

GENERAL CONDITIONS OF PURCHASE

 **FINGER**
Befestigungstechnik



General terms and conditions of purchase with fixed fee for losses caused by delay

§ 1 General, area of applicability

1. The following general terms and conditions of purchase shall apply to all business relationships with our business partners and suppliers (hereinafter: „Seller“). The general terms and conditions of purchase shall only apply if the Seller is an entrepreneur (§ 14 of the German Civil Code - BGB), a legal person under public law or a special fund under public law.
2. The general terms and conditions of purchase shall apply in particular in respect of contracts for the sale and/or the delivery of moveable items to us (hereinafter also referred to as: goods), regardless of whether the Seller manufactures these itself or purchases these from suppliers (§§ 433, 651 BGB). The general terms and conditions of purchase shall apply in their respective version as a framework agreement for future contracts of sale and/or the delivery of moveable items to us with the same Seller, without us needing to refer to these terms and conditions of purchase again in each individual case; in such a case, we shall immediately inform the Seller of amendments to our general terms and conditions of purchase.
3. These general terms and conditions of purchase shall apply exclusively. Deviating, opposing or supplementary general terms and conditions of business of the Seller shall only become part of the contract to the extent that we have expressly agreed to their applicability in writing. This agreement requirement shall apply in all cases, also for example if we accept the deliveries of the Seller without reservation in knowledge of its general terms and conditions of business.
4. Any individual agreements concluded with the Seller in individual cases (including ancillary agreements, additions and amendments) shall always take precedence over these general terms and conditions of purchase. A written contract and our written confirmation shall be ,decisive for the contents of such agreements.
5. Legally relevant declarations and notices which are to be made to us by the Seller following conclusion of the contract (for example the setting of deadlines, warnings, declaration of rescission) shall require at least written form via email or fax to take effect.
6. References to the applicability of statutory regulations shall only have an explanatory function. Therefore, the statutory regulations shall also apply without such a clarification, to the extent that they are not directly changed or are explicitly excluded in these general terms and conditions of purchase.

§ 2 Conclusion of the contract

1. Our order shall be deemed to be binding at the earliest on submission declared in text form or on confirmation. The Seller shall inform us of obvious errors (for example typing and calculation mistakes) and incompleteness of the order, including the order documents for the purpose of correction and completion prior to acceptance; otherwise the contract shall be deemed to have not been concluded.

2. The Seller shall be obliged to confirm our order within a deadline of 2 days in text form or in particular to carry it out without reservation by means of dispatch of the goods (acceptance). A delayed acceptance shall be deemed to be a new offer and shall require acceptance by us.

§ 3 Delivery time and delivery delay

1. The delivery time stated by us in the order shall be binding. Should the delivery time not be stated in the order and not have been agreed elsewhere, this shall be one day immediately following conclusion of the contract. The Seller shall be obliged to immediately inform us in text form should it expect not to be able to comply with the agreed delivery times, regardless of reason.

2. Should the Seller not provide its service, fail to provide its service within the agreed delivery time, or should it enter default, our rights, in particular those of rescission or damages, shall be determined in accordance with the statutory provisions. The provisions in Paragraph 3 shall not be affected.

3. Should the Seller be in default, we shall be entitled to demand a fixed reimbursement of our default losses to the amount of 1% of the net price per completed week, however not more than 5% of the net price of the goods which are delivered late, alongside any statutory claims which go beyond this. We shall retain the right to provide proof that our losses exceed the above. The Seller shall retain the right to provide proof that we have not incurred any loss or that the loss incurred was significantly less than the above.

§ 4 Service, delivery, transfer of risk, acceptance default

1. Without our prior agreement in text form, the Seller shall not be permitted to have the services which is obliged to provide carried out by third parties (for example subcontractors). The Seller shall bear the procurement risk for its services, unless otherwise agreed in individual cases (for example the sale of products in stock).

2. The delivery shall take place carriage paid to the location specified in the order. Should the destination not be stated and in the absence of an agreement to the contrary, the delivery shall be made to our place of business in Brilon. The respective destination shall also be the place of performance (obligation to provide)

3. A delivery note which states the date (issue and dispatch), the contents of the delivery (article number and quantity) and our order details (data and number) shall be attached to the delivery. Should the delivery note be missing or incomplete, we cannot accept responsibility for delays in the processing and payment of the delivery.

A corresponding notice of dispatch with the same contents shall be sent to us separately from the delivery note.

4. The risk of possible loss and possible impairment of the products shall be transferred to us on handover at the place of performance. To the extent that an acceptance is agreed, this shall be decisive for the transfer of risk. Otherwise, the statutory regulations concerning contracts for work and service shall apply accordingly to acceptance. The handover and acceptance shall be deemed to have taken place should we enter acceptance default.

5. The statutory provisions shall apply in respect of the occurrence of our acceptance default. The Seller must also then expressly offer its services to us in cases where a designated or determinable calendar time is agreed for an action or co-operation on our part (for example the supply of materials). Should we enter acceptance default, the Seller shall be entitled to require reimbursement of its additional expenses in accordance with the statutory provisions (§ 304 of the German Civil Code, BGB). Should the contract concern non-fungible goods that are to be produced by the Seller (individual manufacture), the Seller shall only be entitled to further reaching rights if we have undertaken to provide assistance and are responsible for the failure to provide the said co-operation.

§ 5 Prices and payment terms

1. The price stated in the order shall be binding. All prices shall be inclusive of statutory value added tax, unless this is stated separately.

2. Unless otherwise agreed in individual cases, the price shall include all services and supplementary work of the Seller (for example assembly and installation), as well as all ancillary expenses (for example proper packaging, transportation costs including any delivery and liability insurance). On our request, the Seller shall take return possession of packaging materials.

3. The agreed price shall be due for payment within 30 calendar days following complete delivery and service (including any agreed acceptance) and following receipt of a proper invoice. Should we make payment within 14 calendar days, the Seller shall grant us a discount of 3% of the net amount of the invoice. In case of bank transfers, the payment shall be deemed to have been made on time if our payment mandate is received by our bank prior to expiry of the payment deadline; we shall not be responsible for delays on the part of the banks involved in the processing of the payment.

4. We shall not be obliged to pay default interest. The annual default interest shall amount to 5 percentage points above the base rate of interest. The statutory provisions shall apply in respect of the occurrence of default by us, whereby in deviation thereof, a written warning must be issued by the Seller.

5. We shall be entitled to rights of set off and rights of retention, as well as the plea of non-fulfilment of the contract, to the extent prescribed by law. In particular, we shall be entitled to withhold due payments should we be entitled to claims due to incomplete or defective services against the Seller.

6. The Seller shall only be entitled to a right of set off or right of retention if the counterclaims have been recognised by a court or are undisputed.

§ 6 Secrecy and reservation of ownership

1. We shall reserve ownership rights and copyright in respect of images, plans, drawings, calculations, performance instructions, product descriptions and other documents. Such documents shall only be used for the contractual service and shall be returned to us following performance of the contract. The documents shall be kept confidential in relation to third parties, also following termination of the contract. The secrecy obligation shall not expire until the knowledge contained in the transferred documents has become generally known.

2. The above mentioned provision shall apply accordingly to substances and materials (for example software, completed and half completed products), as well as to tools, templates, samples and other objects which we make available to the Seller for manufacture. Unless they are processed, such objects shall be stored separately at the expense of the Seller and shall be reasonably insured against destruction and loss.

3. Processing, mixing or connection (further processing) of provided objects by the Seller shall be carried out for us. The same shall apply in case of further processing of the delivered goods by us, so that we are deemed to be the manufacturer and we acquire ownership of the product at the latest on further processing in accordance with the statutory provisions.

4. The transfer of the goods to us must take place absolutely and without regards to the payment of the price. However, should we accept an offer of the Seller concerning transfer which is conditional on payment of the purchase price in individual cases, the reservation of ownership of the Seller shall lapse at the latest on payment of the purchase price for the delivered goods. In the course of proper business processes, we shall remain entitled to sell on the goods, also following payment of the purchase price, under assignment in advance of the resulting claim (alternatively applicability of the simple reservation of ownership which is extended to the selling on). All other forms of the reservation of ownership shall be therefore excluded in all cases, in particular the forwarded on reservation of ownership and the reservation of ownership which is extended to the further processing.

§ 7 Defective delivery

1. In case of material defects and defects of title in respect of the goods (including incorrect deliveries and shortfalls in deliveries, as well as incorrect assembly, defective assembly, operation and service instructions) and in case of other breach of obligations on the part of the Seller, the statutory provisions shall apply unless otherwise provided below.

2. In accordance with the statutory provisions, the Seller shall, in particular, be liable for ensuring that the goods are of the agreed quality at the time of transfer of risk to us. Those product descriptions which form the subject matter of the respective contract in particular due to identification or reference in our order or are incorporated into the contract in the same way as these general terms and conditions of purchase shall, in all cases, form an agreement concerning quality. The questions as to whether the product description originates from us, the Seller or the manufacturer shall be irrelevant. Should a purpose of use of the goods be stated in our order, this shall apply as the suitability of use which is required for the contract.

3. Contrary to the provisions of § 442 Paragraph 1 Sentence 2 of the German Civil Code (BGB), we shall be entitled to unrestricted defect claims, also in cases where the defect has remained unknown to us at the time of conclusion of the contract due to gross negligence.

4. The statutory regulations (§§ 377, 381 of the German Commercial Code - HGB) shall apply as follows in respect of the commercial inspection and complaint obligations: Our inspection obligation shall be restricted to defects which are apparent during our goods-in inspection by means of an external check, including the delivery papers, as well as in case of a random quality inspection (for example transportation damage, incorrect deliveries and shortfalls in deliveries). Insofar as an acceptance is agreed, no inspection obligation shall exist. Otherwise, it shall depend on whether and to what extent an inspection appears feasible, taking into account the circumstances of the individual case in accordance with proper business practices. Our complaint obligation for defects which are subsequently discovered shall not be affected. In all cases, our complaint (defect notification) shall be deemed to be immediate and timely if it is received by the Seller within five working days.

5. The costs spent by the Seller for the purposes of testing and rectification (including any removal and installation expenses) shall be borne by the Seller, even if it transpires that there was in fact no defect. Our liability to pay damages in case of unjustified defect correction requests shall not be affected; however, we shall only incur liability if we recognisably or gross negligently failed to ascertain that no defect was present.

6. Should the Seller fail to comply with its obligation to provide supplementary performance (which shall be correction of the defect - improvement or delivery of a defect-free item - replacement delivery according to our choice) within a reasonable deadline to be set by us, we shall be entitled to correct the defect ourselves and to demand reimbursement of the necessary expenses in this respect by the Seller and to demand a corresponding advance payment. Should the supplementary performance by the Seller fail or be unreasonable for us (for example due to particular urgency, endangerment of operational safety or threatened occurrence of disproportional damage), no setting of a deadline shall be required; we shall immediately inform the Seller of such circumstances, in advance if possible.

7. Otherwise we shall be entitled, in accordance with the statutory provisions, to reduce the purchase price or rescind the contract in case of material defects or defects of title. In addition, we shall be entitled to damages and reimbursement of expenses in accordance with the statutory provisions.

8. The falling below or exceeding of the quantity deviations which are customary in the field by +/- 10 % shall be deemed to be defects.

§ 8 Supplier recourse

1. Our recourse claims within a supply chain which are provided by law (supplier recourse in accordance with §§ 478, 479 BGB) shall be due to us without restriction together with the defect claims. In particular, we shall be entitled to demand the type of supplementary performance from the Seller (improvement or replacement delivery) which we are obliged to provide to our consumer in the individual case. Our statutory right of choice (§ 439 Abs 1 BGB) shall not be restricted by means of the above.

2. Prior to recognising or fulfilling a defect claim asserted by one of our consumers (including reimbursement of expenses in accordance with § 478 Paragraph 3, 439 Paragraph 2 BGB), we shall inform the Seller and request a written statement following a short representation of the facts. Should the statement not be made within a reasonable deadline and should no mutually agreed solution be reached either, the defect claim which is actually granted by us shall be deemed to be owed to our consumer; in such a case, the Seller shall be obliged to provide the counter evidence.

3. Our claims under supplier recourse shall also apply if the goods were further processed prior to their sale to a consumer by us or by one of our customers, for example by means of installation into another product.

§ 9 Producer's liability

1. Should the Seller be responsible for product damage, it shall release us from third party claims to the extent that the cause falls within its scope of control and area of organization and it is itself liable to third parties.

2. Within the framework of its indemnification obligation, the Seller must, in accordance with §§ 683 and 670 of the German Civil Code (BGB), refund expenses which result from or in connection with a third party claim, including recall actions carried out by us. To the extent that is possible and reasonable, we shall inform the Seller of the contents and extent of recall measures, and shall give the Seller the opportunity to make a statement. Any further statutory claims shall not be affected.

3. The Seller shall conclude and maintain a product liability insurance policy with a fixed sum insured of 10 million EUR per incidence of personal injury or damage to property.

§ 10 Statute of limitation

1. The mutual claims of the contracting parties shall lapse in accordance with the statutory provisions, unless otherwise agreed below.
2. In deviation from § 438 Paragraph 1 Number 3 BGB, the general statute of limitation for defect claims shall be 3 years from the time of transfer of risk. Should an acceptance be agreed, the statute of limitation shall commence on acceptance. The three-year statute of limitation shall also apply accordingly to claims due to defects of title, whereby the statutory period of limitation for third party in rem claims to return (§ 438 Paragraph 1 Number 1 BGB) shall remain unaffected. Beyond that, claims arising out of defects in title shall on no account be time-barred, so long as the third party can still assert the right against us, in particular due to lack of a period of limitation.
3. The periods of limitation of the laws concerning the sale of goods, including the extension above, shall apply to all contractual defect claims to the extent provided by law. Should we be entitled to damages claims outside of the contract, the regular statute of limitation (§§ 195, 199 BGB) shall apply, unless the application of the periods of limitation of the law concerning the sale of goods leads to a longer statute of limitation.

§ 11 Choice of law, place of jurisdiction

1. The law of the Federal Republic of Germany shall apply to these general terms and conditions of purchase and all legal relationships between ourselves and the Seller, to the exclusion of international uniform law and the UN Convention on the International Sale of Goods. The requirements and effects of the reservation of ownership shall be subject to the laws of the respective place of storage of the object, if, under the said law, a choice of law made in favour of German legislation is not permitted or is void.
2. Should the Seller be a businessman as defined in the German Commercial Code (Handelsgesetzbuch), a legal person under public law or a special fund under public law, the place of jurisdiction for all disputes connected to the contractual relationship, also internationally, shall be our place of business in Brilon. However, we shall also be entitled to bring a lawsuit at the place of performance of the delivery obligation.