

# General terms and conditions of purchase

Last updated: June 2021

## Section 1 Scope and form

- (1) These General Terms and Conditions of Purchase (Conditions of Purchase) apply to all business relationships with our suppliers ("Sellers"). The Conditions of Purchase apply only if the Seller is an entrepreneur as defined by Section 14 of the *Bürgerliches Gesetzbuch* (BGB – German Civil Code), a legal entity under public law or a special fund under public law. If the subject of the contract is the performance of services or provision of work or labour, the appendix titled "Supplemental regulations governing the performance of services or provision of work or labour" shall also apply. In the event of conflicts in such cases, the provisions of the appendix shall take precedence over these Conditions of Purchase.
- (2) In particular, the Conditions of Purchase apply to contracts on the purchase and/or delivery of goods ("Goods"), irrespective of whether the Seller produces the Goods itself or procures them from suppliers (Sections 433 and 650 of the BGB). Unless otherwise agreed, the Conditions of Purchase also apply to similar contracts in the future without the requirement that we incorporate them by reference in each case.
- (3) The Conditions of Purchase apply exclusively. Deviating, opposing or supplemental General Terms and Conditions of Business issued by the Seller shall become an integral part of the contract only if and to the extent that we have expressly agreed in writing to their applicability. This requirement for consent shall apply in all instances, for example, even if we accept the Seller's deliveries without reservation in the knowledge of the Seller's General Terms and Conditions of Business.
- (4) Individual arrangements made with the Seller (including side agreements, addenda and amendments) in specific cases shall take precedence over these Conditions of Purchase. Subject to proof to the contrary, the provisions of such arrangements shall be governed by a written contract and our written confirmation.
- (5) Legally relevant declarations and notifications provided by the Seller and pertaining to the contract must be issued in written or text form (e.g. letter, e-mail, telefax).
- (6) The statutory regulations apply unless they have been directly modified within or expressly excluded from these Conditions of Purchase.

## Section 2 Contract conclusion

- (1) Our order shall be deemed binding at the earliest upon placement or confirmation in text form. The Seller is required to inform us of any obvious mistakes (e.g. typographical or mathematical errors) and omissions in the order, including order documents, so that we may correct or complete them prior to acceptance. Otherwise, the contract shall not be deemed to have been concluded.
- (2) The Seller is obliged to confirm our order in writing or, in particular, to execute the order by shipping the goods without reservation within two weeks (Acceptance). Delayed Acceptance shall be deemed a new offer, the same requiring Acceptance by us.

## Section 3 Lead time and delays in delivery

- (1) The delivery lead time stipulated by us on the order is binding. The lead time shall be two weeks from the date of contract conclusion unless it is indicated on the order or otherwise agreed. The Seller shall immediately notify us in writing if it is unable to adhere to the agreed lead times for any reason whatsoever.
- (2) If the Seller fails to provide the goods or services at all or within the agreed lead times, or if it experiences delays, our rights – in particular, the right to rescind the contract and demand compensation – shall be determined by the statutory regulations. The provisions of para. 3 remain unaffected.  
If the Seller is delayed, we may – in addition to other legal rights – demand lump-sum compensation in the amount of 1% of the net price per full calendar week for our losses resulting from the delay but totalling no more than 5% of the net price of the goods delivered late. We reserve the right to prove that a higher loss has been incurred. The Seller reserves the right to prove that the loss was significantly lower or that no loss at all was incurred.

## Section 4 Performance, delivery, transfer of risk, delayed Acceptance

- (1) The Seller is not entitled to have the work or service owed by it performed by third parties (subcontractors) without our prior written consent.
- (2) Delivery shall be effected within Germany free to the buyer's address (including packaging) at the location indicated on the order. Upon our request, the Seller shall be obliged to take back the packaging at its own expense. If the destination is not indicated and not otherwise agreed, delivery shall be made to our company's headquarters in Karlstadt. The respective destination is also the place of performance for delivery and any subsequent performance (Seller's Obligation).
- (3) The risk of accidental loss of or damage to the Goods shall pass to us upon transfer at the place of performance. If acceptance testing has been agreed, it shall determine when the risk is transferred. In all other matters, the statutory regulations under work and services contract law shall apply accordingly to acceptance testing. Any delay in acceptance on our part shall be deemed equivalent to transfer or acceptance testing.
- (4) The conditions constituting a delay in acceptance shall be governed by the statutory regulations. The Seller shall also be expressly required to offer us its products or services if a specific or determinable calendar period has been agreed for an action or contribution on our part (e.g. provision of material). If we are delayed in our acceptance, the Seller

may demand compensation for its additional expenses in accordance with the statutory regulations (Section 304 BGB).

## Section 5 Prices and terms of payment

- (1) The price indicated on the order is binding.
- (2) Unless otherwise agreed in individual instances, the price shall include all Goods and services and ancillary services provided by the Seller (e.g. assembly and installation) as well as all ancillary expenses (e.g. proper packing, transport costs, to include any transport and liability insurance).
- (3) The agreed price is to be paid within 30 calendar days from the date of complete delivery and performance (including any agreed acceptance testing) as well as receipt of a proper invoice (with the order number indicated on the order). If we effect payment within 21 calendar days, the Seller shall grant us a cash discount of 3% on the net invoice amount.
- (4) We shall not owe any interest upon the due date for payment. The conditions for payment default are governed by the statutory regulations.
- (5) We are entitled to rights of set-off and retention as well as the defence of an unfulfilled contract to the extent permitted by law.
- (6) The Seller has a right of set-off or retention only if its counterclaim has been legally established or is undisputed.

## Section 6 Confidentiality and retention of title

- (1) We reserve rights of ownership and copyright to images, plans, calculations, instructions, product descriptions and other documentation. Such documents are to be used exclusively for provision of the contractual Goods or services. The documents are to be kept confidential from third parties, including during the period after the contract has ended. The obligation to maintain confidentiality shall expire only when and to the extent that the information contained in the documents provided has become generally known through actions taken by us.
- (2) The above provision shall apply mutatis mutandis to substances and materials (e.g. software, finished and semi-finished Goods) as well as to tools, templates, samples and other items that we have provided to the Seller for use in production. Such items – unless they are being used in production – are to be stored separately at the Seller's expense and insured against destruction or loss for an appropriate amount.
- (3) Any processing, mixing or combining (Further Processing) of items provided by the Seller shall be carried out for us. The same shall apply to Further Processing of the Goods delivered when carried out by us, thereby ensuring that we are considered to be the manufacturer and acquire the title to the product in accordance with the statutory regulations at the latest upon Further Processing.
- (4) Transfer of ownership of the Goods to us must take place unconditionally and without regard to payment of the price. However, in individual instances if we accept an offer from the Seller to transfer ownership made conditional upon payment of the purchase price, the Seller's reservation of title shall expire at the latest upon payment of the purchase price for the Goods delivered. In the ordinary course of business, we shall remain authorised to resell the goods prior to payment of the purchase price and to assign the resulting claim in advance (alternatively, simple reservation of title extended to resale). This excludes all other forms of retention of title, in particular extended and forwarded retention of title and retention of title expanded to include Further Processing.

## Section 7 Defective delivery

- (1) The statutory provisions shall apply to our rights in the event of material defects and defects of title of the goods (including delivery of the wrong product, delivery of the wrong number of products, improper assembly, or deficient assembly instructions, operating manual, or instructions for use) and in the event of other breaches of duty by the Seller, unless otherwise stipulated below.
- (2) In accordance with the statutory provisions, the Seller shall be liable in particular for ensuring that the Goods have the agreed quality at the time of transfer of risk to us. If no agreement has been made, the Goods shall at least be of a quality typical for their normal or intended use. Those product descriptions – in particular, those designated or referred to in our order – that are the subject matter of the respective contract or have been incorporated into the contract in the same way as these Conditions of Purchase shall be deemed to be an agreement on quality. Whether the product description originates from us, the Seller or the manufacturer shall make no difference.
- (3) Notwithstanding Section 442, para. 1, sentence 2, of the BGB, we shall be entitled to claims for defects without restriction even if the defect remained unknown to us at the time of conclusion of the contract due to gross negligence.
- (4) With respect to the administrative duty of inspection and notification of defects, the statutory regulations under Sections 377 and 381 of the *Handelsgesetzbuch* (HGB – German Commercial Code) shall apply with the following proviso: Our duty of inspection shall be limited to defects apparent during our incoming goods inspection through external examination, including of the delivery documents (e.g. transport damage, wrong product or incorrect amount). If acceptance testing has been agreed, inspection is not required. In all other instances, it shall depend on the extent to which an inspection is feasible in the ordinary course of business, taking into account the circumstances of the individual case. Our obligation to give notice of defects discovered later remains unaffected. Irrespective of our duty to inspect, complaints (notification of defects) issued

by us shall be deemed to be prompt and timely if sent within five working days of discovery or, in the case of obvious defects, of the date of delivery.

- (5) Subsequent performance shall also include the dismantling of the defective goods and their reinstallation, provided that the goods have been installed in or attached to another object in accordance with their nature and intended use. Our legal entitlement to reimbursement of associated expenses shall remain unaffected. The Seller shall bear the expenses necessary for the purpose of inspection and subsequent performance even if it turns out that there was actually no defect. Our liability for damages in the event of unjustified requests for the rectification of defects shall remain unaffected. However, we shall be liable only if we have recognised or grossly negligently failed to recognise that there was no defect.
- (6) Notwithstanding our statutory rights and the provisions in para. 5, the following shall apply: If the Seller does not fulfil his obligation of subsequent performance – at our discretion either by remedying the defect (repair) or by delivering a defect-free item (replacement delivery) – within a reasonable period of time set by us, we may remedy the defect ourselves and demand reimbursement of the expenses required to do so or a corresponding advance payment from the Seller. If subsequent performance by the Seller has failed or is unreasonable for us (e.g. due to particular urgency, endangerment of operational safety or imminent occurrence of disproportionate damage), no deadline need be set. We shall inform the Seller of such circumstances without delay, in advance if possible.
- (7) Otherwise, in the event of a material defect or defect in title, we shall be entitled to reduce the purchase price or to rescind the contract in accordance with statutory regulations. Furthermore, the statutory regulations entitle us to compensation for losses and expenses.

#### Section 8 Recourse against the supplier

- (1) In addition to claims for defects, we are entitled without restriction to our legally determined rights of recourse within a supply chain (supplier recourse pursuant to Sections 445a, 445b and 478 BGB). In particular, we are entitled to demand from the Seller exactly the type of subsequent performance (repair or replacement) that we owe to our customer in the individual case. Our legal right of choice (Section 439, para. 1, BGB) is not limited thereby.
- (2) Our rights of recourse against the supplier shall also apply if we or another company have processed the defective Goods further – for instance, by installing them in a different product.

#### Section 9 Producer liability

- (1) If the Seller is responsible for product damage, it shall indemnify us from third-party claims to the extent that the cause lies within its sphere of control and organisation and the Seller is itself liable toward third parties.
- (2) Within the scope of its obligation to indemnify us, the Seller shall reimburse us for expenses pursuant to Sections 683 and 670 of the BGB that we incur from or in connection with a third-party claim, including recall actions carried out by us. We shall inform the Seller – as far as possible and reasonable – about the scope and extent of any recalls and give him the opportunity to comment. Further legal rights shall remain unaffected.
- (3) The Seller shall take out and maintain product liability insurance with an appropriate amount covered (at least EUR 5 million per instance of personal injury or property damage unless otherwise agreed).

#### Section 10 Limitation period

- (1) The rights of the contracting parties with respect to each other shall expire in accordance with the statutory provisions, unless otherwise provided for below.
- (2) Notwithstanding Section 438, para. 1, no. 3, of the BGB, the general limitation period for claims for defects is 3 years from the transfer of risk. If acceptance testing has been agreed, the limitation period shall commence upon acceptance. The three-year period of limitation shall apply accordingly to claims arising from defects of title, but the statutory period of limitation for third-party claims for surrender in rem (Section 438, para. 1, no. 1, BGB) shall remain unaffected. Moreover, claims arising from defects of title shall not become statute barred under any circumstances as long as the third party can still assert the right against us – in particular, due to the absence of a limitation period.
- (3) The limitation periods under the law on sales, including the above extension, shall apply – to the extent permitted by law – to all contractual claims for defects. If we also have the right to file non-contractual claims for damages due to a defect, the regular statutory limitation period (Sections 195 and 199 of the BGB) shall apply, unless the application of the limitation periods under the law on sales provide for a longer limitation period in individual cases.

#### Section 11 Choice of law and legal venue

- (1) These Conditions of Purchase and the contractual relationship between us and the Seller are governed by the law of the Federal Republic of Germany. The applicability of international private law and the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.
- (2) The exclusive place of jurisdiction for all legal disputes arising directly or indirectly from the contract relationship is Würzburg, Germany, or, at our discretion, the place of performance for the delivery obligation in accordance with these Conditions of Purchase or by prior, individual arrangement or the general place of jurisdiction for the Seller. Statutory regulations with priority, in particular those relating to exclusive jurisdiction, remain unaffected.

Düker GmbH