

Terms of delivery and sale

of Gross & Perthun GmbH & Co KG - Status June 2021

1. Scope

1.1 Our Terms and Conditions of Delivery and Sale (hereinafter referred to as "Terms and Conditions of Delivery") shall apply to all deliveries and services (including services) provided by us to companies within the meaning of § 14 BGB (German Civil Code), legal entities under public law and special funds under public law (hereinafter referred to as "customer").

An entrepreneur as defined by § 14 BGB is a natural or legal entity or a partnership with legal capacity which, when concluding a legal transaction, acts in the exercise of its commercial or independent professional activity.

1.2 Our separate General Terms and Conditions of Purchase shall apply to our purchases and orders.

1.3 Deviating terms and conditions of the customer which we do not expressly accept in writing are not binding for us, even if we do not expressly object to them. Our terms and conditions of delivery shall also apply if we carry out the delivery without reservation in the knowledge of conflicting or deviating terms and conditions of the customer.

1.4 In the case of long-term business relationships, these Terms and Conditions of Delivery in the version current at the time of their effective inclusion in the contractual negotiations or contract shall also apply to future offers and contracts for the sale or delivery of movable goods with the same customer, without our having to refer to them again in each individual case.

2. Offer, conclusion of contract, content of contract

2.1 Our offers are non-binding. A contract shall only be concluded if we confirm the order of the customer. Our order confirmation shall be decisive for the content and scope of the contract.

2.2 Changes to the technical design of the ordered goods are permissible unless this results in a significant change in function or the customer demonstrates that the change is unreasonable for him.

2.3 The conclusion of the contract is subject to correct and timely self-delivery. We shall notify the customer immediately of the occurrence of such a case. Liability in the event of defective, late or complete failure of self-delivery shall only be excluded if we are not responsible for such failure (Vertretenmüssen) (see also Clause 6).

2.4 Information on the object of the delivery or service (e.g. dimensions, other values, load capacity, tolerance and technical data) as well as the representation of the same (e.g. drawings and illustrations) shall only be deemed authoritative insofar as the usability for the contractually stipulated purpose does not require exact conformity. They are not a guaranteed quality feature, but a description or identification of the delivery or service. The documents belonging to the offer, such as photocopies, drawings, weight and quantity specifications,

are only approximately authoritative, unless they are expressly designated as legally binding. Usual deviations, which are made due to legal regulations or represent technical improvements, as well as the replacement of components by equivalent components are permissible, as far as they do not impair the usability for the contractually intended purpose.

2.5 Quantity deviations are permissible within the framework of an excess quantity of 10% and a shortage of 5% and do not constitute a defect in the delivery.

2.6 We reserve our property rights, copyrights and other industrial property rights to all illustrations, calculations, drawings and other documents. The customer may only pass these on to third parties with our consent in text form, irrespective of whether we have marked them as confidential.

3. Prices, price adjustments, packaging

3.1 Unless otherwise agreed, our prices shall apply ex delivery warehouse including loading, but excluding packaging, freight, insurance and the statutory value added tax applicable at the time of delivery. These positions shall be invoiced separately.

3.2 Should we have to bear taxes, customs duties or similar expenses due to deliveries abroad or should fees or charges, in particular customs duties or taxes, be introduced or increased after conclusion of the contract, these shall be borne additionally by the customer.

3.3 Price adjustments by us are permissible if there are more than four months between the conclusion of the contract and the agreed delivery date. If, after conclusion of the contract until completion or execution of the delivery, wages, material costs or market cost prices increase, we shall be entitled to increase the price appropriately in accordance with the cost increase. The customer will be informed of this immediately in text form. In this case, the customer is entitled to withdraw from the contract within seven days after receipt of the notification of the price increase by declaration in text form.

3.4 If the delivery is made in returnable containers, these must be returned to us within 90 days of receipt of the delivery, emptied and carriage paid. The costs for loss of and damage to delivery packaging shall be borne by the customer if he is responsible for this (Vertretenmüssen). Returnable packaging may not be used for purposes other than transporting the delivered goods or for holding other products. Labels on the packaging may not be removed.

3.5 We do not take back disposable packaging. We shall name a third party to the customer who will recycle the packaging in accordance with the Packaging Ordinance.

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4. Terms of payment

- 4.1 Our invoices are due for payment net within 30 days after delivery, unless otherwise agreed.
- 4.2 If partial deliveries are permissible because they have been agreed or are reasonable for the customer, we shall be entitled to issue a separate invoice for each partial delivery, which shall be payable in accordance with the above conditions.
- 4.3 If the customer suspends payment, defaults on payment, is overindebted or an application is made to open insolvency proceedings, our total claim shall become due immediately. The same shall apply in the event of any other significant deterioration in the financial circumstances of the customer. In these cases we are entitled to demand sufficient security or to withdraw from the contract and demand compensation. Discount agreements, rebates, price reductions, etc. shall be deemed forfeited in this case.
- 4.4 Offsetting (Aufrechnung) or retention (Zurückbehaltungsrecht) by the customer is excluded unless the offsetting or retention claim is undisputed or has been legally established. The customer shall be entitled to a right of retention insofar as its counterclaim is based on the same contractual relationship.

5. Delivery period, default of acceptance

- 5.1 The commencement of the delivery and/or performance period shall be subject to the timely and proper fulfilment of the customer's obligations and the clarification of all technical issues. If these obligations are not fulfilled by the Customer in due time, the delivery and/or performance period shall be extended accordingly.
- 5.2 In the event of subsequent changes requested by the customer, the delivery period shall be extended accordingly.
- 5.3 If the customer is in default of acceptance or culpably violates other duties to cooperate, we shall be entitled to demand compensation for the damage incurred by us in this respect, including any additional expenses. In this case, we shall also be entitled, at our discretion, to dispatch the goods ready for dispatch at the expense of the customer or, if necessary, to store them professionally outdoors. We reserve the right to assert further claims.
- 5.4 If the customer is in default of acceptance, the goods ready for dispatch may be charged.

6 Force majeure, exemption from performance, right of withdrawal

- 6.1 If an event or circumstance occurs which prevents or has prevented us from performing one or more of our obligations under the contract, this obstacle is or was beyond our unreasonable control, it could not reasonably have been foreseen at the time of

the conclusion of the contract and the effects of the obstacle could not reasonably have been avoided or overcome by us, a case of force majeure exists. We shall be released from our obligation to perform for the duration of such an event or circumstance. In this case, we shall notify the customer of the beginning and end of such circumstances without culpable delay.

6.2 Events of force majeure include in particular

- a) war, hostilities, attack, acts of foreign enemies, extensive military mobilisation,
- b) civil war, riot, civil commotion, rebellion and revolution, military or other seizure of power, insurrection, acts of terrorism, sabotage or piracy,
- c) currency and trade restrictions, embargo, sanctions,
- d) lawful or unlawful official acts, compliance with laws or government orders, expropriation, confiscation of works, requisition, nationalisation, official orders and restrictions (e.g. production restrictions, plant closures),
- e) epidemic, pandemic, floods, Natural disaster or extreme natural event,
- f) explosion, fire, destruction of equipment, prolonged failure of transport, telecommunications, information systems or power,
- g) general labour unrest such as boycotts, strikes and lockouts, slow-down strikes, occupation of factories and buildings, official plant closures due to massive default in the workforce (e.g. due to illness or quarantine measures).

6.3 The foregoing shall also apply if force majeure demonstrably occurs or has occurred at our suppliers and subcontractors and we are therefore not supplied or not supplied on time.

6.4 If delivery is delayed unreasonably (in particular by more than one month) due to force majeure and if the impediment to delivery cannot be overcome by reasonable efforts, we are entitled to withdraw from the contract with regard to the quantity affected by the impediment to delivery.

6.5 The right of withdrawal shall also exist if the customer was initially notified of an extension of the delivery period.

6.6 The customer shall not be entitled to any claims for damages in the aforementioned cases.

7. Transfer of risk, acceptance

7.1 The risk shall pass to the customer when the goods have left the factory, even if partial deliveries are made or we have assumed other services such as delivery or installation or have agreed to bear the shipping costs. Insofar as acceptance is to take place, this shall be decisive for the transfer of risk. It must be carried out immediately on the acceptance date, alternatively after the supplier's

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notification of readiness for acceptance. The customer may not refuse acceptance in the event of a non-substantial defect.

- 7.2 If dispatch or acceptance is delayed or does not take place as a result of circumstances for which we are not liable, the risk shall pass to the customer on the day of notification of readiness for dispatch or acceptance. In this case we are entitled to insure the goods and to charge the costs for this to the customer.

8. Retention of title

- 8.1 Our deliveries are always made subject to retention of title. The goods shall remain our property until full payment of all claims arising from the business relationship with the customer. In the case of a current account, the reserved property shall be deemed security for our balance claim.

- 8.2 The customer is entitled to resell the delivered goods in the ordinary course of his business. He may neither pledge the goods subject to retention of title nor assign them as security.

- 8.3 In the event of resale, the customer hereby assigns to us all claims, including all ancillary rights, arising from the resale. This shall apply irrespective of whether the customer sells the reserved goods unprocessed, processed or together with other goods. If the sale is made together with goods not belonging to us, the assignment shall only apply to the amount of the value of the reserved goods. The value is calculated according to our sales prices including VAT.

- 8.4 Processing of the goods subject to retention of title shall always be carried out for us as manufacturer (Hersteller) within the meaning of § 950 BGB (German Civil Code) without, however, obligating us. The processed goods shall be deemed to be goods subject to retention of title within the meaning of these terms and conditions. If goods subject to retention of title are processed or inseparably mixed with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the invoice value of the goods subject to retention of title (incl. VAT) to the invoice value of the other goods used at the time of processing or mixing. The co-ownership rights thus created shall be deemed to be reserved goods within the meaning of these terms and conditions. At our request, the customer is obliged to inform the purchaser of the reserved goods of our ownership rights. In all other respects, the same shall apply to the item created by processing or mixing as to the goods delivered subject to retention of title.

- 8.5 The customer is authorised to collect the claims from the resale, without prejudice to our own authority to collect. As long as the customer duly meets his payment obligations, we shall not assert the claim ourselves. At our request, the customer shall inform us of the debtors of the assigned claims and notify them of the assignment. Our right

to inform the third party debtors of the assignment ourselves shall not be affected by this. The customer is prohibited from assigning the claim against the third-party debtors to third parties or from agreeing a prohibition of assignment with the third-party debtors.

- 8.6 The customer is obliged to handle the goods with care; in particular, he is obliged to insure them adequately at his own expense against theft and damage at the nominal value. The customer assigns his claims from the insurance contracts to us.

- 8.7 The customer is obliged to inform us immediately and as quickly as possible of any seizure or any other impairment of our security rights by third parties. The customer is obliged to provide us with all documents necessary to protect our rights and to reimburse us for the costs incurred by a necessary intervention.

- 8.8 If the realisable value of the securities exceeds our claims by more than 10%, we shall release securities of our choice to this extent at the request of the customer.

- 8.9 If the customer defaults on his payment obligation in whole or in part, if there is over-indebtedness or suspension of payments or if an application for insolvency has been filed, we shall be entitled to immediately take possession of all goods still subject to retention of title. Likewise, we may immediately assert the further rights arising from the retention of title; the same shall apply in the event of any other material deterioration in the financial circumstances of the customer. The customer shall grant us or our authorised representatives access to all his business premises during business hours.

9. Warranty, notice of defects, limitation period

- 9.1 The customer shall inspect the received goods for defects immediately upon receipt. Notification of defects must be made by the customer in text form immediately after receipt of the goods, but at the latest within 7 days after receipt. For hidden defects, the same period shall apply from the time of discovery. Warranty claims shall lapse for defects not notified in due time. The customer shall precisely describe the type and extent of the defects.

- 9.2 Warranty claims do not exist in the case of only insignificant deviations of the delivered goods from the agreed quality (this applies in particular to unavoidable, minor deviations with regard to colour, surface and material purity) or in the case of only insignificant impairment of usability.

- 9.3 In the event of justified complaints, we shall, at our discretion, either remedy the defect or supply a replacement. If we do not remedy the defect or deliver a replacement within a reasonable period of time, the customer has the right to withdraw from the contract or to demand a reduction of the purchase price. Right of withdrawal is excluded if there is only an insignificant breach of duty on our part.

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- 9.4 In the event of justified defects, the customer may only withhold payments to an extent that is in reasonable proportion to the material defects that occur. If the notice of defect is unjustified, we may demand reimbursement of the expenses incurred from the customer.
- 9.5 With regard to further claims for material defects asserted by the customer, Clause 10 shall apply.
- 9.6 In the event of recourse by the entrepreneur, the customer shall be entitled to the rights of § 437 BGB. In this case, the limitation period shall be governed by § 479 BGB.
- 9.7 Warranty claims do not exist in particular for defects that arise after the transfer of risk as a result of unsuitable or improper use, faulty assembly or commissioning by the customer or third parties, improper operation, natural wear and tear, improper maintenance, unsuitable operating materials, unsuitable substrate or due to special external influences that are not assumed under the contract. If the customer or a third party carries out improper repairs, we shall not be liable for the resulting consequences. The same applies to any changes made to the delivery item without our prior consent.
- 9.8 The limitation period for warranty claims begins with the delivery of the goods; if acceptance is required, from acceptance. The period shall be one year for the delivery of new goods to entrepreneurs.
- 9.9 The aforementioned period shall not apply to claims for damages by the customer arising from injury to life, limb or health or which are based on an intentional or grossly negligent breach of duty by us, our legal representatives or our vicarious agents. The aforementioned period shall also not apply in the event of fraudulent concealment of a defect and the assumption of a guarantee for the quality of the goods. These claims shall become statute-barred in accordance with the statutory provisions. Other special statutory provisions on limitation (in particular § 438 para. 1 no. 1 and no. 2, §§ 444, 445 b BGB) shall also remain unaffected.
- 10. Limitation of liability**
- 10.1 Unless otherwise stipulated in these terms and conditions of delivery including the following provisions, we shall be liable for a breach of contractual and non-contractual obligations in accordance with the statutory provisions. We shall be liable for damages - irrespective of the legal grounds - within the scope of fault liability (Verschuldenshaftung) in the event of intent and gross negligence.
- In the event of simple negligence, we shall only be liable - subject to a milder standard of liability in accordance with the statutory provisions (e.g. for diligence in our own affairs) - as follows
- a) for damages arising from injury to life, body or health as well as
- b) for damages arising from the not insignificant breach of a material contractual obligation (obligation whose fulfilment is a prerequisite for the proper performance of the contract and on whose compliance the contractual partner regularly relies and may rely); in this case, however, our liability shall be limited to compensation for the foreseeable, typically occurring damage.
- 10.2 The limitations of liability resulting from Clause 10.1 shall also apply in the event of breaches of duty by or in favour of persons for whose fault we are responsible in accordance with statutory provisions. They do not apply insofar as we have fraudulently concealed a defect or have assumed a guarantee for the quality of the goods and for claims under the Product Liability Act.
- 10.3 The customer may only withdraw from or terminate the contract due to a breach of duty that does not consist of a defect if we are responsible for the breach of duty. A free right of termination on the part of the customer (in particular in accordance with §§ 651, 649 BGB) is excluded. In all other respects, the statutory requirements and legal consequences shall apply.
- 10.4 The customer's claim for reimbursement of futile expenses instead of damages in lieu of performance shall remain unaffected.
- 10.5 The customer guarantees that the ordered goods and the plans, drawings and technical information provided to us by the customer do not infringe the industrial property rights or other rights of third parties. In this respect, the customer shall indemnify us against all claims of third parties.
- 10.6 Our products have a wide range of applications. If the customer wishes to use our products in a manner or for a purpose for which they are not expressly intended according to our product documents or for which we have not declared a separate, written release, the customer must check the suitability for the intended purpose in his own tests. Any liability on our part is excluded.
- 11. Prohibition of assignment**
- The customer is not entitled to transfer rights from the contracts concluded with us to third parties without our consent.
- 12. Data protection**
- We will only process and store the data relating to the respective contracts within the framework of the applicable statutory provisions. The details can be found in the privacy policy available on our website.
- 13. Applicable law, place of performance, place of jurisdiction, translations of these terms of delivery**

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- 13.1 German law shall apply exclusively; the applicability of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the conflict-of-law rules applicable in Germany are excluded.
- 13.2 The place of performance for all obligations arising from the contracts concluded by us with the customer is our respective shipping point. For payments, our place of business.
- 13.3 If the customer is a merchant, the place of jurisdiction shall be Mannheim. However, we are also entitled to sue the customer at his place of business.
- 13.4 The English or French versions of the foregoing text of our Terms of Delivery are only translations of the German version, and are provided for reference purposes only. In the event of any conflict or discrepancy between the English or French version and German versions, the German version shall prevail (in all respects) and be treated as the correct version. Terms to which a German translation has been added must be interpreted in such a way that they have the meaning of the German term.

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