

# General Terms and Conditions of Purchase



## Section 1 Valid scope, form

(1) These General Terms and Conditions of Purchase (GTCP) apply to all business relationships with our business partners and suppliers ("Seller"). The GTCP shall only apply if the Seller is an entrepreneur (Section 14 of the German Civil Code (BGB)), a legal entity under public law or a special fund under public law.

(2) The GTCP apply in particular to contracts for the sale and/or delivery of movable goods ("goods"), irrespective of whether the Seller manufactures the goods itself or purchases them from suppliers (Sections 433, 650 BGB). Unless otherwise agreed, the GTCP in the version valid at the time of the Buyer's order or, in any case, in the version last communicated to the Seller in text form shall also apply as a general agreement for similar future contracts, without us having to refer to them again in each individual case.

(3) These GTCP shall apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the Seller shall only become part of the contract if and insofar as we have expressly consented to their validity in writing. This requirement of consent shall apply in any case, for example, even if the Seller refers to its own GTCP in the order confirmation and we do not expressly object thereto.

(4) Individual agreements (e.g., general supply agreements, quality assurance agreements) and information in our order shall take precedence over the GTCP. In case of doubt, trade terms shall be interpreted in accordance with the Incoterms® issued by the International Chamber of Commerce in Paris (ICC) in the version valid at the time of conclusion of the contract.

(5) Legally relevant declarations and notifications by the Seller in relation to the contract (e.g., setting of deadlines, reminders, withdrawal) must be made in writing. The written form within the scope of these GTCP includes handwritten and text form (e.g., letter, e-mail, fax). Statutory formal requirements and further evidence, in particular in the event of doubts about the legitimacy of the declarant, remain unaffected.

(6) References to the applicability 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 GTCP.

## Section 2 Conclusion of contract

(1) Our order shall be deemed binding at the earliest upon written submission or confirmation. The Seller shall notify us of obvious errors (e.g., typographical and calculation errors) and incompleteness of the order, including the order documents, for the purpose of correction or completion before acceptance; otherwise the contract shall be deemed not to have been concluded.

(2) The Seller is obliged to confirm our order in writing within a period of 7 days or, in particular, to execute it without reservation by dispatching the goods (acceptance).

(3) Delayed acceptance shall be deemed a new offer and requires acceptance by us.

## Section 3 Delivery time and delay in delivery

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

(2) If the Seller does not render its performance or does not render it within the agreed delivery period or is in default, our rights – in particular to rescission and damages – shall be determined in accordance with the statutory provisions. The provisions in Para. 3 remain unaffected.

(3) If the Seller is in default, we may – in addition to further statutory claims – demand lump-sum compensation for our damage caused by default in the amount of 1% of the net price per completed calendar week, but not more than a total of 5% of the net price of the goods delivered late. We reserve the right to prove that higher damages have been incurred. The Seller reserves the right to prove that no damage at all or only significantly less damage has been incurred.

# General Terms and Conditions of Purchase



## Section 4 Performance, delivery, transfer of risk, default of acceptance

(1) Without our prior written consent, the Seller shall not be entitled to have the performance owed by it rendered by third parties (e.g., subcontractors). The Seller shall bear the procurement risk for its services unless otherwise agreed in individual cases (e.g., limitation to stock).

(2) Delivery within Germany shall be "free domicile" to the location specified in the order. If the place of destination is not specified and nothing else has been agreed, delivery shall be made to our registered office at Riedstraße 4 in 88250 Weingarten. The respective destination is also the place of performance for the delivery and any subsequent performance (obligation to deliver).

(3) A delivery bill stating the date (issue and dispatch), contents of the delivery (article number and quantity) and our order identification (date and number) must be enclosed with the delivery. If the delivery bill is missing or incomplete, we shall not be responsible for any resulting delays in processing and payment. A corresponding dispatch note with the same content must be sent to us separately from the delivery bill.

(4) The risk of accidental loss and accidental deterioration of the goods shall pass to us upon handover at the place of performance. If acceptance has been agreed, this acceptance shall be decisive for the transfer of risk. The statutory provisions of the laws regarding contracts for work and services shall also apply accordingly in the event of acceptance. The handover or acceptance is deemed to have taken place if we are in default of acceptance.

(5) The statutory provisions shall apply to the occurrence of our default of acceptance. However, the Seller must also expressly offer us its service if a specific or determinable calendar time has been agreed for an action or cooperation on our part (e.g., provision of material). If we are in default of acceptance, the Seller may demand compensation for its additional expenses in accordance with the statutory provisions (Section 304 BGB). If the contract relates to a non-fungible item to be manufactured by the seller (individual production), the Seller shall only be entitled to further rights if we have undertaken to cooperate and are responsible for the failure to cooperate.

(6) The unconditional acceptance of a delayed delivery or service shall not be construed as a waiver of claims to which we are entitled due to the delayed delivery or service; this stipulation applies until complete payment of the amounts owed by us for the delivery or service in question has been made.

(7) Partial deliveries are precluded as a rule, unless we have expressly agreed to them or they are reasonable.

(8) The values determined by us during the incoming goods inspection shall prevail with respect to quantities, weights and dimensions, unless evidence to the contrary can be produced.

(9) With respect to software included within the scope of delivery, including its documentation, we shall have the right to use such software with the agreed-upon performance features and to the extent necessary for the use of the product in accordance with the agreement. This right of use is supplementary to the right of use of such software to the extent provided for by applicable law (Sections 69a ff. of the German Copyright Act (UrhG)). We have the right to make a backup copy, even without express consent.

## Section 5 Prices, invoicing and terms of payment

(1) The price specified in the order is binding. All prices include statutory value added tax if it is not listed separately.

(2) Unless otherwise agreed in individual cases, the price shall include all services and ancillary services of the Seller (e.g., assembly, installation), as well as all ancillary costs (e.g., proper packaging, transportation costs including any transportation and liability insurance, customs duties, taxes or other public charges).

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

(4) We shall not owe any due date interest. Statutory provisions govern in case of default of payment.

(5) We shall be entitled to rights of set-off and retention, as well as the defense of non-performance of the contract to the extent permitted by law. In particular, we are entitled to retain payments due in cases where we have claims against Seller for incomplete or defective performance of services.

# General Terms and Conditions of Purchase



(6) The Seller has the right of set-off or retention only for legally adjudicated or uncontested counterclaims.

(7) The information contained in our orders and delivery call-offs shall apply. The invoice showing the invoice number and other references must be sent in one copy to the respective printed mailing address or to [invoice@tox-de.com](mailto:invoice@tox-de.com). (The provisions stipulated in Section 14 of the German Value Added Tax Act (UStG) must be observed.)

## Section 6 Confidentiality and retention of title

(1) Supplier shall keep all business or technical information made accessible by us (including features which might be learned from objects, documents or software submitted and any other information or experiences) towards third parties confidential, as long as and to the extent that they cannot be proven to be in the public domain, and shall only make such information available in at the supplier's premises to persons who need to make use of the information for the purpose of supplying products or services to us and who must also be made subject to a duty of confidentiality; all such information remains our exclusive property. Without our prior written consent, such information – except for deliveries to us – may not be duplicated or used for commercial purposes. Upon our demand, all information originating from us (including any copies or recordings thereof) and loaned items shall be immediately returned to us or destroyed promptly and fully. We reserve all rights to such information (including copyrights and the right to file for industrial property rights such as patents, utility models, semiconductor protection, etc.). In the event that they are provided to us by third parties, this reservation of rights also applies to these third parties.

(2) Products built on the basis of documentation prepared by us, such as drawings, models and the like, or based upon our confidential information or built with our tools or tools modelled on our tools may neither be used by the supplier nor be offered or supplied to third parties. The same shall apply, mutatis mutandis, to our printing orders.

(3) We also reserve ownership rights and copyrights to illustrations, plans, drawings, calculations, execution instructions, product descriptions and other documents. Such documents are to be used exclusively for the contractual service and returned to us after completion of the contract. Such documents must also be kept confidential from third parties, even after termination of the contract. The confidentiality obligation shall only expire if and insofar as the knowledge contained in the documents provided has become generally known. Special non-disclosure agreements and statutory provisions on the protection of secrets remain unaffected.

(4) The above 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 shall – as long as they are not processed – be stored separately at the Seller's expense and insured to an appropriate extent against destruction and loss.

(5) Any processing, mixing or combination (further processing) of items provided by the Seller shall be carried out on our behalf. The same applies if we further process the delivered goods, so that we are deemed to be the manufacturer and acquire ownership of the product at the latest upon further processing in accordance with the statutory provisions.

(6) The transfer of ownership of the goods to us shall be unconditional and without regard to the payment of the price. However, if in individual cases we accept an offer from the Seller for transfer of ownership conditional on payment of the purchase price, the Seller's retention of title shall expire at the latest upon payment of the purchase price for the delivered goods. We shall remain authorized to resell the goods in the ordinary course of business, even before payment of the purchase price, subject to advance assignment of the resulting claim (alternatively, the simple retention of title extended to the resale shall apply). This stipulation excludes all other forms of retention of title, in particular the extended retention of title, the forwarded retention of title and the retention of title extended to further processing.

## Section 7 Defective delivery

(1) The statutory provisions and, exclusively in our favor, the following supplements and clarifications shall apply to our rights in the event of material defects and defects of title of the goods (including incorrect and short delivery, as well as improper assembly/installation or defective instructions) and in the event of other breaches of duty by the Seller.

(2) In accordance with the statutory provisions, the Seller shall be liable in particular for ensuring that the goods have the agreed quality upon transfer of risk to us. In any case, those product descriptions which – in particular by designation or reference in our order – are the subject matter of the respective contract or have been included in the contract in the same way as these GTCP shall be deemed to be an agreement on the quality. It makes no difference whether the product description comes from us, the Seller or the manufacturer.

(3) In the case of goods with digital elements or other digital content, the Seller is responsible for providing and updating the digital content to the extent that it meets any quality agreements in accordance with para. 2 or other product descriptions of the manufacturer or on its behalf, in particular on the Internet, in advertising or on the product label.

(4) We are not obliged to inspect the goods or make special inquiries about any defects upon conclusion of the contract. Partially deviating from Section 442(1)(2) BGB, we are therefore entitled to claims for defects without restriction even if the defect remained unknown to us at the time of conclusion of the contract due to gross negligence.

(5) The statutory provisions (Sections 377 and 381 of the German Commercial Code (HGB)) shall apply to the commercial obligation to inspect and give notice of defects with the following proviso: our obligation to inspect shall be limited to defects which become apparent during our incoming goods inspection under external examination including the delivery documents (e.g., transport damage, incorrect and short delivery) or which are recognizable during our quality control in the random sampling procedure. If acceptance has been agreed, there is no obligation to inspect. Furthermore, it depends on the extent to which an investigation is feasible in the ordinary course of business, while taking the circumstances of the individual case into consideration. Our obligation to give notice of defects discovered later remains unaffected. Notwithstanding our duty to inspect, our complaint (notification of defects) shall in any case be deemed to be immediate and timely if it is sent within 10 working days of discovery and, in the case of obvious defects, within three days of delivery.

(6) Subsequent performance shall also include the removal of the defective goods and reinstallation, provided that the goods were installed in another item or attached to another item in accordance with their nature and intended use before the defect became apparent; our statutory claim for reimbursement of corresponding expenses (removal and installation costs) shall remain unaffected. The expenses required for the purpose of inspection and subsequent performance, in particular transport, travel, labor and material costs, as well as any dismantling and installation costs, shall be borne by the Seller even if it turns out that there was actually no defect. Our liability for damages in the event of unjustified requests to remedy defects shall remain unaffected; however, we shall only be liable in this respect if we recognized or were grossly negligent in not recognizing that there was no defect.

(7) Notwithstanding our statutory rights and the provisions in Para. 5, the following shall apply: if the Seller does not fulfill its obligation to provide subsequent performance – at our discretion by remedying the defect (subsequent improvement) or by delivering a defect-free item (replacement delivery) – within a reasonable period set by us, we may remedy the defect ourselves and demand compensation from the Seller for the expenses required for such remedy or a corresponding advance payment. If subsequent performance by the Seller has failed or is unreasonable for us (e.g., due to particular urgency, endangerment of operational safety or imminent occurrence of disproportionate damage), no deadline need be set; we shall inform the Seller of such circumstances immediately, if possible in advance.

(8) Otherwise, we shall be entitled to reduce the purchase price or withdraw from the contract in the event of a material defect or defect of title in accordance with the statutory provisions. We are also entitled to compensation for damages and expenses in accordance with the statutory provisions. In the event of a defective delivery, we are entitled to demand a one-off lump sum for complaints in the amount of €89.00. Further claims for damages and reimbursement of expenses remain unaffected by this.

## Section 8 Supplier recourse

(1) We shall be entitled to our statutory claims for expenses and recourse within a supply chain (supplier recourse pursuant to Sections 478, 445a and 445b or 445c, 327(5) and 327u BGB) without restriction in addition to the claims for defects. In particular, we are entitled to demand exactly the type of subsequent performance (rectification or replacement delivery) from the Seller that we owe our customer in the individual case; in the case of goods with digital elements or other digital content, this stipulation also applies in regard to the provision of necessary updates. Our statutory right of choice (Section 439(1) BGB) is not restricted hereby.

(2) Before we acknowledge or fulfill a claim for defects asserted by our customer (including reimbursement of expenses pursuant to Sections 445a(1), 439(2), (3) and (6)(2), 475(4) BGB), we shall notify the Seller and request a written statement, briefly explaining the facts of the case. If a substantiated statement is not made within a reasonable period of time and no amicable solution is reached, the claim for defects actually granted by us shall be deemed to be owed to our customer. In this case, the Seller is responsible for providing evidence to the contrary.

(3) Our claims arising from supplier recourse shall also apply if the defective goods have been combined with another product or further processed in any other way by us, our customer or a third party, e.g., by installation, attachment or installation.

## Section 9 Producer liability

(1) If the Seller is responsible for product damage, it shall indemnify us against third-party claims to the extent that the cause lies within its sphere of control and organization and it itself is liable in relation to third parties.

(2) Within the scope of its indemnification obligation, the Seller shall reimburse expenses pursuant to Sections 683 and 670 BGB arising from or in connection with claims asserted by third parties, including recall actions carried out by us. We will inform the Seller – as far as possible and reasonable – about the content and scope of recall measures and give it the opportunity to comment. Further legal claims remain unaffected.

(3) The Seller shall take out and maintain product liability insurance with a lump sum coverage of at least EUR 10 million per personal injury/property damage.

## Section 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 Section 438(1)(3) BGB, the general limitation period for claims for defects is 3 years from the transfer of risk. If acceptance has been agreed, the limitation period shall commence upon acceptance. The 3-year limitation period shall also apply accordingly to claims arising from defects of title, whereby the statutory limitation period for third-party claims for restitution in rem (Section 438(1)(1) BGB) shall remain unaffected; furthermore, claims arising from defects of title shall in no case become time-barred as long as the third party can still assert the right – in particular in the absence of a limitation period – against us.

(3) The limitation periods of the law on sales, including the above extension, shall apply – to the extent permitted by law – to all contractual claims for defects. Insofar as we are also entitled to non-contractual claims for damages due to a defect, the regular statutory limitation period (Sections 195 and 199 BGB) shall apply, unless the application of the limitation periods of the law on sales leads to a longer limitation period in individual cases.

# General Terms and Conditions of Purchase



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

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

(2) If the Seller is a merchant within the scope of the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive – also international – place of jurisdiction for all disputes arising from the contractual relationship shall be our registered office in 88250 Weingarten. The same applies if the Seller is an entrepreneur within the scope of Section 14 BGB. In all cases, however, we shall also be entitled to bring an action at the place of performance of the delivery obligation in accordance with these GTCP or an overriding individual agreement or at the Seller's general place of jurisdiction. Overriding statutory provisions, in particular regarding exclusive responsibilities, remain unaffected.

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