

General Purchase Conditions (GPC)

1 Scope of application, form

- (1) These General Purchase Conditions (GPC) apply to all business relations with our business partners and suppliers ("Seller"). The General Purchase Conditions shall only apply if the Seller is an entrepreneur (Section 14 of the German Civil Code (BGB)), a legal entity under public law or a special fund under public law.
- (2) The GPC shall apply in particular for contracts governing the sale and/or supply of movables regardless of whether the Seller manufactures the goods himself or buys them in from sub-suppliers (Sections 433, 651 BGB). Unless an agreement has been made otherwise, the GTC shall apply as a master agreement for future contracts governing the sale and/or the supply of movables with the same supplier in future as well, without us having to draw attention to them again in each individual case.
- (3) These GPC shall apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the Seller shall only become part of the contract if and insofar as we have expressly agreed to their validity in writing. This requirement of consent shall apply in any case, for example even if we accept the Seller's deliveries without reservation in full knowledge of the Seller's general terms and conditions.
- (4) Agreements made with the Seller in an individual case (including side agreements, supplements and amendments) shall in all cases prevail over these T&Cs (Section 305b of the German Civil Code [BGB]). Subject to proof to the contrary, a written contract or our written confirmation shall determine the content of such agreements.
- (5) Legally relevant declarations and notifications of the Seller with regard to the contract (e.g. setting of a deadline, reminder, withdrawal) must be made in writing, i.e. in written or text form (e.g. letter, e-mail, fax). Legal formalities and further evidence, especially in case of doubts about the legitimacy of the declarant, remain unaffected.
- (6) References to the validity of statutory provisions have only clarifying significance. Even without such clarification, the statutory provisions shall therefore generally apply unless they are expressly changed or excluded in these GPC.

2 Conclusion of the contract

- (1) Our order shall be deemed binding at the earliest upon written submission or confirmation. The Seller shall point out any obvious mistakes (e.g. typing or spelling errors) and incomplete orders, including order documents, to us without delay so they can be revised or completed before acceptance; otherwise, the contract shall not take effect.
 - (2) The Seller is obliged to confirm our order in writing within a period of 7 days or, in particular, to execute it unconditionally by dispatching the Goods (acceptance).
- A delayed acceptance is considered a new offer and requires our acceptance.

3 Delivery time and delay in delivery

- (1) The delivery time stated by us in the order is binding. The Seller is obliged to inform us immediately in writing if it is likely that he cannot meet the agreed delivery times for whatever reasons.
- (2) Should the Seller fail to render the agreed performance or fail to do so within the agreed delivery time or if it defaults on delivery, our rights – especially those to withdraw from the contract and damages – shall be defined by the statutory provisions. The provisions in Paragraph 3 shall remain unaffected.
- (3) In the event the Seller defaults on a delivery, we may – in addition to further legal claims – demand lump sum compensation for damage caused by delay to the amount of 1% of the net price per completed calendar week but not more than a total of 5% of the net price of the Goods delivered late. We reserve the right to prove that a higher damage has occurred. The Seller reserves the right to prove that no damage at all or only considerably less damage has been incurred.

4 Performance, delivery, passing of risk, default of acceptance

- (1) Without our prior written consent, the Seller shall not be entitled to have the performance owed by him rendered by a third party (e.g. subcontractor). The Seller bears the procurement risk for his services, unless otherwise agreed in individual cases (e.g. limitation to stock). The Seller is obliged – as far as possible – to mark the delivery items in such a way that they are permanently recognisable as the Seller's product.
- (2) Delivery shall be made DDP in accordance with Incoterms 2010 to the place specified in the order. If the place of destination is not specified and nothing to the contrary has been agreed, delivery shall be made to our place of business in Mörfelden-Walldorf, Germany. The respective place of destination shall also be the place of performance for the delivery and any subsequent performance (obligation to deliver). Unless otherwise agreed in individual cases, deliveries shall only be accepted during normal business hours.
- (3) The delivery must be accompanied by a delivery note stating the date (issue and dispatch) and content of the delivery (article number and quantity) as well as our order identification (date and number). The delivery notes must show the same positioning as the FRANK order as well as the FRANK article number and the FRANK article text with regard to the delivered products. If the delivery note is missing or incomplete, we shall not be responsible for any resulting delays in processing and payment. A corresponding dispatch note with the same content shall be sent to us separately from the delivery note.
- (4) The risk of accidental loss and accidental deterioration of the Goods shall pass to us upon delivery at the place of performance. If acceptance has been agreed, this shall be decisive for the transfer of risk. In all other respects, the statutory provisions of the law on contracts for work and services shall also apply mutatis mutandis in the event of acceptance. If we are in default of acceptance, this shall be deemed equivalent to handover or acceptance.
- (5) The statutory provisions shall apply to the occurrence of our default of acceptance. However, the Seller must also expressly offer his services to us if a specific or determinable calendar period has been agreed for an action or cooperation on our part (e.g. provision of material). If we are in default of acceptance, the Seller may demand reimbursement of his additional expenses in accordance with the statutory provisions (Section 304 BGB). If the contract concerns a non-fungible thing (individual production) manufactured by the Seller, the Seller shall only be entitled to additional rights, if we have committed to cooperate and are responsible for the failure to do so.

5 Prices and terms of payment

- (1) The price stated in the order is binding. All prices are understood including legally applicable VAT, unless this is specified separately.
- (2) Unless otherwise agreed in individual cases, the price shall include all services 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).
- (3) The agreed price is due for payment within 30 calendar days of complete delivery and performance (including any agreed acceptance) and receipt of a proper invoice. Unless otherwise agreed in individual cases, each invoice must be sent to the postal address "Frank GmbH, Starckenburgstraße 1, 64546 Mörfelden-Walldorf, Germany". In each invoice, the details of the invoice recipient, the purchaser as well as the number of products delivered there must be shown with the FRANK article number listed in the FRANK order in the same position as in the FRANK order and with the FRANK article text there.
If we make payment within 14 calendar days, the Seller shall grant us a discount of 3% on the net amount of the invoice. In the case of bank transfers, payment is deemed to have been made on time if our transfer order is received by our bank before the expiry of the payment deadline; we are not responsible for delays caused by the banks involved in the payment process.
- (4) We shall not owe any interest payable after the due date. Statutory provisions apply to any default in payment.
- (5) We shall be entitled to offset rights and rights of retention as well as the plea of non-performance to the extent permitted by law. Our rights notably include the right to withhold payments as long as we still have outstanding claims against the Seller resulting from incomplete or defective performances.
- (6) The Seller only has offset rights or the right of retention due to legally established or undisputed counterclaims.

6 Confidentiality and retention of title

(1) We reserve ownership rights and copyrights to illustrations, plans, drawings, calculations, implementation instructions, product descriptions and other documents. Such documents shall be used exclusively for the contractual performance and shall be returned to us after completion of the contract. The documents must be kept secret from third parties, even after termination of the contract. The obligation to maintain secrecy shall not expire until and to the extent that the knowledge contained in the documents provided has become generally known.

(2) The aforementioned provision shall apply mutatis mutandis to all materials (e.g. software, finished and semi-finished products) as well as to tools, templates, samples and other items that we provide to the Seller for manufacture. If they are not processed, these kinds of objects shall be kept separately at the Seller's expense and insured to an appropriate extent against destruction and loss.

(3) Any processing, mixing or combination (further processing) of items provided by the Seller shall be carried out on our behalf. The same applies to further processing of the delivered Goods by us, so that we are deemed to be the manufacturer and acquire ownership of the product in accordance with the statutory provisions at the latest upon further processing.

(4) The transfer of ownership of the Goods to us must take place unconditionally and regardless of the payment of the price. However, if we accept an offer by the Seller to transfer ownership conditional on the payment of the purchase price in an individual case, the Seller's retention of title shall expire at the latest upon payment of the purchase price for the delivered Goods. In the ordinary course of business, we shall also remain authorised to resell the Goods prior to payment of the purchase price with advance assignment of the claim arising therefrom (alternatively validity of the simple reservation of title extended to the resale). This excludes all other forms of retention of title, in particular the extended retention of title, the forwarded retention of title and the retention of title extended to further processing.

7 Defective delivery

(1) The statutory provisions shall apply to our rights in the event of material defects and legal defects of the goods (including incorrect and short delivery as well as improper assembly, defective assembly, management or operating instructions) and other breaches of duty by the Seller, unless otherwise stipulated below.

(2) In accordance with the statutory provisions, the Seller shall be liable in particular for ensuring that the Goods have the agreed quality upon transfer of risk to us. Any product descriptions which – in particular by designation or reference in our order – are the subject matter of the respective contract or which were included in the contract in the same way as these GPC shall in any case be deemed to be agreements on quality. It makes no difference whether the product description comes from us, the Seller or the manufacturer.

(3) Notwithstanding the provisions in Section 442 (1) Sentence 2 BGB, we shall be entitled to claims for defects without limitation even if we did not become aware of the defect upon conclusion of the contract due to gross negligence.

(4) The statutory provisions (Sections 377, 381 HGB) shall apply to the commercial obligation to examine and give notice of defects with the following proviso: Our obligation to inspect shall be limited to defects which become apparent during our incoming goods inspection under external inspection including the delivery documents (e.g. transport damage, wrong and short delivery) or which are identifiable during our quality inspection by random sampling. If acceptance has been agreed, there shall be no obligation to inspect. Otherwise, it depends on the extent to which an investigation is feasible in the ordinary course of business, taking into account the circumstances of the individual case. Our obligation to give notice of defects discovered later shall remain unaffected. Irrespective of our duty to inspect, our complaint (notice of defects) shall in any case be deemed immediate and timely if it is dispatched within 5 working days from discovery or, in the case of obvious defects, from delivery.

(5) Subsequent performance shall also include the removal of the defective Goods and their reinstallation, insofar as the Goods have been installed in another item or attached to another item in accordance with their type and intended use, our statutory claim to reimbursement of corresponding expenses shall remain unaffected. The Seller shall bear the expenses necessary for the purpose of inspection and subsequent performance even if it turns out that no defect actually existed. Our liability for damages in the event of an unjustified demand to remedy defects shall remain unaffected; in this respect, however, we shall only be liable if we have recognised or grossly negligently failed to recognise that no defect existed.

(6) Irrespective of our statutory rights and the provisions in Paragraph 5, the following shall apply: If the Seller does not fulfil his obligation to subsequent performance – at our discretion by remedying the defect (rectification) or by delivering a defect-free item (replacement delivery) – within a reasonable period set by us, we shall be entitled to remedy the defect ourselves and demand reimbursement from the Seller of the expenses incurred or an appropriate advance payment. If subsequent performance by the Seller has failed or is unreasonable for us (e.g. due to particular urgency, endangerment of operational safety or imminent occurrence of disproportionate damage), no deadline need be set; we shall inform the Seller of such circumstances without delay, if possible in advance.

(7) In addition, we shall be entitled to reduce the purchase price or withdraw from the contract in the event of a material defect or defect of title in accordance with the statutory provisions. In addition, we are entitled to claim damages and reimbursement of expenses in accordance with the statutory provisions.

8 Recourse against the supplier

(1) In addition to the warranty claims, we shall have unrestricted entitlement to our statutory rights of recourse within a supply chain (recourse against suppliers in accordance with Sections 445a, 445b, 478 BGB). In particular, we shall be entitled to demand from the Seller exactly the type of subsequent performance (rectification of defects or replacement delivery) which we owe to our customer in the individual case. Our legal right to choose (Section 439 (1) BGB) is not restricted by this.

(2) Before we acknowledge or fulfil a claim for defects asserted by our customer (including reimbursement of expenses pursuant to Sections 445a (1), 439 (2) and (3) BGB), we shall notify the Seller and request a written statement, briefly explaining the facts of the case. If a substantiated statement is not made within a reasonable period and no amicable solution is reached, the claim for defects actually granted by us shall be deemed to be owed to our customer. In this case, the Seller shall be responsible for providing proof to the contrary.

(3) Our claims arising from supplier recourse shall also apply if the defective Goods have been further processed by us or another entrepreneur, e.g. by installation in another product.

9 Manufacturer's liability

(1) If the Seller is responsible for a product damage, he shall indemnify us from claims of third parties to the extent that the cause lies within his sphere of control and organisation and he himself is liable in the external relationship.

(2) As part of this obligation to indemnify, the Seller must reimburse any expenses in accordance with Sections 683, 670 BGB that arise out of or in connection with any recourse taken by third parties, including for recall action carried out by us. If possible and reasonable, we shall inform the Seller regarding the content and extent of product recalls and give it the opportunity to comment. Further legal claims shall remain unaffected.

(3) The Seller shall take out and maintain product liability insurance with a lump sum cover of at least EUR 10 million per personal injury/property damage.

10 Statute of limitations

(1) Both parties' claims shall be subject to the statutory limitation periods unless otherwise stipulated below.

(2) Notwithstanding Section 438 (1) (3) BGB, the standard limitation period for warranty claims shall be 3 years from the passing of risk. If acceptance has been agreed, the limitation period shall commence with acceptance. The 3-year limitation period shall also apply mutatis mutandis to claims based on legal defects, whereby the statutory limitation period for third-party claims for real restitution (Section 438 (1) No. 1 BGB) remain unaffected; claims based on legal defects shall not become statute-barred as long as third parties can still make claims against us, particularly in the absence of a limitation period.

(3) The limitation periods of the sales law including the above extension apply – to the extent permitted by law – to all contractual claims for defects. Insofar as we are also entitled to non-contractual claims for damages due to a defect, the regular statutory limitation period (Sections 195, 199 BGB) shall apply here, unless the application of the limitation periods of sales law in individual cases leads to a longer limitation period.

11 Choice of law and place of jurisdiction

(1) The law of the Federal Republic of Germany shall apply to these GPC and the contractual relationship between us and the Seller to the exclusion of international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods.

(2) If the Seller is merchant according to the German Commercial Code, legal person or special fund under public law, the exclusive – also international – place of jurisdiction for all disputes arising from this contractual relationship shall be Frankfurt am Main, Germany. The same shall apply if the Seller is an entrepreneur in the sense of Section 14 BGB. In all cases, however, we shall also be entitled to take legal action at the place of performance of the delivery obligation in accordance with these GPC or a prior individual agreement, or at the general place of jurisdiction of the Seller. Prior statutory provisions, in particular regarding exclusive responsibilities, shall remain unaffected.

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