

## § 1 General, scope of application

(1) These General Terms and Conditions of Purchase (GTCP) apply to all transactions with our business partners and suppliers (hereafter 'the Seller'). The GTCP shall apply only if the Seller is an entrepreneur (§ 14 Germany's Civil Code - Bürgerliches Gesetzbuch [BGB]), a legal person under public law or a special fund [Sondervermögen] under public law.

(2) The GTCP shall especially apply to contracts for the sale and/or supply of moveable assets (hereafter also 'Goods'), regardless of whether the Seller produces the goods itself or purchases them from suppliers (§§ 433, 651 BGB). The GTCP shall also apply, in the version applicable at the time, and without our having to make further reference to them in each individual case, as a framework agreement for future contracts formed with the same Seller for the sale and/or supply of moveable assets.

(3) These GTCP shall apply exclusively. Divergent, contradictory or additional general terms and conditions of the Seller shall be considered to form part of this contract only if and insofar as we expressly approved them in writing. This requirement for approval shall apply in every case, including, for example, if we accept the Seller's deliveries unconditionally whilst being aware of the Seller's general terms and conditions.

(4) One-off individual agreements concluded with the Seller (including ancillary accords, addenda and amendments) shall in every case have priority over these GTCP. For the content of such agreements, a written contract or our written confirmation is required.

(5) Legal declarations and notifications that have to be given to us by the Seller after the formation of the contract (e.g. deadlines, reminders or rescission of the contract) must be made in writing.

(6) Notifications that statutory regulations apply are for information purposes only. Statutory regulations shall therefore apply even without such information, unless these GTCP make different provisions or explicitly exclude the statutory regulations.

## § 2 Formation of contract

(1) Our order is not to be considered binding until submitted or confirmed in writing. Obvious errors (e.g. typographical or calculation errors) and incomplete orders or incomplete order documentation are to be communicated to us by the Seller before delivery so that we can correct or complete them; otherwise the contract shall be considered not formed.

(2) The Seller within five working days shall either confirm our order in writing or fulfil it unconditionally by despatching the goods (acceptance).

## § 3 Delivery times and delays

(1) The delivery time that we specify in the order is binding. The Seller shall immediately inform us in writing if, regardless of the cause, it is apparent that it cannot comply with the delivery times agreed.

(2) If the Seller fails to perform its obligations or fails to perform them within the agreed delivery time or if it is in default, our rights – particularly with regard to withdrawal and compensation – shall be those provided for by statutory regulations. This shall be without prejudice to para. 3.

(3) If the Seller is in default, we reserve the right to demand a contractual penalty of 1% of the net price per full calendar week, this sum shall however not exceed 5% of the net price of the goods that have been delivered late. We reserve the right to demand the contractual penalty in addition to performance of contract and as a minimum amount of the compensation due to us from the Seller under statutory regulations; our right to bring further claims for compensation remains unaffected. If we accept delayed performance of contract, the contractual penalty is to be claimed by us no later than final payment.

## § 4 Performance, delivery, transfer of risk, acceptance delay

(1) The Seller is not permitted to have its obligations under the contract performed by a third party (e.g. a subcontractor) unless our written permission has been provided in advance. The Seller shall bear the procurement risk for its performance except in the case of one-off items.

(2) Delivery within Germany shall be free of charge to the place specified in the order. If the destination is not specified and unless otherwise agreed, delivery shall be to our head office in Hatzfeld-Reddighausen, Germany. The destination is also the place of fulfilment (debt to be discharged at creditor's domicile).

(3) Delivery is to be accompanied by a delivery notice specifying the date (of issue and despatch), contents (item numbers and quantity) and our order reference (date and number). If the delivery notice is missing or incomplete, we shall not be

responsible for any resulting delays in processing or payment. In addition to the delivery notice, notice of despatch containing the same information is to be sent to us.

(4) The risk of accidental loss and accidental deterioration of the items transfers to us upon handover at the place of fulfilment. If receipt is agreed, this shall define the point at which risk is transferred. In all other cases, the statutory provisions of contract law for work and services shall apply for receipt. Default of acceptance by us shall be equivalent to transfer or acceptance.

(5) If we are in default of acceptance, statutory regulations shall apply. The Seller must however explicitly offer us performance if a defined or definable calendar date is agreed for an act or contribution (e.g. provision of material) on our part. If we are in default of acceptance, the Seller can demand reimbursement of its additional expenses in accordance with statutory regulations (§ 304 BGB). If the contract governs non-fungible goods to be manufactured by the Seller (one-off items), further rights shall be due to the Seller only if we are obliged to contribute and the failure to contribute is attributable to us.

## § 5 Prices and payment conditions

(1) The price specified in the order is binding. All prices are inclusive of statutory sales tax unless stated otherwise.

(2) Unless otherwise agreed in individual cases, the price includes all the Seller's services and ancillary services (e.g. assembly, installation) and all ancillary costs (e.g. postage and packaging, including any transportation and liability insurance). Packaging material must be taken back by the Seller at our request.

(3) The agreed price is due within 60 calendar days of complete delivery and performance (including receipt where agreed) and receipt of a correct invoice. If we provide payment within 21 calendar days, the Seller shall allow us a 3% discount from the net invoice amount.

If the invoice is not issued the same day as the delivery takes place, the payment term will start on the day of receipt of the invoice. In case the gap between invoice date and invoice receipt date is more than 5 days we reserve the right to value the date of the invoice as per the invoice receipt date.

(4) We shall not be liable for interest on amounts due. This shall not affect the Seller's right to bring a claim for interest on default payments. The onset of default shall be determined by statutory regulations. For each case the Seller must however submit a warning.

(5) Offsetting and retention rights and the right to withhold payment on the grounds of non-performance shall be due to us to the extent provided for by statute. We shall in particular be entitled to withhold due payments for as long as we are due redress from the Seller for incomplete or defective performance.

(6) Offsetting and retention rights are due to the Seller only in the case of legally proven or undisputed counterclaims.

## § 6 Quality

The Seller shall adhere to established technical standards, safety regulations, agreed technical data and any one-off purchasing specifications that we prescribe. Changes to the items to be supplied require our prior written permission.

## § 7 Confidentiality and reservation of title

(1) We retain ownership and copyright of any images, plans, drawings, calculations, instructions, product descriptions, one-off purchasing specifications and other documents. Such documents are to be used solely for the purposes of contractual performance and returned after the end of the contract. The documents are to be treated as confidential in dealings with third parties, including after the end of the contract. The obligation of confidentiality exists until and to the extent that the knowledge contained in the submitted documents has become general knowledge.

(2) The aforementioned provision shall also apply to substances and materials (e.g. software, finished and semi-finished products) as well as to tools, templates, samples and other objects that we provide to the Seller for manufacturing purposes. For as long as they are not in use, such objects are to be stored separately and safeguarded to the normal extent against damage or loss.

(3) Any processing, mixing or combination of the provided items carried out by the Seller is performed on our behalf. If, following the processing, mixing or combination of the items with property owned by third parties, the third parties are still due ownership rights, we shall acquire co-ownership of the new property in relation to the value of our property to the other properties.

(4) Goods shall be assigned to us unconditionally and regardless of payment of the price. All forms of extended or prolonged reservation of title are excluded so that a potentially effective reservation of title declared by the Seller shall only

apply up to the payment for the goods and only in respect of these goods.

## § 7.1. Tools and models

(1) Tools and models for the manufacture of parts to our specification and that have been fully or partly paid for by us pass into the legal ownership of the customer upon the Seller's acquisition or manufacture. They are to be marked by the Seller as our property. The Seller shall preserve such tools and models free of charge and shall maintain them in working order at its own cost and secure them against fire, natural hazards and theft. We will leave such tools and models in the Seller's possession but reserve the right to reclaim them at any time.

(2) Models, tools and other means of production that have been provided by us to the Seller or produced to our specifications can only be used for consignments to third parties with our prior written permission. The same shall apply for confidential details provided to the Seller by the customer.

## § 8 Defective consignments

(1) For our rights in the case of material defects or defects of title concerning the Goods (including incorrect delivery or under-delivery, incorrect assembly, or incorrect instructions for assembly, operation or servicing) and for other infringements by the Seller, statutory regulations shall apply unless otherwise provided for in the following.

(2) Under statutory regulations the Seller shall in particular be liable for ensuring the item has the agreed properties at the point of transfer of risk to us. The agreed properties shall be the product descriptions that form part of the contract in question, especially as a result of being specified or referred to in our order, or that form part of the contract in a way similar to the way that these GTCP form part of the contract. It is irrelevant whether the product description comes from us, from the Seller or from the manufacturer.

(3) In derogation from § 442 para. 1 BGB, we shall have the unlimited right to bring claims for defects if due to gross negligence the defect remained unknown to us when the contract was formed.

(4) For the commercial obligation to inspect goods and provide notice of defects, statutory regulations (§§ 377, 381 of Germany's Commercial Code [Handelsgesetzbuch - HGB]) shall apply, subject to the following conditions: our obligation to inspect is limited to defects (e.g. transportation damage or incorrect or under-supply) that are clearly apparent during external inspection of incoming goods and consignment documents and during quality control procedures carried out during random checks. No obligation to inspect exists where receipt is agreed. For other cases, whether or not and to what extent inspection takes place shall be determined by the feasibility of such an inspection in the circumstances and in accordance with normal operating conditions. Our obligation to provide notice of subsequently discovered defects remains unaffected.

(5) For any case of deficient delivery we shall be entitled to charge a general processing fee of 150 Euro per claim, without prejudice to the outcome of the (pending) review. The costs incurred for the purposes of inspection and rectification by the Seller shall be borne by the Seller even if it transpires that no defect in fact existed. This shall not effect our liability to provide compensation if we demand without grounds that a defect be corrected; we shall however only bear such liability if we were aware that no defect existed or were not aware as a result of gross negligence.

(6) If the Seller fails to meet its obligation to remedy the defect within an appropriate period to be determined by us, either by, at our direction, correcting it (rectification) or by supplying a defect-free item (substitution), we reserve the right to correct the defect ourselves and seek from the Seller either recovery of the costs or an appropriate advance payment. If the remedial action taken by the Seller is unsuccessful or unreasonable (e.g. because the matter is especially urgent, or poses a risk to operational security, or threatens to inflict disproportionate damage) there is no requirement for us to specify a period of time; the Seller is to be instructed immediately, or beforehand if possible.

(7) In all other cases involving material defects or defects of title, we shall in accordance with statutory regulations be entitled to a reduction in the purchase price or to withdraw from the contract. We shall in accordance with statutory regulations further be entitled to claim compensation and reimbursement of expenses.

## § 9 Supplier recourse

(1) Our statutory rights of recourse as part of a supply chain (supplier recourse as provided for in §§ 478, 479 BGB) are due to us without limitation and in addition to our rights to bring claims for defects. We especially reserve the right to demand the same remedial action from the Seller (rectification or substitution) that we are

required to perform by our purchaser. This shall not limit our statutory right of choice (§ 439 para. 1 BGB).

(2) Before we acknowledge or meet a claim for defects from our purchaser (including the reimbursement of expenses as per §§ 478 para. 3, 439 para. 2 BGB), we shall inform the Seller, submit a short description of the issue and ask for their written response. If this response is not provided within an appropriate period and if no solution is agreed, the claim for defects allowed by us shall be considered due to our purchaser; any proof to the contrary must be provided by the Seller.

(3) Claims made by us for supplier recourse shall be valid even if the item has been handled or processed by us or one of our purchasers (e.g. by being installed in another product) prior to being sold to the consumer.

## § 10 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 control and organisation and the Seller itself is liable in relation to third parties.

(2) As part of its obligation to indemnify, the Seller shall under §§ 683, 670 BGB reimburse expenses resulting from or in connection with claims brought by third parties, including for recall campaigns carried out by us. We shall as far as is possible and reasonable notify the Seller of the content and extent of any recall measures and give it the opportunity to respond. The right to bring further statutory claims remains unaffected.

(3) The Seller shall take out and keep up to date product liability insurance for an appropriate amount and for not less than 10 million euros for each instance of personal injury or material damage. Proof of insurance is to be provided on request.

## § 11 Limitation period

(1) The period for reciprocal claims of the contractual parties shall be limited in accordance with statutory regulations unless agreed otherwise in the following.

(2) In derogation from § 438 para. 1 no. 3 BGB, the general limitation period for claims for defects is three years from the transfer of risk. Where receipt is agreed, the limitation period shall commence upon receipt. The three-year limitation period shall also apply for claims arising from defects of title, whereby the statutory limitation period for third party claims for the return of property (§ 438 para. 1 no. 1 BGB) remains unaffected; the right to bring additional claims arising from defects of title shall not expire for as long as a third party can bring a claim against us, particularly in the absence of a limitation period.

(3) The limitation periods under German sale of goods law, including the extensions specified above, shall apply – to their statutory extent – for all contractual claims for defects. Insofar as we also have the right to bring claims for non-contractual compensation for defects, the regular statutory limitation periods shall apply (§§ 195, 199 BGB), provided the application of the limitation periods under German sale of goods law does not allow for a longer limitation period.

## § 12 Adherence to safety standards and other statutory regulations

(1) The Seller shall adhere to statutory safety standards in order to ensure safety in the supply and production chain.

(2) The Seller agrees to meet all its tax and customs obligations securely and reliably and abide by all requirements, restrictions and interdictions imposed on foreign trade. The Seller guarantees to meet prior to despatch all the export regulations affecting it and further guarantees that all export bans and export licence requirements have been observed. The Seller shall also submit to us, free of charge and in good time, all the information relevant for adherence to export and re-export regulations and concerning the assembly and origin of the delivered goods. The Seller shall in addition publish a register of its goods in the goods lists of the EU, Germany or the US.

(3) The Seller shall pay the employees it engages to perform the services commissioned at least the minimum wage in accordance with Germany's Minimum Wage Act [Mindestlohngesetz]. We reserve the right to demand written proof at any time during the period in which the work or services are being performed that the Seller is paying the minimum wage; if we do so demand, the Seller shall supply the written proof to us immediately or within three days of receipt of the demand. The Seller shall indemnify us against all claims that may arise from a breach of the Minimum Wage Act by the Seller or its subcontractors. Regardless of any rights to terminate or withdraw from the contract, we reserve the right to withdraw from or terminate the contract with immediate effect if the Seller and/or its subcontractors is in culpable breach of the aforementioned provisions or the Minimum Wage Act. The Seller shall compensate us for any loss arising from the

withdrawal or termination. Any claims brought by the Seller for non-performance of contract are excluded. For all other cases the consequences of withdrawal or termination shall be governed by the statutory provisions.

## **§ 13 Choice of law and jurisdiction**

(1) These GTCP and all legal relationships between us and the Seller shall be governed by German law with the exclusion of all international and supranational (contractual) jurisdictions, especially UN sale of goods law. Conditions and consequences of reservation of title shall be subject to the law applicable at the place where the matter arises insofar as said law makes the choice of German law unviable or invalid.

(2) If the Seller is a merchant in the sense intended by the German Commercial Code or is a legal person or a special fund under German public law, the exclusive – and international – jurisdiction for all disputes arising from the contractual relationship is the County Court in Marburg, Germany. There is also the right to take legal actions at the place of performance of the obligation to deliver or at the International Court of Justice in Brussels, depending on the nature and extent of the dispute.

### **Please respect our loading hours:**

Monday to Thursday – 6:00 a.m. to 2 p.m.

Friday – 6:00 a.m. to 10:30 a.m.

July, 2016

**FRANK WALZ- UND SCHMIEDETECHNIK GMBH**