

## § 1 Applicability of these general terms and conditions

- 1.1 All of our deliveries, services and offers are conducted exclusively on the basis of the following general terms and conditions (hereinafter called "these Conditions"). Conflicting or deviating terms and conditions of the contractual partner shall only apply if they are explicitly accepted by a member of the management or an authorized representative. General terms and conditions of the contractual partner are non-binding even if their applicability has not been explicitly contradicted. A tacit acceptance of the general terms and conditions of the contractual partner by conclusive behavior is excluded. The valid regulations about a power of representation existing by law remain unaffected.
- 1.2 These Conditions shall also apply to future relationships. They shall apply irrespective of whether they are referred to separately in individual cases.
- 1.3 Any regulations or supplements deviating from these Conditions must be made in writing. This does not apply to regulations that are agreed with members of the management or authorized representatives or other persons authorized by us to agree deviating regulations or amendments.
- 1.4 These Conditions apply only to entrepreneurs, not to consumers.

## § 2 Inquiries and orders

- 2.1 We are entitled to request prices and other conditions for deliveries and services from the contractual partner at any time. The contractual partner shall then submit an offer which exactly complies with our enquiry with regard to all characteristics decisive for the service, in particular with regard to quantity and quality. If the offer deviates from our inquiry, the contractual partner must expressly indicate this. The submission of the offer by the contractual partner shall be free of charge for us.
- 2.2 We are entitled to accept an offer of the contractual partner within one week after receipt by us; there is no obligation to accept the offer.
- 2.3 Orders on our part with which we do not accept an offer from the contractual partner can only be accepted by the contractual partner within one week of the date of dispatch. Acceptance must be made in writing. Written communication within the meaning of these terms and conditions shall also include communication by email or fax.
- 2.4 All specifications contained in our orders for the provision of deliveries and services are binding. This applies in particular to the price, quality and quantity as well as the time and place of performance.

## § 3 Delivery modalities and transfer of risk; Retention of title

- 3.1 The contractual partner must pack and secure the items to be delivered and, if he is responsible for transport, transport them in such a way that there is no risk of loss of or damage to the items to be delivered or to the property or health of third parties during transport and that the items to be delivered can be safely unloaded at the place of destination. It must be complied with the statutory labelling obligations.
- 3.2 We shall be entitled, at our reasonable discretion, to issue instructions concerning the packaging and transport of delivery items, provided that this does not incur any costs for the contractual partner beyond those necessary for a fast and safe transport by the transport person as well as for the fast and safe acceptance and processing of the delivery by us. Transport packaging, sales packaging and outer packaging which, after use, are typically not generated as waste by private final consumers or for which system participation is not possible due to system incompatibility pursuant to No. 3 (4) sentence 3 of Annex I of the Packaging Ordinance or sec. 7 (5) of the Packaging Act, and sales packaging of products containing harmful substances shall be taken back by the contractual partner at its own expense at the place where risk passes in accordance with § 3.4 of these Conditions. Sec. 15 (2) sentence 1 of the Packaging Act shall remain unaffected.
- 3.3 Partial deliveries and excess or short deliveries may only be made with our prior written consent.
- 3.4 The risk of accidental loss or accidental deterioration of the contractual partner's deliveries or services shall only pass to us upon delivery. Sec. 447 German Civil Code does not apply.
- 3.5 A retention of title of the contractual partner is excluded.

## § 4 Performance disturbances

- 4.1 Agreed delivery dates or periods and performance dates or periods are binding. If the contractual partner does not comply with the bindingly agreed date or the bindingly agreed period, he shall be in default without a reminder. This shall not apply if the delay is due to a circumstance for which the contractual partner is not responsible.
- 4.2 If the contractual partner is in default with a service, we may – in addition to the statutory claims – demand a lump-sum compensation for our damage caused by default amounting to 1 % of the net price of the service concerned per completed calendar week, but not more than 5 % of the net price in total. We reserve the right to prove that we have incurred higher damages. The contractual partner reserves the right to prove that we have incurred no damage at all or only significantly less damage.
- 4.3 The contractual partner is obliged to inform us immediately in writing if circumstances occur or become apparent to him which are likely to jeopardise a punctual, complete and/or defect-free delivery or service. The notification must contain as comprehensive and precise information as possible on the circumstances, the extent of the risk and the foreseeable duration of any hindrance to delivery or performance. If, after due assessment by the contractual partner, the hindrance leads to the fact that he is not able to render his service at all, he must expressly point this out.
- 4.4 If the supplier does not provide his delivery or service at the agreed time, we shall be entitled to set a reasonable grace period. If the grace period expires without result, we shall be entitled to withdraw from the contract. It is not necessary to set a grace period if this is dispensable according to the law, in particular sec. 323 (2) German Civil Code. Beyond the setting of a reasonable period of grace, the contractual partner shall not be entitled to an extension of the period for the provision of his delivery or service. This shall also apply if the contractual partner is not responsible for the delay.
- 4.5 We are entitled to withdraw from the contract before the due date of the delivery or service of the contractual partner if it is obvious that the preconditions for withdrawal will occur, in particular if this results from the notifications of the contractual partner according to § 4.3 of these Conditions.
- 4.6 Any other rights to which we are entitled, in particular claims for damages due to breaches of duty by the contractual partner, shall remain unaffected.

## § 5 Standards of care and use of subcontractors

- 5.1 The contractual partner shall render his services with the diligence of a prudent businessman.
- 5.2 The use of subcontractors requires our prior consent.

## § 6 Quality of the delivery or service

- 6.1 The contractual partner guarantees that his services
- are provided in full, at the right time and in the right place,
  - have no defects as to quality and/or title,
  - comply with the statutory requirements applicable in Germany and those contained in other regulations, including all safety regulations, and comply with the current state of the art in science and technology; and
  - are provided by adequately qualified technical personnel.
- 6.2 The contractual partner must constantly check the quality of his deliveries and services. In particular, he shall check the quality of deliveries before dispatching them to us. The contractual partner shall document the results of these inspections and make them available to us upon request. The contractual partner shall keep the documentation of the quality inspections for a period of 10 years.
- 6.3 The contractual partner must mark his deliveries in such a way that they can be assigned to a production batch so that we are able to remove all delivery items originating from a batch from production in the event of defects occurring until they have been inspected.
- 6.4 The contractual partner shall notify us in due time of any changes to manufacturing processes, materials or other circumstances affecting production. In addition, he shall provide us with all information necessary to check the effects of the aforementioned changes on our production.

## § 7 Claims due to material defects

- 7.1 A delivery or service of the contractual partner is defective if it does not have the agreed quality or, in the absence of such an agreement, is not suitable for the contractually presumed use. A delivery or service of the contractual partner is in any case defective if it does not correspond to the state of the art applicable at the time of the provision of the delivery or service. A delivery or service is also defective if the contractual partner renders a delivery or service other than the one commissioned or quantitatively insufficient.
- 7.2 We shall be entitled without restriction to all statutory rights due to defective delivery as well as any other rights based on a special agreement with the contractual partner.
- 7.3 The period for giving notice of defects within the meaning of sec. 377 (1), (3) German Commercial Code is five days, beginning with delivery, or, if a defect only becomes apparent later, five days from discovery of the defect. The timely dispatch of the notice of defect is decisive for compliance with the deadline. Neither the acceptance of a delivery nor the payment of the purchase price for a delivery shall constitute approval of the relevant delivery.
- 7.4 The limitation period for claims due to material defects is 36 months. Sec. 445b (2) German Civil Code remains unaffected.

## **§ 8 Defects of title**

- 8.1 The contractual partner shall be liable for ensuring that all deliveries and services are free from defects of title, in particular from rights of third parties, which exclude their use or restrict it. The contractual partner shall not be liable for damages in this context if the contractual partner is not responsible for a defect of title.
- 8.2 If third parties assert claims against us regarding infringements of property rights and if it is therefore impossible for us to use the delivery or service provided by the contractual partner in whole or in part, the contractual partner shall be obliged to do everything in his power to exclude an infringement of property rights in the future.
- 8.3 The contractual partner shall indemnify us from all claims of third parties due to the infringement of property rights, unless he is not responsible for the infringement. This includes all costs of extrajudicial and judicial legal defence. The contractual partner is obliged to provide us with all information required for legal defence.
- 8.4 We are entitled to all statutory rights and rights based on a special agreement with the contractual partner due to defects of title without restriction.
- 8.5 The limitation period according to § 7.3 of these Conditions shall apply accordingly to defects of title.

## **§ 9 Product liability; Liability insurance**

- 9.1 Insofar as the contractual partner is responsible for product damage, he shall indemnify us against claims for damages by third parties to the extent that the cause of the product damage lies within his sphere of control and organisation and he is himself liable externally.
- 9.2 If the contractual partner is responsible for the cause of the product damage within the meaning of § 9.1 of these Conditions, the contractual partner is also obliged to reimburse any expenses resulting from or in connection with a recall action carried out by us, insofar as these expenses are necessary for the execution of the recall action; sec. 254 BGB remains unaffected. As far as possible and reasonable, we shall inform the contractual partner about the content and scope of the recall measures to be carried out and give him the opportunity to comment. Any statutory claims to which we are entitled in this connection shall remain unaffected.
- 9.3 The contractual partner undertakes to maintain adequate product liability insurance and to prove this to us upon request.

## **§ 10 Property of documents or something similar; Confidentiality**

- 10.1 All documents, drawings, models, tools or similar items which are handed over to the contractual partner for the submission of an offer or the manufacture of the delivery item or the provision of a service shall remain our property and may not be used by the contractual partner for other purposes, reproduced or made accessible to third parties unless this is necessary for the fulfilment of the contractual partner's obligation. They shall be returned to us immediately and unrequested, insofar as they are no longer required for the preparation of an offer or the provision of the delivery or service to which the contractual partner has committed himself. The same shall apply in the event of the termination of the contract. The contractual partner must treat the documents and objects mentioned as business secrets and keep them in safe custody. He shall be liable for damages arising from a breach of this obligation, unless he is not responsible for the breach of duty.
- 10.2 In addition, the contractual partner shall be obliged to treat all information, documents, records or objects as trade secrets which are expressly designated by us as "confidential" or in a similar manner as trade secrets, or which are to be treated as trade secrets as a result of the circumstances. This shall not apply if and to the extent that information is already generally known.
- 10.3 The contractual partner shall impose corresponding obligations on its employees and all third parties he uses to fulfil its obligations.

## **§ 11 Prices and terms of payment**

- 11.1 The agreed price is a fixed price. It covers all deliveries and services to be rendered by the contractual partner.
- 11.2 Unless otherwise agreed, we shall settle invoices within 14 days of delivery and receipt of invoice with 2% discount or within 60 days of delivery and receipt of invoice without deduction.
- 11.3 The contractual partner shall be obliged to state our order number exactly on all shipping documents, delivery notes and invoices; if he fails to do so, we shall not be responsible for delays in processing.
- 11.4 We shall have unrestricted rights of set-off and retention to the extent permitted by law.
- 11.5 The contractual partner shall only be entitled to set off such claims to which he is entitled, that have been legally established or are undisputed. The same applies to the assertion of a right of retention.
- 11.6 The contractual partner is not entitled to assign claims against us to third parties without our consent. Sec. 354 a HGB remains unaffected. In the event of an assignment contrary to the terms of the contract, we shall also be entitled to make payment to the contractual partner with discharging effect.

## **§ 12 Limitations of claims for damages against us**

- 12.1 We shall be liable for intentional and grossly negligent conduct of our organs and vicarious agents as well as for damages resulting from injury to life, body or health irrespective of the degree of fault.
- 12.2 Furthermore, we shall be liable for slight negligence on the part of our organs and vicarious agents in the event of impossibility of performance, delay in performance, non-compliance with a guarantee or the breach of any other material contractual obligation. In such cases, our liability shall be limited to damages typical of the contract which we could reasonably have expected at the time of conclusion of the contract.
- 12.3 Any liability on our part exceeding the liability according to § 10.1 and § 10.2 of these Conditions – for whatever legal reason – is excluded. This applies in particular to all claims based on breach of contractual obligations and to claims arising from tort, but not for claims based on culpa in contrahendo.
- 12.4 Any limitations of liability pursuant from § 12.1 to § 12.3 of these Conditions shall also apply in favour of our organs and vicarious agents.

## **§ 13 Data protection**

- 13.1 If the contractual partner provides us with personal data within the meaning of art. 4 No. 1 of the General Data Protection Regulation (GDPR), the contractual partner shall bear the legal responsibility for ensuring that the transfer to us and our use within the framework of the contractual relationship existing with the contractual partner are lawful.
- 13.2 The contractual partner shall provide us with appropriate evidence upon justified request. This applies in particular if affected persons within the meaning of art. 4 para. 1 GDPR or the data protection authority request such information and evidence from us.
- 13.3 Our data protection information is attached to these Conditions. The contractual partner shall, if necessary, familiarize the persons concerned, whose data he has transmitted to us, with the contents of the data protection information.

## **§ 14 Final provisions**

- 14.1 All legal relationships arising in connection with the conclusion, execution or termination of this contract shall be governed by the substantive law of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).
- 14.2 The place of performance for all deliveries and services of the contractual partner shall be the contractually determined place of performance. The place of performance for the fulfilment of our obligations shall be Hamburg, Germany.
- 14.3 The exclusive place of jurisdiction for all legal disputes shall be Hamburg. However, we shall be entitled, at our discretion, to also assert claims against the contractual partner at other legally opened places of jurisdiction.
- 14.4 § 14.2 and § 14.3 of these Conditions apply only to merchants, legal entities under public law and special funds under public law.
- In the event of discrepancies between the German and English version of these Conditions, the German version shall prevail.