

# General Terms and Conditions TEIJIN FRONTIER EUROPE GMBH

## § 1 General, scope of application

(1) These general terms and conditions apply to all business relationships of TEIJIN FRONTIER EUROPE GMBH (hereinafter referred to as seller) with its customers (hereinafter referred to as buyers). The general terms and conditions only apply if the buyer is a business person (§ 14 BGB (German Civil Code), a legal entity under public law or a special fund under public law.

(2) The general terms and conditions particularly apply to contracts on the sale and/or the supply of movables (hereinafter referred to as „goods“), without taking into account whether the seller manufactures the goods himself or buys them from suppliers (§§ 433, 651 BGB). The general terms and conditions also apply in their respective version as a framework agreement for future contracts on the sale and/or the supply of movables with the same buyer without the seller having to make reference to these each single time.

(3) The seller's general terms and conditions shall apply exclusively. Any deviating, contradictory or complementary general terms and conditions of the buyer shall only and insofar be incorporated in the contract if the seller has given his express consent to their validity. Consent shall be required in any case, even if, e.g. the seller makes the delivery to the buyer unconditionally whilst being aware of his terms and conditions.

(4) Individual agreements with the buyer (including additional agreements, supplements and amendments) shall always take precedence over these general terms and conditions. The contents of such agreements shall be subject to a written contract or to the seller's written confirmation.

(5) Legally relevant declarations and notifications which the buyer has to submit to the seller after contract conclusion (e.g. setting deadlines, notification of defects, declaration of withdrawal or reduction) must be done in writing to be effective.

(6) References to the application of statutory provisions only serve clarification purposes. Even without such clarification the statutory regulations shall therefore apply providing these are not directly changed or explicitly excluded in these general terms and conditions.

## § 2 Contract conclusion

(1) All offers by the seller are non-binding and non-obligatory. This also applies if catalogues, technical documents (e.g. drawings, plans, calculations, references to DIN norms), other product descriptions or documents – also in electronic form were made available to the buyer and to which the seller has reserved rights of title and copyrights.

(2) The buyer ordering the goods is valid as a binding contractual offer. If nothing to the contrary results from the order, the seller is entitled to accept this contractual offer within 14 days after its receipt.

(3) The acceptance can be either done in writing (e.g. through order confirmation) or through delivering the goods to the buyer.

(4) All sales are only concluded for certain delivery quantities, amounts, items and fixed prices. Both parties are bound to this. Block orders are, however, permissible. These can be regulated in implementing provisions. Reallocations in the framework of the issued order are only permissible by mutual agreement. All stated quantities are confirmed subject to a deviation of plus/minus 10 %.

## § 3 Delivery period and delay in delivery

(1) The delivery period is individually agreed resp. stated by the seller when accepting the order. Time bargains will not be confirmed.

(2) If the seller cannot observe binding delivery periods due to reasons for which he is not responsible (non-availability of the service), the seller will immediately inform the buyer of this fact and at the same time inform the buyer of the new expected delivery period. If this service is also not available within the new delivery period, in this case the seller is entitled to withdraw from the contract wholly or partially; a return service already provided by the buyer will be immediately reimbursed by the seller. Particularly applicable as a case of non-availability of the service in this respect is the unpunctual self delivery by the buyer through his suppliers if he has concluded a congruent covering action. The seller's statutory withdrawal and termination rights as well as the statutory regulations on the processing of the contract with an exclusion of the obligation to perform (e.g. impossibility or unreasonableness of the service and/or supplementary performance) remain unaffected. The buyer's withdrawal and termination rights remain exempt in accordance with § 8 of these general terms and conditions.

The occurrence of delayed delivery by the seller is basically determined according to the statutory regulations; however, the seller is generally entitled to a grace period for delivery of 18 days. In each case, however, a reminder by the buyer is necessary. If the seller gets into delivery default, the buyer can in this case demand flat rate damages for damages he has incurred due to the delay. The lump-sum compensation amounts to 0.5% of the net price (delivery value) for each completed calendar week of the delay; however, in total a maximum of 5% of the delivery value of the goods delivered late. The seller has the right to prove that the buyer has not incurred any damages at all or only considerably less damages than the aforementioned flat-rate amounts.

## § 4 Delivery, passing of risk, acceptance, default of acceptance

(1) The delivery is made subject to agreement.

(2) The risk of accidental loss and accidental deterioration of the goods shall transfer to the buyer at the latest when the goods are handed over. In the case of a mailing purchase, however, the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay shall already be transferred upon the delivery of the goods to the shipping agent, the carrier or another person or institute designated to execute the shipment. Delivery shall have occurred even if the buyer is in default with respect to acceptance.

(3) If the buyer defaults in accepting delivery, omits an act of cooperation or if the delivery is delayed due to other reasons for which the buyer is responsible, then the seller is entitled to claim compensation for the damages he has incurred including additional expenses (e.g. storage costs). (This therefore refers to damages arising from a buyer simply not accepting the goods delivered on time, etc.). The seller will charge compensation for this to the value of 2 % of the gross product value per calendar week, starting with the delivery period resp. – for lack of a delivery period – with the notification of the readiness of the goods for dispatch.

The seller's right to prove greater damages and the seller's statutory claims (in particular compensation for additional expenses, appropriate compensation, termination) remain unaffected; however, the lump sum is to be credited to further monetary claims. The buyer is entitled to prove that the seller incurred no damage at all or only considerably less damage than the aforementioned flat-rate amounts.

## § 5 Prices and payment terms

(1) Unless otherwise agreed in a particular case, the prices and conditions in the agreed currency confirmed in the order confirmation shall apply.

(2) In case of a possibly agreed mailing purchase, the buyer shall bear all transport costs and the costs of a transport insurance policy possibly requested by the buyer. Transport and all other packaging subject to the packaging regulations shall not be taken back by the seller; they become the property of the buyer; an exception to this is pallets.

(3) The due date for the purchase price is based on the conditions stated in the respective order confirmation.

(4) The buyer gets into default upon the expiry of the aforementioned payment deadline. Interest is to be paid on the purchase price during the default period at the respectively valid statutory default interest rate. The seller retains the right to assert further damages caused by the delay. With regard to merchants our claim to the commercial interest after the due date (§ 353 HGB) remains unaffected.

(5) The buyer shall only be entitled to execute offsets or retentions in so far as the respective counterclaim has a legal effect or is undisputed. In the case of defects in the delivered goods § 7 paragraph 6 remains unaffected.

(6) If after conclusion of the contract it becomes clear that the buyer may have insufficient funds to meet the seller's payment demand

(e.g. through application to open insolvency proceedings), the seller is entitled according to statutory regulations to refuse performance and, if necessary, after having a fixed time limit, to withdraw from the contract (§ 321 BGB). In the case of contracts on the manufacturing of unacceptable objects (individual productions), the seller is entitled to declare his withdrawal immediately; the statutory regulations concerning the dispensability of the fixing of a time-limit shall remain unaffected.

#### à§ 6 Retention of title and assignment of claims

(1) Until all current and future accounts receivable arising from the purchase agreement and the ongoing business relationship have been paid completely (secured claims), the seller retains the right of ownership to the supplied products.

(2) The goods which are subject to retention of title may not be pledged to third parties or placed in escrow before payment in full of the secured receivables. The buyer is obliged to inform the seller immediately in writing if and to what extent the goods belonging to us have been accessed by third parties.

(3) If the buyer acts in contravention of this contract, in particular in the case of non-payment of the due purchase price, the seller is entitled to withdraw from the contract according to the statutory regulations and to demand that the goods are returned to use due to reservation of title and withdrawal. If the buyer fails to pay the due purchase price, the seller is only entitled to assert these rights if he has previously set the buyer a deadline for payment to no avail or setting this type of deadline is dispensable according to the statutory regulations.

(4) The buyer is authorised to resell and/or process the goods under retention of title in a proper business transaction. In this case the following terms shall apply in addition.

(a) The retention of title extends to the full value of the products ensuing from the processing, mixing or combining of the seller's goods, whereby the seller is deemed to be the manufacturer. Should property rights of third parties exist in the case of processing, blending or combining their goods, the seller shall acquire joint ownership in the proportion of the invoice values of the processed, blended or combined goods. In all other cases the same applies to the ensuing products as applies to the goods delivered subject to retention of title

(b) The buyer already assigns to the seller as a security claims against third parties arising from the resale of goods or the product in full resp. to the value of the possible joint ownership share by the seller in accordance with the aforementioned paragraph. The seller accepts the assignment. The buyer's obligations, specified in item 2 shall also apply in consideration of the assigned claims.

(c) The buyer along with the seller is entitled to collect the claim. The seller undertakes not to collect the claim as long as the buyer meets with his payment obligations to the seller, does not get into payment default, has made no application to open insolvency proceedings and there is no other evidence that he is unable to pay. However, if this is the case, the seller can demand that the buyer informs the seller of the assigned claims and their debtors, provides all necessary details on the collection, hands over the related documents and informs the debtors (third parties) of the assignment.

(d) If the realisable value of the securities of the seller should exceed the value of the claim by more than 10%, the supplier shall release securities at the discretion of the seller at the request of the buyer.

#### § 7 Warranty claims of the buyer

(1) The statutory regulations shall apply for the rights of the buyer in the case of defects of quality and defects of title (including incorrect and short delivery), providing nothing has been determined to the contrary in the following. The special statutory provisions for the final delivery of goods to a consumer remain unaffected in any case (suppliers' recourse according to §§ 478, 479 BGB).

(2) The basis for the seller's responsibility for defects is above all the agreement made on the features of the goods. As regards the quality of the goods, at least those product specifications (also those of the manufacturer) which were made available to the buyer before his order or which have been incorporated in the contract in the same way as these general terms and conditions shall be deemed agreed upon.

(3) Insofar as the feature was not agreed, it is to be judged according to the statutory regulation whether a defect is on hand or not (§ 434 paragraph 1 S 2 and 3 BGB). However, the seller shall not assume any responsibility for public statements made by the manufacturer or other third parties (e.g. advertising messages).

(4) The warranty claims of the buyer require that he has observed his statutory obligations to examine the goods and to give notice of defects (§§ 377, 381 HGB). Should a defect not be detectable during the initial inspection be found at a later date, we are to be advised of the defect immediately in writing. The notification is considered to have been made immediately if it is done within two weeks, whereby the punctual dispatch suffices for the observance of the deadline. Irrespective of this obligation to examine the goods and give notice of defects, the buyer is obliged to give notification in writing of obvious defects (including incorrect and short delivery) within two weeks from delivery, whereby the punctual dispatch of the notification suffices here as well for the observance of the deadline. If the buyer misses the correct examination and/or notification of defects, the seller's liability for the failed notification of defects is excluded.

(5) If the delivered item is defective, then the buyer has the choice of satisfying the guarantee by reworking or replacing the goods. If the buyer does not declare which of the two rights he has selected, in this case the seller can set him a deadline. If the buyer does not make his choice within the deadline, the seller is entitled in this case to make the choice after the deadline has elapsed.

(6) The seller is entitled to make the due supplementary performance dependent on the buyer paying the due purchase price. However, the buyer is entitled to retain an appropriate part of the purchase price relative to the defect.

(7) The buyer is obliged to give the seller the time and opportunity necessary for the due supplementary performance, in particular to hand over the rejected goods for test purposes. In the case of a replacement the buyer must return to the seller the defective goods according to statutory regulations.

(8) The expenditure necessary for the purpose of the test and supplementary performance, in particular transport, road, work and material costs, shall be borne by the seller if a defect actually exists. However, should the buyer's demand for a correction of defects prove to be unjustified, the seller may claim back the costs he has incurred for this from the buyer.

(9) In urgent cases, e.g. to prevent disproportionate damage, the buyer has the right to correct the defect himself and to demand compensation for the expenses objectively necessary for this. The seller is to be informed immediately of such work carried out independently, if possible beforehand. The right to correct the defect independently does not exist if the seller would have been entitled to refuse a relevant supplementary performance according to statutory regulations.

(10) Once the supplementary performance has failed or a deadline to be set by the buyer has expired for the supplementary performance without result or is dispensable according to the statutory regulations, the buyer may withdraw from the contract or reduce the purchase price. In case of an insignificant defect, however, the withdrawal shall be excluded.

(11) The buyer's claims for damages or compensation of wasted expenses shall only exist in compliance with § 8, otherwise they shall be excluded.

#### § 8 Other liability

(1) Unless otherwise stipulated in these general terms and conditions, including the following provisions, the seller shall be liable in the case of a breach of contractual and non-contractual obligations in compliance with the applicable statutory provisions.

(2) The seller shall be liable for damages - irrespective of the legal reason - in the case of intent and gross negligence. The seller shall only be liable in the case of slight negligence in the following cases

(a) for damages arising from injury to life, body or health,

(b) for damages from the breach of an essential contractual obligation (if compliance with this duty is essential for the execution of the contract and if the other party legitimately trusts in the compliance with this duty; in this case the seller's liability, however, shall be restricted to the compensation for foreseeable, typically arising damage

(3) The liability restrictions resulting from paragraph 2 shall not apply if the seller has concealed a defect with intent to deceive or a guarantee was given for the quality of the goods. The same applies to claims by the buyer according to the Product Liability Act.

(4) The buyer may rescind or terminate the contract on the grounds of breach of duty which is not based on a defect of the goods only if and when the circumstance entitling to rescission is based on a fault for which the seller is responsible. An unrestricted right of termination by the buyer (in particular according to §§ 651, 649 BGB) shall be excluded. Besides this, the statutory prerequisites and legal consequences shall apply.

The seller shall assume no liability whatsoever towards third parties regarding business transactions conducted on behalf of the buyer. Should the seller have been given a design as a template for the contract, the buyer declares explicitly that it is his own design or that he is entitled to dispose over this design.

#### **§ 9 Statute of limitations**

(1) Contrary to § 438 paragraph 1 no. 3 BGB, the general statute of limitations for claims from defects of quality and defects of title is one year from delivery. If an acceptance has been agreed, the statute of limitations begins upon the acceptance.

(2) The aforementioned statute of limitations of the purchase right also apply to contractual and non-contractual damage claims by the buyer, based on a defect in the goods, apart from if the application of the regular statutory statute of limitations (§§ 195, 199 BGB) would lead to a shorter statute of limitations in the individual case. The statutes of limitations of the Product Liability Act remain unaffected in any case. Otherwise the statutory statutes of limitations shall apply exclusively for damage claims by the buyer in accordance with § 8.

#### **§ 10 Applicable law and court of jurisdiction**

(1) The laws of the Federal Republic of Germany shall apply for these general terms and conditions and all legal relationships between the seller and the buyer to the exclusion of all international and supranational (contractual) legal systems, in particular the UN purchase law. Prerequisites and effects of reservations of title according to § 6 in contrast are subject to the law at the respective location of the item, providing the legal choice made according to this in favour of German law is impermissible or ineffective.

(2) If the buyer is a businessman in terms of the commercial code, a legal entity under public law or a special fund under public law, an exclusive – also international – court of jurisdiction for all disputes arising directly or indirectly from this contractual relationship is the company headquarters of the seller in Hamburg. The seller is, however, also entitled to initiate legal proceedings at the buyer's place of general jurisdiction.

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