

General Purchasing Conditions of Joh. CLOUTH GmbH & Co. KG

§ 1 Abstract, scope of application

(1) These General Purchasing Conditions (GPC) apply for all business relationships with our business partners and suppliers (hereinafter referred to as "Sellers"). These GPC only apply if the Seller is a business persons (§ 14 BGB (German Civil Code)), a legal entity pursuant to public law or a fund under public law.

(2) These GPC particularly apply for agreements regarding the sale and/or delivery of movable objects and services (hereinafter also referred to as "Goods") regardless of whether the Seller manufactures the Goods himself or purchases them from suppliers (§§ 433, 651 BGB (German Civil Code)). These GPC apply in their respective version as general agreements also for future agreements regarding the sale and/or supply of movable objects with the same Seller without the necessity of having to refer to them in each individual case; we shall inform the Seller immediately in case of changes to our GPC.

(3) These GPC apply exclusively. Deviating, opposing or supplemental general conditions of the Seller become a component of the agreement only and to the extent as we have explicitly agreed to their validity in writing. This requirement for consent applies in any case, for example also if we have accepted the delivery without reservation with knowledge of the Seller's General Terms and Conditions.

(4) Individual agreements with the Seller concluded in isolated cases (including subsidiary agreements, supplements or changes) outrank these GPC in any event. A written contract or our written confirmation is decisive for the content of such agreements.

(5) Legally relevant declarations and notifications to be issued to us by the Seller after the formation of a contract (e.g. deadlines, warnings, declarations of withdrawal) require the written form to be effective.

(6) References to the application of legal regulations only have a clarifying significance. Therefore the legal regulations apply also without such clarification, unless they are directly altered in these GPC or have been explicitly excluded.

§ 2 Conclusion of contract

(1) Our order is considered legally binding upon written submission or confirmation at the earliest. The Seller is obligated to inform us of obvious errors (e.g. typing and calculation errors) and incompleteness of the order including the order documentation for the purpose of correction and/or completion prior to acceptance; otherwise, the contract is considered not to be concluded.

(2) The Seller is obligated to confirm our order in writing within a period of two weeks or to execute the order particularly by dispatching the Goods without reservation (acceptance).

A delayed acceptance is deemed to be a new offer and requires our acceptance.

§ 3 Delivery period and delay in delivery

(1) The delivery period specified in our order is binding. If the delivery time has not been stipulated in the order or otherwise agreed, it amounts to two weeks following the formation of the contract. The Seller is obligated to inform us in writing without undue delay if he is likely not able to comply with the agreed delivery periods for whatever reason.

(2) If the Seller does not provide his performance or does not do so within the agreed delivery period or if he is in default, our rights - particularly pertaining to withdrawal and compensation - are determined by the statutory regulations. The regulations in (3) remain unaffected.

(3) If the Seller is in default, we are entitled to demand a contractual penalty of 1% of the net price for each completed calendar week; however no more than 5% of the net price of the late delivered Goods. As well as the contractual penalty and the fulfilment as a minimum amount, we are entitled to demand compensation from the Seller according to the statutory regulations; the assertion of further damages remains unaffected. If we accept the late performance, we shall assert the contractual penalty upon final payment at the latest.

§ 4 Performance, delivery, transfer of risk

(1) Without our prior written consent the Seller is not entitled to have the performance owed by him provided by third parties (e.g. subcontractor). The Seller is responsible for the procurement risk pertaining to his performances, unless otherwise agreed in individual cases (e.g. sale of available Goods).

(2) The delivery occurs "free to the door" / DDP including packaging (INCOTERMS 2010) within Germany to the location specified in the order. If the place of destination is not specified or otherwise agreed, the delivery has to be made to our registered business address in Hückeswagen. The respective place of destination is also the place of fulfilment (obligation to perform at purchaser's address).

(3) The delivery has to be accompanied by a delivery note stating the date (issuing and dispatch), the content of the delivery (article number and quantity) as well as our order code (date and number). If the delivery note is missing or incomplete, we are not responsible for any resulting delays in processing and payment.

(4) The risk of accidental destruction and accidental deterioration of the Goods is transferred to us upon handover at the place of fulfilment. If acceptance has been agreed upon, it is decisive for the transfer of risk. Also for the remainder, the statutory regulations of the law on contracts for work and services apply accordingly for acceptance. The handover and/or acceptance also applies if we are in default of acceptance.

(5) The statutory regulations apply in the event of our default of acceptance. However, the Seller has to also explicitly offer his performance to us if a certain or determinable calendar period is agreed for any action or participation on our behalf (e.g. provision of material). If we are in default of acceptance, the Seller can demand compensation for his additional expenditures according to the statutory regulations (§ 304 BGB (German Civil Code)). If the agreement concerns unreasonable objects to be produced by the Seller (one-off production), the Seller is entitled to further rights if we have agreed to cooperation and are responsible for omitting cooperation.

(6) If the Seller is obligated to provide test protocols, quality documentation, material samples or other record, the completeness of the delivery and performance is also subject to the provision of such documentation.

(7) We are not obligated to accept partial or additional deliveries which are not contractually agreed upon. This applies respectively if the Goods/performance are delivered prior to the agreed deadline. We are entitled to return the Goods or store them with third parties at the expense and risk of the Seller.

(8) The Seller is responsible for incurred costs due to defect or delayed delivery (particularly transport, labour, shipping, material costs or costs exceeding the usual extent of an incoming Goods inspection).

§ 5 Prices and payment conditions

(1) The price specified in our order is binding. All prices include statutory VAT, unless it is separately indicated.

(2) Unless otherwise agreed upon in individual cases, the price includes all performances and ancillary services of the Seller (e.g. assembly, installation) as well as all ancillary costs (e.g. proper packaging, transport costs including any transport and liability insurance, customs fees as well as all discounts and any incurred surcharges). The Seller has to take back packaging material at our request.

(3) The agreed price is due and payable within 30 calendar days following the complete delivery and performance (including any agreed acceptance) as well as receipt of a proper invoice. If we make payment within 14 calendar days, the Seller shall grant us 3% discount on the net invoice amount. If our order is settled in partial deliveries, the payment and discount periods also for issued partial invoices only

expire from receipt of the last delivery and invoice. If we are entitled to retain payment due to defects of delivery or service, also the discount period commences on the day at which the reason for the right of retention is redundant. Offsetting applies for the payment also with regard to the discount entitlement. Payment is considered on time in cases of bank transfers if our transfer order is received by our bank prior to the expiration of the payment term; we are not responsible for delays due to payment procedures by the involved banks.

(4) We are not liable for maturity interest. The default interest amounts to 5 percentage points above the base interest rate per annum. The statutory regulations apply for the commencement of our default whereby, in deviation, the written warning by the Seller is required in any event.

(5) We are entitled to offsetting and retention rights as well as plea of the unfulfilled contract within the limits of the law. We are particularly authorised to retain due payments as long as we are entitled to claims from incomplete or defect performances against the Seller.

(6) The Seller is only entitled to offsetting or retention rights if the counterclaim has been conclusively determined or uncontested.

(7) If prepayments have been contractually agreed, they only become due and payable if CLOUTH has received an absolute bond from the Seller securing this prepayment, which is due upon first demand from a major German bank, cooperative bank or public Sparkasse in the amount of the prepayment.

(8) Invoices have to be sent to the invoice address following the fulfilment of the agreement separated by orders - order numbers have to be specified. All accounting documentation has to be attached.

(9) Invoices pertaining to partial performances have to be labelled with the note "Partial performance invoice", final invoices with the note "Residual performance invoice" or "Final invoice".

(10) Original invoices may not be attached to the delivery.

§ 6 Confidentiality and reservation of title

(1) We retain proprietary and copy rights to illustrations, plans, drawings, calculations, application instructions, product descriptions and other documentation. Such documentation has to be utilised exclusively for the contractual performances and returned to us upon the settlement of the agreement. The documentation has to be kept confidential toward third parties, also after the expiration of the agreement. The obligation to confidentiality only expires if and in as far as the know-how contained in the provided documentation has become public knowledge. In cases of

culpable violation of confidentiality we are entitled to assert flat rate damage of 0.5% of the net price (delivery value), however a maximum of 5% of the delivery value. We are entitled to prove that the Purchaser incurred no damage at all or a significantly lesser damage than the flat-rate stipulated above.

(2) The above mentioned conditions apply accordingly for substances and materials (e.g. software, finished and semi-finished products) as well as for tools, templates, samples and other objects which we provide to the Seller. Such objects - as long as they are not processed - are to be stored separately at the expense of the Seller and insured against destruction and loss to an appropriate extent.

(3) Processing, intermingling or combination (further processing) of the provided objects by the Seller is executed on our behalf. This applies analogously for the further processing of supplied Goods by us, so that we are considered the manufacturer and acquire the ownership to the product at the latest upon further processing according to the specifications of the statutory regulations.

(4) The transfer of ownership of the Goods to us occurs unconditionally and regardless of the payment of the price. However, if we accept an offer of the Seller for transfer conditional on the payment of the purchase price in any individual case, the Seller's right to reservation of title expires with the payment of the purchase price at the latest. In the proper course of business we remain authorised to onsell the Goods under advance assignment of the generated claims also prior to the payment of the purchase price (alternatively application of the simple reservation of title extended to the onselling). In any case, this excludes all other forms of reservation of title, particularly the extended, the transferred and the reservation of title extended to further processing.

§ 7 Defect delivery

(1) Unless otherwise determined below, the statutory regulations apply for our rights in case of material and legal defects of the Goods (including wrong and short delivery as well as improper installation, defective installation or operating instructions) as well as other breaches of duty by Seller.

(2) According to the statutory regulation, the Seller is specifically liable for the agreed quality of the Goods at the time of transfer of risk to us. In any case, the product descriptions - particularly pertaining to the description or reference in our order - which are subject of the respective agreement or were incorporated in the agreement similarly to these GPC apply as the agreement regarding the quality. It is hereby irrelevant whether the product description originates from us, the Seller or the manufacturer.

(3) By derogation from § 442 (1) sentence 2 BGB (German Civil Code), we are also unlimitedly entitled to warranty claims if the defect remained unknown to us at the time

of the conclusion of the agreement due to gross negligence.

(4) The statutory regulations (§§ 377, 381 HGB (German Commercial Code)) apply for the commercial requirements regarding the duty to inspect and make a complaint in respect of a defect immediately on receipt of the Goods with the following stipulation: Our duty of inspection is limited to defects which are obvious in the course of our incoming Goods inspection and external inspection including the delivery documents as well as our quality control in random check procedure (e.g. transport damages, wrong and short delivery). If acceptance is agreed, a duty of inspection does not exist. For the remainder, the extent to which an inspection is feasible considering the circumstances in the proper course of business is decisive.

Our requirements to make a complaint for subsequently detected defects remain unaffected. In all cases, our reprimand (notice of defect) is considered immediate and in time if it is received by the Seller within 5 working days.

(5) The costs expended by the Seller for the purpose of verification and subsequent improvement (including any de-installation and installation costs) are born by the Seller also if it becomes evident that a defect did in fact not exist. Our liability for compensation in cases of unjustified demands for remedy remains unaffected; however, in this respect we are only liable if we have recognised or gross negligently failed to recognise that a defect did not exist.

(6) If the Seller does not comply with this obligation for subsequent fulfilment - at our discretion by remedying the defect (subsequent fulfilment) or by delivering a defect-free item (replacement delivery) - within an appropriate period specified by us, we are entitled to remedy the defect ourselves and demand compensation from the Seller for the necessary expenditures and/or a respective advance payment. If the subsequent fulfilment by Seller has failed or is unacceptable to us (e.g. due to special urgency, threat to operational safety or impending occurrence of disproportionate damages), a period of grace is not required; we shall inform the Seller of such circumstances without undue delay, if possible in advance.

(7) For the remainder, according to the statutory regulations we are entitled to reduce the purchase price or withdraw from the agreement in case of material or legal defect. Furthermore, we are entitled to claim compensation for damage and expenses according to the statutory regulations.

§ 8 Supplier recourse

(1) As well as the warranty claims, we are unlimitedly entitled to our legally specified right of recourse within a chain of supply (supplier recourse according to §§ 478, 479 BGB (German Civil Code)). We are particularly entitled to demand specifically the type of subsequent fulfilment (subsequent improvement or replacement delivery) from the Seller, which we owe to our customer in any individual case. Our statutory right to

choose (§ 439 (1) BGB (German Civil Code)) is not limited by this regulation.

(2) Prior to us acknowledging or fulfilling a warranty claim asserted by our customer (including reimbursement for expenses according to §§ 478 (3), 439 (2) BGB (German Civil Code)) we shall notify the Seller by way of short description of the facts and request a written statement. If the statement is not received within an appropriate period and if an amicable solution cannot be reached, the warranty claim actually provided by us is considered owned to our customer; in this case, the Seller is obligated to prove the contrary.

(3) Our claims based on supplier regress also apply if the Goods were further processed by us or one of our customers, e.g. by incorporation into another product, prior to their sale to a consumer.

§ 9 Producer's liability

(1) If the Seller is responsible for product damage, he is obligated to exempt us from claims by third parties to the extent as the cause is based within his domain and organisation and he is liable himself in the external relationship.

(2) In the context of his obligations for exemption, the Seller has to reimburse expenditures according to §§ 683, 670 BGB (German Civil Code) which arise from or in the context with a third party claim including any recall actions conducted by us. We shall inform the Seller regarding the content and extent of recall measures - as far as possible and feasible - and provide him with the opportunity to make a statement. Further statutory claims remain unaffected.

§ 10 Statute of limitation

(1) The reciprocal claims of the contractual parties become statute barred according to the statutory regulations unless otherwise determined below.

(2) By derogation from § 438 (1) No. 3 BGB (German Civil Code) the general period of limitation for warranty claims is 3 years from the date of transfer of risk. If acceptance has been agreed upon, the statute of limitation commences with the acceptance. The statutory period of limitation of 3 years applies accordingly also for claims based on defect of title, whereby the statutory period of limitation for third party in-rem restitution claims according to § 438 (1) No. 1 BGB (German Civil Code) remains unaffected; claims based on legal defects do not become statute barred in any event as long as the third party can still assert the right - particularly due to lack of limitation - against us.

(3) The limitation period of Purchase Law including the above mentioned extension apply for all contractual warranty claims within the limits of the law. In as far as we are entitled to extra-contractual compensation claims based on a defect, the regular legal

statute of limitation (§§ 195, 199 BGB (German Civil Code)) applies, unless the application of the limitation periods of Purchase Law results in a longer limitation period in individual cases.

§ 11 Publication / Advertising

The utilisation or disclosure of the existing business relationship with Joh. CLOUTH GmbH & Co. KG in publications or for advertising purposes is only permitted with the express written consent of Joh. CLOUTH GmbH & Co. KG.

§ 12 Choice of law and place of jurisdiction

(1) The law of the Federal Republic of Germany applies for these GPC and all legal relationships between the Seller and us, excluding international uniform law, particularly the United Nations Convention on Contracts for the International Sale of Goods. Prerequisites and effects of the reservation of title are subject to the laws of the respective location of the matter, in as far as the elected choice of law in favour of the German law is accordingly inadmissible or ineffective.

(2) If the Seller is a merchant in terms of the Commercial Code, a legal person under public law or a special fund under public law, the exclusive - also international - place of jurisdiction for all direct and indirect disputes arising from the contractual relationship is our registered business address in Hückeswagen, Germany. However, we are also entitled to raise claim at the place of fulfilment of the supply obligation.