

### **§ 1 General information, scope of application**

(1) These General Conditions of Purchase (GCP) apply to all business relations with our business partners and suppliers ("Seller").

(2) The GCP apply in particular to contracts for the sale and/or delivery of moveable property ("Goods"), regardless of whether the Seller produces the Goods himself or buys them from his component suppliers (§§ 433, 651 BGB [German Civil Code]). Unless stipulated otherwise, the GCPs in the version valid at the time of ordering or the last written version provided to the supplier apply also as a master agreement for similar future contracts without any obligation on our part to point this out in each individual instance.

(3) These GCPs apply exclusively. Any General Terms and Conditions of the Seller that deviate from, oppose or supplement ours will only be a component of the contract if we have expressly agreed their validity in writing. This requirement shall apply in any case, for example, even if we accept the delivery without reservation although we are aware of the Seller's General Terms and Conditions.

(4) Individual agreements entered into with the supplier in an individual case (including side agreements, supplements and changes) shall in any case take priority over these GCPs. Subject to proof of the contrary, a written contract or our written confirmation shall be decisive with regard to the content of such agreements.

(5) Legally binding declarations and notifications required from the supplier following the conclusion of the contract (e.g. setting of deadlines, reminders, declarations of cancellation or reduction) require the written form in order to be effective.

(6) References to the applicability of legal provisions are for purposes of clarification only. Even without such clarification the legal provisions shall therefore apply unless directly amended or expressly excluded in these GCPs.

### **§ 2 Conclusion of contract**

(1) Our order is binding, at the earliest, upon written submission or confirmation. The Seller must point out to us obvious errors (e.g. typing errors and miscalculations) and any incompleteness of the order including the order documents for the purpose of correction or completion before acceptance; the contract shall otherwise be considered not concluded. The Seller is also obliged to point out to us if requirements for the prior art, the provisions of environmental protection or technical expediency are not respected.

(2) The Seller is obliged to confirm our order within a period of two weeks in writing or to unconditionally execute it in particular by dispatching the goods (acceptance). Late acceptance constitutes a new offer and must be accepted by us.

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

(1) The delivery time specified by us in the order is binding. If the delivery time is not indicated in the order and not agreed elsewhere, it is two weeks from the conclusion of the contract. The Seller is obliged to inform us immediately in writing if he thinks - for whatever reason - that he can probably not comply with the agreed delivery times.

(2) If the Seller does not effect performance or not within the agreed delivery time or he is in default, then our rights - in particular our rights to the withdrawal and compensation - are determined in accordance with the statutory provisions. The provisions in paragraph 3 shall remain unaffected.

(3) If the Seller is in default, we can - in addition to further legal claims - demand lump-sum default damages to the amount of 1% of the net price per completed calendar week, but not more than 5% of the net price of the delayed goods. We reserve the right to prove that higher damage occurred. The Seller is entitled to prove that no damage at all or significantly less damage was incurred.

### **§ 4 Performance, delivery, packaging, transfer of risk, default of acceptance**

(1) The Seller is not entitled to provide the performance owed by means of a third party (e.g. subcontractors) without our prior written consent. The Seller bears the procurement risk for his services, unless otherwise agreed in a particular case (e.g. limitation to stock).

(2) Within Germany, delivery is "carriage paid" to the place specified in the order. If the destination is not specified, and unless otherwise agreed, delivery must take place at our headquarters in Hochheim am Main. The respective destination is also the place of performance and any subsequent performance (obligation to provide).

(3) The delivery shall be accompanied by a delivery note stating the date (issue and dispatch), contents of the delivery (article number and quantity) as well as our order identification (date and number). If the delivery note is missing or incomplete, we shall not be responsible for any delays in processing and payment resulting from this. Separate from the delivery note, a corresponding dispatch note with the same content must be sent to us.

(4) Unless otherwise agreed, the products to be supplied must be packed in a way that is commercially customary and proper for the goods in question. At our request, the Seller must take back the packaging material.

(5) The risk of accidental loss or accidental deterioration of the Goods shall be transferred to us upon handover at the place of performance. Insofar as an acceptance procedure has been agreed, this shall be decisive for the transfer of risk. As for the rest, the legal regulations of the law applicable to works and services shall also apply accordingly. Default of acceptance by us shall be deemed equivalent to delivery or acceptance.

(6) We shall only be in default of acceptance according to the legal regulations. This shall not release the Seller from the obligation of expressly offering his service if a specific or definable time has been agreed for an action or assistance on our part (e.g. ordering of material). If we come into default of acceptance, the Seller can, in accordance with the statutory provisions, demand reimbursement of his additional expenditure (§ 304 BGB). If the contract concerns a unique (i.e. custom-made) item to be manufactured by the Seller, then the Seller shall be entitled to more extensive rights only if we have committed ourselves to provide assistance and are responsible for the failure to assistance.

## § 5 Prices and terms of payment

- (1) The price stated in the order shall be binding. All prices are inclusive of statutory value added tax, if this is not shown separately.
- (2) Unless agreed otherwise in individual cases, the price shall include all services and ancillary services of the Seller (e.g. assembly, installation) as well as all ancillary costs (e.g. suitable packaging, transport costs, and those required for the return of goods, including any transport and liability insurance).
- (3) The agreed price shall be due for payment within 30 calendar days after delivery and performance (including any agreed acceptance) and the receipt of a duly issued invoice. We shall be granted 3 % discount on the net amount of the invoice if we effect payment within 14 calendar days. With bank transfers, payment is deemed as having been effected on time if our transfer order is received at the bank before the payment period expires; we are not responsible for delays caused by the banks involved in the payment process.
- (4) We do not owe any default interest. The statutory provisions apply to late payments.
- (5) We are entitled to the rights of offsetting and retention rights as well as the plea of breach of contract in accordance with the statutory provisions. In particular, we are entitled to withhold payments due as long as we still are still entitled to assert claims against the Seller arising from incomplete or defective performance.
- (6) The order and contract number and order date must be stated in the invoices addressed to us.
- (7) The Seller shall have a right of offsetting and retention against us only in cases of possible claims arising from the same contractual relationship that are legally established or are undisputed.

## § 6 Non-disclosure and retention of title

- (1) We reserve all property rights and copyrights to illustrations, plans, drawings, calculations, executive instructions, product descriptions and other documents. Documents of this kind shall be used exclusively for the contractual performance and shall be returned to us on completion of the order. The documents shall be kept strictly secret vis-à-vis third parties, also after completion of the order. The obligation to maintain secrecy shall only expire if and insofar as the knowledge contained in the documents provided has become generally known.
- (2) The preceding provision shall apply accordingly to substances and materials (e.g. software, finished and semi-finished products) as well as to tools, templates, samples and other items that we provide to the Seller for production. Items of this kind shall be stored separately at the Seller's expense – as long as they are not processed – and insured to the normal extent against destruction and loss.
- (3) Any processing, mixing or combining by the Seller of the items provided shall be performed on our behalf. The same applies for further processing of the goods delivered by us, so that we are considered the manufacturer and, at the latest upon the further processing, acquire the ownership of the product in accordance with the statutory provisions.
- (4) Assignment of the goods to us shall take place unconditionally and regardless of the payment of the price. Should we, however, in an individual case, accept an offer for assignment from the Seller that is

contingent on payment of the purchase price, the Seller's retention of title expires, at the latest, upon payment of the purchase price for the goods delivered. In the normal course of business, however, we remain entitled, even before the payment of the purchase price, to resell the goods under advance assignment of the claim resulting therefrom (alternatively the application of simple and extended retention of title on resale). In any event, all other forms of retention of title, in particular extended retention of title, transferred retention of title and retention of title extended to further processing are excluded.

## § 7 Industrial property rights, quality seals and seals of approval

- (1) The Seller warrants that the goods supplied by him may be freely distributed with their trademarks and features and in particular do not infringe any intellectual property rights (e.g. copyrights, patents, licenses, registered or industrial designs) of third parties or the corresponding statutory provisions. The Seller is obliged to indemnify us of all claims arising from of a breach of such intellectual property incurred by us. Further statutory rights are unaffected.
- (2) If quality labels are used for products offered and delivered by Seller, such as those of the VDE, TÜV, GS, CE, UE, Umweltengel, Stiftung Warentest, etc., then the Seller is obliged, upon request, to prove his lawful use of these marks. The Seller is obliged to indemnify us from any claims arising from the unauthorized use of these marks or of a violation of the obligation to provide proof by the Seller. Further statutory rights are unaffected.

## § 8 Liability for defects

- (1) Unless specified otherwise below, the statutory provisions apply to our rights with regard to material and legal defects of the Goods (including wrong and short delivery as well as improper installation or imperfect/faulty assembly or operating instructions or instructions for use) and other breaches of duty by the Seller.
- (2) By law, the Seller is liable in particular for ensuring that the goods have the contractually agreed characteristics at the time when the risk is transferred to us. Those product descriptions that are the subject matter of the respective contract or incorporated in the contract in the same way as these General Conditions of Purchase – in particular due to identification or reference in our order – shall be valid as an agreement on the properties and condition. It shall be immaterial whether the product description originates from us, the Seller or the manufacturer.
- (3) Notwithstanding Article 442(1)ii BGB (German Civil Code), we shall be entitled to unrestricted warranty claims even if the defect shall remain unknown to us upon conclusion of contract as a result of gross negligence.
- (4) The statutory provisions (§§ 377, 381 HGB) apply to commercial obligation to inspect and the requirement to make a complaint in respect of a defect immediately on receipt of the goods, with the following proviso: Our duty to examine is limited to defects that become evident during our incoming goods inspection through external survey including the delivery papers as well as those that become evident in the event of a random quality control (e.g. damage in transit, wrong or short delivery). The duty of inspection does not apply if acceptance has been agreed. Moreover, it depends on the extent to which an inspection is feasible

according to proper business routines, taking into account the circumstances of the individual case. Our obligation to give notice of defects discovered at a later point remains unaffected. In any event, our complaint (notification of defect) shall be deemed to be without delay and on time if it is received by Seller within 8 working days.

(5) The costs incurred by the Seller for the purpose of examining and subsequent performance (including any removal and installation costs) are borne by the Seller even if it turns out that no defect was actually present. In the event of an unwarranted demand to remedy a defect, our liability for damages remains unaffected; however we only accept liability insofar as we recognised or were grossly negligent in failing to recognise that there was no defect.

(6) In the event that the Seller does not honour his obligation to supplementary performance – at our choice by either remedying the defect (subsequent improvement) or by supplying an item free of defects (replacement delivery) – within a reasonable time limit set by us, we have the right to remedy the defect ourselves and demand from the Seller compensation for the expenses incurred in this respect or an appropriate advance payment. A deadline shall not be necessary in the event that supplementary performance by the Seller shall be abortive or unacceptable for us (e.g. on account of special urgency, operating safety hazard or imminent occurrence of disproportionate damages); the Seller shall be informed of this immediately, if at all possible in advance.

(7) As for the rest, we shall be entitled to reduction of the purchase price or withdrawal from the contract according to the legal regulations in the case of defects of quality and defects of title. Moreover, we shall have a claim to compensation for damages and reimbursement of expenses in accordance with the statutory provisions.

(8) The Seller warrants that spare parts for the products or goods supplied by him or to be supplied by him are available and can be obtained in adequate quantities for at least 5 years after the contract has been concluded.

#### **§ 9 Regress against suppliers**

(1) In addition to the warranty claims, we shall have unrestricted entitlement to our legally determined rights of recourse within a supply chain (regress against suppliers according to Articles 478, 479 BGB [German Civil Code]). In particular, we shall be entitled to demand exactly the type of supplementary performance from the Seller (subsequent improvement or replacement delivery) that we owe to our buyer in an individual case. Our legal option (Article 439(1) BGB) shall not be restricted by this.

(2) Before we recognise or satisfy a warranty claim asserted by our buyer (including reimbursement of expenses in accordance with Article 478 para. 3, 439 para. 2 BGB), we shall inform the Seller, provide a short statement of the facts and request a written statement. In the event that the statement is not provided within a reasonable time limit and if an amicable solution is not reached, the warranty claim we actually conceded shall be regarded as owed to our buyer; counter evidence in this case shall be incumbent upon the Seller.

(3) Our claims arising from regress against suppliers also apply if the goods, before being sold to a consumer, were processed by us or one of our customers, for example by being incorporated into another product.

#### **§ 10 Manufacturer's liability**

(1) If the Seller is responsible for damage to a product, he shall be obligated to indemnify us at first request in this respect from claims of third parties provided that the cause lies in his area of command and organisation and he is personally liable in relation to third parties.

(2) Within the framework of his indemnity obligation, the Seller shall reimburse expenses according to Articles 683, 670 BGB that arise from or in connection with a claim by third parties including product recalls that we have carried out. Insofar as this is possible and reasonable, we shall inform the Seller regarding the contents and extent of product recalls and give him the opportunity to comment. Further statutory rights remain unaffected.

(3) The Seller shall take out and maintain a product liability insurance policy with an appropriate amount of cover for personal injury/damage to property. Appropriate proof of this must be furnished upon our request.

#### **§ 11 Statute of limitation**

(1) The reciprocal claims of the parties to the contract shall become statute-barred in accordance with the statutory rules and regulations, unless agreed otherwise in the following.

(2) Notwithstanding § 438(1)iii BGB, the general statute of limitations for claims of defects is three years from the transfer of risk. If acceptance has been agreed, the limitation period begins upon acceptance. The three-year limitation period also applies to claims arising from defects, whereby the statutory limitation period for in rem claims by third parties (§ 438(1)i BGB) remains unaffected; furthermore, claims based on defects of title do not expire in any event as long as the third party can still assert the right against us - particularly in the absence of the statute of limitation.

(3) The limitation periods of commercial law including the aforementioned extension apply - to the legal extent - for all contractual claims for defects. Insofar as we are entitled to assert non-contractual claims for damages because of a defect, the normal statutory limitation period (§§ 195, 199 BGB) applies if the application of the limitation periods of commercial law do not lead to a longer limitation period in an individual case.

#### **§ 12 Law and place of jurisdiction**

(1) The law of the Federal Republic of Germany excluding International Uniform Law, especially the UN Convention on Contracts for the International Sale of Goods, shall apply to these General Conditions of Purchase and all legal relations between us and the Seller.

(2) If the Seller is a trader within the meaning of the Commercial Code, a legal entity under public law or a public special fund, our place of business in Hochheim am Main shall be the exclusive - also international - place of jurisdiction for all disputes arising from the contractual relationship. The same applies if the Buyer is an entrepreneur in terms of § 14 BGB. However, in all cases, we are also entitled to bring an action at the place of delivery commitment under these GCP or an overriding individual

agreement or at the general place of jurisdiction of the Seller. Overriding statutory provisions, especially regarding exclusive powers, remain unaffected.

**§ 13 Final provisions**

Should any provision of these conditions be or become invalid, this will have no bearing on the validity of all the remaining provisions. Invalid provisions must be replaced by those whose validity comes closest to that of the invalid provision.

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Hochheim am Main, March 2016