

§ 1 General, scope of application

- (1) These General Terms and Conditions of Sale and Payment (GTCS) apply to all our business relationships with our customers (hereinafter: "Buyer"). The GTCS shall only apply if the Buyer is an entrepreneur (Section 1 (2) KSchG) or a special fund under public law.
- (2) The GTCS apply in particular to contracts for the sale and/or delivery of movable goods (hereinafter also referred to as "goods"), irrespective of whether we manufacture the goods ourselves or purchase them from suppliers. The GTCS shall also apply in their respective version as a framework agreement for future contracts for the sale and/or delivery of movable goods with the same buyer, without us having to refer to them again in each individual case.
- (3) Our GTC shall apply exclusively. Deviating, conflicting or supplementary General Terms and Conditions (GTC) of the Buyer shall only become part of the contract if and to the extent that we have expressly consented to their validity. This requirement of consent shall apply in any case, for example even if we carry out the delivery to the Buyer without reservation in the knowledge of the Buyer's GTC.
- (4) Individual agreements made with the Buyer in individual cases (including collateral agreements, supplements and amendments) shall in any case take precedence over these GTCS. A written contract or our written confirmation shall be authoritative for the content of such agreements.
- (5) Legally relevant declarations and notifications to be made to us by the Buyer after conclusion of the contract (e.g. setting of deadlines, notification of defects, declaration of rescission or abatement of price) must be made in writing to be effective.
- (6) References to the validity of statutory provisions are for clarification purposes only. Even without such clarification, the statutory provisions shall therefore apply unless they are directly amended or expressly excluded in these GTCS.

§ 2 Conclusion of contract

- (1) Our offers are subject to change and non-binding and are merely an invitation to the Buyer to submit an offer. This shall also apply if we have provided the Buyer with catalogues, other product descriptions or documents - including in electronic form - to which we retain title and ownership rights or copyrights.
- (2) The order of the goods by the buyer is considered a binding contract offer. Orders are accepted by our central order and complaints hotline, telephone number 07612-76577-244, fax number 07612-76577-250 or bestellungen@hipp.at with pleasure. We are entitled to accept this contractual offer within two weeks of its receipt by us.
- (3) Acceptance can be declared either in writing (e.g. by order confirmation) or by delivery of the goods to the buyer.
- (4) The minimum order quantity is 50 units (carton/tray) or one promotional pallet. For orders of one to 49 units, we charge a freight surcharge of € 15 per delivery.

§ 3 Delivery period and delay in delivery

- (1) The delivery period shall be agreed individually or specified by us upon acceptance of the order. If this is not the case, the delivery period is approx. two weeks starting with the conclusion of the contract.
- (2) If we are unable to meet binding delivery deadlines for reasons for which we are not responsible (non-availability of the goods or services), we will inform the buyer of this immediately and at the same time inform him of the expected new delivery deadline. If the service is also not available within the new delivery period, we shall be entitled to rescind from the contract in whole or in part; in this case, we shall immediately reimburse any consideration already paid by the Buyer. A case of non-availability of the goods or services in this sense is in particular the failure of our supplier to deliver to us on time if we have concluded a congruent hedging transaction. Our statutory rights of rescission and termination as well as the statutory provisions on the performance of the contract in the event of an exclusion of the obligation to perform (e.g. impossibility or unreasonableness of performance and/or subsequent performance) shall remain unaffected. The Buyer's rights of rescission and termination pursuant to § 8 of these GTCS shall also remain unaffected.
- (3) The occurrence of our delay in delivery shall be determined in accordance with the statutory provisions. In any case, however, a donning letter from the buyer is required.

§ 4 Delivery, transfer of risk, acceptance, default of acceptance

- (1) Delivery shall be ex warehouse D-85098 Großmehring, which is also the place of fulfilment. At the buyer's request, the goods will be dispatched to another destination (sale to destination). The goods shall be delivered free to destination subject to a flat-rate transport charge for small quantities in accordance with § 2 (4) of these GTCS. Unless otherwise agreed, we are entitled to determine the type of shipment (in particular transport company, shipping route, packaging) ourselves.
 - (2) The risk of accidental destruction and chance deterioration of the goods shall devolve to the buyer upon delivery at the latest. In the case of sale by despatch, however, the risk of accidental destruction and chance deterioration of the goods as well as the risk of delay shall already devolve upon delivery of the goods to the forwarding agent, carrier or other person or institution designated to carry out the despatch. If acceptance has been agreed, this shall be decisive for the transfer of risk. If the buyer is in default of acceptance, this shall be deemed equivalent to handover or acceptance.
 - (3) If the Buyer collects the goods from the warehouse D-85053 Ingolstadt or D-85098 Großmehring or has them collected by auxiliary persons commissioned by him, the collection must be carried out exclusively with roadworthy vehicles that correspond to the state of the art and comply with all necessary official authorisations. When collecting the goods, the Buyer or its auxiliary persons shall be responsible for compliance with all road traffic law obligations in accordance with the applicable statutory provisions. In particular, the Buyer or its auxiliary persons shall be responsible for complying with all regulations on load safety (in particular safe loading) and truck loading weight.
 - (4) If the buyer is in default of acceptance, fails to co-operate or if our delivery is delayed for other reasons for which the buyer is responsible, we are entitled to demand compensation for the resulting damage including additional expenses (e.g. storage costs). For this we charge a flat-rate compensation of 0.5 per cent of the purchase price per calendar week up to a maximum of 5 per cent of the purchase price, beginning with the delivery deadline or - in the absence of a delivery deadline - with the notification that the goods are ready for dispatch.
- Proof of higher damages and our statutory claims (in particular reimbursement of additional expenses, reasonable compensation, cancellation) shall remain unaffected; however, the lump sum shall be offset against further monetary claims. The Buyer shall be entitled to prove that we have suffered no loss at all or only a significantly lower loss than the above lump sum.
- (5) If there are delays of more than two hours after the arrival of the truck at the destination which are attributable to the buyer's sphere of risk, we will charge the buyer demurrage in the amount of € 50 for each additional hour on the basis of the carrier's assigned right. § 4 (4) of these GTCS shall remain unaffected.
 - (6) Provided there are no mandatory statutory provisions to the contrary, we do not take back transport packaging and all other packaging; ownership in such packaging shall transfer to the buyer. In the case of palletised deliveries, the buyer is obliged to provide the same number of undamaged empty pallets upon delivery of the goods in exchange (step-by-step), which must correspond in size, design and condition to the pallets with which the goods were delivered. For exchange pallets not returned on time, or returned damaged or in another form of low value, we demand a flat-rate compensation of € 10 per pallet without further proof and refuse to take back pallets offered accordingly, provided that there are no mandatory statutory provisions to the contrary.

§ 5 Prices, terms of payment

- (1) Unless otherwise agreed in individual cases, our list prices valid on the day of delivery shall apply, plus the statutory VAT applicable on that day.
- (2) Our invoices are payable within 30 days of the invoice date. A discount of 3 per cent is granted for payment immediately after invoicing by direct debit, and a discount of 2 per cent for payment within 10 days of the invoice date.
- (3) Bills of exchange or cheques are generally not accepted.
- (4) If the purchase price is not paid in full within 30 days of the invoice date, the buyer shall be in default. During the period of default, interest shall be charged on the purchase price at the applicable statutory default interest rate. We reserve the right to claim further damages caused by default. In the event of default, we are also entitled to hand over the claim to D.A.S., Linz, for collection.
- (5) In the event of default in accordance with § 5 (4) of these GTCS, all other claims arising from the entire current business relationship shall also be due immediately without deduction of discount.
- (6) The Buyer shall only be entitled to rights of set-off or retention to the extent that his claim has been legally established, is undisputed or has been recognised by us. Furthermore, the buyer is only authorised to exercise a right of retention if his counterclaim is based on the same contractual relationship. The transfer, assignment or pledging of a counterclaim requires our express, separate consent. In the event of defects in the delivery, § 7 (8) of these GTCS shall remain unaffected.
- (7) If it becomes apparent after conclusion of the contract that our claim to the purchase price is jeopardised by the Buyer's inability to pay (e.g. by an application to open insolvency proceedings), we shall be entitled to refuse performance in accordance with the statutory provisions and - if necessary after setting a deadline - to revoke the contract (Section 918 ABGB).

§ 6 Retention of title

- (1) Until full payment of all our present and future claims arising from the purchase contract, we retain title to the sold goods.
- (2) The goods subject to retention of title may neither be pledged to third parties nor assigned as security before full payment of the secured claims. The goods may only be resold subject to retention of title. The buyer must inform us immediately in writing if and insofar as third parties seize or in other way take access of the goods belonging to us.
- (3) In the event of breach of contract by the Buyer, in particular non-payment of the purchase price due, we shall be entitled to withdraw from the contract in accordance with the statutory provisions and to demand the return of the goods on the basis of retention of title and rescission. If the buyer does not pay the purchase price due, we may only assert these rights if we have previously set the buyer a reasonable deadline for payment without success or if such deadline is dispensable according to the statutory provisions.
- (4) The purchaser is authorised to resell and/or process the goods subject to retention of title in the ordinary course of business. In this case, the following provisions shall apply in addition.
 - (a) If, in the event of processing, mixing or combining with goods of third parties, their right of ownership remains, we shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined goods. In all other respects, the same shall apply to the resulting product as to the goods delivered subject to retention of title.

(b) The Buyer hereby assigns to us as security any claims against third parties arising from the resale of the goods or the product in total or in the amount of our respective co-ownership share in accordance with the above paragraph. We accept the assignment. The obligations of the buyer mentioned in § 6 (2) of these GTCS shall also apply with respect to the assigned claims.

(c) The buyer remains authorised to collect the claim alongside us. We undertake not to collect the claim as long as the buyer fulfils his payment obligations to us, is not in default of payment, no application for the opening of insolvency proceedings has been filed and there is no other deficiency in his ability to pay. If this is the case, however, we can demand that the buyer informs us of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment.

(d) Where the realisable value of the securities exceeds our claims by more than 10 percent, we shall at the buyer's request release securities of our choice.

§ 7 Claims for defects of the buyer

(1) The statutory provisions shall apply to the rights of the buyer in the event of material defects and defects of title (including incorrect and short delivery), unless otherwise specified below. In all cases, the special statutory provisions for final delivery of the goods to a consumer remain unaffected (supplier recourse in accordance with §933b ABGB).

(2) The basis of our liability for defects is above all the agreement reached on the quality of the goods. The product descriptions (including those of the manufacturer) designated as such, which were provided to the Buyer prior to his order or were included in the contract in the same way as these GTCS, shall be deemed to be an agreement on the quality of the goods. Unless expressly agreed otherwise, the goods are intended exclusively for sale in the respective country of destination. Unless another country of destination has been expressly agreed, the country of destination is Austria. The legal provisions applicable in the country of destination are decisive for assessing the marketability of the goods.

(3) Insofar as the quality has not been agreed, it is to be assessed in accordance with the statutory provisions whether a defect exists or not (§§ 922 et seq. ABGB). However, we accept no liability for public statements made by the manufacturer or other third parties (e.g. advertising statements).

(4) The buyer's claims for defects presuppose that he has fulfilled his statutory obligations to inspect and give notice of defects (§§ 377, 381 UGB). If a defect is discovered during the inspection or later, we must be notified immediately. The notification shall be deemed immediate if it is made within four working days of delivery; timely dispatch of the notification shall suffice to meet the deadline. The notification must be made in writing. Irrespective of the above obligations to inspect and give notice of defects, the Buyer must note obvious defects (including externally recognisable damage, incorrect and short delivery) immediately upon delivery on the complete delivery note and have them confirmed by the carrier or driver in writing, stating the vehicle registration number. The notification must always be made in writing. If the buyer fails to provide the aforementioned notification of defects, our liability for the unreported defect shall be excluded. The above documentation may, if agreed between the parties to the contract, also be sent by electronic means.

(5) If the delivered item is defective, the buyer may initially demand, at his discretion, either rectification of the defect (subsequent improvement) or delivery of a defect-free item (replacement delivery) as subsequent fulfilment. If the buyer does not declare which of the two rights he chooses, we can set him a reasonable deadline for this. If the buyer does not make the choice within the deadline, the right to choose shall pass to us upon expiry of the deadline. Acceptance of the delivery subject to reservation is excluded.

(6) We are entitled to make the subsequent fulfilment owed dependent on the buyer paying the purchase price due. However, the buyer is entitled to withhold a reasonable part of the purchase price in proportion to the defect.

(7) The Buyer shall give us the time and opportunity required for the subsequent fulfilment owed, in particular hand over the rejected goods for inspection purposes. We shall bear the expenses necessary for the purpose of subsequent performance, in particular transport, travel, labour and material costs. In the event of a replacement delivery, the Buyer shall return the defective item to us in accordance with the statutory provisions.

(8) In urgent cases, e.g. if operational safety is jeopardised or to prevent disproportionate damage, the Buyer shall have the right to remedy the defect himself and to demand compensation from us for the expenses objectively necessary for this purpose. We must be notified immediately, if possible in advance, of any such self-remedy. The right of self-remedy does not exist if we would be entitled to refuse a corresponding subsequent fulfilment in accordance with the statutory provisions.

(9) If the subsequent fulfilment has failed or a deadline to be set by the buyer for the subsequent fulfilment has expired unsuccessfully or is dispensable according to the statutory provisions, the buyer may withdraw from the purchase contract or reduce the purchase price. However, there is no right of withdrawal where the defect is insignificant.

(10) Claims of the Buyer for damages or reimbursement of futile expenses shall only exist in accordance with § 8 of these GTCS, otherwise they shall be excluded.

§ 8 Other liability

(1) Unless otherwise stated in these GTCS, including the following provisions, we shall be liable in the event of a breach of contractual and non-contractual obligations in accordance with the relevant statutory provisions.

(2) We shall be liable for damages - irrespective of the legal grounds - in the event of willful intent and gross negligence. This also applies to liability for our representatives and agents. In the event of simple negligence, we shall only be liable

a) for damages resulting from injury to life, body or health,

b) for damages arising from the breach of an essential contractual obligation (obligation whose fulfilment is essential for the proper execution of the contract and on whose compliance the contractual partner regularly relies and may rely).

(3) Insofar as there is no willful breach of contract on our part, our liability shall be limited to compensation for foreseeable, typically occurring damage.

(4) The limitations of liability resulting from §8 (2) and (3) of these GTCS shall not apply if we have fraudulently concealed a defect or have assumed a guarantee for the quality of the goods. The same applies to claims of the buyer under the Product Liability Act.

(5) The Buyer may only withdraw from or terminate the contract due to a breach of duty that does not consist of a defect if we are responsible for the breach of duty. A free right of termination on the part of the buyer is excluded. Otherwise, the statutory requirements and legal consequences shall apply.

(6) Notwithstanding the above provisions, we are not liable for damages

a) to delivered goods caused by improper storage and/or handling on the part of the buyer,

b) in connection with short deliveries that occur due to production-related bottlenecks or raw material shortages,

c) unless they only concern the subject matter of the contract.

§ 9 Return of goods

(1) Goods shall only be taken back by mutual agreement. If the buyer returns goods to us without our consent, these will not be credited to the buyer, but kept at his disposal at his expense.

(2) Any claims of the buyer arising from the return of goods must be asserted immediately and are subject to a limitation period of one year from the authorised return of the goods.

§ 10 Statute of limitations

(1) The reciprocal claims of the contracting parties shall become time-barred in accordance with the statutory provisions, unless otherwise stipulated below.

(2) Notwithstanding § 933 ABGB, the general limitation period for claims arising from material defects and defects of title is one year from delivery. If acceptance has been agreed, the limitation period shall commence upon acceptance. However, claims arising from defects of title shall not become time-barred as long as the third party can still assert its right - in the absence of a limitation period - against the buyer.

(3) The above shortening of the limitation period shall not apply in the case of supplier recourse and in the case of fraudulent intent. The same applies to the claims for damages regulated in § 8 (2) of these GTCS and to claims under the Product Liability Act. In these cases, the statutory limitation provisions shall apply exclusively.

(4) Insofar as we owe the Buyer damages pursuant to § 8 of these GTCS due to or as a result of a defect, the statutory limitation periods (§ 1489 ABGB) shall apply. The limitation periods of the Product Liability Act shall remain unaffected in any case.

§ 11 Indemnification obligation for claims

If the Buyer delivers the goods to a country other than the country of destination, the Buyer shall be obliged to indemnify us against third-party claims upon written request, insofar as these result from the fact that the goods were delivered outside the country of destination. § 7 (2), sentences 3 & 4 of these GTCS shall apply accordingly.

§ 12 Choice of law, place of jurisdiction

(1) These GTCS and all legal relationships between us and the Buyer shall be governed by Austrian law to the exclusion of all international and supranational (contractual) legal systems, in particular the UN Convention on Contracts for the International Sale of Goods. However, the conditions and effects of the retention of title pursuant to § 6 of these GTCS shall be subject to the law of the respective location of the item, insofar as the choice of law made in favour of Austrian law is inadmissible or ineffective.

(2) The exclusive - also international - place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is Linz. However, we are also entitled to bring an action at the buyer's general place of jurisdiction.

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