



1. General Terms, Scope

- 1.1. These General Delivery Terms (GDT) apply to all our business relations with our customers (hereinafter: "Buyer"). The GDT shall only apply where the Buyer is an entrepreneur (§ 14 BGB [*Bürgerliches Gesetzbuch*, German Civil Code]), a legal entity under public law or a special fund under public law.
- 1.2. The GDT shall particularly apply to agreements concerning the sale and/or delivery of movable items (hereinafter also referred to as: "Goods"), regardless of whether we manufacture the Goods ourselves or purchase them from suppliers (§§ 433, 651 BGB). The GDT shall apply as amended from time to time as a framework agreement for future agreements concerning the sale and/or delivery of movable objects with the same Buyers, without us having to refer to them again in each individual case; in this case, we will inform the Buyer of changes to our GDT.
- 1.3. Our GDT shall apply exclusively. Differing, conflicting or additional General Terms and Conditions from the Buyer shall only become part of the agreement if and to the extent to which we have expressly consented in writing to their application. This consent requirement shall apply under all circumstances, for example even if we effect delivery to Buyer without reservation with knowledge of the Buyer's AGB.
- 1.4. References to the application of statutory provisions are for purposes of clarification only. The statutory provisions therefore also apply absent such clarification insofar as they are not directly modified or expressly excluded in these GDT.

2. Conclusion of the Agreement

- 2.1. Our offers are subject to change and non-binding. This shall also apply if we have provided the Buyer with catalogues, technical documentation (e.g. drawings, plans, calculations, estimates, referrals to DIN standards), other product descriptions or

documents – including in electronic form – in which we reserve ownership- or copyrights.

- 2.2. The Buyer's order for the Goods shall constitute a binding offer of contract. It shall be considered refused if we do not accept it within one week.
- 2.3. Acceptance may be made in writing (e.g. by confirmation of the order) or by delivery of the Goods to the Buyer.

3. Delivery Period and Delay in Delivery

- 3.1. The delivery period shall be agreed upon individually or specified by us upon acceptance of the order.
- 3.2. If we cannot comply with binding delivery periods due to reasons for which we are not responsible (impossibility of performance), we shall inform the Buyer immediately thereof and at the same time communicate the expected new delivery period. If performance is also impossible within the new delivery period, we shall be entitled to withdraw from the agreement in whole or in part; in this case, we will immediately refund the Buyer for consideration already provided. Late delivery from our suppliers shall particularly be considered a case of impossibility of performance in this sense if we have concluded a congruent covering transaction, if neither we nor our supplier are at fault or if we are not responsible for procurement in the individual case.
- 3.3. Statutory provisions shall determine the occurrence of a delay in delivery on our part. However, a written warning from the Buyer is necessary in any event. Should we encounter a delay in delivery, the Buyer may demand lump-sum compensation for damages incurred due to the delay. For each completed calendar week of the delay, the lump-sum compensation shall be 0.5% of the net price (delivery value), but in total limited to 5% of the delivery value of the Goods delivered behind schedule. We reserve the right to prove that the Buyer did not incur any damage





or only significantly less damage than the aforementioned lump sum.

- 3.4. The Buyer's rights pursuant to § 8 of these GDT and our statutory rights, particularly in the case that the obligation to perform is precluded (e.g. due to impossibility or unreasonableness of performance and/or supplemental performance) shall remain unaffected.

4. Delivery, Transfer of Risk, Acceptance, Delay in Acceptance, Force Majeure

- 4.1. Delivery shall be made ex warehouse, which is also the place of performance. The Goods will be shipped to another destination upon request and at the cost of the Buyer (sales shipment). Unless agreed otherwise, we shall be entitled to determine the method of shipment (particularly transport companies, route of transport, packaging).
- 4.2. Unless agreed otherwise, the risk of accidental loss or accidental deterioration of the Goods shall pass at the latest upon delivery to the Buyer. However, in the case of a sales shipment, the risk of accidental loss or accidental deterioration of the Goods and the risk of delay shall transfer upon delivery of the Goods to the forwarder, carrier or other person or entity designated to execute the shipment. Where acceptance is agreed, this shall be authoritative for the transfer of risk. The statutory provisions governing contracts for work and labour shall also apply accordingly to an agreed acceptance. The transfer or acceptance shall also be deemed as having been made if the Buyer is in delay of the acceptance.
- 4.3. If the Buyer is in delay of acceptance, fails to act in cooperation or if the delivery is delayed for other reasons for which the Buyer is responsible, we shall be entitled to demand compensation for the damages arising therefrom, including additional expenses (e.g. warehousing costs).
- 4.4. In case of serious events, particularly force majeure, labour disputes, riots, military or terrorist conflicts that entail unforeseeable consequences of the execution of performance, the parties shall be exempted from

their performance obligation for the duration of the disruption and to the extent of its effects, even if they are in default. This does not entail an automatic termination of the agreement. The contractual parties are obligated to inform one another of such a hindrance and shall modify their obligations in good faith according to the changed circumstances.

5. Prices and Terms of Payment

- 5.1. Unless agreed otherwise in the individual case, our current prices applicable at the time of conclusion of the agreement shall apply ex warehouse plus statutory value added tax.
- 5.2. In the case of a sales shipment (§ 4 para. 1), the Buyer shall bear the transport costs ex warehouse and the costs of any transport insurance desired by the Buyer. Any duties, fees, taxes or other public levies shall be borne by the Buyer. We shall not take back transport or any other packaging; it shall become the property of the Buyer except for pallets.
- 5.3. The terms of payment shall be agreed upon individually with the customer. Unless governed otherwise, the payment period shall be 30 days from the date of invoice.
- 5.4. The Buyer shall be in default upon expiry of the payment period. Interest shall be paid on the purchase price during the default at the respective applicable interest rate for default. We reserve the right to assert claims for additional damages caused by default. § 353 HGB [*Handelsgesetzbuch*, German Commercial Code] shall remain unaffected.
- 5.5. The Buyer shall be entitled to retention rights or rights of set off only to the extent that its claim is legally established or undisputed.

6. Retention of Title

- 6.1. We shall retain title to the Goods sold until full payment of all our present and future claims arising under the purchase agreement and





out of an ongoing business relation (secured claims).

6.2. The Goods under retention of title may not be pledged or assigned by way of securities to third parties prior to full payment of the secured claims. The Buyer shall notify us immediately in writing if and to the extent to which the Goods belonging to us are attached by third parties.

6.3. The Buyer is entitled to resell and/or process the Goods under retention of title in the normal course of business. In this case, the following terms shall also apply additionally.

- a) The retention of title shall extend to the full value of the products created from processing, mixing or combination with our Goods, whereby we shall be considered the manufacturer. If the ownership rights of third parties continue to exist during processing, mixing or combination with their Goods, we shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined Goods. In addition, the same shall apply to the product created as does for the Goods supplied under retention of title.
- b) As security, the Buyer hereby assigns, in whole or in the amount of our potential co-ownership share pursuant to the preceding paragraph, the claims against third parties arising from the resale of the Good or product. We accept the assignment. The Buyer's obligations specified in para. 2 shall also apply in consideration of the assigned claims.
- c) In addition to us, the Buyer shall remain entitled to collect on the claim. We shall undertake not to collect on the claim as long as the Buyer meets his payment obligations to us, does not default in payment, no petition is made to open insolvency proceedings and no other deficiency exists concerning his ability to pay. If this is the case, however we may demand that the Buyer provide us with the assigned claims and corresponding debtors, all information required for collection, corresponding documents

and that he notify the debtors (third parties) of the assignment.

- d) Should the realisable value of the securities exceed our claims by more than 10%, we shall release the securities at our discretion upon the Buyer's request.

7. Defect Claims of the Buyer

- 7.1. Unless subsequently agreed otherwise, the statutory provisions shall apply to the rights of the Buyer with respect to material defects and defects in title (including wrong and short delivery as well as improper installation or defective installation instructions). In all cases, the statutory special provisions for the final delivery of the Goods to a consumer shall remain unaffected (right of recourse against the supplier pursuant to §§ 478, 479 BGB).
- 7.2. The Buyer's defect claims require that Buyer fulfil its legal obligation to examine the goods and give notice of defects (§§ 377, 381 HGB). We must be notified immediately in writing of any defect appearing during the examination or later. The notification shall be considered immediate if it is provided within one week, whereby timely dispatch of the notification shall suffice as observance of the deadline. Independent of this obligation to examine the goods and give notice of defects, the Buyer must notify us in writing of obvious defects (including wrong and short delivery) within one week of delivery, whereby timely dispatch of the notification shall suffice as observance of the deadline here, as well. Should the Buyer fail to conduct a proper examination and/or give notice of defects, our liability is excluded for the defects not reported.
- 7.3. If the item delivered is defective, the Buyer may first demand at his option the elimination of the defect (repair) or delivery of an item free of defects (replacement delivery). If the Buyer does not state which of the two rights he is selecting, we may provide him with a reasonable period within which to do so. If Buyer does not choose within this period, the





right to choose shall pass to us upon expiry of this period.

- 7.4. The Buyer shall give us the time and opportunity required for the supplementary performance, particularly handing over the defective Goods for purposes of examination. In the event of replacement delivery, the Buyer shall return the defective item to us according to statutory provisions. Supplementary performance does not imply either the removal of the defective item or reinstallation if we were not originally obligated to perform installation.
- 7.5. We shall bear the costs required for purposes of examination and supplementary performance, particularly the costs of transport, travel, labour and materials (not: removal or installation) if a defect in fact exists. However, if a request by the Buyer for rectification of a defect proves to be unjustified, we may demand that the costs arising therefrom be reimbursed by the Buyer.
- 7.6. In urgent cases, e.g. to avoid excessive damages, Buyer shall have the right to remedy the defect itself and to demand from us reimbursement of the expenses objectively necessary therefor. We must be notified immediately, beforehand, if possible, regarding self-remedy of this nature. The right of self-remedy shall not apply if we are entitled to refuse corresponding supplementary performance pursuant to statutory provisions.
- 7.7. Claims of the Buyer for compensation for damages or compensation for unnecessary expenditures shall only apply according to § 8 and are otherwise excluded.

8. Other Liability

- 8.1. Unless determined otherwise under these GDT, including the following provisions, we shall be liable in the case of breach of contractual and non-contractual duties according to the relevant statutory provisions.
- 8.2. We shall be liable for compensation for damages in cases of intent or gross negligence – irrespective of the legal grounds. In

cases of simple negligence, we shall only be liable

- a) for damages arising from loss of life, injury to limb or health,
- b) for damages arising from the breach of a material contractual obligation (an obligation, the satisfaction of which makes proper performance of the contract possible and upon the observance of which the contractual partner regularly relies and may rely); however, in this case our liability is limited to the compensation of damage that is foreseeable and typically occurring.

8.3. The limitations of liability arising under para. 2 shall not apply insofar as we have maliciously failed to disclose a defect or have assumed a guarantee for the condition of the Goods. The same shall apply to claims of the Buyer pursuant to the German Product Liability Act.

8.4. The Buyer may only withdraw or terminate due to a breach of duty that does not consist of a defect if we are responsible for that breach of duty. A free right of termination by the Buyer (particularly pursuant to §§ 651, 649 BGB) is precluded. In addition, the statutory requirements and legal consequences shall apply.

9. Limitation Period

- 9.1. By way of derogation from § 438 para. 1 no. 3 BGB, the general limitation period for claims arising from defects in quality or defects in title shall be one year from delivery. Insofar as acceptance has been agreed, the limitation period shall begin upon acceptance. Special statutory provisions for third party in rem claims for return (§ 438 para. 1 no. 1 BGB), for malicious intent on the part of the seller (§ 438 para. 3 BGB) and for claims in the supplier's recourse in case of final delivery to





a consumer (§ 479 BGB) shall remain unaffected.

- 9.2. The above limitation periods of sales law shall also apply to contractual and non-contractual claims for damages of the Buyer that are based on a defect in the Goods unless the application of the regular statutory limitation period (§§ 195, 199 BGB) would result in a shorter limitation period in the individual case. The limitation periods of the German product Liability Act shall in any case remain unaffected. Otherwise the statutory limitation periods shall apply exclusively to damage compensation claims by Buyer pursuant to § 8.

10. Choice of Law and Place of Jurisdiction

- 10.1. The law of the Federal Republic of Germany shall apply to these GDT and all legal relations between us and Buyers under exclusion of international uniform law, particularly the UN Convention on Contracts for the International Sale of Goods (CISG). The requirements for and the consequences of the retention of title pursuant to § 6 shall be subject to the law of the respective location of the subject matter if, under said law, the choice of law made in favour of German law is inadmissible or invalid.
- 10.2. If the Buyer is a merchant in terms of the HGB, a legal entity under public law or a special fund under public law, the exclusive – and international – place of jurisdiction for all disputes arising directly or indirectly from the contractual relation shall be Hamburg. However, we shall also be entitled to file suit in the Buyer's general place of jurisdiction.

