

General Terms and Conditions of Purchase (GCPs)

Börger GmbH – Last updated: Juni 2024

Art. 1 Scope, Form

- (1) These General Terms and Conditions of Purchase (GTCP) shall apply to all business relationships with our business partners and suppliers ("vendors"). The GTCP shall only apply if the vendor 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 GTCP shall apply, in particular, to contracts for the sale and/or delivery of movable property ("goods"), regardless of whether the vendor manufactures the goods themselves or purchases them from suppliers (Sections 433, 650 BGB). Unless otherwise agreed, the GTCP in the version valid at the time of the buyer's order or, in any case, in the version last notified to the vendor in text form shall also apply as a framework agreement for similar future contracts without us having to refer to them again in each individual case.
- (3) These GTCP shall apply exclusively. Deviating, conflicting or supplementary General Terms and Conditions of the vendor shall only become part of the contract if and to the extent that we have expressly consented to their application in writing. This requirement of consent shall apply in any case, e.g. even if the vendor refers to their GTC in the context of the order confirmation and we do not expressly object thereto.
- (4) Individual agreements (e.g. framework supply agreements, quality assurance agreements) and specifications in our order shall take precedence over the GTCP. In case of doubt, commercial clauses shall be interpreted in accordance with the Incoterms® published by the International Chamber of Commerce in Paris (ICC) in the version valid at the time the contract is concluded.
- (5) Legally relevant declarations and notifications of the vendor with regard to the contract (e.g. setting of a deadline, reminder, withdrawal) shall be made in writing. Written form within the meaning of these GTCP shall include written and 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 declaring party, shall remain unaffected.
- (6) References to the applicability of statutory provisions shall only have a clarifying meaning. Even without such clarification, the statutory provisions shall therefore apply unless they are directly amended or expressly excluded in these GTCP.

Art. 2 Conclusion of contract

- (1) Our order shall be deemed binding at the earliest upon written submission or confirmation. The vendor shall point out obvious errors (e.g. spelling and calculation errors) and incompleteness of the order including the order documents to us for the purpose of correction or completion before acceptance; otherwise the contract shall be deemed not concluded.
- (2) The vendor is required to confirm our order in writing within a period of 5 calendar days, or, in particular, to execute it without reservation by dispatching the goods (acceptance). If confirmation is not given by the supplier within 5 days, the order shall be deemed accepted as written.

Art. 3 Delivery time and delay in delivery

- (1) The delivery time specified by us in the order shall be binding. If the delivery time is not specified in the order and has not been agreed otherwise, it shall be two weeks from the conclusion of the contract. The vendor shall be obliged to notify us in writing without delay if

they anticipate being unable to comply with agreed delivery times - for whatever reason.

- (2) If the vendor fails to perform or does not perform within the agreed delivery time or if the vendor is in default, our rights - in particular to withdrawal and damages - shall be determined in accordance with the statutory provisions. The provisions in section 3 shall remain unaffected.
- (3) If the vendor is in default, we may - in addition to further statutory claims - demand lump-sum compensation for our damage caused by default in the amount of 3% 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 damages have been incurred. The vendor reserves the right to prove that no damage at all or only a significantly lower damage has been incurred.

Art. 4 Performance, Delivery, Transfer of Risk, Default of Acceptance

- (1) The vendor shall not be entitled to have the performance they owe rendered by third parties (e.g. subcontractors) without our prior written consent. The vendor shall bear the procurement risk for their services unless otherwise agreed in individual cases (e.g. limitation to stock).
- (2) Delivery shall be made "free domicile" within Germany to the place specified in the order. If the place of destination is not specified and nothing else has been agreed, the delivery shall be made to our registered office in Borken-Weseke. The respective place of destination shall also be the place of performance for the delivery and any subsequent performance (obligation to deliver).
- (3) The delivery shall be accompanied by a delivery note stating the date (issue and dispatch), the content of the delivery (item number and quantity) and our order identification (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 dispatch 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 of the law on contracts for work and services shall also apply mutatis mutandis. The handover or acceptance shall be deemed equivalent if we are in default of acceptance.
- (5) The statutory provisions shall apply to the occurrence of our default in acceptance. However, the vendor must also expressly offer us their performance if a specific or determinable calendar time has been agreed upon for an action or cooperation on our part (e.g. provision of material). If we are in default of acceptance, the vendor may demand compensation for their additional expenses in accordance with the statutory provisions (Section 304 BGB). If the contract relates to a non-representable item to be manufactured by the vendor (individual production), the vendor shall only be entitled to further rights if we have undertaken to cooperate and are responsible for the failure to cooperate.

Art. 5 Prices and terms of payment

- (1) The price stated in the order shall be binding. All prices shall be inclusive of the statutory value-added tax unless the latter is stated separately.
- (2) Unless otherwise agreed on a case-by-case basis, the price shall include all services and ancillary services of the vendor (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 shall be due for payment within 30 calendar days of complete delivery and performance (including any agreed acceptance) and receipt of a proper invoice. If payment is made within 14 calendar days, the vendor shall grant us a 3% discount on the net amount of the invoice. If payment is remitted by bank transfer, 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 deadline; we shall not be responsible for any delays caused by the banks involved in the payment process.
- (4) We shall not owe any interest on arrears. The statutory provisions shall apply to default in payment.
- (5) We shall be entitled to rights of set-off and retention as well as the defense of non-performance of the contract to the extent provided by law. We shall, in particular, be entitled to withhold payments due as long as we are still entitled to claims against the vendor arising from incomplete or defective performance.
- (6) The vendor shall have a right of set-off or retention only with respect to counterclaims that have become *res judicata* or are undisputed.

Art. 6 Secrecy and retention of title

- (1) We reserve the property rights and copyrights to illustrations, plans, drawings, calculations, execution instructions, product descriptions and other documents. Such documents shall be used exclusively for the contractual performance and returned to us following the 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 only expire if and to the extent that the knowledge contained in the documents provided has become generally known. Special confidentiality agreements and statutory regulations on the protection of secrets shall remain unaffected.
- (2) The foregoing provision shall apply *mutatis mutandis* to substances and materials (e.g. software, finished and semi-finished products) as well as to tools, templates, samples and other items which we provide to the vendor for production. Such items shall - as long as they are not processed - be stored separately at the vendor'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 vendor shall be carried out on our behalf. The same shall apply in the event of further processing of the delivered goods by us, resulting in us being deemed the manufacturer and acquiring 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. However, if in individual cases we accept an offer of the vendor to transfer title conditional on payment of the purchase price, the vendor's retention of title shall expire at the latest upon payment of the purchase price for the goods delivered. We shall remain authorized to resell the goods in the ordinary course of business even before 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, in any case, shall exclude all other forms of retention of ownership, in particular retention of ownership which is extended to further processing, extended in another way, or transferred.

Art. 7 Defective delivery

- (1) The statutory provisions and, exclusively in our favor, the following supplements and clarifications shall apply to our rights in the event of material defects and defects of title of the goods (including wrong and short delivery as well as improper assembly/installation or

defective instructions) and in the event of other breaches of duty by the vendor.

- (2) In accordance with the statutory provisions, the vendor shall be liable, in particular, for ensuring that the goods have the agreed quality at the time of transfer of risk to us. In any case, those product descriptions which - in particular by designation or reference in our order - 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. It shall be immaterial whether the product description originates from us, from the vendor or from the manufacturer.
- (3) In the case of goods with digital elements or other digital content, the vendor shall owe the provision and updating of the digital content in any case to the extent that this results from a quality agreement pursuant to section 2 or other product descriptions of the manufacturer or on their behalf, in particular on the Internet, in advertising or on the goods label.
- (4) We shall not be obliged to inspect the goods or make special inquiries about any defects upon conclusion of the contract. In partial deviation from Section 442 (1) sentence 2 of the German Civil Code (BGB), we shall therefore also be entitled without restriction to claims for defects if the defect remained unknown to us at the time of conclusion of the contract due to gross negligence.
- (5) The statutory provisions (Sections 377 and 381 of the German Commercial Code, HGB) shall apply to the commercial duty to inspect and give notice of defects, subject to the following proviso: Our duty to inspect shall be limited to defects which become apparent during our incoming goods inspection under external examination including the delivery documents (e.g. transport damage, wrong delivery and short delivery) or which are recognizable during our quality control in the random sampling procedure. Insofar as acceptance has been agreed, there shall be no obligation to inspect. Otherwise, it shall depend on the extent to which an examination is feasible, taking into account the normal course of business in the individual case. Our obligation to give notice of defects discovered later shall remain unaffected. Notwithstanding our duty to inspect, our notice of defect shall be deemed to have been given without undue delay and in good time if it is sent within 5 working days of discovery or, in the case of obvious defects, of delivery.
- (6) Subsequent performance shall also include removal of the defective goods and reinstallation, provided that the goods were installed in another item or attached to another item in accordance with their type and intended use before the defect became apparent; our statutory claim to reimbursement of corresponding expenses (removal and installation costs) shall remain unaffected. The expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labor and material costs and, if applicable, removal and installation costs, shall be borne by the vendor even if it turns out that there was actually no defect. Our liability for damages in the event of an unjustified request for rectification of defects shall remain unaffected; in this respect, we shall, however, only be liable if we recognized or were grossly negligent in not recognizing that there was no defect.
- (7) Notwithstanding our statutory rights and the provisions in section 5, the following shall apply: If the vendor fails to meet their obligation of subsequent performance - at our option by remedying the defect (subsequent improvement) or by delivering an item free of defects (replacement delivery) - within a reasonable period of time set by us, we may remedy the defect ourselves and demand reimbursement from the vendor of the expenses required for this purpose or a corresponding advance payment. If subsequent performance by the vendor 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 need be set; we shall inform the vendor of such circumstances without undue delay, if possible in advance.
- (8) Otherwise, in the event of a material defect or defect of 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.

non-contractual claims for damages due to a defect, the regular statutory limitation period (Sections 195 and 199 BGB) shall apply, unless the application of the limitation periods of the law on sales leads to a longer limitation period on a case-by-case basis.

Art. 8 Supplier recourse

- (1) We shall be entitled to our legally determined claims for expenses and recourse within a supply chain (supplier recourse pursuant to Sections 478, 445a, 445b or Sections 445c, 327 (5), 327u of the German Civil Code, BGB) without limitation in addition to the claims for defects. We shall, in particular, be entitled to demand exactly the type of subsequent performance (repair or replacement) from the vendor that we owe our customer on a case-by-case basis; in the case of goods with digital elements or other digital content, this shall also apply with regard to the provision of necessary updates. Our statutory right of choice (Section 439 (1) BGB) shall not be restricted hereby.
- (2) Before we acknowledge or fulfill a claim for defects asserted by our customer (including reimbursement of expenses pursuant to Sections 445a (1), 439 (2), (3), (6) sentence 2, 475 (4) of the German Civil Code, BGB), we shall notify the vendor and request a written statement, briefly setting out the facts of the case. If a substantiated statement is not made within a reasonable period of 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 vendor shall have the burden of proof to the contrary.
- (3) Our claims arising from supplier recourse shall also apply if the defective goods have been combined with another product or further processed in any other way by us, our customer or a third party, e.g. by incorporation, attachment or installation.

Art. 9 Producer liability

- (1) If the vendor is responsible for product damage, they shall indemnify us against claims of third parties to the extent that the cause lies within their sphere of control and organization and they themselves are liable in relation to third parties.
- (2) Within the scope of their indemnification obligation, the vendor shall reimburse expenses pursuant to Sections 683 and 670 of the German Civil Code (BGB) arising from or connected to a claim lodged by third parties including recall actions carried out by us. We shall notify the vendor of the content and scope of recall measures - to the extent possible and reasonable - and give them an opportunity to comment. Further legal claims shall remain unaffected.
- (3) The vendor shall take out and maintain product liability insurance with a lump sum coverage of at least EUR 10 million for each instance of personal injury/property damage.

Art. 10 Statute of limitations

- (1) The reciprocal claims of the contracting parties shall become statute-barred in accordance with the statutory provisions unless otherwise stipulated below.
- (2) Notwithstanding Section 438 (1) no. 3 of the German Civil Code (BGB), the general limitation period for claims for defects shall be 3 (three) years from the transfer of risk. Insofar as acceptance has been agreed, the limitation period shall commence upon acceptance. The 3-year limitation period shall apply mutatis mutandis to claims arising from defects of title, whereby the statutory limitation period for claims in rem of third parties for surrender of goods (Section 438 (1) no. 1 BGB) shall remain unaffected; in addition, claims arising from defects of title shall in no case become statute-barred as long as the third party can still assert the right against us - in particular in the absence of a limitation period.
- (3) The limitation periods of the law on sales including the above extension shall apply - to the extent provided by law - to all contractual claims for defects. Insofar as we are also entitled to

Art. 11 Choice of Law and Place of Jurisdiction

- (1) The laws of the Federal Republic of Germany shall apply to these GTCP and the contractual relationship between us and the vendor, with the exclusion of international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods.
- (2) If the vendor is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive - also international - place of jurisdiction for all disputes arising from the contractual relationship shall be our registered office in 46325 Borken. The same shall apply if the vendor is an entrepreneur within the meaning of Section 14 BGB. However, we shall also be entitled in all cases to bring an action at the place of performance of the delivery obligation pursuant to these GTCP or a prior individual agreement or at the general place of jurisdiction of the vendor. Overriding statutory provisions, in particular regarding exclusive jurisdiction, shall remain unaffected.

Art. 12 Severability clause

Should any provision of this agreement be invalid in whole or in part, or should it later lose its legal effect, this shall not affect the validity of the remaining provisions. In place of the invalid provision, the statutory provisions shall apply.