

GENERAL CONDITIONS OF PURCHASE (GCP)

§ 1 Applicability

1) These General Conditions of Purchase (GCP) shall apply to all business relationships with our business partners and suppliers ("Sellers"). However they shall only apply if the Seller is an entrepreneur in the sense of Section 14 of the German Civil Code [Bürgerliches Gesetzbuch], a legal person under public law or a special fund under public law.

(2) These GCP shall especially apply to contracts on the sale and/or delivery of movable objects irrespective of whether the Seller produces the goods himself or purchases them from suppliers. These GCP shall also apply in their respective form as a framework agreement for future contracts on the sale and/or delivery of movable objects with the same Seller without us having to refer to them again in each individual case; in any case we will inform the Seller about changes to these GCP.

(3) Deviating, contrary or supplementary general terms and conditions of the Seller shall only become part of the respective contract if we expressly agree to their applicability. This requirement shall also apply if we unconditionally accept the delivery of the Seller in knowledge of his GTC.

(4) Individual agreements concluded in individual cases shall in any case take precedence over these GCP. The contents of such precedential agreements shall be determined through a written contract or our written confirmation.

(5) Legally relevant declarations to be submitted to us by the Seller upon contract conclusion must be issued in writing to be effective.

§ 2 Contract conclusion

(1) Our order shall become binding at the earliest upon its written submission or confirmation. The Seller must notify us of any obvious mistakes (e.g., spelling or calculation errors) and incompleteness on the order including the order documents prior to acceptance; otherwise the contract will not be considered to have been concluded.

(2) The Seller shall confirm our order in writing within 1 week preferably by email under reference to our order data or especially by completing it by unconditionally sending the goods. Late acceptance shall be considered as a new offer and requires acceptance by us.

§ 3 Delivery time and delays

(1) The delivery week stated by us in the order (corresponds to the calendar week of Monday to Friday) shall be binding. Should Friday be a non-working day, the week shall end on the last working day of that week. If we state a date (DD/MM/YYYY) this date must be treated as a fixed date. If the delivery period is not stated in the order and was not agreed to otherwise it shall be 2 weeks following contract conclusion. The Seller must notify us by email without delay if he is projected to be unable to meet the agreed delivery deadline.

(2) If the Seller falls behind with his delivery we may—in addition to further legal claims—demand flat-fee compensation of 1% of the net price per completed calendar week but no more than 5% of the net price of the goods delivered late for the damages caused by the delay. We shall reserve the right to assert greater damages. Conversely the Seller may prove that we incurred no or significantly lower damages.

§ 4 Service, delivery, transfer of risk, transfer of acceptance

(1) Without our prior written permission the Seller may not have the services owed by him performed by third parties, e.g. subcontractors. The Seller shall bear the procurement risk for his services unless agreed to otherwise in individual cases.

(2) Deliveries shall be made within Germany—unless agreed to otherwise—"free to the door" to the destination specified in the order. If there is no destination specified and nothing else has been agreed to the delivery must be made to our office. The respective destination shall also serve as the place of fulfillment.

(3) The delivery must include a delivery note stating the date (issuance and despatch), contents of the delivery (LÖFFLER article number and quantity) and our order identifier (date and number). Should the delivery note be missing or incomplete we shall not be responsible for the resulting delay in processing and payment.

(4) The risk of accidental loss or deterioration of the item shall be transferred to us upon the handover at the place of fulfillment. If acceptance has been agreed to it shall determine the transfer of risk. Apart from that statutory regulations of a contract to produce a work shall apply accordingly. The handover or acceptance shall be the same if we delay acceptance.

(5) The Seller must also expressly offer his services to us if a specific calendar time or participation by us (e.g. providing material) has been agreed to for an action. Should we delay acceptance the Seller may demand compensation for his additional expenses according to statutory regulations. Should the contract be for unreasonable objects to be produced by the Seller (individual production), the Seller shall only receive further rights if we agree to participation and are responsible for the failure to cooperate.

§ 5 Prices and payment terms

(1) The price stated in the respective order shall be binding. Any prices shall be net prices. Legal VAT must be stated on the invoice.

(2) The price shall include all services and additional services of the Seller as well as any additional costs including any insurance. The Seller must take back packaging material on our request.

(3) The agreed price shall become due within 30 calendar days of complete delivery (including any acceptance that may have been agreed to) as well receipt of an orderly invoice in paper form sent through the post. If we make payments within 14 calendar days the Seller shall grant us a 3% discount for the net amount of the invoice. For bank transfers payments shall be made on time if our transfer order is received by a bank prior to the expiration of the payment deadline; we shall not be responsible for delays caused by the banks participating in the payment process.

(4) We shall not owe interest on maturity. Our default shall be governed by statutory regulations and shall require written notice by the Seller in any case.

(5) Offsetting and retention rights as well as objections of unfulfilled contracts shall be granted to us to the legal extent. The Seller shall only receive offsetting or retention rights for legally established and uncontested counterclaims.

§ 6 Confidentiality and retention of title

(1) We shall reserve the right to ownership and the copyright as well further technical and non-technical property rights to figures, plans, drawings, product descriptions and other documents. Such documents must only be used for the contractually agreed service and must be returned to us upon completion. Documents must be kept secret towards third parties even beyond the expiration of the contract. This obligation shall only expire if and insofar as the knowledge contained in the documents has become publicly known. This shall apply accordingly to substances, materials, tools, templates, samples and other objects that we provide to the Seller. These must be stored separately and insured to an appropriate extent against destruction and loss.

(2) Processing, mixing or combining (further processing) of provided objects shall be performed for us by the Seller. The same shall apply to the processing of delivered goods by us so that we will be considered as the manufacturer and will acquire ownership of product in accordance with statutory regulations at latest after the further processing.

(3) The handover of the goods to us must be made irrespective of payment of the price. Should we in individual cases accept an offer by the Seller for which the handover is conditional upon payment of the purchase price, retention of title shall expire at the latest with the payment of the purchase price for the delivered goods. Under the ordinary course of business we may continue to resell the goods through advance assignment of the resulting claim prior to paying the purchasing price (alternatively assertion of the simple retention of title extended to the resale). This shall exclude any further consequences of retention of title especially the forwarded retention of title extended to the further processing.

§ 7 Defective delivery

(1) According to statutory regulations the Seller shall especially be liable for the goods being in the agreed condition during the transfer of risk. The product descriptions that are the object of the respective contract or that become part of the contract in the same manner as the GCP shall be considered as an agreement on the condition.

(2) Contrary to Section 442(1) Sentence 2 of the German Civil Code, we may assert defect claims without restriction even if we remained unaware of the defect during contract conclusion due to gross negligence.

(3) Statutory regulations shall apply to the examination and reporting obligations with the following restrictions: Our examination obligation shall be limited to defects that are obviously visible during our incoming goods inspection through external examination including the delivery documents as well as through sampling during our quality inspections (e.g. transport damage, false deliveries, short delivery). In the event that acceptance has been agreed, there shall be no examination obligation. Apart from that it shall depend on to what extent an examination is feasible under the ordinary course of business in consideration of the individual case. Our reporting obligations for subsequently discovered defects shall remain unaffected. In any case our report shall be considered to have been submitted without delay and on time if it is received by the Seller within 10 business days.

(4) The costs applied for the examination and rectification by the Seller shall also be borne by him if it should be discovered that there was no actual defect. Our damage compensation obligation for unjustified demands for defect rectification shall remain unaffected and shall only exist if we recognize or grossly negligently fail to recognize that there was no defect.

(5) Should the Seller fail to meet his rectification obligations (according to our choice either through remedying the defect or delivering a defect-free object) within an appropriate period set by us we may remove the defect ourselves and demand compensation from the Seller for the necessary expenses or according advance payment. If rectification by the Seller failed or is intolerable to us no new deadline shall be required; we shall notify the Seller of such circumstances without delay if possible.

(6) Apart from that we may demand purchase price reductions or withdraw from the contract in accordance with statutory regulations in case of material defects or defects of title. Likewise statutory regulations shall grant damage compensation and reimbursement claims.

§ 8 Supplier regress

(1) Our legal regress claims within a supply chain shall be granted to us without limitation in addition to our defect claims. We may especially demand the exact kind of rectification from the Seller that we owe to our client in individual cases. However our right of choice under Section 439(1) of the German Civil Code shall be restricted.

(2) Before we recognize or fulfil defect claims asserted by our clients we will notify the Seller and request a statement that briefly explains the situation. Should the statement not be issued within an appropriate period and/or should no mutual solution be found the defect claim actually granted by us shall be considered to be owed to our client; the burden of proof for evidence to the contrary shall be on the Seller in this case.

(3) Our claims from delivery regress shall also apply if the goods were processed further by installing another product prior to being sold to a consumer.

§ 9 Manufacturer's liability

(1) If the Seller is responsible for damage to a product he must release us from any third-party claims insofar as the cause lies within his control and organisation and he is personally liable to third parties.

(2) Accordingly the Seller must refund expenses under Sections 683 & 670 of the German Civil Code that resulted through the assertion of claims by third parties including recall campaigns conducted by us. We shall notify the Seller about the content and scope of recall measures and provide him with an opportunity to comment on the matter insofar as it is possible and tolerable.

(3) The Seller must conclude and maintain product liability insurance for amounts appropriate to the respective contracts.

§ 10 Statute of limitations

(1) Contrary to Section 438(1) Number 3 of the German Civil Code, the general statute of limitations for defect claims shall be 3 years following the transfer of risk. After acceptance has been agreed the statute of limitations shall commence upon the acceptance. The 3-year statute of limitations shall also apply accordingly to claims from legal defects though for which the statutory statute of limitations for real claims for the restitution of property (Section 438(1) Number 1 of the German Civil Code) shall remain unaffected; furthermore claims from legal defects shall expire under no circumstances as long as the third party cannot yet assert the right.

(2) The statutes of limitations for the purchase right including the above-stated extension shall apply to the legal extent to any contractual defect claims. Should we also be entitled to non-contractual damage compensation claims the regular statutory statute of limitations shall apply unless the application of the statute of limitation for the purchase right leads to a longer statute of limitations in individual cases.

§ 11 Choice of law and place of jurisdiction

(1) These Terms and any legal relationships between us and the Seller shall be governed by the law of the Federal Republic of Germany under exclusion of international uniform law, especially the UN sales convention. Requirements and effects of retention of title shall be subject to the law of the respective storage site insofar as the law selected is impermissible and invalid under German law.

(2) If the Seller is a merchant in the sense of the German Commercial Code [Handelsgesetzbuch], a legal person under public law or a special fund under public law the exclusive—and international—place of jurisdiction for any disputes arising from the contractual relationship shall be our main office. However we may sue at the place of fulfillment of the delivery obligation.