

1. General, Scope of application

1.1 These General Terms and Conditions of Sale (GTC Sale) apply to all our business relationships with our customers (referred to hereinafter as “Buyer”) except for those who are consumers (in terms of § 13 BGB – German Civil Code).

1.2 The GTC Sale apply in particular to contracts for the sale and/or delivery of movables (also referred to hereinafter as “goods”), regardless of whether we manufacture the goods ourselves or purchase them from sub-suppliers (§§ 433, 651 BGB – German Civil Code). The GTC Sale as amended from time to time are deemed to constitute the framework agreement also for future contracts concluded with the same Buyer for the sale and/or delivery of movables with no obligation on our part to refer to these GTC Sale in each individual case; we will inform the Buyer of any changes or amendments to our GTC Sale without undue delay (“unverzüglich”).

1.3 Our GTC Sale apply exclusively. Deviating, conflicting or supplementary General Terms and Conditions of Business of the Buyer will only become part of the contract if and to the extent that we have explicitly consented to their application. This requirement of consent applies in any case, for instance also in the case that we execute delivery to the customer without reservations even though we are aware of the Buyer’s GTC.

1.4 Any individual agreements made with the Buyer from time to time (including side agreements, changes and amendments) will in any case prevail over these GTC Sale. The content of any such agreement will be fixed in a written contract resp. in our written confirmation.

1.5 Legally relevant declarations and notifications which have to be given to us by the Buyer after contract conclusion (e.g. the fixing of a time limit, notice of defect, declaration of withdrawal, declaration for the reduction of the purchase price) must be in writing (“Schriftform”) to be valid.

1.6 Any confirmation of the applicability of statutory provisions only serves as a clarifying hint. Thus, the statutory provisions also apply in default of such a clarifying confirmation if and to the extent that they are not immediately changed or amended or explicitly excluded by these GTC Sale.

2. Contract conclusion

2.1 Our offers are without engagement and subject to change. This also applies in the case that we have provided the Buyer with catalogues, technical documentation (e.g. drawings, plans, computations, calculations, references to DIN standards), other product specifications or documents – including in electronic form – for which we reserve the corresponding property rights and copyrights.

2.2 Any order of goods by the Buyer is deemed to constitute a binding offer for contract conclusion. Unless stated otherwise in the order, we are entitled to accept this offer for contract conclusion within 2 weeks from receipt (“Zugang”¹).

2.3 Unless otherwise agreed, acceptance of the offer is declared by our written order confirmation.

3. Delivery time and delay in delivery (“Lieferverzug”)

3.1 The delivery time is specifically agreed from time to time or is indicated by us upon acceptance of the order.

3.2 If we are unable to comply with binding delivery times for reasons which are not attributable to us (non-availability of the goods or services to be provided), we will inform the Buyer without undue delay (“unverzüglich”) and at the same time indicate the estimated new delivery time. If the goods or services are not available within such new delivery time either, we will be entitled to withdraw from the contract in whole or in part; any consideration already paid by the Buyer will be refunded without undue delay (“unverzüglich”). Non-availability of the goods or services in terms hereof includes but is not limited to the case of late delivery to us by our sub-suppliers if we have concluded a congruent covering transaction, if no fault is attributable to us or our sub-suppliers or we are under no obligation to procure the goods or services in the specific case in question.

3.3 The occurrence of a delay in delivery (“Lieferverzug”) is defined by the applicable statutory provisions. However, in any case, a reminder by the Buyer is required.

3.4 The Buyer’s rights under section 8 of these GTC Sale and our statutory rights, especially in the case that our obligation to perform is excluded (e.g. for impossibility or unreasonableness of performance and/or subsequent performance (“Nacherfüllung”)) remain unaffected.

4. Delivery, passing of risk, acceptance, delay in acceptance (“Annahmeverzug”)

4.1 Delivery is EX WORKS (INCOTERMS 2010) our warehouse in Reichshof-Wildbergerhütte which is also the place of performance (“Erfüllungsort”). The goods will be delivered to another destination upon request and at the expense of the Buyer (sale by delivery to a place other than the place of performance – “Versendungskauf” in terms of German law). Unless otherwise agreed, we are entitled to choose the mode of dispatch (including but not limited to the carrier, dispatch route, packaging) in our sole discretion.

4.2 The risk of accidental perishing or loss or accidental deterioration of the goods passes to the Buyer no later than upon hand-over of the goods. However, in the case of sale by delivery to a place other than the place of performance (“Versendungskauf” in terms of German law), the risk of accidental perishing or loss or accidental deterioration of the goods as well as the risk of delay passes to the Buyer already upon hand-over of the goods to the carrier, forwarder or other person or institution assigned to execute the dispatch.

4.3 If the Buyer is in default of acceptance (“Annahmeverzug”) or if the Buyer fails to cooperate or assist or if the delivery is delayed for any other reason attributable to the Buyer, we will be entitled to claim compensation of the damage incurred as a result, including any additional expenses (e.g. storage costs). For this, we will charge a lump-sum compensation amounting to 0.1 % per calendar day of the value of the non-accepted goods but not more than a maximum of 5% of such value, starting from the delivery date resp. – in default of a specific delivery date – from the notice of readiness of the goods for dispatch. This is without prejudice to our right to demonstrate that the damage incurred by us was higher and to our statutory rights and claims (including but not limited to the right to reimbursement of additional expenses, adequate compensation, termination); the aforesaid lump sum must be set off against any further monetary claims. The Buyer however is allowed to demonstrate that we did not incur any damage at all or that the damage incurred by us was much less than the aforementioned lump sum.

5. Prices and terms of payment

5.1 Unless otherwise agreed from time to time, the applicable prices are those valid upon contract conclusion, ex our warehouse in Reichshof-Wildbergerhütte, plus statutory value-added tax.

5.2 In the case of a sale by delivery to a place other than the place of performance (“Versendungskauf” in terms of German law) (section 4.1), the costs of transport ex warehouse and the costs of transport insurance, if requested by the Buyer, are borne by the Buyer. Customs duties, if any, fees, taxes and other public charges are borne by the Buyer. We do not accept return of the transport packaging or any other packaging in terms of the “Verpackungsverordnung” (German Packaging Ordinance), the packaging becomes the property of the Buyer; this does not apply to pallets.

5.3 Unless agreed otherwise, the purchase price is due and payable within 30 days from issue of the invoice and delivery.

5.4 The Buyer is deemed to be in default (“Verzug”) from the time of expiry of the aforesaid payment period. During the time of default, interest has to be paid on the purchase price at the statutory default interest rate valid at the time. We reserve the right to claim compensation of any further damage incurred by us as a result of the default (“Verzugsschaden”). As to our relationships with merchants (“Kaufleute” in terms of German law), our right to claim interest already from the due date (§ 353 HGB – German Commercial Code) remains unaffected.

5.5 The Buyer is only entitled to set-off or retention if and to the extent that the Buyer’s claim is undisputed or has been established by a final non-appealable court decision (*res judicata*). In the case of a defect of the delivered goods, the Buyer’s counter-claims including but not limited to those specified in section 7.4 clause 2 of these GTC Sale remain unaffected.

5.6 If it becomes foreseeable after contract conclusion that our purchase price claim is endangered due to the Buyer’s inability to pay (e.g. because a petition in insolvency is filed), we will be entitled under the statutory provisions to refuse performance and – if required, after grant of a grace period – withdraw from the contract (§ 321 BGB – German Civil Code). The statutory provisions governing the dispensability of a grace period remain unaffected.

6. Reservation of title

6.1 We reserve title to the sold goods until all our current and future claims arising from the sales contract and a current business relationship (secured claims) have been paid in full.

¹ Note: An offer or notice is deemed received (“zugegangen”) in terms of German law if and as soon as it has come into the recipient’s area of control in the way that the recipient can reasonably be expected to take note of it.

6.2 The goods sold subject to reservation of title must neither be pledged in favour of third parties nor may title to them be transferred to a third party by way of security before the secured claims have been paid in full. The Buyer is obliged to inform us in writing without undue delay (“unverzüglich”) of any access to, or seizure of the goods belonging to us by third parties.

6.3 If the Buyer is in breach of the contract including but not limited to the case of non-payment of the purchase price due, we will be entitled to withdraw from the contract in accordance with the applicable statutory provisions and demand return of the goods by virtue of the agreed upon reservation of title. If the Buyer fails to pay the purchase price due, we will only be entitled to assert these claims after we have granted to the Buyer a reasonable grace period for payment which has expired without result or if the statutory provisions provide for such a grace period to be dispensable.

6.4 The Buyer is entitled to resell and/or process the goods subject to reservation of title in the ordinary course of business. In this case, the following supplementary provisions apply.

(a) The reservation of title extends to the full value of the products generated through the processing, mixing or combination of our goods whereby we are deemed to be the producer. If, in the case that our goods are processed, mixed or combined with goods of third parties, the property rights of such third parties persist, we will share title to, and become co-owner of the new products in the proportion commensurate with the invoice values of the processed, mixed or combined goods. Apart from that, the newly generated product is subject to the same provisions and regulations as the goods delivered subject to reservation of title.

(b) The Buyer already now assigns to us by way of security the claims against third parties arising from the resale of the goods or the newly generated product, and that in the full amount resp. in the amount corresponding to our co-ownership share, if any, as defined in the preceding paragraph. We hereby accept the assignment. The Buyer's obligations under section 6.2 also apply with respect to the assigned claims.

(c) Besides us, the Buyer also continues to be entitled to collect the claims. We undertake not to collect the claims ourselves as long as the Buyer fulfils his payment obligations in the relationship with us, is not in default of payment, does not file a petition in insolvency and no other failure exists as regards the Buyer's ability to pay. However, if this is the case, we may request the Buyer to disclose to us the specific claims assigned as well as the identity of the debtors, to provide us with all information and data required for the collection, hand over to us the corresponding documents and notify the debtors (third parties) of the assignment.

6.5 If the realizable value of the security exceeds the amount of our claims by more than 10%, we will upon the Buyer's request release an appropriate portion of the security which we will choose in our sole discretion.

7. Buyer's claims for defects

7.1 Unless otherwise agreed upon hereinafter, the Buyer's rights in the case of a defect in quality or title (including wrong delivery (aliud delivery), short delivery as well as improper installation or faulty installation instructions) are governed by the statutory provisions.

7.2 The Buyer's claims for defects are subject to the condition that the Buyer has duly fulfilled his statutory duty to inspect the goods and give notice of defect (§§ 377, 381 HGB – German Commercial Code). If a defect becomes apparent during the inspection or later, the Buyer is obliged to inform us in writing without undue delay (“unverzüglich”). Notice of defect is deemed given without undue delay (“unverzüglich”) if it is issued within two weeks whereby timeous dispatch of the notice is sufficient to comply with the time limit. Regardless of the said duty to inspect and give notice of defect, the Buyer is obliged to give written notice of obvious defects (including wrong delivery (aliud delivery) and short delivery) within two weeks from delivery whereby again timeous dispatch of the notice is sufficient to comply with the time limit. If the Buyer fails to duly inspect the goods and/or give notice of defect, our liability for the non-reported defect is excluded.

7.3 If the delivered item is defective, we may first choose whether we will render subsequent performance (“Nacherfüllung”) by remedying the defect (“Nachbesserung”) or by delivery of a non-defective item (substitute delivery – “Ersatzleistung”). Our right to refuse subsequent performance on the conditions provided for by law remains unaffected.

7.4 We are entitled to make the subsequent performance dependent on the Buyer's payment of the purchase price due. The Buyer is however entitled to withhold such portion of the purchase price as is reasonable with a view to the existing defect.

7.5 The Buyer is obliged to grant us the time and opportunity to render subsequent performance, in particular to hand over the goods which were

complained about for inspection. In the case of substitute delivery, the Buyer is obliged to return the defective item to us as is provided for by the statutory provisions. Subsequent performance includes neither the de-installation of the defective item nor the re-installation if originally we were not obliged to install the item either.

7.6 The expenses required for the inspection and subsequent performance (“Nacherfüllung”) including but not limited to the cost of transport, tolls, labour and material costs (excluding de-installation and re-installation) are borne by us if the item is actually defective. If however the Buyer's request for defect remedy proves to be unjustified, we are entitled to claim from the Buyer reimbursement of the costs incurred by us in this context.

7.7 Buyer's claims for damages resp. for reimbursement of futile expenses exist only within the limits of section 8; apart from that, they are excluded.

8. Other liability

8.1 Unless otherwise stipulated in these GTC Sale including the following provisions, in the case of a breach of contractual and non-contractual duties, we will be liable as is provided for by the applicable statutory provisions.

8.2 We will be liable for compensation of damage – regardless of the legal cause of the claim in the case of intentional or grossly negligent conduct. In the case of simple negligence we may only be held liable

a) for damage resulting from an injury of the life or limb or health,
b) for damage resulting from the breach of a fundamental contractual duty (“wesentliche Vertragspflicht”) (which is a duty the fulfilment of which is an indispensable condition for the proper execution of the contract and on the fulfilment of which the contractual partner generally relies and is reasonably allowed to rely); however, in this case, our liability is limited to the compensation of the typical foreseeable damage.

8.3 The limitations of liability set out in section 8.2 do not apply if and to the extent that we have fraudulently concealed a defect or have given a guarantee for the quality of the goods. The same applies to any claims of the Buyer under the Produkthaftungsgesetz (German Product Liability Act).

9. Limitation

9.1 The limitation period for claims for defects in quality or title is one year from delivery.

9.2 This is without prejudice to special statutory regulations which apply to third-party claims in rem for surrender (§ 438 subs. 1 No. 1 BGB – German Civil Code), in the case of fraudulent conduct of the Seller (§ 438 subs. 3 BGB – German Civil Code) and in the case of claims in the context of the Seller taking recourse against his own (sub-)suppliers in any case where the goods are ultimately delivered to a consumer (§ 479 BGB – German Civil Code).

9.3 The preceding limitation periods applicable under sales law also apply to contractual and non-contractual claims for damages of the Buyer which are based on a defect of the goods unless the application of the regular statutory limitation period (§§ 195, 199 BGB – German Civil Code) would lead to a shorter limitation period in the specific case in question. In any case, the limitation periods stipulated by the Produkthaftungsgesetz (German Product Liability Act) remain unaffected. Otherwise, claims for damages of the Buyer in terms of section 8 are exclusively subject to the statutory limitation periods.

10. Choice of law and place of jurisdiction

10.1 The place of exclusive – and also international – jurisdiction is Bonn. Any contractual relationships are subject to German law with the exception of the UN Convention on the Sales of Goods.

10.2 The preconditions and effects of the reservation of title in terms of section 6 are subject to the law of the place where the item is located if and to the extent that the choice of German law is impermissible or ineffective thereunder. If the applicable property laws do not acknowledge a reservation of title as provided for in section 6 or request additional preconditions such as but not limited to registration requirements etc., the Buyer undertakes to support us at our request in order to fulfil this requirement or to establish a comparable security interest for us in relation to the products.