

# **General Terms and Conditions of Sale**

**Weiss – Apparatebau GmbH, Schützenstr. 5, 31249 Hohenhameln**

## **§ 1 Scope of application, form**

(1) These General Terms and Conditions of Sale (GTC) apply to all our business relationships with our customers ("Buyers"). The GTC only apply if the Buyer is an entrepreneur (§ 14 BGB), a legal entity under public law or a special fund under public law.

(2) The GCS apply in particular to contracts for the sale and/or delivery of movable goods ("goods"), regardless of whether we manufacture the goods ourselves or purchase them from suppliers (§§ 433, 650 BGB). Unless otherwise agreed, the GTC shall apply in the version valid at the time of the Buyer's order or, in any case, in the version last communicated to the Buyer in text form as a framework agreement for similar future contracts, 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 of the buyer shall only become part of the contract if and to the extent that we have expressly agreed to their validity. This requirement of consent shall apply in any case, for example even if the buyer refers to its GTC in the context of the order and we do not expressly object to this.

(4) Individual agreements (e.g. framework supply contracts, quality assurance agreements) and information in our order confirmation take precedence over the GTC. In case of doubt, trade clauses shall be interpreted in accordance with the Incoterms® published 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 buyer in relation to the contract (e.g. setting of deadlines, notification of defects, withdrawal or reduction) must be made in writing. **Written form within the meaning of these GTC includes written and text form (e.g. letter, e-mail, fax).** Statutory formal requirements and further evidence, in particular in cases of doubt about the legitimacy of the declarant, remain unaffected.

(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 GTC.

## **§ 2 Conclusion of contract**

(1) Our offers are subject to change and non-binding. This also applies if we have provided the buyer with catalogues, technical documentation (e.g. drawings, plans, calculations, references to DIN standards), other product descriptions or documents – including in electronic form – to which we reserve ownership rights and copyrights.

(2) The buyer's order of goods is considered a binding offer to enter into a contract. Unless otherwise stated in the order, we are entitled to accept this offer to enter into a contract within 2 weeks of receiving it.

(3) Acceptance can be declared either in writing (e.g. by order confirmation) or by delivery of the goods to the buyer.

### **§ 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 for systems and containers shall be approximately 10 weeks from conclusion of the contract.

(2) If we are unable to meet binding delivery periods for reasons for which we are not responsible (non-availability of the service), we shall inform the buyer of this immediately and at the same time notify them of the expected new delivery period. If the service is also not available within the new delivery period, we shall be entitled to withdraw from the contract in whole or in part; We shall immediately reimburse any consideration already paid by the buyer. Non-availability of the service shall be deemed to exist, for example, in the event of late delivery by our supplier, if we have concluded a congruent covering transaction, in the event of other disruptions in the supply chain, for example due to force majeure, or if we are not obliged to procure the goods in individual cases.

(3) The occurrence of our delay in delivery shall be determined in accordance with the statutory provisions. In any case, however, a reminder from the buyer is required. If we are in default of delivery, the buyer may demand lump-sum compensation for the damage caused by the delay. The lump sum compensation shall amount to 0.5% of the net price (delivery value) for each completed calendar week of delay, but shall not exceed a total of 5% of the delivery value of the goods delivered late. We reserve the right to prove that the buyer has not incurred any damage or has incurred only significantly less damage than the above lump sum.

(4) The rights of the buyer pursuant to § 8 of these GTC and our statutory rights, in particular in the event of an exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of performance and/or subsequent performance), remain unaffected.

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

(1) Delivery shall be made ex warehouse, which shall also be the place of performance for the delivery and any subsequent performance. At the request and expense of the buyer, the goods shall be shipped to another destination (sale by delivery). Unless otherwise agreed, we shall be entitled to determine the type of shipment (in particular the transport company, shipping route, packaging) ourselves.

(2) The risk of accidental loss and accidental deterioration of the goods shall pass to the buyer at the latest upon handover. In the case of sale by delivery to a place other than the place of performance, however, the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay shall pass to the buyer upon delivery of the goods to the forwarding agent, the carrier or any other person or institution designated to carry out the shipment. If acceptance has been agreed, this shall be decisive for the transfer of risk. In all other respects, the statutory provisions of the law on contracts for work and services shall apply mutatis mutandis to an agreed acceptance. The handover or acceptance shall be deemed to have taken place if the buyer is in default of acceptance.

(3) If the buyer is in default of acceptance, fails to cooperate or delays our delivery for other reasons for which the buyer is responsible, we shall be entitled to demand compensation for the resulting damage, including additional expenses (e.g. storage costs).

## **§ 5 Prices and terms of payment**

(1) Unless otherwise agreed in individual cases, our prices valid at the time of conclusion of the contract shall apply, ex warehouse, plus statutory value added tax.

(2) In the case of sale by delivery (§ 4 (1) of these GTC), the buyer shall bear the transport costs ex warehouse and the costs of any transport insurance requested by the buyer. Any customs duties, fees, taxes and other public charges shall be borne by the buyer.

(3) The purchase price is due and payable within 14 days of invoicing and delivery or acceptance of the goods. However, even within the framework of an ongoing business relationship, we are entitled at any time to make a delivery in whole or in part only against advance payment. We shall declare a corresponding reservation at the latest with the order confirmation.

(4) Upon expiry of the above payment period, 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 assert further claims for damages caused by default. Our claim to commercial interest on arrears (§ 353 HGB) against merchants remains unaffected.

(5) The buyer shall only be entitled to set-off or retention rights insofar as his claim has been legally established or is undisputed. In the event of defects in the delivery, the buyer's counter-rights, in particular in accordance with § 7 (6) sentence 2 of these GTC, shall remain unaffected.

(6) If, after conclusion of the contract, it becomes apparent (e.g. through an application to open insolvency proceedings) that our claim to the purchase price is at risk due to the buyer's inability to pay, we shall be entitled to refuse performance in accordance with the statutory provisions and – if necessary, after setting a deadline – to withdraw from the contract (Section 321 BGB). In the case of contracts for the manufacture of non-fungible goods (custom-made products), we may declare our withdrawal immediately; the statutory provisions on the dispensability of setting a deadline remain unaffected.

## **Section 6 Retention of title**

(1) We retain title to the goods sold until all our current and future claims arising from the purchase contract and an ongoing business relationship (secured claims) have been paid in full.

(2) The goods subject to retention of title may not be pledged to third parties or transferred as security before the secured claims have been paid in full. The buyer must notify us immediately in writing if an application for the opening of insolvency proceedings is filed or if third parties (e.g. seizures) have access to the goods belonging to us.

(3) If the buyer acts in breach of contract, in particular by failing to pay the purchase price due, we shall be entitled to withdraw from the contract in accordance with the statutory provisions and/or to demand the return of the goods on the basis of the retention of title. The demand for surrender does not simultaneously constitute a declaration of withdrawal; rather, we are entitled to demand only the return of the goods and to reserve the right to withdraw from the contract. If the buyer fails to 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 a deadline is dispensable according to the statutory provisions.

(4) Until revoked in accordance with § 6 (4) (c) of these GTC, the buyer 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) The retention of title extends to the full value of the products resulting from the processing, mixing or combination of our goods, whereby we are considered the manufacturer. If, in the event of processing, mixing or combination with goods of third parties, their ownership rights remain in force, 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 under retention of title.

(b) The buyer hereby assigns to us as security all claims against third parties arising from the resale of the goods or the product, either in full or in the amount of our possible co-ownership share in accordance with the above paragraph. We accept the assignment. The obligations of the buyer specified in § 4 (2) of these GTC also apply with regard 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 meets its payment obligations to us, there is no deficiency in its ability to pay and we do not assert our retention of title by exercising a right in accordance with § 4 (3) of these GTC. If this is the case, however, we may 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. In this case, we shall also be entitled to revoke the buyer's authority to resell and process the goods subject to retention of title.

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

#### **§ 7 Buyer's claims for defects**

(1) Unless otherwise specified below, the statutory provisions shall apply to the buyer's rights in the event of material defects and defects of title (including incorrect and short delivery as well as improper assembly/installation or defective instructions). In all cases, the statutory provisions on the sale of consumer goods (§§ 474 et seq. BGB) and the buyer's rights arising from separately issued guarantees, in particular on the part of the manufacturer, remain unaffected.

(2) Our liability for defects is based primarily on the agreement made regarding the quality and intended use of the goods (including accessories and instructions). All product descriptions and manufacturer's specifications that are the subject of the individual contract or that were publicly announced by us (in particular in catalogues or on our website) at the time of conclusion of the contract shall be deemed to be an agreement on quality in this sense. If the quality has not been agreed, the statutory provisions shall be used to assess whether or not there is a defect (Section 434 (3) BGB). Public statements made by the manufacturer or on its behalf, in particular in advertising or on the label of the goods, take precedence over statements made by other third parties.

(3) In the case of goods with digital elements or other digital content, we shall only be obliged to provide and, if necessary, update the digital content if this is expressly stated in a quality agreement in accordance with Section 7 (2) of these GTC. We accept no liability for public statements made by the manufacturer or other third parties in this regard.

(4) We shall not be liable for defects which the buyer is aware of at the time of conclusion of the contract or which he is unaware of due to gross negligence (Section 442 of the German Civil Code (BGB)). Furthermore, the buyer's claims for defects presuppose that he has fulfilled his statutory obligations to inspect and give notice of defects (Sections 377, 381 of the German Commercial Code (HGB)). In the case of building materials and other goods intended for installation or further processing, an inspection must be carried out immediately before installation in all cases. If a defect becomes apparent during delivery, inspection or at any later point in time, we must be notified of this in writing without delay. In any case, obvious defects must be reported in writing within 7 working days of delivery and defects that are not apparent during inspection must be reported in writing within the same period after discovery. If the buyer fails to carry out the proper inspection and/or report defects, our liability for defects that are not reported or not reported in a timely or proper manner is excluded in accordance with the statutory provisions. In the case of goods intended for installation, attachment or fitting, this shall also apply if the defect only became apparent after processing as a result of a breach of one of these obligations; in this case, the buyer shall have no claims for reimbursement of corresponding costs ("removal and installation costs").

(5) If the delivered item is defective, we may first choose whether to provide subsequent performance by remedying the defect (repair) or by delivering a defect-free item (replacement delivery). If the type of subsequent performance chosen by us is unreasonable for the buyer in individual cases, the buyer may reject it. Our right to refuse subsequent performance under the statutory conditions remains unaffected.

(6) We are entitled to make the subsequent performance owed dependent on the buyer paying the purchase price due. However, the buyer is entitled to retain a portion of the purchase price that is reasonable in relation to the defect.

(7) The buyer must give us the time and opportunity necessary for the subsequent performance owed, in particular to hand over the rejected goods for inspection purposes. In the event of a replacement delivery, the buyer must return the defective item to us at our request in accordance with the statutory provisions; however, the buyer has no right to demand return. Subsequent performance does not include the removal, dismantling or uninstalling of the defective item, nor the installation, fitting or installation of a defect-free item, if we were not originally obliged to provide these services; claims by the buyer for reimbursement of corresponding costs ("removal and installation costs") remain unaffected.

(8) We shall bear or reimburse the expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labour and material costs as well as any removal and installation costs, in accordance with the statutory provisions and these GTC, if a defect actually exists. Otherwise, we may demand reimbursement from the buyer for the costs incurred as a result of the unjustified request to remedy the defect if the buyer knew or could have recognised that there was in fact no defect.

(9) In urgent cases, e.g. if operational safety is at risk or to prevent disproportionate damage, the buyer has the right to remedy the defect themselves and to demand reimbursement from us for the objectively necessary expenses incurred in doing so. We must be notified of such self-remedy immediately, if possible in advance. The right to remedy the defect ourselves does not apply if we would be entitled to refuse corresponding subsequent performance in accordance with the statutory provisions.

(10) If a reasonable period to be set by the buyer for subsequent performance has expired without success or is dispensable according to the statutory provisions, the buyer may withdraw from the purchase contract or reduce the purchase price in accordance with the statutory provisions. However, there is no right of withdrawal in the case of an insignificant defect.

(11) Claims by the buyer for reimbursement of expenses pursuant to Section 445a (1) of the German Civil Code (BGB) are excluded, unless the last contract in the supply chain is a consumer goods purchase (Sections 478, 474 BGB) or a consumer contract for the provision of digital products (Sections 445c (2), 327 (5), 327u BGB). Claims by the buyer for damages or reimbursement of futile expenses (§ 284 BGB) shall also exist in the event of defects in the goods only in accordance with §§ 8 and 9 of these GTC.

### **§ 8 Other liability**

(1) Unless otherwise specified in these GTC, including the following provisions, we shall be liable for any breach of contractual and non-contractual obligations in accordance with the statutory provisions.

(2) We shall be liable for damages – regardless of the legal basis – within the scope of fault-based liability in cases of intent and gross negligence. In cases of simple negligence, we shall only be liable, subject to statutory limitations of liability (e.g. diligence in our own affairs; insignificant breach of duty),

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

b) for damages resulting from the breach of an essential contractual obligation (an obligation whose fulfilment is essential for the proper execution of the contract and on whose fulfilment the contractual partner regularly relies and may rely); in this case, however, our liability is limited to compensation for the foreseeable, typically occurring damage.

(3) The limitations of liability resulting from § 8 (2) of these GTC also apply to third parties and to breaches of duty by persons (including for their benefit) for whose fault we are responsible according to statutory provisions. They do not apply if a defect has been fraudulently concealed or a guarantee has been given for the quality of the goods, nor do they apply to claims by the purchaser under the Product Liability Act.

(4) In the event of a breach of duty that does not constitute a defect, the buyer may only withdraw from the contract or terminate it if we are responsible for the breach of duty. The buyer's right to terminate the contract at will (in particular in accordance with Sections 650, 648 of the German Civil Code (BGB)) is excluded. In all other respects, the statutory requirements and legal consequences shall apply.

### **Section 9 Limitation period**

(1) Notwithstanding Section 438 (1) No. 3 BGB, 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.

(2) Special statutory provisions on the limitation period (in particular Section 438 (1) No. 1, (3), Sections 444, 445b BGB) remain unaffected.



(3) The above limitation periods under sales law also apply to contractual and non-contractual claims for damages by the buyer based on a defect in the goods, unless the application of the regular statutory limitation period (Sections 195, 199 BGB) would lead to a shorter limitation period in individual cases. Claims for damages by the buyer pursuant to Section 8 (2) sentences 1 and 2 (a) of these GTC and pursuant to the Product Liability Act shall become time-barred exclusively in accordance with the statutory limitation periods.

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

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

(2) If the buyer is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive – including international – place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be Hildesheim. The same shall apply if the buyer is an entrepreneur within the meaning of Section 14 of the German Civil Code (BGB). However, we shall also be entitled in all cases to bring an action at the place of performance of the delivery obligation in accordance with these GTC or a prior individual agreement or at the buyer's general place of jurisdiction. Overriding statutory provisions, in particular those relating to exclusive jurisdiction, shall remain unaffected.