

GENERAL TERMS AND CONDITIONS FOR CONTRACTORS OF UEBERKOPF GMBH RIGGINGSERVICE & VERANSTALTUNGSTECHNIK GMBH

§ 1 SCOPE, FORM

- (1) These Standard Purchasing Terms ('SPT') shall apply to all business relationships with our business partners, contractual partners and suppliers (collectively referred to as a 'Seller'). The SPT 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) Without limitation, the SPT shall apply to contracts for the sale and/or delivery of movable goods ('Goods') and the rental of goods and related supplies of goods and services, irrespective of whether the Seller manufactures the Goods themselves or purchases them from suppliers (sections 433, 650 BGB). Unless otherwise agreed, these SPT, in the version in effect at the time the customer places an order (or 'Lessee' hereinafter collectively referred to as a 'Buyer') or, as applicable, the most recent version communicated to such party in writing, are deemed to be a framework agreement for similar contracts concluded in future without the need on our part to refer to them again in any specific case.
- (3) These SPT shall apply on an exclusive basis. Any 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 agreed to their application in writing. This consent requirement shall apply in any case, for example even if we accept the Seller's supplies of goods and services without reservation with knowledge of the Seller's general terms and conditions.
- (4) Individual agreements made with the Seller in specific cases (including collateral agreements, supplements, amendments) take precedence over these SPT in all cases. Subject to proof to the contrary, a written contract, or our written confirmation, shall be decisive as to the contents of any such agreements.
- (5) Legally relevant declarations and notifications by the Seller with regard to the contract (e.g. setting deadlines, dunning notices, revocation) must be made in writing, i.e. in written or text form (e.g. letter, email, fax). Legal requirements as to form and additional evidence, in particular in cases of doubt as to the authority of the declaring party, remain unaffected.
- (6) References to the application of the statutory provisions are solely for purposes of clarification. Even without such clarification, the statutory provisions shall therefore apply, unless they are directly amended or expressly excluded in these SPT.

§ 2 CONTRACT CONCLUSION

- (1) Our order shall be deemed binding upon written submission or confirmation at the earliest. The Seller shall notify us of obvious errors (e.g. spelling and calculation errors) and incomplete information in an order, including 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 48 hours or, in particular, to perform it without reservation by dispatching the Goods (acceptance).
Delayed acceptance shall be considered a new offer and requires our acceptance.
- (3) Our contract with the Seller is subject to the condition precedent that the contract under which we are obliged to supply goods and services to our own customer, and with regard to which we rely upon supplies of goods and services from the Seller, is not terminated or rescinded by our customer prior to the commencement of performance by the Seller on grounds for which we are not at fault and we have communicated this to the Seller. If the contract with our own customer is revoked or rescinded following the commencement of performance by the Seller but prior to the completion of performance as described above, our contract with the Seller remains effective with regard to the performance already rendered, whereas such contract is rescinded without any claim to compensation or reimbursement as to supplies of goods and services not yet provided by the Seller.

§ 3 DELIVERY TIME AND DELAYS IN DELIVERY

- (1) Delivery times stated by us in the order are binding. The Seller is obliged to inform us in writing without undue delay if they are likely to be unable to meet agreed delivery times on whatever grounds.
- (2) If the Seller does not perform at all or within the agreed delivery time or if they are in default, our rights, including without limitation to withdraw from the contract and to claim damages, shall be governed by applicable statutory provisions. This is without prejudice to the provisions of paragraph (3).
- (3) If the Seller is in default, we may, in addition to additional statutory rights, demand lump sum compensation for damage suffered by us as a result of such default in the amount of 1% of the net price per completed calendar week, limited, however, to no more than a total of 5% of the net price of the untimely delivered Goods. We reserve the right to prove that we have incurred greater losses. The Seller remains free to prove that no, or substantially lower, damages were caused.

§ 4 PERFORMANCE, DELIVERY, PASSAGE OF RISK, DEFAULT OF ACCEPTANCE

- (1) Without our prior written consent, the Seller shall not be entitled to have their performance obligations rendered by third parties (e.g. subcontractors). Unless otherwise agreed in any specific case (e.g. limitation to inventory stocks), the Seller bears the procurement risk for their supplies of goods and services.
- (2) All deliveries shall be accompanied by a delivery note stating the date (issue and dispatch), the contents of the delivery (article number and quantity) and our purchase order information (date and number). We are not responsible for any delays in processing and payment in cases where the delivery note is missing or incomplete. Shipping notice with the same contents shall be sent to us in addition to the delivery note.
- (3) The risk of accidental loss and accidental deterioration of the goods shall pass to us upon transfer at the place of performance. In the event that acceptance has been agreed, this shall be decisive for the passage of risk. For all other purposes, the statutory provisions of the law on contracts for work and services shall also apply accordingly in the event of acceptance. Default in acceptance on our part shall be deemed to be equivalent to handover or acceptance.
- (4) Applicable statutory provisions shall apply in the event of our default of acceptance. However, the Seller must also expressly offer their performance to us in cases where a defined or definable calendar date has been agreed for action or cooperation on our part (e.g. provision of materials). If we are in default of acceptance, the Seller may demand compensation for any additional expenses they incur in accordance with applicable statutory provisions (section 304 BGB). If the contract relates to an object to be manufactured by the Seller that may not be re-sold (custom production), the Seller shall only be entitled to additional rights if we are obliged to cooperate and are responsible for any failure to cooperate.

§ 5 PRICES AND TERMS OF PAYMENT

- (1) Prices stated in the order are binding. All prices are understood to include statutory value added tax if not otherwise stated separately.
- (2) Unless otherwise agreed in any specific case, prices shall include all supplies of goods and services and ancillary performance by the Seller (e.g. assembly, installation) as well as all incidental costs (e.g. proper packaging, transport costs including any transport and liability insurance).
- (3) We owe no interest on maturity. Applicable statutory provisions shall apply to default of payment.

- (4) We are entitled to exercise rights of set-off or retention and to claim non-performance of the contract to the extent permitted by law. Without limitation, we shall be entitled to withhold any payments due as long as we are still entitled to claims related to incomplete or defective performance in relation to the Seller.
- (5) The Seller may only exercise a right of set-off or retention on the basis of counterclaims that are undisputed or have been finally determined by a court.

§ 6 CONFIDENTIALITY AND RESERVATION OF TITLE

- (1) We reserve ownership and copyright in illustrations, plans, drawings, calculations, execution instructions, product descriptions and other documents. Such documents shall be used exclusively for contractual performance and shall be returned to us after completion of the contract. No such documents may be disclosed to third parties; this obligation continues to apply even after termination of the contract. This non-disclosure obligation shall only lapse when and insofar as information contained in any documents provided has become generally known.
- (2) The preceding provisions shall apply accordingly to substances and materials (e.g. software, finished and semi-finished products) as well as tools, templates, samples and other items which we provide to the Seller for manufacture. Such objects are – provided they are not processed – to be stored separately and insured to a reasonable extent against destruction and loss at the expense of the Seller.
- (3) Any processing, mixing or combination (further processing) on the part of the Seller of any provided items shall be performed on our behalf. The same applies in cases where we further processed supplied Goods, such that we are considered the manufacturer and acquire ownership of the product no later than upon further processing in accordance with applicable statutory provisions.
- (4) Ownership of the Goods must pass to us unconditionally and without regard to the payment of the price. If, however, we accept an offer from the Seller to transfer ownership conditioned on payment of the purchase price in a specific case, the Seller's reservation of title lapses no later than upon payment of the purchase price for the supplied Goods. We remain entitled to sell the Goods in the ordinary course of business, even prior to payment of the purchase price, subject to advance assignment of the resulting receivable (alternatively, assertion of a simple reservation of title that extends to resales). All other forms of retention of title are thus excluded in any case, including without limitation retention of title that is expanded, transferred or extended to further processing).

§ 7 DEFECTIVE SUPPLIES

- (1) Unless otherwise specified below, the statutory provisions shall apply to our rights in the event of material defects and defects of title in the Goods (including incorrect and short deliveries as well as defective assembly, operating instructions or manuals).
- (2) In accordance with applicable statutory provisions, the Seller shall be liable for ensuring that the Goods have the agreed quality at the time of passage of risk to us in particular. In any event, product descriptions which – without limitation by means of designation or reference in our order – are the subject of the respective contract, or which have been incorporated into the contract in the same way as these SPT, shall be deemed to be an agreement on quality. In this context, it makes no difference whether the product description comes from us, the Seller or the manufacturer.
- (3) Section 442 (1) second sentence of the German Civil Code notwithstanding, we shall be entitled to claims for defects without restriction even if we were unaware of the defect concerned at the time of conclusion of the contract owing to gross negligence.

- (4) The statutory provisions sections 377, 381 of the German Commercial Code shall apply to the commercial duty to inspect and give notice of defects subject to the following condition: our obligation to inspect is limited to defects that are apparent during our incoming goods inspection under external examination, including delivery documents (e.g. transport damage, incorrect or short deliveries) or that are ascertainable during our quality control by random sampling. There is no duty to inspect where acceptance has been agreed. In all other cases, the extent to which an inspection is feasible in the normal course of business, taking into account the circumstances of the specific case, is decisive. This is without prejudice to our obligation to provide notice of defects discovered later. Notwithstanding our duty to inspect, our complaint (notice of defects) shall, in any case, be deemed to have been given without undue delay and on a timely basis, if it is sent within five working days of discovery or, in the case of latent defects, of delivery.
- (5) Cure shall also include the removal of the defective Goods and their re-installation, provided that the Goods have been installed in, or attached to, another object in accordance with their nature and intended use; our statutory claim to reimbursement of corresponding expenses shall remain unaffected. The Seller shall bear the expenses necessary for the purpose of inspection and cure even in cases where it is determined that there was no defect. Our liability for damages in the event of an unjustified request for cure remains unaffected; however, in such cases, we are only liable to the extent that we were aware, or failed to be aware owing to gross negligence, that there was no defect.
- (6) The following applies without prejudice to our statutory rights and the provisions of paragraph (5): if the Seller does not fulfil their obligation to provide cure – as per our judgement, either by remedying the defect (repair) or by delivering a defect-free item (replacement) – within a reasonable time set by us, we may remedy the defect ourselves and demand reimbursement of the necessary expenses or a corresponding advance payment from the Seller. No deadline need be set if an attempt at cure by the Seller has failed or is not reasonably acceptable to us (e.g. owing to particular urgency, endangerment of operational safety or imminent occurrence of disproportionate harm); we shall inform the Seller of such circumstances without delay and in advance if possible.
- (7) In all other cases, we are entitled to reduce the purchase price or to withdraw from the contract in the event of a material defect or defect in title based on applicable statutory provisions. In addition, we are entitled to compensation for damages and expenses in accordance with applicable statutory provisions.

§ 8 SUPPLIER RECOURSE

- (1) In addition to claims for defects, we shall be entitled to our legally defined rights of recourse within a supply chain (supplier recourse pursuant to sections 445a, 445b, 478 BGB) without restriction. Without limitation, we are entitled to demand from the Seller the same form of cure (repair or replacement) that we are obliged to provide our customer in the respective specific case. This is without prejudice to our statutory elective right (section 439 (1) BGB).
- (2) We shall notify the Seller and, following brief description of the relevant circumstances, request a response before we acknowledge or satisfy a claim for defects asserted by our customer (including reimbursement of expenses in accordance with sections 445a (1), 439 (2), (3) BGB). If a substantiated statement is not made within a reasonable time and no amicable resolution is reached, any claim for defects actually granted by us shall be deemed owed to our customer. The Seller bears the burden of proof to the contrary in such cases.
- (3) Our claims based on supplier recourse apply even in the event that the defective Goods have been further processed by us or another company, e.g. by installation in another product.

§ 9 MANUFACTURER'S LIABILITY

- (1) If the Seller is responsible for a product claim, they shall indemnify us against third-party claims to the extent that the cause lies within their area of control and organisation and they are liable themselves in relation to third parties.
- (2) Within the scope of their duty to indemnify, the Seller shall reimburse expenses according to sections 683, 670 of the German Civil Code arising from, or in connection with, a third-party claim including any recall actions we conduct. To the extent possible and reasonable, we will inform the Seller about the content and scope of the respective recall measures to be taken and give them the opportunity to comment. This is without prejudice to additional claims.
- (3) The Seller shall purchase and maintain product liability insurance with a lump sum indemnity of at least EUR 3 million per personal injury/property damage claim.

§ 10 LIMITATION PERIOD

- (1) To the extent not otherwise provided below, the contracting parties' reciprocal claims shall become time-barred in accordance with applicable statutory provisions.
- (2) Section 438 (1) no. 3 of the German Civil Code notwithstanding, the general limitation period for claims for defects is three years from the passage of risk. If acceptance has been agreed, the limitation period begins with acceptance. The three-year limitation period also applies accordingly to claims arising from defects of title, whereby the statutory period of limitation for real rights of a third party on the basis of which return of the purchased item may be demanded (section 438 (1)(1) BGB) remains unaffected; furthermore, claims arising from defects of title do not become time-barred under any circumstances as long as the third party can still assert the right – especially in the absence of a limitation period – against us.
- (3) Limitation periods provided under the law on sales, including the above extension, apply to all contractual claims for defects to the extent permitted by law. The regular statutory limitation period (sections 195, 199 BGB) shall apply here in cases in which we are also entitled to non-contractual claims for damages owing to a defect, unless application of the limitation periods under the law on sales would result in a longer limitation period in any specific case.

§ 11 CHOICE OF LAW; JURISDICTION

- (1) These SPT, and the contractual relationship between us and the Seller, shall be governed by the laws of the Federal Republic of Germany, excluding uniform international law, in particular the UN Convention on Contracts for the International Sale of Goods.
- (2) If the Seller is a merchant as defined in the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive place of jurisdiction for all disputes arising under the contractual relationship, including international disputes, shall be our registered office in Hamburg. However, we shall also be entitled to bring an action at the place of performance of the delivery commitment in accordance with these SPT or an overriding individual agreement or at the Seller's general place of jurisdiction in all cases. This is without prejudice to overriding statutory provisions, in particular those concerning exclusive jurisdiction.