

General Purchasing Conditions

1. Scope, general

a)

These General Purchasing Conditions (GPC) shall apply to all business relations with our business partners and suppliers (hereinafter referred to as Sellers). These GPC shall only apply if the Seller is an entrepreneur (sect. 14 BGB (GERMAN CIVIL CODE)), a legal entity or a special fund under public law.

b)

These GPC shall apply in particular to contracts for the purchase and/or delivery of moveable goods, regardless of whether the Seller produces the goods itself or purchases them from subcontractors. Unless agreed otherwise, these GPC, as a framework agreement, shall also apply to future contracts for the purchase and/or delivery of moveable goods with the same Seller, without us having to indicate this in each single case.

c)

The terms and conditions of our business partners and suppliers or any third party shall not apply, even if we do not explicitly contradict their validity in individual cases. Even if we take reference to a letter containing or referring to the terms and conditions of the Seller or any third party, this will not imply our consent with the validity of such terms and conditions.

d)

Individual agreements made in particular cases with the Seller (including ancillary agreements, amendments and changes) always take precedence over these GPC (sect. 305b BGB (GERMAN CIVIL CODE)). A written contract or our written confirmation shall be binding for the content of such agreements.

e)

References to the application of legal provisions only have clarifying significance. Unless directly changed or explicitly excluded in these GPC, the legal provisions shall thus also apply without such clarification.

f)

Any legally relevant statements and notifications the Seller has to provide us with after the conclusion of the contract (e.g. deadlines, reminders, declaration of withdrawal) require the written form to become effective.

2. Conclusion of contract, call-off

a)

Insofar as our offers (e.g. inquiries) do not contain an explicit binding period, we shall be bound by them for a period of two weeks from the date of the offer. Decisive for the timely acceptance is the receipt of the declaration of acceptance at our company. A delayed acceptance is considered to be a new offer and requires the acceptance on our part.

b)

At the earliest with the written submission or confirmation our order is considered to be binding. The Seller is obligated to point out any obvious mistakes such as misspellings or calculation errors and any incompleteness in the purchase order including the purchase order documents for the purpose of correction and/or completion before acceptance; otherwise the contract is considered to be not concluded.

c)

The Seller undertakes to confirm our purchase order in writing within a period of two weeks or primarily execute it without any reservation by shipping the goods (acceptance).

d)

We have the right to terminate the contract anytime by means of a written declaration indicating the reason if we can no longer use the products ordered in our business operations due to circumstances arising after the conclusion of the contract. In this case we will reimburse the Seller its partial performance.

e)

We are entitled to change time and place of the delivery as well as the type of packing by means of a written notice (text form is sufficient) anytime within a period of at least 21 calendar days before the agreed delivery date. The same shall apply to changes of product specifications insofar as they can be implemented within the scope of the regular production process of the Seller without any considerable additional time and expenses, with the period of notice according to the preceding sentence being at least 3 weeks in these cases. We shall reimburse our Supplier the respective appropriate additional costs verifiably incurred due to the change. Should such changes entail delays in delivery, which cannot be avoided using reasonable efforts during our Supplier's normal production and business operations, the delivery date originally agreed will be postponed correspondingly. The Seller shall inform us in writing of the expected, carefully estimated additional costs and/or delay in delivery in good time prior to the delivery date, however, at least within 10 working days after the receipt of our notice according to the preceding sentence 1.

f)

Delivery call-offs can be sent in text form (sect. 126b BGB (GERMAN CIVIL CODE)), e.g. by e-mail, facsimile or remote data transmission. Delivery call-offs under contracts for delivery on call shall become binding if the Seller does not contradict within one week at the latest from the receipt of our delivery call-off. In the case of contracts for delivery on call, a call-off term of 12 months is to be taken as a basis.

3. Payment conditions, prices, invoice details etc.

a)

The prices indicated in the order are binding. The statutory value-added tax is not included in the price and will be charged in addition at the respective statutory rate.

b)

Unless agreed otherwise in individual cases, the price includes all services and ancillary services of the Seller (e.g. mounting, incorporation etc.) as well as all additional charges (transport, packing, insurance). At our request, the Seller shall take the packing material back. If, according to the agreements made, the price does not include packing, and the compensation for those packing materials, which are not only provided on a loan basis, is not expressly determined, it must be invoiced at proven cost. At our request the Seller shall take the packing materials back at its own expense.

c)

Unless agreed otherwise, we shall pay the agreed price within 14 days with 3 % cash discount or within 30 days net from the time delivery and service including any statutorily prescribed or agreed acceptance of the goods have been completed and a proper invoice has been received. For the timeliness of the payment owed by us the receipt date of our money transfer order at our bank shall be sufficient.

d)

Our order number, article number, delivery quantity and delivery address are to be indicated on all order confirmations, delivery documents and invoices. Should any delays occur due to the lack of such details, our payment terms shall be extended by the period of the delay.

e)

We shall be entitled to the right of retention or offsetting as well as the plea of non-fulfilment of contract to the statutory extent. We shall particularly be entitled to withhold due payments as long as we still have claims against the Seller resulting from incomplete or faulty deliveries or services.

f)

The legal provisions shall apply to the beginning of our default period on condition that a written reminder on the part of the Seller is always required.

g)

The Seller is only entitled to assign its claims against us following our prior written consent. Should an extended retention of title be applicable to the Seller, this consent shall be deemed to be given.

h)

The Seller only has an offset right or a right to retain possession against undisputed or finally determined counter-claims.

i)

In the case of default of payment we shall owe interest on arrears amounting to 5 percentage points above the base-lending rate according to sect. 247 BGB (GERMAN CIVIL CODE).

4. Delivery period, delivery

a)

The delivery time indicated in our order is binding. If the delivery time is not indicated in the order and has not been agreed otherwise, the delivery time shall be two weeks from the conclusion of contract. The Seller is obligated to inform us in writing without delay if the Seller is likely not to be able to meet the agreed delivery times, no matter for what reason. An early delivery is not permitted unless we give our express consent.

b)

Should the Seller not render its services or not render its services within the agreed delivery time or should it fall behind schedule, our rights – particularly our rights to rescission and damages – shall be governed by the statutory provisions. The regulations of the following paragraph c) shall remain unaffected.

c)

If the Seller is in default, we can request a contractual penalty to the amount of 0.5 % of the net price per completed calendar week, however, not more than a total of 5 % of the net price of the delayed goods. We are entitled to request the contractual penalty in addition to the fulfilment and as a minimum amount of damages owed by the Seller according to the legal requirements. The enforcement of claims for further damages shall remain unaffected. We are not obligated to reserve the right to the enforcement of the contractual penalty upon the acceptance of the delivery.

d)

If the deadline, on which the delivery/performance has to be effected, can be determined on the basis of the contract, the Seller shall be in default at the end of that day, without this requiring a particular reminder on our part.

5. Delivery, transfer of risk, default of acceptance

a)

Without our prior written consent, the Seller shall not be entitled to have third parties (e.g. subcontractors) render its services. The Seller bears the risk of procurement for its services unless agreed otherwise in individual cases (e.g. purchase of stocked goods).

b)

The Seller shall not be entitled to effect partial deliveries without our prior written consent. We have the right to reject such deliveries.

c)

The delivery/service of our Seller has to be effected carriage paid to the place indicated in the order. If such a place has not been specified and nothing else has been agreed, delivery shall be effected to our place of business. The place, at which delivery resp. service is to be effected, shall also be the

place of fulfilment. The respective destination shall also be the place of fulfilment for a possible subsequent fulfilment.

d)

The receipt of the goods at the place of fulfilment is decisive for the compliance with the delivery time.

e)

The delivery is to be accompanied by a delivery note specifying the date, contents of the delivery as well as our order identifier (date and number). Should the delivery note be missing or be incomplete, we shall not be responsible for any resulting delays with regard to processing and payment.

f)

The risk of accidental loss and deterioration of the goods shall be transferred to us with the handover of the goods at the place of fulfilment, even if forwarding has been agreed.

6. Protection of ownership, tools, confidentiality

a)

We shall retain the title or copyright to all orders submitted by us as well as to drawings, pictures, calculations, descriptions and other documents made available to the Seller. The Seller may not make them available to any third party or use or reproduce them itself or through third parties without our express consent. Such documents are solely to be used for the contractual provision of services from contracts concluded with us. At our request the Seller shall return these documents completely to us if the Seller no longer needs them in the proper course of business or if negotiations do not result in the conclusion of a contract. Any copies made by the Seller must be destroyed in this case; this does not apply to safekeeping within the framework of legal retention periods as well as the storage of data for protection purposes within the scope of the usual data backup.

b)

Tools, devices and models, which we make available to the Seller or which are manufactured for contractual purposes and charged to us separately by the Seller, shall remain or become our property. The Seller will mark them as our property, store them carefully, protect them against damage of any kind and use them only for the purpose of the contract with us.

c)

Reservations of ownership on the part of the Seller shall only apply insofar as they refer to our payment obligations for the respective goods, of which the Seller reserves the right of ownership.

d)

The processing, mixing or combining (further processing) of objects provided by the Seller is carried out for us. The same applies if we further process the goods delivered, so that we are regarded as manufacturers and, in accordance with the statutory regulations, attain ownership of the product at the latest with its further processing.

e)

The ownership of the goods has to be transferred to us without fail and regardless of whether the purchase price has been paid. However, if, in individual cases, we accept the offer of the Seller for the transfer of ownership submitted due to the payment of the purchase price, the retention of title on the part of the Seller will expire at the latest with the payment of the purchase price for the goods delivered. In the proper course of business we also continue to be entitled to the further sale of the goods before the payment of the purchase price, subject to the advance assignment of any claims arising. In any case, except for the simple retention of title, all other forms of retention of title, in particular the extended, the transferred and the time-extended retention of title shall be excluded.

f)

The Seller is obligated to keep secret all conditions of our order as well as any information and documentation provided for this purpose (except for publicly available information) for a period of 60 months after their disclosure, at least, however, for the duration of the concrete delivery relationship and to only use them for the processing of the order. At our request the Seller will return to us such information and documentation immediately after the processing of inquiries or orders.

g)

The Seller is also obligated to regard all non-public commercial and technical information or knowledge, which becomes known through our business relation, as business secret; in particular models, templates, samples, tools and similar objects may not be made available to any unauthorised third parties or made accessible in any other way. Subject to deviating regulations, also the reproduction of such objects, except within the scope of operational necessities, is prohibited.

h)

The Seller will ensure in an appropriate manner that the employees, staff members, freelance employees and subcontractors it involves in the execution of the contracts concluded with us safeguard the above confidentiality. The Seller will disclose the information as described in paragraphs a) and b) only to those of its employees, staff members, freelance employees, consultants etc. who necessarily have to be engaged in the development, construction, manufacture and delivery of goods to us. A disclosure also entails that the receiving persons for their part are sworn to secrecy according to the confidentiality rules in these GPC.

i)

Any subcontractors permissibly employed by the Seller are to be committed correspondingly.

j)

Our Seller may use our mutual business relation to advertise its products and services only following our prior written consent.

7. Defects, notice of defects, guarantee

a)

Unless specified otherwise hereafter, the statutory regulations shall apply to our rights with regard to material and legal defects in the goods (including wrong and short deliveries as well as incorrect mounting, faulty mounting or operating instructions) and in the case of other breaches of duty on the part of the Seller.

b)

The statutory regulations shall apply to the commercial obligation of examination and notification of defects subject to the following conditions: Our obligation of examination is restricted to defects, which can be visually identified during our incoming goods inspection carrying out an external examination of the delivery documents as well, and during our quality inspection (e.g. transport damage, wrong performance and/or underperformance). In other respects it depends, to what extent an inspection taking into account the circumstances of each individual case is feasible according to the proper course of business.

In the case of any deviations in quality and quantity observed during the incoming goods inspection a complaint is considered to have been made in good time, if these deviations are communicated to the Seller within 8 working days from the receipt of the goods at our company. In any case, complaints on hidden material defects are considered to have been made in good time, if the Seller is notified within 8 working days from their discovery.

c)

Our approval or acceptance of samples does not constitute a waiver of guarantee claims.

d)

Any expenses incurred for the purpose of rectification, in particular transportation, labour and material costs, shall be borne by the Seller. Moreover, if defective parts have already been mounted due to the unawareness of the defect, the Seller shall also bear the mounting and dismounting costs in the case of faulty delivery.

e)

The Seller shall also bear the expenses incurred for the purpose of examination and rectification (including any mounting and dismounting costs) if it becomes apparent that there was actually no defect. Our liability for compensation for an unjustified request of remedial action shall remain

unaffected; we are only liable if we have recognised or grossly negligently not recognised the absence of a defect.

f)

If the Seller fails to meet its obligation of rectification – subject to our discretion, by remedying the defect (rectification) or by delivering a defect-free item (replacement delivery) – within a reasonable period of time specified by us, we have the right to remedy the defect ourselves and request compensation for the necessary expenses resp. a corresponding advance payment from the Seller. If rectification has failed or is unreasonable for us (e.g. on account of particular urgency, a threat to the operating safety or imminent occurrence of disproportionate damage), the setting of a deadline is not required; if possible, we will inform the Seller of such circumstances in advance.

g)

Moreover, in the case of material or legal defects as defined by the law, we are entitled to the reduction of the purchase price or the withdrawal from the contract. According to statutory regulations, we are also entitled to compensation for damages and expenses.

8. Supplier regress

a)

In addition to claims for defects, we shall have unrestricted entitlement to our legally determined rights of recourse within a supply chain (regress against suppliers according to sect. 478, 479 BGB (GERMAN CIVIL CODE)). We shall have particular entitlement to request exactly the type of subsequent fulfilment (rectification or replacement delivery) from the Seller, which we owe our customer in the individual case. This will not restrict our legal right of option (sect. 439 para. 1 BGB (GERMAN CIVIL CODE)).

b)

Before accepting or fulfilling a claim for defects asserted by our customer (including reimbursement of expenses according to sect. 478 para. 3, 439 para. 2 BGB (GERMAN CIVIL CODE)), we will notify the Seller briefly explaining the situation and ask for a written opinion. If the opinion is not delivered within a reasonable period of time and if no mutual solution is brought about either, the subsequent fulfilment actually granted by us shall be deemed to be owed to our customer; in this case it rests with the Seller to prove otherwise.

c)

Our claims from regress against suppliers shall also apply, if the goods, before their sale to a consumer by us or one of our customers, have been processed further, e.g. via incorporation into another product.

9. Industrial property rights

a)

The Seller shall ensure that, upon contractual use of the supplied objects, no claims, in particular no claims for damages from the violation of any industrial property rights and applications for protective rights are asserted against us by third parties if such property rights have been applied for or are registered with the German or European Patent Office. The Supplier shall also ensure that, due to the products it delivers, no third-party property rights are violated in such countries, in which the products are manufactured or in which the Supplier has them manufactured.

b)

The Seller is obligated to indemnify us from and against all third-party claims, which are asserted against us due to the infringement of industrial property rights mentioned in the above paragraph and to compensate us for all expenses incurred by the assertion of such claims. This claim exists independently of the Seller's fault.

c)

The above provisions shall not apply if the Seller has produced delivery items for us according to our specifications, in particular drawings, models and other descriptions, without knowing or without having to know that third-party property rights would be violated due to this.

d)

The Seller undertakes to inform us immediately of any risks of infringement of an industrial property right, particularly alleged cases of violation, which may become known.

e)

Any further legal claims on our part towards the Seller with regard to defects of title in the products delivered to us shall remain unaffected.

10. Product liability, insurance

a)

If the Seller is responsible for a product defect, it shall indemnify us from third-party claims as far as the reason lies within its range of command and organisation and as far as it shall be held liable itself in the legal relationship with third parties. Should we be obligated to initiate a product recall affecting third parties due to defects in one of the products delivered by the Seller, the Seller shall bear all costs caused by the recall.

b)

Under its obligation to indemnify, the Seller has to reimburse any expenses pursuant to sect. 683, 670 BGB (GERMAN CIVIL CODE) that arise out of or in connection with any recourse taken by third parties including recall campaigns carried out by us. We shall inform the Seller of the content and scope of the recall measures to be carried out as far as can reasonably be expected and give it the opportunity to comment. Any other legal claims shall remain unaffected.

c)

The Seller shall take out and maintain product liability insurance granting a lump-sum coverage to the amount of at least € 5 million per case of personal injury/property damage. At our request the Seller shall send us a copy of the liability policy and, at further request, send us the original for inspection. We shall also have this right during the contractual relationship.

11. Spare parts

a)

The Seller undertakes to provide spare parts for the products delivered to us for a period of at least 10 years from the delivery.

b)

If the Seller intends to discontinue the production of spare parts for the products delivered to us, it will inform us immediately upon the decision on such discontinuation. Subject to paragraph a) this decision has to be made at least 6 months before the discontinuation of the production.

12. Limitation period

a)

The respective mutual claims of the Contractual Parties become time-barred according to the statutory provisions, unless hereinafter stipulated otherwise for individual cases.

b)

Deviating from sect. 438 para. 1.3 BGB (GERMAN CIVIL CODE) the general limitation period for claims for defects shall be 3 years (36 months) from the transfer of risk. If an acceptance inspection has been agreed, the limitation period shall start with acceptance. Correspondingly, the three-year limitation period also applies to claims resulting from defects of title whereby the statutory limitation

period for material claims for the restitution of property remains unaffected (sect. 438 para. 1.1 BGB (GERMAN CIVIL CODE)).

Moreover, claims based on defects of title will by no means become time-barred as long as the third party can still assert the right towards us, particularly due to the lack of limitation.

c)

The limitation periods of sales law, including the aforementioned extension, apply for all contractual claims for defects to the extent permitted by law. If we are also entitled to non-contractual claims for damages by reason of a defect, the regular statutory limitation period applies (sect. 195, 199 BGB (GERMAN CIVIL CODE)); unless, for the application of the limitation periods, sales law results in a longer limitation period in individual cases.

d)

Upon receipt of our written notification of defects by the Seller, the statutory limitation of guarantee claims is suspended until the Seller rejects our claims or declares the defect to be remedied or otherwise refuses the continuation of negotiations about our claims. In the case of replacement delivery and remedial action the guarantee period for replaced and reworked parts will start again, unless we must assume from the Seller's behaviour that it did not feel obliged to these measures and only carried out the replacement delivery or remedial action as a gesture of good will or for a similar reason.

13. Choice of law, place of jurisdiction, other

a)

For these GPC and all legal relationships between us and the Seller the law of the Federal Republic of Germany shall apply to the exclusion of the International Uniform Law, particularly of CISG (the United Nations Convention on Contracts for the International Sale of Goods).

b)

Prerequisites and effects of the reservation of title shall be subject to the law of the respective location of the subject-matter, if, under that law, the choice of German law would be inadmissible or invalid.

c)

The contract language is German.

d)

Our registered office is the exclusive and international place of jurisdiction. However, we shall also be entitled to sue the Seller at its place of business. Statutory regulations of prime importance, in particular on the exclusive competence, shall remain unaffected.

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