarding the legitimation of the declaring party, remain unaffected.
- (6) References to the applicability of statutory provisions have clarifying significance only. Even without such a clarification the statutory provisions therefore apply, to the extent that these are not directly amended or expressly excluded in the GTP.

### § 2 Conclusion of contract

- (1) Our order is regarded as binding at the earliest with written submission or confirmation. The Vendor shall notify us prior to acceptance of any evident errors (e.g., mistakes in spelling and calculation) and any incompleteness in the order, including the order documents for the purpose of correction, respectively completion; otherwise, the contract shall be deemed to have not been concluded.



- (2) The Vendor is obliged to confirm our order in writing within a deadline of 3 working days or to carry out the order via the shipping of the goods without reservation (acceptance).
- (3) Delayed acceptance shall be deemed to be a new offer and requires acceptance by us.

### **§ 3 Delivery time and delayed delivery**

- (1) The delivery time stated by us in the order is binding. The Vendor is obliged to notify us in writing without delay if he is likely to be unable to meet the agreed delivery times – for whatever reason.
- (2) Should the Vendor fail to deliver his performance or fail to do so within the agreed delivery time, or if he is in default, our rights – in particular to withdrawal and compensation – shall be in accordance with the statutory provisions. The terms in para. 3 are not affected.
- (3) If the Vendor is in default, we may – in addition to further statutory claims – demand a fixed sum compensation of our default loss to the amount of 1% of the net price per completed calendar week, however, in total not more than 5% of the net price of the goods with delayed delivery. We reserve the right to prove that a higher loss has been incurred. The Vendor reserves the right to prove that no loss or a significantly lower loss has been incurred.

### **§ 4 Performance, delivery, transfer of risk, delayed acceptance**

- (1) The Vendor is not entitled to have the performance that he owes provided by third persons (e.g., subcontractors) without our prior, written agreement. The Vendor bears the procurement risk for his goods and services, unless otherwise agreed in individual cases (e.g., limitation to stock).
- (2) Delivery shall occur in accordance with the designated site stated in the order. The respective designated site is also the place of performance for the delivery and any supplementary performance (debt to be discharged at the creditor's domicile).
- (3) The delivery is to be accompanied by a delivery note with statement of date (issue and shipping), content of the delivery (item number and quantity) as well as our order identification (date and number). In the event of the delivery note being missing or incomplete, we shall not be responsible for resultant delays in processing and payment. Separate from the delivery note, a corresponding shipping note with the same content is also to be sent to us.
- (4) The risk of any accidental loss and accidental deterioration for the object is transferred to us with hand over at the place of performance. To the extent that acceptance is agreed, this is decisive for the transfer of risk. Beyond this, the statutory provisions of work and services contract law apply. Handover and acceptance are deemed to have been undertaken if we have delayed acceptance.
- (5) The statutory provisions apply for the onset of our delayed acceptance. The Vendor is also required to expressly offer us his performance when a specific or specifiable calendar time is agreed for



an action or participation on our part (e.g., provision of material). If we are in default of acceptance, the Vendor may demand compensation of his additional expense in accordance with the statutory provisions (section 304 BGB). If the contract concerns a unique item to be manufactured by the Vendor (custom production), the Vendor shall only be entitled to further rights if we have committed ourselves to participation and are responsible for the failure to participate.

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

- (1) The price stated in the order is binding. All prices include the statutory value-added tax, where this is not indicated separately.
- (2) Unless otherwise agreed in individual cases, the price includes all performance and ancillary performance of the Vendor (e.g., assembly, installation) together with all ancillary costs (e.g., orderly packaging, transport costs including any transport and third-party liability insurance cover).
- (3) The agreed price is payable within 30 calendar days of complete delivery and performance (including any agreed acceptance) as well as receipt of an orderly invoice. If we make payment within 14 calendar days, the Vendor shall grant us a 3% cash discount on the net amount of the invoice. In the case of bank transfer the payment is deemed to have been made successfully where our transfer order is received by our bank prior to the passing of the payment deadline; we are not responsible for delays caused by the banks involved in the payment process.
- (4) We do not owe any interest on maturity. The statutory provisions apply for delayed payment.
- (5) Rights to offsetting and retention as well as the plea of non-fulfilled contract are also available to us to the statutory extent. In particular, we are entitled to retain payments due so long as we still have claims against the Vendor for incomplete or defective performance.
- (6) The Vendor only has a right to offsetting and retention for legally determined or undisputed counter claims.

### **§ 6 Confidentiality and retention of title**

- (1) We reserve title and copyright to illustrations, plans, drawings, calculations, design instructions, product descriptions and other documents. Such documents are to be used exclusively for the contractual performance and returned to us following completion of the contract. The documents are to be kept secret from third parties, including after the ending of the contract. The duty to maintain confidentiality only lapses when and to the extent that the knowledge contained in the assigned documents becomes common knowledge. Separate confidentiality agreements and statutory provisions regarding protection of confidentiality are not affected.



(2) The above terms apply accordingly for substances and materials (e.g., software, finished and semi-finished products) as well as for tools, templates, samples, and other items that we provide the Vendor with for manufacturing. Such items are – to the extent that they are not processed – to be stored separately at the expense of the Vendor and insured adequately against destruction and loss.

(3) Processing, blending or combination (further processing) of items provided by the Vendor is undertaken on our behalf. The same applies for the further processing of the delivered goods by us, so that we are deemed to be the manufacturer and acquire title to the product at the latest with the further processing, according to the statutory provisions.

(4) The transfer of the goods to us is to occur unconditionally and without regard to payment of the price. Should we, however, in individual cases, accept an offer of the Vendor for transfer subject to payment of the purchase price, the retention of title of the Vendor shall lapse at the latest with payment of the purchase price of the goods delivered. We remain entitled in orderly business transactions and including prior to payment of the purchase price to sell on the goods with assignment in advance of the resultant claims (alternatively, application of simple retention of title extended to resale). In any case excluded are all other forms of retention of title, in particular extended and forwarded retention of title and retention of title extended to further processing.

## **§ 7 Defective delivery**

(1) For our rights with regard to material and legal defects in the goods (including incorrect and short delivery as well as improper assembly/installation or defective instructions) and other breaches of duty by the Vendor the statutory provisions apply and, exclusively in our favor, the following supplements and clarifications.

(2) According to the statutory provisions, the Vendor is liable in particular for the goods having the agreed characteristics at transfer of risk. Also applicable as agreement of quality are the product descriptions which – in particular through designation or reference in our order – are a subject of the respective contract or incorporated into the contract in the same manner as these GTP. It makes no difference if the product description originates with us, the Vendor, or the manufacturer.

(3) In the case of goods with digital elements or other digital content the Vendor also owes the provision and updating of the digital content to the extent that this arises from an agreement of characteristics and quality as per para. 2 or other product descriptions of the manufacturer or on his behalf, in particular on the internet, in advertising or on the goods label.

(4) We are not obliged to conduct an examination of the goods or separate enquiries regarding any defects at conclusion of contract. Deviating in part from section 442 para. 1 S. 2 BGB, we are also entitled to unlimited claims for defects where the defect has remained unknown to us at conclusion of contract due to gross negligence.



(5) For the commercial obligation of examination and notification of defects the statutory provisions apply (sections 377, 381 HGB - German Commercial Code) subject to the following condition: our obligation to examine is limited to defects that become apparent in the course of our goods incoming inspection through external observation, including of the shipping papers (e.g. transport damage, incorrect and short delivery) or are identifiable in random samples conducted by our quality control. To the extent that acceptance is agreed, no obligation to examine exists. Beyond this, it depends on the extent to which an examination is feasible taking account the circumstances of the individual case in an orderly business transaction. Our duty to notify defects in the case of defects discovered at a later stage remains unaffected. Irrespective of our obligation to examine, our notification (notification of defects) is also deemed to be prompt and timely where it is sent within 5 working days of discovery or, in the case of apparent defects, from delivery.

(6) Supplementary performance also includes the removal of the defective goods and subsequent installation, to the extent that the goods have been installed in or fitted to another object in accordance with their type and intended purpose prior to discovery of the defect; our statutory claim to compensation of corresponding expense (costs of removal and installation) remains unaffected. The expense incurred for the purpose of inspection and supplementary performance, in particular, transport, travel, work and material costs as well as any costs of removal and installation, shall be borne by the Vendor, including where it emerges that no defect actually existed. Our liability for compensation in the case of unjustified demand for rectification of defects remains unaffected; however, we shall only be liable where we have recognized or failed to recognize in a grossly negligent manner that no defect was present.

(7) Irrespective of our statutory rights and the terms of para. 5, the following applies: should the Vendor fail to undertake his obligation to supplementary performance – according to our choice, through rectification of the defect (improvement) or through delivery of an item free from defects (replacement delivery) – within a reasonable time period determined by us, we may rectify the defect ourselves and demand compensation from the Vendor for the expense required for this, or a corresponding advance payment. If supplementary performance on the part of the Vendor fails or cannot reasonably be expected of us (e.g., due to particular urgency, risk to operational safety or the threat of disproportionate damage), no period is required to be set; we shall communicate such circumstances to the Vendor without delay, where possible in advance.

(8) Beyond this, in the case of material or legal defect we are entitled according to the statutory provisions to reduce the purchase price or withdraw from the contract. In addition, according to the statutory provisions we are also entitled to compensation for loss and expense.

## **§ 8 Supplier recourse**



(1) We are also entitled to our statutorily determined claims to expense and recourse within a supply chain (supplier recourse as per sections 478, 445a, 445b respectively sections 445c, 327para. 5, 327u BGB) to an unlimited extent in addition to our claims for defects. In particular, we are entitled to demand the precise type of supplementary performance (improvement or replacement delivery) from the Vendor that we owe to our customer in the individual case; in the case of goods with digital elements or other digital content this also applies with regard to the provision of necessary updates. Our statutory right to choose (section 439 para. 1 BGB) is not limited by this.

(2) Before we acknowledge or fulfil a claim for defects brought against us by our customer (including compensation for expense as per sections 445a para. 1, 439 paras. 2, 3, 6 S. 2, 475 para. 4 BGB), we shall notify the Vendor and, briefly illustrating the circumstances, request a written statement. If a substantiated statement fails to be submitted within a reasonable period of time and if no mutual solution is established, the claim for defects granted by us shall be deemed to be owed to the customer. The duty to prove otherwise in this case lies upon the Vendor.

(3) Our claims from supplier recourse also apply where the defective goods have been combined with another product or otherwise processed further by us, our customer or a third party, e.g., through installation or fitting.

### **§ 9 Manufacturer's liability**

(1) If the Vendor is liable for a product defect, he shall release us from the claims of third parties to the extent that the cause lies in his area of authority and organization and he himself is liable in relation to third parties.

(2) Within the scope of this duty to exempt the Vendor shall reimburse expenses as per sections 683, 670 BGB that are incurred from or in relation to a claim by third parties, including recall campaigns conducted by us. Where possible and reasonable we shall notify the Vendor of the content and scope of the recall measures that are to be carried out and give him opportunity to make a statement in response. Further statutory claims remain unaffected.

(3) The Vendor shall take out and maintain product liability insurance cover with a fixed indemnity limit of at least 7.5 m euros per case of personal injury or material damage.

### **§ 10 Limitation period**

(1) The reciprocal claims of the contracting parties lapse according to the statutory provisions, to the extent not otherwise determined below.

(2) In deviation from section 438 para. 1 no. 3 BGB the general limitation period for claims for defect is 3 years from transfer of risk. To the extent that acceptance is agreed, the limitation period commences with acceptance. The 3-year limitation period applies accordingly for all claims for legal defects, whereby



the statutory limitation period for in rem claims for restitution of property of third parties (section 438 para. 1 no. 1 BGB) remains unaffected; claims for legal defects beyond this do not lapse in any case so long as the third party may still enforce the right against us – in particular due to lack of limitation.

(3) The limitation periods of commercial law, including the above extensions, apply – to the statutory extent – for all contractual claims for defect. To the extent that we are also entitled to non-contractual claims for compensation arising from a defect, the regular statutory limitation period applies (sections 195, 199 BGB), if the application of the limitation periods of commercial law does not result in a longer limitation period in the individual case.

#### **§ 11 Choice of law and place of jurisdiction**

(1) The law of the Federal Republic of Germany applies for these GTP and the contractual relationship between us and the Vendor, excluding international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods.

(2) If the Vendor is a businessperson, legal person under public law or public separate estate, exclusive place of jurisdiction – including international jurisdiction – for all disputes arising from the contractual relationship is our registered office in Sinntal. The same applies where the Vendor is a businessperson as defined by section 14 BGB. However, in all cases we are also entitled to pursue claims at the place of performance of the delivery obligation as per these GTP, respectively an overriding separate agreement or in the general place of jurisdiction of the Vendor. Preferential legal provisions, in particular regarding exclusive competencies, remain unaffected.