

## General Conditions of Purchase

Updated May 2019

### Art. 1 Scope of validity, form

(1) These general conditions of purchase (GCP) apply to all business relationships with our business partners and suppliers ("sellers"). The GCP apply only if the seller is a business owner (Art. 14 of the German Civil Code (BGB)), a legal entity under public law or a special fund under public law.

(2) The GCP apply particularly to contracts covering the sale and/or delivery of movable items ("goods"), irrespective of whether the seller manufactures said goods or purchases them from suppliers (Arts. 433, 650 of the German Civil Code (BGB)). Unless otherwise agreed, the version of the GCP that was valid at the time when the customer placed their order - and in all cases the version of which they were most recently given notice in writing - shall also apply as the framework agreement for similar future contracts without the need for us to refer to them again in each individual case.

(3) These GCP apply exclusively. Different, contradictory or additional general conditions of business of the seller shall only form part of the contract when and to the extent that we expressly agree to them applying. This approval requirement applies in all cases, for example also when we accept the seller's deliveries without reservation and with knowledge of their general conditions of business.

(4) Individual agreements made with the seller in individual cases (including subsidiary agreements, supplements and amendments) take precedence over these GCP in all cases. In the absence of proof to the contrary, a written contract or our written confirmation is decisive for the content of such agreements.

(5) Legal declarations and notifications by the seller relating to the contract (e.g. deadlines, reminders, withdrawal) must be submitted in writing, i.e. in written or text form (e.g. letter, e-mail, fax). Statutory provisions on form and other evidence, particularly in cases of doubt about the credentials of the party making the declaration, remain unaffected.

(6) References to the validity of statutory provisions are for clarification purposes only. Even without such clarification, the statutory provisions therefore apply unless they have been directly amended or expressly excluded in these GCP.

### Art. 2 Conclusion of the contract

(1) Our order shall be deemed binding at the earliest when submitted or confirmed in writing. Prior to acceptance, the seller must notify us of obvious errors (e.g. spelling or arithmetic errors) and incompleteness of the order and/or order documents so that these can be corrected and/or completed. Otherwise the contract shall be deemed not to have been concluded.

(2) The seller must confirm our order in writing within 10 working days, or in particular by sending the goods without reservation (acceptance).

Delayed acceptance shall be deemed by us to be a new offer, and requires acceptance by us.

### Art. 3 Delivery time and delayed delivery

(1) The delivery time stated by us in the order is binding. If we have not stated the delivery time in the order and if it has also not been otherwise agreed, it shall be 30 working days commencing upon conclusion of the contract. The seller is obligated to inform us in writing immediately if agreed delivery times probably cannot be met for any reason whatsoever. Part deliveries or deliveries before the agreed delivery time may not be made without our permission.

(2) If the seller does not render performance or does not render performance within the agreed delivery time or if he is in default, our rights – particularly the right to withdrawal and damages – shall be determined according to the statutory provisions. The provisions in para. 3 remain unaffected.

(3) If the seller is in default, we can – in addition to further statutory claims – demand a lump-sum reimbursement of the default damages incurred by us, amounting to 1% of the net price per complete calendar week, but no more than 5% of the net price of the goods delivered late. We reserve the right to prove that a higher loss has occurred. The seller retains the right to prove that no loss at all or only a substantially smaller loss has occurred.

### § 4 Performance, delivery, transfer of risk, delay in acceptance

(1) Without our prior written approval, the seller is not entitled to have the performance that he owes provided by third parties (e.g. subcontractors). Unless otherwise agreed in an individual case, the seller bears the procurement risk for his performances (e.g. limitation to stock).

(2) Unless otherwise agreed in an individual case, all deliveries shall be free domicile to the place stated in the order ("destination"; DDP destination as per INCOTERMS 2010). If the destination is not stated and unless otherwise agreed, the delivery must be made to our domicile in 69427 Mudau, Federal Republic of Germany. The destination is also the contractual place of performance and fulfilment (obligation of performance at creditor's address).

(3) A delivery note stating the date (issue and dispatch), the contents of the delivery (item number and quantity) and our order ID (date and number) must be enclosed with the delivery. If the delivery note is missing or incomplete, we are not responsible for the resulting delays in processing and payment. A corresponding shipping notice with the same content must be sent to us separately from the delivery note.

(4) The risk of accidental loss and of accidental deterioration of the goods shall pass to us upon handover at the place of fulfilment. If an acceptance has been agreed, this is the determining factor with regard to the transfer of risk. The statutory provisions of the law governing contracts for work and services apply analogously to an acceptance in other respects also. Default of acceptance by us is equivalent to delivery or acceptance.

(5) The statutory provisions apply if acceptance by us is delayed. However, the seller must then expressly offer us performance even if a defined or definable calendar period is agreed for an act or contribution on our part (e.g. providing material). If we default on acceptance, the seller can demand reimbursement of his additional expenses in accordance with the statutory provisions (Art. 304 of the German Civil Code (BGB)). If the contract relates to a single item to be manufactured by the seller (custom-made product), the seller shall only have further-reaching rights if we have undertaken to participate and are responsible for our failure to participate.

## Art. 5 Prices and payment conditions

(1) The price stated in the order is binding. All prices are inclusive of statutory VAT, unless this is shown separately. This also applies to any supplementary services to be furnished by the supplier.

(2) Unless otherwise agreed in an individual case, the price includes all of the seller's services and ancillary services (e.g. assembly, installation) and all incidental costs (e.g. proper packaging, transport costs including any transport and liability insurance).

(3) Invoices must be sent to us as single original copies, showing the invoice number, order number, quantity, price and other allocation references.

(4) The agreed price is payable within 30 calendar days from complete delivery and performance (including any agreed acceptance) and receipt of a proper invoice. If we make payment within 15 working days, the seller shall grant us a 3% discount on the net invoiced amount. In the case of bank transfers, payment shall be deemed to have been made on time if our transfer order reaches our bank before expiry of the payment deadline. We are not responsible for delays on the part of the banks involved in the payment transaction.

(5) We shall owe no interest on maturity. The statutory provisions apply if payment is delayed.

(6) To the extent permitted by law, we retain the rights of offsetting and retention as well as to put forward the defence of non-fulfilment of the contract. In particular, we are entitled to retain due payments if we still have outstanding claims against the seller arising from incomplete or deficient performance.

(7) The seller shall have offset or retention rights only on the basis of legally recognised or undisputed counterclaims.

## Art. 6 Secrecy and reservation of ownership

(1) We reserve ownership rights and copyright on illustrations, plans, drawings, calculations, instructions, product descriptions and other documents. Such documents are to be used solely for the purpose of contractual performance and must be returned to us after completion of the contract. The documents must not be disclosed to third parties either during the contract period or after it has ended. The confidentiality obligation only expires if and to the extent that the knowledge contained within the documents has become generally known.

(2) The above provision applies accordingly to substances and materials (e.g. finished products and semi-finished products) as well as to tools, templates, samples and other objects that we provide to the seller for the purpose of manufacture. Insofar as they have not been processed, such objects must be stored separately at the seller's expense and must be suitably protected against destruction and loss.

(3) Processing, mixing or combining (further processing) by the seller of objects that we have provided will be done for us. The same applies to further processing by us of the supplied goods, with the result that we are considered to be a manufacturer and acquire ownership of the product in line with the statutory provisions no later than when the further processing is performed.

(4) Transfer of ownership of the goods to us shall be unconditional and regardless of whether the purchase price has been paid. However, if in an individual case we accept the seller's offer of a transfer of ownership that is conditional upon payment of the purchase price, the seller's reservation of ownership shall expire no later than when the purchase price for the

delivered goods is paid. Even before payment of the purchase price and in the normal course of business, we remain entitled to resell the goods under advance assignment of the claim arising from this (alternatively validity of the simple reservation of ownership extended to resale). In every case, this excludes all other forms of reservation of ownership, particularly extended reservation of ownership, transferred reservation of ownership and reservation of ownership extended to further processing.

## Art. 7 Defective delivery

(1) Unless otherwise stated below, the statutory provisions apply to our rights in the event of defects in quality and title of the goods (including wrong and short shipments and improper installation, or incorrect installation or operating instructions) and in the case of other breaches of obligations by the seller.

(2) In accordance with the statutory provisions, the seller is particularly liable for ensuring that the goods are of the agreed quality when the risk is transferred to us. In any case, the product descriptions that – particularly by way of description or reference in our order – are the subject of the respective contract or that have been incorporated into the contract in the same way as these GCP apply as the agreement on quality. In this respect it is irrelevant whether the product description originated with us, the seller or the manufacturer.

(3) Contrary to Art. 442 para. 1 clause 2 of the German Civil Code (BGB), we shall also be able to make deficiency claims without restriction if, due to gross negligence, the defect remained unknown to us when the contract was concluded.

(4) For the commercial duty to inspect and to give notice of defect, the statutory provisions (Arts. 377, 381 of the German Commercial Code (HGB)) apply with the following proviso: Our duty to inspect is limited to defects that come to light in an external examination during our receiving inspection, which includes checking the delivery documents (e.g. transport damage, wrong and short shipments), or that our quality control finds during random sampling. If an acceptance has been agreed, there is no duty to inspect. Otherwise it depends on the extent to which an inspection is feasible, taking into account the circumstances of the individual case in the course of normal business. Our duty to give notice of defects for faults discovered later remains unaffected. Irrespective of our duty to inspect, our complaint (notification of a defect) is in any case deemed to be immediate and on time if it is sent within 5 working days of discovery or, in the case of obvious defects, delivery.

(5) Subsequent performance also includes removal of the defective goods and their re-installation, provided that the goods were installed in or on something else in line with their type and purpose. Our statutory right to claim the relevant expenses remains unaffected. The expenses necessary for inspection and subsequent performance shall be covered by the seller even if it becomes apparent that no defect in fact existed. Our liability to pay damages in the case of an unjustified request for rectification remains unaffected. However, in this respect we shall only be liable if we recognised or - due to gross negligence - did not recognise that no defect existed.

(6) The following applies without prejudice to our statutory rights and the provisions in para. 5: If the seller does not meet his subsequent performance obligation – at our discretion by either eliminating the defect (rectification) or delivering a defect-free item (replacement delivery) – within an appropriate period of grace set by us, we shall be able to remedy the defect ourselves and demand from the seller reimbursement of the expenses incurred or an appropriate advance payment. If the subsequent performance by the seller was unsuccessful or

unreasonable for us (e.g. due to particular urgency, a risk to operational safety or the threat of disproportionate damage), there shall be no requirement to grant a period of grace. We shall inform the seller of such an eventuality immediately, if possible in advance.

(7) Otherwise, in the case of defects in quality and title, we shall be entitled to reduce the purchase price or withdraw from the contract according to the statutory provisions. In addition, we have a right to damages and to the reimbursement of expenses in accordance with the statutory provisions.

### **Art. 8 Recourse against a supplier**

(1) Our statutory rights of recourse within a delivery chain (recourse against a supplier in accordance with Arts. 445a, 445b, 478 of the German Civil Code (BGB)) are unlimited, in addition to the deficiency claims. In particular, we are entitled to demand from the seller the exact same type of subsequent performance (rectification or replacement delivery) that we owe to our customer in that individual case. This does not limit our statutory right to choose (Art. 439 para. 1 of the German Civil Code (BGB)).

(2) Before we recognise or fulfil a deficiency claim made by our customer (including the reimbursement of expenses in accordance with Arts. 445a para. 1, 439 paras. 2 and 3 of the German Civil Code (BGB)), we shall inform the seller and, having briefly described the facts of the matter, request written comments. If substantiated comments are not received within an appropriate period and also if an amicable solution is not reached, the deficiency claim that we actually conceded shall be deemed to be owed to our customer. In this case, the seller is responsible for providing evidence to the contrary.

(3) Our claims for recourse against a supplier shall also be valid if the defective goods have been further processed by us or another contractor, e.g. by installing them in another product.

### **Art. 9 Producer liability**

(1) If the seller is responsible for product damage, he must exempt us from third-party claims for damages insofar as the cause lies within his sphere of control and organization, and he is personally liable with respect to third parties.

(2) Under his obligation to indemnify, the seller must reimburse any expenses pursuant to Arts. §§ 683, 670 of the German Civil Code (BGB)) that arise from or in relation to a third-party claim, including recall actions conducted by us. Insofar as is possible and reasonable, we shall inform the seller of the content and extent of recall measures, and give him the opportunity to comment. Statutory claims over and above these remain unaffected.

(3) The seller must take out and maintain product liability insurance with a lump-sum insured amount of at least 10 million Euros per case of injury / material damage.

### **Art. 10 Limitation**

(1) Unless otherwise stated, the reciprocal claims of the contract parties become time-barred in accordance with the statutory provisions.

(2) Contrary to Art. 438 para. 1 No. 3 of the German Civil Code (BGB), the general limitation period for deficiency claims is three years, commencing upon transfer of risk. If an acceptance has been agreed, the limitation period commences upon acceptance. The 3-year limitation period also applies accordingly to claims arising from defects in title, with the statutory limitation period for third-party claims for return based upon a property rights (Art. 438 para. 1 no. 1 of the German Civil Code (BGB)) remaining unaffected. In addition, claims arising from defects in title in no case become time-barred as long as the third party can still assert the right – particularly because it is not yet time-barred – against us.

(3) The limitation periods of commercial law, including the aforementioned extension, apply – within the scope of the law – to all contractual deficiency claims. To the extent that we are also entitled to extracontractual claims for damages because of a defect, the regular statutory limitation period applies to this (Arts. 195, 199 of the German Civil Code (BGB)) if application of the limitation periods of commercial law does not result in a longer limitation period in an individual case.

## **Art. 11 Applicable law and place of jurisdiction**

(1) The law of the Federal Republic of Germany applies to these GCP and to the contractual relationship between us and the seller, to the exclusion of international uniform law and particularly the UN convention on the international sale of goods.

(2) If the seller is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the sole – including international – place of jurisdiction for all disputes arising from the contractual relationship shall be our domicile in 69427 Mudau, Germany. The same shall apply if the seller is a business owner within the meaning of Art. 14 of the German Civil Code (BGB). However, in all cases we are also entitled to bring an action in the place of fulfilment for the delivery commitment in accordance with these GCP and/or an overriding individual agreement, or at the seller's general place of jurisdiction. Overriding statutory provisions, particularly governing exclusive jurisdictions, remain unaffected.

(3) In case of differences between the German and English versions or in other cases of doubt, the German version applies.