

§ 1 Scope, form

- (1) The present General Sales Conditions (GSCs) apply to all of our business relationships with our customers ("Buyers"). The GSCs shall only apply if the Buyer is an entrepreneur (§ 14 BGB [German Civil Code]), a legal entity under public law, or a special fund under public law.
- (2) The GSCs shall particularly apply to contracts regarding the sale and/or delivery of movable property ("Goods"), regardless of whether we produce the Goods ourselves or purchase them from suppliers (§§ 433, 651 BGB).
- (3) Our GSCs apply exclusively. Any deviating, conflicting or supplementary General Terms and Conditions of the Buyer shall only become part of the contract if and to the extent that we have explicitly agreed to their applicability. This agreement requirement applies in every case, for instance even if we are aware of the Buyer's GTCs and nonetheless provide a delivery to the Buyer without reservations.
- (4) Individual agreements established with the Buyer in individual cases (including side agreements, additions, and changes) shall take precedence over these GSCs in every case. Subject to evidence to the contrary, a written contract and/or our written confirmation shall be definitive for the content of such agreements.
- (5) Legally significant declarations and announcements by the Buyer regarding the contract (e.g. deadlines, defect notifications, cancellation or reduction) must be made in writing, in other words in written or text form (e.g. letter, email, or fax). Statutory form requirements and other required proof, particularly in case of doubts regarding the legitimacy of the party making the declaration, remain unaffected.
- (6) References to the applicability of statutory requirements are merely for clarification purposes. Even without such clarification, the statutory provisions therefore apply unless they have been directly modified or explicitly excluded in these GSCs.

§ 2 Conclusion of contract

- (1) Our offers are subject to change and are non-binding. This applies even if we provide the Buyer with catalogs, technical documentation (e.g. drawings, plans, calculations, references to DIN standards), other product descriptions, or materials – including in electronic form – for which we have reserved property rights and copyrights.
- (2) An order of Goods placed by the Buyer is considered a binding contractual offer. Unless otherwise stated in the order, we are entitled to accept this contractual offer within 4 weeks after we receive it.
- (3) Acceptance can take place either in writing (e.g. through an order confirmation) or by delivery of the Goods to the Buyer.

§ 3 Delivery deadline and delay in delivery

- (1) The delivery deadline shall be established on a case-by-case basis and/or specified by us upon acceptance of the order. If this is not the case, the delivery deadline shall be approx. 8 weeks after the conclusion of contract.
- (2) We shall not be liable for impossibility of delivery or for delays in delivery if this is caused by force majeure or by other circumstances that were unforeseeable at the time when the contract was concluded (e.g. operational disruptions of all kinds, difficulties in procuring materials or energy, transport delays, strikes, legal lockouts, shortages of labor, energy or raw materials, difficulties in obtaining the necessary official permits, official measures, or missing, incorrect, or late deliveries by suppliers) and for which we are not responsible. If such circumstances make it significantly more difficult or impossible for us to provide delivery and if the impairment is not merely temporary, we are entitled to cancel the contract. In the event of temporary hindrances, delivery deadlines shall be extended by the length of the hindrance plus an appropriate lead time. If, as a result of the delay, the Buyer cannot be expected to accept delivery, the Buyer can withdraw from the contract by providing us with an immediate written declaration to this effect.
- (3) The start of our delay in delivery shall be determined according to the statutory provisions. In every case, however, the Buyer must provide a warning.
- (4) The Buyer's rights as per § 8 of these GSCs and our statutory rights, particularly if the performance obligation is excluded (e.g. because performance and/or supplementary performance is impossible or unreasonable), remain unaffected.

§ 4 Delivery, transfer of risk, acceptance, default of acceptance

- (1) Unless otherwise established in individual cases, delivery shall be provided EXW (Ex Works, Incoterms 2010) Ramsdorfer Str. 5, 46354 Südlohn, Germany, which is also the place of fulfillment for delivery and potential supplementary performance. At the Buyer's request and expense, goods can also be sent to a different destination (sales shipment). Unless otherwise agreed, we are entitled to determine the shipment type ourselves (particularly the transport company, shipment method, and packaging).
- (2) The risk of accidental destruction and accidental deterioration of the Goods shall be transferred to the Buyer at the latest when they are handed over. However, for sales shipments the risk of accidental destruction and accidental deterioration of the Goods as well as the risk of delays shall be transferred when the Goods are delivered to the shipper, freight forwarder, or another person or entity designated to perform the shipping. If acceptance is required, this is definitive for the transfer of risk. For the rest, the statutory provisions of contract law for work and labor apply correspondingly to any agreed acceptance. If the Buyer is in default with acceptance, this shall be considered equivalent to handover and/or acceptance.
- (3) In the event of non-acceptance, we can exercise our statutory rights. If we request damage compensation, this shall be 15% of the purchase price. Damage compensation can be higher or lower if we can demonstrate greater damage or if the Buyer can demonstrate that the damage was less or non-existent.

§ 5 Prices and payment conditions

- (1) Unless otherwise established in individual cases, our current prices at the time when the respective contract was concluded shall apply EXW (Ex Works, Incoterms 2010) Ramsdorfer Str. 5, 46354 Südlohn, Germany, plus statutory value added tax.
- (2) For sales shipments (§ 4 Sec. 1), the Buyer shall bear the transport costs ex warehouse and the costs of transport insurance if requested by the Buyer. If we do not invoice the actual transport costs in individual cases, a flat transport-cost fee (excluding transport insurance) of EUR 50.00 is considered to be agreed. Any customs duties, fees, taxes, and other public charges shall be borne by the Buyer.
- (3) Unless otherwise established in individual cases, the purchase price shall be due and payable immediately upon invoicing and delivery and/or acceptance of the Goods. However, we are entitled, even in the context of an ongoing business relationship, to provide deliveries in full or in part only in exchange for payment in advance. We shall declare any such reservation at the latest upon confirmation of the order.
- (4) At the end of the above payment period, the Buyer shall be considered in default. The purchase price shall be subject to the applicable statutory interest rate during the period of default. We reserve the right to claim further default damages. Our claim to commercial maturity interest (§ 353 HGB) from merchants remains unaffected hereby.
- (5) The Buyer is only entitled to offsetting or retention rights if and to the extent that the Buyer's claim is legally established or undisputed. In the event of defects in the delivery, the Buyer's counter-rights, particularly as per § 7 Sec. 6 Sentence 2 of these GSCs, shall remain unaffected.
- (6) If it becomes apparent after conclusion of the contract (e.g. due to a request to initiate insolvency proceedings) that our claim to the purchase price is threatened by the Buyer's lack of solvency, the statutory provisions entitle us to refuse performance and – after setting a grace period if applicable – to withdraw from the contract (§ 321 BGB). For contracts regarding the production of non-fungible goods (custom manufacturing), we can declare our withdrawal immediately; the statutory provisions regarding the dispensability of setting a grace period shall remain unaffected.

§ 6 Reservation of title

- (1) Until all of our current and future receivables from the purchase contract and any ongoing business relationship (secured receivables) have been paid in full, we shall reserve the title to the sold Goods.
- (2) The Goods subject to reservation of title may not be pledged to third parties or transferred by way of security until the secured receivables have been paid in full. The Buyer must inform us immediately in writing if an application to initiate insolvency proceedings has been submitted or if third-party access (e.g. pledging) is established for Goods that belong to us.
- (3) In the event of non-contractual conduct by the Buyer, particularly the failure to pay the owed purchase price, we shall be entitled to withdraw from the contract according to the statutory provisions and/or to request the return of the Goods on the basis of the reservation of title. A request for return does not automatically mean a withdrawal declaration; rather, we are entitled to simply request the return of the Goods and reserve the right to withdraw from the contract. If the Buyer does not pay the owed purchase price, we may only assert these rights if we have first set an appropriate payment grace period for the Buyer, without success, or if such a grace period is not required by the statutory provisions.
- (4) Until revocation as per (c) below, the Buyer is entitled to resell and/or process the Goods subject to reservation of title within the ordinary course of business. In this case, the following provisions shall also apply.
 - (a) The reservation of title extends to the full value of any products created by processing, mixing, or combining

- (a) our Goods; here we shall be considered the manufacturer. If a third party's ownership rights are preserved during the processing, mixing, or combining of our Goods with the third party's goods, we shall obtain co-ownership in relation to the invoice value of the processed, mixed, or combined goods. For the rest, the same rules shall apply for the resulting product as for the Goods delivered subject to reservation of title.
- (b) By way of security, the Buyer hereby assigns to us in advance any receivables from third parties resulting from the resale of the Goods or the product, either in full and/or in the amount of our co-ownership share as per the above Section. We hereby accept this assignment. The Buyer's obligations named in Sec. 2 shall also apply with regard to the assigned receivables.
- (c) The Buyer shall remain authorized to collect receivables in addition to us. We hereby agree not to collect a receivable as long as the Buyer fulfills its payment obligations to us and does not have a lack of solvency, and as long as we do not assert our reservation of title by exercising a right as per Sec. 3. However, if this is the case, we can request that the Buyer notify us of all assigned receivables and the respective debtors, provide all information needed to collect the receivables, issue the associated documents, and inform the debtors (third parties) of the assignment. In addition, in this case we are entitled to revoke the Buyer's authorization to resell and process the Goods subject to reservation of title.
- (d) If the realizable value of the securities exceeds our receivables by more than 10%, we shall release our choice of securities at the Buyer's request.

§ 7 Defect claims by the Buyer

- (1) The Buyer's rights regarding material defects and defects of title (including incorrect and short deliveries as well as improper assembly or faulty assembly instructions) shall be subject to the statutory provisions unless otherwise established below. In all cases, the special statutory requirements for final delivery of the Goods to a consumer shall remain unaffected (supplier regress as per §§ 478, 479 BGB).
- (2) Above all, our defect liability is based on the agreement regarding the characteristics of the Goods. This is subject to deviations in structure or color where these are due to the nature of the materials used and are customary in the trade.
- (3) If no characteristics were agreed upon, the statutory provisions shall be used to determine whether a defect exists or not (§ 434 Sec. 1 pp. 2 and 3 BGB). However, we do not assume any liability for public statements made by third parties (e.g. in advertising messages).
- (4) The Buyer's defect claims require the Buyer to have fulfilled its statutory inspection and complaint obligations (§§ 377, 381 HGB). If a defect is found during the inspection or thereafter, we must be informed of this immediately in writing.
- (5) We shall not be liable for defects caused by circumstances beyond our control. Such circumstances particularly include unsuitable or inappropriate use, incorrect or improper handling, natural wear and tear, moisture, excessive heating of the rooms, temperature and weather influences, as well as inappropriate interventions in the delivered Goods by the Buyer and/or third parties.
- (6) If the delivered Goods are defective, we can first decide whether we will provide supplementary performance by rectifying the defect (repair) or by delivering a fault-free item (replacement delivery). Our right to refuse to provide supplementary performance according to the statutory requirements remains unaffected.
- (7) We are entitled to make the owed supplementary performance dependent upon the Buyer's payment of the owed purchase price. However, the Buyer is entitled to withhold an appropriate portion of the purchase price according to the extent of the defect.
- (8) The Buyer shall give us the necessary time and opportunity to provide the owed supplementary performance, particularly by handing over the Goods subject to a complaint for inspection purposes. In the case of a replacement delivery, the Buyer must return the defective item to us according to the statutory provisions.
- (9) Any expenses incurred for the inspection and supplementary performance, particularly transport, travel, labor, and material costs, shall be borne by us if a defect is found to exist. Otherwise we can request reimbursement from the Buyer for any costs (particularly inspection and transport costs) incurred for the unfounded defect rectification request, unless the Buyer was unable to determine the absence of a defect.
- (10) The Buyer's claims for damage compensation and/or compensation for futile expenditures, even in the case of defects, shall only apply as defined in § 8 and are otherwise excluded.

§ 8 Other liability

- (1) Unless otherwise established by these GSCs, including the following provisions, we shall be liable as per the statutory regulations for any violation of contractual or non-contractual obligations.
- (2) Regardless of legal grounds, we shall be liable for damage compensation within the scope of fault-based liability in the case of intent and gross negligence. In the case of simple negligence, we shall only be liable according to the statutory requirements, subject to a more lenient standard of liability (e.g. for the duty of care in our own affairs), for
 - a) damage due to a loss of life, bodily injury, or damage to health,
 - b) damage caused by a significant violation of a major contractual obligation (an obligation that must be fulfilled in order to permit the proper execution of the contract and which the contractual partner regularly expects and may reasonably expect to be fulfilled); in this case, however, our liability is limited to compensation for foreseeable, typically occurring damage.
- (3) The liability limitations resulting from Sec. 2 also apply to obligations that are violated by, and/or for the benefit of, persons whose culpability is our responsibility according to the statutory requirements. They do not apply if we fraudulently concealed a defect or provided a guarantee of the characteristics of the Goods, or for the Buyer's claims as per the Product Liability Act.
- (4) The Buyer can only withdraw from or terminate the contract due to a violation of obligations other than a defect if we are responsible for this violation. The Buyer's free right of termination (particularly as per §§ 651, 649 BGB) is hereby excluded. For the rest, the statutory requirements and legal consequences apply.

§ 9 Limitation period

- (1) In deviation from § 438 Sec. 1 No. 2 BGB, the general limitation period for claims from material defects and defects of title shall be one year from the time of delivery. If acceptance is required, the limitation period shall begin at the time of acceptance.
- (2) However, if the Goods are a building or an item that was used for a building according to its customary application and which caused it to be defective (building material), the limitation period as per the statutory provision shall be 5 years from the time of delivery (§ 438 Sec. 1 No. 2 BGB). Other special statutory provisions regarding the limitation period (esp. § 438 Sec. 1 No. 1, Sec. 3, §§ 444, 479 BGB) shall also remain unaffected.
- (3) The above limitation periods for the purchase right shall also apply to the Buyer's contractual and non-contractual damage compensation claims based on a defect in the Goods unless the application of the regular statutory limitation period (§§ 195, 199 BGB) would lead to a shorter limitation period in individual cases. However, the Buyer's damage compensation claims as per § 8 Sec. 2 Sentence 1 and Sentence 2(a) as well as under the Product Liability Act shall lapse exclusively according to the statutory limitation periods.

§ 10 Returns

- (1) Our products may only be returned with our permission; returns must indicate our invoice number. Accessory items with an expiration date may not be returned. A cost share amounting to at least 33% of the value of the Goods shall be charged for processing these returns. Custom-made items are fundamentally excluded from returns. Against our claims, the customer has the right to provide proof that our losses were significantly lower than claimed or non-existent.

§ 11 Choice of law and place of jurisdiction

- (1) These GSCs and the contractual relationship between us and the Buyer are subject to the law of the Federal Republic of Germany to the exclusion of uniform international law, particularly the UN Sales Convention.
- (2) If the Buyer is a merchant in the sense of the German Commercial Code, a legal entity under public law, or a special fund under public law, the exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship – including internationally – shall be our registered offices in Südlohn, Germany. The same shall apply correspondingly if the Buyer is an entrepreneur in the sense of § 14 BGB. In every case, however, we are also entitled to file a suit at the place of fulfillment for the delivery obligation as per these GSCs and/or a prior-ranking individual agreement, or at the Buyer's general place of jurisdiction. Prior-ranking statutory regulations, particularly regarding exclusive competences, remain unaffected.

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Ramsdorfer Straße 5 · 46354 Südlohn · Germany
Issued October 2017

You will find the latest version of the terms of delivery and payment at www.terhuerne.com