

# GENERAL CONDITIONS OF PURCHASE (GCP)

of

UTG Unabhängige Tanklogistik GmbH

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## §1 General, Scope

- 1.1. The present General Conditions of Purchase (GCP) shall apply to all business relations with our business partners and suppliers (hereinafter: "Sellers"). The GCP shall only apply if the Seller is an enterprise pursuant to Section 14 German Civil Code, a corporate entity under public law or a special fund under public law.
- 1.2. The GCP shall in particular apply to contracts concerning the sale and/or supply of movables (hereinafter "Goods"), regardless of whether Seller itself produces the Goods or buys such Goods from third-party suppliers (Sections 433, 651 German Civil Code). The GCP as amended from time to time shall constitute a framework agreement, also for future contracts on the sale and/or supply of Goods with the same Seller, without an obligation on our part to refer to them in each individual case.
- 1.3. These GCP shall apply exclusively. Seller's deviating or opposing or supplementary general terms and conditions shall become an integral part of the contract only if and to the extent that we have expressly confirmed their validity in writing. This consent requirement shall apply in each and every case, even if, for example, we accept Seller's deliveries without reservation in knowledge of Seller's general terms and conditions.
- 1.4. Any individual agreements made with Seller in individual cases (including

subsidiary agreements, addenda, and amendments) shall always take precedence over these GCP. As a minimum, the content of such agreements shall require a contract in the form of a written text (e.g. e-mail) or respectively our confirmation, at least in writing (e.g. e-mail).

- 1.5. Any material representations and notifications required to be made to us by Seller after conclusion of contract (e.g. the setting of deadlines, payment reminders, or notice of rescission of contract) require the written form to be valid.
- 1.6. Any reference made to the applicability of statutory provisions shall be for the avoidance of doubt only. Statutory provisions shall therefore apply even in the absence of such reference, unless specifically modified or expressly excluded in these GCP.

## §2 Conclusion of Contract

- 2.1. Our order shall not be deemed binding until communicated at least in text form (e.g. e-mail) or confirmed at least in text form (e.g. e-mail). Seller shall be under an obligation to notify us of any apparent errors (e.g. spelling and arithmetical errors) or incompleteness of orders, including incomplete order documents, to enable us to correct or complete the order. The contract shall otherwise be deemed not to have been concluded.
- 2.2. Seller shall be obliged to confirm our order in writing within a period of two (2) weeks of receipt or in particular to

execute the order without reservation by dispatching the Goods (acceptance). Delayed acceptance shall be deemed to constitute a new offer, which requires acceptance by us.

### §3 Delivery Time and Default in Delivery

- 3.1. The delivery time stated on the order by us shall be binding. If such delivery time is neither stated on the order nor otherwise agreed, it shall be two (2) weeks as from conclusion of contract. Seller undertakes to notify us immediately in writing if, for whatever reason, the agreed delivery times are likely to be exceeded.
- 3.2. If Seller fails to render performance or such performance is not rendered within the agreed delivery time or Seller is in default, our rights – in particular the right to rescission and to compensation for damages – shall be governed by the statutory provisions. The foregoing shall not affect the provisions of (3) below.
- 3.3. If Seller is in default we shall be entitled to claim – in addition to further legal claims – lump-sum compensation from Seller for the damage caused by delay in the amount of 0.5 per cent of the net price per completed calendar week, the sum total of which, however, shall not exceed 5 per cent of the net price of the Goods that are delivered late. We shall be entitled to provide evidence that we have suffered greater damage. Seller shall be entitled to

prove that we suffered no or substantially less damage.

### §4 Performance, Delivery, Passing of Risk, Default of Acceptance

- 4.1. Without our prior written consent, Seller shall not be entitled to have third parties (e.g. subcontractors) deliver any performance that Seller is obligated to deliver. Seller shall bear the procurement risk for its performance unless it is a custom-made product made to specification.
- 4.2. The delivery shall be effected carriage free to the place stated on the order. If no destination is stated and in the absence of any other agreement, delivery shall be effected carriage free to our registered address in Bremerhaven. The place of delivery shall also be the place of performance (obligation to render performance at creditor's domicile).
- 4.3. The delivery shall be accompanied by a delivery note stating date of issue and date of dispatch, content of the delivery (article number and quantity), and our order reference (date and number). We cannot be held responsible for any delays in processing or payment resulting from a missing or incomplete delivery note. An advice of dispatch with identical content shall be sent to us separately.
- 4.4. Seller shall immediately provide and furnish any certificate of origin requested by us, properly signed and with all required information. The same

shall apply to documents referring to value added tax for export and intra-community deliveries .

- 4.5. Seller shall notify us immediately if a delivery in whole or in part is subject to export restrictions under German or other law.
- 4.6. The risk of accidental destruction or accidental degradation of the Goods shall pass to us upon delivery at the place of performance. In the event that an acceptance procedure has been agreed, such procedure shall be binding in respect of the passing of risk. The statutory provisions of German work contact law shall also apply to acceptance. If we are in default of acceptance this shall be deemed equivalent to handover or, respectively, acceptance. 4.7. The statutory provisions shall apply to the occurrence of our default of acceptance. However, Seller shall expressly offer its services to us even if a particular or determinable calendar period was agreed for any act or collaboration on our part (e.g. the provision of material). If we are in default of acceptance Seller shall be entitled to claim compensation for its additional expenditure (Section § 304 German Civil Code). If the contract refers to a non-fungible article to be produced by Seller (custom-made item), Seller shall have further rights only if we have agreed to collaborate and are responsible for failing to collaborate..

## §5 Prices, Invoices, and Terms of Payment

- 5.1. The price stated on the order shall be binding. Any subsequent price increase whatsoever shall be permissible only with our prior written consent. All prices are inclusive of statutory value added tax, unless this is stated separately.
- 5.2. Unless otherwise agreed in individual cases, prices shall be inclusive of all performance and ancillary services provided by Seller as well as all ancillary expenses (e.g. proper packaging, transport costs including transport and liability insurance, if applicable). At our request, Seller shall take back the packaging material.
- 5.3. Seller's invoices shall comply with all value added tax requirements. If the transaction is taxable and subject to tax, Seller's invoices shall in particular indicate the applicable amount of value added tax.
- 5.4. The agreed price shall be payable within thirty (30) calendar days of complete delivery and performance (including any acceptance procedure agreed) and delivery of a proper invoice. If we make payment within fourteen (14) calendar days, Seller shall grant us an early-payment discount of three (3) per cent on the net invoice amount.
- 5.5. We do not owe interest on overdue payments. This does not affect Seller's right to demand payment of interest on arrears. The statutory provisions shall

apply in respect of our default in payment. Seller shall, however, be obliged to send us a reminder in all cases.

- 5.6. We shall be entitled to the rights of setoff and retention and the right to plead the defence of non-fulfilment of contract to the extent permitted by law. In particular, we shall be entitled to retain any due payments as long as we are still entitled to claims against Seller for incomplete or defective deliveries.
- 5.7. Seller shall have the right to setoff or retention only for legally established or undisputed counterclaims.

## §6 Nondisclosure and Retention of Title

- 6.1. We retain the right of ownership and copyright in all images, plans, drawings, calculations, execution instructions, product descriptions, and other such documentation. Such documents shall be used only for the contractual performance; they shall be returned to us on completion of the contract. Such documents shall not be disclosed to third parties even after termination of the contract. The foregoing non-disclosure obligation shall expire only if and when the information contained in the documents provided has become common knowledge.
- 6.2. The above provisions shall likewise apply to substances and materials (e.g. software, finished and semi-finished products) and to tools,

templates, samples and other items provided by us to Seller for production purposes. Until such time as they are processed, such items shall be stored separately and insured against loss and destruction to the customary extent at Seller's expense.

- 6.3. If Seller processes, mixes or combines any items provided by us, this shall be deemed performed on our behalf. If, during the processing, mixing, or combining of third-party items, that party's right of ownership remains valid, we shall acquire co-ownership in the new item in the proportion of the value of the item we provided to the value of the other items.
- 6.4. The transfer of ownership of the Goods to us shall be unconditional and regardless of payment of the price.

Extended retention of ownership in any form whatsoever shall not be permissible under any circumstances, so that any retention of ownership effectively declared by Seller shall be valid only until payment of the Goods supplied to us and shall apply only to such goods.

## §7 Defective Delivery

- 7.1. Unless otherwise specified below, the statutory requirements shall apply in respect of our rights regarding material defects and defects in title of the Goods (including wrong and short delivery, improper assembly or installation, inadequate installation or operating instructions), and in case of any other breaches of duty on the part of Seller.

- 7.2. In accordance with the statutory provisions, Seller shall be particularly liable for the Goods having the agreed quality at the time of passing of risk to us. The agreement on the quality of the Goods shall always be deemed to be the quality stated in the product descriptions that are the subject of the relevant contract, particularly through designation or reference on our order, or that are incorporated into the contract in the same way as these GCP. Whether the product description comes from us, from Seller, or from the manufacturer is irrelevant.
- 7.3. Notwithstanding Section 442 (1) Sentence 2 German Civil Code, we shall be entitled without limitation to claims for defects even if we were unaware of the defect at the time of conclusion of contract as a result of gross negligence.
- 7.4. The commercial duty to inspect the Goods and notify Seller of any defects shall be governed by the statutory provisions of Sections 377, 381 German Commercial Code, save that our duty to inspect shall be limited to defects that become apparent from a visual inspection during our incoming goods inspection, including inspection of the delivery notes, and from random sampling during our quality control (e.g. damage in transit, wrong and short delivery). Insofar as an acceptance procedure has been agreed, we shall not be obliged to inspect the Goods. Our duty to inspect the Goods and notify Seller of any defects shall otherwise depend on the extent to which an inspection would be

expedient in accordance with proper business practice, taking into account the circumstances of the individual case. This shall not affect our obligation to give notice of subsequently discovered defects. In all cases, our complaint (notification of defects) shall be deemed prompt and timely if received by Seller within five (5) working days.

- 7.5. If Seller fails to honour its obligation to render supplementary performance – which, at our discretion, shall be either by remedying the defect (repair) or by supplying a non-defective item (substitute delivery) – within a reasonable period set by us, we shall be entitled to remedy the defect ourselves and demand from Seller reimbursement of the costs required for such remedy or an appropriate advance payment. If Seller's supplementary performance has failed or is unacceptable to us (e.g. because of exceptional urgency, risk to operational safety or imminent occurrence of disproportionate damages) no deadline is required to be set; Seller shall be notified immediately and, if possible, in advance.
- 7.6. Furthermore, in the event of a defect in quality or title we shall additionally be entitled to a reduction of the purchase price or rescission from the contract in accordance with the statutory provisions. We shall furthermore be entitled to claim damages and reimbursement of expenses in accordance with the statutory provisions.

## §8 Recourse against Supplier

- 8.1. In addition to claims for defects we shall be fully and unrestrictedly entitled to our right of recourse within a supply chain (supplier recourse pursuant to Sections 478, 479 German Civil Code). In particular, we shall be entitled to demand from Seller exactly the type of supplementary performance (remedy of defects or replacement) that we owe to our customer in the given case. This shall not restrict our statutory right of choice pursuant to Section 439 (1) German Civil Code.
- 8.2. Before accepting or meeting any claim for defects made by our customer (including reimbursement of expenses pursuant to Sections 478 (3), 439 (2) German Civil Code), we shall contact Seller with a brief description of the circumstances of the case and ask for a written comment. Failure to either provide such statement within a reasonable period of time or find a mutually acceptable solution shall result in the claim for defects that we have granted to be deemed owed to our customer, in which case it shall be incumbent upon Seller to furnish proof of the contrary.
- 8.3. Our claims from recourse against supplier shall apply even if the Goods have been processed by us or one of our customers, e.g. by way of installation in another product, prior to being sold.

## §9 Manufacturer's Liability

- 9.1. If Seller is responsible for a product defect, Seller shall indemnify us for third-party claims insofar as the cause is within Seller's sphere of control and organisation and Seller itself is liable to third parties.
- 9.2. As part of its obligation to indemnify, Seller shall reimburse expenses pursuant to Sections 683, 670 German Civil Code that arise from or in connection with any third-party claim, including any product recall carried out by us. As far as possible and reasonable, we shall notify Seller of the content and scope of any product recall programme and give Seller the opportunity to comment. Any additional statutory claims shall remain unaffected.
- 9.3. Seller shall take out and maintain product liability insurance with lump-sum indemnity cover of at least EUR 10,000,000 for each personal injury/property damage claim.

## §10 Property Rights

- 10.1. Seller warrants and represents that Seller's deliveries do not infringe any third-party property rights in countries of the European Union, North America, or other countries in which Seller manufactures products itself or has products manufactured.
- 10.2. Seller undertakes to exempt us from any claim filed against us by a third party for any infringement of industrial property rights under (1) and to reimburse any necessary expenses in

connection with such claims. This right shall apply independently of any fault on the part of Seller.

## §11 Period of Limitation

11.1. Notwithstanding Section 438 (1) No. 3 German Civil Code, the general period of limitation for any claim for defects shall be three (3) years as from the passing of risk. Insofar as an acceptance procedure has been agreed, the limitation period shall commence upon acceptance. The three-year limitation period shall also apply mutatis mutandis to any claims for defects in title without affecting the statutory limitation period for material claims for the restitution of property of third parties (Section 438 (1) No. 1 German Civil Code); furthermore, claims from defects in title shall not become statute-barred as long as the third party is still entitled to assert its claim against us, in particular in the absence of limitation.

11.2. The limitation periods for defects under the laws governing the sale of goods, including the aforementioned extension under (1) shall apply to the extent permitted by law to all contractual claims for defects. Insofar as we are also entitled to non-contractual compensation for defects, the regular statutory limitation period (Sections 195, 199 German Civil Code) shall apply unless the application of the limitation periods of the law governing the sale of goods results in a longer period of limitation in any given case.

11.3. The regular period of limitation for our claim for performance shall be five (5) years as from conclusion of contract.

11.4. The reciprocal claims of the parties shall otherwise expire by limitation in accordance with statutory provisions.

## §12 Applicable Law and Place of Jurisdiction

12.1. These GCP and the legal relationship between us and Seller shall be governed by the law of the Federal Republic of Germany. All international and supra-national (contract) legislation, in particular the UN Convention on Contracts for the International Sale of Goods, shall be excluded. The requirements and effects of retention of title shall be subject to the law applicable at the storage site of the Goods insofar as the choice of law in favour of German law is inadmissible or invalid.

12.2. The German version of these Conditions of Purchase shall be binding.

12.3. If Seller is a merchant within the meaning of the German Commercial Code or a legal entity under public law or a special fund under public law, the sole legal venue for any disputes, including any international disputes arising from the contractual relationship, shall be our registered office in Bremerhaven. However, we shall also be entitled to bring an action at the place of performance of the delivery obligation.