

GENERAL TERMS AND CONDITIONS

1. General, scope

- 1.1 These General Terms and Conditions shall apply to all our business relations with merchants (Section 14 of the German Civil Code (BGB)), legal persons under public law or a special fund under public law.
- 1.2 These General Terms and Conditions shall also apply to agreements on the sale and supply of movable property (hereinafter "Goods"), irrespective of whether the vendor manufactures said Goods or purchases them from its suppliers. They shall also serve as framework provisions for future agreements on the sale and supply of movable property with the same purchaser, without us having to point out their applicability to the purchaser in each individual case.
- 1.3 Only the Terms and Conditions of Sale shall apply. Differing, contrary or supplementary general terms and conditions of the purchaser shall only apply to the extent we have expressly consented to their applicability in writing. This consent requirement shall apply in any case, i.e. including in those where we are aware of the purchaser's general terms and conditions and make delivery without expressly objecting to them.
- 1.4 Individual agreements made on a case-by-case basis shall take precedence over these present General Terms and Conditions. The contents of such individual agreements shall be determined by a written agreement or our written confirmation. Legally relevant statements and disclosures which must be made to us by the purchaser after the conclusion of a contract shall only be effective if they are made in writing (i.e. setting of deadlines, payment reminders, declaration of rescission).

2. Conclusion of a contract

- 2.1 Our offers are non-binding. A contract shall only be concluded upon us accepting an order placed by the purchaser. This shall also apply if we have provided the purchaser with technical documentation (i.e. drawings, plans, calculations, references to DIN standards) and other product descriptions or documents, including in electronic format, in which we reserve ownership and/or copyrights.
- 2.2 Industry-typical deviations in our acceptance (i.e. by way of order confirmation) of the purchaser's order shall be reserved and shall not affect the conclusion of a contract.
- 2.3 The purchaser's order for the goods shall represent a binding offer to enter into a contract. If nothing to the contrary is specified in the order, we shall be entitled to accept such an offer to enter into a contract within two weeks of receipt.
- 2.4 We may declare our acceptance in writing (i.e. by way of an order confirmation) or by delivering the goods to the purchaser.

3. Delivery terms

- 3.1 The delivery date shall be agreed on a case-by-case basis or specified by us at the time of accepting an order.
- 3.2 If we fail to adhere to delivery dates for reasons for which we are not responsible (i.e. non-availability of a contractual performance), we shall immediately notify the purchaser accordingly and set a new delivery date, which has to be reasonable in consideration of the circumstances. We shall be entitled to rescind the contract or parts thereof if the contractual performance also remains unavailable by the new delivery date. We shall in this case immediately refund any consideration paid. Our statutory rights, i.e. an exclusion of our obligation to perform, as well as the purchaser's rights under these General Terms and Conditions shall remain unaffected.
- 3.3 Non-availability of a contractual performance in this sense shall include delayed deliveries by our own supplier if we have entered into a congruent hedging transaction. Our statutory rights pertaining to rescission and termination as well as the statutory provisions relating to the performance of the contract in the case of an excluded obligation to perform shall remain unaffected.
- 3.4 We reserve the right to make partial delivery if we deem that such action will facilitate a swift performance of the contract and such partial delivery is not exceptionally unreasonable for the purchaser. Additional expenses incurred in making partial delivery shall not be invoiced to the purchaser.
- 3.5 The occurrence of a default in delivery on our part shall be determined by the statutory regulations. The purchaser shall always be required to submit a written payment reminder notice.

4. Delivery, passing of risk, acceptance, default in acceptance

- 4.1 Deliveries shall be ex our place of business, which is also the place of performance. The goods may be shipped to another destination upon request by and at the cost of the purchaser (mail order). Unless agreed otherwise, we may determine the type of shipping (in particular, the shipping company, shipping route and packaging) at our sole discretion.
- 4.2 The risk of accidental perishing or degradation of the goods shall pass to the purchaser no later than at the time of the goods being surrendered. In the case of mail orders, the risk of accidental perishing or deterioration as well as the risk of delayed delivery shall pass at the time of surrendering the goods to the shipping company, carrier or any other person or institution engaged for performing the shipment. The risk shall also pass at the time of formal acceptance, provided the parties have agreed on such acceptance. The statutory provisions pertaining to contracts for works shall apply otherwise where an acceptance has been agreed between the parties. The purchaser's default in acceptance shall be deemed to replace acceptance or handover.
- 4.3 In the event the purchaser is in default of acceptance, fails to act according to its duty of cooperation or if our delivery is delayed for reasons, for which the purchaser is responsible, we shall be entitled to claim compensation for any resultant damages and additional expenses incurred (i.e. storage expenses).

5. Prices, payment terms

- 5.1 The purchase price shall fall due for payment within 14 days from the date of the invoice, and without deduction of discount. The purchaser shall be in default if payment has not been made by the due date. Any amounts in arrears shall bear interest at the applicable statutory interest rate for payment default. Any further rights shall be expressly reserved.
- 5.2 The purchaser shall only be entitled to offsetting or retention to the extent the respective counterclaim has been established in a non-appealable ruling, acknowledged or if it has not been established in a non-appealable ruling but is ready for decision. This shall not apply to contractual claims, provided such claims stem from the same contractual relationship (i.e. demand for payment of purchase price and warranty rights from the same contract)
- 5.3 The purchaser shall only have a right of retention if the counterclaim is based on the same contractual relationship.
- 5.4 If the claim for payment is at risk due to the purchaser's inability to perform (i.e. application to commence insolvency proceedings), we shall be entitled to rescind the contract pursuant to the statutory provisions on refused performances by giving notice as required (Section 321 BGB) We may rescind the contract with immediate effect in the case of custom-made goods. The statutory provisions pertaining to the dispensability of imposing a deadline shall remain unaffected.

6. Retention of title

- 6.1 We shall retain ownership title in the goods sold until full payment of all our current and future claims from the purchase agreement and the ongoing business relationship (secured claims) has been received.
- 6.2 Goods in which we have retained title must not be pledged or assigned as collateral to third parties prior to full payment of the secured claims. In the event a third party asserts claims against any goods in which we have retained title, the purchaser shall immediately notify us in writing and furnish us with all documents required for the enforcement of our rights.
- 6.3 In the event that the purchaser infringes against any provisions of this agreement, in particular in the case of the purchaser defaulting on payment of the purchase price due, we shall be entitled to rescind from the contract or request the goods to be surrendered pursuant to the statutory provisions. Such a request for the goods to be surrendered shall not be construed as a declaration of rescission. Rather, we shall in this case only be entitled to request the goods to be surrendered and reserve the right to rescind from the contract at a later time. In the event of a payment default, we shall only assert the aforementioned rights following the unsuccessful expiry of a final and reasonable deadline to make payment or if the imposition of such final and reasonable deadline is dispensable under law.
- 6.4 The purchaser shall be permitted to sell or process the goods in which we have retained title as part of its ordinary course of business.
- 6.5 The retention of title shall extend to goods created by way of processing, mixing or combining existing products. In the event third-party property rights remain in force, we shall acquire joint ownership in the proportion of the values of the goods. The goods created in such manner shall also be subject to retention of title.
- 6.6 The purchaser shall assign all claims or claims representing our joint ownership proportion that arise from reselling such goods to us as collateral at the time of entering into the contract. We shall expressly accept said assignment. The purchaser's obligations stipulated in paragraph 2.) shall also apply to the assigned claims. In addition to ourselves, the purchaser shall also be authorised to collect such (a) claim(s).
- 6.7 In the event that the value of the collateral exceeds the total amount of our claims by more than 10%, we shall release such excess collateral of our choosing to match the 10% threshold upon being requested to do so by the purchaser.

7. Claims for defects by the purchaser

- 7.1 Our liability for defective quality or title (including for wrong and short delivery) shall be governed by the statutory provisions, unless provided for otherwise in the following. The statutory provisions pertaining to recourse against suppliers shall remain unaffected.
- 7.2 Only product descriptions that are expressly specified in the individual contract shall be considered agreed characteristics. In addition to the statutory provisions, the goods shall also be deemed free from quality defects if they possess the characteristics that the purchaser was entitled to expect on the basis of the product description supplied by us. We shall accept no liability for any statements made by third parties (i. e. advertising statements).
- 7.3 Any claim for defects by the purchaser shall subject to the purchaser having met its statutory obligations for inspecting the goods and notifying us of any defects. The purchaser shall allow us the time necessary for assessing the claimed defect and enable us to do so by surrendering the goods to us.
- 7.4 If the goods are found to be defective, we shall remedy such defects (subsequent improvement) or deliver an item that is free from defects (substitute delivery) at our discretion. Our statutory right of refusal shall remain unaffected.
- 7.5 If the subsequent performance fails or a deadline imposed by the purchaser for subsequent performance expires without the issue being resolved, or without the lapsing of such deadline if its imposition is disposable pursuant to statutory provisions, the purchaser may rescind from the contract or reduce the purchase price. The purchaser may not rescind the contract for insignificant defects.
- 7.6 The purchaser shall only be entitled to damages or reimbursement of futile expenses according to the following provisions.
- 7.7 We shall only be held liable for damages, regardless of the legal grounds, for wilful intent or grossly negligent conduct by either ourselves or our vicarious agents. However, we shall also be liable for slight negligence in the case of
 - a) damages resulting from injury to life, limb or health.
 - b) damages resulting from the breach of a material contractual obligation. However, our liability in these cases shall be limited to the typical and foreseeable damages.
- 7.8 The aforementioned limitations of liability shall not apply if we are found to have fraudulently concealed a defect or if we have assumed a guarantee. The same shall apply accordingly to the purchaser's claims pursuant to the Product Liability Act.
- 7.9 Outside of the warranty, the purchaser shall only be entitled to terminate or rescind a contract for infringements of contractual obligations for which we are responsible. The parties agree that contracts may exclusively be terminated for good cause. A notice of termination or rescission must be explained in writing. The statutory conditions and legal consequences shall also apply.

8. Non-assignment clause

- 8.1 The purchaser may only assign its claims to third parties with our express consent.

9. Applicable law, place of jurisdiction

- 9.1 This contract and all legal relations between the parties shall be governed by the law of the Federal Republic of Germany under exclusion of the UN Sales Convention (CISG). Prerequisites and effects of the retention of title shall be governed by the law at the place where the goods are stored.
- 9.2 The contractual language shall be German.
- 9.3 If the purchaser is a merchant, legal person under public law or a special fund under public law, the place of performance for both contractual parties shall be Ahaus.
- 9.4 If the purchaser is a merchant, legal person under public law or a special fund under public law, the exclusive place of jurisdiction for all disputes arising from this contract shall be Ahaus. The same shall apply if the purchaser does not have general jurisdiction in Germany or its domicile or habitual place of residence is unknown at the time of commencing legal action.

Göcke GmbH & Co. KG does not participate in consumer arbitration proceedings under the Consumer Dispute Settlement Act.

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