



General Terms and Conditions

(Date: July 2014)

Article 1 General, Applicability

(1) These general terms and conditions (GTC) shall apply to all business relationships with our clients (hereinafter: "Buyer"). The GTC only apply if the Buyer is an entrepreneur (section 14 of the German Civil Code /*Bürgerliches Gesetzbuch* (BGB)), a legal entity under public law or a special fund under public law.

(2) The GTC shall apply in particular to contracts on the sale and/or the delivery of movable items (hereinafter also referred to as "Goods"), irrespective of whether we produce such Goods ourselves or buy them from third party suppliers (sections 433, 651 BGB). The GTC, as amended from time to time, shall also apply as a general agreement to future contracts on the sale and/or the delivery of movable items entered into with the same Buyer without us being required to refer to such GTC again in each individual case; in such case, we will promptly notify the Buyer of any changes of our GTC.

(3) Our GTC shall apply exclusively. Any deviating, conflicting or supplementary general terms and conditions of the Buyer shall become an integral part of the contract only if and to the extent to which we have expressly agreed to their application in writing. This requirement for consent shall apply in any event, also including, for example, if we unconditionally carry out delivery to the Buyer despite our knowledge of its GTC.

(4) Individual agreements entered into with the Buyer in individual cases (including side agreements, supplements and modifications) shall in any case take precedence over these GTC. A written agreement or written confirmation by us shall be decisive of the content of such agreements.

(5) Legally relevant statements and notifications to be made to us by the Buyer following the conclusion of the contract (e.g., setting of deadlines, notifications of defect, declarations of rescission of contract or reduction) must be in writing in order to be effective.

(6) References to the validity of legislative provisions are for clarification purposes only. Therefore, the legal provisions shall apply even without such clarification, unless directly modified or explicitly excluded in these GTC.

Article 2 Formation of Contract

(1) All of our offers are non-binding and subject to confirmation. The same applies if we have supplied the Buyer with catalogues, price lists, product specifications, technical documentation (e.g., drawings, plans, calculations, certificates, references to DIN standards), other product specifications or documents - including in electronic format - to which we hold title and copyrights.

(2) Placement of a purchase order for Goods by the Buyer shall be deemed a binding offer of a contract. Unless otherwise stated in the purchase order, we shall be entitled to accept this offer of a contract within two (2) weeks after its receipt by us.

Article 3 Prices and Terms of Payment

(1) Unless otherwise agreed in any particular case, our prices current at the time of the conclusion of the contract shall apply, i.e., ex works or ex warehouse plus statutory value added tax. The cost of packaging shall not be included in the price and will be charged separately.

(3) Unless otherwise agreed in any particular case, the purchase price (without reductions) shall be due and payable within 14 days of the invoicing and delivery or acceptance of the Goods. In the case of contracts with a delivery value exceeding EUR 100,000.00, we are, however, entitled to demand an advance payment in the amount of 30 % of the purchase price. The advance payment shall be due and payable within 14 days of invoicing.

(4) The Buyer shall be in default upon expiry of the aforementioned deadline. The respective statutory interest rate applicable at the time shall be paid on the purchase price during the default period. We reserve the right to claim further damages caused by default. Our entitlement to commercial maturity interest (section 353 of the German Commercial Code/ *Handelsgesetzbuch* (HGB)) remains unaffected with respect to merchants.

(5) The Buyer shall be entitled to setoff or retention only to the extent its claim is determined by final judgement or undisputed. In the case of defects of delivery, the reciprocal rights of the Buyer, in particular pursuant to clauses 8, para 6, sentence 2 of these GTC, shall remain unaffected.

(6) If, after the conclusion of the contract, it becomes evident that our claim to the purchase price is jeopardised due to the Buyer's inability to perform (e.g., due to a request for the opening of insolvency proceedings), we are entitled to refuse performance (*Leistungsverweigerung*) and - after setting a time limit, if applicable - rescind the contract (*Rücktritt*) (section 321 BGB) in accordance with the statutory provisions. In the case of contracts on the manufacturing of non-fungible items (manufactured to customer's specification), we are entitled to rescind the contract immediately; the statutory provisions on the dispensability of setting a period for performance shall remain unaffected.

Article 4 Delivery Period and Default in Delivery

(1) The delivery period will be individually agreed or stated by us upon acceptance of the order. The delivery period shall begin on the date of the acceptance of the order, but not until all performance details have been clarified.

(2) In case we are unable to meet binding delivery deadlines for reasons not attributable to us (e.g., unavailability of goods or services), we will inform the Buyer immediately thereof and, at the same time, indicate the prospective new delivery time. If the goods or services continue to be unavailable within the new delivery deadline, we are entitled to rescind the contract in whole or in part; any consideration already provided by the Buyer will be immediately reimbursed by us. Failure by our own supplier to deliver to us on time shall in particular constitute a case of unavailability of goods and services in this sense, if (i) we have concluded a congruent supply transaction, (ii) neither we nor our supplier is at fault, or (iii) if we are not obliged to supply the goods or services in the particular case

(3) The occurrence of default in delivery by us is determined in accordance with statutory provisions. However, notice by the Buyer is required in any case. In the case of a default in delivery by us, the Buyer shall be entitled to claim lump-sum compensation of the damage incurred by it due to the default. The lump-sum compensation shall amount to 0.5 % of the net price (delivery value) for each full calendar week of default, however, not exceeding a total of 5 % of the delivery value of the Goods delivered late. We reserve the right to prove that the Buyer has not incurred any damage at all or that the incurred damage is considerably lower than the aforementioned lump sum.

(4) The rights of the Buyer pursuant to article 9 of these GTC and our statutory rights shall remain unaffected, in particular if the performance obligation is excluded (e.g., due to impossibility or unreasonableness of the performance and/or cure (*Nacherfüllung*)).

Article 5 Delivery, Passing of Risk, Acceptance, Default of Acceptance

(1) Delivery shall be ex works/ex warehouse, which shall also be the place of performance. Unless otherwise agreed, the Goods will be delivered packaged to the Buyer, whereby the costs of packaging will be charged separately.

(2) We are entitled to make partial deliveries. The same applies with respect to excess or short deliveries, unless the deviation in number or weight exceeds the customary scope.

(3) At the Buyer's request and cost, the Goods will be shipped to another destination (sale by delivery to a place other than the place of performance). Unless otherwise agreed, we shall be entitled to determine the type and method of shipping (in particular carrier and shipment route) ourselves. The Buyer shall bear the cost of carriage ex works/warehouse and the costs of a transportation insurance requested by the Buyer, if applicable. Unless we charge the transportation costs actually incurred in the individual case, flat-rate transportation costs (excluding transportation insurance) based on the weight of the Goods shall be deemed to be agreed. Such flat-rate transportation costs amount to 1.00 EUR/kg net for shipping within the Federal Republic of Germany, 2.50 EUR/kg net for shipping within Europe and 4.50 EUR/kg net for overseas transport. Any duties, fees, taxes and other public charges shall be borne by the Buyer.

(4) The risk of accidental loss and accidental deterioration of the Goods passes to the Buyer upon handover at the latest. However, in the case of a sale by delivery to a place other than the place of performance, the risk of accidental loss and accidental deterioration of the Goods as well as the risk of delay shall pass upon handover of the Goods to the forwarding agent, the carrier or any other person or entity entrusted with the shipment.

(5) If the Buyer is in default of acceptance or fails to cooperate or if our delivery is delayed for other reasons attributable to the Buyer, we are entitled to claim compensation for any resulting damages, including additional expenses incurred (e.g., storage costs). We will charge lump-sum compensation in the amount of EUR 20.00 per calendar day, commencing upon expiry of the delivery deadline or - if there is no delivery deadline - upon notification that the Goods are ready for shipment. The right to prove higher damages and our statutory claims (in particular the reimbursement of additional expenses incurred, reasonable compensation, termination) remain unaffected; however, the lump sum is to be offset against further monetary claims. The Buyer reserves the right to prove that we have not incurred any damage at all or that the incurred damage is considerably lower than the aforementioned lump sum.

Article 6 Continuous Delivery, Framework Agreements

In the case of agreements with continuous delivery (Framework Agreements), calls and type classifications shall be submitted to us in time; the total quantity must be classified and called within one year of the conclusion of the contract. If the Buyer does not fulfil this obligation, we are entitled, after the expiry of a grace period to no avail, to classify ourselves and deliver the Goods or to rescind the part of the contract which is still outstanding, and claim damages.

(2) If the contractually agreed quantity is exceeded by individual calls of the Buyer, we are entitled to deliver the excess amount. We are entitled to invoice the excess at the prices applicable at the time of the conclusion of the contract (ex works or ex warehouse plus any statutory VAT).

Article 7 Retention of Title

(1) Until receipt of full payment of all of our current and future claims under the sales contract and throughout an ongoing business relationship (Secured Claims), we retain title to the sold Goods.

(2) Until receipt of full payment of the secured claims, the Goods subject to retention of title must not be pledged or assigned by way of security to third parties. The Buyer shall immediately notify us in writing if and the extent to which third parties seize the Goods belonging to us.

(3) If the Buyer breaches the terms of the contract, in particular in the case of failure to pay the due purchase price, we are entitled to rescind the contract pursuant to the statutory provisions and reclaim the Goods based on the retention of title and the rescission. If the Buyer fails to pay the due purchase price, we may assert these rights only after having first unsuccessfully granted the Buyer a reasonable time for payment or if the granting of such a grace period is dispensable according to the statutory provisions.

(4) The Buyer is entitled to resell and/or process the Goods subject to retention of title in the ordinary course of business. In this case, the following additional provisions shall apply:

(a) The retention of title extends to the products resulting from the processing, mixing or combination of our Goods at their full value, whereby we shall be deemed to be the manufacturer. If as a result of the processing, mixing or combining with goods of third parties, third party title rights continue to exist, we will acquire co-ownership in the newly created products in proportion to the invoiced value of the processed, mixed or combined goods. Furthermore, the same shall apply with respect to the resulting product as applies to the Goods delivered under retention of title.

(b) The Buyer hereby fully, or in the amount of our respective co-ownership share pursuant to the preceding paragraph, assigns by way of security any claims against third parties resulting from reselling the Goods or the product. We hereby accept the assignment. The obligations of the Buyer set out in paragraph 2 shall also apply in respect of the assigned claims.

(c) The Buyer is authorised to collect the claim in addition to us. We undertake not to collect the claim as long as the Buyer fulfils its payment obligation towards us, the Buyer is not in default of payment, no application for the opening of insolvency proceedings has been made and there exists no other deficiency in the Buyer's financial capacity. If any of these conditions exist, however, we may demand that the Buyer informs us of the assigned claims and their respective debtors, provides all information required for collection, delivers the relevant documents and notifies the debtors (third parties) of the assignment.

(d) If the realisable value of the securities exceeds our claims by more than 10 %, we will, at the Buyer's request, release securities at our choice.

Article 8 Warranty Claims of the Buyer

(1) Unless otherwise provided below, the regulatory provisions shall apply with respect to the rights of the Buyer in the case of defects of quality or title (including wrong shipment and short shipment as well as improper assembly or defective assembly instructions). In the case of ultimate delivery to a consumer, the special statutory provisions (recourse to supplier pursuant to sections 478, 479 BGB) shall in any case remain unaffected.

(2) Our liability for defects shall be primarily based on the agreement on the quality and condition of the Goods. Product specifications (including those of a supplier) which have been made available to the Buyer prior to the placement of a purchase order or which have

been incorporated in the contract in the same manner as these GTC shall be deemed as an agreement on the quality and condition of the Goods.

(3) If no quality or condition has been agreed, the existence or non-existence of a defect shall be determined in accordance with the statutory provisions (section 434, para. 1, sentences 2 and 3 BGB). However, we do not assume any liability for public statements made by third parties (e.g., marketing statements).

(4) Claims for defects made by the Buyer require that it has complied with its statutory duty to examine the Goods and give notice of any defects (sections 377, 381 HGB). If a defect becomes apparent during or after the examination, we must be immediately notified thereof in writing. The notice is deemed immediate if it was made within a period of two weeks, whereby the deadline is met if the notice has been dispatched in time. Regardless of the duty to examine and give notice of defects, the Buyer shall give notice in writing of obvious defects (including wrong shipment and short shipment) within two weeks of delivery whereby the deadline is also met if the notice has been dispatched in time. If the Buyer fails to duly examine and/or give notice of defects, our liability for any defect of which we were not notified shall be excluded.

(5) If the supplied item is defective, we may first of all choose whether we will cure the defect by remedying the defect (rectification of defect (*Nachbesserung*)) or by supplying an item free of defects (replacement (*Ersatzlieferung*)). Our right to refuse to provide a cure in accordance with the statutory requirements remains unaffected.

(6) We are entitled to make the cure owed conditional upon payment of the due purchase price by the Buyer. However, the Buyer shall be entitled to retain a portion of the purchase price which is appropriate relative to the defect.

(7) The Buyer shall grant to us the time and opportunity required for the cure owed, and shall in particular surrender the rejected Goods for inspection. In the case of a replacement, the Buyer shall return the defective item pursuant to the statutory provisions. A cure does neither include the removal of the item, nor its repeated installation, if we were initially not obliged to install the item.

(8) If a defect actually exists, we will assume any expenses necessary for inspection and cure, in particular costs incurred for transportation, labour and material (excluding costs for removal and installation). If, however, the Buyer's request to remedy a defect proves to be unjustified, we are entitled to demand reimbursement from the Buyer of any resulting costs incurred.

(9) In urgent cases, such as where there is a risk to operational safety, or in order to prevent disproportionate damage, the Buyer shall be entitled to remedy the defect itself and claim from us compensation of any expenses objectively necessary to remedy the defect. We shall be immediately informed of such self-remedy, if possible prior to its execution. There exists no right to self-remedy of defects if we would be entitled to refuse the relevant cure in accordance with the statutory provisions.

(10) If the cure has failed or a reasonable deadline to be set by the Buyer for the cure has lapsed to no avail or may be dispensed with pursuant to the statutory provisions, the Buyer shall be entitled to rescind the contract or reduce the purchase price. However, no right of rescission exists in the case of a non-material defect.

(11) Claims of the Buyer to damages or compensation for futile expenses only exist in accordance with Article 9 and are otherwise excluded.

Article 9 Other Liability

(1) Unless otherwise provided in these GTC and the following provisions, we shall be liable in accordance with the applicable statutory provisions in the case of breach of contractual and non-contractual obligations.

(2) We assume liability for damages - regardless of the legal grounds - in the case of intent and gross negligence.

(3) In the case of ordinary negligence, our liability shall be limited to:

(a) damages resulting from personal injury, death or deterioration to health;

(b) damages resulting from the breach of a material contractual obligation (obligation whose proper fulfilment facilitates the performance of the contract in the first place and upon whose fulfilment the contractual partner normally relies and may rely upon); in such case, however, our liability shall be limited to the compensation of damages which are foreseeable at the time of the conclusion of the contract and typical for the contract;

(c) However, production downtime, loss of benefit of use, unsuccessful expenses, time spent unproductively, loss of use, lost business opportunities and other comparable indirect damages do not constitute damages which are foreseeable at the time of the conclusion of the contract or typical for the contract.

(4) The limitations of liability under paragraph 3 shall not apply if we have fraudulently concealed a defect or have warranted the condition and quality of the Goods. The same applies to claims of the Buyer pursuant to the German Product Liability Act (*Produkthaftungsgesetz*).

(5) The Buyer may only rescind or terminate the contract for a breach of duty which does not constitute a defect, if such breach of duty is attributable to us. A right of the Buyer to terminate the contract at will (in particular pursuant to sections 651, 649 BGB) shall be excluded. Furthermore, the statutory requirements and legal consequences apply.

Article 10 Statute of Limitation

(1) In deviation from section 438, para. 1, no. 3 BGB, the general limitation period for claims arising from defects of quality or title shall be one year from delivery. However, special statutory provisions for third-party *in rem* return claims (section 438, para. 1, no. 1 BGB), in the case of malice (*Arglist*) of the Buyer (section 438, para. 3 BGB) and for claims made in connection with taking recourse to the supplier in the case of ultimate delivery to a consumer (section 479 BGB) shall remain unaffected.

(2) The aforementioned limitation periods of the provisions on the sale of goods shall also apply to contractual and non-contractual damage claims of the Buyer based on a defect of the Goods, unless application of the regular statutory limitation (sections 195, 199 BGB) would lead to a shorter limitation period in the individual case. The limitation periods of the German Product Liability Act shall in any case remain unaffected. Apart from that, only the statutory limitation periods shall apply to damage claims of the Buyer under section 9.

Article 11 Choice of Law and Place of Jurisdiction

(1) The laws of the Federal Republic of Germany shall apply to these GTC and all legal relationships between us and the Buyer to the exclusion of international uniform law, in particular the UN Sales Convention. The prerequisites for and effects of retention of title pursuant to Article 7 are subject to the applicable law at the place where the Goods are located, to the extent the choice of law made in favour of German law is unlawful or ineffective.

(2) If the Buyer 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 – and international – place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be our principal place of business in Osterholz-Scharmbeck. We are, however, entitled to bring an action at the general place of jurisdiction of the Buyer.