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## 1. Applicability & form

- 1.1 These General Purchasing Terms and Conditions (GPTC's) govern all business relations with our partners, service providers, and suppliers ("Sellers"). The GPTC's apply only if the Seller is a businessman (BGB [German Civil Code] Section 14), a legal public-law entity, or a special fund under public law.
- 1.2 The GPTC's specifically apply to contracts for services and for the sale and/or delivery of movable property ("Merchandise"), regardless of whether the Seller produces the Merchandise himself or purchases it from suppliers (BGB Sections 433, 650). Unless agreed otherwise, the GPTC's also apply as a master agreement for similar contracts in the future (in the version in force at the time of the buyer's order or in any case in the version most recently provided to the buyer in text form), without the need for us to reference them again in each individual case.
- 1.3 These GPTC's apply exclusively. Different, contrary, or supplemental General Terms and Conditions of the Seller shall become part of the contract only if and insofar as we have expressly agreed in writing that they should apply. Such agreement is required in every case, for instance even if we accept the Seller's shipments without reservation with knowledge of his General Terms and Conditions.
- 1.4 Individual agreements made with the Seller in an individual case (including ancillary arrangements, supplements, and changes) take precedence over these GPTC's in any case. A written contract or our written confirmation is authoritative with regard to the content of such agreements, subject to evidence to the contrary.
- 1.5 Legal statements and notices from the Seller with respect to the contract (e.g., time limit, reminder, rescission) must be given in writing, i.e., in written or text form (e.g., letter, E-mail, telefax). Legal requirements of form and other proof shall remain unaffected thereby, particularly in case of doubt regarding the standing of the party making the statement.
- 1.6 References to the applicability of legal regulations are provided merely for clarity's sake. The legal regulations thus apply even without such clarifying references unless they are directly modified or expressly precluded in these GPTC's.

## 2. Conclusion of the contract

- 2.1 Our order is not considered binding until submitted or confirmed in writing. The Seller must call our attention to obvious errors (e.g., typographical or mathematical errors) and incomplete elements in the order (including order documents) prior to acceptance so that we can correct or complete it; otherwise the contract is not considered to have been made.
- 2.2 The Seller is required to confirm our order in writing (acceptance) within seven (7) days. Delayed acceptance is considered to be a new offer and requires our acceptance.

## 3. Delivery period & default

- 3.1 The delivery period we indicate in the order is binding. If the delivery period is not indicated in the order and was not agreed elsewhere, it shall be five (5) business days from conclusion of the contract. The Seller is required to promptly notify us in writing if he is likely unable to meet the agreed delivery periods, regardless of the reasons.
- 3.2 If the Seller does not perform or does not do so within the agreed delivery period or if he is in default, our rights are based on the legal regulations, particularly regarding rescission and damages. The rules in Art. 3.3 shall remain unaffected thereby.
- 3.3 If the Seller is in default, we can charge liquidated damages amounting to 1 percent of the net price for each whole calendar week, up to a maximum of 5 percent of the net price of the Merchandise in default, in addition to other legal claims. We reserve the right to show greater damages. The Seller reserves the right to show there were no damages or significantly lesser damages.

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## 4. Performance, delivery, risk, default of acceptance

- 4.1 Without our prior written consent, the Seller is not authorized to have the performance owed by him performed by third parties (e.g., subcontractors). The Seller bears the procurement risk for his performances, unless otherwise agreed in the specific case (e.g., limitation to stock on hand).
- 4.2 Shipment within Germany shall be "free house" to the location indicated in the order. If the destination is not indicated and nothing else is agreed, shipment shall be to our registered office in Schechen. The destination is also the place of fulfillment for the shipment and any supplementary performance (obligation to deliver).
- 4.3 A delivery note must be included in the shipment indicating the date (issue and shipping), content of shipment (item number, quantity, and batch and serial numbers where available), and our order code (date and number). We shall not be responsible for processing and payment delays that result if the delivery note is missing or incomplete. A shipping notice with the same content must be sent to us separately from the delivery note.
- 4.4 The risk of accidental loss or degradation of the item does not pass to us until the time of delivery at the place of fulfillment. If inspection and acceptance is agreed, that is the controlling event for the passage of risk. In other respects, too, the legal regulations governing contracts for work shall apply in case of inspection and acceptance. If we are in default of acceptance, this is equivalent to delivery or inspection/acceptance.
- 4.5 The legal regulations apply with regard to when we enter default of acceptance. However, the Seller must expressly offer us his performance even if a specified or specifiable calendar period was agreed for an action or contribution on our part (e.g., provision of materials). If we are in default of acceptance, the Seller may demand compensation for his added expense according to the legal regulations (BGB Section 304). If the contract is for a non-fungible item to be produced by the Seller (one-off production), the Seller shall have further rights only if we undertook to make a contribution and are responsible for failing to make such contribution.

## 5. Prices and payment

- 5.1 The price indicated in the order is binding. All prices include value-added tax at the legal rate unless this is stated separately.
- 5.2 Unless agreed otherwise in an individual case, the price includes all services and ancillary performances by the Seller (e.g., assembly, installation), as well as all ancillary costs (e.g., proper packaging, transport costs including applicable transport and liability insurance).
- 5.3 The agreed price is due and payable within 30 calendar days from the time of complete service and delivery (including inspection and acceptance if agreed) and receipt of a proper invoice. If we provide payment within 14 calendar days, the Seller grants us a cash discount of 3 percent of the net invoice amount. For bank transfers, payment is considered timely if our transfer order is received by a financial institution before the end of the payment period; we are not responsible for delays caused by the financial institutions involved in the payment.
- 5.4 We do not owe late interest. The legal regulations apply for payment default.
- 5.5 We have set-off and retention rights and the defense of non-performance to the extent provided by law. In particular, we are entitled to withhold payable amounts as long as we still have claims against the Seller for incomplete or defective performance.
- 5.6 The Seller has a right of set-off or retention only for counterclaims that have been adjudicated finally and without possibility of appeal, or are undisputed.

## 6. Confidentiality and title reservation

- 6.1 We retain ownership rights and copyrights to diagrams, plans, sketches, calculations, instructions, product descriptions, and other documents. Such documents may be used exclusively for contractual performance purposes and must be returned to us following completion of the contract. The documents may not be disclosed to third parties, not even after completion or termination of the contract. The non-disclosure requirement remains in effect as long and insofar as the knowledge contained in the provided documents has not become generally known.
- 6.2 The preceding provision applies accordingly for substances and materials (e.g., software, finished and semifinished goods) and for tools, specimens, samples, and other objects we provide to the Seller for production. As long as they are not processed, such items must be stored separately at the Seller's expense and adequately insured for loss or destruction.

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- 6.3 Any processing, combining, or joining (further processing) of provided items is performed for us by the Seller. The same applies for further processing of the delivered Merchandise by us, so that we are considered the manufacturer and acquire title to the product in accordance with the legal regulations at the time of further processing, at the latest.
- 6.4 Ownership of the Merchandise must be transferred to us unconditionally and irrespective of payment of the price. However, if we accept an offer for transfer of ownership from the Seller that is conditional on payment of the price in an individual case, the Seller's title reservation expires upon payment of the purchase price for the delivered Merchandise, at the latest. In the ordinary course of business, we are still authorized to resell the Merchandise even before payment of the price, assigning the resulting claim in advance (alternatively applying the simple title retention and the title reservation extended to the resale). In any case, all other forms of title reservation are thereby precluded, particularly the expanded reservation of title, transferred reservation of title, and reservation of title extended to the resale.

## 7. Defective goods

- 7.1 Unless provided for otherwise hereinafter, our rights are governed by the legal regulations in the event of material defects and defects of title in the Merchandise (including wrong or short delivery, improper assembly or installation, defective instructions for assembly, installation, operation, or use) and in case of other violations of the Seller's duties.
- 7.2 According to the legal regulations, the Seller is in particular liable for the fact that the Merchandise should have the agreed characteristics at the time risk transfers to us. Those product descriptions that are the subject matter of the particular contract (particularly by being designated or referred to in our order) or are incorporated into the contract in the same way as these GPTC's count in any case as an agreement on the characteristics. It makes no difference whether the product description comes from us, the Seller, or the manufacturer.
- 7.3 Contrary to BGB Section 442 (1) sentence 2, we are entitled to unlimited claims due to defects if we remained unaware of the defect at the time the contract was made due to gross negligence.
- 7.4 The commercial duty of examination and complaint is governed by the legal regulations (HGB [German Commercial Code] Sections 377, 381), with the following proviso: Our duty of examination is limited to defects that are clearly evident in our incoming-merchandise check with external inspection including the delivery papers (e.g., transport damage, wrong or short delivery) or can be identified by random sampling in our quality control procedures. If inspection and acceptance is agreed, there is no duty of examination. Otherwise, it depends on how practical it is to conduct an examination in the ordinary course of business, considering the circumstances of the individual case. Our duty of complaint for defects detected later shall remain unaffected thereby. Without prejudice to our duty of examination, our complaint (defect report) is considered prompt and timely in any case if it is sent within five (5) business days from the time of discovery or, in case of obvious defects, from the time of delivery.
- 7.5 Supplementary performance also includes uninstalling and reinstalling the defective Merchandise if the Merchandise was installed in or on another object in accordance with its type and intended use; our legal claim to compensation for related expenses shall remain unaffected thereby. The expenses required for testing and supplementary performance purposes shall be paid by the Seller even if it turns out there was not actually any defect. Our liability for damages in case of unjustified defect correction demands shall remain unaffected thereby.
- 7.6 The following applies without prejudice to our legal rights and the rules in Art. 7.5: If the Seller does not fulfill his obligation of supplementary performance (at our election by correcting the defect [remedy] or supplying a defect-free item [replacement]) within a reasonable period of time set by us, we may correct the defect ourselves and demand compensation for the required expenses or a corresponding advance payment from the Seller. If the Seller's supplementary performance fails or is unreasonable for us (e.g., due to special urgency, risk to company safety or security, or imminent disproportionate harm), it is not necessary to set a time period; we will promptly notify the Seller of such circumstances, ahead of time if possible.
- 7.7 Moreover, we are entitled to reduce the purchase price or rescind the contract in accordance with the legal regulations in case of a material defect or defect of title. In addition, we are entitled to damages and reimbursement of expenses in accordance with the legal regulations.

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## 8. Supplier's recourse

- 8.1 In addition to claims due to defects, we are entitled to our legally specified recourse claims within the supply chain without restriction (supplier's recourse under BGB Sections 445a, 445b, 478). In particular, we have the right to demand the exact type of supplementary performance from the Seller (remedy or replacement) that we owe to our buyer in the individual case. Our legal right of choice (BGB Section 439 [1]) shall not be restricted thereby.
- 8.2 Before we acknowledge or satisfy a defect claim asserted by our buyer (including compensation for expenses pursuant to BGB Sections 445a [1], 439 [2] and [3]), we will notify the Seller with a brief description of the circumstances and request a written response. If no substantiated response is provided within a reasonable period and no mutually agreeable solution is brought about, the defect claim actually accepted by us will be considered to be owed to our buyer. In this case it is up to the Seller to provide evidence to the contrary.
- 8.3 Our supplier recourse claims are valid even if the defective Merchandise was further processed by us or another company, for instance through installation in another product.

## 9. Manufacturer's liability

- 9.1 If the Seller is responsible for harm caused by a product, he must indemnify us and hold us harmless from third-party claims to the extent the cause is located within his sphere of control and organization and he himself is liable externally.
- 9.2 As part of his hold-harmless obligation, the Seller must provide compensation pursuant to BGB Sections 683, 670 for expenses resulting from or in connection with any claims asserted by third parties, including recall campaigns performed by us. As far as possible and reasonable, we will notify the Seller concerning the scope and content of recall measures and give him an opportunity to respond. Additional legal claims shall remain unaffected thereby.
- 9.3 The Seller must purchase and maintain product liability insurance with aggregate coverage of no less than ten (10) million euros per claim for personal injury and property damage.

## 10. Industrial property rights

- 10.1 It is the Seller's responsibility as provided for in Art. 10.2 below to ensure that the products he supplies do not violate third-party property rights in countries of the European Union or other countries where he manufactures the products or has them manufactured.
- 10.2 The Seller is required to indemnify us and hold us harmless from any and all claims which third parties assert against us for violation of industrial property rights as mentioned in Art. 10.1, and to compensate us for all necessary expenses in connection with such claims. This does not apply if and insofar as the supplier demonstrates that he is neither responsible for the violation of property rights nor should he have known of it at the time of delivery by exercising commercial due diligence.
- 10.3 Our further legal claims due to defects of title to the products supplied to us shall remain unaffected thereby.

## 11. Limitation period

- 11.1 Claims between the contracting parties shall become time-barred according to the legal regulations unless provided for otherwise hereinafter.
- 11.2 Contrary to BGB Section 438 (1) item 3, the general limitation period for defect claims is three (3) years from the transfer of risk. Where inspection and acceptance is agreed, the limitation period begins at the time of inspection and acceptance. The three-year limitation period applies accordingly for claims based on defects of title, though the statutory limitation period shall remain unchanged for recovery actions in rem by third parties (BGB Section 438 [1] item 1); furthermore, claims based on defects of title shall in no case expire as long as the third party can still assert the title claim against us, particularly in the absence of a limitation period.
- 11.3 The limitation periods of commercial law, including the above extension, shall apply for all contractual defect claims in the legal scope and extent. To the extent we are also entitled to non-contractual damages due to a defect, the regular statutory limitation period shall apply (BGB Sections 195, 199) unless applying the limitation periods of commercial law results in a longer limitation period in the specific case.

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## 12. Choice of law, jurisdiction & venue

- 12.1 These GPTC's and the contractual relationship between us and the Seller are governed by and shall be construed in accordance with the laws of the Federal Republic of Germany, precluding uniform international law, particularly UN commercial law.
- 12.2 If the Seller is a merchant within the meaning of the German Commercial Code, a legal public-law entity, or a special fund under public law, the courts of Munich (Munich Regional Court I) shall have exclusive (including international) jurisdiction and venue for all disputes arising from the contractual relationship. The same applies accordingly if the Seller is a businessman within the meaning of BGB Section 14. In all cases, however, we are also entitled to file suit at the place of fulfillment for the delivery obligation according to these GPTC's or any overriding individual agreement, or at the Seller's general legal venue. Overriding legal regulations shall remain unaffected thereby, particularly those regarding exclusive jurisdiction.