

1. General, scope of application

- 1.1 The present General Sales and Delivery Conditions (GSDC) apply to all our business relations with our customers ("Purchasers"). The GSDC only apply if the purchaser is an entrepreneur (Section 14 BGB), a legal entity of public law or a special fund of public law.
- 1.2 The GSDC especially apply to contracts dealing with sales and/or the delivery of movable objects ("Goods"), regardless of whether we manufacture the goods ourselves or buy them from suppliers (Sections 433, 651 BGB). Insofar as nothing else is agreed on, the GSDC apply in the version valid at the time of the purchaser's ordering or in any case in the version last communicated to him in text form as framework agreement also for similar future contracts without us having to again refer to them in each individual case.
- 1.3 Our GSDC solely apply. Any deviating, contradictory or supplementary General Terms and Conditions of the Purchaser only then and insofar become a part of the contract as we have explicitly approved their validity. This approval requirement is valid in each case, for example also when we know the General Terms and Conditions of the purchaser and carry out the delivery to him unconditionally.
- 1.4 Individual agreements met with the purchaser in an individual case (including collateral agreements, supplements and changes) shall in all cases have priority over these GSDC. For the content of such agreements subject to counterevidence, a written contract or our written confirmation is decisive.
- 1.5 Legally relevant declarations and notifications which are to be given over to us after contract termination by the purchaser (e.g. deadlines, defect notifications, declaration of withdrawal or reduction) are required in the text form to be effective.
- 1.6 Insofar as is necessary for business, we are authorised to save and process the data of the purchaser in the scope of the data protection laws (especially Section 28 BDSG) via EDP.
- 1.7 References to the validity of statutory regulations shall only have clarifying significance. Also even without such clarification, the statutory regulations are therefore valid, insofar as they are not directly changed or expressly excluded in these GSDC.

2. Contractual declarations

- 2.1 Our published product and service range is subject to confirmation and non-binding. This also applies if we have ceded catalogues, technical documentation (e.g. drawings, plans, evaluations, calculations, referrals to DIN norms), other product descriptions or documents – also in electronic form – to which we reserve ownership rights and copyrights.
- 2.2 The order of the goods by the purchaser is valid as binding contract offer. Insofar as nothing else results from the order, we are entitled to accept this contract offer within 18 days after we have received it.
- 2.3 The acceptance can be declared either in writing (e.g. via order confirmation) or via delivery of the goods to the purchaser.

3. Delivery, transfer of risk, delay in acceptance and partial performance

- 3.1 The delivery ensues ex stock, where is also located the place of fulfilment for the delivery and possible subsequent performance. On request and costs of the purchaser, the goods are sent to another place of destination (sales shipment). In case of taking delivery, the purchaser has to take delivery of the goods on the delivery date agreed on, or in case a delivery date was not fixed, immediately after communication of the provision at the place of fulfilment.
- 3.2 If the purchaser is in delay with taking delivery of the goods, we are entitled to send them on our own choice on the costs of the purchaser or – insofar as nothing else is possible, if necessary outdoors – to store them. We are entitled to determine the type of shipment (especially shipping method, shipping route, forwarding agent and/or carrier) ourselves. For the storage, we calculate a lump-sum compensation to the amount of 25 Euros per pallet storage area and calendar day, beginning with the delivery date or – with no delivery date – with the notification of the shipment readiness of the goods.
- 3.3 The risk of destruction, loss, or damage of the goods transfers to the purchaser with the provision of the goods and dispatch of the delivery readiness notification or with the loading if the goods are sent. Insofar as an acceptance is agreed on, it is decisive for the transfer of risk. It is deemed equivalent to the handover or acceptance if the purchaser is in default with the acceptance. This also applies if partial deliveries ensue or we have taken over additional performances like transport costs or delivery.
- 3.4 We reserve the right to partial performances and to invoice the same, unless they are unacceptable for the purchaser.
- 3.5 If the delivery ensues in returnable containers, thus they are to be sent back empty of residue and carriage paid within 90 days after the delivery has been received. Loss and damage of a returnable packaging is borne by the purchaser if he is liable. Returnable packaging must not be used for other purposes or to hold other products. It is only intended to transport the delivered goods. Labels must not be removed.

- 3.6 We do not take back disposable packaging, instead we refer the purchaser to a third party who will arrange for a recycling for the packaging in accordance with the packaging regulation.

- 3.7 Due to production reasons, excess or shortfall deliveries can ensue up to 10 % corresponding to the size of the order. The quantity calculated is the quantity actually delivered.

4. Force majeure, disturbance of basis of transaction, retention of fulfilment

With cases of force majeure which affect us or our presupplier, our performance and delivery obligations rest for the duration of the disturbance. The same applies to shortages of energy or raw materials, labour disputes, official decrees or traffic delays or business disturbances. If a considerable change occurs in the relations existing at contract conclusion in the consequence of which we cannot be reasonably expected to adhere to the contract, we are entitled to withdraw from the contract. Our fulfilment of contract is under the provision that we neither violate regulations of national and international foreign trade legislation, nor breach sanctions or embargoes with it.

5. Delivery deadline and delay in delivery

- 5.1 The delivery deadline is individually agreed on or we give it when we accept the order. Insofar as this is not the case, the delivery deadline is 4 weeks from contract conclusion.
- 5.2 Insofar as we cannot observe binding delivery deadlines from reasons we are not responsible for (non-availability of the service), we will inform the purchaser of this without delay and at the same time communicate the expected new delivery deadline. If the performance is not available even within the new delivery deadline, we are entitled to totally or partly withdraw from the contract; we will without delay reimburse an already provided counter-performance of the purchaser. Especially valid as a case of non-availability of the performance in this sense is the not punctual self-delivery by our supplier, if we have concluded a congruent hedging transaction neither we nor our supplier is culpable or we are not obliged to the procurement in the individual case.

6. Prices and payment conditions

- 6.1 Insofar as nothing else is agreed in the individual case, our prices current at the time of contract conclusion shall apply and in fact ex warehouse plus legal VAT.
- 6.2 In sale by dispatch, the purchaser bears the transport costs ex warehouse and the costs of a transport insurance possibly desired by the purchaser. Any tariffs, charges, taxes and other public charges are borne by the purchaser.
- 6.3 The purchase price is due and to be paid within 30 days from invoicing and delivery or acceptance of the goods. However also in the scope of a current business relationship, we are entitled at any time to carry out a delivery entirely or partly only against advance payment. We declare a reservation to this effect at the latest with the order confirmation.
- 6.4 With the expiry of the above mentioned payment period, the purchaser is in delay. Interest is to be paid on the purchase price at the respective applicable interest rate for default during the default. We reserve the assertion of any further default damages. Our claim for the commercial maturity interest (Section 353 HGB) against merchants remains unaffected.
- 6.5 The purchaser is only entitled to set-off rights or rights of retention insofar as his claim is legally established or undisputed. With defects in delivery, the reciprocal rights of the purchaser remain untouched, especially according to 8.6 sentence 2 of these GSDC.
- 6.6 If it becomes apparent after conclusion of the contract (e.g. by application to file for insolvency proceedings) that our claim to the purchase price is endangered by the lack of ability to perform of the purchaser, thus we are entitled according to the statutory regulations to refuse performance and – if necessary after setting a deadline – to withdraw from the contract (Section 321 BGB). With contracts about the manufacture of unreasonable objects (individual productions), we can declare the withdrawal immediately; the legal regulations of the dispensability of a deadline remain unaffected.

7. Reservation of title

- 7.1 We reserve the title to the sold goods up to the complete payment of all our present and future claims from the purchase contract and a current business relationship (secured claims).
- 7.2 Before complete payment of the secured claims, the goods under reservation of title must be neither pledged nor assigned by way of security to third parties. The purchaser has to inform us in writing without delay if an application to file insolvency proceedings has been made or insofar as access of third parties (e.g. seizures) ensue on the goods belonging to us.
- 7.3 With behaviour of the purchaser contrary to the contract, especially with non-payment of the due purchase price, we are entitled to withdraw from the contract according to the legal regulations and to demand the goods on the basis of the reservation of title and the withdrawal. If the purchaser does not pay the due purchase price, we may only assert these rights if we have set the purchaser an appropriate deadline for payment beforehand without success or setting such a deadline is superfluous according to the statutory regulations.

- 7.4 The purchaser is authorised until revoked according to below (c) to further sell and/or process the goods under reservation of title in the proper course of business. In this case the following terms additionally apply.
- The reservation of title extends to the products created by processing, mixing or combining with our goods to their full value, whereby we are regarded as the manufacturer. If the third parties retain a right of ownership with a processing, mixing or combining with their goods, thus we shall acquire co ownership in proportion to the invoice values of the processed, mixed or combined goods. As for the rest, the same applies to the product to be created as for the goods delivered under reservation of title.
 - The purchaser already assigns claims towards third parties arising from the onward sale of the goods or the product to us now altogether or to the amount of our possible co ownership share according to the above mentioned paragraph for security. We accept the assignment. The obligations of the purchaser named in 7.2 also apply in consideration of the assigned claims.
 - We and the purchaser are authorised to collect the claim. We bind ourselves not to collect the claim as long as the purchaser meets his payment obligations to us, there is no deficiency of his performance capacity and we do not assert the reservation of title by exercising a right according to 7.3. However if this is the case, we can demand that the purchaser informs us of the assigned receivables and their debtors, gives all information necessary for the collection, hands out the relevant documents and informs the debtors (third parties) of the assignment. In addition, we are entitled in this case to revoke the entitlement of the purchaser to further sale and processing of the goods under reservation of title.
 - If the realisable value of the securities exceeds our claims by more than 10%, we will release securities at our choice on request of the purchaser.
- 8. Claims for defects of the purchaser**
- For the rights of the purchaser with defects of quality and titles (including wrong and short delivery as well as incorrect installation or defective installation instructions), the statutory regulations apply insofar as nothing else is determined in the following. The special legal requirements for final delivery of the goods to a consumer (supplier regress according to Sections 478, 479 BGB) remain unaffected in all cases.
 - The basis of our liability for defects is above all the agreement met on the quality of the goods. Valid as agreement on the quality of the goods are the product descriptions denoted as such (also of the manufacturer) which were ceded to the purchaser before his order or included in the contract in the same way as these GTC.
 - Insofar as the quality was not agreed on, it has to be assessed according to the legal regulation whether there is a defect or not (Section 434, paragraphs 1, sentence 2 and 3 BGB). However, we take on no liability for public statements of the manufacturer or other third parties (e.g. advertising statements).
 - The claims for defects of the purchaser presuppose that he has met his legal duties to inspect and notify of defects (Sections 377, 381 HGB). If a defect is found during the inspection or later, thus we have to be notified of this in writing immediately. The notification is regarded as immediately if it ensues within two weeks, whereby the time shall be deemed observed if the notification is sent in time. Independent of this inspection and notification of defect obligation, the purchaser has to notify of obvious defects (including wrong and short deliveries) within two weeks from the delivery in writing, whereby also here sending the notification in time is enough to observe the deadline. If the purchaser fails to carry out the proper inspection and/or report of defects, our liability for the defect which was not reported is excluded.
 - If the delivered object is faulty, the purchaser can first demand elimination of the defect (rectification) or delivery of an object free of defects (replacement delivery) as subsequent fulfilment at his choice. If the purchaser does not declare which of the two rights he chooses, thus we can grant him an appropriate deadline for this. If the purchaser does not make the choice within the deadline, thus the entitlement to select shall be transferred to us after the expiry of the deadline.
 - We are entitled to make the owed subsequent performance dependent on the fact that the purchaser pays the due purchase price. However, the purchaser is entitled to retain a part of the purchase price in appropriate proportion to the defect.
 - The purchaser has to grant us the time and occasion necessary for the owed subsequent fulfilment, especially hand over the goods concerned for purposes of inspection. In the case of the replacement delivery, the purchaser has to return the defective object to us according to the legal requirements. The subsequent fulfilment contains neither the removal of the defective object nor the renewed installation if we were originally not obliged to installation.
 - We bear the expenses necessary for the purpose of inspection and subsequent fulfilment, especially transport, road, labour and material costs (not: removal and installation costs) when a defect has actually occurred. Otherwise, we can demand that the purchaser replaces the costs arising from the unjustified request to remedy a defect (especially inspection and transport costs), unless the missing defectiveness was not recognisable for the purchaser.
- 8.9** Claims of the purchaser to compensation or replacement of wasted expenditures also exist with defects only following 9. and are excluded for the remaining.
- 9. Other liability**
- Insofar as nothing else ensues from these GSDC including the following stipulations, we are liable with a violation of contractual and extra-contractual obligations according to the legal requirements.
 - We are liable for compensation – no matter which legal basis – in the scope of the fault-based liability with intent and gross negligence. With simple negligence, we are subject to a milder standard of liability according to legal requirements (e.g. for care in own matters) only
 - for damages from fatalities, physical injuries or damage to health,
 - for damages from the significant violation of an essential contract obligation (obligation the fulfilment of which only makes the proper execution of the contract possible, and on which observation the contract partner regularly depends on and can depend on); in this case however, our liability is limited to the replacement of the foreseeable typically occurring damage.
 - The liability limitations arising from 9.2 also apply to violations of duty by or to the favour of persons the fault of whom we are answerable for according to legal requirements. They do not apply insofar as we have fraudulently concealed a defect or taken over a guarantee for the quality of the goods and for claims of the purchaser according to the product liability act.
 - Due to a violation of duty which does not consist of a defect, the purchaser can only withdraw or terminate if we are answerable for the violation of duty. A free right of termination of the purchaser (especially according to Sections 651, 649 BGB) is excluded. For the remaining the legal preconditions and consequences are valid.
- 10. Limitation**
- Deviating from Section 438, paragraph 1, No. 3 BGB, the general limitation period for claims from quality and title defects is one year from delivery. Insofar as an acceptance has been agreed on, the limitation begins with the acceptance.
 - If however the goods are a building or an object which has been used corresponding to its usual manner of use as a building and has caused their defectiveness (building material), the statutory limitation period amounts to 5 years from delivery according to the legal regulation (Section 438, paragraph 1, No. 2 BGB). Also remaining unaffected are further special legal regulations for limitation (especially Section 438, paragraph 1, No. 1.74, paragraph 3, Sections 444, 479 BGB).
 - The above mentioned statutory limitation periods of the sale of goods law also apply to contractual and extra-contractual compensation claims of the purchaser which rest on a defect of the goods, unless the application of the regular legal limitation (Sections 195, 199 BGB) would lead to a shorter limitation in the individual case. Compensation claims of the purchaser according to 9.2, sentences 1 and 2 (a) as well as according to the product liability act however expire by limitation solely according to the legal limitation periods.
- 11. Subcontractors**
- We are entitled to employ subcontractors for installation work.
- 12. Choice of law and place of jurisdiction**
- The law of the Federal Republic of Germany applies to these GSDC and the contract relationship between us and the purchaser, excluding international uniform law, especially UN Sales Law.
 - If the purchaser is a merchant in the sense of the German commercial code, legal entity of public law or a special fund of public law, the sole – also international – place of jurisdiction for all disputes directly or indirectly arising from the contract relationship is our place of business in 35781 Weilburg, Germany. The same applies if the purchaser is entrepreneur in the sense of Section 14 BGB. However, we are also entitled in all cases to file an action in the place of fulfilment of the delivery obligation according to these GSDC or a priority individual agreement or at the place of general jurisdiction of the purchaser. Priority legal regulations, especially on exclusive jurisdictions, remain unaffected.

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