

» General Terms and Conditions of Sale (Status: April 2021)

Following terms and conditions apply to international customers (outside of Germany), only.

§ 1 General information, scope of application

(1) The following General Terms and Conditions of Sale (GTCs) shall apply to all business relationships with our customers ("Purchaser"). These GTCs only apply if the Purchaser is an entrepreneur (Section 14 German Civil Code (BGB)), a legal entity governed by public law or special assets of the Federal Government.

(2) The GTCs apply, in particular, to contracts for the sale and/or supply of movable things ("goods"), regardless of whether or not such goods are manufactured by ourselves or purchased from third-party suppliers (Sections 433, 651 BGB). Unless otherwise agreed upon, the GTCs, in the version valid at the time of the Purchaser's purchase order or in the version last notified to the Purchaser in text form, also apply as a framework agreement to any similar future contracts, without us having to refer to these again in each individual case.

(3) Our GTCs shall apply exclusively. Any deviating, contrary or supplementary General Terms and Conditions of Business of the Purchaser only become a part of the contract, if and insofar as we have explicitly approved their validity. This approval requirement shall apply in any case, including, for example, if we carry out the delivery to the Purchaser without reservation, although we are aware of the GTCs of the Purchaser.

(4) Any individual agreements with the Purchaser made in the individual case (including ancillary agreements, supplements and amendments) shall in all cases have precedence over these GTCs. In the absence of any evidence to the contrary, a written contract or our written confirmation shall be decisive for the content of such agreements.

(5) Legally relevant declarations and notifications to be given to us by the Purchaser after conclusion of the contract (e.g. setting of deadlines, notifications of defects, declaration of cancellation or price reduction) require the written form in order to be valid.

(6) References to the validity of statutory regulations shall only have clarifying significance. Therefore, the statutory regulations shall also apply without such a clarification, unless they are directly modified or explicitly excluded by these GTCs.

§ 2 Conclusion of contract

(1) Our offers are always subject to confirmation and not binding. This also applies if we have handed over catalogues, technical documentation (e.g. drawings, plans, calculations, cost estimates, references to DIN standards), other product descriptions or documents – including in electronic form – to the Purchaser, to which we reserve property rights and copyrights.

(2) The order of the goods placed by the Purchaser is deemed to be a binding contractual offer. Unless otherwise indicated in the purchase order, we are entitled to accept this contractual offer within 10 days after its receipt by us.

(3) The acceptance can be declared either in writing (e.g. by confirmation of the order) or by delivery of the goods to the Purchaser.

§ 3 Delivery period and delay in delivery

(1) The delivery period will be agreed upon individually or stated by us with the acceptance of the purchase order. Otherwise, the delivery period shall be approx. 2 weeks from conclusion of the contract. A prerequisite for compliance with this delivery period is that the documents, consents and approvals, in particular plans, to be provided by the Purchaser are available upon conclusion of the contract. If this prerequisite is not met, the delivery period shall be extended reasonably, unless we are responsible for the delay.

(2) If we are not able to meet binding delivery periods for reasons for which we are not responsible (non-availability of performance), we shall notify the Purchaser thereof immediately and at the same time indicate the expected, new delivery period. If performance cannot be rendered within the new delivery period either, we shall be entitled to cancel the contract in whole or in part; we will immediately reimburse any consideration already provided by the Purchaser. A case of non-availability of performance within this sense is, in particular, late supply by our sub-supplier if we have concluded a congruent cover transaction, if neither we nor our sub-suppliers were at fault or if we are not obliged to procurement in the individual case.

(3) The occurrence of our delay in delivery shall be determined in accordance with the statutory provisions. In any case, however, a reminder given by the Purchaser is required.

(4) We are entitled to make partial deliveries. In the case of tailor-made products, we are entitled to over delivery of up to 10%.

(5) The Purchaser's rights pursuant to § 8 of these GTCs and our statutory rights, in particular in the case of exclusion of the obligation to perform (for instance, due to impossibility or unreasonableness of performance and/or subsequent performance) remain unaffected.

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

(1) The delivery is carried out ex warehouse, which is also the place of performance for the delivery and any subsequent performance. At the request and cost of the Purchaser, the goods will be sent to another place of destination (contract of sale involving the carriage of goods [Versendungskauf]). Unless otherwise agreed upon, we are entitled to determine the type of shipment (in particular, the transport company,

shipping route, and packaging).

(2) The risk of accidental loss and accidental deterioration of the goods shall pass to the Purchaser, at the latest, when the goods are handed over. In the event of a contract of sale involving the carriage of goods, however, the risk of accidental loss and accidental deterioration of the goods and the risk of delay shall already pass upon the delivery of the goods to the carrier, the freight forwarder or the other person or institution designated to perform the shipment. If an acceptance has been agreed, this shall be decisive for the passing of risk. Incidentally, the statutory provisions of the law governing contracts for work and services [Werkvertragsrecht] shall also apply mutatis mutandis to an agreed acceptance. If the Purchaser is in default with the acceptance, this shall be deemed to be equivalent to handover or acceptance.

(3) If the Purchaser is in default of acceptance, if it fails to provide assistance or if our delivery is delayed for other reasons for which the Purchaser is responsible, we are entitled to request compensation for any resulting losses including additional expenses (e.g. storage costs). For this, we will charge flat-rate compensation per calendar month in the amount of 0.5% of the net price (delivery value), but a maximum of 5% of the delivery value, beginning with the delivery deadline or – in the absence of a delivery deadline – with the notification that the goods are ready for shipment.

The proof of higher losses and our statutory claims (in particular reimbursement of additional expenses, reasonable compensation, termination) remains unaffected; however, the flat rate is to be offset against further monetary claims. The Purchaser has the right to give proof that we have not suffered any losses at all or only substantially lower losses than the aforementioned flat rate.

§ 5 Prices and terms of payment

(1) Unless otherwise agreed in the individual case, our prices valid at the date of contract conclusion shall apply, ex warehouse, plus the applicable value added tax.

(2) For orders with a net goods value of less than € 250.00, we charge, at our discretion, either a minimum quantity surcharge of € 25.00 per order item or we increase the net goods value, after consultation of the Purchaser, to at least € 250.00.

(3) As a rule, the goods are delivered in packaging units in accordance with the most recent sales documents. For orders of incomplete packaging units, requested in exceptional cases, we will levy a surcharge of 30% based on the item price.

(4) In the event of a contract of sale involving the carriage of goods (§ 4 (1)), the Purchaser shall bear the transport costs ex works and the cost of transport insurance requested by the Purchaser, if applicable. Any customs duties, fees, taxes and other public charges shall be borne by the Purchaser.

(5) The purchase price is due and payable within the specified period of payment. However, we are entitled at any time, including during an ongoing business relationship, to provide a delivery in whole or in part only against cash in advance. We will declare a corresponding reservation at the latest in the confirmation of order.

(6) The Purchaser is in default upon the expiry of the aforementioned period of payment. During the period of default, default interest at the applicable statutory rate will be charged on the purchase price. We reserve the right to claim higher damages caused by default. Our claim to the commercial interest after the due date (Section 353 German Commercial Code, HGB) against traders shall remain unaffected.

(7) The Purchaser is only entitled to any offsetting or retention rights insofar as its claim is undisputed or legally established. In the event of any defects in the delivery, the Purchaser's counterclaims, in particular pursuant to § 7 (6) sentence 2 of these GTCs shall remain unaffected.

(8) If there are indications after conclusion of the contract that our entitlement to the purchase price is at risk due to the Purchaser's insufficient ability to pay (e.g. as a result of an application for the opening of insolvency proceedings), we are entitled under the statutory provisions to refuse performance and – if applicable, after having set a deadline – to cancel the contract (Section 321 BGB). In the case of contracts for the manufacture of non-fungible items (custom-made products), we may declare the cancellation immediately; the statutory regulations concerning dispensability of setting a deadline shall remain unaffected.

§ 6 Reservation of title

(1) We retain title to the goods sold until payment in full of all our present and future claims under the purchase contract or contract for work and services and an ongoing business relationship (secured claims).

(2) The goods subject to reservation of title may neither be pledged to third parties, nor assigned as collateral, before payment in full of the secured claims. The Purchaser must notify us immediately in writing if an application for opening insolvency proceedings is filed or insofar as third parties access (e.g. attachments) to the goods belonging to us.

(3) In the event of a breach of contract by the Purchaser, in particular non-payment of the purchase price due, we shall be entitled to cancel the contract in accordance with the statutory regulations and/or to demand return of the goods on the basis of the reservation of title. If the Purchaser fails to pay the purchase price due, we can only exercise these rights if we have previously set a reasonable deadline for payment or if setting such a deadline is dispensable pursuant to the statutory regulations.

(4) The Purchaser is authorised, until further notice pursuant to (c) below, to resell and/or process the goods subject to reservation of title in the ordinary course of business. In this case, the following provisions shall also apply.

(a) The reservation of title covers the full value of the products created through processing, mixing or combining our goods, whereby we are deemed the manufacturer. If, in the event of processing, mixing or combining with goods of third parties, the ownership rights of these third parties continue to exist, we shall acquire co-ownership in the ratio of the invoice values of the processed, mixed or combined goods. Incidentally, the same shall apply to the resulting product as is applicable to the goods delivered under reservation of title.

(b) The Purchaser hereby now assigns to us as collateral the claims against third parties resulting from the resale of the goods or the product in their full amount or in the amount of any co-ownership share acquired by us pursuant to the above paragraph. We accept the assignment. The obligations of the Purchaser stated in paragraph (2) also apply with regard to the claims assigned.

(c) The Purchaser remains authorised to collect the claim in addition to us. We undertake not to collect the claim as long as the Purchaser meets its payment obligations towards us, no impairment concerning its ability to pay exists and we do not invoke the reservation of title by exercising a right pursuant to paragraph 3. However, if this is the case, we can request that the Purchaser informs us about the assigned claims and their debtors, provides all information which is necessary for the collection, furnishes all pertinent documents and informs the debtors (third parties) of the assignment. In this case, we are also entitled to revoke the authority of the Purchaser to resell and process the goods subject to reservation of title.

(d) If the realisable value of the collateral exceeds our claims by more than 10%, we shall release collateral items at our choice upon request of the Purchaser.

§ 7 Purchaser's claims for defects

(1) The statutory regulations shall apply to the Purchaser's rights in the event of defects of quality and title (including wrong or short deliveries as well as improper assembly or faulty assembly instructions), insofar as not otherwise determined below.

(2) The basis of our liability for defects is, above all, the agreement made concerning the characteristics of the goods. Agreements concerning the characteristics of the goods are all product descriptions that are the subject matter of the individual contract; it is irrelevant whether the product description stems from the Purchaser, from the manufacturer or from us.

(3) If no agreement has been made concerning the characteristics, the assessment of whether a defect is present or not must be based on the statutory regulation (Section 434 (1) sentences 2 and 3 BGB). However, we do not assume any liability for public statements of the manufacturer or other third parties (e.g. advertising statements).

(4) The Purchaser's claims for defects presuppose that it has met its statutory obligations to examine and notify (Sections 377, 381 HGB). If a defect becomes apparent during the examination or subsequently, we must be notified thereof immediately in writing. The notice is deemed as immediate if it is made within two weeks, whereby the timely dispatch of the notice is sufficient in order to safeguard the deadline. Irrespective of these obligations to examine and notify, the Purchaser must report obvious defects (including incorrect and under delivery) in writing within two weeks from delivery; here, too, timely dispatch of the notice is sufficient in order to safeguard the deadline. If the Purchaser fails to carry out the proper examination and/or to give notice of defects, our liability for the unnotified defect is excluded.

(5) If the delivered item is defective, we can initially choose whether we provide subsequent performance by remedying the defect (improvement) or by delivery of a non-defective item (substitute delivery). Our right to refuse subsequent performance under the statutory prerequisites remains unaffected.

(6) We are entitled to make the owed subsequent performance conditional upon the Purchaser having paid the purchase price due. However, the Purchaser is entitled to withhold a part of the purchase price, which is reasonable in proportion to the defect.

(7) The Purchaser must give us the time and opportunity which are necessary for the owed subsequent performance, in particular hand over the defective goods for purposes of inspection. In the event of substitute delivery, the Purchaser must return the defective item to us in accordance with the statutory regulations. Subsequent performance does not include the disassembly of the defective item nor reassembly if we were originally not obliged to perform the assembly.

(8) We will bear the expenses which are necessary for the purpose of inspection and subsequent performance, in particular, transport, travel, labour and material costs (but excluding disassembly and installation costs), provided that a defect actually exists. Otherwise, we are entitled to demand from the Purchaser reimbursement of any costs incurred by the unjustified request of defect rectification (in particular, inspection and transport costs), unless the Purchaser was unable to recognise that no defect existed.

(9) In urgent cases, e.g., given a threat to operational safety or for the purpose of avoiding disproportionate damage, the Purchaser shall be entitled to remedy the defect itself and to demand reimbursement by us of the costs objectively necessary for this. We must be informed immediately, if possible in advance, of any such removal of defects by the Purchaser itself. The Purchaser's right to remove defects itself shall not apply if we had been entitled to refuse corresponding subsequent performance pursuant to the statutory regulations.

(10) If subsequent performance has failed or if a reasonable deadline to be set by the Purchaser for the subsequent performance has expired unsuccessfully or is dispensable according to the statutory regulations, the Purchaser may cancel the purchase contract or reduce the purchase price. However, no right of cancellation exists in the case of an insignificant defect.

(11) Claims of the Purchaser for damages or reimbursement of fruitless expenses in the event of defects only exist in accordance with § 8 of these GTCs and are excluded in other respects.

§ 8 Other liability

(1) Unless otherwise specified in these GTCs, including the provisions below, we shall be liable for a violation of contractual and non-contractual obligations in accordance with the statutory regulations.

(2) We shall be liable for damages – regardless of the legal grounds – within the limits of fault-based liability for intent and gross negligence. In the event of slight negligence, we shall be liable, subject to a lower degree of liability, pursuant to the statutory regulations (e.g. for care and diligence in its own affairs) only

a) for damage resulting from injury of life, limb or health,

b) for damage resulting from the more than insignificant violation of a material contractual obligation (obligation whose fulfillment makes proper execution of the contract possible in the first place and on which the contracting partner regularly relies and may rely); in this case, however, our liability is limited to compensation for the foreseeable, typically occurring damage.

(3) The restrictions of liability resulting from para. 2 also apply to violations of duty by or to the favour of persons for whose fault we are responsible pursuant to the statutory regulations. They shall not apply if we maliciously conceal a defect or have assumed a guarantee for the characteristics of the goods and for any claims of the Purchaser under the Product Liability Act.

(4) The Purchaser may only cancel or terminate the contract due to breach of duty which does not involve a defect if we are responsible for the breach of duty. A free right of termination of the Purchaser (in particular according to Sections 651, 649 BGB) is excluded. Incidentally, the statutory prerequisites and legal consequences shall apply.

§ 9 Return of goods

(1) Goods ordered by the buyer and contractually delivered by MEFA being generally excluded from return. If, in extra-ordinary cases only, stock articles will be taken back upon prior agreement, at least 15% administrative costs, but no less than € 50,00, will be deducted from the credit note amount. Credits granted in this way will be offset against delivery of goods only. The reconsignment is generally on buyer's account. Necessary rework and/or re-packaging, if applicable, will be displayed to the buyer and deducted after release. Customized products are generally excluded from return.

§ 10 Limitation period

(1) In deviation from Section 438 (1) no. 3 BGB, the general limitation period for claims resulting from defects of quality and title shall be one year from delivery, when purchasing goods (without assembly). Insofar as an acceptance has been agreed upon, the period of limitation shall begin with the acceptance.

(2) However, if the goods relate to a building or an item that has been used for a building in accordance with its normal method of use and has caused this building to be defective (building materials), the period of limitation shall be five years from delivery in accordance with statutory regulation (Section 438 (1) no. 2 BGB). Any other special statutory regulations regarding the statute-of-limitations (in particular, Section 438 (1) no. 1 and (3), Sections 444, 479 BGB) shall also not be affected.

(3) The afore-mentioned periods of limitation of the law governing purchases shall also apply to contractual and non-contractual claims for damages of the Purchaser which are due to a defect in the goods, unless the application of the regular legal statute-of-limitations (Sections 195, 199 BGB) would lead to a shorter period of limitation in an individual case. However, the Purchaser's claims for damages pursuant to § 8 (2) sentences 1 and 2(a) of these GTCs and pursuant to the Product Liability Act shall be statute-barred exclusively pursuant to the statutory periods of limitation.

§ 11 Choice of law and place of jurisdiction

(1) These GTCs and the contractual relationship between us and the Purchaser shall be subject to the laws of the Federal Republic of Germany under exclusion of international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods.

(2) If the Purchaser is a trader as defined in the German Commercial Code, a legal entity governed by public law or special assets of the Federal Government, the exclusive – including international – place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is our corporate seat in D-74635 Kupferzell. The same applies if the Purchaser is an entrepreneur as defined by Section 14 BGB. However, we are in all cases also entitled to file a suit at the place of performance of the delivery obligation pursuant to these GTCs or a higher-ranking individual agreement or at the general place of jurisdiction of the Purchaser. Any overriding statutory provisions, in particular, regarding exclusive places of jurisdiction, shall not be affected.