

# **General Terms and Conditions of Purchase of M.W.B. GmbH**

## **§ 1 General, Scope**

(1) The present General Terms and Conditions of Purchase (GTCP) shall apply to all business relations with our business partners and suppliers (hereinafter referred to as: "Sellers"). The GTCP shall apply only if the Seller is an entrepreneur (Section 14 of the German Civil Code (BGB)), a corporate body under public law or a special fund under public law.

(2) The GTCP shall in particular apply to contracts for the sale and/or supply of moveable objects (hereinafter also referred to as: goods), irrespective of whether the Seller manufactures the goods itself or purchases them from suppliers (Sections 433, 651 of the German Civil Code, (BGB)). The GTCP, as amended from time to time, shall also apply as a framework agreement to any contracts for the sale and/or supply of movable objects entered into in future with the same Seller, without any particular reference to their application being required from us in each individual case; in such case, we will inform the Seller without delay of any amendments to our GTCP.

(3) These GTCP shall apply exclusively. Deviating, conflicting or supplementary General Terms and Conditions of Business of the Seller shall only become a part of the contract insofar as we have given our express written consent to their application. This requirement for consent shall apply in all cases, for example even if we unconditionally accept deliveries of the Seller while aware of its General Terms and Conditions of Business.

(4) Individual agreements reached with the Seller in an individual case (including side agreements, addenda or amendments) shall in any event take precedence over these GTCP. The content of such agreements must be set out in a written contract or be confirmed in writing by us.

(5) Declarations and notifications relevant in law that the Seller must make to us after conclusion of the contract (e.g. deadlines, reminders, declaration of withdrawal) must be made in writing in order to be effective.

(6) References to the validity of statutory regulations shall serve merely as clarification. Therefore, the statutory regulations shall apply even without such a clarification unless they are directly changed or are explicitly excluded in these GTCP.

## **§ 2 Conclusion of the Contract**

(1) Our purchase order shall be binding at the earliest when it is placed or confirmed in writing. Before accepting any purchase order the Seller must point out to us any obvious mistakes (e.g. misspellings or calculation errors) and any incompleteness in the purchase order including the purchase order documents for the purpose of correction and/or completion; the contract shall otherwise be regarded as not concluded.

(2) The Seller shall be obliged to confirm our purchase order in writing within a deadline of 3 days or in particular by dispatching the goods without reservation (acceptance).

Delayed acceptance shall be deemed a new offer and shall require acceptance by us.

## **§ 3 Delivery Time and Delayed Delivery**

(1) The delivery time specified by us in the purchase order shall be binding. The Seller shall be obliged to notify us immediately if it becomes likely that it will be unable to comply with agreed delivery dates, for whatever reason.

(2) If the Seller does not provide performance or does not provide it within the agreed delivery time or is in default, our rights (especially in regard to withdrawal and compensation for damages) shall be determined in accordance with statutory provisions. The provisions in para. 3 shall remain unaffected.

(3) If the Seller is in default, then in addition to further statutory entitlements, we shall be entitled to demand flat-rate compensation for the damage caused to us by the default to the amount of 1% of the net price per completed calendar week, but not, however, more than a total of 5% of the net price of the delayed goods. We reserve the right to prove that we have incurred a higher loss. The Seller shall reserve the right to furnish evidence that we have incurred no damage, or have only incurred significantly less damage.

## **§ 4 Performance, Delivery, Transfer of Risk, Delay in Taking Delivery**

(1) The Seller shall not be entitled to arrange for the performance which it owes to be provided by third parties (e.g. sub-contractors) without obtaining our prior written consent. Unless otherwise agreed in an individual case, the Seller shall bear the procurement risk for its services (e.g. sale of goods in stock).

(2) Delivery shall be made "carriage paid" within Germany to the location stated in the purchase order. If the destination is not stated and nothing to the contrary has been agreed, delivery must be made to our registered office in Wörth / Isar. The respective destination shall also be the place of performance.

(3) A delivery note stating the date (of issue and despatch), the content of the delivery (item number and unit number) and also our order reference (date and number and cost centre) must be enclosed with the delivery. If the delivery note is missing or is incomplete, we shall not be responsible for any resulting delays in processing or payment.

(4) The risk of accidental loss and accidental deterioration of the goods shall pass to us when they are handed over at the place of performance. If an acceptance procedure has been agreed, this shall be authoritative for the transfer of risk. In the event of an acceptance procedure, the statutory provisions of the law on contracts for services shall also apply accordingly in all other respects. The goods shall be deemed to have been handed over/taken delivery of if we delay in taking delivery of the goods.

(5) The statutory provisions shall apply in respect of the commencement of our delay in taking delivery of the goods. However, the Seller must expressly offer us its performance even if a defined or definable calendar period has been agreed for an act or contribution on our part (e.g. provision of material). If we default in taking delivery, the Seller may demand compensation for its extra expenses in accordance with statutory provisions (Section 304 of the German Civil Code (BGB)). If the contract concerns the manufacture of a non-fungible item (custom-made product), the Seller shall only be entitled to more far-reaching rights if we have entered into an undertaking to cooperate and if we are responsible for the absence of cooperation.

## **§ 5 Prices and Payment Terms**

(1) The price stated in the purchase order shall be binding. All prices are inclusive of statutory VAT, unless it is shown separately.

(2) Unless otherwise agreed in an individual case, the price shall include all services and ancillary services of the Seller (e.g. assembly, installation) and all ancillary costs (e.g. proper packaging, transport costs including transport and third-party liability insurance, if any). The Seller must take back any packaging at our request.

(3) The agreed price shall be due for payment within 30 calendar days of complete delivery and performance (including the acceptance inspection, if one is agreed) and receipt of a due and proper invoice. If we make payment within 14 calendar days, the Seller shall grant us a 3% early payment discount on the net invoice amount. In the case of payment by bank transfer, payment shall be deemed to have been made on time if our remittance order is received by the bank before the payment deadline has expired; we shall not be responsible for delays caused by the banks involved in the payment transfer process.

(4) We shall not be liable for interest on payments made after the due date. The annual interest rate for default shall be 5 percentage points above the base interest rate. The date from which we are deemed to be in default shall be governed by statutory provisions; by way of derogation where applicable, a written dunning notice shall be required from the Seller in each case.

(5) We shall be entitled to set-off and retention rights and also to the defence of non-fulfilment of the contract to the extent provided by law. We shall in particular be entitled to withhold payments that are due for such time as we still have claims against the Seller relating to incomplete or defective services.

(6) The Seller shall only have a right of set-off or right of retention in respect of counterclaims which have been held to be final and absolute by a court of law or which are uncontested.

## **§ 6 Secrecy and Reservation of Title**

(1) We reserve all property rights and copyrights to illustrations, plans, drawings, calculations, instructions for execution, product descriptions and other documents. Such documents must only be used for the purpose of the contractual performance and must be returned to us once the contract has

been discharged. The documents must be kept secret from third parties, even after the contract has ended. The obligation in respect of secrecy shall only end if and to the extent that the knowledge contained in the supplied documents has become a matter of common knowledge.

(2) The preceding provision shall apply accordingly to substances 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 production. Such items must – so long as they are not processed – be stored separately and insured to an appropriate extent against destruction and loss at the Seller's cost.

(3) Any processing, mixing or combining (further processing) by the Seller of items provided by us shall be undertaken for us. The same shall apply if the delivered goods are further processed by us, so that we are deemed the manufacturer and acquire ownership of the product in accordance with statutory provisions no later than at the time of further processing.

(4) Title to goods shall be transferred to us unconditionally and regardless of whether the purchase price has been paid. However, if in an individual case we accept an offer of the Seller for transfer of ownership which is conditional on payment of the purchase price, the Seller's reservation of title shall at the latest expire on payment of the purchase price for the delivered goods. We shall remain authorised to sell on the goods in the ordinary course of business even before the purchase price has been paid, with advance assignment of the resulting claim (alternative validity of simple reservation of title extended to resale). In any event, all other forms of reservation of title shall thus be precluded, including in particular enlarged reservation of title, forwarded reservation of title and reservation of title extended to further processing.

## **§ 7 Defective Delivery**

(1) Insofar as not otherwise determined below, the statutory provisions shall apply to our rights in the event of defects of quality and title (including wrong delivery and short delivery, as well as incorrect assembly and inadequate assembly and operating instructions) and in the event of other breaches of duty by the Seller.

(2) According to statutory provisions, the Seller shall in particular be liable for the goods having the agreed quality at the time when the risk passes us. In all cases, those product descriptions that are the subject matter of the respective contract or incorporated in the contract in the same way as these GTCP – in particular due to identification or reference in our purchase order – shall be valid as an agreement on the quality. In this context, it shall be immaterial whether the product description originates from us, from the Seller or from the manufacturer.

(3) In derogation of Section 442 (1) sentence 2 of the German Civil Code (BGB), we shall also be entitled to claim for defects without restriction if the defect remained unknown to us upon conclusion of the contract as a result of gross negligence.

(4) The commercial duty to examine and to notify defects shall be governed by the statutory provisions (sections 377 and 381 of the German Commercial Code (HGB)), subject to the following proviso: our duty to examine shall be limited to defects that are obvious during visual inspection of the incoming goods, including the delivery documents, or during spot checks as part of our quality control procedures (e.g. transport damage, wrong deliveries and short deliveries). No examination shall be required if an acceptance procedure has been agreed on. In all other cases, it shall depend on the extent to which examination is expedient according to proper business practice, taking into account the circumstances of the particular case.

This shall not affect our duty to report any defects that are discovered at a later date. In all cases, we shall be deemed to have reported defects without delay and on time if such notification of defects is received by the Seller within 45 working days.

(5) The costs (including any removal and installation costs) incurred by the Seller for the purposes of testing and subsequent improvement shall be borne by the Seller even if it transpires that there was in fact no defect. Our liability to pay damages in the case of unjustified demands for rectification of defects shall remain unaffected; to this extent we shall, however, only be liable if we realised that no defect existed or if we failed, through gross negligence, to realise that no defect existed.

(6) If the Seller does not honour its obligation to provide supplementary performance – at our choice by remedying the defect (subsequent improvement) or by delivering an item free of defects (replacement delivery) – within a reasonable time limit as set by us, we may remedy the defect ourselves and demand compensation from the Seller for the expenses necessary for this, or demand an appropriate advance payment. If supplementary performance by the Seller fails or if it is unreasonable for us to have defects remedied by the Seller (e.g. because of particular urgency, risks

to operational safety or the likelihood of disproportionate damage occurring), no time period need be set; we shall inform the Seller without delay (if possible in advance) of such circumstances.

(7) In all other cases, we shall in the event of defects of quality and defects of title be entitled to reduce the purchase price or withdraw from the contract in accordance with statutory provisions. In addition, we shall be entitled to damages and to the reimbursement of expenses in accordance with statutory provisions.

## **§ 8 Recourse against the Supplier**

(1) In addition to the claims for defects, we shall be entitled, without restriction, to our statutory rights of recourse within the supply chain (recourse against suppliers pursuant to Sections 478, 479 of the German Civil Code (BGB)). We shall be entitled in particular to demand from the Seller precisely the type of supplementary performance (subsequent improvement or replacement delivery) which we owe to our customer in the individual case. This shall not limit our statutory right to choose (Section 439 (1) of the German Civil Code (BGB)).

(2) Before we recognise or fulfil a claim for defects asserted by our customer (including reimbursement of expenses in accordance with Sections 478 (3), 439 (2) of the German Civil Code (BGB)), we will inform the Seller, giving a brief description of the facts of the case, and request written comments. If the comments are not provided within a reasonable period of time and if no mutual resolution is brought about either, then the claim for defects actually granted by us shall be deemed to be owed to our customer; in this case, the Seller shall be responsible for supplying counter evidence.

(3) Our claims for supplier recourse shall also apply if the goods have been further processed by us or one of our customers before being sold to a consumer (e.g. through installation in another product).

## **§ 9 Producer Liability**

(1) Where the Seller is responsible for product damage, it shall indemnify us in respect of third-party claims insofar as the cause lies within its area of control and organisation and the Seller is liable in relation to third parties.

(2) Under its obligation to indemnify, the Seller must reimburse any expenses pursuant to Sections 683, 670 of the German Civil Code (BGB) that arise out of or in connection with any recourse taken by third parties including recall campaigns carried out by us. To the extent possible and reasonable, we shall inform the Seller of the content and scope of the recall measures and allow opportunity for comment. This shall not affect more far-reaching statutory claims.

(3) The Seller shall take out and maintain product liability insurance granting a lump-sum coverage of no less than EUR 5 million for each case of personal injury/property damage.

## **§ 10 Statute of Limitations**

(1) Unless otherwise stipulated below, the mutual claims of the contracting parties shall be time-barred in accordance with the statutory provisions.

(2) Notwithstanding § 438 (1) no. 3 of the German Civil Code (BGB), the general limitation period for claims for defects shall be three years from the transfer of risk. Where an acceptance procedure has been agreed, the limitation period shall begin with the acceptance. The 3-year limitation period shall also apply mutatis mutandis for claims arising out of defects in title, whereby the statutory limitation period for third-party claims for surrender in rem (Section 438 (1) No. 1 of the German Civil Code (BGB)) shall remain unaffected; moreover, claims on the grounds of defects in title shall not become statute-barred as long as the third party can still assert the right against us – in particular due to the absence of limitation.

(3) The limitation periods applying under the law governing the sale of goods, including the above extension, shall apply to all contractual claims for defects, within the scope permitted by law. If a defect also entitles us to assert non-contractual compensation claims, the standard statutory period of limitation (sections 195 and 199 of the German Commercial Code (BGB)) shall apply unless other periods of limitation applying under the law governing the sale of goods result in a longer period in the case in hand.

## **§ 11 Choice of law and place of jurisdiction**

(1) These GTCP and all legal relationships between ourselves and the Seller shall be governed exclusively by the laws of the Federal Republic of Germany to the exclusion of international uniform law and in particular the UN Convention on the International Sale of Goods (CISG). The prerequisites for and the effects of retention of title shall be governed by the law in force at the place where the item is stored if, under that law, the choice of German law would be inadmissible or invalid.

(2) If the Seller is a merchant within the meaning of the German Commercial Code (Handelsgesetzbuch), a corporate body under public law or a special fund under public law, the exclusive place of jurisdiction (including the international place of jurisdiction) for all disputes arising from the contractual relationship shall be our registered office in Wörth / Isar. We shall, however, also be entitled to file an action at the place of performance for the delivery obligation.