

General Conditions of Business and Delivery

of ASB Grünland Helmut Aurenz GmbH (Version: 01 September 2012)



§ 1 General, Scope

(1) These General Conditions of Business and Delivery (GC) apply to all business relations with our customers and suppliers (hereinafter "Partners"). The GC apply only if the Seller is a company (§ 14 BGB – German Civil Code), a legal person under public law or a special fund under public law.

(2) The GC apply in particular to contracts for the sale and / or delivery of the goods (hereinafter also referred to as "goods"), regardless of whether we make the goods ourselves or purchase them from suppliers (§ 433, § 651 BGB). The GC apply in their current version as a Master Agreement to future contracts for the purchase, sale and / or delivery of the goods with the same business Partner, without us having to refer to it again in each individual case; whereby in the event of any changes to our GCP we will inform the seller thereof immediately.

(3) Our GC apply exclusively. Differing, conflicting or additional terms and conditions of the Partner shall only become an integral part of the contract, if and inasmuch as we have expressly consented thereto in writing. This requirement applies in all cases, for example, even if we unconditionally carry out deliveries to the Partner with knowledge of the general conditions of the latter.

(4) Individual agreements reached with the Partner in a particular case (including collateral agreements, supplements and amendments) shall always take precedence over these GC. The content of such agreements are governed by either a written contract or by our written confirmation.

(5) All relevant statements and advertisements, which under the contract must be supplied to us by the Partner (e.g. deadlines, notifications of defects, declaration of withdrawal or reduction) must be in written form.

(6) References to the application of statutory provisions serve clarification purposes only. Even without such clarification, statutory provisions therefore apply, unless directly modified or expressly excluded in these GC.

§ 2 Conclusion of Contract, Scope

(1) Our offers are subject to change and non-binding. This also applies if we have supplied the Partner with catalogues, technical documentation (e.g. drawings, plans, calculations, references to DIN standards), other product descriptions or documents - including in electronic form - in respect of which we have reserved title and copyright.

We will hold to the prices contained in our offers for 30 days from the date thereof. The definitive prices are those specified in the order confirmation, in Euros plus the respective statutory VAT. Additional deliveries and services are charged separately. Each party is entitled to request an adjustment of the contract price if any significant changes to labour, materials or energy costs occur.

(2) An order for the goods placed by the Partner is deemed to be a binding contract offer. Unless otherwise stated in the order, we are entitled to accept this offer within two weeks of its receipt by us.

(3) Acceptance may either be declared in writing (e.g. by confirmation) or by delivering the goods to the Partner.

(4) The Partner is required in the event of withdrawal, order cancellation or reduction in the contract price to pay us the cost thereof plus a flat fee of 5% of costs for our administrative overheads caused by our ordering of raw materials, etc., for example. We reserve the right to prove higher administrative costs. The Partner reserves the right to prove a lower cost rate for flat fee administrative costs.

(5) Where a Master Agreement exists between us and our Partner, we are entitled to order the customer-specific raw materials using the first batch of the Master Agreement for the entire projected delivery of the Master Agreement.

If no further batch / individual orders are available, the cost of raw materials shall be remunerated in accordance with the calculations in Paragraph (4).

§ 3 Delivery time and delivery delay

(1) The delivery time will be arranged individually or by us at the time of order acceptance. Where this is not the case, delivery time is approximately 6 - 8 weeks from contract conclusion. Even if a specific calendar delivery time is agreed, there is no fixed trade transaction as defined in § 376 Paragraph 1 HGB (German Commercial Code). This requires additional agreement of the parties about the fact that, for example, in the cases of seasonal goods or promotional campaigns, the contract may be terminated without notice for failure to meet the delivery deadline and, if we are at fault, compensation may be demanded for non-performance.

(2) If we are unable to keep binding delivery deadlines for reasons beyond our control, (non-availability of contractual service), we will inform the Partners of this immediately and will simultaneously inform them of the expected new delivery date. If the contractual service is not available even within the new delivery period, we are entitled to withdraw from all or part of the contract; whereby we will refund immediately any payment already made by the Partner. For this purpose, non-availability of the contractual service, is deemed to be in particular non-timely delivery by our supplier, if we have completed a congruent covering transaction e.g. concerning raw materials, and also acts of God. Our statutory rescission and termination rights and the legal provisions regarding processing of the contract in the eventuality of exclusion of liability (e.g., impossibility or unreasonableness of contractual performance and / or subsequent performance) remain unaffected. The rescission (withdrawal) and termination rights of the Partner under § 8 of these GC also remain unaffected.

(3) The occurrence of delayed delivery shall be governed by the relevant statutory provisions. In any case, however, a formal reminder from the Partners is required. If we are in default of delivery, the Partner may demand flat rate compensation for the loss caused to it by delay. For each complete week of delay, fixed-fee compensation amounts to 0.5% of net price (delivery value), up to a total of a maximum of 5% of the contract value of the delayed goods. We reserve the right to prove that the Partner has incurred either no loss or a loss smaller than the above flat rate.

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

(1) Delivery is ex stock held at the place of performance. At the request and expense of the Partner, the goods will be shipped to another destination (dispatch sale). Unless otherwise agreed, we are entitled to decide ourselves on the type of shipment required (in particular transport company, shipping, packaging).

(4) The risk of accidental loss and accidental deterioration of the goods shall pass to us at the latest at the time of handover to the Partner. However, in the case of mail order purchases, the risk of accidental loss and accidental deterioration of the goods and the risk of delay passes at handover of the goods to the forwarder, carrier or other person or organisation responsible for the shipping. Once acceptance of goods is agreed, this is definitive for the transfer of risk. Furthermore, in the case of agreed acceptance of goods, the relevant statutory provisions in force on the day of the contract of works apply accordingly. Even if the Partner is in default of acceptance, this shall not affect handover or acceptance.

(3) If the Partner is in default of acceptance, it fails to carry out a cooperative action or if delivery is delayed for reasons for which the Partner is not responsible, we are entitled to demand compensation for the resulting losses, including additional expenses (e.g. storage costs). For this purpose, we charge a flat maximum of 0.5% of the net price (delivery value) per calendar day up to a maximum of 5%, starting from the date of delivery or - in the absence of a delivery date - the date of notification of readiness for dispatch.

The proof of greater loss and our legal claims (especially reimbursement of additional expenses, reasonable compensation, termination) are not affected thereby, and any corresponding figure is to be deducted from further monetary claims. The Partner is entitled to prove that we have suffered either no loss or considerably less loss than the above flat rate.

§ 5 Prices and Payment Terms

(1) Unless otherwise agreed in a particular case, our prices current at the time of contract conclusion apply, namely ex stock, plus VAT.

(2) For mail order purchases (§ 4, § 1), the Partner bears the shipping costs ex stock and the cost of shipping insurance if desired by the Partner. Any duties, fees, taxes and other public charges shall be borne by the Partner. We will not take back any transport-related or other packaging required under the Packaging Ordinance (Verpackungsverordnung) and these become the property of the Partner, except for Euro pallets. If the Partner has no Euro-pallets to exchange, it is agreed that we will sell the Partner the pallets for a price of 10 € each.

(3) The purchase price shall be due and payable within 30 days of invoice and delivery or on acceptance of the goods. For contracts with a contract value of more than 10,000 EUR, we are nevertheless entitled to demand a deposit of 30% of the purchase price. The deposit is due and payable within 14 days of invoice. If payment is made within 10 days from the date of invoice, a 2% discount will be granted provided the Partner is not in arrears with regard to the settlement of any outstanding claims. As regards timeliness of payment, the time of actual receipt of payment by us is decisive.

(4) Upon expiry of the above payment deadline, the Partner is in default. The purchase price shall be payable during the default at the rate of 8 percentage points above the base rate of the Deutsche Bundesbank. We reserve the right to claim further damages. As against merchants our claim to commercial maturity interest (§ 353 HGB) remains unaffected.

(5) The Partner has set-off or retention rights only insofar as its claim is legally established or undisputed. In the case of defects in the delivery § 8 shall remain unaffected.

(6) If after conclusion of the contract it becomes apparent that our claim for payment of the purchase price is jeopardized by the Partner's inability to pay (e.g. an application for commencement of insolvency proceedings) we shall be entitled in accordance with the relevant statutory provisions to refuse to perform and - if necessary after fixing a time limit - to withdraw from the contract. (§ 321 BGB). In the case of contracts for the manufacture of specific items (making to specification) we can withdraw immediately; this shall not affect the legal provisions concerning the dispensability of fixing a time limit.

(6) In the event of delayed payment, we may, after prior written notice to the Partner, discontinue the fulfilment of our obligations until receipt of payment.

(7) Bills of exchange and cheques are accepted only by agreement and only on account of contractual performance and provided they can be discounted. Discount charges are calculated from the due date of the invoice amount. Any warranty in respect of the proper presentation of the bill of exchange or of the lodging of a bill protest is hereby excluded.

§ 6 Sales Aids

Sales and presentation tools that are available free of charge to the Partners shall remain our property and may be reclaimed. During the use of sales and presentation aids by the Partner any associated risk passes to it. It undertakes to fit the sales and representation aids with our goods only and to pay compensation for any loss or damage for which it is responsible.

§ 7 Retention of title

(1) Until full payment of all current and future claims arising from the purchase agreement and an ongoing business relationship (secured claims), we reserve title to the goods sold.

(2) Until full payment of secured claims, no goods under retention of title may be assigned to a third party or transferred by way of security. The Partner must notify us immediately in writing if and when third parties attempt to gain access to goods that belong to us.

(3) In the case of conduct of the Partner in breach of contract, especially for non-payment of the purchase price due, we shall be entitled, under statutory provisions to withdraw from the contract and to demand return of the goods on the basis of retention of title and contractual withdrawal. If the Partner does not pay the purchase price due, we may only assert these rights if we have previously set the Partner a reasonable deadline for payment or else if such a period is unnecessary under the law.

(4) The Partner is authorised to sell the goods under retention of title in the ordinary course of business and / or to process them. In this case, the following provisions shall also apply.

(A) The retention of title extends to the full value of products obtained from processing, mixing or combining our goods, whereby we are deemed to be the manufacturer thereof. Where our retention of title to goods of third parties continues after the processing, mixing or combining thereof, we shall acquire co-ownership in proportion to the invoice value of the processed, mixed or combined goods. In all other respects, the same applies to the resulting product as for the goods under retention of title.

(B) The Partner shall assign to us all claims against third parties in respect of costs incurred from the resale of the goods or products either in total or in the amount of our co-ownership where applicable in accordance with the preceding paragraph on security. We accept the said assignment. The obligations of the Partner referred to in Paragraph 2 also apply with respect to the assigned claims.

(C) The Partner shall remain authorised to collect the claim in addition to us. We undertake not to collect the claim as long as the Partner meets its payment obligations towards us, is not in arrears with payment, no application has been made for the institution of insolvency proceedings and there is no other problem with the supplier's payment capacity. If the latter is the case, however, then we can require that the Partners notify us of the assigned claims and their debtors, provide all information necessary for collection, hand over the relevant documents and inform the debtors (third parties) of the assignment.

(D) If the realizable value of our claims exceeds 10%, we shall on request release the Partner's securities at our option.

§ 8 Defect claims of the Partner

(1) The rights of the Partner in relation to material and legal defects of the goods (including wrong and short delivery as well as incorrect installation) are governed by the relevant statutory provisions, unless otherwise agreed. In all cases the special statutory provisions for final delivery of goods to a consumer (supplier recourse under § 478, § 479 BGB) shall remain unaffected. Over- and under-deliveries of up to 5% in terms of volume and number of items are permitted. This changes the total price accordingly.

(2) d primarily the agreement reached on the quality and characteristics of the goods. An agreement on the quality and characteristics of the goods is deemed to consist of the product descriptions designated as such (including those of the manufacturer), as supplied to the Partner prior to its order, or incorporated into the contract in the same way as these GC.

(3) If the quality and characteristics of the goods has not been agreed, it must be assessed under the statutory scheme whether or not a defect exists (§ 434 Paragraph 1 S 2 and 3 BGB). We assume no liability, however, for any public statements made by the manufacturer or other third parties (e.g. advertising statements).

(4) The defect claims of the Partner presuppose that it has complied with its statutory inspection and notification duties (§ 377, § 381 HGB). Where a defect becomes apparent either during or after an inspection, we shall provide written notification thereof immediately. The notification is deemed to be immediate if it is made within two weeks, whereby dispatch of the notification in time is sufficient to fall within this period. Irrespective of this duty of examination and notification the Partner shall notify obvious defects (including wrong and short delivery) within two weeks from delivery; the time shall be deemed observed if the notification is sent in time. If the Partner fails to carry out proper inspection and / or raise a defect complaint, we shall have no liability for the undisclosed defect.

(5) In the case of a legitimate, timely defect complaint, we may, at our discretion, either deliver or replace the defective goods concerned.

(6) We have the right to make subsequent performance owed dependent on the Partner paying the purchase price due. The Partner is nevertheless entitled to withhold a proportion of the purchase price corresponding to the defect concerned.

(7) The Partner must give us sufficient time and opportunity to carry out the subsequent performance owed, and in particular must hand over the defective goods for inspection. Where a replacement is supplied, our Partner must return the defective item in accordance with statutory provisions.

(8) All costs necessary for testing and supplementary performance, in particular transport, travel, labour and material costs, shall be borne by ourselves where an actual defect exists. Where, however, the Partner's defect request out to be unjustified, we may the Partner to reimburse any expenses we have incurred in relation thereto.

(9) If the remedy has failed or if a reasonable period set for subsequent fulfilment by the Partner has expired without the said fulfilment or is dispensable under the law, the Partner may either withdraw from the contract or reduce the purchase price. In the case of a minor defect, there is, however, no right of contractual withdrawal.

(10) Claims by the Partner for damages or reimbursement of wasted expenditure shall lie in accordance with § 10 only and are otherwise excluded.

§ 9 Information and Privacy

(1) The Partner irrevocably agrees to personal data communicating being handled or processed in relation to orders placed and in compliance with statutory provisions.

(2) All drawings, samples, production instructions and internal company data supplied by us to the Partner in connection with provision of our contractual offer or for the purpose of order implementation remain our property. They may not be used, reproduced or disclosed to third parties for any other purposes and must be stored with the diligence of a prudent business person.

(3) Furthermore, all other information underlying this contract shall not deemed to be confidential unless otherwise agreed upon in writing.

§ 10 Other Liability

(1) Unless provided otherwise in these GC including the following provisions, we shall be liable for a breach of contractual and non-contractual obligations under the relevant statutory provisions.

(2) We are not liable

> In the case of simple negligence by our corporate bodies, legal representatives, employees or other agents;

> In the case of gross negligence of our non-executive employees or other agents, if such negligence is not a breach of contractual obligations. The obligations to effect timely, faultless delivery as well as the obligations to provide advice, protection and care, which are intended to enable the contractual use of the delivered goods, are all essential to the contract.

(3) If, therefore, on the merits of the case our liability to pay damages is well founded, such liability is limited to damages that we have anticipated in the contract as the possible consequences of a breach of contract or of circumstances that were known to us or of which we should have been aware or which we should have foreseen had we used a normal level of diligence.

(4) Indirect losses and consequential losses that result from defects in the delivered goods are only eligible for compensation where such damage is typically expected from improper use of the delivered goods.

(5) The above exclusions and limitations apply equally and to the same extent to the corporate bodies of our company, its legal representatives, employees and other agents.

(6) If an employee of our company gives information or acts in an advisory capacity, and such information or advice does not form part of the contractually agreed scope owed by us, this is done free of charge and without any liability whatsoever.

(7) The foregoing limitations of liability do not apply to our liability for wilful intent or due to gross negligence of the user or by an intentional or negligent breach of duty by a legal representative or vicarious agent of the user, or for guaranteed characteristics, or on account of injury to life, limb or health or under the Product Liability Act.

§ 11 Limitation Period

(1) Notwithstanding § 438 subsection 1 No. 3 BGB, the general period of limitation for claims based on defects of quality and legal imperfections in title shall be one year from delivery Where acceptance is agreed, the limitation period begins at the time of acceptance.

(2) However, if the commodity is a building or an object used for a building as a result of its customary mode of use and has caused its defectiveness (building material), the limitation period, according to the relevant statutory provision shall be five years from delivery (§ 438 Paragraph 1 No. 2 BGB). Special statutory provisions governing in rem claims to return of third parties (§ 438 Paragraph 1 No. 1 BGB), wilful deceit of the vendor (§ 438 Paragraph 3 BGB) and claims of recourse against the supplier in final supply to a consumer (§ 479 BGB) shall also remain unaffected.

(3) The aforementioned periods of limitation of purchase law shall also apply to contractual and extra-contractual claims for damages of the Partner based on a defect in the goods unless application of the usual statutory limitation period (§ 195, § 199 BGB) would lead to a shorter limitation period in the individual case. The limitation periods of the Product Liability Act remain unaffected in any case. Apart from this the statutory limitation periods shall exclusively apply to claims for damages of the Partner pursuant to § 10 hereof.

§ 12 Choice of Law and Jurisdiction

(1) Both these GC and all legal relations between us and the Partner are governed by the law of the Federal Republic of Germany to the exclusion of all international and supranational (contractual) legal systems, and in particular the CISG. The preconditions for and effects of retention of title under § 7 are nevertheless subject to the laws of the respective storage location of the item, insofar as any choice of law made in favour of German law is prohibited or ineffective thereunder.

(2) If the counterparty is a merchant within the meaning of the HGB, a legal entity under public law or a special fund under public law, the exclusive - and international - place of jurisdiction for all disputes whether arising directly or indirectly from the contractual relationship is that of the location of our head office. Nevertheless, we are also entitled to bring an action at the general jurisdiction of the Partner.

§ 13 Severability

If any individual provisions of these general conditions is or becomes ineffective either entirely or in part, this shall not affect the effectiveness of the remaining provisions and the contract and the general conditions shall otherwise remain effective for both parties. With the publication and entry into effect of a new version of our price list, the previously published price lists shall cease to be valid.