

## **General Terms and Conditions of Solara GmbH**

### **Section 1 General information, scope**

1. These General Terms and Conditions (GTC) shall apply to all our business relations with our customers (hereinafter: "Buyer"). The GTC shall apply only if Buyer is an entrepreneur (under Section 14 of the German Civil Code, BGB), a legal entity under public law, or a special fund under public law.
2. The GTC shall apply, in particular, to agreements on the sale and/or delivery of movable goods (hereinafter also: "Goods"), regardless of whether we manufacture the Goods ourselves or procure them from suppliers (Sections 433, 651 BGB). The GTC shall apply in such version as is in effect from time to time as a framework agreement also for future agreements on the sale and/or delivery of movable goods with the same Buyer, without there being a requirement for us to reference them in each case again.
3. Our GTC shall apply exclusively. Any deviating, opposing or supplementary General Terms and Conditions of Buyer shall become part of the agreement only where and to the extent that we have agreed thereto in express terms. Such requirement of consent shall apply in any case, for example, also when we execute a delivery to Buyer without reservation in full knowledge of Buyer's GTC.
4. Individual agreements with Buyer entered into on a case-by-case basis (including collateral agreements, supplements and amendments) shall take precedence over these GTC at any rate. The contents of such agreements shall be subject to a written agreement and/or our written confirmation.
5. Legally relevant declarations and notices that Buyer shall submit to us following the conclusion of the agreement (for example, setting of deadlines, notices of defects, declarations of withdrawal or price reduction) shall be in writing to enter into effect.
6. References to the effect of statutory provisions shall serve purposes of clarification only. Even without such clarification, therefore, the statutory provisions shall apply unless they have been amended directly or excluded in express terms under these GTC.

### **Section 2 Quotation and contract conclusion**

1. Our offers are without obligation and non-binding. This shall also apply where we have provided Buyer with catalogues, technical documentation (for example, drawings, plans, calculations, references to DIN standards), other product descriptions or documents – including in electronic form – in respect of which we reserve our proprietary and copyrights.
2. An order for the Goods by Buyer shall be deemed a binding offer for a contract. Unless the order contains provisions to the contrary, we shall be entitled to accept such offer for a contract within four weeks of receipt.
3. Such acceptance may be expressed in writing (for example, by confirmation of order) or by shipping the Goods to Buyer.
4. Any illustrations, dimensions and weights indicated in our catalogues and brochures shall only be deemed approximate. Minor changes and deviations, particularly if they do not impair usability, as well as the use of other materials shall be reserved without prior notification. In case of errors contained in catalogues, price lists, brochures, quotations, order sheets, invoices and other declarations, we shall be entitled to correct such documents and, as the case may be, debit and/or credit the customer without prior notification.

### **Section 3 Delivery period and default**

1. The delivery period shall be agreed individually and/or specified by us at the time of acceptance of the order. Otherwise, we will deliver as soon as possible.

2. We shall be entitled to effect partial deliveries.
3. Commencement of the delivery period specified by us shall be subject to the clarification of all technical questions as well as timely and proper fulfilment of the customer's obligations.
4. If we fail to meet binding delivery periods for reasons for which we are not responsible (non-availability of service), we will inform Buyer thereof as well as of the foreseeable new delivery period. If the service is not available even within the new delivery period, we shall be entitled to withdraw from the agreement in full or in part; any consideration already received from Buyer will be returned immediately. A case of non-availability of service in this context shall occur, in particular, if we are not supplied in time by our suppliers after concluding a congruent covering transaction. Our statutory rights of withdrawal and termination, as well as the statutory provisions on the handling of a contract in case that the obligation to perform is excluded (for example, impossibility or unreasonableness of service and/or subsequent performance) shall remain intact. The rights of withdrawal and termination of Buyer under Section 8 of these GTC shall also remain intact.
5. Whether or not a default in delivery has occurred shall be subject to the statutory provisions. At any rate, a reminder from Buyer shall be required. If we default in delivery, Buyer may demand a lump-sum compensation for the damages caused by such default. The compensatory lump sum shall amount to 0.5% of the net price (delivery value) for each completed calendar week of the default, but overall to no more than 5% of the delivery value of Goods delivered late. We reserve the right to demonstrate that Buyer did not suffer any damage or that the damages are substantially less than the aforementioned lump sum.
6. If the supply contract makes reference to Incoterms and their applicability is agreed, the version of Incoterms 2010 shall apply.

#### **Section 4 Delivery, passing of risk, acceptance, default of acceptance**

1. Delivery shall be ex warehouse, which shall also be the place of performance. At the request and cost of Buyer, the Goods will be shipped to another destination (sale by dispatch). In the absence of any provisions to the contrary, we shall be entitled to determine ourselves the type of shipping (particularly with respect to the carrier, mode of shipping and packaging).
2. No later than upon shipping, the risk of accidental loss and accidental deterioration of the Goods shall pass to Buyer. In the case of sale by dispatch, however, the risk or accidental loss or accidental deterioration of the Goods, as well as the risk of delay, shall pass at the time the Goods are handed to the haulage contractor, carrier or any person or outfit contracted to ship the Goods. Where acceptance is agreed, the passing of risk shall be subject thereto. As well, such acceptance shall be subject to the statutory provisions under the contract-for-work law. Handover and/or acceptance shall be deemed to have been completed if Buyer defaults in acceptance.
3. If Buyer delays acceptance, fails to cooperate as obligated, or if our delivery is delayed for other reasons for which Buyer is responsible, we shall be entitled to demand compensation for the damage incurred, including additional expenses (for example, storage costs). In this context, we will charge a compensatory lump sum in the amount of 5% of the order value for each week commenced, beginning with the delivery period and/or – in the event there is no delivery period – upon notice of readiness for dispatch of the Goods. Proof of higher damages and our statutory claims (particularly compensation for additional expenses, reasonable compensation, termination) shall remain intact; the lump sum, however, shall be credited to further monetary claims. Buyer may demonstrate that we did not suffer any damage or that the damages are substantially less than the aforementioned lump sum.

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

1. Unless the parties have agreed provisions to the contrary in individual cases, our prices that are in effect at the time of the conclusion of contract shall apply, ex warehouse, plus statutory value-added tax.
2. In the event of sale by dispatch (Section 4(1)), Buyer shall bear the transport costs ex warehouse and the costs of any transport insurance that Buyer may have requested. Any customs duties, fees, taxes and other public charges shall be borne by Buyer. We will not accept returned transport and other packaging materials pursuant to the packaging ordinance; such materials shall become the property of Buyer, except for pallets.
3. The minimum order for shipping deliveries shall amount to €250.00 (excluding VAT). For small deliveries below the minimum order value, proportional processing costs amounting to at least €25.00 (excluding VAT) will be invoiced.
4. If the agreed delivery period exceeds two months after contract conclusion or if the delivery is delayed by more than two months after contract conclusion for reasons not attributable to us, we shall be entitled to calculate the prices valid at the date of delivery.
5. The purchase price shall be payable in advance, unless the parties have reached agreement to the contrary.
6. Upon expiry of the aforementioned term of payment, Buyer shall be deemed in default. The purchase price shall be subject to statutory late-payment interest during such default. We reserve to bring claims for further default-related damage.
7. Buyer shall have rights of set-off or retention only to such extent as Buyer's claims has been confirmed by declaratory judgment or is uncontested. The provisions under Section 7(6) shall remain intact in the even of defects of delivery.
8. If after the conclusion of the contract it becomes clear that our claim to the purchase price is jeopardised by the deficient capacity of Buyer (for example, by a petition to instigate insolvency proceedings), we shall be entitled, under the statutory provisions regarding refusal of performance and – if applicable, following a set deadline – to withdraw from the agreement (Section 321 BGB). In the case of contracts regarding the manufacture of non-fungible goods (individual productions), we shall be permitted to declare immediate withdrawal; the statutory provisions regarding the dispensability of setting a grace period shall remain intact.

## **Section 6 Reservation of title**

1. Until such time as all our current and future claims from the purchase agreement and an ongoing business relation (secured receivables) have been paid in full, we shall reserve title in the Goods sold.
2. Goods subject to reservation of title shall not be pledged or transferred as a security to any third party prior to the full payment of the secured receivables. Buyer shall inform us in writing immediately if and when a third party accesses Goods that belong to us.
3. If Buyer breaches the agreement, particularly in connection with non-payment of the purchase price due, we shall be entitled to withdraw from the agreement under statutory provisions and/or demand the return of the Goods by reason of the reservation of title. The demand for return of the Goods does not include a simultaneous declaration of withdrawal; instead, we shall be entitled merely to demand the return of the Goods and to reserve the right of withdrawal. If Buyer does not pay the purchase price due, we shall exercise these rights only if we have previously set Buyer a reasonable grace period for period that has

passed unsuccessfully, or if such grace period is deemed dispensable under statutory provisions.

4. Buyer shall be authorised to sell and/or process the Goods subject to reservation of title in the ordinary course of business. In this event, the following provisions shall apply additionally.
5. The reservation of title shall extend to the products and their full value that result from the processing, mingling and combination of our Goods, and we shall be deemed the manufacturer thereof. If the processing, mingling or combination with goods of a third party leaves such third party's title intact, we shall acquire co-ownership in proportion to the invoice value of the processed, mingled or combined goods. For all other intents and purposes, the resulting product shall be subject to the same provisions as the Goods delivered subject to reservation of title.
6. (6) Buyer shall, effective immediately, assign claims against a third party resulting from the resale of the Goods or of the products to us as security in full and/or in the amount of our co-ownership share pursuant to the previous paragraph. We accept the assignment. The obligations of Buyer under Para. 2 shall also apply in respect of the claims assigned.
7. Buyer shall continue to be authorised to collect on the claim, as are we. We undertake not to collect on the claim as long as Buyer meets his payment obligations towards us, does not default in payment, does not have insolvency proceedings instigated against him, and no other deficiency exists in respect of its capacity to perform. But should this be the case, we may demand that Buyer disclose the claims assigned and their debtors, share all information necessary for collection, surrender all related documentation, and inform the debtors (third parties) of the assignment.
8. If the realisable value of the securities exceeds our claims by more than 10%, we will release securities, to be chosen at our discretion, if so requested by Buyer.

#### **Section 7 Claims for defects of Buyer**

1. The rights of Buyer in connection with material defects and defects of title (including wrong or insufficient deliveries, as well as improper assembly or deficient assembly instructions) shall be subject to statutory provisions unless stipulated otherwise herein below.
2. The primary foundation of our liability for defects shall be any agreement reached on the quality of the Goods. Such agreement on the quality of the Goods shall include all product descriptions that are part of the individual agreement; it does not matter in this context whether the product description was authored by Buyer, the manufacturer, or by us.
3. Where no agreement on quality exists, any assessment as to whether defects exist or not shall be subject to statutory provisions (Section 434(1) Sent. 2 and 3 BGB). However, we shall not accept liability for any public utterances of the manufacturer or any other third party (for example, advertising).
4. For Buyer to have legitimate claims for defects, it shall have complied with its statutory obligations to examine and report (Sections 377, 381 German Commercial Code, HGB). If a defect is discovered during the inspection or subsequently, a written notice thereof shall be sent to us immediately. Notice shall be deemed to have been given immediately if it is effected within two weeks; sending the notice in due time shall be deemed compliance with the period. Regardless of Buyer's obligation to examine and report, Buyer shall report in writing apparent defects (including wrong and insufficient deliveries) within two weeks of delivery; here, too, sending the notice in due time shall be deemed compliance with the

period. If Buyer fails to conduct an inspection and/or report a defect in proper time, our liability for such defect not reported shall be excluded.

5. If the items delivered are defective, we may initially choose whether to effect subsequent performance by removing the defect (subsequent improvement) or by delivering a non-defective item (substitute delivery). Our right to refuse the chosen method of subsequent performance within the statutory framework shall remain intact.
6. We shall be entitled to make the subsequent performance owed contingent upon Buyer's payment of the purchase price due. However, Buyer shall be entitled to withhold a reasonable part of the purchase price in proportion to the defect.
7. Buyer shall allow us the time and opportunity necessary to realise the subsequent performance owed, and shall, in particular, surrender the Goods in question for testing purposes. In the event of substitute delivery, Buyer shall return to us the defective item pursuant to statutory provisions.
8. The expenditure necessary in connection with the testing and subsequent performance, particularly transport, shipping, labour and material costs, shall be borne by us if, in fact, a defect exists. However, should Buyer's demand for removal of defect be shown to be unsubstantiated, we shall be entitled to demand compensation from Buyer for the costs incurred as a result.
9. In urgent matters, for example, risk to operational safety or to prevent disproportionate losses, Buyer shall be entitled to remove the defect itself and to demand compensation from us for objectively necessary expenditure incurred as a result. If Buyer decides to remove the defect itself, Buyer shall notify us thereof immediately, and possibly ahead of time. The Buyer's right to remove the defect shall not exist if, under statutory provisions, we would have been entitled to refuse subsequent performance in such case.
10. If subsequent performance has failed, or if a reasonable grace period to be set by Buyer has passed unsuccessfully, or if it is dispensable under statutory provisions, Buyer may withdraw from the purchase agreement or reduce the purchase price. However, there shall be no right of withdrawal in connection with insubstantial defects.
11. Claims of Buyer for damages and/or compensation for futile expenditure shall be valid only in connection with the provisions under Section 8 hereof, and for all other intents and purposes shall be excluded.

#### **Section 8 Other liability**

1. Unless these GTC and the following provisions state otherwise, we shall be liable for breaches of contractual and non-contractual obligations under relevant statutory provisions.
2. We shall be liable for damages in connection with wilful and gross negligence, regardless of the legal grounds. In the event of minor negligence, we shall be liable only
  - a. for damages resulting from injury to life, limb or body;
  - b. for damages resulting from breaches of a substantial contractual obligation (obligation whose performance is necessary to enable the contract to be executed at all, and on whose compliance the contracting party relies, and may rely, regularly); in such event, our liability, however, shall be limited to compensation for the foreseeable and typical damage.
3. The liability limitations derived from Para. 2 shall not apply where we have concealed a defect maliciously or have guaranteed the quality of the Goods. The same shall apply to Buyer's claims under the German Product Liability Act.

4. A breach of duty that does not consist of a defect shall enable Buyer to withdraw only if such breach is our responsibility. Buyer's unrestricted right of termination (particularly under Sections 651, 649 BGB) shall be excluded. For all other intents and purposes, the statutory requirements and legal consequences shall apply.

#### **Section 9 Limitation**

1. In deviation from Section 438(1)(3) BGB, the general period of limitation for claims arising from material defects and defects of title shall be one year from delivery. Where acceptance has been agreed, the limitation period shall commence upon acceptance.
2. The aforementioned limitation periods under the law on sales shall also apply to contractual and non-contractual claims for damages of Buyer that are based on a defect of the Goods, unless the application of the regular statutory limitation period (Sections 195, 199 BGB) would result in a shorter limitation period in the individual case. The limitation periods under the German Product Liability Act shall remain intact at any rate. Otherwise, the Buyer's claims for damages under Section 8 hereof shall be subject exclusively to the statutory limitation periods.

#### **Section 10 Applicable law and jurisdiction**

1. These GTC and all legal relations between us and Buyer shall be subject to the laws of the Federal Republic of Germany to the exclusion of all international and supranational (contract) laws, particularly the U.N. Convention for the International Sale of Goods. Prerequisites and effects of reservation of title under Section 6 hereof, however, shall be subject to the laws at the respective storage location of the items where German law as the applicable law is not not permitted or ineffective.
2. If Buyer is a merchant under the German Commercial Code, a legal entity under public law or special fund under public law, the exclusive – and international – place of jurisdiction for all disputes arising from the agreement directly or indirectly shall be our place of business in Hamburg. However, we shall be entitled to bring legal action before a court of law of general jurisdiction over Buyer.

#### **Section 11 Final provisions**

1. These GTC shall supersede all previous General Terms and Conditions. If, for these GTC, there is a version in the English language alongside the German language, only the German version shall be decisive for the interpretation of the contractual regulations.
2. Amendments and additions to these General Terms and Conditions shall be executed in writing. This shall also apply to amendments or additions to this requirement of written form. The requirement of written form may also be satisfied by communications via fax or electronic media.
3. Should individual provisions in the agreement with the customer, including these GTC, be or become ineffective in part or in full, the validity of the remaining provisions shall in no way be affected. Such provision(s) ineffective in part or in full shall be replaced by a provision that shall come as close as possible to the economic purpose of such ineffective provision(s).

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