

Sect. 1 General, Scope of application

(1) The present General Terms and Conditions of Purchase (AEB) apply to all our business relations with our business partners and suppliers („Seller“). The AEB shall apply only if the Seller is an entrepreneur (German: *Kaufmann*, Sect. 14 BGB) a legal person under public law or a special fund under public law.

(2) The AEB shall especially to contracts for the sale and/or the delivery of movable goods („Goods“), regardless of whether the Seller produces the Goods itself or purchases them from suppliers (Sections 433, 651 BGB).

(3) The present AEB apply exclusively. Deviating, conflicting or supplemental general terms and conditions of the Seller shall become a part of the contract only if and inasmuch as we expressly consent in advance to their application. This requirement of prior consent shall apply in all cases, for example even in the case that we accept delivery from the Seller without reservation, despite our having knowledge of Seller's general terms and conditions.

(4) Any individual agreements concluded with the Seller in any individual case (including side agreements, supplements, and/or amendments) shall take precedence over the present AEB, on principle. The contents of such agreements shall, unless proven otherwise, be determined by written contract, resp. our written confirmation.

(5) Legally significant declarations and notices that the Seller is under an obligation to make to us after the conclusion of contract (e.g. setting of time limits, giving notice of defects, giving notice of withdrawal or reduction of the purchase price) shall be effective only if in written form.

(6) Notices made regarding the application of statutory provisions shall have clarifying significance only. Even without such clarification, statutory law shall apply, unless it is directly modified or expressly excluded in the present AEB.

Sect. 2 Conclusion of contract

(1) Our order shall be deemed binding at the earliest upon written placement or written confirmation. In order to enable corrections and completions, the Seller must advise us of any evident errors (e.g. spelling mistakes and errors in calculation) and any incompleteness in the order, including the documents related to the order, before accepting it; otherwise the contract shall be considered not concluded.

(2) The Seller is required to confirm our order within one week in writing or to perform it without reservation (acceptance of offer) in particular by dispatching the Goods. Late acceptance of the offer shall be deemed a new offer and requires acceptance by us.

Sect. 3 Delivery term and late delivery

(1) The delivery term stated by us in the order is binding. If the delivery term is not stated in the order and has not been mutually agreed otherwise, it shall be 4 weeks from the conclusion of contract. The Seller is obliged to inform us in writing if the Seller is prospectively unable to meet the agreed delivery term – whatever the reason.

(2) If the Seller fails to perform, or fails to perform within the agreed delivery term, or if the Seller defaults through delayed performance, our rights – in particular to withdrawal from the contract and damages – shall be subject to statutory law. The provisions under para. (3) shall not be affected.

(3) If the Seller defaults through delay, we may – in addition to other statutory claims – demand liquidated damages in the amount of 1% of the net price per full calendar week for the damage/loss we suffer through such default, the amount of damages however not exceeding 5% of the Goods delivered late. We reserve the right to prove that we suffered higher damage/losses. The Seller is entitled to prove that no or only considerably lower damage/losses were caused.

Sect. 4 Performance, delivery, passing of the risk, delay in taking delivery

(1) Without our written prior approval, the Seller is not entitled to perform the services it owes by engaging a third party (e.g. sub-contractors). The Seller shall bear the procurement risk for its services, unless otherwise agreed in the individual case (e.g. limitation to stock).

(2) Within Germany, delivery shall be „free domicile“ to the location designated in the order. If no destination is specified and nothing else has been agreed, delivery shall be to our place of business in Wettingen, Germany. The respective destination is equally the place of performance for delivery and for any subsequent performance (debt to be discharged at buyer's domicile (German: *Bringschuld*)).

(3) The delivery shall be enclosed with a delivery note stating the date (issue and dispatch), contents of the delivery (article no. and quantity) and our order identifier (date and number). If the delivery note is missing or incomplete, we shall not be responsible for any resulting delays in processing and payment. A corresponding dispatch note shall be sent to us separately from the delivery note, containing the same information.

(4) The risk of accidental loss and accidental deterioration shall pass to us upon delivery of possession at the place of performance. If it is agreed that delivery of the goods is subject to acceptance, the risk shall pass upon acceptance. Likewise, the statutory provisions relating to contracts for works (German: *Werkvertragsrecht*) shall apply *mutatis mutandis*, for the rest, in the case that an acceptance procedure for the goods is agreed. If we default on taking delivery this shall qualify as the equivalent of delivery of possession, resp. acceptance of the goods.

(5) Our default on taking delivery is governed by statutory law. The Seller must expressly offer his services to us even if a specific or determinable calendar date has been agreed for an act or contributory act on our part (e.g. provision of material). In the case that we default on acceptance, the Seller may demand reimbursement of his additional expenses under statutory law (Sect. 304 BGB). If the contract relates to fungible goods to be manufactured by the Seller (individual custom made goods), the Seller shall only be entitled to additional claims if we agreed to perform a contributory act and are responsible for omitting it.

Sect. 5 Prices and payment terms

(1) The price stated in the order is binding. All prices are inclusive of the statutory value-added tax, unless the latter is shown separately.

(2) Unless agreed otherwise in the individual case, the price includes all services and ancillary services of the Seller (e.g. assembly, installation) and all ancillary costs (e.g. proper packaging, transportation costs, including transport and liability insurance).

(3) The agreed price is due payable within 30 calendar days from full delivery and performance (including any agreed acceptance procedure for the Goods) and receipt of a proper invoice. If we effect payment within 14 calendar days, the Seller shall grant us a 2% discount on the net amount of the invoice. In the case of bank transfers, payment shall be considered punctually effected within the due time if the bank receives our transfer order prior to the end of the payment term; we assume no responsibility whatsoever for any delays caused by the banks involved in the payment process.

(4) We owe no maturity interest. In the case of late payment, statutory law shall apply.

(5) We are entitled within the statutory scope to the right to set-off, the right of retention, and the right to plead non-performance. We are especially entitled to withhold due payments for as long as we are entitled to claims based on incomplete or defective services against the Seller.

(6) The Seller has a set-off right, and/or a retention right, only in respect of counter claims that are *res judicata* or undisputed.

Sect. 6 Secrecy and retention of ownership

(1) We reserve all ownership rights and copyrights to illustrations, plans, drawings, calculations, implementation guidelines/instructions, product descriptions and other documents. Such documents may be used solely for the contractual services and shall be returned to us upon completion of the contract. The documents shall be kept secret from any third party, even after the termination of the contract. The obligation to maintain secrecy shall expire no earlier than when and only inasmuch as the knowledge contained in the documents supplied has become general knowledge.

(2) The above provision shall apply *mutatis mutandis* to substances and materials (e.g. software, finished and half-finished products) and to tools, templates, samples, and other objects we may provide to the Seller for production purposes. Such objects shall – unless they are processed – be stored separately at the Seller's expense and shall be insured appropriately against destruction and loss.

(3) Any processing, mixing, or commingling (reprocessing) of supplied objects by the Seller shall be effected on our behalf. The same applies in the case that we further process the delivered Goods so that we qualify as manufacturer and, according to statutory law, acquire ownership of the product upon further processing, at the latest.

(4) The transfer of ownership of the Goods to us shall take place unconditionally and irrespective of the payment of the price. If however, in the individual case, we accept a conditional offer of the Seller to transfer ownership, the Seller's retained ownership shall expire at the latest upon the payment of the purchase price for the delivered Goods. We shall be entitled to resell the Goods in the proper course of business with an advance assignment of the resulting receivables, even before the purchase price is paid (in the alternative: validity of the ordinary retention of ownership and of the retention of ownership extended to reselling). This excludes all other forms of retained ownership, in particular the extended and assigned retention of ownership and the retention of ownership extended to reprocessing.

Sect. 7 Defective delivery

(1) Our rights in the case of defects in title to and/or in quality of the Goods (including wrong and/or short delivery and/or incorrect assembly, defective assembly, and/or defective operating or use instructions) and in the case of other breaches of obligations on the part of the Seller, shall be governed by statutory law unless otherwise agreed herein-below.

(2) According to statutory law, the Seller is liable in particular for ensuring that the Goods have the agreed quality at the time of the passing of the risk to us. Agreed quality, in any case, means all those product descriptions that – especially by designation or by reference to them in our order – form the subject matter of the respective contract or were incorporated into the contract in the same manner as the present AEB. It makes no difference whether the product description originates from us, from the Seller, or from the manufacturer.

(3) Contrary to Sect. 442, para. (1), sentence (2) BGB, we are entitled to claims based on defects even if the defect remained unknown to us through gross negligence at the conclusion of contract.

(4) The entrepreneurial obligations to inspect the goods and give notice of any defects (Sections 377, 378 HBG) shall apply subject to the following conditions: our obligation to inspect the goods is limited to defects that become openly apparent during our incoming goods inspection through external examination, also of the shipping documents, and during our quality control procedure using random sample checks (e.g. transport damage, wrong and/or short delivery). Where an acceptance

procedure for the goods is mutually agreed, no obligation to inspect the goods exists. Otherwise, the existence of an inspection obligation depends on whether and to which extent an inspection is expedient in the proper course of business, taking into consideration the circumstances of the individual case.

Our obligation to give notice of defects discovered subsequently shall not be affected. In all cases, our complaint (notice of defect) shall be deemed without forthwith and within the due time if the Seller receives it within 7 working days.

(5) The Seller shall bear all expenses it incurs for the purposes of inspection and subsequent performance (including any dismantling and installation costs), even if the fact emerges that no defect existed. Our liability for damage in the case of unjustified defect rectification claims shall not be affected; in this respect, however, we shall be liable only if we were aware, or failed to become aware through gross negligence, that no defect existed.

(6) If the Seller fails to fulfil its obligation of subsequent performance – at our choice by either remedying the defect (subsequent performance) or by delivering defect-free Goods (replacement delivery) – within a reasonable period of time set by us, we may remedy the defect ourselves and demand reimbursement of required expenses, or a corresponding advance payment, from the Seller. If subsequent performance on the part of the Seller fails or is unreasonable to us (e.g. on account of particular urgency, risks to operational safety, or the pending occurrence of disproportionate damage) the setting of a time limit is not required; we will inform the Seller without undue delay, where possible in advance, of any such circumstances.

(7) Otherwise, in the case of a defect in title or in quality, we are entitled under statutory law to reduce the purchase price or to withdraw from the contract. In addition, we are entitled to compensation for damage and reimbursement of expenses according to statutory law.

Sect. 8 Producer liability

(1) If the Seller is responsible for any damage to the product the Seller shall indemnify us against any third party claims to the extent that the cause is set in the Seller's sphere of control and organisation and the Seller itself is liable to third parties.

(2) Within the scope of the Seller's indemnification obligation, the Seller shall reimburse expenses in accordance with Sections 683, 670 BGB that resulted from or in connection with claims raised by third parties, including recalls carried out by us. Where possible and reasonable we will inform the Seller of the contents and scope of any recall measures and grant the Seller opportunity to express an opinion. Additional statutory claims shall not be affected.

(3) The Seller shall take out and maintain product liability insurance with a lump sum amount insured of at least 10 million euros per personal injury/property damage. At our request, the Seller shall at any time send a copy of the liability policy to us.

Sect. 9 Limitation

(1) The reciprocal claims of the contracting parties shall become time-barred pursuant to statutory law, unless otherwise agreed herein-below.

(2) Contract to Sect. 438, para. (1), no. 3 BGB, the general limitation period for claims based on defects is 3 years from the date of the passing of the risk. Where an acceptance procedure has been mutually agreed, the limitation period shall commence upon acceptance of the Goods. The 3-year limitation period shall apply accordingly to claims based on defects in title, however without affecting the statutory limitation period for third parties' *in rem* rights of restitution (Sect. 438, para. (1), no. (1) BGB); claims based on defects in title, however, shall never become time-barred for as long as the third party is able to raise such a claim against us – especially in the absence of any statute of limitation.

(3) The limitation periods under the laws on contracts for the sale of goods, including the extension set out herein-above, shall apply – within the statutory limits – to all contractual claims based on defects. Where we are entitled to extra-contractual damages claims on the grounds of a defect, the regular statutory limitation period shall apply (Sections 195, 199 BGB), unless the application of the statutory limitation periods under the laws on contracts for the sale of goods give rise to a longer limitation period in the individual case.

Sect. 10 Choice of law and jurisdiction

(1) The present AEB and the contractual relations between us and the Seller shall be governed by the laws of the Federal Republic of Germany to the exclusion of uniform international law, in particular the UN Convention on Contracts for the International Sale of Goods.

(2) If the Seller is an entrepreneur within the meaning of the German Commercial Code, a legal person under public law, or a special fund under public law, the exclusive – and international – place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be at our place of business in Wettingen, Germany. The same shall apply accordingly if the Seller is an entrepreneur within the meaning of Sect. 14 BGB. However, we are entitled in all cases to bring court action at the place of performance of the delivery obligation as stipulated in the present AEB, resp. any prevailing individual agreement, or at the Seller's general place of jurisdiction. Prevailing statutory provisions, in particular regarding exclusive jurisdiction, shall not be affected.

As of: 03/2016