

<p>General Terms of Purchase, Delivery and Payment Purchase Contract</p>
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## **I. SCOPE**

1. Unless otherwise expressly agreed, our General Terms of Delivery and Payment are a component of every purchase contract concluded with customers who order from us (“Customers”). Only our General Terms of Purchase, Delivery and Payment will apply. Unless we have expressly consented otherwise, we will not acknowledge any opposing conditions, or conditions which deviate from our GTDP, or from statutory provisions. This applies even if we have not expressly objected to such conditions, or have rendered services without reservation.
2. Oral side agreements made before contract conclusion which deviate from our Terms of Purchase, Delivery and Payment will be effective only if we have confirmed them in writing.

## **II. OFFER AND CONCLUSION**

1. Unless otherwise expressly agreed in writing, any documents we attach to an offer (e.g., drawings, illustrations, technical data, references to standards, as well as information in advertising media) have been optimally determined, but are only approximations. Deviating values which are higher or lower are permissible if typical of the trade.
2. Our offers are always subject to change. Agreements will not become binding until we have confirmed the order in writing or made a delivery. We may accept a contract offer from our Customer within two weeks after receiving it. Until this period expires, orders are irrevocable. If we do not respond, this will not give anyone cause to believe that a contract has been concluded. If our Customer receives our order confirmation late, they shall inform us thereof without undue delay.
3. Any change to our order confirmation must be confirmed in writing by our department in charge to be effective.

### III. PRICES AND PAYMENT

1. Our prices are ex works, and do not include packaging, carriage, customs, insurance, or the statutory VAT. If we make deliveries abroad, the Customer shall reimburse us for all taxes, customs and other public levies we must pay in that country.
2. If the cost factors (e.g., material prices and wages) that were used as a basis for price calculation at contract conclusion increase after the date of contract conclusion, and that date is more than four months earlier than the delivery date, we may equitably raise the prices. This does not apply if our Customer resells directly to an end consumer the goods we have processed, through a distributor or after processing them further, without being entitled to pass the price increase on to the employer's buyer. If the prices permissibly increase by more than 5%, our Customer may withdraw from the contract.
3. Payment must be made through a bank transfer, giro transfer, or postal cheque transfer. Once transferred, the amount will not be deemed paid until it has been credited to our account. If we accept a cheque, we do so on account of payment. Once accepted, a cheque will not be considered payment until we cash it irrevocably. We expressly reserve the right to refuse bills of exchange. Whenever we do accept bills of exchange, we do so on account of payment. Once accepted, a bill of exchange will not be considered payment until we cash it. Bank, discount, and collection charges will be borne by our Customer and due for immediate payment.
4. Invoices are payable within 14 days after the invoice date. If the Customer receives the invoice too late to comply with the payment period, they shall notify us thereof.
5. If our employer defaults on payment, interest will be calculated according to the bank rates for overdraft facilities, but at least in accordance with statutory provisions.
6. If the payment is late or the employer's financial circumstances worsen considerably (to a degree which jeopardises our claims), we may demand immediate payment or adequate security for those claims, in deviation from agreed periods allowed for payment. If the payment is late or our claims are in jeopardy, we may also render outstanding services only in return for prepayment or provision of adequate security. In particular, the employer's financial circumstances will be deemed to have "worsened considerably" and our claim to the payment of the purchase price will be deemed in jeopardy if:

- a petition is filed to open insolvency proceedings on our Customer's assets;
  - our Customer discontinues payments;
  - our Customer's legal relationships change;
  - bills of exchange or cheques from our Customer are not promptly cashed;
  - periods allowed for payment are exceeded by more than 30 days.
  - credit insurers are no longer willing to insure claims against the Customer.
7. Our Customer may provide counterevidence that their financial circumstances have not worsened considerably and our claim to payment of the purchase price is not jeopardised. If within a reasonable period our Customer fails to comply with our demand to either pay the purchase price in the abovementioned form, or provide security, concurrently with delivery, we may withdraw from the contract.
8. Offsetting will be permitted only for claims which are uncontested or upheld by a judgment debt.
9. A right of retention may be asserted only regarding claims which are uncontested or upheld by a judgment debt. Moreover, the claims which cause the right of retention to be asserted must be based on the same contractual relationship as our claim and adequately proportionate to that claim.

#### **IV. DELIVERY AND SHIPPING; ACCEPTANCE**

1. Delivery deadlines can be agreed as binding or nonbinding. A binding agreement on delivery deadlines requires that a delivery date not only be specified but expressly agreed in writing as binding. A pre-contractual agreement on delivery deadlines must be in writing to be effective.
2. Any default by our supplier will normally exclude default on our part against the Customer, unless we could have foreseen our supplier's default.
3. If unforeseeable interruptions which are not our fault (such as strikes, lockouts, war, riots, raw material shortages, damages to machines, or government actions) or incidents of force majeure which we could not have influenced even if acting diligently, occur or become known to us after contract conclusion, the delivery period will be extended by the duration of such events.

4. We will notify our Customer of any incidents of force majeure, or interruptions of the aforementioned type, which last longer than eight weeks. Without prejudice to other statutory rights, our Customer may withdraw from the contract if the agreed delivery period is postponed by more than six months due to the circumstances described in sentence 1. This right must be exercised through registered letter. If the circumstances named in sentence 1 permanently prevent us from delivering, we will be released from the obligation to perform.
5. None of the aforementioned cases entitle our Customer to damage compensation.
6. Four weeks after a nonbinding delivery period has been exceeded, our Customer may ask us to deliver, in writing, while specifying a reasonable period within which to do so. The time limit will then be binding.
7. If the Customer defaults in accepting the goods that have been contractually offered to that party, we may store those goods on our premises, with a warehouse keeper, or on the premises of a forwarding agent, at the Customer's expense and risk and without prejudice to further rights.
8. The risk of accidental loss will be transferred to the Customer as soon as the goods are handed over to the forwarding agent or freight carrier, but at the latest when they leave the supplying factory's warehouse. If pickup by the Customer has been agreed, the risk of accidental loss will be transferred to that party when the goods have been separated in our factory.
9. If our Customer culpably fails to accept the goods that have been contractually offered to that party, and a grace period set by our Customer expires to no avail, we may store those goods on our premises, with a warehouse keeper, or on the premises of a forwarding agent, at our Customer's expense and risk and without prejudice to further rights. We are also entitled (but not obligated) to set a grace period for our Customer in writing, tied to the declaration that we will refuse to provide the service after that period expires. If the grace period expires to no avail, we may withdraw from the purchase contract through written declaration or demand damage compensation instead of performance. No grace period need be set if our Customer seriously and definitively refuses acceptance, or is obviously unable to accept within the grace period.
10. We may make partial deliveries unless this has been expressly excluded in the offer.

11. Make-and-hold orders must have a fixed term on contract conclusion. Otherwise, the time limit for calling for the entire merchandise amounts to 6 months. If no make-and-hold order is issued for the agreed quantity within the 6 months, we may deliver the merchandise and issue an invoice for it.
12. We may produce the entire ordered quantity as a closed quantity. After an order has been placed, no change requests can be considered unless this was expressly agreed.

## **V. DELAY IN DELIVERY**

1. In the event of default, our liability for delay of service will be based on statutory provisions, under the following conditions. We shall be liable only for compensating for direct damage that was foreseeable at contract conclusion, at the most for the value of the goods we delivered. We will not be liable for loss of potential profit, damages due to operational interruptions, or other indirect damages. Defective performance will not be deemed late delivery. These disclaimers do not apply to intentional or grossly negligent conduct on our part, or to other mandatory liability. The preceding rules are not tied to a change of the burden of proof.
2. On our request, the Customer shall declare within a reasonable period whether it will withdraw from the contract due to the delay in delivery or continue to insist on performance.

## **VI. RESERVATION OF OWNERSHIP**

1. We will reserve ownership of the delivered goods until all our claims against our Customer have been paid in full. The Customer shall be careful when handling the goods whose ownership we have reserved ("reserved goods"), adequately insure them against theft, breakage, fire, water and other damages (at their original value), and verify such coverage to us on request. The Customer hereby authorises us to pursue all damage compensation claims arising from those insurances.
2. However, despite our reservation of ownership, our Customer may sell or process the reserved goods in the due course of business (but see VI. 3.). The reserved goods may not be transferred by way of security or pledged to the benefit of third parties. Our Customer shall inform us without undue delay if third parties seize the goods.

3. Our Customer's authorisation to sell the reserved goods in the due course of business will end if the Customer's financial circumstances worsen considerably. The meaning of "worsen considerably" can be found in item III. 5.
4. In this case, our Customer shall return the reserved goods to us on first request. For reserved goods that have been returned, we will credit our Customer with the proceeds we obtain after optimal exploitation (§ 254 BGB (German Civil Code)). The demand that the goods be returned will be deemed withdrawal from the contract.
5. The Customer's claims arising from a resale of the reserved goods are hereby transferred to us in the amount of the value of the reserved goods, to secure all our claims arising from the business relationship. Our Customer may not sell the reserved goods unless the ensuing claims are transferred to us. Those claims may not be pre-pledged to the benefit of third parties, or assigned to third parties, without our consent. However, the Customer shall inform us without undue delay if third parties seize these claims.
6. We will not collect the assigned claims as long as our Customer complies with its payment obligations. At our request, however, our Customer shall specify who the third-party debtors are and notify those debtors of the assignment.
7. Any processing or transformation of the item we have delivered which is performed by our Customer will be deemed to have been performed on our behalf. If the delivered item is processed along with other objects not belonging to us, we will acquire co-ownership of the new item in the ratio of the value of our goods to the other processed objects at the time of processing. Otherwise, what applies to the goods delivered under reservation of ownership will apply to the item created through the processing.
8. If the delivered item is inseparably mixed with other objects not belonging to us, we will acquire co-ownership of the new item in the ratio of the value of our goods to the other mixed objects at the time of mixing. If the mixing occurs so that our Customer's item is considered the main item, it is hereby agreed that our Customer shall transfer proportional co-ownership to us. The Customer shall keep our resulting title for us.
9. If the value of the security rights to which we are entitled exceeds the amount of the secured claims by more than 10%, we shall release a corresponding portion of the security rights at the Customer's request.

10. We also reserve the rights of ownership, use, registered designs, patents, trademarks, authorship, personality and other proprietary rights going beyond the delivery object, especially to any illustrations, drawings and other documents, designs, design suggestions, templates, worksheets, forms, copyrights, know-how, calculations and software which we have provided in physical or electronic form.
11. If the Contracting Partner's financial circumstances worsen considerably (see item III.5), our Customer shall send us without undue delay a list of the reserved goods still available, and a list of the Customer's claims arising from the sale of reserved goods, along with copies of the invoices.
12. If the law of the country in which the Customer has its registered office does not allow for extended reservation of ownership, we agree to a simple retention of title.

## **VII. WARRANTY**

1. We will assume no warranty for insignificant material defects.
2. The Customer shall diligently inspect the deliveries. In particular, this also includes trying out the goods, especially if damages to the goods can be detected only under certain usage conditions. Any notice of defect must be submitted in writing. Notices of defect may not be submitted for commercially typical deviations, or minimal deviations which are technically unavoidable.
3. We shall consider a notice of visible defect only if we receive it in writing within 10 days after receipt of the goods. We shall consider a notice of hidden defect only if we receive it in writing within 10 days after the defect is discovered. Any goods not mentioned during the complaint period will be deemed accepted.
4. Contested goods may be returned only with our consent. However, if we fail to respond within 10 days to a notice of defect sent under threat of returning the goods, our Customer may return those goods even without our consent, although this will not constitute any acknowledgement of the notice of defect on our part.
5. If the objection to the contested goods was legitimate, after receiving those goods we shall fulfil our warranty obligations at our choice through subsequent improvement without undue delay or by delivering defect-free replacement goods.

6. Claims due to a material defect become time-barred in 12 months from the statutory commencement of the limitation period. This does not apply if the statutes prescribe longer time limits, inter alia in accordance with §§ 438(1)(2)(3), 479(1) and 634a(1)(2) BGB (German Civil Code).
7. The Customer's claims to expenses necessitated by the supplementary performance, especially transport costs, road costs, and costs for materials and labour, are excluded, provided the expenses are increased because the delivery object is subsequently transported somewhere other than the Customer's branch, unless bringing it to that location corresponds to the intended use.
8. On our request, the Customer shall declare within a reasonable period whether it will withdraw from the contract due to a material defect or continue to insist on delivery.
9. The Customer's rights of recourse against us in accordance with § 478 BGB exist only if the Customer has made no agreements with its buyer which go beyond statutory defect rights.
10. We shall owe compensation for damages and expenses due to defective delivery only in accordance with the provisions of item VIII.

#### **VIII. COMPENSATION FOR DAMAGE AND EXPENSES**

1. We will be liable to compensate for damage and expenses only under the statutory requirements, in accordance with the following provisions. This applies to damage compensation claims in addition to or instead of the service, regardless of legal grounds—especially due to defects, breach of contractual obligations, or tort—and to compensation for futile expenses. However, the regulations on delay in delivery (item V) will take precedence.
2. As part of the Customer's duty to minimise damages, that party shall diligently examine the goods we have processed before they are put to use. In particular, this also includes trying out the goods, if damages to the goods can be detected only under certain usage conditions.
3. We shall be liable for intentional or grossly negligent conduct. Our liability for grossly negligent conduct is limited to compensating for foreseeable damages which can typically be expected.



4. Moreover, we will not assume liability for damages the delivery object causes to the legal goods of the Customer or third parties, such as damages to other items, loss of potential profit and financing costs, as well as indirect damages such as those due to operational downtime.
5. The preceding restrictions of item VIII do not apply if liability is mandatory under the Product Liability Act, due to injury to life, limb or health, or for other reasons. Neither do they apply to culpable breach of an essential contractual obligation. To this extent, liability will be limited to compensating for foreseeable damages which are typical of this type of contract. A contractual obligation is "essential" if it is needed to achieve the contractual purpose, or if its fulfilment makes proper contract execution possible in the first place and the Customer may rely on its being complied with.
6. The preceding rules are not tied to a change of the burden of proof.
7. If compensation claims for damages and expenses are based on defective delivery, they will become time-barred in accordance with item VII.6 6.; if they are based on something else, such claims against us will become time-barred 18 months from the statutory commencement of the limitation period.
8. If our liability is limited, this also applies to the personal liability of our employees, representatives and vicarious agents.

## **IX. APPLICABLE LAW**

1. The legal relationships between our Customer and us are subject exclusively to the laws of the Federal Republic of Germany, under the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG; the Vienna Convention). If another legal system must be applied, it will apply only insofar as no choice of law is permissible.

## **X. PLACE OF FULFILMENT AND PLACE OF JURISDICTION**

1. The place of performance and fulfilment for all deliveries and payments is Mönchengladbach.

2. The exclusive place of jurisdiction, including for complaints about cheques or bills of exchange, is Mönchengladbach, provided the employer is a registered trader, a legal entity under public law or special fund under public law. However, we may also sue the Customer at its general place of jurisdiction.

## **XI. NON-DISCLOSURE AGREEMENT (NDA); MISCELLANEOUS**

1. The Customer shall treat as confidential all knowledge of confidential information and trade secrets we provide to that party as part of contract execution ("Information"), and shall use that Information only in accordance with the contract. This does not apply to Information that a) is or becomes generally known or b) was already known to the Customer when the contract was concluded, without such knowledge being based on a breach of a nondisclosure agreement or statutory provisions. The preceding obligations apply for a period of 10 years after the end of the contract.
2. Finding a provision of these conditions or other agreements to be invalid, now or in the future, will not invalidate the remaining provisions. The invalid provision must be replaced by a new agreement which comes closest to the economic significance of the invalid provision. The same applies to regulatory gaps.
3. "Schriftform" (written form under § 126 BGB) may be preserved without a signature in the signatory's own hand or an electronic signature. Notifications per telefax, email or other text forms will satisfy the requirements for "Schriftform".

Effective as of 17 September 2018