Last updated: June 2020

General Terms and Conditions for the Sale of Goods and the Provision of Services

Scope of application

These General Terms and Conditions of Sale (hereinafter referred to as "GTCS") apply to all our business relations with our customers (hereinafter referred to as "Customers"). The GTCS shall only apply if the Customer is a company (Section 14 BGB [German Civil Code]), a legal entity under public law or a special fund under public law.

The GTCS shall apply to contracts for the sale and/or delivery of movable goods (hereinafter referred to as "Goods"), irrespective of whether we manufacture the Goods ourselves or purchase them from suppliers (Sections 433, 650 BGB). In addition, the GTCS shall apply to the provision of works (Section 631 BGB) and provision of services (Section 611 BGB) as well as other services (hereinafter referred to as "Services") against payment to the Customer. Unless otherwise agreed, the GTCS in the version valid at the time of the Customer's order or, in any case, in the version last communicated to it in text form shall also apply as a framework agreement for similar contracts in the future, without us having to refer to them again in each individual case. The Customer agrees to the validity of the GTCS at the latest with the unopposed acceptance of the delivery of the Goods or the provision of the Services.

Our GTCS apply exclusively. Deviating, conflicting or supplementary General Terms and Conditions of the Customer shall only become part of the contract if and insofar as we have expressly agreed to their validity. This requirement of consent shall apply in any case, for example, even if we carry out the delivery to the purchaser without reservation in the knowledge of the purchaser's General Terms and Conditions.

Conclusion of contract

Our offers are subject to change without notice, unless they are expressly marked as binding or expressly contain binding promises or were otherwise agreed upon as binding. They are invitations to order. The Customer is bound to its order as a contract request for 14 calendar days – in the case of electronic orders 5 working days (in each case at our registered office) – after submission of the order, unless the Customer must regularly also expect a later acceptance by us (Section 147 BGB). This also applies to repeat orders by the Customer.

A contract is only concluded – even in the course of current business transactions – when the Customer's order has been confirmed in writing or in text form by an order confirmation. The order confirmation is only valid under the condition that any outstanding payments of the Customer are settled and that a credit check of the Customer carried out by us immediately remains without negative result.

In case of delivery or performance within the binding period of the Customer's offer, our order confirmation can be replaced by our delivery or performance, whereby the dispatch of the delivery or performance is decisive.

Delivery time and default in delivery for purchase and service contracts

Binding delivery dates and deadlines must be expressly agreed in writing. Non-binding or approximate delivery dates and deadlines are met to the best of our ability.

Delivery and/or performance periods shall commence upon receipt of the order confirmation by the Customer, but not before all economic, technical and logistical details of the execution of the order between the Customer and us have been fully clarified and all other prerequisites to be fulfilled by the Customer for the delivery/performance have been met in full, in particular agreed down payments or securities, and necessary cooperation services have been provided in full by the Customer. The same applies to delivery dates and/or performance deadlines. If the Customer has requested changes after the order has been placed, a new reasonable period for delivery/performance shall commence upon confirmation of the changes by us. A reasonable delivery date/performance deadline is one that takes into account the actions made necessary by the change in the preparation for readiness to deliver/perform – e.g. in the form of procurement or subcontracted deliveries – in addition to the remaining period of delivery/performance.

Deliveries before the expiry of the delivery period are permissible. In the case of a debt to be collected, the day of notification of readiness for dispatch shall be deemed the day of delivery; in the case of a debt to be shipped, the day of dispatch of the Goods; in the case of a debt to be brought to the place of performance, the day of delivery at the agreed place of delivery.

In the absence of any other written agreement, the Customer's interest in the delivery of the Goods or the performance of the Services shall only lapse if we do not deliver or perform essential parts or if we deliver or perform with a delay.

In the event of a delay, the Customer must first grant us a reasonable grace period of at least – unless unreasonable – 14 working days for delivery or performance. If this expires without result, claims for damages due to breach of duty – for whatever reason – shall only exist in accordance with the provision in Section 11.

Transfer of risk and default of acceptance for purchase and service contracts

The delivery of Goods is always ex warehouse, which is also the place of performance for the delivery and any subsequent performance. At the request and expense of the Customer, the Goods will be shipped to another destination (sale to destination). Unless otherwise agreed, we shall be entitled to determine the type of shipment (in particular transport company, shipping route, packaging) ourselves.

The risk of accidental loss and accidental deterioration of the Goods shall pass to the Customer at the latest upon delivery. However, in the case of sale by delivery to a place other than the place of performance, the risk of accidental loss and accidental deterioration of the Goods as well as the risk of delay shall pass to the Customer upon delivery of the Goods to the forwarding agent, the carrier or any other person or institution designated to carry out the shipment. In the event of acceptance, this shall be decisive for the transfer of risk, and the statutory provisions of the law on contracts for works and services shall apply, unless otherwise agreed in these GTCS. If the Customer is in default of acceptance, this shall be deemed equivalent to handover or acceptance.

If the Customer is in default of acceptance, fails to cooperate or if our delivery is delayed for other reasons for which the Customer is responsible, we are entitled to demand compensation for the resulting damage, including additional expenses (e.g. storage costs). For this we charge a lump-sum compensation of 0.5% of the order value per calendar week and a maximum of 5% in the event of final non-acceptance, starting with the delivery deadline or – in the absence of a delivery deadline – with the notification that the Goods are ready for dispatch or the request for acceptance. The proof of a higher amount of damage and our legal claims (in particular compensation for additional expenses, appropriate compensation, termination) remain unaffected; however, the lump sum is to be offset against further monetary claims. The Customer shall be entitled to prove that we have incurred no damage at all or only a considerably lower amount of damage than the above lump sum.

Change in performance, material and release for purchase and service contracts

We reserve the right to change the specification of the Goods and Services to the extent that legal requirements make this necessary, provided that this change does not result in a deterioration in quality and usability for the usual purpose and, if suitability for a particular purpose has been agreed, for this purpose.

We are furthermore entitled to deliver Goods with customary deviations in colour, material thickness and design, as long as functional and qualitative criteria agreed with the Customer or legally required are fulfilled. This applies in particular to requirements according to EN ISO 20471:2013 (class 2) and OEKO-TEX Standard 100. Such Goods shall be deemed to comply with the contract.

Before the mass production of Goods, we prepare a binding proof (e.g. a recording of the company logo, part number, etc.) on the basis of jointly agreed formal, qualitative and content-related requirements, which must be approved by the Customer in writing and in good time before the start of production. We are only responsible for deviations in the final product if the print result deviates from the proof by more than is usual in the industry.

Prices and terms of payment

Unless otherwise agreed in individual cases, our prices, which are current at the time of conclusion of the contract, shall apply ex warehouse, plus statutory value added tax.

In the case of sale to destination (Section 4.1), the Customer shall bear the transport costs ex warehouse and the costs of any transport insurance requested by the Customer. Any customs duties, fees, taxes and other public charges shall be borne by the Customer.

The price for the Goods or Services is due and payable within 14 days of invoicing and delivery or acceptance. 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 declare a corresponding reservation at the latest with the order confirmation.

Upon expiry of the above payment period, the Customer shall be in default. During the period of default, interest shall be charged on the price at the statutory default interest rate applicable at the time. We reserve the right to assert further damages caused by delay. Our claim to the commercial interest on maturity (Section 353 HGB [German Commercial Code]) remains unaffected vis-à-vis business persons.

The Customer shall only be entitled to set-off or retention rights insofar as its claim has been legally established or is undisputed. In case of defects in the delivery or performance, the Customer's counter rights remain unaffected.

If it becomes apparent after conclusion of the contract (e.g. through an application for the opening of insolvency proceedings) that our claim to the price is endangered by the Customer's lack of ability to pay, we are, in accordance with statutory provisions,entitled to refuse performance and, if necessary, after setting a deadline - to withdraw from the contract(Section 321 BGB). In the case of contracts for the manufacture of non-fungible items (custom-made products), we can declare our withdrawal immediately; the statutory regulations regarding the dispensability of setting a deadline remain unaffected.

Price adjustment

We are entitled to unilaterally increase the remuneration in the event of an increase in material production costs and/or material and/or product procurement costs, wage and incidental wage costs, social security contributions as well as energy costs and costs due to environmental regulations and/or currency regulations and/or changes in customs duties and/or freight rates and/or public charges if these directly or indirectly influence the goods production or procurement costs or costs of our contractually agreed performance and if there are more than 4 months between the conclusion of the contract and delivery. An increase in the aforementioned sense is excluded insofar as the cost increase for individual or all of the aforementioned factors is offset by a cost reduction for other of the aforementioned factors in relation to the total cost burden for the delivery. If the aforementioned cost factors are reduced without the cost reduction being offset by an increase in other of the aforementioned cost factors, the cost reduction shall be passed on to the Customer as part of a price reduction.

If the new price is 20% or more above the original price due to the aforementioned price adjustment right, the Customer is entitled to withdraw from contracts that have not yet been completely fulfilled. However, the Customer can only assert this right immediately after notification of the increased price.

Retention of title in the sale of Goods

We reserve title to the Goods sold until full payment of all our present and future claims arising from the purchase contract and an ongoing business relationship (secured claims).

The Goods subject to retention of title may not be pledged to third parties or transferred by way of security before full payment of the secured claims. The Customer must inform us immediately in writing if an application is made for the opening of insolvency proceedings or if third parties (e.g. attachments) seize the Goods belonging to us.

If the Customer acts in breach of contract, in particular if it fails to pay the due purchase price, we are entitled to withdraw from the contract in accordance with the statutory provisions and/or to demand the return of the Goods on the basis of the reservation of title. The demand for return does not at the same time include the declaration of withdrawal; we are rather entitled to demand only the return of the Goods and to reserve the right of withdrawal. If the Customer does not pay the due purchase price, we may only assert these rights if we have previously set the Customer a reasonable deadline for payment without success or if such setting of a deadline is dispensable according to the statutory provisions.

The Customer is authorised until revocation according to Section 8.7 to resell and/or process the Goods subject to retention of title in the ordinary course of business. In this case, the following provisions shall also apply.

The retention of title extends to the full value of the products resulting from the processing, mixing or combination of our Goods, whereby we are considered the manufacturer. If, in the event of processing, mixing or combining with Goods of third parties, their right of ownership remains, we shall acquire co-ownership in the ratio of the invoice values of the processed, mixed or combined Goods. Otherwise, the same applies to the resulting product as to the Goods delivered under reservation of title.

The Customer hereby assigns to us by way of security all claims against third parties arising from the resale of the Goods or the product, in total or in the amount of our possible co-ownership share in accordance with the above paragraph. We shall accept the assignation. The obligations of the Customer mentioned in Section 8.2 shall also apply in consideration of the assigned claims.

In addition to us, the Customer remains authorised to collect the claim. We undertake not to collect the claim as long as the Customer fulfils its payment obligations to us, it does not lack the ability to pay and we do not assert the reservation of title by exercising a right in accordance with Section 8.3. However, if this is the case, we can demand that the Customer informs us of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment. In this case, we are furthermore entitled to revoke the Customer's authority to resell and process the Goods subject to retention of title.

If the realisable value of the securities exceeds our claims by more than 10%, we will release securities of our choice at the Customer's request.

Force majeure and self-delivery

If, for reasons beyond our control for the provision of the contractual Goods or Services owed, we do not receive the Goods or Services from our suppliers in accordance with the quantity and quality agreed with the Customer in our delivery or performance agreement, or do not receive them correctly or in time, despite proper and sufficient supplies prior to conclusion of the contract with the Customer (congruent supply), or if events of force majeure of not inconsiderable duration (i.e. lasting longer than 14 calendar days) occur, we shall inform our Customer in writing in good time. In this case, we are entitled to postpone the delivery or performance for the duration of the hindrance or to withdraw from the contract in whole or in part due to the unfulfilled part of the contract, provided that we have complied with the above obligation to provide information and have not assumed the procurement risk according to Section 276 BGB or a delivery or performance guarantee. The following shall be considered force majeure: War, mobilisation, riots, natural disasters, epidemics, pandemics, strikes, lockouts, official interventions, shortages of energy and raw materials, transport bottlenecks or hindrances through no fault of our own, operational hindrances through no fault of our own – e.g. due to fire, water and machine damage – and all other hindrances which, from an objective point of view, have not been caused by our fault.

If a delivery and/or performance date or a delivery and/or performance deadline has been bindingly agreed and if the agreed delivery date or the agreed delivery deadline is exceeded due to events in accordance with Section 9.1, the Customer is entitled to withdraw from the contract with regard to the unfulfilled part after a reasonable grace period has expired without result. Further claims of the Customer, especially those for damages, are excluded in this case.

The above provision under Section 9.2 shall apply accordingly if, for the reasons stated in Section 9.1, it is objectively unreasonable for the Customer to continue to adhere to the contract even without a fixed delivery date being contractually agreed.

Claims for defects of the Customer for purchase and service contracts

Unless expressly agreed otherwise, we provide a warranty for defects for a period of 12 months, calculated from the date of transfer of risk, or, in the event of refusal by the Customer to accept or take delivery, from the date of receipt of the notification of readiness for delivery. This shall not apply to claims for damages arising from a guarantee, the assumption of a procurement risk within the meaning of Section 276 BGB, claims due to injury to life, limb or health, fraudulent, wilful or grossly negligent acts, or if in the cases of Section 478 BGB (recourse in the supply chain with the consumer as the end buyer), Section 438 (1) (2) BGB (erection of buildings and delivery of items for buildings) and Section 634a (1) (2) BGB (building defects) or if otherwise a longer limitation period is mandatory by law. Section 305b BGB (priority of the individual agreement) remains unaffected. A reversal of the burden of proof is not associated with the above provision.

In all cases, the statutory special provisions shall remain unaffected in the case of final delivery of the unprocessed Goods to a consumer, even if the consumer has processed them further (supplier recourse as per Section 478 BGB). Claims arising from supplier recourse are excluded if the defective Goods have been further processed by the Customer or another company, e.g. by installation in another product.

When selling Goods, we do not assume any liability for public statements made by the manufacturer or other third parties (e.g. advertising statements) which the Customer has not pointed out to us as being decisive for its purchase.

In the case of the sale of Goods, the Customer's claims for defects presuppose that it has fulfilled its statutory obligation of examination and notification of defects (Sections 377, 381 HGB). In the case of building materials and other Goods intended for installation or other further processing, an examination must. in any case, take place immediately before processing. If a defect is discovered during delivery, examination or at any later time, we must be notified of this in writing without delay. In any case, obvious defects shall be reported in writing within 3 working days of delivery and defects that are not visible during examination shall be reported in writing within the same period from the time of their discovery. If the Customer fails to carry out the proper examination and/or report defects, our liability for the defect not reported or not reported in time or not properly is excluded according to the statutory provisions.

If the delivered Goods are defective, we may initially choose whether we provide subsequent performance by eliminating the defect (rectification of defects) or by delivering a defect-free item (replacement delivery). Our right to refuse subsequent performance under the statutory conditions remains unaffected. Subsequent performance does not include the removal of the defective item or the reinstallation if we were not originally obliged to install it.

We are, in any case, entitled to make the subsequent performance owed dependent on the Customer paying the price due. However, the Customer is entitled to retain a part of the price which is reasonable in relation to the defect.

The Customer's claims for damages or compensation for futile expenses shall exist only in accordance with Section 11, even in the case of defects, and shall otherwise be excluded.

Liability and indemnity

Subject to the following exceptions, we are not liable, in particular not for claims of the Customer for damages or reimbursement of expenses – regardless of the legal grounds.

The exclusion of liability regulated in Section 11.1 does not apply: (i) for our own intentional or grossly negligent breaches of duty and intentional or grossly negligent breaches of duty by our legal representatives or vicarious agents, (ii) for the breach of essential contractual obligations, i.e. such obligations whose fulfilment is essential for the proper execution of the contract and on whose compliance the Customer may regularly rely, (iii) in the case of injury to life, limb and health also by legal representatives or vicarious agents, (iv) in the case of the assumption of a guarantee and (v) in the case of legally binding liability situations.

The exclusion of liability regulated in Sections 11.1 and 11.2 shall also apply to breaches of duty committed before the time of conclusion of the contract. Our liability for such pre-contractual breaches of duty is excluded or limited to the same extent as our liability would have been excluded or limited if the breach of duty had only been committed after conclusion of the contract. Therefore, the Customer waives to this extent any claims for compensation to which it may be entitled and which have already arisen, and we accept this waiver.

If we or our legal representatives or vicarious agents are only guilty of slight negligence, we shall be liable, except in the case of Section 11.2 (iii), (iv) and (v), only for typical and foreseeable damage and not for indirect damage, loss of profit, loss of production and loss of use.

Except in the case of Section 11.2 (i), (iii), (iv) and (v) and in cases of legally binding deviating higher liability sums, liability is limited to the amount of the contractually owed remuneration. Any further liability is excluded.

The exclusions or limitations of liability of the above Sections 11.1 to 11.5 shall apply to the same extent in favour of our bodies, employees and other vicarious agents.

A reversal of the burden of proof is not associated with the provisions in Section 11.

The Customer shall be obliged to indemnify us against all claims for damages and expenses, including the statutory legal fees, which we incur from a culpable breach of its obligations under these GTCS to third parties within the limitation period. Section 254 BGB (contributory negligence) remains unaffected. The Customer shall inform us immediately if third parties assert claims against it which are covered by the above indemnification obligation and shall give us the opportunity to defend the asserted claim as far as possible under the circumstances of the individual case. The Customer is obliged to immediately provide us with all information available to it on the relevant facts in full and in text form. Possible claims beyond this remain unaffected.

Due to a breach of duty which does not consist of a defect, the Customer may only withdraw or terminate if we are responsible for the breach of duty. A free right of termination by the Customer (especially in accordance with Sections 650, 648 BGB) is excluded.

Ownership of production and advertising materials, intellectual property rights

All documents, advertising material and other products which are handed over to the Customer within the scope of the contract in addition to the owed subject matter of the contract or which are created or acquired by us for order processing remain or become our property as soon as they are created. Models, stencils, templates, samples, tools and other means of production may only be used for deliveries to third parties with our prior written consent. The Customer shall store our property in the aforementioned materials free of charge, treat them with care, protect them from access by third parties and inform us immediately if and by whom third party infringements occur. Unless otherwise agreed, the return will take place at the latest two years after the end of the project.

The Customer is not granted any right to use rights to the materials mentioned in Section 12.1. If the Customer has acquired rights of its own (e.g. trademark rights) through the use of the materials, it is obliged to transfer these rights to us on termination of the contract.

Subcontractors

We are entitled to use subcontractors (e.g. for translations, illustrations, multimedia productions, print productions).

Our obligations from the contracts with the Customer remain unaffected by this.

References and competitors

We will include the Customer's company name and logos in our reference list after termination of the contract, unless and until the Customer prohibits us from doing so in writing.

The Customer agrees that we may also work for companies that are in a competitive relationship with the Customer.

Confidentiality

The Customer is obliged to maintain secrecy of confidential information. Confidential information is all financial, technical, legal, tax-related information concerning our business activities or companies affiliated with us in accordance with Section 15 AktG [German Stock Corporation Act], including data and records, as well as secret expertise, i.e. identifiable information in which there is an explicit or implied interest in maintaining secrecy, which is accessible only to a narrowly defined group of persons, which can be objectively individualised and which has a commercial value and which is provided to the Customer by us in connection with the business relationship, provided that: (i) that these, if provided in writing or electronically, are marked as confidential information, are described as such or are clearly recognisable as such for the Customer in another way; or (ii) that these, if provided verbally or visually, are declared as confidential information by us when they are provided and are subsequently summarised by us to the Customer in writing or in text form. This summary shall be sent to the Customer within 14 calendar days of its release to the Customer and shall be marked "confidential information", with the date of receipt being decisive. The obligation of secrecy applies in any case and independent of the above regulation for information concerning our prices, Services, advertisements and sales promotion concepts.

The obligation of secrecy does not apply to information if it was demonstrably already known to the Customer at the time of its notification, which is generally accessible or for which there is a legal obligation of disclosure.

In case of doubt, the Customer shall be obliged to obtain our prior written consent as to whether or not a certain fact is to be kept secret.

The Customer is obliged to obligate its (also freelance) employees, suppliers and other third parties, which it employs for the fulfilment of the contract, in writing to comply with the obligations according to Section 15.

The Customer may only advertise the business relationship with us with our prior written consent.

Assignment prohibition

The Customer is not entitled to assign its claims from the contractual relationship with us to third parties.

The prohibition pursuant to Section 16.1 shall not apply to monetary claims.

Severability clause

If a provision of these GTCS is or becomes invalid/void or unenforceable in whole or in part for reasons of the law on the General Terms and Conditions in accordance with Sections 305 to 310 BGB, the statutory provisions shall apply.

If any present or future provision of these GTCS is or becomes invalid/void or unenforceable in whole or in part for reasons other than the provisions relating to the law on the General Terms and Conditions in accordance with Sections 305 to 310 BGB, the validity of the remaining provisions of this contract shall not be affected thereby and the provisions pursuant to Sections 17.3 and 17.4 below shall apply. The same shall apply if a gap requiring supplementation arises after the conclusion of the contract with the Customer.

Contrary to a possible principle according to which a severability maintenance clause shall in principle only reverse the burden of proof, the validity of the remaining contractual provisions shall be maintained under all circumstances and thus Section 139 BGB shall be waived in its entirety.

The parties shall replace the provision which is invalid/void/unenforceable for reasons other than the provisions relating to the law on the General Terms and Conditions in accordance with Sections 305 to 310 BGB or a gap which needs to be filled by a valid provision which corresponds in its legal and economic content to the invalid/void/unenforceable provision and the overall purpose of the contract. Section 139 BGB (partial invalidity) is expressly excluded. If the invalidity of a provision is based on a measure of performance or time (deadline or date) specified therein, the provision shall be agreed to be legally permissible to the extent that is closest to the original measure.

Written form

Individual agreements made with the Customer in individual cases (including ancillary agreements, supplements and amendments) shall, in any case, take precedence over these GTCSs. Subject to proof to the contrary, a written contract or our written confirmation shall be decisive for the content of such agreements.

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Legally relevant declarations and notifications of the Customer with regard to the contract (e.g. setting of a deadline, notification of defects, withdrawal or reduction) shall be made in writing, i.e. in written or text form (e.g. letter, e-mail, fax). Statutory formal requirements and further evidence, in particular in the event of doubts about the legitimacy of the person making the declaration, remain unaffected.

Applicable law and place of jurisdiction

The GTCS and the contractual relationship between us and the Customer shall be governed by the laws of the Federal Republic of Germany to the exclusion of international uniform law, in particular the UN Sales Convention.

If the Customer is a business person within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive – also international – place of jurisdiction for all disputes arising from the contractual relationship shall be our registered office in Munich. In all cases, however, we shall also be entitled to bring an action at the place of performance of the delivery or performance obligation in accordance with these GTCP or a prior individual agreement or at the general place of jurisdiction of the Customer. Priority statutory provisions, in particular those concerning exclusive jurisdiction, shall remain unaffected.