

General Conditions of Purchase

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



§ 1 General, Scope

(1) These General Conditions of Purchase (GCP) apply to all business relations with our business partners and suppliers (hereinafter the "Seller"). The GCP 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 GCP apply to the specific contracts for the sale and / or delivery of the goods (hereinafter also referred to goods), regardless of whether the Seller makes the goods themselves or purchases them from suppliers (§ 433, § 651 BGB). The GCP apply in their current version as a Master Agreement to future contracts for the sale and / or delivery of the goods with the same Seller, 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) These GCP apply exclusively. Differing, conflicting or additional terms and conditions of the seller 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 accept the seller's deliveries with knowledge of the general conditions of the latter.

(4) Individual agreements reached with the Seller in a particular case (including collateral agreements, supplements and amendments) shall always take precedence over these GCP. 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 seller (e.g. deadlines, reminders, declaration of withdrawal) 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 explicitly excluded in these GCP.

§ 2 Conclusion

(1) Our order is binding at the earliest at the time of written submission or confirmation. The seller must inform us for correction or clarification purposes of any obvious errors (e.g. typing or calculation errors) and any incompleteness of the order including on the order forms prior to acceptance; otherwise the contract shall not be deemed to have been concluded.

(2) The seller is required to confirm our order within a period of five working days in writing or in particular by unconditionally carrying out shipment of goods (acceptance). Late acceptance constitutes a new offer and is subject to acceptance by us.

§ 3 Delivery time and delivery delay

(1) The delivery time stated by us in the order shall be binding. If the delivery time is not specified in the order and in the absence of any other agreement, it is usually two weeks from conclusion. The seller is obliged to notify us immediately in writing if he is likely to be unable to keep to the delivery times agreed - regardless of the reason therefor.

(2) If the Seller fails to provide the required service or fails to do so within the agreed delivery time or if he is in default, our rights – in particular our contractual withdrawal and compensation rights – shall be determined by the relevant statutory provisions. The stipulations in Paragraph 3 shall remain unaffected.

(3) If the Seller is in default, we can demand a contractual penalty in the sum of 0.2% of the net price per completed calendar day, but not more than 5% of the net price of the delivered goods. We have the right to demand a contractual penalty in addition to performance and at a minimum damages owed by the seller under statutory provisions; whereby the right to claim further damages remains unaffected.

Where we accept delayed contractual performance, we will claim any contractual penalty no later than the final payment.

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

(1) The Seller has no right to have the contractual service owed by it performed by third parties (e.g. subcontractors) without our prior written consent. The Seller bears the procurement risk in relation to its services, unless agreed otherwise in individual cases (e.g. sale of goods in stock).

(2) Delivery is within Germany "to the door" at the place specified in the order. If the destination is not specified, and unless otherwise agreed, the delivery must be made to our office at the place of the order. The respective destination is also the place of performance (debt of performance).

(3) The delivery must be accompanied by a note stating the date (issue and shipping), delivery content (item number and quantity) as well as our order identification (date and number). If the delivery note is missing or incomplete, we will not be responsible for any delays in processing and payment that may result therefrom.

We must also be sent, separately from the delivery note, a corresponding dispatch note containing the same content.

(4) The risk of accidental loss and accidental deterioration of the goods shall pass to us at the time of handover in the place of performance. Once acceptance of goods is agreed, this is definitive for the transfer of risk. Furthermore, in the case of acceptance of goods, the relevant statutory provisions in force on the day of the contract of works apply accordingly. Even if we have fallen into delay in respect of acceptance, this shall not affect either handover or acceptance.

(5) Whether or not we have fallen into delay in respect of acceptance is governed by statutory provisions. The Seller must specifically offer us its contractual performance even if a definite or definable calendar time has been agreed for a particular action or involvement on our part (for example, provision of material). If we fall into delay in respect of acceptance, under statutory provisions the Seller may demand reimbursement of any additional expenses it has incurred (§ 304 BGB). If the contract pertains to an item that it would be unreasonable for the Seller to manufacture (on an individual basis), the Seller shall only have greater rights if we have undertaken to cooperate and are responsible for any lack of co-operation.

§ 5 Prices and Payment Terms

(1) The price specified in the order is binding. All prices include statutory VAT if not shown separately.

(2) Unless otherwise agreed in an individual case, the price includes all services and ancillary services of the Seller (e.g., assembly, installation) and all ancillary costs (for example, proper packaging, transportation costs including any transport insurance and liability insurance). On request by us, the Seller must take back any packaging material.

(3) The agreed price is due within 30 calendar days after complete delivery and contractual performance (including any acceptance agreed upon) and receipt of a proper invoice. If we make payment within 14 calendar days, the Seller shall grant a 3% discount on the net invoice amount. With bank transfers, payment is made on time if our transfer order is received by our bank before expiry of the payment deadline; we shall not be liable for any delays caused by banks participating in the payment process.

(4) We do not owe any late interest. The annual interest rate is five percentage points above base rate. Whether or not we fall into delay is governed by statutory provisions; whereby in derogation therefrom where necessary in an individual case, a written warning by the Seller is required.

(5) We shall be permitted to make use of offset and retention as well as the defence of breach of contract to the fullest extent permitted by law. In particular, we have the right to withhold payments due for as long as we have the right to bring a claim against the Seller in respect of incomplete or inadequate contractual performance.

(6) The Seller shall only have an offset or retention right on the basis of legally established or undisputed counter claims.

§ 6 Confidentiality and retention of title

(1) We reserve all rights of ownership and copyright over images, plans, drawings, calculations, installation instructions, product specifications and other documents. Such documents shall be used solely for the contractual performance and must be returned to us on completion of the contract. The documents must be kept confidential towards third parties, even after the contract has ended. The confidentiality obligation shall not expire unless and insofar as the knowledge contained in the documents handed over has entered the public domain.

(2) The above provision shall apply to substances and materials (e.g., software, finished and semi-finished products) and also to the tools, templates, samples and other items that we provide to the Seller for production purposes. Such items must - as long as they are not processed - be stored separately at the Seller's expense and must be insured at an adequate level against destruction and loss.

(3) The processing, mixing or combining (finishing) of supplied goods by the Seller will be undertaken for us. The same applies to processing of goods supplied by us, so that we are considered to be the manufacturer and under the relevant statutory provisions acquire title to the product at the latest at the time that further processing is carried out.

(4) The transfer of ownership of the goods to us shall be made unconditionally and without regard to payment of the purchase price. Nevertheless, in the event that we accept an offer to transfer title to the goods and dependent on payment of the purchase price, the Seller's reservation of title shall be extinguished at the latest on payment of the purchase price for the goods. Even before payment of the purchase price and in the ordinary course of business we are still authorised to reprocess the goods under anticipatory assignment of any resulting claim (whereby, alternatively, a simple retention of title extended to resale may apply). In any event, all other forms of retention of title, in particular retention of title that is expanded, assigned or extended to reprocessing, are thereby excluded.

§ 7 Defective delivery

(1) Our rights in relation to material and legal defects of the goods (including wrong and short delivery as well as incorrect installation, defective installation, operation or service instructions) and other breaches of duty by the Seller are governed by the relevant statutory provisions, unless otherwise agreed.

(2) Under the relevant statutory provisions, the Seller shall in particular ensure that at the time the risk is transferred to us the goods are of the agreed quality and characteristics. In any event the quality and the characteristics of the goods are governed by the product descriptions that - in particular by being specified or referred to in our order - form the subject of the respective contract or are incorporated in the contract in the same way as these GCP. It is irrelevant whether the product description originates from us, the Seller or the manufacturer.

(3) Notwithstanding § 442 Paragraph 1 S 2 BGB we are fully entitled to bring defects claims, even if the defect remained unknown to us at the time that the contract was concluded due to gross negligence.

(4) All our commercial inspection and defect complaint rights are governed by statutory provisions (§ 377, § 381 HGB – German Commercial Code), with the following proviso:

Our duty of inspection is limited to defects revealed during our goods-in inspection carried out as an external inspection including the shipping documents as well as our quality control sampling (e.g. transport damage, incorrect and short delivery). If acceptance is agreed, there is no duty of inspection. Moreover, it is a question of whether an inspection is possible in the ordinary course of business, given the circumstances of each case. Our right to raise a complaint regarding defects discovered later remains unaffected. In all cases, our complaint (notification of defects) is deemed to be both prompt and on time, provided it is received by the seller within five working days.

(5) The costs incurred by the Seller for the purposes of examination and repair (including any removal and installation costs) shall be borne by the latter, even if it turns out that in fact there was no defect. Our liability for damages for unjustified demands for removal of defects remains unaffected insofar as we shall only be liable if we knowingly or in gross negligence failed to realise that there was no defect.

(6) If the Seller fails to meet its obligation to cure – at our discretion by eliminating the defect (rectification) or by effecting delivery of conforming goods (replacement) – within a reasonable time set by us, we can rectify the defects and demand any necessary expenses or an appropriate advance payment from the seller. If subsequent fulfilment by the Seller has failed or is unreasonable for us (e.g. because of special urgency, danger to operational safety or the imminent occurrence of disproportionate loss or damage), no deadline need be set; whereby we will notify the Seller promptly of such circumstances, if possible in advance.

(7) In addition, in the case of a material defect or deficiency we have the right under statutory provisions either to reduce the purchase price or to cancel the contract altogether. Furthermore, under statutory provisions, we have the right to claim damages and reimbursement of expenses.

§ 8 Supplier Recourse

(1) Our statutory recourse within a given supply chain (supplier recourse pursuant to § 478, § 479 BGB) is our full and unrestricted right in addition to our right to raise claims for defects. In particular we have the right to require exactly the same type of subsequent performance (repair or replacement) of the seller that we owe to our customers in a particular case. Our statutory right to vote (§ 439 Paragraph 1 BGB) shall not be restricted thereby.

(2) Before we recognise or remedy any defect claim brought by one of our customers (including reimbursement of expenses pursuant to § 478 Paragraph 3, § 439 Paragraph 2 BGB), we will notify the Seller and, following a short presentation of the facts, request the Seller's written opinion. If this written opinion is not forthcoming within a reasonable time and if no amicable solution is found, any defect claim that we have actually conceded shall be deemed to be owed to us in the same way as to our customer; whereby in this case it is up to the Seller to provide rebutting evidence.

(3) Any claims we may have under supplier's recourse are also applicable in situations where prior to being sold to a consumer the goods concerned have been processed further either by us or by one of our customers, e.g. through incorporation in another product.

§ 9 Manufacturer's Liability

(1) Where the Seller is liable for product damage, it must indemnify us against any third party claims, the cause of which lies within its operational and organisational control and for which it is liable externally.

(2) As part of its duty of indemnification, under § 683, § 670 BGB the Seller must reimburse any expenditure that may arise from or in connection with any claims by third parties, including any recalls carried out by us. We will notify the Seller of the content and scope of the recall measures - where possible and reasonable - and give the Seller the opportunity to comment.

Further statutory rights remain unaffected.

(3) The Seller shall take out and maintain a product liability insurance policy with minimum coverage of 10 million EUR for each event of bodily injury or property damage and must provide evidence of having done so on request.

§ 10 Limitation Period

(1) All reciprocal claims by the parties shall become time-barred under statutory provisions, unless provided otherwise.

(2) Notwithstanding § 438 subsection 1 No. 3 BGB, the general limitation period for defect claims is three years from the transfer of risk. Where acceptance is agreed, the limitation period begins at the time of acceptance. The three-year limitation period also applies to claims concerning defects, whereby the statutory limitation period for in rem restitution claims of third parties (§ 438 Paragraph 1 No. 1 BGB) shall be unaffected thereby; moreover, claims based on defects shall not expire under any circumstances, as long as the parties have the right - in particular due to the lack of any applicable time limitation - to bring the said claims against us.

(3) The limitation periods of the law governing the sale of goods including any future extension thereof shall apply - insofar as permitted by the law - to all contractual claims for defects. Insofar as we also have the right to bring a non-contractual claim for damages owing to a defect, this shall be governed by the regular statutory limitation periods (§ 195, § 199 BGB), unless the application of the limitation periods contained in the law of the sale of goods brings about a longer limitation period in the particular case.

§ 11 Choice of Law and Jurisdiction

(1) Both these GCP and all legal relations between us and the Seller are governed by the law of the Federal Republic of Germany to the exclusion of international uniform law and in particular that of the CISG. The preconditions for and effects of retention of title are subject to the laws of the respective location of the matter, insofar as any choice of law made in favour of German law is prohibited or ineffective thereunder.

(2) If the Seller 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 arising from the contractual relationship is that of the place of our head office. We also have the right to bring an action in the place of performance of the duty to effect delivery.