

§ 1 Validity, form

- (1) The present General Sales Conditions (hereinafter abbreviated to “GSCs”) apply to all our business relationships with our clients (hereinafter also referred to as “purchasers”). The GSCs only apply if the purchaser is an entrepreneur (§ 14 BGB (German Civil Law Code)) or a legal entity governed by public law or a separate fund under public law.
- (2) The GSCs apply in particular to contracts for the sale and/or delivery of movable objects (“goods”) regardless of whether we produce the goods ourselves or buy them from suppliers. (§§ 433, 650 BGB). Unless otherwise stipulated, that version of the GSCs applies which was valid at the time the purchaser made the order, or in any case, which was last communicated to him in written form; also as a framework agreement for similar contracts in future without us having to refer to it again in every single case.
- (3) Our GSCs apply exclusively. Different, conflicting or complementary general business conditions of the purchaser can only be a contractual component when and insofar as we have agreed expressly to their validity. This approval requirement applies in all cases, for example, also when we make a delivery to the purchaser without reservation, in full knowledge of his terms and conditions of business.
- (4) Individual agreements made with the purchaser (including collateral agreements, complementary additions and alterations) on a case-by-case basis always take precedence over these GSCs. A written contract or our written confirmation is decisive for the content of such agreements, subject to proof to the contrary.
- (5) To ensure secure, trouble-free operation, overall system design has to be taken into account when selecting products. The purchaser and the client of the purchaser are responsible for the right choice of components, their materials, the physical and chemical operating conditions as well as correct installation, operation and servicing. In this respect, the purchaser is obligated to pass on to his client the information, application and security instructions he has received from us.
- (6) Legally relevant declarations and notifications from the purchaser with regard to the contract (e.g. deadlines, notice of defects, withdrawal or reduction) are to be made in written or text form (e.g. letter, email, telefax). Legal formalities and other forms of verification, in particular if there are doubts about the legitimation of the sender, remain unaffected.
- (7) References to the validity of legal provisions are for the purposes of clarification only. Therefore, the legal provisions apply even without such clarification, insofar as they have not been directly amended or expressly excluded in these GSCs.

§ 2 Conclusion of contract

- (1) Our offers are subject to change and non-binding. This also applies if we have given the purchaser catalogs, technical documentation (e.g. drawings, plans, calculations, referrals to DIN norms), other product descriptions or documents – also in electronic form – to which we reserve the rights of ownership and copyright.
- (2) We reserve the rights to ownership and copyright of illustrations, drawings, calculations and other documents.
- (3) The ordering of goods by the purchaser is understood as a binding contractual offer. If nothing else arises from the order, we are entitled to accept this contractual offer within four weeks of receiving it.
- (4) The acceptance by us can be declared either in writing (e.g. by order confirmation) or by delivering the goods to the purchaser.
- (5) If the purchaser orders goods electronically, we will confirm receipt of the order immediately. Confirmation of receipt does not represent binding acceptance of the order. Confirmation of receipt can be combined with the confirmation of acceptance.

§ 3 Delivery deadline and delays in delivery

- (1) The delivery deadline is agreed individually and specified by us when the order is accepted. If this is not the case, the delivery deadline is approximately 3 to 6 months after the conclusion of contract.
- (2) Insofar as we are unable to meet binding delivery deadlines for reasons beyond our control (non-availability of goods/services), we will inform the purchaser immediately and inform him at the same time of the new delivery deadline. If the goods/services are still not available within the new delivery period, we are entitled to withdraw from the contract either partly or in full; we will immediately refund any payment or service already rendered by the purchaser. It is considered a case of non-availability in this respect if our supplier does not deliver goods/services to us in time, if we have concluded a congruent hedging transaction, if neither we nor our supplier is at fault, or if in a given case we are not obligated to the procurement.
- (3) The occurrence of a delay in delivery is determined in accordance with legal provisions. In all such cases, a reminder from the purchaser is required.
- (4) The rights of the purchaser, according to § 8 of these GSCs and our legal rights, in particular the exclusion of our obligation to performance (e.g. impossibility or unreasonableness of performance and/or supplementary performance), remain unaffected.

§ 4 Delivery, transfer of risk, acceptance, delay in acceptance

- (1) If nothing else is stated in the order confirmation, delivery is agreed “FCA Lüdenscheid” (Incoterms® 2020).
- (2) The clarification of all technical questions is a precondition of the delivery period stated by us.
- (3) If the purchaser delays acceptance or culpably violates other obligations to cooperate, the risk of an accidental loss or deterioration of the goods passes to the purchaser at the moment the latter is in delay with acceptance or payment.
- (4) If the purchaser delays acceptance, fails to perform an act of cooperation, or our delivery is delayed for other reasons for which the purchaser is responsible, we are entitled to claim

compensation for the resulting damages, including extra expenses (e.g. storage costs). We charge flat-rate compensation amounting to 0.5 percent of delivery value per calendar week up to a maximum of 5 percent of the order value, beginning with the delivery deadline or – in the absence of a delivery deadline – with the date of notification that the goods were ready to dispatch.

- (5) Proof of higher damages and our legal claims (in particular, reimbursement of extra expenses, reasonable compensation, cancellation) remain unaffected; the flat-rate is to be offset against further monetary claims. The purchaser may reserve the right to demonstrate that we suffered no loss at all, or only a substantially smaller loss than the above-mentioned flat-rate.

§ 5 Prices and conditions of payment

- (1) Insofar as nothing else is agreed on a case-to-case basis, our current prices apply at the time the contract was concluded ex store. The statutory value-added tax is not included in our prices; it is shown separately on the invoice, on the date of the invoice.
- (2) In so far as no other contractual arrangement is made, the purchase price is due for payment within 30 days of invoicing and delivery or acceptance of the goods. However, we are entitled at any time within the framework of an ongoing business relationship to deliver only after partial or full prepayment - such a condition to be stated at the latest in our order confirmation.
- (3) When the above-mentioned payment deadline expires, the purchaser is in default. During the period of delay, default interest is charged on the purchase price at the current statutory rate. We reserve the right to assert further default damages. Our claim for commercial default interest (§ 353 HGB) vis-à-vis commercial partners remains unaffected.
- (4) The purchaser's right to offset or withhold payments is only valid insofar as his claim is uncontested or legally established. Counter-rights of the purchaser, in particular according to § 7, section 9, sentence 2 of these GSCs, remain unaffected in the case of defects in the goods delivered.
- (5) If after conclusion of the contract it becomes apparent (e.g. because of an application for bankruptcy proceedings), that our claim to the purchasing price is at risk due to the purchaser's inability to pay, we are entitled to refuse service, according to legal provisions, and – where appropriate, after setting a deadline – to withdraw from the contract (§ 321 BGB). In the case of contracts to produce specific items considered to be unreasonable (custom-made products), we can declare our withdrawal immediately; the statutory provisions regarding the dispensability of setting a deadline remain unaffected.

§ 6 Retention of title

- (1) Until payment in full of all our current and future claims from the purchase contract and an ongoing business relationship (secured claims), we retain the title to the goods sold.
- (2) The purchaser is obligated to take good care of the goods purchased; in particular, he is obligated to insure them adequately at his own cost against fire, water and theft to their original value. Should maintenance and inspection work be required, the purchaser has to make sure this is carried out in good time at his own cost.
- (3) Goods to which the retention of title applies may not be pledged to third parties nor transferred as collateral security. The purchaser has to inform us immediately in writing if he files an application to open bankruptcy proceedings or if third parties (e.g. seizures) secure access to goods which belong to us.
- (4) If the behavior of the purchaser constitutes a breach of contract, in particular, if he fails to pay the purchase price, according to statutory provisions, we are entitled to withdraw from the contract and/or demand the return of the goods based on the retention of title. A demand for the return of goods is not a simultaneous declaration of withdrawal; in fact, we are entitled to demand only a return of the goods and reserve the right to withdraw from the contract. If the purchaser does not pay the purchase price due, we may only exercise these rights if we have previously set the purchaser an appropriate deadline to pay, and this was unsuccessful, or if setting a deadline of this nature is unnecessary according to statutory provisions.
- (5) According to (c) below and until further notice, the purchaser is authorized to resell and/or process goods to which retention of title applies, in the normal course of business. In this case, the following complementary provisions apply.
 - (a) The retention of title extends to the full value of products made from processing, mixing or combining our goods, and we are considered the manufacturers. If, in the case of processing, mixing or combining with the goods of third parties, the latter retains a right of ownership, we acquire joint ownership in relation to the invoiced value of the goods which have been processed, mixed or combined. Apart from that, the same applies to the resulting final product as to the goods delivered, to which retention of title applies.
 - (b) With immediate effect, the purchaser assigns claims vis-à-vis third parties to us as collateral which result from reselling the goods or the product, either for the full amount, or for a sum corresponding to our possible joint ownership share in accordance with the previous paragraph. We accept the assignment. The obligations of the purchaser referred to in paragraph 2 also apply with regard to the assigned claims.
 - (c) The purchaser retains the right to collect claims in addition to us. We undertake not to collect the claim as long as the purchaser continues to meet his payment obligations to us, there is no sign of financial default on his part, and we are not asserting our retention of title by exercising our right as specified in paragraph 3. However, if this is the case, we can demand from the purchaser that he informs us of the assigned claims and the debtors involved, gives us the information required for collection and that he informs the debtors (third parties) of the assignment accordingly. In this case, we are also entitled to revoke the purchaser's authorization to resell and process the goods to which the retention of title applies.

- (d) Should the realizable value of the securities exceed our claims by more than 10 percent, we will release securities of our choice in response to a request by the purchaser.

§ 7 Product features, quantity and claims for defects by the purchaser

- (1) Our products are not suitable for use in the aerospace or nuclear power industries. We approve their suitability for medical products on a case-by-case basis, particularly in the context of the medical products law, and the purchaser is obligated to check with us before using them.
- (2) Manufacturing exact quantities is not possible in mass production, especially for client-specific products; in any case, deliveries of up to 10 percent more or less than the quantity ordered are permitted. In the case of excess or shortfall deliveries, the total price is adjusted to correspond to unit price and quantity delivered.
- (3) In the case of defects of quality and title (including wrong or shortfall deliveries, improper installation or defective assembly instructions) the legal provisions apply, unless stipulated otherwise in these GSCs. In all cases, special legal provisions for final delivery of unprocessed goods to a consumer remain unaffected, even if the latter has processed them (supplier regress according to §§ 478 BGB). Supplier regress claims are excluded if the defective goods have been processed by the purchaser or another contractor, e.g. by installing them in another product.
- (4) The quality of the goods as described in our order confirmation is decisive for the assessment of an existing defect. Also relevant, but of subsidiary importance for the agreement on the quality of the goods, are all product descriptions and manufacturer's specifications, which form part of the individual contract or had been made public by us at the time of the contract conclusion.
- (5) No guarantee is given for quality requirements over and above the quality standards defined in the technical documents or which exceed the recognized technical state-of-the-art. This applies in particular to material quality requirements and similar components of the contract over which we have no influence.
- (6) Insofar as the quality was not agreed, whether a defect exists or not, has to be assessed in accordance with the statutory provision (§ 434, section 1, p 2 and 3 BGB). However, we are not liable for public statements of the manufacturer or other third parties (e.g. advertising messages), which the purchaser has not informed us were a critical factor in his purchase decision.
- (7) We are not liable for defects known to the purchaser when the contract is concluded, or is not aware of through gross negligence (§ 442 BGB). Furthermore, a precondition of defect claims by the purchaser is that he has performed his legal inspection and complaint obligations (§§ 377, 381 HGB). In the case of building and other materials to be installed or otherwise processed, an inspection has to take place immediately before further processing steps. If a defect is apparent on delivery, during inspection or at any later stage, this has to be notified to us immediately in writing. In all cases, obvious defects have to be notified in writing within 10 working days of delivery and defects, which were not recognizable as such during the inspection, within the same period following their discovery. If the purchaser neglects to carry out a proper inspection and/or give notification of defects, then according to statutory provisions our liability is excluded for the defect which was not properly notified, or not notified in time.
- (8) If the item which has been delivered is defective, we can first of all choose whether to rectify the defect (repair) or by delivering a defect-free item (replacement delivery). Our right to refuse rectification in accordance with legal provisions remains unaffected.
- (9) We are entitled to make the rectification owed to the purchaser conditional on his payment of the purchase price due. However, the purchaser is entitled to withhold part of the purchase price in proportion to the extent of the defect.
- (10) The purchaser has to give us the requisite time and opportunity to carry out the rectification, in particular to give us the disputed goods for inspection purposes. In the case of a replacement delivery, the purchaser has to return to us the defective item, according to legal provisions. Rectification does not include either the removal of the defective item, or a new installation, if we were not originally commissioned with the installation.
- (11) We will bear or reimburse all necessary expenses in accordance with legal requirements for the purpose of inspection and rectification, in particular transport, travel, labor and material costs as well as removal and installation costs if necessary, providing it is shown that a defect does exist. Otherwise we can claim reimbursement of the costs incurred from the purchaser (in particular, inspection and transport costs) for any unjustified request for rectification, unless the absence of a defect was not recognizable for the purchaser.
- (12) In urgent cases, e.g. if operational safety is endangered, or to prevent disproportionate damage, the purchaser has the right to rectify the defect himself and claim from us reimbursement of the costs objectively considered necessary to perform the task. If the purchaser proposes to take such remedial action himself, he has to inform us immediately, if possible beforehand. The purchaser's right to rectify defects does not apply, if we were entitled to refuse such rectification according to legal provisions.
- (13) If rectification is unsuccessful, or the reasonable deadline set by the purchaser for the rectification passes without progress being made, or is unnecessary according to legal provisions, the purchaser can withdraw from the purchase contract or demand a reduction of the purchase price. However, there is no right of withdrawal in the case of a minor defect.
- (14) Claims for damages or replacement by the purchaser for wasted expenditure are only possible for defects as stated in § 8, and are otherwise excluded.

§ 8 Other liability

- (1) Insofar as nothing to the contrary is stated in these GSCs, including the terms below, our liability for the infringement of contractual and non-contractual obligations is in accordance with legal provisions.

- (2) We are liable for damages – irrespective of the legal grounds – in the context of encumbrance liability in the case of willful intent and gross negligence. We are liable in the case of simple negligence, subject to legal liability restrictions (e.g. the same diligence exercised in our own affairs; insignificant breach of obligations), only
 - a) for damages arising from injury to life, body or health,
 - b) for damages arising from the breach of a substantial contractual obligation (an obligation, the fulfillment of which makes the proper execution of the contract possible and compliance with which the contractual partner regularly relies on and is entitled to rely on); however, in this case, our liability is limited to reimbursement of predictable damages, typically incurring.
- (3) The liability limitations specified in paragraph 2 also apply vis-à-vis third parties, and in the case of obligation infringements by persons (also in their favor), for whose mistakes we are responsible according to legal provisions. They do not apply insofar as a defect is fraudulently concealed, or a guarantee for the quality of the goods has been assumed and for claims of the purchaser, according to the product liability law.
- (4) For a breach of obligation which is not attributable to a defect, the purchaser can only withdraw or cancel if we are responsible for the breach of obligation. A free right of cancellation of the purchaser (in particular, acc. to §§ 650, 648 BGB) is excluded. Otherwise, the legal preconditions and consequences apply.

§ 9 Limitation period

- (1) The general limitation period for claims arising from material and legal defects differs from § 438, section 1, no. 3 BGB: it is one year after delivery. Insofar as an acceptance date is agreed, the limitation period begins on that date.
- (2) If the goods in question are an item which is firmly attached to a building, causing its defectiveness in the first place, the limitation period is extended to 5 years after delivery (§ 438, section 1, no. 2 BGB). Further special legal provisions regarding the limitation period also remain unaffected (esp. § 438, section 1, no. 1, section 3, §§ 444, 445b, § 479 BGB).
- (3) The above-mentioned limitation periods of sales law also apply to contractual and non-contractual claims for damages on the part of the purchaser, based on a defect of goods, unless the application of the regular legal limitation period (§§ 195, 199 BGB) leads to a shorter limitation period in individual cases. Claims for damages on the part of the purchaser, according to § 8, section 2, sentence 1 and sentence 2(a) and the product liability law, expire exclusively after the legal limitation periods.

§ 10 Force majeure

Force majeure, labor disputes, disturbances, measures taken by authorities, absence of deliveries from our suppliers, epidemics, pandemics and other unforeseeable, unavoidable and serious events release the contract partners from their performance obligations for the duration of the disturbance and the extent of its effects. This also applies if these events occur at a time in which the contractual partner concerned is in default, unless he has caused the defaults with willful intent or through gross negligence. The contractual partners are obligated to share the necessary information immediately within reasonable bounds and adjust their obligations to the changed circumstances in good faith.

§ 11 Protective rights of third parties

For the manufacture of a product which has been ordered on the basis of construction drawings and/or instructions from the purchaser, the purchaser declares that these documents do not infringe on any rights the purchaser is aware of, and, in particular, not on any special industrial property protection rights of third parties. In the case that a product manufactured according to the instructions of the purchaser infringes on the rights of third parties, the purchaser indemnifies us from all claims arising from this.

§ 12 Applicable law, contract language and place of jurisdiction

- (1) For these GSCs and the contractual relationship between us and the purchaser, the law of the Federal Republic of Germany applies, excluding international uniform law, in particular UN Sales Law.
- (2) If the purchaser is a business person in the sense of the German Commercial Code (HGB), a public legal entity, or a special fund under public law, the exclusive place of jurisdiction – i.e. also the international venue – for all disputes arising either directly or indirectly from the contractual relationship is the seat of our company in Lüdenschheid. The same applies if the purchaser is a business person in the sense of § 14 BGB. However, in all cases we are entitled to file a suit at the place of fulfillment for the delivery in accordance with these GSCs, or according to an overriding separate agreement, or at the general place of jurisdiction of the purchaser. Overriding legal provisions, in particular, governing exclusive jurisdictions remain unaffected.