

Standard Purchase and Contract Terms & Conditions (Last updated: May 2019)

1. General Provisions, Scope of Application

- 1.1. These Standard Purchase and Contract Terms and Conditions (“T&C”) shall apply to all our business relationships with our suppliers and contractors (hereinafter “Seller(s)”). These terms and conditions are applicable only to Sellers who are entrepreneurs (as defined in Section 14 German Civil Code [*Bürgerliches Gesetzbuch*; “BGB”], legal entities under public law, or special funds under public law.
- 1.2. These T&C shall apply in particular to contracts for the purchase and/or the delivery of movable goods (“Goods”) regardless of whether the Seller manufactures the Goods itself or purchases them from suppliers (Sections 433, 650 BGB). Unless agreed otherwise, these T&C shall apply in the version valid at the time of the our order or, in any event, as last communicated in text form to the Seller and shall serve as a master agreement for similar future contracts without our having to refer to these T&C again in each individual case.
- 1.3. These T&C shall apply exclusively. The Seller’s deviating, opposing or supplementary standard terms and conditions shall not become an integral part of any contract unless we expressly agree to their validity in writing, and only then and to the extent agreed. This requirement of our consent shall apply in any event, for example also in cases where we take delivery of the items provided by the Seller without any reservation while being aware of the Seller’s standard terms and conditions.
- 1.4. Any individual agreement entered into with the Seller in individual cases (including collateral agreements, supplements and amendments) shall in any event take precedence over these T&C. Save for evidence to the contrary, a written contract

or our written confirmation, as applicable, shall be authoritative in determining the content of any such agreement.

- 1.5. Legally relevant statements and notices of the Seller with regard to the contract (e.g. setting of a deadline, reminder, rescission) must be made in written form or text form (e.g. letter, email, fax). Legal requirements as to form, and other supporting documents, in particular in the event of doubt as to the legitimacy of the entity making the statement, shall remain unaffected.
- 1.6. Reference to the applicability of the provisions of the law merely serve the purpose of clarification. Those statutory provisions shall thus apply also without any such clarification, unless they were directly modified or expressly excluded in these T&C.

2. Quotations and Conclusion of the Contract

- 2.1. The Seller must submit its binding quotations free of charge. In its quotation, the Seller must adhere to the quantities, packaging units, quality, design, etc. specified in our inquiry and expressly inform us in writing of all instances where the Seller deviated from our inquiry. The preceding sentence shall apply accordingly to the Seller’s acknowledgments of order.
- 2.2. Our order shall be deemed binding at the earliest when submitted or confirmed in writing. The Seller shall notify us of obvious errors (e.g. clerical errors and calculation errors), and incompleteness of the order, including the order documents, for the purpose of correction or completion prior to acceptance; otherwise the contract shall be deemed not to have been concluded.
- 2.3. The Seller is obligated to confirm our order in writing within eight (8) days after

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receipt of the order or to execute the order unconditionally by dispatching the Goods (acceptance). Late acceptance shall be deemed a new offer and be subject to our acceptance.

3. Dates and Time Limits

3.1. The dates and time limits specified by us in our order are binding on the Seller.

3.2. The Seller is under the obligation to inform us immediately in writing if it anticipates not being able to comply with agreed-upon dates or time limits for any reason whatsoever, and shall at the same time inform us of the reason and the expected duration of the imminent non-compliance with the delivery date or time limit.

3.3. If the Seller fails to perform its obligations or fails to perform them as of the agreed date or within the agreed-upon time limit, or if the Seller is in default, our rights—in particular our right to rescission and damages—shall be governed by the law. The provisions set forth under Clause 3.4 shall remain unaffected.

3.4. If the Seller is in default, we shall be entitled—in addition to any further legal claims—to claim liquidated damages for our loss or damage based on default in the amount of 1% of the net price per full calendar week, but overall no more than 5% of the net price of the Goods delivered late. We reserve the right to prove that we suffered a higher loss or damage. The Seller may reserve the right to prove that no loss or damage or only substantially lower loss or damage has occurred.

4. Performance, Passing of Risk, Acceptance

4.1. Without our prior written consent, the Seller shall not be entitled to have the performance owed by it performed by third parties (e.g. subcontractors). Unless

agreed otherwise in individual cases, the Seller shall bear the procurement risk for its performance.

4.2. The Seller shall deliver the Goods to the place specified by us in the order. If the place of destination is not specified and nothing else has been agreed, the Goods shall be delivered to our place of business in Bremen. The respective place of destination shall also be the place of performance for the delivery and any cure, as the case may be, (debt to be discharged at obligee's domicile).

4.3. On the day of dispatch of each shipment from the Seller's premises, the Seller must send us a dispatch note specifying our order number, the declaration of Goods and volume/quantity. The Seller must have each delivery accompanied by a delivery slip including that same information. If the delivery slip is missing or is incomplete, we shall be entitled to refuse acceptance of the shipment at the Seller's expense; we will not be responsible for any resulting delays in processing and payment.

4.4. The risk of accidental loss, destruction or deterioration of the item shall pass to us upon delivery at the place of performance. If acceptance has been agreed upon, such acceptance shall be relevant for the passing of risk.

4.5. Unless agreed otherwise in individual cases, the Seller shall not be entitled to partial, excess or short deliveries; we reserve the right to refuse acceptance of partial, excess or short deliveries.

4.6. The Seller shall provide suitable packaging as customary in the trade to protect the delivery items from damage and impairment.

4.7. The Seller shall insure the Goods to be delivered against accidental loss (in particular due to fire and theft) and acci-

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dental deterioration at its own expense at replacement value for the period until the passing of risk in accordance with Clause 4.4.

- 4.8. We may refuse to accept performance for as long as an event of force majeure or any other circumstances beyond our control (including industrial disputes) make it impossible or unreasonable for us to accept performance. In such event, the Seller must store and insure the delivery item at its expense and risk until the circumstances justifying such refusal have cleared. In all other respects, statutory provisions shall apply in the event of late acceptance on our part, provided, however, that the Seller must expressly offer its performance also in cases where a specific or specifiable calendar time has been agreed upon for an action or cooperation on our part.

5. Prices and Terms of Payment

- 5.1. The price stated in the order is binding. All prices shall be deemed quoted inclusive of statutory value-added tax, unless such tax has been stated separately.
- 5.2. The quantities, dimensions, and weights of the delivery items determined by us in the incoming inspection shall govern invoicing based on quantities, dimensions, and weights.
- 5.3. Unless agreed otherwise in individual cases, the price shall include all of Seller's performance and ancillary services (e.g. assembly, installation) as well as all ancillary costs (e.g. proper packaging, transport costs, including transport and liability insurance).
- 5.4. The agreed price shall be due for payment on the agreed payment date, but no earlier than upon complete delivery of the Goods and performance of the services (including any required accompanying documents and any agreed ac-

ceptance) as well as receipt of a proper invoice in duplicate. Our order number and the value-added tax at the statutory rate must be shown separately in each invoice. In the event of premature delivery by the Seller, an agreed payment period shall commence at the earliest on the contractually agreed delivery date.

- 5.5. We shall not owe any late interest. In the event of default in payment, the provisions of the law shall apply.

6. Assignment/Setoff and Retention

- 6.1. The Seller is not entitled to assign its claims against us and rights under the contractual relationship to third parties. This shall not apply to claims for money.
- 6.2. We shall be entitled to setoff and retention rights as well as the defense of non-performance of the contract to the extent permitted by law. We shall be in particular entitled to withhold due payments as long as we have outstanding claims against the Seller for incomplete or defective performance.
- 6.3. The Seller may offset only against uncontested or finally adjudicated claims against us.
- 6.4. The Seller shall be entitled to exercise its right of retention only if its counterclaim is based on the same contractual relationship.

7. Secrecy and Retention of Title

- 7.1. We reserve proprietary rights and copyrights to illustrations, plans, drawings, calculations, design instructions, product descriptions and other documents. Such documents shall be used exclusively for the contractual performance and shall be returned to us after completion of the contract. These documents must be kept secret from third parties, also beyond the termination of the contract. The obligation to maintain secrecy shall not expire

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- until and to the extent that the knowledge contained in the documents provided has entered the public domain.
- 7.2. The above provision shall apply accordingly to substances and materials (such as software, finished and semi-finished products) as well as to tools, templates, samples and other items which we provide to the Seller for production. Such objects shall, for as long as they are not processed, be kept separately at the Seller's expense and shall be adequately insured against destruction and loss.
- 7.3. The Seller shall be liable for any loss and damage of the items provided by us in accordance with Clause 7.1 and 7.2. The Seller shall notify us in writing without undue delay of any legal or factual impairment of the items provided to it.
- 7.4. Any processing, blending or combination (subsequent processing) by the Seller of items provided by us shall be done on our behalf. The same shall apply to subsequent processing of the delivered Goods by us, so that we shall be deemed the manufacturer and shall acquire title to the product at the latest upon subsequent processing in accordance with the provisions of the law.
- 7.5. Title to the Goods must be transferred to us without reserve and regardless of the payment of the price. If, however, in individual cases, we accept an offer by the Seller to transfer title to the Goods subject to the payment of the purchase price, the Seller's retention of title shall lapse at the latest upon our payment of the purchase price for the delivered Goods. We shall remain entitled to resell the Goods in the ordinary course of business, even before payment of the purchase price, with advance assignment of the resulting receivable (alternatively, a simple retention of title, prolonged to include the resale, shall apply). All other forms of retention of title shall be excluded, including but not limited to any retention of title that is extended [*erweitert*], has been transferred, or is prolonged [*verlängert*] to include the subsequent processing.
- 8. Defects**
- 8.1. Unless provided otherwise below, the provisions of the law shall apply to our rights in the event of defects of quality and in title (including faulty shipment or short delivery, as well as improper assembly instructions, operating or user instructions) and in the event of other breaches of duty by the Seller.
- 8.2. Under the provisions of the law, the Seller shall be liable in particular for ensuring that the Goods have the agreed quality upon passing of risk to us. Any product descriptions, which have become the subject matter of the respective contract, in particular by specifying them or referring to them in our order, or which have been incorporated in the contract in the same manner as these T&C, shall in any event be deemed an agreement regarding the quality. Whether the production description is provided by us, the Seller or

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- by the manufacturer does not make any difference.
- 8.3. In derogation of Section 442(1) Sentence 2 *BGB*, we shall be entitled to assert rights in relation to the defect even if our having no knowledge of the defect at the time of conclusion of the contract was due to gross negligence.
- 8.4. The statutory provisions shall apply to the commercial duty to examine the Goods and give notice of defects (Sections 377, 381 German Commercial Code) subject to the following proviso: Our obligation to examine the Goods shall be limited to defects which become apparent upon visual check during our incoming goods inspection, including the delivery documents, (e.g. transport damage, faulty and short delivery), or during our quality control procedure using random sampling. In cases where acceptance has been agreed upon, there is no duty to examine the Goods. Other than that, it depends on whether an examination is expedient in the ordinary course of business taking the circumstances of the individual case into account. Our obligation to give notice of defect with respect to defects discovered later shall remain unaffected. Regardless of our obligation to examine the Goods, our notice of defects shall be deemed to have been given without undue delay and in a timely fashion when dispatched within eight (8) business days since the discovery or, in the event of obvious defects, since delivery.
- 8.5. The cure shall include the removal of the defective Goods and their reinstallation to the extent that the Goods, considering their nature and intended use, have been installed in other items or attached to other items; our statutory claim for reimbursement of related expenses shall remain unaffected. The Seller shall bear the expenses necessary for the purpose of inspection and cure even if it turns out that, in fact, there was no defect. Our liability for damages in the event of an unjustified request to remedy defects shall remain unaffected; in this respect, however, we shall only be liable if we have recognized, or failed to recognize due to gross negligence, that there was no defect.
- 8.6. Notwithstanding our statutory rights and the provisions in Clause 8.5, the following shall apply: If the Seller fails to fulfill its obligation to provide a cure—at our choice by remedying the defect (repair) or by providing an item free from defects (replacement)—within a reasonable period set by us, we shall be entitled to remedy the defect ourselves and demand reimbursement from the Seller of the expenses incurred therefor, or a reasonable advance payment, as the case may be. If the cure to be provided by the Seller has failed or is unreasonable for us (e.g. due to extreme urgency, exposure to operating safety hazards, or imminent occurrence of extreme loss or damage), there is no need to set a period for such cure; we shall inform the Seller immediately of any such circumstances.
- 8.7. Furthermore, we shall be entitled to reduce the purchase price or rescind the contract in the event of a defect of quality or in title according to the law. We shall also be entitled to damages and compensation of expenses under the law.
- 9. Recourse to Initial Supplier**
- 9.1. In addition to our rights in relation to defects, we shall also be entitled to an unrestricted right of recourse within a supply chain as defined in the law (recourse to initial supplier pursuant to Sections 445a, 445b, 478 *BGB*). In particular, we shall be entitled to demand from the Seller exactly that type of cure (repair or replacement) that we owe our buyer in

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- each case. Our statutory right to choose the cure (Section 439(1) *BGB*) shall not be restricted thereby.
- 9.2. Before we acknowledge or fulfill a claim arising from defects asserted by our buyer (including reimbursement of expenses pursuant to Sections 445a(1), 439(2)(3) *BGB*), we will notify the Seller, provide it with a brief description of the facts, and request its written statement. Absent a substantiated statement within a reasonable time or an amicable solution between the Seller and us, the claim arising from the defect that we have actually granted shall be deemed the claim owed our buyer. In this case, the Seller shall have the burden of proof to the contrary.
- 9.3. Our claims under the recourse to initial supplier shall also apply if the defective Goods have been subsequently processed by us or another entrepreneur, e.g. by installation in another product.
- 10. Liability, Indemnity, and Insurance**
- 10.1. Claims for damages and compensation of expenses by the Seller against us shall be excluded, regardless of their cause in law, unless they are based on the provisions of the Product Liability Act, a deliberate or grossly negligent violation of contractual or legal obligations on our part, damage caused to the health and bodily harm of the Seller or its employees due to a breach of duty for which we are responsible, the assumption of a warranty for a specific quality or our violation of essential contractual obligations. In the event of a violation of essential contractual obligations on our part, the Seller's claim for damages against us shall be limited to foreseeable damage that is typical of this type of contract, unless it is based on willful misconduct or gross negligence or we are liable for damage caused to health or bodily harm or due to the assumption of a warranty for a specific quality. A breach of duty by our legal representative or person employed in performing our obligation shall be deemed a breach of duty by us. The above stipulations shall not effect a reversal of the burden of proof to the disadvantage of the Seller.
- 10.2. In the development and production of the delivery item, the Seller must observe state-of-the-art of science and technology and comply with all mandatory legal provisions, it must carry out a detailed functional and quality check prior to delivery and adequately document all measures taken to fulfill these obligations, and the Seller must keep this documentation for a period of eleven (11) years and allow us to inspect such documentation at any time upon request. The Seller is obligated to notify us in advance in the event of defective products or changes in product definitions.
- 10.3. If the Seller is responsible for product damage, it shall indemnify and hold us harmless against third-party claims to the extent that the cause lies within its sphere of control and organization and the Seller itself is liable in dealings with third parties. The indemnity obligation of the Seller shall include the reimbursement of expenses pursuant to Section 683, 670 *BGB*, arising from or in connection with being held liable by third parties, including any recall campaign carried out by us. To the extent possible and reasonable, we shall inform the Seller of the substance and scope of any recall campaign and provide the Seller with the opportunity to submit a statement. Further legal claims shall remain unaffected.
- 10.4. The Seller must maintain product liability insurance at its own expense for a combined single limit of at least EUR 2.5 million per personal injury/damage to property.

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11. Statute of Limitations

- 11.1. The mutual claims of the parties shall become statute-barred in accordance with the law, unless otherwise stipulated below.
- 11.2. In derogation of Section 438(1) No. 3 *BGB*, the general limitation period for claims arising from defects shall be three (3) years from the passing of risk. If acceptance has been agreed, the limitation period shall start to run upon acceptance. The 3-year limitation period shall apply *mutatis mutandis* also to claims resulting from defects in title, while the statutory limitation period for third-party *in rem* claims for return (Section 438(1) No. 1 *BGB*) remains unaffected; furthermore, claims arising from defects in title shall not become statute-barred under any circumstances as long as the third party is still able to assert its right against us, in particular in the absence of a statute of limitations.
- 11.3. The limitation periods under the sales law, including the above extension, shall apply within the statutory limits to all contractual claims arising from defects. Where, based on a defect, we are also entitled to non-contractual claims for damages, the regular statutory limitation period (Sections 195, 199 *BGB*) shall apply in those cases, unless the application of the limitation periods under the sales law result in longer limitation periods in individual cases.

12. Choice of Law, Severability, and Place of Jurisdiction

- 12.1. These T&C and the contractual relationship between us and the Seller shall be governed by the laws of the Federal Republic of Germany, exclusive of any uniform international law, including but not limited to the United Nations Convention on Contracts for the International Sale of Goods.
- 12.2. If individual provisions of a contract entered into with the Seller are or become invalid, the validity of the remaining provisions of that contract shall not be affected thereby.
- 12.3. If the Seller is a merchant within the meaning set forth in the German Commercial Code, or a legal entity under public law, or a special fund under public law, our registered office in Bremen, Federal Republic of Germany, shall be the exclusive, as well as international, place of jurisdiction for any disputes arising directly or indirectly under the contractual relationship with the Seller. This rule applies *mutatis mutandis* if the Seller is an entrepreneur within the meaning of Section 14 *BGB*. In all cases, however, we shall also be entitled to bring action before the courts at the place of performance of the delivery obligation in accordance with these T&C or as set forth in an overriding individual agreement, or a the Seller's regular place of jurisdiction. Overriding statutory provisions, in particular regarding exclusive jurisdiction, shall remain unaffected.