
§ 1 Scope of application, form

- (1) These General Terms and Conditions of Purchase (“AEB”) shall apply to all business relationships with our business partners and suppliers as seller (“Seller”). The General Terms and Conditions of Purchase shall only apply if the Seller is an entrepreneur (section 14 German Commercial Code (BGB)), a legal entity or a special estate under public law.
- (2) The General Terms and Conditions of Purchase shall especially apply to contracts for the sale and/or delivery of moveable items (“Goods”), irrespective of whether the Seller manufactures the Goods himself or procures these from suppliers (sections 433, 650 BGB). Unless agreed otherwise, the General Terms and Conditions of Purchase as amended at the time we place our order shall apply as framework agreement, but always in the version as last communicated to the Seller in text form; they shall also apply to similar future contracts without us having to refer to these again in each individual instance.
- (3) These General Terms and Conditions of Purchase shall apply exclusively. Any deviating, contrary or supplementary general terms and conditions of the Seller shall only and insofar become part of the contract as we have expressly agreed to any such in writing or in text form. This consent shall be required in any case, for example also if we accept a delivery from the Seller without reservation knowing of the T&Cs of the Seller.
- (4) Individual agreements concluded with the Seller on a case-by-case basis (including additional agreements, supplements, and amendments) shall always take precedence over these General Terms and Conditions of Purchase. The content of any such shall, without prejudice to proof to the contrary, depend on a written or textual contract or our written or textual confirmation.
- (5) Legal declarations and notifications of the Seller regarding the contract (e.g. setting time limits, warnings, withdrawal) shall be made in written or textual form. Formal requirements set out by law and further proof, especially in case of doubts concerning the legitimisation of the person making the declaration, shall remain unaffected.
- (6) References to the application of legal provisions are made for clarification purposes only. This means that legal provision shall also apply unless these are modified or expressly excluded in these General Terms and Conditions of Purchase.

§ 2 Contract conclusion

- (1) Our order shall not become binding until it is submitted or confirmed in writing or text form at the earliest. The Seller shall point out any obvious errors (e.g. orthographical and calculation errors) and incomplete information in the order, including the order documents, so that we can correct and/or complete these before the order is accepted; otherwise, the contract shall not be deemed concluded.
- (2) The Seller is required to confirm our order in writing or in text form within a time limit of 14 days or to complete it without reservation, especially also by dispatching the Goods (acceptance). Any delayed acceptance shall be considered to be a new offer which shall require acceptance by us.

§ 3 Delivery period and delay of delivery

- (1) The delivery period we state in the order shall be binding. If the delivery period is not set out in the order and was not otherwise agreed, it shall be 14 days after conclusion of the contract. The Seller shall be obliged to notify us immediately in writing or in text form if he is likely to be unable to comply with agreed delivery periods, irrespective of the reasons.
- (2) If the Seller does not perform or fails to perform during the agreed delivery period or if he delays performance, our rights – especially to withdrawal and compensation – shall be governed by the legal provisions. The provisions of clause 3 shall remain unaffected.
- (3) If the Seller delays performance, we may – in addition to further legal claims – demand a fixed-rate compensation for the damage incurred by us of 1 % of the net price per complete calendar week, but no more than 5 % of the net price of the Goods that were delivered too late. We reserve the right to prove that we incurred a higher damage. The Seller shall remain entitled to prove that we did not incur any or an only much lower damage.

§ 4 Performance, delivery, transfer of risk, delayed acceptance

- (1) Without our prior written or textual consent, the Seller shall not have the right to have the performance he owes provided by third parties (e.g. subcontractors). The Seller shall bear the procurement risk for his services, unless agreed otherwise on a case-by-case basis (e.g. limitation to stock levels).
- (2) Deliveries within Germany shall be made “free domicile” to the location specified in the order. If the destination is not specified, the delivery shall be made to our place of business in Schwelm. The respective destination shall also be the place of performance for the delivery and any subsequent performance (debt to be discharged at place of performance, (Bringschuld)).
- (3) The delivery shall be accompanied by the delivery note, including date (issuance and dispatch), content of the delivery (article number and quantity) as well as our order number, including the date. If the delivery note is missing or incomplete, we shall not be held responsible for any resulting delays in processing and payment. We shall be sent a dispatch notice with identical content, separate from the delivery note.
- (4) The risk of accidental loss and accidental deterioration of the item shall be transferred to us upon handover at the destination. If formal acceptance was agreed, formal acceptance shall be decisive for the transfer of risk. Apart from the above, the legal provisions applicable to formal acceptance under the law governing contracts for work shall apply mutatis mutandis. Delay of acceptance on our part shall be equivalent to handover or acceptance.
- (5) Legal provisions shall govern the occurrence of us delaying acceptance. In deviation from the legal provisions, however, the Seller shall also expressly offer his services to us if a determined or determinable calendar time was agreed for any action or cooperation on our part (e.g. provision of material). If we delay acceptance, the Seller shall be able to demand compensation for additional costs in accordance with legal provisions (section 304 BGB). If the contract was concluded for a specific item that the Seller has to manufacture (customised manufacturing), the Seller shall only be entitled to further rights if we have undertaken to cooperate and if we are responsible for non-cooperation.

§ 5 Prices and payment conditions

- (1) The price stated in the order shall be binding. All prices are given including value added tax at the statutory rate unless it is listed separately.
- (2) Unless agreed otherwise on a case-by-case basis, the price shall include all deliveries and ancillary services of the Seller (e.g. assembly, installation) as well as all additional costs (e.g. proper packaging, transport costs including any transport and liability insurance).
- (3) The agreed price shall be payable within 30 calendar days of complete delivery and performance (including any formal acceptance that may have been agreed) as well as after receipt of an invoice in due form. If we make the payment within 14 calendar days, the Seller shall grant us a discount of 3 % on the net invoice amount. In case of bank transfers, the payment shall be deemed to have been made in time if our bank transfer order was received by our bank before expiry of the payment deadline; we shall not be held responsible for delays caused by the banks involved in the payment proceedings.
- (4) We shall not owe interest on delayed payments. Delayed payments shall be governed by the legal provisions.
- (5) We shall be entitled to the statutory rights regarding set-off and retention as well as the right to suspend performance until the other party performs. In particular, we shall have the right to retain any payments that are due for as long as we are entitled to claims against the Seller under incomplete or defective deliveries.
- (6) The Seller shall only be entitled to offsetting or retention based on legally determined or undisputed claims.

§ 6 Confidentiality and reservation of title

- (1) We reserve ownership rights and copyright to images, plans, drawings, calculations, instructions for execution, product descriptions, and other documents. Such documents shall only be used for the contractual performance and shall be returned to us after the contract was completed. The documents shall be treated as confidential in dealings with third parties, also after the contract was completed. This obligation to secrecy shall only expire once and insofar as the knowledge contained in the documents has become public knowledge.
- (2) The above provision shall apply mutatis mutandis to matters and materials (e.g. software, finished and semi-finished products) as well as to tools, templates, samples, and other items that we provide to the Seller for manufacturing purposes. Such items – if not processed – shall be stored separately at the cost of the Seller and shall be sufficiently insured against destruction and loss.
- (3) Any processing, mixing or combination (processing) of the provided items by the Seller is done on our behalf. The same shall apply to the processing of the provided Goods by us, meaning that we shall be deemed to be the manufacturer and that we acquire ownership of the product in accordance with legal provisions by no later than upon processing.

§ 7 Defective delivery

- (1) Our rights in case of material defects and defects of titles of the Goods (including incorrect delivery and short delivery, improper assembly, incorrect assembly or operating instructions or manuals) and in case of other violations of duty on the part of the Seller shall be governed by legal provisions, unless set out otherwise below.
- (2) According to legal provisions, the Seller shall especially be liable for the Goods having the agreed characteristics when handed over to us. Considered an agreement on the characteristics shall always be those product descriptions that – especially in our order or by reference to our order – have become a part of the contract in question or which were included in the contract in the same manner as these General Terms and Conditions of Purchase. It shall make no matter in this regard if the product description was prepared by us, the Seller or the manufacturer.
- (3) In deviation from section 442 clause 1 second sentence BGB, we shall also be entitled to unrestricted claims for defects if the defect remained unknown to us due to gross negligence at the time the contract was concluded.
- (4) Commercial inspection and defect notification obligations shall be governed by the legal provisions (sections 377, 381 German Commercial Code (HGB)), subject to the following proviso: Our inspection obligation shall be restricted to defects that were obvious and determined during an external inspection as part of incoming goods control, including an inspection of the delivery note (e.g. transport damage, incorrect delivery, short delivery) or during our quality control by randomised sampling. If formal acceptance was agreed, no inspection obligation shall apply. Apart from the above, the fact as to how feasible an inspection was under the circumstances in each case shall be decisive. Our obligation to report defects in case of defects that were not determined until a later point shall remain unaffected. Without prejudice to our inspection obligation, our complaint (notification of a defect) shall be deemed to have been made without undue delay and in time if it is made in writing or in text form within 5 working days of discovering the defect, and/or in case of an obvious defect, within 5 working days of delivery.
- (5) Subsequent performance shall also include the removal of the defective Goods and the re-installation, provided that the Goods were installed in or attached to another item in accordance with their intended use; our legal claim to compensation for any expenses we incur shall remain unaffected. The expenses required for testing and subsequent performance shall be borne by the Seller, also if it is established that there was, in fact, no defect. Our liability to pay damages in case of unjustified demands to remove defects shall remain unaffected; but we shall only accept liability in this case insofar as we had determined that no defect was present or failed to determine this through gross negligence.
- (6) Without prejudice to our legal rights and the regulations in clause 5, the following shall apply: If the Seller does not comply with his obligation to provide a subsequent performance – at our choice by removal of the defect (subsequent improvement) or delivery of a defect-free item (replacement delivery) – within a reasonable time limit set by us, we shall have the right to remove the defect ourselves and to demand the Seller to reimburse any expenses incurred as a result and/or an appropriate advance payment. If subsequent performance by the Seller was unsuccessful or is unreasonable for us (e.g. due to special urgency, risk to operational safety

or imminent danger of disproportionate damage), setting of a time limit shall not be required; we shall inform the Seller immediately, if possible in advance, of such circumstances.

- (7) Apart from the above, we shall be entitled to withdraw from the contract or to reduce the purchase price in accordance with legal provisions in case of material defects or defects of title. Furthermore, we shall be entitled to compensation for any damage and expenses we incur in accordance with legal provisions.

§ 8 Supplier's redress

- (1) We shall be entitled to unrestricted redress within a supply chain as provided for by law (supplier's redress pursuant to sections 445a, 445b, 478 BGB) in addition to claims for defects. In particular, we shall have the right to demand specifically that form of subsequent performance (subsequent improvement or replacement delivery) from the Seller that we owe to our customers in each individual case. This shall not limit our legal right to choose (section 439 clause 1 BGB).
- (2) Before we recognise or meet any claim for defects asserted by our customer (including compensation of expenses pursuant to sections 445a clause 1, 439 clause 2 and 3 BGB), we shall inform the Seller and request a written or textual statement, having provided a short summary of the situation. If no substantiated statement is provided within an appropriate time limit and if no amicable solution can be found, the claim for defect that is recognised by us shall be deemed owed to our customer. The Seller shall be obliged to provide proof to the contrary in this case.
- (3) Our claims under supplier's redress shall also apply if the defective Goods were processed by us or another entrepreneur, e.g. by incorporation into another product.

§ 9 Manufacturer liability

- (1) If the Seller is responsible for a product defect, he shall indemnify and hold us harmless in regard to third-party claims insofar as the cause is located in his sphere of influence and organisation and if he is liable himself in relationships with third parties.
- (2) As part of his indemnification obligation, the Seller shall reimburse expenses pursuant to sections 683, 670 BGB that are incurred as a result of or in connection with being held liable by third parties, including any recall campaigns on our part. We shall inform the Seller – where possible and reasonable – of the content and scope of the recall measures and we shall give him the opportunity to make a statement. Further legal claims shall remain unaffected.
- (3) The Seller shall take out and maintain product liability insurance with a fixed insured sum of at least EUR 10 million per personal injury/material damage, and he shall present the insurance certificate to us for inspection at our request.

§ 10 Statute of limitations

- (1) Mutual claims shall become time-barred in accordance with legal provisions, unless agreed otherwise below.
- (2) In deviation from section 438 clause 1 no. 3 BGB, the general statute of limitations for claims for defects shall be 3 years after transfer of risk. If formal acceptance was agreed, the limitation period shall commence upon formal acceptance. The limitation period of 3 years shall apply mutatis mutandis to claims based on defects of title, with the statutory statute of limitations for in rem return claims of third parties remaining unaffected (section 438 clause 1 no. 1 BGB); apart from the above, claims based on defects of title shall not become time-barred for as long as the third party may exercise the right towards us, especially if that right is not subject to a limitation period.
- (3) The above statutes of limitations under sale of goods law including the above extension – to the extent provided for by law – shall apply to all contractual claims for defects. If we are also entitled to extra-contractual damage claims, these shall be subject to standard limitation periods (sections 195, 199 BGB), unless the application of sale of goods law results in a longer limitation period on a case-by-case basis.

§ 11 Choice of law and place of jurisdiction

- (1) These General Terms and Conditions for Purchase and the contractual relationship between us and the Seller shall be governed by the laws of the Federal Republic of Germany under exclusion of international uniform law, especially the CISG provisions.
- (2) If the Seller is an entrepreneur in terms of the German Commercial Code, a legal entity or special estate under public law, the exclusive – also international – place of jurisdiction for any and all disputes resulting directly or indirectly from the contractual relationship shall be our place of business in Schwelm. The same shall apply if the Seller is an entrepreneur in terms of section 14 BGB. We shall, however, in any case remain entitled to bring action at the place of performance for the delivery obligation as per these General Terms and Conditions for Purchase and/or any overriding individual agreement, or at the general place of jurisdiction of the Seller. Any overriding legal provisions, especially any such regarding exclusive competences, shall remain unaffected.
- (3) If the contract or these General Terms and Conditions of Purchase contain regulatory gaps, those legally effective provisions shall be deemed agreed to fill such gaps that the parties to the agreement would have agreed on in consideration of the economic objectives of the contract and the purpose of these General Terms and Conditions of Purchase had they been aware of such regulatory gaps.