

## General Conditions of Purchase (GTC Purchase)

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### § 1 Scope, form

(1) These General Conditions of Purchase apply to all the business relations with our business partners and suppliers ("Seller"). The General Conditions of Purchase are effective only, if the seller is an enterprise, (§ 14 German Civil Law Code), a legal entity or a special fund under public law.

(2) In particular, the General Conditions of Purchase apply to contracts regarding sale and/or delivery of movable object ("Goods") irrespective of whether the seller produced the goods by himself or purchases them from suppliers (§§ 433, 650 German Civil Law Code). Unless otherwise agreed, the General Conditions of Purchase are effective in the latest version or in that latest text version, which was submitted as frame contract to the customer at the date and time of the customer's order. This frame contract applies also to every future contract of same kind without us having to refer to this frame contract.

(3) General Conditions of Purchase are exclusively valid. Deviating, contrary or supplementary General Conditions of Business of the seller become part of the contract only and insofar as we have expressly accepted in writing such validity. This requirement of acceptance applies in any case, for example even if we in awareness of the seller's General Conditions of Business, accept his deliveries without any reservation.

(4) Individual arrangements concluded with the seller in an individual case (including collateral agreements, supplements and amendments), have priority over these General Conditions of Purchase, in every case. Any content of such agreements, subject to counterevidence, requires a written contract or our written confirmation.

(5) Legally relevant declarations and indications of the seller related to the contract (for ex. appointment of a deadline, reminder, rescission) are to be submitted in writing, i.e. in written or text form (f. ex. letter, emails, fax). Legal formal requirements and other evidences, in particular with doubts about the legitimation of the declaring party remain unaffected.

(6) Notes on the validity of legal provisions have clarifying significance only. Thus, the legal provisions shall apply even without such clarification if not directly amended or expressly excluded in these General Conditions of Purchase.

### § 2 Conclusion of contract

(1) Our order becomes binding with written submission or confirmation at the earliest. The seller informs us on evident errors (f. ex. typing and calculating errors) as well as incompleteness of the order including the order records for the purpose of correction or completion before acceptance, otherwise the contract is not deemed concluded.

(2) The seller shall conform in writing our order within a period of time of 10 (ten) workdays or execute the order in particular by shipment of the goods without reservation (acceptance).

Delayed acceptance is considered a new quotation and has to be confirmed by us.

### § 3 Date of delivery and delayed delivery

(1) The delivery date indicated in the order by us is binding. If the date of delivery is not specified in the order and not otherwise agreed upon, then the date of delivery amounts to two weeks from the date of conclusion of the contract. The seller is obliged to inform us immediately in writing if he probably will not be able meeting agreed delivery dates for any reason whatsoever.

(2) If the seller is not in a position fulfilling his performance at all or not within the agreed delivery time and thus he falls behind, then our rights, in particular the right of withdrawal or indemnification, are ruled by the legal provisions. The regulations in section 3 remain unaffected.

(3) If the seller has fallen behind, we are entitled demanding, in addition to further legal claims, a flat rate compensation of the damage due to delay of 1 (one) percent of the net price per completed calendar week, but not more than 5 (five) percent of the net price of the goods delivered with delay. We may prove that we have suffered a higher damage. The seller may prove that no damage at all or a substantially lower damage has occurred only.

### § 4 Performance, delivery, passing of risk, default of acceptance

(1) The seller is not entitled to have the performance he is obliged to provide supplied by Third Parties (f. ex. subcontractor) without our prior written consent. The seller bears the risk of procurement for his performances if nothing else has been agreed in the individual case (f. ex. limitation to stock).

(2) Within Germany, the basis of delivery is "Free House" to the place stated in the order. If the place of destination is not indicated and nothing else has been agreed, then the goods are to be delivered to our business domicile in Neuhausen. The actual destination is also the place of performance for the delivery and possible subsequent performance (obligation which the seller has to meet at the customer's business site).

(3) The delivery is to be accompanied with a delivery bill indicating the date (issue and shipment), content of the delivery (item number and quantity) as well as our order reference (date and number). If the delivery bill is missing or incomplete, then we are not responsible for the resulting delay of processing and payment. Separately from the delivery bill, a proper shipping note of identical content shall be sent to us.

(4) The risk of accidental loss and accidental deterioration of the objects is passed to us when the goods are handed over at the place of performance. As far as an acceptance is agreed upon, then such acceptance is the criterion for the passing of risk. In addition, the legal provisions of the law on contracts for work and services apply accordingly to any acceptance. In legal sense, it shall be deemed to be the equivalent of handing-over or acceptance if we are in the condition of default of acceptance.

(5) As for the begin of our default of acceptance, the current legal provisions shall be effective. The seller, however, has to expressly offer to us his performance even in that case if a defined or definable calendar period is agreed upon for any of our actions or collaboration (f. ex. supply of material). If we get into default of acceptance, then the seller is entitled demanding compensation for his extra expenditure according to the legal provisions (§ 304, German Civil Law Code). If the contract deals with an unacceptable object, the seller has to produce (one-off production), then the seller is entitled to further rights only, if we have committed ourselves to cooperation and we are to blame for the non-realization of that cooperation.

### § 5 Prices and terms of payment

(1) The price indicated in the order is binding. All the prices include the legal VAT unless separately indicated.

(2) If in an individual case nothing else was agreed upon, then the price covers all the performances and additional services of the seller (f. ex. assembly, installation) as well as all the additional costs (f. ex. appropriate packing, transports costs including possible transport and liability insurances).

(3) The agreed price is due for payment within 30 calendar days from complete delivery and performance (including a possibly agreed acceptance) as well as receipt of a correct invoice. If we pay within 14 calendar days, the seller grants to us a 3 (three) percent discount on the net amount of the invoice. With bank transfer, the payment is considered made in time, if our bank receives the transfer order before the payment term elapses. We do not accept any responsibility for any delay caused by the banks involved in the money transfer.

(4) We do not owe interest after due date. As for delay of payment, the current legal provisions shall be effective.

(5) We are entitled to legal extent to the rights of set-off and withhold as well as objection of the not fulfilled contract. We are particularly empowered withholding due payments as long as we are yet entitled to levy claims against the seller due to incomplete or defective performances.

(6) The seller has the rights of set-off and withhold only on basis of legally valid and irrefutable counterclaims.

#### **§ 6 Confidentiality and reservation in title**

(1) We reserve the right of property and copyright of illustrations, layouts, drawings, calculations, execution instructions, product descriptions and other records. Such records must be used for the contractual performance only and returned to us after completion of the contract. The records have to be kept confidential towards Third Parties, even after completion of the contract. The obligation of confidentiality will extinguish only when and insofar the knowledge collected in the handed-over records has become generally known.

(2) The above provision applies accordingly to substances and materials (f. ex. software, finished and semi-finished products) as well as tools, templates, samples, and other objects that we supply to the seller. Such objects have to be separately stored as long as they have not yet been processed at the seller's costs and reasonably insured against damage and loss.

(3) The seller processes, mixes and combines (re-processing) supplied objects for us. The same fits to re-processing of delivered goods by us, converting us into manufacturer. Thus we acquire the right of ownership by the re-processing according to legal regulations.

(4) The ownership of the goods is transferred to us unconditionally and regardless of the payment of the price. If, in an individual case, we accept an offer of the seller for transfer of ownership conditioned by the payment of the purchase price, the seller's reservation of ownership expires at the latest with the payment of the purchase price for the delivered goods. During the ordinary course of business, we remain entitled, also before payment of the purchase price, to resale of the goods under the condition of anticipatory assignment of the claim resulting from this action (by an alternative method of validity of the simple reservation in title, which is also extended to the resale). In any case, by means of the above provision, all the other forms of reservation in title, in particular the extended and transferred reservations in title as well as the one extended to the re-processing, are excluded.

#### **§ 7 Faulty delivery**

(1) As regards our rights concerning material deficiencies and deficiencies in title (including misdelivery and short shipment as well as inappropriate assembly and operating instructions and operator manual) and with any other violation of obligation by the seller, the legal provisions shall apply if nothing different is stipulated in the following.

(2) According to the legal provisions, the seller is especially liable that the goods represent the agreed conditions at the time of passing of risk to us. In any case, the conditions described in the product specifications are considered agreed upon. This is particularly true for the designation and reference in our order. These specifications are part of the actual contract as well in the same manner as these General Conditions of Purchase. It shall thereby make no difference whether the product specification was created by us, the seller or manufacturer.

(3) Deviating from § 442, section 1, page 2, German Civil Law Code, we are entitled to full extent to claims arising from a defect, even if we were not aware of such defect due to gross negligence.

(4) As for the commercial duty of inspection and notice of defects, the legal provisions are effective (§§ 377, 381, German Commercial Code) on the following conditions: Our duty of inspection is limited to defects, which are detected with our visual check of incoming goods and the delivery note (f. ex. transport damages, misdelivery and short shipment) or by our sample-based quality inspection. As far as an acceptance is agreed upon, then the duty of inspection does not apply. Another aspect is the

condition how far an inspection under consideration of the circumstances of that individual case is feasible according to ordinary course of business. Our duty to give notice of defects for later detected defects remains unaffected. Regardless of our duty of inspection, our notice of defect (complaint) is considered immediate and in time, if submitted within 5 (five) workdays from the date of detection or, in case of obvious defects, from the date of shipment.

(5) The subsequent performance includes also the disassembly and re-assembly of the defect goods, insofar the goods according to their quality and purpose were built in another object or attached to another object. Our legal claim to compensation of reasonable expenditure remains unaffected. The expenditure required for inspection and subsequent performance is paid by the seller, even if it turns out that the defect really did not exist. Our liability with unjustified claim for defect remedy remains unaffected. We, however, are liable insofar only, if we have detected or gross negligently not recognized that there was no defect at all.

(6) Regardless our legal rights and provisions in section 5, the following shall be effective: If the seller does not meet his obligation of subsequent performance - in our discretion by remedy of the defect (repair) or delivery of a defectless object (replacement) - within a reasonable deadline set by us, then we are entitled to eliminate the defect by own activity and demand compensation for the expenditure spent for that purpose or to claim reasonable advance payment. If the seller failed providing the subsequent performance or such subsequent performance proves to be unreasonable for us (f. ex. due to special urgency, risk of operational safety or threatening occurrence of exceptional damages), no deadline needs to be set. We inform immediately the seller on such circumstances, if possible, in advance.

(7) Additionally, we are entitled to reduce the purchase price or withdraw from the contract in case of material deficiency or deficiency of title according to the legal provisions. Moreover, we are entitled to claim compensations for damage and expenditure according to the legal provisions.

#### **§ 8 Supplier's recourse**

(1) In addition to claims arising from a defect, we are absolutely entitled to legally ruled claims of recourse within a supply chain (supplier's recourse according to §§ 445 a, 445 b, 478, German Civil Law Code). In particular, we are entitled demanding from the seller the identical kind of subsequent performance (repair or spare part delivery) that we owe to deliver to our customer in the individual case. Our legal right of decision (§ 439, section 1, German Civil Law Code) is not restricted by this condition.

(2) Before we acknowledge or fulfil any claim arising from a defect (including reimbursement of expenses according to §§ 445 a, section 1, 439 sections 2 and 3, German Civil Law Code) presented by our customer, we inform the seller with a short description of the matter and ask for his comment. If neither the seller submits a substantial comment within a reasonable period of time nor a mutual solution could be agreed upon, then the claim arising from a defect really granted by us is considered as to be owed to our customer. In this case, the seller shall present the counterevidence.

(3) Our claims resulting from supplier's recourse are still effective even if the defect goods were re-processed by us or other entrepreneur, f. ex. by assembly into another product.

#### **§ 9 Producer's liability**

(1) If the seller is responsible for a product damage, then he has to indemnify us from Third Party's claims insofar the cause occurred within his area of control and organisation and he itself is liable regarding his relationship with Third Parties.

(2) In the frame of his obligation of indemnification, the seller shall pay expenditures according to §§ 683, 670, (German Civil Law Code) resulting from or in connection with the utilization of Third Parties including recall campaigns initiated by us. We inform the seller on content and scope of recall campaigns as far as reasonably and possible and give him the opportunity of comment. Further legal claims remain unaffected.

**§ 10 Limitation period**

(1) The mutual claims of the contractual parties become statute-barred according to the legal provisions insofar nothing else was agreed upon.

(2) Deviating from § 438, section 1, no. 3, German Civil Law Code, the general limitation period amounts to 3 (three) years after the passing of risk. As far as an acceptance is agreed upon, then the limitation period begins with the date of acceptance. The 3 (three) years of limitation period apply also to claims arising from deficiencies in title, whereby the legal limitation period for object claims for surrender of Third Parties (§ 438, section 1, no. 1, German Civil Law Code) remains unaffected. In addition, claims arising from deficiencies in title do not become statute-barred, in no case, as long as the Third Party is still able claiming the right - in particular due to the lack of limitation period - against us.

(3) The limitation period of the purchase right including the above-mentioned prolongation apply to legal extent to all the contractual claims arising from a defect. Insofar we are also entitled to non-contractual claims for damages due to a defect, the persistent legal limitation period shall be effective for this condition (§§ 195, 199 German Civil Law Code), if the application of the periods of limitation of the purchase right does not lead to a longer limitation period in the individual case.

**§ 11 Choice of law and court of jurisdiction**

(1) These General Conditions of Purchase and the contractual relation between us and the seller are subject to the law of the Federal Republic of Germany. The international harmonized law, especially the UN-purchase right, are excluded.

(2) If the seller is a businessman in the sense of the German Commercial Code, a legal entity or a special fund under public law, the exclusive, and also international, court of jurisdiction for all the disputes arising from the contractual relation shall be our business domicile in Neuhausen. Same becomes true if the seller is an entrepreneur in the sense of the § 14, German Civil Law Code. In any case, we are also entitled, however, to file a suit at the place of performance of the delivery obligation according to these General Conditions of Purchase or to an individual agreement of priority or at the general court of jurisdiction of the seller. Legal provisions of priority, in particular regarding exclusive competences, remain unaffected.