

## Section 1 Scope of application, Form

(1) These General Terms and Conditions (T&Cs) apply to all our business relationships with our customers ("**Buyers**"). The T&Cs shall only apply if the Buyer is an entrepreneur in accordance with Section 14 of the German Civil Code (BGB), a legal entity under public law or a special fund under public law.

(2) The T&Cs shall apply to contracts regarding the sale and/or delivery of movable assets ("**Goods**"), regardless of whether we manufacture the Goods ourselves or purchase them from suppliers (Sections 433, 650 BGB).

The T&Cs shall also apply to contracts for the repair of Goods (additionally in this regard Section 10).

The term 'Buyer' as referred to below shall apply accordingly to the party contracting a repair, unless more specific and overriding provisions are stipulated in Section 10.

Unless otherwise agreed, the T&Cs shall also apply in the version communicated to the Buyer in writing at the time of its placement of a purchase order, or in any case in the version communicated to it most recently, including for similar future contracts, without us having to make reference to them again in each individual case.

(3) Our T&Cs shall apply exclusively. Any deviating, opposing or supplementary general terms and conditions of the Buyer shall only become part of the contract if we have expressly consented to their validity. This requirement of consent shall apply in all cases, including, for example, where we make delivery to the Buyer without reservation while being aware of its terms and conditions.

(4) Specific agreements with the Buyer (including subsidiary agreements, additions and amendments) shall always take precedence over these T&Cs. A written contract or our written confirmation shall be authoritative for the content of such agreements, subject to furnishing of proof to the contrary.

(5) Legally relevant declarations and notifications of the Buyer in relation to the contract, such as setting of a deadline, notification of defects, withdrawal or price reduction, shall be made in writing, such as by letter, e-mail or fax. Legal formal requirements and requirement of further proofs, particularly in the event of doubt regarding the legitimacy of the declaring party, shall remain unaffected.

(6) References to the validity of statutory provisions shall have significance only by way of clarification. The said statutory provisions shall therefore also apply without such clarification, unless they are directly amended or expressly excluded in these T&Cs.

## Section 2 Conclusion of contract

(1) Our quotations are subject to change and non-binding. This shall also apply where we have provided the Buyer with catalogs, technical documents (e.g. drawings, plans, calculations, costings, references to DIN standards), other product descriptions or documents – including in electronic form – to which we reserve property rights and copyrights.

(2) The order of the Goods by the Buyer shall be deemed a binding offer of contract. Unless otherwise stated in the order, we shall be entitled to accept this contract offer within 4 weeks of our receiving it.

(3) Acceptance may be declared either in writing (e.g. by order confirmation) or by delivery of the Goods to the Buyer.

## Section 3 Delivery period and default in delivery

(1) The delivery period shall be agreed individually, and shall be specified by us on acceptance of the order. **If this is not the case, the delivery period shall be approximately 25 weeks from conclusion of the contract.**

(2) If we are unable to meet binding delivery deadlines for reasons beyond our control (non-availability), we shall inform the Buyer without delay, indicating the projected new delivery date. If performance 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 refund any consideration already paid by the Buyer. Cases of non-availability under the terms of this provision shall be deemed to be, in particular, delayed self-delivery by our supplier where we have concluded a congruent covering transaction, cases in which neither we nor our supplier are at fault, or in which we are not subject to any procurement obligation in the specific circumstances.

(3) The occurrence of our default in delivery shall be determined accordance to the applicable statutory provisions. In any case, however, a reminder by the Buyer shall be required. If we default in delivery, the Buyer may demand flat-rate compensation for the damage caused by the delay. The flat-rate compensation shall amount to 0.5% of the net price (delivery value) for each full calendar week of delay, though in total not more than 5% of the delivery value of the delayed Goods. We reserve the right to prove that the Buyer has not suffered any damage, or that the damage is significantly less than the aforementioned flat amount.

(4) The rights of the Buyer pursuant to Section 8 of these T&Cs and our statutory rights, in particular in the event of exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of performance and/or subsequent performance), shall remain unaffected.

## Section 4 Delivery, transfer of risk, acceptance, delayed acceptance

(1) Delivery shall be from the warehouse location, which shall be also the place of performance for the delivery and any subsequent performance. The Goods may be shipped to another destination at the request and expense of the Buyer (dropshipping). Unless otherwise agreed, we shall be entitled to specify the method 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 on handover at the latest. In the case of dropshipping, however, the risk of accidental loss and accidental deterioration of the Goods, as well as the risk of default, shall pass on delivery of the Goods to the forwarding agent, the carrier or any other person or entity designated to carry out the shipment. Insofar as acceptance has been agreed, this shall be decisive for the transfer of risk. In all other respects, the provisions of the law on contracts for work and services shall also apply accordingly to an agreed acceptance. Default of acceptance on the part of the Buyer shall be deemed equivalent to handover and acceptance.

(3) If the Buyer is in default of acceptance, or fails to cooperate, or if our delivery is delayed 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). In such a case, we shall charge flat-rate compensation of 0.015% of the invoice amount per calendar day, starting on the delivery deadline date or – in the absence of a delivery deadline – on notification that the Goods are ready for shipping.

The proof of greater damage and evidencing of our legal claims (in particular reimbursement of additional expenses, reasonable compensation, termination) shall remain unaffected; the flat-rate amount shall be credited against further monetary claims however. The Buyer shall be entitled to prove that we have not incurred any damage at all, or that the damage is significantly less than the aforementioned flat-rate amount.

## Section 5 Prices and terms of payment

(1) Unless otherwise agreed in individual cases, our prices current at the time of concluding the contract shall apply, ex warehouse, plus statutory sales tax (VAT).

If, between conclusion of the contract between the Buyer and ourselves (**'Conclusion of contract'**) and delivery to us by the supplier of the Goods, the supplier's prices increase relative to those at the time the contract was concluded, we shall be entitled to increase the purchase price in the same proportion. If the supply only relates to part of the Goods, this shall apply to the proportionate value of the supply relative to the

Goods in total. In this context, written confirmation by the supplier or proof based on publicly accessible supplier price lists shall be sufficient as proof of the price increase.

(2) In the case of dropshipping (Section 4, paragraph 1), the Buyer shall bear the transport costs from the warehouse location and the cost of any transportation insurance requested by the Buyer. The cost of any customs duties, fees, taxes and other public levies shall be borne by the Buyer.

(3) The purchase price shall be due and payable within 30 days from date of invoice and delivery and acceptance of the Goods. We shall, however, be entitled to carry out a delivery in whole or in part only against advance payment at any time, including in the course of an ongoing business relationship. We shall give notice of any such reservation on confirmation of the order at the latest.

(4) The Buyer shall be in default when the aforementioned payment period expires. During the period of default, the purchase price shall bear interest at the applicable statutory default interest rate. We reserve the right to assert claims for further compensation resulting from the delay. Our claim to the rate of default interest in commercial transactions between traders accruing as from the due date (Section 353 of the German Commercial Code (HGB)) shall remain unaffected.

(5) The Buyer shall only be entitled to rights of set-off or retention to the extent that its claim has been legally established or is undisputed. In the event of defects in the delivery, the Buyer's counter rights shall remain unaffected, in particular pursuant to Section 7, paragraph 6, sentence 2 of these T&Cs.

(6) If, after conclusion of the contract, it becomes apparent (such as by filing for insolvency proceedings) that our claim to the purchase price is jeopardized by the Buyer's inability to pay, we shall be entitled to refuse performance in accordance with the statutory provisions and – where appropriate, 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 give notice of withdrawal immediately; the statutory provisions on the dispensability of setting a deadline shall remain unaffected.

## Section 6 Reservation of title

(1) Until full payment of all our present and future claims arising from the purchase contract and an ongoing business relationship (secured claims), we reserve title to the Goods sold.

(2) The Goods subject to reservation of title may neither be pledged to third parties nor assigned as security before full payment of the secured claims. The Buyer shall inform us immediately in writing if an application

is made to open insolvency proceedings or if third parties access the Goods belonging to us (such as by seizure).

**(3)** If the buyer breaches the contract, in particular if the due purchase price is not paid, we shall be entitled to withdraw from the contract in accordance with the statutory provisions or/and to demand return of the Goods on the basis of our reservation of title. The demand for return shall not be deemed equivalent to notice of withdrawal; rather, we shall be entitled to demand only the return of the Goods, and to reserve our right of withdrawal. If the Buyer fails to pay the due purchase price, we may only assert these rights if we have previously set the Buyer a reasonable deadline for payment without success, or if setting of such a deadline is dispensable under the statutory provisions.

**(4)** The Buyer shall be authorized to sell and/or process the goods subject to our reservation of title in the ordinary course of business until the said reservation is revoked in accordance with (c) below. In such a case, the following provisions shall additionally apply.

**(a)** The reservation of title shall extend to the products resulting from the processing, mixing or combining of our Goods at their full value, whereby we shall be deemed to be the manufacturer. Where third-party right of title is retained in the event of processing, mixing or combining our Goods with goods of third parties, 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 reservation of title.

**(b)** The Buyer hereby assigns to us by way of security all claims against third parties arising from the resale of the Goods or the resulting product in total or in the amount of our co-ownership share, if any, pursuant to the preceding paragraph. We accept the assignment. The obligations of the Buyer set out in paragraph 2 shall also apply with regard to the assigned claims.

**(c)** The Buyer shall remain authorized to collect the claim in addition to ourselves. We undertake not to collect the claim as long as the Buyer meets its payment obligations to us, its ability to pay is not impaired, and we do not assert reservation of title by exercising a right pursuant to paragraph 3. If this is the case, however, we may demand that the Buyer inform us of the assigned claims and the debtors, provide all information necessary for collection, hand over the relevant documents, and inform the debtors (third parties) of the assignment. In this case we shall furthermore be entitled to revoke the Buyer's authority to further sell and process the Goods subject to reservation of title.

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

## Section 7 Buyer's warranty claims

**(1)** Unless otherwise stipulated 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 special statutory provisions on the reimbursement of expenses in the case of final delivery of the newly manufactured Goods to a consumer (supplier recourse pursuant to Sections 478, 445a, 445b and Sections 445c, 327 (5), and 327u BGB) shall remain unaffected unless equivalent compensation has been agreed, for example, within the scope of a quality assurance agreement.

Claims arising from supplier recourse shall be excluded if the defective Goods have been further processed by the Buyer or by another entrepreneur, such as by installing them in another product.

**(2)** The basis of our liability for defects shall primarily be the agreement reached on the condition and the presumed 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 (particularly in catalogs or on our website) at the time the contract was concluded shall be deemed to be an agreement on condition in this sense. Insofar as the condition has not been agreed, it shall be assessed in accordance with the statutory provisions whether or not there is a defect (Section 434 (3) BGB). Public statements made by the manufacturer or on the manufacturer's behalf, in particular in advertising or on the label of the Goods, shall take precedence over statements made by other third parties.

No material defect shall be represented by the usual wear and tear that occurs on ball bearings, sealing rings, seals, parts of the tool clamping and release system, internal coolant supplies, couplings, gears, belts, brakes, unless they do not comply with the technical standard for wearing parts.

**(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 insofar as this is expressly stipulated in an agreement on condition pursuant to paragraph 2. We shall not be liable for public statements made by the manufacturer or other third parties in this respect.

**(4)** As a matter of principle, we shall not be liable for defects of which the Buyer is aware at the time the contract is concluded, or of which it is not aware due to gross negligence (Section 442 BGB). Furthermore, the Buyer's warranty claim shall require that it has complied with its statutory obligations to inspect the Goods and give notice of defects (Sections 377, 381 HGB). In the case of building materials and other goods intended for installation or other further processing, an in-

spection must in any case be carried out immediately prior to processing them. If a defect becomes apparent during delivery, inspection or at any later time, we shall be notified of it in writing without delay. In any case, obvious defects shall be notified in writing within 10 working days of delivery, and defects not detectable upon inspection within the same period as from their discovery. If the Buyer fails to properly inspect the Goods and/or notify us of defects, our liability for any defects not reported, not reported promptly, or not reported properly shall be excluded in accordance with the statutory provisions.

**(5)** If the delivered item is defective, we may initially choose whether to carry out subsequent performance by remedying the defect (rectification) or by delivering a defect-free item (replacement). Our right to refuse subsequent performance under the statutory conditions shall remain unaffected.

**(6)** We shall be entitled to make the required subsequent performance dependent on the Buyer paying the due purchase price. The Buyer shall, however, be entitled to retain a reasonable part of the purchase price proportionate to the defect.

**(7)** The Buyer shall give us the time and opportunity required for subsequent performance, in particular to submit the rejected Goods for inspection purposes. In the event of a replacement delivery, the Buyer shall return the defective item to us in accordance with the statutory provisions. Subsequent performance shall neither include removal nor re-installation of the defective item if we were not originally obliged to install it.

**(8)** If there is in fact a defect, we shall bear or reimburse, as appropriate, the costs of inspection and subsequent performance, in particular transportation, travel, labor and material costs and, if applicable, removal and installation costs, in accordance with the statutory provisions. Otherwise, we may demand reimbursement from the Buyer of the costs incurred as a result of the unjustified request to remedy the defect (in particular inspection and transportation costs), unless the defect-free condition was not apparent to the Buyer.

**(9)** In urgent cases, such as if operational safety is at risk, or to prevent disproportionate damage, the Buyer shall be entitled to remedy the defect itself, and to demand reimbursement from us of the costs objectively incurred in doing so. We shall be notified without delay, where possible in advance, of any such self-remedying. The right of self-remedying shall not be allowed if we would be entitled to refuse subsequent performance in accordance with the statutory provisions.

**(10)** If subsequent performance has failed, or 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. There shall be no right of withdrawal in the event of an insignificant defect however.

**(11)** Claims of the Buyer for damages or reimbursement of futile expenses shall also be allowable in the event of defects only in accordance with Section 8, and shall otherwise be excluded.

**(12)** With regard to defects of title and the infringement of industrial property rights and copyrights, the following shall apply in addition:

**a)** If a third party asserts justified claims against the Buyer due to the infringement of industrial property rights or copyrights ('Property rights') or other defects of title by Goods delivered by us, we shall be liable to the Buyer as follows:

**b)** We shall, at our discretion and expense, either

- acquire a right to use the Goods,
- modify the Goods in such a way that the property right is not infringed, or
- exchange the Goods for other, functionally identical Goods that do not infringe the property rights.

Insofar as this is not economically reasonable for us, we and the Buyer may withdraw from the contract.

In addition, we shall indemnify the Buyer against justified claims by the owners of the property rights in question. We shall only be liable for damages in accordance with Section 8.

**c)** We shall only be liable if the Buyer immediately notifies us in writing of the assertion of claims by third parties, does not make any statements acknowledging the claim, and leaves all defensive measures and settlement negotiations to us.

**d)** Claims of the Buyer against us shall be excluded insofar as the infringement of property rights is caused by the Buyer's specifications for the Goods or the Buyer is responsible for the infringement of property rights in any other way.

## Section 8 Other liability

**(1)** Unless otherwise stipulated in these T&Cs, including the following provisions, we shall be liable in accordance with the statutory provisions in the event of a breach of contractual and non-contractual obligations.

**(2)** We shall be liable for damages, irrespective of the legal grounds, within the scope of liability for willful intent and gross negligence. In the event of simple negligence, we shall be liable, subject to statutory limitations of liability (e.g. due diligence in own affairs; non-material breach of duty), only

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

**b)** for damages resulting from a breach of an essential contractual obligation (the fulfillment of which enables proper execution of the contract in the first place, and

on the fulfillment of which the contractual partner regularly relies, and may rely); in this case, however, our liability shall be limited to compensation for foreseeable, typically occurring damage.

**(3)** The limitations of liability arising from paragraph 2 shall also apply to third parties as well as to breaches of duty by persons (including in their favor) whose fault we are responsible for according to statutory provisions. They shall not apply if a defect was fraudulently concealed, or a guarantee as to the condition of the Goods has been given, or to claims of the Buyer under the German Product Liability Act (Produkthaftungsgesetz).

**(4)** The Buyer may only withdraw from or terminate the contract due to a breach of duty that does not constitute a defect if we are responsible for the breach of duty. A free right of termination by the Buyer (in particular according to Sections 650, 648 BGB) shall be excluded. In all other respects, the statutory provisions and legal consequences shall apply.

## Section 9 Limitation

**(1)** Notwithstanding Section 438 (1) No. 3 BGB, the general limitation period for claims arising from material defects and defects of title shall be one year from delivery. Where acceptance testing has been agreed, the limitation period shall begin on acceptance.

**(2)** If the 'Goods' refer to a building structure or an item used for a building structure in accordance with its customary use which has caused the defect in the said structure (building material), the limitation period shall be 5 years from delivery in accordance with the statutory provision (Section 438, paragraph 1, sentence 2 BGB). Further statutory special provisions relating to limitation periods (in particular Section 438 (1) No. 1, para. 3, Sections 444, 445b BGB) shall also remain unaffected.

**(3)** The above limitation periods of the law on sales of goods shall also apply to contractual and non-contractual claims for damages of the Buyer based on a defect in the Goods, unless application of the regular statutory limitation period (Sections 195, 199 BGB) would lead to a shorter limitation period in the individual case. The Buyer's claims for damages in accordance with Section 8 (2), sentence 1 and sentence 2(a), as well as in accordance with the German Product Liability Act (Produkthaftungsgesetz) shall expire solely in accordance with the statutory periods of limitation.

## Section 10 Repair orders

**(1)** In relation to repair orders, it shall be agreed, unless otherwise stipulated in individual cases, that the service life of a repaired spindle shall be 1,000 operating hours from acceptance.

**(2)** Notwithstanding Section 634a (1) No. 1 BGB, the limitation period for claims arising from material de-

fects and defects of title shall be 12 months from acceptance.

**(3)** No material defect shall be represented by the usual wear and tear that occurs on ball bearings, sealing rings, seals, parts of the tool clamping and release system, internal coolant supplies, couplings, gears, belts, brakes, unless they do not comply with the technical standard for wearing parts.

Furthermore, claims for material defects shall not be allowable if a defect is due to incorrect connection or operation by the Customer or a third party. Damage due to force majeure, such as lightning, due to overstressing of mechanical and electromechanical parts, due to improper use or due to contamination, extraordinary mechanical, chemical or atmospheric influences.

**(4)** In the event of a claim relating to material defects, the Customer shall ensure that the Goods subject to claim are made available to us for inspection and rectification. Replaced parts shall become our property.

If the inspection reveals that there is no material defect, we shall inform the Customer and offer to repair the defect at the Customer's expense.

**(5)** If the Customer requesting a repair requires a cost estimate, this must be agreed in writing in advance. The Customer shall pay a handling fee for cost estimates in an amount to be agreed or, in the absence of an agreement, in an amount of EUR 18.20.

## Section 11 Choice of law and place of jurisdiction

**(1)** These T&Cs and the contractual relationship between us and the Buyer shall be governed by the laws of the Federal Republic of Germany, excluding international uniform law, in particular the United Nations Convention on Contracts for the International Sale of Goods (CISG).

**(2)** If the Buyer is a merchant under the terms of the German Commercial Code (HGB), a legal entity under public law or a special fund under public law, the sole place of jurisdiction (including internationally) for all disputes arising directly or indirectly from the contractual relationship shall be our registered office in Ober-Mörlen.

The same shall apply if the Buyer is an entrepreneur under the terms 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 T&Cs or an overriding individual agreement, or at the general place of jurisdiction of the Buyer. Overriding statutory provisions, in particular relating to exclusive competencies, shall remain unaffected.

**(3)** In the event of any discrepancies between the German and English versions of these T&Cs, the German version alone shall prevail.

## Section 12 Data protection

(1) We shall comply with the relevant statutory provisions, in particular the General Data Protection Regulation (GDPR), with regard to the Buyer's personal data.

(2) We shall collect, store, process and use the Buyer's personal data if, to the extent, and for as long as necessary in order to establish, execute or terminate this contract.

Further collection, storage, processing and use of the Buyer's personal data shall only take place if so required or permitted by law, or the Buyer has consented thereto.

(3) The Buyer is aware that the collection, processing and use of the Buyer's personal data, including name, consumer or entrepreneur status, address, date of birth and bank details, on the basis of Art. 6 (1) lit. b) GDPR is required for the execution of pre-contractual measures and fulfillment of this contract.

(4) We shall be entitled, to the extent allowed by law, to check the risk of payment default on the part of the Buyer for the purpose of deciding on the establishment, execution or termination of the purchase contract.

In this respect, probability values concerning the future behavior of the Buyer shall be collected and processed. The address data of the Buyer is also used to calculate the said probability values.

For verification purposes, we shall use the services of credit agencies such as SCHUFA Holding AG (Wiesbaden) or other third parties, and to that end transmit to them or request from them data relating to the Buyer.

The collection, processing and use of data for this purpose shall be based on Art. 6 (1) lit.b) GDPR.

(5) In particular, we shall be entitled to transfer the Buyer's data to third parties if, and to the extent, necessary for the execution of pre-contractual measures and fulfillment of this contract (such as in relation to shipping, assembly, installation, invoicing or customer service) pursuant to Art. 6 (1) lit. b) GDPR or in any other way fulfill a legal obligation under the terms of Art. 6 (1) lit. c) GDPR. To the extent permitted by law, we may also forward this data to third parties (such as debt collection agencies) for the purpose of enforcing claims in accordance with Art. 6 (1) lit.b) and/or f) GDPR.

(6) On request, we shall provide the Buyer with information about the stored personal data relating to the Buyer free of charge, subject to the statutory provisions. The Buyer shall be entitled under the statutory provisions to demand the correction, deletion, restriction of processing or transfer of its data to a third party. The buyer shall also be entitled to lodge a complaint with a supervisory authority.

(7) The buyer may object to any use of its personal data (I) for the necessary performance of a task that has

been transferred to us in the public interest or in the exercise of public power, or (II) to safeguard our legitimate interests or those of a third party, as according to Section 5 above where applicable, pursuant to Art. 21 (1) GDPR at any time by means of an informal notification to us. If we cannot demonstrate any overriding compelling reasons worthy of protection for the usage, we shall no longer use the data concerned for the said purposes on receipt of the objection.

The Buyer may also object to any use of its personal data for direct marketing purposes pursuant to Art. 21 (2) GDPR, free of charge, by means of an informal notification to us. We shall no longer use the data concerned for the said purposes on receipt of the objection.

(8) The responsible body in respect of all data protection related matters, and for the exercising of rights set out in Sections 6 and 7, is:

### **RPA Datenschutz + Compliance GmbH**

Hauser Gasse 19b 35578 Wetzlar

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Contacts:

Mr. Ilja Borchers and Mr. Henning Koch

The supervisory authority primarily responsible for the supplier is:

### **The State of Hesse Data Protection Officer (Hessische Beauftragte für Datenschutz und Informationsfreiheit)**

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