

# General Terms and Conditions

## § 1 General/scope of application

1. Our General Terms and Conditions (GTC) apply exclusively. Deviating, conflicting or supplementary General Terms and Conditions of the Buyer shall only become part of the contract if and insofar as we have expressly agreed to their validity. This requirement of consent shall also apply if the Buyer refers to his General Terms and Conditions in the context of the order and we have not expressly objected to the General Terms and Conditions.
2. Unless otherwise agreed, our General Terms and Conditions shall apply in the version valid at the time of the Buyer's order or in the version last communicated to him in text form as a framework agreement also for similar future contracts, without us as the Seller having to refer to them again on a case-by-case basis.
3. Individual agreements made with the Buyer in individual cases (including collateral agreements, supplements and amendments) and information in our order confirmation shall take precedence over these General Terms and Conditions of Sale. Subject to proof to the contrary, a written contract or our written confirmation shall be decisive for the content of such agreements.
4. Our General Terms and Conditions apply to companies within the meaning of Section 14 (1) BGB (German Civil Code).

## § 2 Offer and conclusion of contract

1. Our offers are binding, but subject to change with regard to exact prices and delivery times until written order confirmation. Our price quotations and calculations may not be made accessible to third parties unless we give the Buyer our express written consent to do so.
2. All agreements between the Buyer and us for the purpose of executing the contract must be recorded in text form.

## § 3 Prices and payment agreements

1. Unless otherwise agreed in writing in individual cases, our current prices at the time of the order shall apply.
2. All price quotations are prepared individually for our Buyers in accordance with the INCOTERMS® 2020 terms and conditions of contract and delivery. All prices are quoted in the agreed currency plus the statutory value added tax applicable at the time of delivery and, if applicable, plus transport costs.
3. Payment claims are due upon delivery and receipt of the invoice. Payment of the purchase price must be made exclusively to the account specified in the sales invoice. The deduction of a cash discount is only permitted with a special written agreement.

4. Unless otherwise agreed, the purchase price is due and payable within 30 days of invoicing and delivery or acceptance of the goods. However, we are entitled at any time, even within the framework of an ongoing business relationship, to make a delivery in whole or in part only against advance payment. We shall declare a corresponding reservation at the latest with the order confirmation.

5. The Buyer shall be in default if the above payment period expires. During the period of default, interest shall be charged on the purchase price at the applicable statutory default interest rate pursuant to Section 288 (2) of the German Civil Code (BGB) in the amount of nine percentage points above the respective base interest rate. We reserve the right to claim further damages for default. Our claim against merchants for commercial maturity interest in accordance with Section 353 of the German Commercial Code (HGB) remains unaffected.

6. If it is foreseeable after conclusion of the contract that our claim to payment of the purchase price is jeopardized due to the Buyer's inability to pay (e.g. due to an application for the opening of insolvency proceedings), we shall be entitled to refuse performance in accordance with the statutory provisions and, if necessary after setting a deadline, to withdraw from the contract (Section 321 of the German Civil Code (BGB)). In the case of contracts for which the manufacture of non-fungible items (custom-made products) is owed, we may declare our withdrawal immediately. The statutory provisions on the dispensability of setting a deadline shall remain unaffected in this respect.

#### **§ 4 Delivery period and delay in delivery**

1. The delivery period shall be agreed individually or specified by us upon acceptance of the order. If this is not the case, the general delivery period is between 3-6 weeks from conclusion of the contract.

2. In the event that we are unable to meet contractually agreed delivery deadlines for reasons for which we are not responsible, we must inform the Buyer of this circumstance immediately and at the same time inform the Buyer of the expected or new delivery deadline. If a delayed delivery cannot be made due to non-availability of the service even within the newly announced delivery period, we are entitled to withdraw from the contract in whole or in part; we must immediately reimburse any consideration already provided by the Buyer (in the form of the purchase price payment). The non-availability of the service is given, for example, if our supplier has not delivered to us on time, if we have concluded a congruent hedging transaction, if there are other disruptions in the supply chain (for example due to force majeure) or if we are not obliged to procure in individual cases.

3. If we do not receive deliveries or services from our suppliers for reasons for which we are not responsible, or do not receive them correctly or on time, or if force majeure events occur, § 10 shall apply. This shall also apply if circumstances described in § 10 occur after we are in default and if force majeure events occur at our suppliers.

## § 5 Delivery, transfer of risk, acceptance, default of acceptance

1. In the case of deliveries ex warehouse, the warehouse shall be deemed the place of performance for the delivery and the place for any subsequent performance. The goods shall be made available at the factory for collection by the Buyer.

2. In the event that the Buyer wishes to have the goods sent to another destination (sale by dispatch), this shall be deemed to be the place of performance of the contract. The costs for this shall be charged separately to the Buyer by agreement and the transfer of risk to the Buyer shall take place as soon as the goods are handed over for transportation. In the event that nothing has been contractually agreed, we may determine the type of shipment (packaging, shipping route, transport company) ourselves.

3. The risk of accidental loss and accidental deterioration shall pass to the Buyer when the goods are handed over to the Buyer. In the case of a sale involving the carriage of goods, the risk of accidental loss of the goods, accidental deterioration of the goods and the risk of delay shall pass to the Buyer upon delivery of the goods to the forwarding agent or carrier. In the event that acceptance of the goods is contractually agreed, this shall be decisive for the transfer of risk. Further statutory provisions of the law on contracts for work and services shall remain unaffected. If the Buyer is in default of acceptance, this shall be deemed equivalent to handover or acceptance of the goods.

4. In the event that the Buyer is in default of acceptance or our delivery is delayed for other reasons for which the Buyer is responsible, we shall be entitled to claim compensation from the plaintiff for the damage incurred, including additional expenses (e.g. storage costs). If this is the case, we reserve the right to charge the Buyer a lump-sum compensation of EUR 150 per calendar day (beginning with the delivery period or, if no delivery period is specified, with the notification that the goods are ready for dispatch). Statutory claims on our part (reimbursement of additional expenses, reasonable compensation, termination) and proof of higher damages shall remain unaffected.

5. Proof of higher damages and our statutory claims (in particular reimbursement of additional expenses, reasonable compensation, termination) shall remain unaffected; however, the lump sum shall be offset against further monetary claims. However, the Buyer reserves the right to prove that we have incurred no damage at all or only significantly less damage than the above lump sum.

## § 6 Retention of title

1. the goods shall remain the property of the Seller until all claims (including all current account balance claims) to which the Seller is entitled against the Buyer now or in the future for any legal reason have been settled. Processing or transformation shall always be carried out for the Seller as manufacturer, but without any obligation for him. If the Seller's ownership expires due to combination, it is hereby agreed that the Buyer's ownership of the uniform item shall pass to the Seller in proportion to its value. The Buyer shall store the Seller's property free of charge. Goods to which the Seller is entitled to ownership are hereinafter referred to as reserved goods.

2. The Buyer is entitled to process and sell the reserved goods in the ordinary course of business as long as he is not in default. Pledging or transfer assignments by way of security are not permitted. The Buyer hereby assigns to the Seller in full by way of security any claims arising from the resale or any other legal grounds in respect of the goods subject to retention of title. The Seller revocably authorizes him to collect the claims assigned to the Seller for the Seller's account in his own name. This collection authorization can only be revoked if the Buyer does not properly meet his payment obligations.
3. In the event of access by third parties to the reserved goods, in particular seizures, the Buyer shall draw attention to the Seller's ownership and inform the Seller immediately so that the Seller can enforce his ownership rights. If the third party is not in a position to reimburse the Seller for the court or out-of-court costs incurred in this connection, the Buyer shall be liable for such costs.
4. In the event of breach of contract by the Buyer, in particular default of payment, the Seller shall be entitled to withdraw from the contract and demand the return of the reserved goods.
5. A withdrawal from the contract is not required to assert the rights arising from retention of title, unless the debtor is a consumer.

## **§ 7 Industrial property rights**

1. If the goods are manufactured according to the Buyer's specifications and this infringes third-party property rights, the Buyer shall indemnify us against all third-party claims for infringement of the property rights.
2. In the event of breaches of contract by the Buyer, his industrial property rights shall not prevent us from utilizing the goods in accordance with the contract.

## **§ 8 Buyer's claims for defects, compensation for damages and expenses**

1. The statutory provisions shall apply to the rights of the Buyer in the event of material defects and defects of title (including incorrect and short delivery), unless otherwise stipulated below.
2. Agreements that we have made with Buyers regarding the quality and recommended use of the goods regularly form the basis of our liability for defects under the warranty. A quality agreement includes all product descriptions and manufacturer's specifications that are the subject of the individual contract or were made public by us at the time the contract was concluded. In the event that no quality has been agreed, it must be assessed in accordance with the provisions of Section 434 (3) BGB (German Civil Code) whether a defect exists. Against this background, it shall be noted that public statements made by the manufacturer in the context of advertising or on the label of the goods take precedence over statements made by other third parties.
3. If the delivered goods are defective, we as the Seller shall be entitled to choose whether we provide subsequent performance by remedying the defect (rectification) or by delivering a defect-free item (subsequent delivery). In the event that the type of subsequent performance

chosen by us is unreasonable for the Buyer in the individual case, he may refuse it. However, we reserve the right to refuse subsequent performance under the statutory conditions. In addition, we are entitled to make the subsequent performance to be provided by us dependent on the Buyer paying the purchase price due. However, the Buyer shall be entitled to retain a reasonable part of the purchase price in proportion to the defect.

4. The Buyer shall grant us the necessary time and opportunity for the subsequent performance to be rendered. In particular, the Buyer must hand over to us the item for which he has asserted a defect for inspection purposes. In the event that we make a subsequent delivery of a defect-free item, the Buyer must return the defective item to us in accordance with the statutory provisions. However, the Buyer is not entitled to a claim for return.

5. We shall reimburse the expenses which are necessary for inspection purposes and for subsequent performance (transport, labor and material costs as well as any dismantling and installation costs) in accordance with the statutory provisions and these General Terms and Conditions in the event that a defect is present. However, we may demand reimbursement from the Buyer for costs incurred due to an unjustified request to remedy a defect in the event that the Buyer knew or could have recognized that there was in fact no defect.

6. The Buyer has the right to remedy the defect himself and to demand reimbursement of the expenses objectively necessary for this purpose if there is an urgent case (e.g. in the event of danger with regard to operational safety or to prevent disproportionate damage). The Buyer must inform us immediately in the event of self-performance. In the event that we would be entitled to refuse subsequent performance in accordance with the statutory provisions, the Buyer shall have no right to self-performance.

7. The Buyer may withdraw from the purchase contract in accordance with the statutory provisions or reduce the purchase price if a deadline to be set by the Buyer for subsequent performance has expired unsuccessfully or is dispensable in accordance with the statutory provisions. In the event of a minor defect, however, the Buyer shall not be entitled to withdraw from the contract.

8. All claims for damages and reimbursement of expenses against us shall become time-barred 12 months after delivery of the goods, in the case of tortious liability from knowledge or grossly negligent ignorance of the circumstances giving rise to the claim or of the person liable to pay compensation. This does not apply in the case of intent and the cases mentioned in § 8.9.

9. The provisions of §§ 8.1 - 8.8 shall not apply in the case of strict liability, if there is liability for injury to life, limb or health, if a guarantee of quality has been given or if a defect has been fraudulently concealed.

## **§ 9 Right of retention/offsetting**

1. The Buyer shall only have a right of retention or set-off with regard to counterclaims that are not disputed or have been legally established; this shall not apply to counterclaims arising from the same contractual relationship.

2. We reserve the right to offset even in the event that the reciprocal claims are denominated in different currencies. The conversion rate shall be the officially determined middle rate on the Frankfurt Foreign Exchange on the day of the declaration of set-off.

## § 10 Force majeure

### 1. Definition:

“Force Majeure“ means the occurrence of an event or circumstance (“Force Majeure Event“) that prevents a party from performing one or more of its contractual obligations under the contract if and to the extent that the party affected by the impediment (“Affected Party“) proves that:

- a) that impediment is beyond its reasonable control; and
- b) it could not reasonably have been foreseen at the time of the conclusion of the contract; and
- c) the effects of the impediment could not reasonably have been avoided or overcome by the party concerned.

### 2. Non-performance by third parties

If a party fails to perform one or more of its contractual obligations due to the default of a third party to whom it has entrusted the performance of all or part of the contract, that party may invoke force majeure only to the extent that the requirements for assuming the existence of force majeure as defined in paragraph 1 of this clause apply not only to the party but also to third parties

### 3. Presumed events of force majeure

The conditions for the assumption of force majeure are fulfilled by

- a) war (declared or undeclared), hostilities, attack, acts by foreign enemies, large-scale military mobilization;
- b) civil war, riot, rebellion or revolution, military seizure of power, insurrection, acts of terrorism, sabotage or piracy;
- c) currency and trade restrictions, embargo sanctions;
- d) lawful or unlawful official acts, compliance with laws or government orders, expropriation, confiscation of works, requisition, nationalization;
- e) plague, epidemic, pandemic, natural disaster or extreme natural event;
- f) explosion, fire, destruction of equipment, prolonged breakdown of means of transportation, telecommunications, information systems or energy;
- g) general labor unrest such as boycott, strike or lockout, slowdown, occupation of factories and buildings.

#### 4. Notification

The affected party must notify the other party of the event without delay.

#### 5. Consequences of force majeure

A party who successfully invokes this clause is released from the obligation to perform its contractual obligations and from any liability for damages or any other contractual remedy for breach of contract, but only if it gives immediate notice. However, if the notification is not made immediately, the release shall only take effect from the time at which the notification reaches the other party. The other party may suspend the performance of its obligations from the time of such notification if force majeure is actually to be assumed.

#### 6. Duty to mitigate

The affected party is obliged to take all reasonable measures to mitigate the effects of the force majeure event.

### **§ 11 Export control**

We draw the Buyer's attention to the fact that in the event of a resale or other transfer of our goods to a country other than that of the Buyer's registered office or the contractually agreed place of delivery, the Buyer must inform himself on his own responsibility about the technical, official, statutory and legal requirements applicable there. The Buyer alone is responsible for checking whether this is the case. Should the Buyer require specific information about our goods for this purpose, we will make this available to him on request. We would like to point out to Buyers that European and German foreign trade law applies to the export of goods and that individual deliveries may be subject to export control restrictions and prohibitions. This applies in particular to so-called armaments and dual-use goods. The relevant legal provisions are in particular Regulation (EC) No. 428/2009 (EC Dual-Use Regulation) and its annexes, the Foreign Trade and Payments Act (AWG), the Foreign Trade and Payments Ordinance (AWV) and its annex (Part I Sections A and B of the German Export List), as amended from time to time.

The Buyer undertakes to recognize and comply with the European and German export control regulations and embargo regulations. Furthermore, the Buyer undertakes not to sell, export, re-export, deliver, pass on or otherwise make available the delivered goods indirectly or directly, with or without intermediary to persons, companies, institutions, organizations or countries, insofar as this violates European and German export control regulations or embargo ordinances.

Upon request, the Buyer is obliged to provide us with appropriate and complete information on the end use of the goods or services to be delivered, in particular to issue so-called end-use certificates (EUCs) and to send them to us in the original in order to be able to check the end use and the intended purpose of the goods or services to be delivered and to be able to prove this to the competent export control authority.



## § 12 REACH clause

If the Buyer notifies us of a use in accordance with Article 37.2 of Regulation (EC) No. 1907/2006 (REACH Regulation) which makes it necessary to update the registration or the chemical safety report or which triggers another obligation under the REACH Regulation, the Buyer shall reimburse us for all demonstrable expenses. We shall not be liable for delays in delivery caused by the notification of such use and the fulfillment by us of the corresponding obligations under the REACH Regulation.

## § 13 Place of performance/jurisdiction/applicable law

1. The place of performance is our factory in Kreuzauer Strasse 46, 52355 Düren, Germany.
2. Place of jurisdiction is Düren. However, we are also entitled to sue the Buyer at his general place of jurisdiction.
3. The law of the Federal Republic of Germany shall apply.
4. If the Buyer is domiciled outside Germany, the CISG ("UN Sales Convention") shall apply with the following special rules:

- Contract amendments or terminations must be made in writing.

- In the event of the delivery of non-conforming goods, the Buyer shall only be entitled to cancel the contract or receive a replacement delivery if claims for damages against us are excluded or if it is unreasonable for the Buyer to utilize the non-conforming goods and claim the remaining damages. In such cases, we shall initially be entitled to remedy the defect. If the rectification of defects fails and/or leads to an unreasonable delay, the Buyer is entitled, at his discretion, to cancel the contract or to demand a replacement delivery.

## § 14 Partial invalidity

In the event of the invalidity of individual provisions, the remaining provisions shall remain fully effective. The invalid provision shall be replaced without further ado by a provision that comes as close as legally possible to the economic intent of the invalid clause. The same applies in the event of contractual loopholes.

## § 15 German version prevailing

These General Terms and Conditions shall be interpreted in accordance with German law. If the legal meaning of a translation differs from the German legal meaning, the German meaning shall take precedence.

As at November 2024

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