

# **General Terms and Conditions of Sale and Delivery (Status: December 2019)**

## **§ 1**

### **General information**

1.1 These General Terms and Conditions of Sale and Delivery ("GCS") shall apply to all business relations with our customer ("Customer"), provided that the Customer is an entrepreneur (§ 14 BGB), a legal entity under public law or a special fund under public law within the meaning of § 310 para. 1 BGB.

The business relationship shall be governed exclusively by our General Terms and Conditions in the version valid at the time of the order or, in any case, in the version last notified to the Customer in text form, also for similar future contracts, without us having to refer to them again in each individual case. Deviating, conflicting or supplementary conditions shall not become part of the contract, even if we do not expressly object to them.

1.2 Our General Terms and Conditions shall also apply if we carry out the delivery to the Customer without reservation in the knowledge that the Customer's terms and conditions conflict with or deviate from our General Terms and Conditions. Silence on declarations of the Customer is not to be regarded as consent.

1.3 Individual agreements made in individual cases with the Customer (including collateral agreements, supplements and amendments) shall in any case take precedence over these GCS. Subject to proof to the contrary, the content of such agreements shall be governed by a written contract or our written confirmation.

1.4 Legally relevant declarations and notifications to be made to us by the Customer after conclusion of the contract (e.g. setting of deadlines, notification of defects, declarations of withdrawal or reduction) must be made in writing, i.e. in written or text form (e.g. letter, e-mail, fax), in order to be effective. Legal formal requirements and further evidence, in particular in cases of doubt as to the legitimacy of the declarant, remain unaffected.

1.5 References to the validity of statutory provisions have only clarifying significance. Even without such clarification, the statutory provisions shall therefore apply insofar as they are not directly amended or expressly excluded in these GTC.

## **§ 2**

### **Order and offer documents**

2.1 Our offers are subject to confirmation and non-binding. This shall also apply if we have provided the Customer with catalogues, calculations and other product descriptions or documents - also in electronic form - to which we reserve ownership rights and copyrights.

2.2 Orders placed by the Customer shall be deemed a binding offer. Orders submitted by the Customer shall only be deemed accepted by us if they are accepted in writing by us or one of our representatives within 14 days of submission, unless the order specifies a different acceptance period. The acceptance takes place either in writing, i.e. in written or text form, or by delivery of the ordered commodity. There is no obligation on our part to accept an offer.

2.2 All sales documents, cost estimates, specifications and price lists shall be treated as strictly confidential and shall not be made available to third parties. We reserve ownership rights and copyrights to illustrations, drawings, calculations and other documents; they may not be made accessible to third parties (see also § 10 for the obligation to maintain secrecy).

2.3 With regard to the accuracy of the order, the Customer shall be responsible and the Customer shall be responsible for providing us with all necessary information relating to the goods ordered within a reasonable time so that the order can be executed in accordance with the contract.

2.4 If the goods have to be manufactured or otherwise processed by us and if the Customer has submitted a specification for this, the Customer shall indemnify us against any loss, damage, costs or other disadvantages which we suffer because the contractual processing or treatment of the goods has turned out to be an infringement of a patent, copyright, trademark or other property right of a third party due to the Customer's specification.

2.5 We reserve the right to change the description of the goods with regard to specification to the extent that legal requirements have to be taken into account, provided that this change does not lead to a deterioration in the quality and usability of the order.

### **§ 3**

#### **Prices and terms of payment**

3.1 The purchase price shall be the price stated by us or, where this has not been done in detail, the price stated in our current price lists. Our prices are quoted in EURO and are ex works ("EXW", incoterms 2010) plus packaging, the respective statutory value added tax, export deliveries, customs duties as well as fees and other public charges, notwithstanding the provision in Section 3.2, unless expressly agreed otherwise. Insofar as we are prepared to deliver the goods to other locations at the Customer's request, the Customer shall bear the costs of transport, packaging and insurance.

3.2 From a net goods value of EUR 200,-- our prices within Germany are valid as DAP (incoterms 2010) including packaging, unless otherwise stated in the order confirmation.

3.3 Invoice amounts are to be paid within 8 days of invoicing and delivery or acceptance of the goods without any deduction, unless otherwise agreed in writing. The date of receipt by us shall be decisive for the date of payment. Cheques shall not be deemed payment until they have been cashed. Irrespective of the above, however, we are entitled at any time, even within the framework of an ongoing business

relationship, to make a delivery in whole or in part only against advance payment. We declare a corresponding reservation at the latest with the order confirmation.

3.4 The Customer shall be in default upon expiry of the aforementioned payment period. The purchase price shall bear interest during the period of default at the statutory default interest rate applicable from time to time. We expressly reserve the right to claim higher interest and further damages in the event of default. Our claim against merchants to commercial interest on maturity (§ 355 HGB) remains unaffected.

3.5 The Customer shall only be entitled to set-off or retention rights to the extent that his claim has been legally established or is undisputed. In the event of defects in the delivery, the Customer's counter rights shall remain unaffected, in particular in accordance with Clause 7.2 sentence 2 of these GCS.

3.6 If it becomes apparent after conclusion of the contract (e.g. by application for opening of insolvency proceedings) that our claim to the purchase price is endangered due to the Customer's inability to pay, we shall be entitled under the statutory provisions to refuse performance and - if necessary after setting a deadline - to withdraw from the contract (§ 321 BGB). In the case of contracts for the manufacture of unjustifiable items (custom-made items), we can declare our withdrawal immediately; the statutory provisions on the dispensability of setting a deadline remain unaffected.

## **§ 4**

### **Delivery; Delay**

4.1 Delivery shall be ex works ("EXW", incoterms 2010), subject to the provisions of Clause 3.2, where the place of performance for the delivery and any subsequent performance shall also be. At the request and expense of the Customer, the goods will be shipped to another destination (mail order purchase). Unless otherwise agreed by written agreement, we shall be entitled to determine the type of dispatch (in particular transport company, dispatch route, packaging) ourselves, without accepting any liability for the cheapest and fastest transport.

4.2 The delivery period shall be agreed individually or, as the case may be, specified by us upon acceptance of the order. If shipment has been agreed, the delivery periods and delivery dates shall refer to the time of handover to the forwarding agent, carrier or other third party commissioned with the transport.

4.3 If we are unable to comply with binding delivery periods for reasons for which we are not responsible (non-availability of performance), we shall immediately inform the Customer thereof and at the same time inform the Customer of the expected new delivery period. If the delivery is not available even within the new delivery period, we shall be entitled to withdraw from the contract in whole or in part; in this case we shall

reimburse any consideration already paid by the Customer without delay. In particular, the non-availability of the service in this sense shall be deemed to be the non-timely self-delivery by our supplier if we have concluded a congruent hedging transaction, if neither our supplier nor we are at fault or if we are not obliged to procure in individual cases.

4.4 Compliance with delivery periods shall be subject to the timely and proper fulfilment of the Customer's obligations, in particular the timely receipt of all documents to be supplied by the Customer, any necessary approvals and releases as well as compliance with the agreed terms of payment. The defence of non-performance of the contract remains reserved.

4.5 If non-compliance with the deadlines is due to force majeure, e.g. mobilization, war, riot or similar events, e.g. strike, lockout, the deadlines shall be extended accordingly.

4.6 The occurrence of our delay in delivery shall be determined in accordance with the statutory provisions. In any case, however, a reminder by the Customer is required. If we are in default of delivery, the Customer may demand lump-sum compensation for the damage caused by the delay. The lump-sum compensation shall amount to 0.5% of the net price (delivery value) for each completed calendar week of delay, but shall not exceed a total of 5% of the delivery value of the goods delivered late. We reserve the right to prove that the Customer has suffered no damage at all or only a considerably lower damage than the aforementioned lump sum.

4.7 Both claims for damages on the part of the Customer due to delayed delivery and claims for damages in lieu of performance which exceed the limits specified in Section 4.6 above shall be excluded in all cases of delayed delivery, even after expiry of a delivery deadline set by us. This shall not apply if liability is mandatory in cases of intent, gross negligence or injury to life, limb or health. The Customer may only withdraw from the contract within the framework of the statutory provisions if we are responsible for the delay in delivery. A change in the burden of proof to the disadvantage of the Customer is not associated with the above provisions.

4.8 At our request, the Customer is obliged to declare within a reasonable period of time whether he will withdraw from the contract due to the delay in delivery or insist on delivery.

4.9 If the Customer is in default of acceptance or violates other obligations to cooperate, we shall be entitled to demand compensation for the resulting damage, including any additional expenses. Further claims remain reserved. In this case, the risk of accidental loss or accidental deterioration of the goods shall pass to the Customer at the time of default in acceptance or other breach of the duty to cooperate.

## **§ 5**

### **Transfer of risk and transport risk**

5.1 The risk of accidental loss and accidental deterioration shall pass to the Customer, even in the case of carriage paid delivery, when the delivery has been dispatched or collected. The goods always travel uninsured and in any case at the risk of the

Customer. This shall also apply in the case of carriage paid delivery and irrespective of which means of transport is used. We shall insure the deliveries against the usual transport risks only at the express request and expense of the Customer.

5.2 Otherwise clause 4.9 sentence 3 shall apply.

## **§ 6**

### **Retention of title security**

6.1 Irrespective of the delivery and the passing of risk or other provisions, we reserve title to the goods until complete receipt of all payments from the delivery contract and the current business relationship (secured claims).

6.2 In the event of breach of contract by the Customer, in particular default in payment, we shall be entitled to withdraw from the contract in accordance with the statutory provisions or/and demand the return of the goods on the basis of retention of title. The demand for surrender does not at the same time include the declaration of withdrawal, unless we have expressly declared this in writing. If the Customer does not pay the purchase price due, we may only assert these rights if we have unsuccessfully set the Customer a reasonable deadline for payment beforehand or if such a deadline is not required by law. The seizure of the goods by us always constitutes a withdrawal from the contract. After taking back the goods, we shall be entitled to sell them; the proceeds from the sale shall be set off against the Customer's liabilities - less reasonable selling costs.

6.3 The goods subject to retention of title may not be pledged to third parties or transferred by way of security until the secured claims have been paid in full. In the event of seizure or other interventions by third parties, the Customer must inform us immediately so that we can file a suit in accordance with § 771 ZPO (Code of Civil Procedure). If the Customer does not comply with this obligation, he shall be liable for the damage incurred.

6.4 The Customer is entitled to resell the goods in the ordinary course of business; however, he hereby assigns to us all claims in the amount of the final invoice amount agreed with us (including value added tax) which accrue to him from further processing against his Customers or third parties, irrespective of whether the goods have been resold without or after processing. We hereby accept the assignment. The Customer remains authorised to collect the claim even after the assignment. Our authority to collect the claim ourselves remains unaffected by this. However, we undertake not to collect the claim as long as the Customer meets his payment obligations from the proceeds received, is not in default of payment and, in particular, no application has

been made for the opening of insolvency or composition proceedings and payments have not been suspended. If this is the case, however, we can demand that the Customer informs us of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtor (third party) of the assignment.

6.5 The processing of the goods by the Customer is always carried out for us. The Customer's expectant right to the goods shall continue in respect of the processed goods. If the goods are processed with other foodstuffs or other goods not belonging to us, we shall acquire co-ownership of the new goods in the ratio of the objective value of our goods to the other processed goods at the time of processing. For the rest, the same shall apply to the goods resulting from processing as to the goods delivered under reservation. The Customer shall hold the co-ownership thus created in safe custody for us free of charge.

6.6 If the goods are inseparably mixed with other goods not belonging to us, we shall acquire co-ownership of the new goods in the ratio of the objective value of our goods to the other mixed goods at the time of mixing. If the mixing is carried out in such a way that the goods of the Customer are to be regarded as the main item, it shall be deemed agreed that the Customer assigns co-ownership to us on a pro rata basis. The Customer shall keep the sole ownership or co-ownership thus created in safe custody for us free of charge.

6.7 We undertake to release the securities to which we are entitled at the request of the Customer to the extent that the realisable value of our securities exceeds the claims to be secured by more than 10%; the choice of the securities to be released shall be incumbent on us.

## **§ 7**

### **Warranty for defects**

7.1 The statutory provisions shall apply to the Customer's rights in the event of material defects and defects of title (including wrong and short delivery), unless otherwise stipulated below. A prerequisite for any warranty rights of the Customer is that he has duly fulfilled all inspection and complaint obligations owed in accordance with § 377 HGB (German Commercial Code). If a defect becomes apparent upon delivery, inspection or at any later point in time, we must be notified thereof in writing without delay. The nature and extent of the alleged defect must be clearly apparent from the notification. If the Customer fails to properly inspect the goods and/or give notice of defects, our liability for the defect not reported or not reported on time or properly shall be excluded in accordance with the statutory provisions.

7.2 If there is a defect in the goods for which we are responsible, we shall be entitled, at our option, to supplementary performance in the form of rectification of the defect or replacement delivery. We shall be entitled to make the subsequent performance owed dependent on the Customer paying the purchase price due. However, the Customer shall be entitled to retain a reasonable part of the purchase price in proportion to the defect.

7.3 The Customer shall give us the time and opportunity required for the subsequent performance owed, in particular to hand over the rejected goods for inspection purposes. In the event of a replacement delivery, the Customer must return the defective item to us in accordance with the statutory provisions.

7.4 We shall bear or reimburse the expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labour and material costs, in accordance with the statutory provisions if a defect actually exists, insofar as these are not increased by the fact that the goods have been taken to a place other than the place of performance. Otherwise, we may demand reimbursement from the Customer for the costs incurred as a result of the unjustified request to remedy the defect (in particular testing and transport costs), unless the lack of defectiveness was not recognisable to the Customer.

7.5 If the subsequent performance fails and a reasonable period to be set by the Customer for the subsequent performance has expired without success or is dispensable according to the statutory provisions, the Customer shall be entitled, at its option, to declare rescission or demand a corresponding reduction in the purchase price. In the case of an insignificant defect, however, there is no right of withdrawal.

7.6 The warranty period shall end upon expiry of the minimum durability date of the goods or at the latest or, if a minimum durability date does not exist, after 12 months from delivery.

7.7 Claims of the Customer for damages or reimbursement of futile expenses shall only exist in accordance with § 8 even in the case of defects and shall otherwise be excluded.

## **§ 8 Liability; Limitation of claims for damages**

8.1 Claims for damages and reimbursement of expenses by the Customer ("claims for damages"), for whatever legal reason, in particular due to breach of duties arising from the contractual obligation, regardless of whether contractual or pre-contractual, and

from tort, are excluded, with the exception of claims arising from default, for which we are liable in accordance with Section 4.6.

8.2 This shall not apply in cases of mandatory liability, e.g. under the Product Liability Act, in cases of intent, gross negligence, injury to life, limb or health and breach of essential contractual obligations (obligations the fulfilment of which is essential for the proper performance of the contract and the observance of which the contractual partner regularly relies on and may rely on). The claim for damages for the breach of essential contractual obligations is, however, limited to the foreseeable damage typical for the contract, unless intent or gross negligence exists or liability is assumed for injury to life, limb or health. A change in the burden of proof to the disadvantage of the Customer is not associated with the above provisions.

8.3 The limitations of liability resulting from the above clauses 8.1. and 8.2. shall also apply in the event of a breach of duty by persons whose fault we are responsible for in accordance with statutory provisions, e.g. representatives and vicarious agents. They shall not apply if we have fraudulently concealed a defect or assumed a guarantee for the quality of the goods. Insofar as our liability is excluded or limited, this shall also apply to the personal liability of our employees, workers, staff, representatives and vicarious agents.

8.4 In the event of a breach of duty which does not consist in a defect, the Customer may only withdraw from the contract or terminate the contract if we are responsible for the breach of duty. A free right of termination of the Customer (in particular according to §§ 650, 648 BGB) is excluded.

8.5 The objection of contributory negligence (§ 254 BGB) remains unaffected.

8.6 The periods of limitation specified in Clause 7.6 shall also apply to contractual and non-contractual claims for damages by the Customer based on a defect in the goods, unless the application of the regular statutory period of limitation (§§ 195, 199 BGB) would lead to a shorter period of limitation in individual cases. Claims for damages on the part of the Customer due to injury to life, body or health, in cases of intent and gross negligence as well as under the Product Liability Act shall, however, become statute-barred exclusively in accordance with the statutory limitation periods.

## **§ 9**

### **Place of Performance, Applicable Law and Jurisdiction**

9.1 Unless otherwise stated in the order confirmation, our place of business shall be the place of performance.

9.2 If the Customer 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 exclusive - also international - place of jurisdiction for all disputes arising from or in connection with this



contract shall be our place of business. The same applies if the Customer is an entrepreneur within the meaning of § 14 BGB (German Civil Code). In all cases, however, we shall also be entitled to sue the Customer at his general place of jurisdiction. Prior statutory provisions, in particular regarding exclusive responsibilities, shall remain unaffected.

9.3 These GCS and the contractual relationship between us and the Customer shall be governed exclusively by German substantive law, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 / CISG .

## **§ 10**

### **Confidentiality and data protection**

10.1 The Customer must treat the conclusion of the contract confidentially and may only refer to the business relationship with us in advertising material after our written consent. The contracting parties undertake to treat all non-public commercial or technical details which become known to them through the business relationship as business secrets and to obligate their employees accordingly.

10.2 The obligation to maintain secrecy shall continue to apply for a period of three calendar years after termination of the contract.

10.3 We will treat any personal data of the Customer in accordance with the data protection law applicable in Germany, in particular the GDPR.

## **§ 11**

### **Other**

11.1 The Customer shall not make any contributions to our employees or management, in particular no gifts, special payments, travel, cash, samples, tickets for entertainment events or the like.

11.2 We may correct spelling mistakes, miscalculations and similar obvious inaccuracies at any time after discovery without being liable for any damages arising from such mistakes.

11.3 Should individual parts of these General Terms and Conditions of Sale and Delivery be invalid, this shall not affect the validity of the remaining provisions.