

# General Terms and Conditions of Purchase

As of October 2011

## Article I: General remarks, scope of application

1. These General Terms and Conditions of Purchase (GTP) apply to all business relations with our business partners and suppliers (hereinafter referred to as "Supplier"). The GTP shall only apply if the Supplier is an entrepreneur (Section 14 of the German Civil Code BGB), a legal person under public law or a special fund under public law.
2. In particular, the GTP shall also apply to contracts for the sale and/or delivery of movable goods (hereinafter also referred to as "Goods") to us, irrespective of whether the Supplier manufactures the Goods themselves or purchases them from suppliers. The GTP in their respective version shall also apply to future contracts with such Supplier, without us having to refer to them again in each individual case.
3. Supplier's general terms and conditions which contradict or supplement these GTP shall only become part of the contract if and insofar as we have expressly agreed to their validity in writing.
4. Individual agreements made with the Supplier in individual cases shall in any case take precedence over these GTP. A written contract or our written confirmation is decisive for the content of such agreements.
5. Legally relevant declarations and notifications to be made to us by the Supplier after conclusion of the contract (e.g. setting of deadlines, reminders, declaration of withdrawal) shall be made in writing to be effective.

## Article II: Conclusion of contract

1. Our order is only binding if submitted or confirmed in writing. The Supplier shall notify us of obvious errors (e.g. typing and calculation errors) and omissions in the order including in the order documents so that we can correct or complete them before acceptance; otherwise the contract shall be deemed not to have been concluded.
2. The Supplier shall confirm our order in writing within a period of 14 days or shall, in particular, execute it without reservation by dispatching the Goods (acceptance). A delayed acceptance shall be considered as a new offer and requires our acceptance.

## Article III: Delivery time and delay in delivery

1. The delivery date stated by us in the order shall be binding. The Supplier is obliged to notify us without delay in writing if the Supplier does not expect to meet agreed delivery dates for whatever reason.
2. If the Supplier is unable to perform at all or on the agreed delivery date or if the Supplier is in default, our rights – including but not limited to our right to withdraw from the contract and claim damages – shall be determined in accordance with statutory provisions. The regulations in paragraph 3 shall remain unaffected.
3. If the Supplier is in default, we can – in addition to further legal claims – claim lump-sum compensation for our damage caused by default in the amount of 1% of the net price per completed calendar week, but in total not more than 5% of the net price of the delayed Goods. We reserve the right to prove that we have incurred higher damages. The Supplier reserves the right to prove that we have incurred no damage at all or only a significantly lower damage.

## Article IV: Performance, delivery, transfer of risk, default of acceptance

1. Without our prior written consent, the Supplier shall not be entitled to have the performance owed by them rendered by third parties (e.g. subcontractors).
2. Delivery within Germany is "free domicile" to the place indicated in the order. If no destination has been specified, delivery shall be made to our registered office in Gröbenzell, Germany, unless otherwise agreed. The respective destination is also the place of performance.
3. Delivery shall be accompanied by a delivery note stating the date, content of the delivery and our order ID (article no. and order no.). If the delivery note is not properly prepared and transmitted, we shall not be responsible for any resulting delays in processing and payment. A proper invoice shall be sent to us separately from the delivery note.
4. The Supplier shall pack the contractual products for shipment to us in a proper and appropriate manner and, if necessary, according to our specifications.
5. The risk of accidental loss and accidental deterioration of the Goods shall pass to us upon delivery at the place of performance. If acceptance has been agreed, this is decisive for the transfer of risk. If we are in default of acceptance, the Goods shall be deemed to have been handed over or accepted.
6. The statutory provisions shall apply if we default on acceptance. However, the Supplier must also expressly offer us their service if a specific or determinable calendar period has been agreed for an action or cooperation on our part (e.g. provision of material). If we default on acceptance, the Supplier may demand compensation for their additional expenses in accordance with statutory provisions.

## Article V: Prices and terms of payment

1. The price stated in the order shall be binding. All prices are exclusive of statutory value added tax.
2. Unless otherwise agreed in individual cases, the price shall include all services and all additional costs (e.g. packaging, transport costs, insurance).
3. The agreed price shall be due for payment within 30 calendar days from complete delivery and any agreed acceptance and receipt of a proper invoice. If we make a payment within 14 calendar days, the Supplier shall grant us a 3% discount on the net amount of the invoice.
4. We shall not owe any maturity interest. The Supplier's claim for payment of interest on arrears remains unaffected. The statutory provisions shall apply if we default. In any case, however, a reminder from the Supplier is required.
5. We are entitled to set-off and retention rights as well as the defence of non-performance of the contract to the extent permitted by law. In particular, we are entitled to withhold due payments as long as we are still entitled to claims against the Supplier arising from incomplete or defective performance.
6. The Supplier shall only be entitled to set-off or retention rights on the basis of counterclaims that have been legally established or are undisputed.

## Article VI: Non-disclosure and retention of title

1. We reserve property rights and copyrights to illustrations, plans, drawings, calculations, execution instructions, product descriptions and other documents. Such documents shall be used exclusively for contractual performance and shall be returned to us after completion of the contract. The documents and their contents must not be disclosed to third parties, even after termination of the contract.
2. The above provision shall apply accordingly to substances and materials (e.g. software, finished and semi-finished products) as well as to tools, templates, samples and other items which we provide to the Supplier for production. Such objects shall – as long as they are not processed – be stored separately at the Supplier's expense and insured to the usual extent against destruction and loss.
3. Any processing, mixing or combination of provided objects by the Supplier shall be carried out for us. If, in the event of processing, mixing or combination with the property of third parties, their property right is preserved, we shall acquire co-ownership of the new item in the ratio of the value of our provided item to the other items.
4. Title to the Goods shall be transferred to us unconditionally and without regard to the payment of the price. In any case, all forms of extended or prolonged retention of title are excluded, so that any retention of title declared effective by the Supplier is only valid until payment for the Goods delivered to us and for these Goods.

## Article VII: Defective delivery

1. The statutory provisions shall apply to our rights in the event of material defects and defects of title of the Goods (including wrong and short delivery) and other breaches of duty by the Supplier, unless otherwise provided for hereinafter.
2. In accordance with statutory provisions, the Supplier shall be liable in particular for ensuring that the Goods have the agreed quality at the time risk is transferred to us. As regards quality, such descriptions and product characteristics which are the subject matter of the respective contract or have been incorporated into the contract in the same way as these GTP – in particular by designation or reference in our order – shall be deemed agreed upon. The Goods must also comply with statutory provisions, including but not limited to the safety and environmental protection regulations including the German Ordinance on Protection against Dangerous Substances GefStoffV, the German Electrical and Electronic Equipment Act ElektroG and the safety recommendations of the relevant German technical committees or professional associations, e.g. VDE, VDI, DIN.
3. Notwithstanding Section 442 (1) sentence 2 BGB, we are entitled to unrestricted warranty claims even if we had no knowledge of the defect at the time of conclusion of the contract due to gross negligence.
4. The statutory provisions (Sections 377, 381 of the German Commercial Code HGB) shall apply to the commercial duty of inspection and notification, with the following proviso: our duty of inspection shall be limited to defects which become apparent during our incoming goods inspection under external examination including the delivery documents and during our quality control in a random sampling procedure (e.g. transport damage, wrong and short delivery). Otherwise, it depends on whether or not an investigation is feasible in the ordinary course of business, taking into account the individual circumstances. Our duty of notification regarding defects discovered at a later time remains unaffected. In all cases, our notification shall be deemed to be given without delay and in time if it is received by the Supplier within 10 days after receipt of the Goods at the destination.

5. If, as a result of a defective delivery, it becomes necessary to subject the Goods to a more extensive incoming goods inspection, the Supplier shall bear the costs incurred and proven for this purpose.
6. The costs incurred by the Supplier for the purpose of inspection and rectification of defects shall be borne by the Supplier even if no defect are found. Our liability for damages in the event of unjustified requests for corrective measures remains unaffected; however, in this respect we are only liable if we have recognised or grossly negligently failed to recognise that there was no defect.
7. If the Supplier does not fulfil their obligation to supplementary performance – at our discretion either by remedying the defect (repair) or by delivering a defect-free item (replacement) – within a reasonable period of time set by us, we may remedy the defect ourselves and demand reimbursement from the Supplier of the necessary related expenses. If the Supplier's supplementary performance has failed or is unreasonable for us (e.g. due to particular urgency, risk to operational safety or imminent disproportionate damage), no period of time needs to be set; the Supplier shall be notified without delay, if possible in advance.
8. Otherwise, in the event of a material defect or defect of title, we are entitled to reduce the purchase price or to rescind the contract in accordance with statutory provisions. In addition, we are entitled to compensation for damages and expenses in accordance with statutory provisions.

## Article VIII: Supplier recourse

1. In addition to warranty claims, we are entitled to legally determined recourse claims within a supply chain (Sections 478, 479 BGB) without restriction. In particular, we are entitled to require the Supplier to provide exactly the type of supplementary performance (repair or replacement) that we owe our customer in a given case. Our statutory right to choose the type of supplementary performance is not restricted by this.
2. Our claims arising from supplier recourse shall also apply if the Goods have been further processed by us or one of our customers prior to their sale to a consumer, e.g. by incorporation into another product.

## Article IX: Manufacturer liability

1. If the Supplier is responsible for damaging a product, the Supplier shall indemnify us from third-party claims to the extent that the cause is within their sphere of control and organisation and the Supplier is liable to third parties.
2. Within the scope of their obligation to indemnify, the Supplier shall reimburse us for expenses arising from or in connection with any third-party claims, including product recalls carried out by us. We shall notify the Supplier about the content and scope of product recalls – as far as possible and reasonable – and give the Supplier the opportunity to comment. Further legal claims remain unaffected.

## Article X: Limitation of claims

1. The contracting parties' mutual claims shall become statute-barred in accordance with statutory provisions, unless otherwise provided for hereinafter.
2. Our warranty claims shall become statute-barred 3 years after the transfer of risk. Insofar as acceptance has been agreed, the limitation period shall commence upon acceptance. The 3-year period of limitation also applies to claims arising from defects of title; furthermore, claims arising from defects of title shall in no case become statute-barred as long as the third party can still assert any rights – in particular in the absence of a limitation period – against us.

3. Insofar as we are also entitled to non-contractual claims for damages due to a defect, the regular statutory limitation period shall apply, unless the application of limitation periods under commercial law extends the limitation period in a given case.

#### **Article XI: Choice of law and place of jurisdiction**

1. The laws of the Federal Republic of Germany shall apply to these GTP and all legal relations between us and the Supplier to the exclusion of all international and supranational (contractual) legal systems, including but not limited to the UN Convention on Contracts for the International Sale of Goods. The prerequisites and effects of the retention of title are subject to the laws applicable at the respective storage location of the item, insofar as the choice of law made in favour of German law is inadmissible or ineffective.
2. The exclusive – also international – place of jurisdiction for all disputes arising from the contractual relationship is 82256 Fürstfeldbruck. However, we are also entitled to bring an action at the place of performance of the delivery obligation.