

# Conditions of Purchase



## § 1 General, Scope of Application

- (1) These General Conditions of Purchase (GCP) shall apply to all business relations with our business partners and suppliers (hereinafter referred to as "vendors"). The GCP only apply if the vendor is an entrepreneur (Section 14 BGB = German Civil Code).
- (2) The GCP particularly apply to contracts for the sale and/or delivery of movable property (hereinafter referred to as "goods") irrespective of whether the vendor produces the goods himself or procures them from other suppliers (Sections 433, 651 BGB). The GCP shall apply as a framework agreement to any future contracts for the sale and/or delivery of goods with the same vendor without the requirement of express reference thereto in each individual case.
- (3) These GCP shall apply exclusively. Any deviating, conflicting or supplementary General Terms and Conditions of the vendor shall become part of the contract only if and to the extent that we have explicitly agreed to their application in writing. This approval requirement applies in any case, for instance, even if we unconditionally accept delivery from the vendor in full knowledge of the vendor's General Terms and Conditions.
- (4) Individual agreements reached with the vendor in particular cases (including any subsidiary agreements, supplements or alterations) take precedence over these GCP. The contents of any such agreements shall be subject to a written contract or to our written confirmation.
- (5) Legally relevant declarations and notifications submitted to us by the vendor after conclusion of the contract (e.g. setting of deadlines, reminders, declaration of rescission) must be in writing to be effective.
- (6) References to the applicability of statutory provisions are solely for the purpose of clarification. Therefore, the statutory provisions apply even without any such clarification unless they have been directly amended or expressly excluded under these GCP.
- (7) We pursue a sustainable environmental policy aimed to maintain an ecologically compatible level of environmental protection in the company, and to continuously enhance it. Suppliers with a proven EMS will be given preference under otherwise equal conditions.

## § 2 Conclusion of Contract

- (1) Our order shall be binding only when it has been placed or confirmed in writing. Any obvious errors (e.g. typing or calculation errors) and omissions in the purchase order or in any associated documents shall be notified to us by the vendor before acceptance for the purpose of correction or completion; otherwise, the contract shall not be deemed concluded.
- (2) The vendor shall confirm our order in writing or execute it unconditionally by shipping the goods within a period of two weeks (acceptance). Any delayed acceptance shall be considered a new offer, requiring acceptance on our part.

## § 3 Delivery Time and Delayed Delivery

- (1) The delivery time specified in our purchase order is binding. If the delivery time has neither been specified in the purchase order nor otherwise agreed, delivery shall be effected within two weeks after conclusion of the contract. The vendor is under the obligation to inform us promptly in writing if – for whatever reason – he expects not to be able to meet the agreed delivery times.
- (2) If the vendor fails to provide performance or to do so within the agreed delivery time or comes into default, our rights – in particular the right to withdraw from the contract or to claim damages – shall be governed by the statutory provisions. The provisions set out in section 3 shall remain unaffected.
- (3) If the vendor is in default, we are entitled – without prejudice to any further legal claims – to demand compensation for the damage caused by the delay at a flat rate of 1% of the net price per completed calendar week, but not exceeding a total of 5% of the net price for the goods delivered late. We reserve the right to prove that we have incurred a higher loss. The vendor, in turn, is entitled to show that no loss at all or only a significantly lower loss has been incurred by us.

## § 4 Performance, Delivery, Transfer of Risk, Default of Acceptance

- (1) Without our previous written consent, the vendor is not allowed to delegate performance of any of his duties to third parties (e.g. subcontractors). The vendor carries the procurement risk for his performance unless the prod-

uct in question is a custom-made item.

- (2) Delivery within Germany shall be made "free domicile" to the location specified in the order. If the destination is not specified and no other agreement has been reached, the goods shall be delivered to our business location in Emskirchen. The respective destination is the place of fulfilment (obligation discharged at our address [Bringschuld]).
- (3) The delivery shall include a delivery note, specifying the date (issue and dispatch), the contents of the delivery (article numbers and quantity) and our order identification (date and number). If the delivery note is missing or incomplete, we are not liable for any resulting delays in processing and payment. In addition to the delivery note, an appropriate advice of dispatch with the same content shall be mailed to us separately.
- (4) The risk of accidental loss or accidental deterioration of the goods passes to us with the transfer of the goods at the place of fulfilment. If an acceptance test has been agreed, the risk shall pass with the acceptance of the goods.
- (5) The statutory provisions shall apply regarding the beginning of our default of acceptance. The vendor must, however, still expressly offer us his performance even if a defined or definable calendar period has been agreed for an activity or involvement on our part (e.g. provision of material). Should we be in default of acceptance, the vendor may demand compensation for his additional expenses in accordance with the statutory provisions (Section 304 BGB). If the contract relates to non-fungible goods to be manufactured by the vendor (custom-made items), the vendor has additional rights only if we have committed ourselves to make a contribution and are responsible for the failure to do so.

## § 5 Prices and Terms of Payment

- (1) The price specified in our purchase order is binding. All prices include statutory value added tax unless it is shown separately.
- (2) Unless otherwise agreed in individual cases, the price includes all services and ancillary services of the vendor (e.g. assembly, installation) and all additional costs (e.g. proper packaging, transportation costs, including any transportation or liability insurance). The vendor must take back packaging material at our request.
- (3) The agreed price is due for payment within 30 calendar days of complete delivery and performance (including any agreed acceptance tests) after receipt of a proper invoice. If we make the payment within 14 calendar days, the vendor shall grant us 3% discount on the net amount invoiced.
- (4) We shall not owe due date interests. The vendor's entitlement to the payment of default interests remains unaffected. The statutory provisions shall apply regarding the beginning of our default. In any case, however, the vendor is required to send a reminder.
- (5) We are entitled to the right of setoff and the right of retention and we shall have recourse to the plea of non-performance as granted by law. In particular, we are entitled to withhold due payments as long as we still have claims against the vendor due to incomplete or defective performance.
- (6) The vendor is entitled to the right of setoff or the right of retention only for legally established or undisputed counterclaims.

## § 6 Confidentiality and Retention of Title

- (1) We shall retain title and copyrights to illustrations, plans, drawings, calculations, implementation instructions, product descriptions and any other documents. Such documents may only be used for contract performance and must be returned to us after the contract has been completed. The documents must not be disclosed to third parties even after termination of the contract. This duty of confidentiality expires only if and to the extent that the information contained in the provided documents has become public knowledge.
- (2) The provision set out above shall apply with the necessary modifications to substances and materials (e.g. software, finished and semi-finished products) as well as to tools, models, samples and any other items supplied by us to the vendor for production. Unless used in production, such items are to be stored separately and insured against destruction and loss to the customary extent at the vendor's cost.
- (3) Any processing, mixing or combination of supplied materials by the vendor shall be done on our behalf. Should third-party proprietary rights remain effective when processing, mixing or combining some item with items of any

# Conditions of Purchase



such parties, we shall acquire co-ownership of the new object in proportion of the value of the item supplied by us to that of the other items.

(4) Title to the goods shall be transferred to us unconditionally and regardless of payment of the purchase price. All forms of expanded or extended retention of title are excluded in any event so that any valid retention of title declared by the vendor shall only be effective until payment has been made for the delivered goods and shall only apply to these goods.

## § 7 Defective Delivery

(1) Unless otherwise provided below, the statutory provisions shall apply regarding our rights in case of defects as to quality and title (including incorrect and short delivery, improper assembly, inadequate assembly instructions, operating instructions or user manuals) or any other breach of duty by the vendor.

(2) In particular, the vendor warrants that the goods shall have the agreed quality at the time when the risk passes over to us in accordance with the statutory provisions. The agreement on quality shall at least include the product descriptions that are part of the contract – e.g. through identification or reference in the purchase order – and any other specifications that have been incorporated into the contract in the same way as these GCP. In this respect, it is of no consequence whether the respective product description originated from us, from the vendor or from the manufacturer.

(3) Contrary to Section 442 Subsection 1 Sentence 2 BGB, we shall have unrestricted claims for defects even if the respective defect remained unknown to us due to gross negligence on conclusion of the contract.

(4) With regard to the commercial duty to examine the goods and to give notice of any defects, the statutory provisions (Sections 377, 381 HGB = German Commercial Code) shall apply with the following proviso: Our duty of examination shall be limited to defects that come to light in our incoming goods inspection, involving a visual inspection of the goods and a check of the delivery documents, or become apparent in our sample-based quality control inspections (e.g. transportation damage, incorrect and short delivery). If an acceptance test has been agreed, there is no duty of examination. With regard to the duty of examination, it is also relevant to which extent such an examination is practicable in the proper course of business, taking the circumstances of the individual case into account.

Our duty to give notice of defects detected at a later stage remains unaffected. In all cases, our complaint (notice of defect) shall be deemed prompt and timely if it has been dispatched by us within 10 work days.

(5) The costs incurred by the vendor for inspection and improvement shall be borne by the vendor even if it turns out that there actually was no defect. Our liability to pay damages for an unjustified request to remedy a defect remains unaffected; however, we shall only be liable if we actually realised or grossly negligently did not realise the non-existence of the defect.

(6) If the vendor fails to meet his obligation of supplementary performance – at our choice, by remedying the defect (subsequent improvement) or by shipping an item that is free of defects (replacement delivery) – within an appropriate period of time specified by us, we can remedy the defect ourselves and demand compensation from the vendor for the necessary expenses or ask for an adequate advance payment. If supplementary performance by the vendor has failed or is unacceptable to us (e.g. due to special urgency, a threat to operational safety or an imminent occurrence of disproportionate damage), there shall be no need to set a deadline; the vendor must be notified promptly and in advance if possible.

(7) In addition, we are entitled to reduce the purchase price or withdraw from the contract in case of a defect as to quality or title in accordance with the statutory provisions. Furthermore, we have a claim for compensation and reimbursement of expenses in accordance with the statutory provisions.

## § 8 Recourse against the Supplier

(1) We shall have unconditional claims of recourse within the supply chain as provided by law (recourse against the supplier pursuant to Sections 478, 479 BGB) in addition to any other claims for defects. In particular, we are entitled to demand the same type of supplementary performance (subsequent improvement or replacement delivery) from the vendor that we owe our customer ourselves in the individual case. Our statutory right of choice

(Section 439 Subsection 1 BGB) shall not be restricted hereby.

(2) Before we recognise or grant any claims for defects asserted by one of our customers (including reimbursement of expenses pursuant to Section 478 Subsection 3 and Section 439 Subsection 2 BGB), we shall notify the vendor of the respective matter with a short explanation and ask for a written statement. If the statement is not submitted within a reasonable period of time and no mutually agreed solution can be reached, the claim for the defect actually granted by us shall be deemed owed to our customer; in this case, the vendor is responsible for producing evidence to the contrary.

(3) Our claims of recourse against the supplier shall also apply if the goods were further processed – e.g. through integration into another product – before being sold to a consumer by us or one of our customers.

## § 9 Producer's Liability

(1) If the vendor is responsible for any damage caused by a product, he must indemnify us against claims by third parties insofar as the cause falls within his sphere of control and organisation and he himself is liable in the external relationship.

(2) Under his obligation to indemnify, the vendor must reimburse any expenses pursuant to Sections 683, 670 BGB that arise from or are incurred in connection with the services of third parties, including any recall actions carried out by us. As far as possible and reasonable, we shall notify the vendor of the content and scope of any such recall actions, providing him with the opportunity to make a statement on the matter. Further legal claims remain unaffected.

(3) The vendor must take out and maintain product liability insurance, covering a lump sum of at least EUR 1 million per personal injury / property damage.

## § 10 Limitation of Claims

(1) Unless otherwise provided below, the claims of the contracting parties against each other shall become statute-barred in accordance with the statutory provisions.

(2) Contrary to Section 438 Subsection 1 No. 3 BGB, the general limitation period for claims arising from defects shall be 3 years after the transfer of risk. If an acceptance test has been agreed, the limitation period begins at the time of acceptance. The 3-year limitation period also applies to claims arising from defects of title. However, the statutory limitation period of third-party claims for the return of property (Section 438 Subsection 1 No.1 BGB) remains unaffected.

(3) The limitation periods of sales law, including the extension of limitation specified above, apply to all contractual claims for defects to the statutory extent. Should we have any non-contractual claims for compensation due to a defect, the statutory standard limitation period shall apply (Sections 195, 199 BGB) unless the application of the limitation periods of sales law leads to a longer period of limitation in the individual case.

## § 11 Choice of Law and Place of Jurisdiction

(1) These GCP and all legal relationships between us and the vendor shall be governed by the laws of the Federal Republic of Germany to the exclusion of all international and supranational (contract) laws, in particular the UN Convention on Contracts for the International Sale of Goods. The conditions and consequences of retention of title are subject to the law applicable at the respective location of the goods if the law in question provides that the choice of German law as governing law is inadmissible or ineffective.

(2) If the vendor is a trader as defined in the German Commercial Code, a legal person under public law or a special fund under public law, the sole and exclusive – even international – venue of jurisdiction for all disputes arising from the contractual relationship shall be our place of business in Emskirchen. However, we are also entitled to file a suit at the place of fulfilment for the delivery obligation.