

## **General Terms and Conditions**

### **§ 1 Scope of application, form**

(1) These General Terms and Conditions apply to all business relations with our customers ("Purchaser"). The General Terms and Conditions shall only apply if the Purchaser is an entrepreneur (Section 14 of the German Civil Code (BGB)), a legal entity under public law or a special fund under public law.

(2) Our General Terms and Conditions shall apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the Purchaser shall only become part of the contract if and to the extent that we have expressly agreed to their validity. This requirement of consent shall apply in any case, even, for example, if we carry out the delivery to the Purchaser without reservation, in full knowledge of the Purchaser's general terms and conditions.

(3) Individual agreements made on a case-by-case basis with the Purchaser (including collateral agreements, supplements and amendments) shall in any case take precedence over these General Terms and Conditions. Subject to proof to the contrary, the content of such agreements shall be governed by a written contract or confirmed in writing by us.

(4) Legally relevant declarations and notifications of the Purchaser with regard to the contract (e.g. setting a deadline, notification of defects, revocation or reduction) must be made in writing, i.e. in written or text form (e.g. letter, e-mail, fax). Legal formal requirements and further evidence, in particular in cases of doubt as to the legitimacy of the declarant, remain unaffected.

(5) References to the validity of statutory provisions shall only have clarifying significance. Even without such clarification, the statutory provisions shall therefore apply insofar as they are not directly amended or expressly excluded in these General Terms and Conditions.

### **§ 2 Conclusion of contract**

(1) Our offers are non-binding and subject to confirmation. This shall also apply if we have provided the Purchaser with catalogues, technical documentation (e.g. drawings, plans, calculations, references to DIN standards), other product descriptions or documents – also in electronic form – for which we reserve ownership rights and copyrights. The order quantities must correspond to our packaging units.

(2) The order of the goods by the Purchaser is considered as a binding contract offer. The order shall only be deemed accepted if it has been confirmed by us in writing, whereby this can also be done in text form (Section 126 b BGB), or the goods have been delivered to the Purchaser.

### **§ 3 Delivery period and delay in delivery**

(1) The delivery period shall be agreed individually or specified by us upon acceptance of the order.

(2) If we are unable to comply with binding delivery periods for reasons for which we are not responsible (non-availability of performance), we shall inform the Purchaser immediately thereof and at the same time inform the Purchaser of the expected new delivery period. If the performance is not available within the new delivery period, we shall be entitled to revoke the contract in whole or in part; we shall immediately reimburse any consideration already rendered by the Purchaser. In particular, the non-availability of performance in this sense particularly includes our suppliers failing to deliver in good time if we have entered into a congruent hedging transaction, neither we nor our suppliers are at fault or we are not obliged to procure in individual cases.

(3) The occurrence of a delay in delivery by us shall be determined in accordance with statutory provisions. However, a reminder by the Purchaser shall be required in any case. If delivery by us is delayed, the Purchaser may claim liquidated damages for any loss incurred as a result of such delay. Such liquidated damages shall be payable in an amount of 0.5 % of the net price (value of the delivery) for each full calendar week of the delay, however not exceeding a maximum amount of 5 % of the value of the delivery affected by the delay. We reserve the right to prove that the Purchaser incurred no damage at all or that the damage incurred is significantly less than the aforementioned amount of liquidated damages.

(4) The rights of the Purchaser according to Section 8 of these General Terms and Conditions and our legal rights, in particular in the case of an exclusion of the obligation to perform (e.g. due to impossibility or unreasonability of performance and/or subsequent performance), remain unaffected.

### **§ 4 Delivery, passing of risk, acceptance, default of acceptance**

(1) Delivery shall be ex works Weingarten, which is also the place of performance. Upon the request and at the expense of the Purchaser, the goods will be delivered to another place of destination (sale by delivery to a place other than the place of performance at the Purchaser's request). Unless otherwise agreed, we shall determine the method of shipment at our own discretion (in particular carrier, type of shipment, packaging).

(2) The risk of accidental loss or accidental deterioration of the goods shall pass to the Purchaser no later than upon delivery. However, in case of sale by delivery to a place other than the place of performance at the Purchaser's request, the risk of accidental loss or deterioration as well as of any delay in delivery shall pass to the Purchaser upon hand-over to the forwarder, carrier or other person or body entrusted with the shipment. If and to the extent that deliveries are subject to acceptance, the risk shall pass upon such acceptance. In all other respects too, the statutory provisions governing contracts for work and services (Werkvertragsrecht) shall apply to acceptance.

Delivery and/or acceptance shall also be deemed to have occurred in the case of any delay in acceptance by the Purchaser.

(3) If acceptance by the Purchaser is delayed, if the Purchaser fails to provide active co-operation or if delivery by us is delayed for any other reason for which the Purchaser is responsible, we shall be entitled to claim damages for any losses caused by such delay or failure, including additional expenditures (e.g. storage costs). For this we shall charge a lump-sum compensation of 0.25% of the invoice amount of the delivery items to be stored per expired week. We reserve the right to claim higher damages. It is up to the Purchaser to prove that no damage has been caused at all or that it is considerably lower than the lump sum.

(4) We shall be entitled to make partial deliveries if

- the partial delivery can be used by the Purchaser within the scope of the contractual purpose,
- the delivery of the remaining ordered goods is ensured and
- the Purchaser does not incur any significant additional costs or expenses (unless we agree to bear such costs).

(5) The recipient is responsible for the disposal of the transport packaging in accordance with the current legal requirements.

## **§ 5 Prices and terms of payment**

(1) Unless otherwise agreed in individual cases, our prices valid at the time of conclusion of the contract shall apply, ex works Weingarten (Incoterms 2010), plus statutory value-added tax.

(2) The agreed price is based on current material costs and wages. If these should change by the time of shipping the order, the price shall also be adjusted in proportion with the percentage of the change in cost of materials and wages, with the change in cost of materials and wages being taken into account at the same percentages. The respective manufacturing status shall be taken into account in the event of material or wage changes. The correction shall relate only to that part of the price which corresponds to the costs still to be incurred.

(3) In the case of sale by delivery to a place other than the place of performance (Section 4 paragraph 1), the Purchaser shall bear the transport costs ex works and the costs of any transport insurance requested by the Purchaser. Any customs duties, fees, taxes and other public charges shall be borne by the Purchaser.

(4) Unless otherwise agreed in individual cases, the purchase price is due and payable within 30 days of invoicing and delivery or acceptance of the goods.

(5) The Purchaser shall be in default upon expiry of the aforementioned payment period. The purchase price shall bear interest during the period of default at the applicable statutory default interest rate. We reserve the right to assert further claims for damages caused by default. Our claim against merchants to commercial interest on maturity (Section 353 of the German Commercial Code (HGB)) remains unaffected.

(6) The Purchaser shall only be entitled to set-off or retention rights to the extent that his claim has been final and non-appealably established or uncontested. In the event of defects in the delivery, the Purchaser's counter rights shall remain unaffected, in particular pursuant to Section 7, paragraph 4, second sentence of these General Terms and Conditions.

(7) If, after conclusion of the contract, there is evidence that our payment claim is in danger caused by lack of financial ability of the Purchaser (e.g. by any filings for insolvency), we shall be entitled, under the provision of § 321 BGB, to refuse to supply and – if necessary after setting a deadline - revoke the contract. In case of production of custom made products (single items) we can revoke the contract without further notice; the legal provisions about cancellation without notice remain unaffected.

## **§ 6 Retention of title**

(1) We reserve the right to the property of the sold goods until the full payment of all of our current and future claims from the purchase contract and a current business relationship (secured claims).

(2) The goods subject to retention of title may neither be pledged to third parties nor transferred by way of security prior to full payment of the secured claims. The Purchaser must notify us immediately in written or text form if a request for the opening an insolvency proceeding has been filed or if the goods belonging to us are seized by third parties (e.g. seizures).

(3) In the event of breach of contract by the Purchaser, in particular non-payment of the purchase price due, we shall be entitled to withdraw from the contract in accordance with the statutory provisions and/or 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 from the contract; rather, we are entitled to claim the return of the goods and to reserve the right of cancellation. If the Purchaser does not pay the due purchase price, we may only exercise these rights if we have previously given the Purchaser a reasonable period of time to pay or if statutory provisions state that such a deadline is unnecessary.

(4) The Purchaser is entitled to continue to sell and/or process the goods subject to retention of title as part of normal business transactions until cancellation as specified in (c). The following provisions also apply in such a case:

(a) The retention of title shall extend to the full value of the products resulting from the processing, mixing or combining of our goods, whereby we shall be deemed to be the manufacturer. If the ownership rights of third parties

remain in force in the event of processing, mixing or combination with goods of third parties, we shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined goods. Furthermore, the same conditions apply to the goods produced as to goods subject to retention of title.

(b) The Purchaser shall assign to us as collateral the total amount of receivables from third parties resulting from the resale of the goods or the product or the value of a possible co-ownership share as per the preceding paragraph. We accept the assignment. The Purchaser's obligations stipulated in paragraph 2 also apply with regard to the assigned receivables.

(c) The Purchaser shall remain authorised to collect the receivables alongside us. We undertake not to collect the receivable if the Purchaser meets his obligations to pay us, there is no impairment in his ability to pay and we do not enforce retention of title by exercising a right as per paragraph 3. If this is the case, we may demand that the Purchaser informs us about all assigned receivables and his debtors, provide all the information necessary for collection, submit corresponding documents and inform all debtors (third parties) of the assignment of payments. Moreover, in such a case, we are also entitled to revoke the Purchaser's authority to resell and further process the goods subject to retention of title.

(d) If the value of the collateral exceeds the value of our receivables by more than 10%, we will, at our discretion, release the collateral at the Purchaser's request.

### **§ 7 Purchaser's claims based on defects**

(1) Unless otherwise specified below, the statutory provisions shall apply to the Purchaser's rights in the event of material defects. In all cases, the statutory special provisions shall remain unaffected upon final delivery of the unprocessed goods to a consumer, even if the consumer has further processed them (supplier regress pursuant to Sections 478 BGB). Claims arising from supplier recourse are excluded if the defective goods have been further processed by the Purchaser or another entrepreneur, e.g. by installation in another product.

(2) The Purchaser's claims for defects presuppose that it has met its statutory obligations to examine and notify (Sections 377, 381 HGB). In the case of goods intended for installation or other further processing, an inspection must always be carried out immediately prior to processing. If a defect becomes apparent upon delivery, during inspection or at any later point in time, we must be notified thereof in written or text form without delay. In any case, obvious defects must be reported in written or text form within 14 working days of delivery and defects not recognisable during inspection within the same period of time from discovery. If the Purchaser fails to properly inspect the goods and/or to notify us of any defects, our liability for the defect that has not been notified, or not notified in good time, or improperly notified, shall be excluded in accordance with the statutory provisions.

(3) If the delivered item is defective, we may initially choose whether to provide subsequent performance by remedying the defect (subsequent improvement) or by supplying a defect-free item (replacement delivery). Our right to refuse subsequent performance under the statutory conditions shall remain unaffected.

(4) We are entitled to make any required subsequent performance conditional on the Purchaser paying the due purchase price. The Purchaser is, however, entitled to retain a part of the purchase price proportional to the defect.

(5) The Purchaser shall give us the time and opportunity required for the owed subsequent performance, in particular to hand the faulty good over for inspection. In the event of a replacement delivery, the Purchaser must return the defective item to us in accordance with the statutory provisions.

(6) We shall bear or reimburse the expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labour and material costs as well as any dismantling and installation costs, in accordance with the statutory provisions, if such a defect does actually exist. If no defect exists, we may require compensation from the Purchaser for the costs incurred due to the unjustified requirement for a defect to be rectified, particularly costs for inspection and transportation unless the Purchaser was not in a position to recognise that there was no defect.

(7) In urgent cases, such as a threat to operating safety or an effort to prevent disproportionate damage, the Purchaser is entitled to rectify the defect himself and require compensation from us for the expenses objectively necessary for this purpose. We must be informed immediately of any such self-performance, prior to any such action if possible. There is no right to self-performance if we would have been entitled to refuse suitable subsequent performance as per statutory provisions.

(8) If the subsequent performance has failed or a reasonable period to be set by the Purchaser for the subsequent performance has expired without success or is dispensable according to the statutory provisions, the Purchaser may revoke the purchase contract or reduce the purchase price. In the case of an insignificant defect, however, there is no right of revocation.

(9) Claims of the Purchaser for damages or reimbursement of futile expenses shall only exist in accordance with Section 8, even in the case of defects, and shall otherwise be excluded.

## **§ 8 Liability**

(1) Unless otherwise stated in these General Terms and Conditions including the following provisions, we shall be liable in the event of a breach of contractual and non-contractual obligations in accordance with the statutory provisions.

(2) We are only liable for compensation for damages in cases of wilful intent or gross negligence, regardless of the legal basis. In the event of slight negligence, we are only liable to a limited extent as per statutory regulations (e.g. for due care in our own affairs):

a) for damages resulting from injury to life, limb or health,

b) for damages arising from the not inconsiderable breach of an essential contractual obligation (obligation of the fulfilment which is essential for the proper execution of the contract and the observance of which the contractual partner regularly relies on and may rely on); in this case, however, our liability is limited to compensation for the foreseeable, typically occurring damage.

(3) The limitations of liability resulting from paragraph 2 shall also apply to breaches of duty by or for the benefit of persons whose fault we are responsible for in accordance with statutory provisions. They shall not apply if we have fraudulently concealed a defect or assumed a guarantee for the quality of the goods and for claims of the Purchaser under the German Product Liability Act (Produkthaftungsgesetz).

## **§ 9 Limitation period**

(1) Notwithstanding Section 438 para. 1 no. 3 BGB, the general limitation period for claims arising from material defects shall be one year from delivery. If acceptance has been agreed, the limitation period shall commence upon acceptance.

(2) Other special statutory provisions on limitation (in particular Section 438 para.1 no. 1, para.3, Sections 444, 445b BGB) shall remain unaffected.

(3) The aforementioned limitation periods under sales law shall likewise apply to the Purchaser's claims for contractual and non-contractual damage compensation that are based on a defect in the goods unless applying the regular statutory limitation period (Sections 195, 199 BGB) would lead to a shorter limitation period in individual cases. Claims for damages of the Purchaser according to Section 8 para 2 sentence 1 and sentence 2(a) as well as according to the product liability law become statute-barred however exclusively after the legal limitation periods.

## **§ 10 Special tools**

(1) All tools not listed in the catalogue are special tools which must be subjected to a feasibility study. Order quantities must correspond to our packaging units.

(2) The delivery may be exceeded or undercut by an appropriate number of items. The delivery quantity shall be deemed reasonable provided that the number of items is not exceeded or undercut by 20 %.

## **§ 11 Governing law, legal venue and language**

(1) These General Terms and Conditions and the contractual relationship between us and the Purchaser shall be governed by the law of the Federal Republic of Germany to the exclusion of international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods.

(2) If the Purchaser is a merchant as defined by the German Commercial Code (HGB), a legal entity under public law or a special fund under public law, the exclusive – including international – place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be our domicile in Weingarten, Germany. In all cases, however, we shall also be entitled to institute legal proceedings at the place of performance of the delivery obligation in accordance with these General Terms and Conditions or a prior individual agreement or at the Purchaser's general place of jurisdiction. Prior statutory provisions, in particular regarding exclusive jurisdiction, shall remain unaffected.

(3) If the Purchaser is domiciled outside the European Union, Switzerland, Norway or Iceland, all disputes or claims arising out of or in connection with this Agreement, including disputes concerning its validity, breach, termination or nullity, shall be finally settled in accordance with the Rules of Arbitration (Vienna Rules) of the Vienna International Arbitral Centre of the Austrian Federal Economic Chamber (VIAC) by three arbitrators appointed in accordance with these Rules. The substantive law applicable to the contractual relationship and the substantive law applicable to the arbitration agreement shall be German law to the exclusion of the conflict-of-law rules of private international law. The language of the arbitration proceedings shall be German. The arbitration proceedings shall be conducted in Vienna, Austria.

(4) The contractual language is German. If there should be any semantic discrepancy between the German text and a foreign-language translation of the contract and the present General Terms and Conditions, the meaning of the German text shall prevail.