

## **General Terms and Conditions of P+P GmbH**

### **Section 1 General information, scope of application**

(1) These General Terms and Conditions (GTC) shall apply to all business relationships with our customers ("Purchasers"). These GTC shall only apply if the Purchaser is an entrepreneur (Section 14 BGB – German Civil Code), a corporate body under public law or a special fund under public law.

(2) These GTC shall apply in particular for contracts governing the sale and/or supply of movable objects ("Goods"), regardless of whether we manufacture the Goods ourselves or purchase them from suppliers (Sections 433 and 650 BGB).

(3) Our GTC shall apply exclusively. General terms and conditions of the Purchaser that deviate from, conflict with or supplement our GTC shall only become an integral part of the contract if and to the extent that we have expressly agreed their validity in writing. This approval requirement shall apply in every case; for example, even if we deliver Goods to the Purchaser without reservation knowing of the Purchaser's general terms and conditions.

(4) Individual agreements with the Purchaser made on a case-by-case basis (including ancillary agreements, additions and amendments) shall always take precedence over these GTC. Subject to evidence to the contrary, a written contract or our written confirmation shall be decisive for the content of such agreements.

(5) Material declarations and notices that must be made to us by the Purchaser following the conclusion of the contract (e.g. the setting of deadlines, notices of defects, declarations of rescission or reduction) must be made in text form to be effective.

(6) Information regarding the validity of statutory provisions shall be for clarification purposes only. Statutory provisions shall therefore apply even without such clarification, unless such provisions are directly amended or expressly excluded in these GTC.

### **Section 2 Conclusion of contract**

(1) Our quotations shall be non-binding and subject to alteration. This shall also apply if we have given the Purchaser catalogues, technical documentation (e.g. drawings, plans, calculations), other product descriptions or documents – including those in electronic form. Furthermore, we reserve proprietary rights and copyright to such documentation.

(2) The ordering of the Goods by the Purchaser shall be considered to be a binding contractual offer accordingly Section 145 BGB. Unless otherwise specified in the order, we shall be entitled to accept this contractual offer within 2 calendar weeks of receipt by us.

(3) Acceptance shall require written order confirmation.

### **Section 3 Delivery date and delay in delivery**

(1) The delivery date shall be agreed on an individual basis or specified by us upon acceptance of the order.

(2) If, for reasons we are not responsible for, we are unable to adhere to delivery dates (non-availability of the service), we shall immediately inform the Purchaser of this and inform him of the expected, new delivery date. If the service is not available by the new delivery date either, we shall be entitled to withdraw from the contract in part or in full; we shall immediately compensate the Purchaser for services already rendered in return. Such a case of non-availability of the service in accordance with this shall in particular be untimely self-delivery by our supplier if we have concluded

a corresponding supply agreement, neither we nor our supplier are at fault or we are not obliged to procure the part in an individual case.

(3) The occurrence of a delay in delivery by us shall be determined by the statutory provisions. In all cases, however, a reminder from the Purchaser shall be required. In case of delay in delivery, the Purchaser may demand lump-sum compensation for the damages caused by the delay. The lump sum for the damages shall be 0.5% of the net price (delivery value) for each completed calendar week of the delay; however, a total 5% of the delivery value of the delayed Goods at the most. We reserve the right to prove that the Purchaser did not incur any damages or damages that are significantly less than the defined lump sum.

(4) The rights of the Purchaser as defined in Section 8 of these GTC and our statutory rights – in particular if the obligation to perform the service is ruled out (e.g. due to the service and/or supplementary performance being impossible or unreasonable) – shall remain unaffected.

#### **Section 4 Delivery, transfer of risk, acceptance, delay in taking delivery**

(1) Delivery shall be **EXW [XXX] (ICC 2020)**, wherever the place of fulfilment for the delivery and any possible subsequent performance is. At the request and expense of the Purchaser, the Goods can be sent to a different destination (sale by dispatch). Unless otherwise agreed, we shall be entitled to determine the method of shipment ourselves (in particular, the forwarding company, route and packaging).

(2) The risk of accidental loss and accidental deterioration of the Goods shall be transferred to the Purchaser upon delivery at the latest. In the event of sale by dispatch, however, the risk of accidental loss and accidental deterioration of the Goods, as well as the risk of delay shall be transferred as soon as the Goods are delivered to the forwarding company, shipping company or the person or body otherwise appointed for the shipment of the Goods. If acceptance is agreed upon, this shall be decisive for the transfer of risk. Furthermore, the statutory provisions of German "Werkvertragsrecht" (German labour and transportation services law) shall apply to an agreed acceptance accordingly. Transfer or acceptance shall be deemed to be complete even if the Purchaser has delayed taking delivery.

(3) If the Purchaser delays acceptance, fails to cooperate with us or our delivery is delayed for other reasons for which the Purchaser is responsible, we shall be entitled to demand compensation for damages resulting therefrom including additional expenses (e.g. storage costs). For this, we shall charge a lump sum in the amount of 0.5% of the net price (delivery value) per calendar week, but a total of 5% of the delivery value at the most, starting with the delivery period or – in the absence of a delivery period – upon notification that the Goods are ready for dispatch. Our right to prove that we incurred damages in a higher amount and our legal claims (in particular to reimbursement for additional expenses, reasonable compensation, termination) shall remain unaffected; the lump sum is, however, to be offset against further monetary claims. The Purchaser shall be permitted to prove that we have not incurred any damages or damages that are significantly less than the above lump sum.

#### **Section 5 Prices and terms of payment**

(1) Unless otherwise agreed for individual cases, our prices valid at the time when the contract was concluded shall apply, **EXW [XXX] (ICC 2020)**, plus statutory VAT.

(2) In the event of sale by dispatch (Section 4 Para. 1) the Purchaser shall bear the transport costs ex warehouse and the costs for a transport insurance policy required by the customer where applicable. The Purchaser shall bear any customs duties, fees, taxes and other public charges.

(3) The purchasing price is due and to be paid within 10 days of the invoice being issued and the Goods being delivered or accepted with a 2% discount or within 30 days without deduction. However, within the scope of an ongoing business relationship too, we shall be entitled at any time to make a delivery, in part or in full, only on advance payment, if we declare such a reservation at the latest upon confirmation of the order.

(4) The Purchaser shall be in default upon expiration of the above payment period. During default, the purchase price shall bear interest at the applicable statutory default interest rate. We reserve the right to exercise further claims for damages caused by the default. Our claim to commercial maturity interest against merchants (Section 353 HGB – German Commercial Code) shall remain unaffected.

(5) The Purchaser shall only have offsetting and retention rights if his claim has been determined by court of law or is uncontested. In the event of defects in the delivery, the counterclaims of the Purchaser, as defined in Section 7, Para. 6, Clause 2 of these GTC in particular, shall remain unaffected.

(6) If after the conclusion of the contract it becomes apparent (e.g. by an application to open insolvency proceedings) that our claim to the purchase price is in jeopardy as a result of the Customer being insufficiently solvent, we shall be entitled to refuse to perform the service and – if applicable after setting a notice period – to withdraw from the contract in accordance with the statutory provisions (Section 321 BGB). For contracts governing the manufacture of non-fungible goods (custom productions), we may immediately declare our withdrawal from the contract; statutory provisions on the dispensability of setting a notice period shall remain unaffected.

#### **Section 6 Retention of title**

(1) Until our current and future claims resulting from the sales agreement and an ongoing business relationship (claims secured by retention of title) have been paid in full, we shall retain ownership of the Goods sold.

(2) The Goods subject to the retention of title may neither be pledged to third parties or assigned by way of security until the secured claims have been paid in full. The Purchaser must immediately inform us if an application to open insolvency proceedings has been made or if third parties seize Goods belonging to us (e.g. distraint).

(3) Should the Purchaser act in a manner contrary to the contract, in particular non-payment of the purchase price due, we shall in accordance with statutory provisions be entitled to withdraw from the contract and reclaim the Goods due to the retention of title and withdrawal. If the Purchaser does not pay the purchase price due, we may only exercise these rights if we have previously set the Purchaser a deadline to pay without success or the setting of such a deadline is not required by law.

(4) Until recalled, in accordance with (c) below, the Purchaser shall be permitted to continue to sell and/or process the Goods subject to retention of title as part of the regular course of business. In this case, the following provisions shall additionally apply.

(a) The retention of title shall extend to products produced by processing, mixing or combining our Goods at their full value, whereby we shall be considered the Manufacturer. If in the event that our Goods are be processed, mixed or combined with goods of third parties and their ownership rights persist, we shall acquire joint ownership of the product proportionally to the invoice values of the processed, mixed or combined Goods. In other respects, the same shall apply to the product produced as to Goods delivered that are subject to retention of title.

(b) The Purchaser shall hereby now assign claims against third parties resulting from the resale of the Goods or the product to us in full or in the amount of our proportion of joint ownership in accordance with the paragraph above by way of security. We shall accept this assignment. The obligations of the Purchaser specified in Para. 2 shall also apply in view of the assigned claims.

(c) The Purchaser shall remain authorised to collect the claim in addition to us. We are obliged not to collect claims as long as the Purchaser fulfils his payment obligations towards us and is sufficiently solvent and unless we do not assert retention of title by exercising a right in accordance with Para. 3. However, if this is the case, we may demand that the Purchaser should inform us of the assigned claims and their debtors, provide the information necessary for collection, issue the appropriate documentation and inform the debtors (third parties) of the assignment. Furthermore, in this case, we shall be entitled to revoke the Purchaser's permission to continue to sell and process the Goods subject to retention of title.

(d) If the realisable value of the securities exceeds our claims by more than 10%, we shall, at our discretion, release securities at the request of the Purchaser.

### **Section 7 Defect claims of the Purchaser**

(1) Unless otherwise specified below, the legal regulations shall apply to the rights of the Purchaser in the event of material defects and defects of title (including incorrect or short deliveries, as well as improper installation or incomplete installation instructions). In any event, the special statutory provisions shall remain unaffected when the Goods are finally delivered to the consumer (supplier regress in accordance with Sections 478 and 479 BGB).

(2) The basis of our liability for defects is above all the agreement reached concerning the properties of the Goods. Product descriptions (including those of the manufacturer) that were received by the Purchaser prior to making an order or that have been included in the contract in the same way as these GTC shall be considered to be an agreement on the properties of the Goods when indicated as such. Modifications to the structure and/or design that impair neither the functionality nor the value of the deliverable shall remain reserved and do not justify notices of defects.

(3) If properties have not been agreed upon, statutory provisions shall be the criterion for assessing whether a product is defective (Section 434, Para. 1, Clauses 2 and 3 BGB). We shall only be responsible for public statements if they have been made by us.

(4) Claims of the Purchaser based on the defection of goods shall require that the Purchaser has fulfilled its legal obligations to investigate and give notice of defects (Sections 377 and 381 HGB). If a defect is found during the investigation or later, we must be informed of this in writing immediately. Notification of the defect shall be considered to have been immediate if it was made within 7 days of delivery, whereby compliance with the deadline is deemed to be achieved if notification is sent in a timely manner. These obligations to investigate and give notice of defects notwithstanding, the Purchaser must give notice of obvious defects (including incorrect or short deliveries) in writing within 7 days of delivery, whereby here too compliance with the deadline is deemed to be achieved if notification is sent in a timely manner. If the Purchaser fails to investigate or give notice of defects properly according to these provisions, we can accept no liability for the unreported defects.

(5) If the delivered item is defective, we may first choose whether to carry out supplementary performance by remedying the defect (improvement) or by delivering a defect-free item (replacement). Our right to refuse supplementary performance in accordance with the statutory provisions shall remain unaffected.

(6) We shall be entitled to make the supplementary performance owed dependent on whether the Purchaser has paid the purchase price due. However, the Purchaser shall be entitled to retain part of the purchase price in proportion to the defect.

(7) The Purchaser must give us the time and opportunity required for the supplementary performance owed. In particular, the Purchaser shall return to us rejected Goods for test purposes. Should supplementary performance be carried out by means of replacement, the Purchaser must return the defective item to us in accordance with the statutory provisions. The supplementary performance shall include neither the dismantling of the defective item nor the new installation unless we were originally obliged to carry out the installation.

(8) The costs required for the purpose of testing and supplementary performance – in particular, transport costs, road costs, labour costs and material costs (not dismantling and installation costs) shall be borne by us if there is a defect. Otherwise, we may demand that the Purchaser should reimburse us for the costs incurred as a result of the unjustified demand for repair (in particular testing and transport costs) unless the Purchaser was unable to see that the Goods were not defective.

(9) In urgent cases, such as in the event of danger to operational safety or for safeguarding against disproportionate damages, the Purchaser shall have the right to remedy the defect himself and demand that we provide compensation for the costs incurred objectively for this. We must be informed immediately and if possible beforehand if the Purchaser intends to carry out such work himself. The Purchaser shall not have the right to carry out such work himself if we would be entitled to refuse corresponding supplementary performance in accordance with statutory provisions.

(10) If supplementary performance is unsuccessful or if an appropriate time limit for supplementary performance to be set by the Purchaser lapses without success or is not required by law, the Purchaser may withdraw from the sales agreement or reduce the purchase price. However, the Purchaser shall not have the right to withdraw from the contract in the event of a minor defect.

(11) The Purchaser shall also have the right to claim for compensation for damages or reimbursement of wasted expenses for defects only in accordance with Section 8; in other respects, such claims cannot be accepted.

## **Section 8 Other liability**

(1) Unless otherwise agreed in these GTC, including the following provisions, we shall be liable for the breaching of contractual and non-contractual obligations in accordance with statutory provisions.

(2) We shall be liable for compensation for damages – on whatever legal grounds – within the scope of fault-based liability if we act with wilful intent or in gross negligence. In accordance with statutory provisions, and notwithstanding a more lenient standard of liability (e.g. for diligence in our own affairs), we shall only be liable for ordinary negligence

(a) for damages resulting in injury to life, limb or health,

(b) for damages resulting in the not insubstantial breach of a material contractual obligation (an obligation that must be fulfilled for the contract to be executed correctly and which the contracting party routinely trusts and may trust to be adhered to); in this case, however, our liability shall be limited to compensation for foreseeable damages that typically occur.

(3) The limitations of liability resulting from Para. 2 shall also apply if obligations are breached by or to the benefit of persons for whom we are responsible in accordance with statutory provisions. They

shall not apply if we fraudulently conceal a defect or have accepted a guarantee for the properties of the Goods and for claims of the Purchaser in accordance with the German Product Liability Act.

(4) The Purchaser may only withdraw from or terminate the contract as a result of a breach of obligation that is not based on a defect if we are responsible for the breach of obligation. A free right of termination of the Purchaser (in particular in accordance Section 648 BGB) shall be excluded. In other respects, statutory provisions and consequences shall apply.

### **Section 9 Limitation**

(1) Section 438 Para. 1 No. 3 BGB notwithstanding, the general period of limitations for claims resulting from quality defects and defects of title shall be one year from delivery. If acceptance has been agreed, limitation shall begin upon acceptance.

(2) The above period of limitations shall also apply to contractual and non-contractual claims for compensation for damages by the Purchaser that are based on a defect in the Goods unless the application of the regular statutory limitation (Sections 195 and 199 BGB) would lead to a shorter period of limitations in the individual case. Claims for compensation of the Purchaser as defined in Section 8, Para. 2, Clause 1 and Clause 2(a) and in accordance with the German Product Liability Law shall, however, lapse exclusively in accordance with the statutory periods of limitations.

### **Section 10 Applicable law and legal venue**

(1) The law of the Federal Republic of Germany shall apply to these GTC and the contractual relationship between us and the Purchaser to the exclusion of international law; in particular, the UN Convention on Contracts for the International Sale of Goods.

(2) In the event that these General Terms and Conditions should also be formulated in a foreign language, the German version shall take precedence over the foreign-language version should there be any contradiction or doubt.

(3) If the Purchaser is a merchant within the meaning of the German Commercial Code, a corporate body under public law or a special fund under public law, the exclusive and international legal venue for all disputes resulting directly or indirectly from the contractual relationship shall be our registered office in Werther, Germany (Judicial district of the District court of Bielefeld). The same shall apply if the Purchaser is an entrepreneur within the meaning of Section 14 BGB. However, we shall in any case also be entitled to file a complaint in the place of fulfilment of the delivery obligation in accordance with these GTC or individual terms agreed in advance, or at the general legal venue of the Purchaser. Superordinate statutory provisions, in particular those regarding exclusive responsibilities, shall remain unaffected.