

## **General Terms and Conditions of Purchase (GTCP)**

### **§ 1 Scope, form**

(1) These General Terms and Conditions of Purchase (GTCP) shall apply to all business relationships with our business partners and suppliers ("Seller/s"). The GTCP shall only apply if the Seller is an entrepreneur (§ 14 of the German Civil Code (BGB)), a legal entity under public law or a special fund under public law.

(2) The GTCP shall, in particular, apply to contracts for the sale and/or delivery of movable property ("Goods"), irrespective of whether the Seller manufactures the Goods himself or purchases them from suppliers (§§ 433, 651 BGB). Unless otherwise agreed, the GTCP in the version valid at the time of the Purchaser's order or in any case in the version last notified to the Purchaser in text form shall also apply as a framework agreement for similar future contracts without our having to refer to them again in each individual case. They shall be recognised by the Seller at the latest with the first delivery.

(3) Our GTCP shall apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the Seller shall only become part of the contract if and to the extent that 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 the knowledge of the Seller's General Terms and Conditions.

(4) Any individual agreements made with the Seller in individual cases (including ancillary agreements, supplements and amendments) shall in any case take precedence over these GTCP. For the content of such agreements, subject to proof to the contrary, a written contract or our written confirmation shall be decisive.

(5) Legally relevant declarations and notifications by 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 formal requirements and further proof, in particular in case of doubts about the legitimacy of the declarant, shall remain unaffected.

(6) References to the applicability of statutory provisions shall only have clarifying significance. The statutory provisions shall therefore apply even without such clarification, insofar as they are not directly amended or expressly excluded in these GTCP.

### **§ 2 Conclusion of the contract**

(1) Our purchase offer shall be deemed binding at the earliest upon written submission or confirmation.

The Seller must inform us of obvious errors (e.g. spelling mistakes and miscalculations) and incompleteness of the purchase offer, including the offer documents for the purpose of correction or completion before acceptance, failing which the contract shall be deemed not to have been concluded.

(2) Unless otherwise stated in the purchase offer, the Seller may only confirm our purchase offer in writing within 2 hours (acceptance). A delayed acceptance shall be deemed a new offer and requires our acceptance.

### **§ 3 Delivery time and delay in delivery**

(1) The delivery time stated by us in the purchase offer shall be binding. If the delivery time is not specified in the purchase offer and has not been agreed otherwise, it will be two weeks from the conclusion of the contract. The Seller must inform us immediately in writing if he expects to be unable to meet agreed delivery times - for whatever reasons.

(2) Delivery and receipt shall take place in the case of agreements with the following designations:

- a) "Immediate delivery": within three business days after conclusion of the contract;
- b) "Prompt delivery": within seven business days after conclusion of the contract;
- c) "Delivery at the beginning of a month": from the 1<sup>st</sup> to 10<sup>th</sup> day of the respective month;
- d) "Delivery in the middle of a month": from the 11<sup>th</sup> to 20<sup>th</sup> day of the respective month;
- e) "Delivery at the end of a month": from the 21<sup>st</sup> day to the end of the respective month;
- f) "Delivery 1<sup>st</sup> half of a month": from the 1<sup>st</sup> to the 15<sup>th</sup> day of the respective month;

g) "Delivery 2<sup>nd</sup> half of a month": from the 16<sup>th</sup> day to the end of the respective month;

h) "Delivery within a designated month": within the month;

i) "Delivery within a period of two months": within the two months at any point of time;

k) "Delivery for more than one month": within each month in approximately equal monthly part deliveries;

l) "Successive delivery": in approximately equal part deliveries within the agreed delivery time.

(3) Business days are working days with the exception of Saturdays, 24<sup>th</sup> December and 31<sup>st</sup> December as well as legally recognised public holidays.

In the cases of paragraph 2 lit. c) to lit. g) the delivery time will therefore be extended to the next business day. In the cases of paragraph 2 lit. h) to lit. l), the delivery time will end on the preceding business day.

(4) If the Seller does not perform or does not perform within the agreed delivery time or if he is in default, our rights - in particular to rescission and damages - shall be determined in accordance with the statutory provisions. The provisions in para. 5 shall remain unaffected.

(5) If the Seller is in default, we may - in addition to further statutory claims - claim lump-sum compensation for our default damages in the amount of 1% of the net price per completed calendar week, but in total not more than 5% of the net price of the Goods delivered late. We reserve the right to prove that higher damage has been incurred. The Seller reserves the right to prove that no damage at all or only significantly less damage has been incurred.

#### **§ 4 Performance, delivery, transfer 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 third parties (e.g. subcontractors). The Seller shall bear the procurement risk for his services unless otherwise agreed in individual cases (e.g. limitation to stock).

(2) Unless otherwise agreed, delivery within Germany must be made "carriage paid" to the place specified in the purchase offer (place of destination). If the place of destination is not specified, the delivery shall be made to our warehouse at our place of business. The respective place of destination will also be the place of performance for the delivery and any subsequent performance (obligation to deliver to the Purchaser's location).

(3) The delivery must be accompanied by a delivery note indicating the date (issue and shipping), the content of the delivery (article number and quantity) as well as our contract identifier (date and number). If the delivery note is missing or incomplete, we shall not be responsible for any delays in processing and payment resulting therefrom. A corresponding advice note with the same content must be sent to us separately from the delivery note.

(4) The risk of accidental loss and accidental deterioration of the item shall pass to us upon handover 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 shall also apply in the event of acceptance. In all other respects, the statutory

provisions of the law on contracts for work and services shall also apply accordingly 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 in acceptance. However, the Seller must also expressly offer his performance to us if a specific or determinable calendar time 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 compensation for his additional expenses in accordance with the statutory provisions (§ 304 BGB). If the contract relates to a specific item that is to be manufactured by the Seller (custom-made item), the Seller shall only be entitled to further rights if we have undertaken to cooperate and are responsible for the failure to cooperate.

#### **§ 5 Prices and terms of payment**

(1) The price stated in the purchase offer shall be binding. All prices are exclusive of statutory value added tax if this is not shown separately.

(2) Unless otherwise agreed in individual case, 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 will be due for payment within 14 calendar days of complete delivery and performance (including any agreed acceptance) and receipt of a proper invoice. In the case of bank transfer, the payment shall be deemed to have been made in due time if our transfer order is received by our bank before the expiry of the payment term; we shall not be responsible for any delays caused by the banks that are involved in the payment process.

(4) We shall not owe interest after due date. The statutory provisions shall apply to default in payment.

(5) We shall be entitled to rights of setoff and rights of retention as well as the objection of non-performance of the contract to the extent provided by law. In particular, we are entitled to withhold due payments as long as we are still entitled to claims from incomplete or defective performances against the Seller.

(6) The Seller shall have a right of setoff or right of retention only in respect of counterclaims which have been established by declaratory judgment or are undisputed.

## § 6 Secrecy and reservation of title

(1) We reserve the property rights and copyrights to illustrations, plans, drawings, calculations, implementation instructions, product descriptions and other documents. Such documents are to be used exclusively for the contractual performance and returned to us after completion of the contract. The documents must be kept secret from third parties, even after termination of the contract. The duty of secrecy shall only expire if and to the extent that the knowledge contained in the documents provided has become generally known.

(2) The above provision shall apply mutatis mutandis to substances and materials (e.g. finished and semi-finished products) as well as to tools, templates, samples and other items which we provide to the Seller for production. Such items shall - as long as they are not processed - be stored separately at the Seller's expense and insured to a reasonable extent against destruction and loss.

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

(4) The transfer of ownership of the Goods to us shall be unconditional and without regard to the payment of the price. If, however, in individual cases we accept an offer of the Seller to transfer ownership conditional upon payment of the purchase price, the Seller's reservation of title will expire at the latest upon payment of the purchase price for the Goods delivered. We will remain authorised to resell the goods in the ordinary course of business also 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). Any other forms of reservation of title, in particular the extended reservation of title, the passed-on reservation of title and the reservation of title extended to further processing shall be excluded.

## § 7 Defective delivery

(1) The statutory provisions shall apply to our rights in the event of any defects of quality or defects of title of the Goods (including wrong delivery and short delivery) and in the event of 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 are of the agreed quality at the time of the transfer of risk to us. The product descriptions which - in particular by designation or reference in our purchase offer - are the subject matter of the respective contract or were included in the contract in the same way as these GTCP shall be deemed to be an agreement on the quality. In this respect, it shall make no difference whether the product description originates from us, from the Seller or from the manufacturer.

(3) Notwithstanding § 442 (1) sentence 2 BGB, we shall also be entitled to unrestricted claims for defects if the defect remained unknown to us at the time of conclusion of the contract due to gross negligence.

(4) Statutory provisions (§§ 377, 381 of the German Commercial Code (HGB)) shall apply to the commercial obligation to inspect 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 appraisal including the delivery papers (e.g. transport damage, wrong delivery and short delivery) or which are recognisable during our quality control in the sampling procedure. If acceptance has been agreed, there shall be no obligation to inspect. In all other respects, it shall depend on the extent to which an inspection is feasible in the ordinary course of business, considering the circumstances of the individual case. Our requirement to give notice of defects shall remain unaffected for defects discovered later. Notwithstanding our obligation to inspect, our complaint (notice of defect) shall be deemed to have been made without delay and in good time if it is sent within two working days of discovery or, in the case of obvious defects, of delivery.

(5) Subsequent performance shall also include the removal of the defective Goods and their re-installation if the Goods were installed in another item in accordance with their intended purpose. The costs incurred by the Seller for the purpose of inspection and subsequent performance (including any removal and installation costs) shall be borne by the Seller even if it turns out that there was actually no defect. Our liability for damages in the event of an unjustified request to remedy a defect shall remain unaffected; in this respect, however, we shall only be liable if we recognised or were grossly negligent in not recognising that there was no defect.

(6) If the Seller fails to fulfil his obligation to provide subsequent performance - at our discretion by remedying the defect (rectification) or by delivering a defect-free item (replacement) - within a reasonable time set by us, we may remedy the defect ourselves and demand reimbursement of the expenses required for this purpose or a corresponding advance payment from the Seller. If subsequent performance by the Seller has failed or is unreasonable for us (e.g. due to particular urgency, risk to operational safety or imminent occurrence of disproportionate damage), no deadline needs to be set; we shall inform the Seller of such circumstances without any undue delay, if possible in advance.

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

#### **§ 8 Supplier recourse**

(1) In addition to the claims for defects, we shall be entitled to our legally determined recourse claims within a supply chain (supplier recourse pursuant to §§ 478, 479 BGB) without restriction. In particular, we shall be entitled to demand the exact type of subsequent performance (rectification of defects or replacement delivery) from the Seller that we owe to our customer in the individual case. Our statutory right to choose (§ 439 (1) BGB) shall not be restricted by this.

(2) Before we acknowledge or fulfil a claim for defects asserted by our customer (including reimbursement of expenses pursuant to §§ 478 (2), 439 (2) BGB), we will notify the Seller and request a written comment, briefly explaining the facts. If the comment is not made within a reasonable time and if 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 obliged to prove the contrary.

(3) Our claims arising from supplier recourse shall also apply if the Goods have been 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 liability**

(1) If the Seller is responsible for a product damage,

he shall indemnify us against third-party claims to the extent that the damage was caused within his sphere of control and organisation and he is liable himself towards third parties.

(2) Within the scope of his indemnity obligation, the Seller shall reimburse expenses pursuant to §§ 683, 670 BGB arising from or in connection with a claim by third parties, including any recall actions carried out by us. We will inform the seller about the content and scope of recall measures - as far as possible and reasonable - and give him the opportunity to make a comment. Further legal claims shall remain unaffected.

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

#### **§ 10 Limitation period**

(1) The mutual claims of the contracting parties shall become statute-barred in accordance with the statutory provisions, unless otherwise stipulated below.

(2) Notwithstanding § 438 (1) no. 3 BGB, the general limitation period for claims for defects is 3 years from the transfer of risk. Insofar as acceptance has been agreed, the limitation period shall begin with acceptance. The 3-year limitation period shall also apply accordingly to claims arising from defects of title, whereby the statutory limitation period for claims in rem of third parties for surrender of goods (§ 438 (1) no. 1 BGB) shall remain unaffected; claims arising from defects of title will furthermore not become time-barred in any case as long as the third party can still assert the right - in particular in the absence of a limitation period - against us.

(3) The limitation periods of the law on sales including the above extension shall apply - to the statutory extent - 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 (§§ 195, 199 BGB) shall apply for this, unless the application of the limitation periods of the law on sales results in a longer limitation period in individual cases.

#### **§ 11 Applicable law and place of jurisdiction**

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

(2) If the Purchaser is a merchant within the meaning of the German Commercial Code (HGB), a legal person of public law or a special fund under public law, the exclusive - and international - place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be the company's place of business. However, we shall also be entitled in all cases to bring an action at the place of performance of the delivery obligation in accordance with these GTCP or a prior individual agreement or at the general place of jurisdiction of the Purchaser. Overriding statutory provisions, in particular on exclusive jurisdiction, shall remain unaffected.

#### **§ 12 Data protection provisions**

(1) We only collect data from customers in the context of processing contracts. In doing so, we observe the legal requirements, in particular the German Telemedia Act (TMG) and the German Federal Data Protection Act (BDSG). Inventory and usage data of the customer are only collected, processed or used insofar as this is necessary for the processing of the contractual relationship.

(2) We will not use customer's data for the purposes of advertising, market or opinion research without the customer's prior consent.

Rostock, July 2017  
Power Oil Rostock GmbH

