

General Terms and Conditions of Purchase

Version: May 2017



§ 1 General Provisions, Scope

- (1) These General Terms and Conditions of Purchase (hereinafter: GTCP) apply to all of our business relationships with our business partners and suppliers (hereinafter: "Sellers"), insofar as, pursuant to Sect. 310 (1) of the German Civil Code (BGB), the Seller is an entrepreneur (Sect. 14 BGB), a legal person under public law or a special fund under public law.
- (2) These GTCP apply in particular to contracts for the sale and/or delivery of moveable property (hereinafter: "Goods"), irrespective of whether the Seller manufactures the Goods itself or acquires same from suppliers (Sections 433, 651 BGB). These GTCP, in the version currently in effect, apply as a framework agreement that also covers future contracts entered into with the same Seller for the sale and/or delivery of Goods, obviating the need for us to refer to them in each individual instance.
- (3) Our GTCP apply exclusively. General terms and conditions of the Seller that deviate from, stand in opposition to or supplement our GTCP may be made part of the contract with the Seller only and insofar as we have given our express written consent to their applicability. This requirement of consent applies in every instance, including in particular where, despite our awareness of the Seller's general terms and conditions, we accept deliveries from it without reservation.
- (4) Legally relevant declarations and notices that the Seller is required to make or provide to us following conclusion of contract (e.g. setting of deadlines, payment default notices, declaration of rescission) must be given in writing in order to be effective.
- (5) Any reference to the applicability of statutory provisions is only made by way of clarification. For this reason, even absent such clarification, the statutory provisions are applicable unless modified or expressly precluded by these GTCP.

§ 2 Conclusion of Contract

- (1) All of our orders are non-binding and subject to confirmation, unless they are expressly designated as binding or set forth a specific deadline for acceptance.
- (2) We reserve our rights of ownership and copyrights in and to all drawings, images, calculations, brochures, catalogues, models, tools, and other documents and resources. The Seller may not, without our express consent, make such materials available to third parties, nor may it disclose same or use or copy same either itself or through third parties and either as such or with respect to the contents thereof. If the Seller no longer requires such materials in the normal course of its business, or if negotiations do not lead to the conclusion of a contract, the Seller must, at our request, return all such materials to us and, if applicable, destroy all copies thereof.
- (3) The foregoing provision applies mutatis mutandis to other materials (e.g. software, finished products, semi-finished products), as well as to tools, templates, samples, and other items we provide to the Seller for manufacturing purposes. To the extent they are not processed, such items must be held in separate safekeeping at the expense of the Seller and insured to the customary extent against destruction and loss.
- (4) Our order cannot be considered binding until it has been submitted or confirmed in writing. In the event the order, including order documentation, contains obvious errors (e.g. mathematical or spelling mistakes) or is incomplete, the Seller shall notify us thereof prior to acceptance so that the order to be corrected or made complete; otherwise, the contract is deemed not concluded.
- (5) The Seller is required to confirm our order in writing within five business days or, in particular by dispatching the Goods by such deadline, carry it out without reservation (acceptance). Untimely acceptance constitutes a new offer by the Seller, which requires acceptance by us.
- (6) The legal relationships between us and the Seller are governed exclusively by a written, executed purchase contract, which includes these GTCP. The purchase contract sets forth in full all agreements between the parties with regard to the subject of the contract. The purchase of certain products and product types covers, on account of their nature and quality, also the provision of additional documentation (e.g. data sheets, safety data sheets, laboratory reports, and/or inspection certificates where the chemical industry is concerned). Verbal commitments made by us prior to conclusion of this contract are not legally binding, and verbal agreements between the parties are deemed to have been superseded by the written contract, unless it is expressly apparent from them that they are to continue to have binding effect.
- (7) To the extent that we provide technical information or act in an advisory capacity, and such information or advice does not form part of the contractually agreed scope of services that we are obligated to render, same is provided at no charge and under exclusion of all liability.
- (8) Individual arrangements made with the Seller in specific cases (including collateral agreements, additions, and amendments to the purchase contract) always have priority over these GTCP. The content of such arrangements is subject to a written contract or our written confirmation.
- (9) With the exception of general managers and/or holders of a general commercial power of attorney, our employees are not authorized to enter into verbal agreements that deviate from the purchase contract.
- (10) The written form requirement is satisfied with transmission by fax; electronic transmission, particularly by e-mail, is not sufficient.

§ 3 Prices and Payment Terms

- (1) The price stipulated in the order is binding. All prices are net of applicable value-added tax.
- (2) Prices agreed to in confirmed orders (order confirmations) are binding and are not subject to any price fluctuations whatsoever.
- (3) Unless agreed otherwise in a particular case, the price includes all services and related work by the Seller (e.g. assembly, installation), as well as all ancillary costs (e.g. proper packaging and transport costs, including possible transport and liability insurance). The Seller shall take back all packaging materials at our request.
- (4) The agreed price is payable not later than 30 calendar days following complete delivery and contractual performance (including any agreed acceptance inspection) and receipt of a proper invoice. Our payment obligations are deemed satisfied if our bank receives our order for payment by bank transfer in due time. The parties may on a case-by-case basis agree informally on an early-payment discount on the net amount of the invoice.
- (5) All order confirmations, delivery documents, and invoices must state our order number, the article number, delivery amount, and delivery address. Should one or more of these statements be missing, resulting in a delay in processing by us in connection with our normal day-to-day business, the payment deadlines stipulated in clause 3 shall be extended by the period of the delay.
- (6) We are not liable for interest payable after the due date. The Seller's claim to payment of default interest remains unaffected. The time we are deemed to be in default is governed by statutory provisions. In the event of default in payment, we owe default interest in the amount of five percentage points over the statutory base interest rate pursuant to Sect. 247 BGB. However, the Seller must give notice of default in any case.
- (7) To the extent provided by law, we are entitled to rights of set-off and retention, as well as to the defense of non-performance of the contract. We are, in particular, entitled to retain due payments in cases where we have claims against the Seller for incomplete or defective performance of services.
- (8) The Seller has a right of set-off or retention only for legally adjudicated or uncontested counterclaims.

§ 4 Time of Delivery, Default in Delivery

- (1) The delivery time stipulated by us in the order is binding. Early deliveries are not permitted. If the delivery time was not stipulated in the order, it is considered to be two weeks following conclusion of contract, unless agreed to otherwise. The Seller is obligated to immediately notify us in writing if, for whatever reason, it anticipates that it will be unable to meet the agreed delivery times.
- (2) The Seller is not entitled to make partial deliveries without our prior written consent.
- (3) If the latest date on which delivery is to be made can be determined on the basis of the contract, the Seller is deemed to be in default upon expiry of such date without the need on our part to send a notice of default. If the Seller fails to perform, fails to perform by the agreed delivery time, or is in default, then our rights – in particular, to rescission and damages – are determined in accordance with statutory provisions. The provisions in clause 4 remain unaffected.
- (4) If the Seller is in default, we are entitled to demand a contractual penalty in the amount of 1% of the net price per full calendar week, but no more than 5% of the net price of the Goods that have not been delivered on time. We are entitled to demand the contractual penalty in addition to performance, with the former constituting minimum damages owed by the Seller pursuant to statutory provisions; any assertion of greater damages remains unaffected. If we accept delayed delivery, we must assert the contractual penalty not later than upon final payment.

§ 5 Delivery, Transfer of Risk, Acceptance, Default in Acceptance

- (1) Without our prior written consent, the Seller is not entitled to have third parties undertake the contractual performance owed by it (e.g. by subcontractors). The Seller bears the procurement risk for its contractual performance, unless a one-off production is involved.
- (2) Early deliveries are not permitted.
- (3) Within Germany, delivery is made "freight prepaid" to the location stipulated in the order. If the place of delivery has not been stipulated and in the absence of another agreement, delivery is to be made to our place of business. For the purposes of debt collection, the respective place of delivery is also the place of performance.
- (4) All deliveries must be accompanied by a delivery note specifying the date (issue and dispatch), contents of the delivery (article numbers and amounts), and our order identifier (date and number). If the delivery note is missing or incomplete, we are not responsible for resulting delays in processing or payment.
- (5) Delivery of the Goods is only deemed to have been made properly if, depending on the nature and quality of the product or product type, the requisite additional documentation is attached (e.g. data sheets, safety data sheets, laboratory reports, and inspection certificates for chemical products).
- (6) The risk of loss and deterioration of the Goods passes to us upon transfer at the place of performance. If an acceptance inspection has been agreed upon, such inspection shall be decisive with respect to transfer of risk. In all other respects, the statutory provisions of the law on contracts for work and services apply analogously to an acceptance inspection. The same consequences arise if we are in default in acceptance.
- (7) The time we are deemed to be in default in acceptance is governed by statutory provisions. However, the Seller must expressly offer us its contractual performance when a specific or specifiable calendar date has been agreed upon for action or cooperation on our part (e.g. provision of materials). If we are in default in acceptance, the Seller may demand compensation for its additional expenses in accordance with statutory provisions (Sect. 304 BGB). If the contract relates to customized goods to be manufactured by Seller (one-off production), the Seller is only entitled to more extensive rights if we have given an undertaking to cooperate and are responsible for the failure of providing such cooperation.

§ 6 Defective Delivery

- (1) Unless stipulated otherwise below, our rights in the event of material and legal defects in the Goods (including incorrect or incomplete delivery, as well as improper assembly and defective instructions regarding assembly, operation or use) and other breaches of duty by the Seller are governed by statutory provisions.
- (2) Under statutory provisions, the Seller is in particular liable for the Goods having the agreed nature and quality upon transfer of risk to us. In any case, such product descriptions as form part of the respective contract – in particular those that have been designated or referred to in our order – or are included in the contract in the same manner as these GTCP, are considered to constitute an agreement as to nature and quality. In this regard, it makes no difference whether the product description originated from us, the Seller, or the manufacturer.
- (3) Notwithstanding Sect. 442 (1) second sentence BGB, we are also entitled without limitation to claims for defects if we were unaware of the defect at the time of conclusion of contract due to gross negligence.
- (4) With regard to the duty of examination and objection, the provisions of Sections 377 and 381 of the German Commercial Code (HGB) apply with the following proviso: Our duty of examination is limited to defects that come to light during an external assessment as part of our incoming goods inspection, including review of delivery documentation, as well as during our random sample quality control (e.g. transport damages, incorrect or incomplete delivery). If an acceptance inspection has been agreed upon, there is no duty of examination. In all other respects, such duty depends on the extent to which an examination is feasible in the ordinary course of business given the circumstances of the particular case. Our duty to give notice of defects discovered at a later date remains unaffected. In any event, our objection (notice of defects) is considered to be prompt and timely if it was received by the Seller within 12 business days.
- (5) We do not waive our warranty claims by way of acceptance or approval of samples or specimens.
- (6) The Seller shall also bear the costs incurred by it through testing and repair if it turns out that there was in fact no defect. Our liability for damages due to an unjustified demand for elimination of defects remains unaffected; However, we are only liable if we recognized that no defect existed or if we were grossly negligent in failing to so recognize.
- (7) If the Seller fails to comply with its obligation to provide subsequent performance – at our discretion, by eliminating the defect (repair) or by delivering defect-free Goods (replacement delivery) – by a reasonable deadline set by us, then we may eliminate the defect ourselves and demand compensation from the Seller for the necessary expenses incurred or require a corresponding advance payment. If the Seller's remedy fails, or if it is unreasonable for us to accept it (e.g. due to special urgency, risk to operational safety, or impending threat of unreasonable damage), a deadline need not be set; the Seller shall be informed thereof without delay, where possible, in advance.
- (8) In all other respects, we are entitled under statutory provisions to reduce the purchase price or rescind the contract in the event of material or legal defects. Furthermore, we are entitled to claim damages and expenses under statutory provisions.

§ 7 Recourse to Suppliers

- (1) In addition to claims for defects, we are entitled without limitation to our statutory claims to recourse within a supplier chain (recourse to suppliers pursuant to Sections 478-479 BGB). In particular, we are entitled to demand from the Seller the exact type of remedy (repair or replacement delivery) we owe to our customer in a given instance. Our statutory right of choice (Sect. 439 (1) BGB) is not limited by the foregoing.
- (2) Prior to recognizing or satisfying a claim for defects asserted by one of our customers (including compensation for expenses pursuant to Sections 478 (3) and 439 (2) BGB), we will inform the Seller thereof and, after briefly explaining the matter, request a written statement. If a statement is not provided within a reasonable time, and if a mutual solution is not reached, then the claim for defects actually conceded by us is deemed owed to our customer; in this case, the Seller is obligated to prove the contrary.
- (3) Our claims under recourse to suppliers also apply in situations where the Goods were subject to further processing by us or one of our customers, e.g. through inclusion in another product, prior to being sold to a consumer.

§ 8 Manufacturer's Liability

- (1) If the Seller is responsible for product injuries, it must indemnify us against third-party claims to the extent that the cause lies within its area of control and organization and it is liable to third parties.
- (2) Within the scope of its obligation to indemnify, the Seller shall reimburse any expenses pursuant to Sections 683 and 670 BGB that are connected with third-party claims, including any recalls that we conduct. To the extent possible and reasonable, we shall inform the Seller of the content and extent of any recall actions and give it the opportunity to respond. Any further legal claims shall remain unaffected.
- (3) The Seller must obtain and maintain product liability insurance with a blanket coverage of at least EUR 5 million for each event of personal injury or property damage, whereby such insurance need not cover recall risk or criminal or other damages, unless agreed otherwise in a particular case. The Seller shall send us a copy of the insurance policy at any time upon request.

§ 9 Assignment

The Seller is not entitled to assign its claims under the contract to third parties. The foregoing does not apply to the extent that monetary claims are involved.

§ 10 Industrial Property Rights

- (1) The Seller warrants that no third-party intellectual property rights in countries of the European Union, North America, Asia, or other countries in which it manufactures products or has same manufactured will be infringed in connection with its delivery.
- (2) The Seller is obligated to indemnify us against all claims asserted against us by third parties due to infringement of industrial property rights set forth in sub clause (1), and to reimburse us for all necessary expenses incurred in connection with such claims. We are entitled to this claim irrespective of fault on the part of the Seller.

§ 11 Replacement Parts

- (1) The Seller is obligated to maintain spare parts for the products delivered to us for a period of at least two years following delivery.
- (2) If the Seller intends to discontinue producing spare parts for products delivered to us, it must inform us thereof immediately following the decision to discontinue production. Subject to the provisions of sub clause (1), such decision must be made at least six months prior to discontinuation of production.

§ 12 Confidentiality

- (1) The Seller is obligated to maintain confidentiality regarding the terms of the order and all information and documentation provided for this purpose (other than publicly available information) for a period of 5 years following conclusion of contract and to use same only for carrying out the order. On request, it must immediately return the foregoing to us after having taken care of requests or processed orders.
- (2) The Seller may not make reference to the business relationship in its advertising materials, brochures, etc. without our prior written consent, and may not display or even depict items manufactured for us.
- (3) The Seller must obligate its subcontractors in a manner pursuant to this clause 12.

§ 13 Retention of Title

- (1) On our behalf, the Seller is to carry out the processing, mixing, or combining of provided objects. If, following processing, mixing, or combining with third-party goods, such third party continues to have a right of ownership, then we acquire co-ownership relative to the value of the other item in the relation of the value of the item we provided.
- (2) The Goods are assigned to us unconditionally and without regard to payment of the price. In particular, all forms of expanded or extended retention of title are precluded, such that any retention of title that the Seller may have effectively declared is applicable only to, and until payment of, the Goods delivered to us.

§ 14 Limitation

- (1) Unless stipulated otherwise below, the parties' respective claims become time-barred in accordance with statutory provisions.
- (2) Notwithstanding Sect. 438 (1) No. 3 BGB, the general limitation period for claims for defects is 3 years beginning with the transfer of risk. If an acceptance inspection has been agreed, the limitation period begins upon acceptance. The three-year limitation period also applies analogously to legal defects, whereby the statutory limitation period for third-party in rem claims for return (Sect. 438 (1) No. 1 BGB) remains unaffected; furthermore, claims for legal defects do not become time-barred in any event as long as the third party may still assert its right against us, particularly when the latter is not subject to limitation.
- (3) The limitation periods under the law of the sale of goods, including the aforementioned extension, apply to all contractual claims for defects to the extent provided by law. Insofar as we are also entitled to extra-contractual claims for damages due to a defect, the regular statutory limitation period (Sections 195 and 199 BGB) shall apply here, unless application of the limitation periods under the law of the sale of goods leads to a longer limitation period in individual cases.
- (4) The limitation period for warranty claims is suspended upon receipt by the Seller of our written notice of defects. In case of replacement delivery and elimination of defects, the warranty period for replaced and repaired parts begins anew, unless we had to assume, based on the Seller's conduct, that it did not feel obligated to take such action but rather undertook replacement delivery or elimination of defects as a gesture of goodwill or for other reasons.

§ 15 Choice of Law and Place of Jurisdiction

- (1) These GTCP and all legal relationships between us and the Seller are governed by the laws of the Federal Republic of Germany to the exclusion of all international and supranational legal systems (governing contracts), in particular, the UN Convention on Contracts for the International Sale of Goods. The conditions for and effects of retention of title are subject to the laws of the place where the Goods are stored, provided that under such law, the choice of German law is impermissible or ineffective.
- (2) If the Seller is a merchant within the meaning of the Commercial Code, a legal person under public law, or a special fund under public law, the exclusive place of jurisdiction – including internationally – for all disputes arising from the contractual relationship is our registered place of business in Schwarzhede. However, if the seller is a subsidiary which directly enters into transactions, the exclusive place of jurisdiction shall be the place where our branch is located. However, we are also entitled to initiate legal proceedings at the place of performance for the delivery obligation.