

# PFANNENSCHMIDT–HAMBURG

## General Conditions of Sale (GSTC) K.-W. Pfannenschmidt GmbH, Hamburg

### 1. Scope of Applicability and Validity of the GCS

1.1 Our General Conditions of Sale (GCS) shall apply exclusively to all offers made by us and contracts entered into by us. The general standard terms and conditions of our business partner (hereinafter referred to as the "Customer") shall, where they deviate from our GCS, only become a component of the contract if expressly consented to in writing by us. Our consent shall always apply exclusively to the individual case at hand.

### 2. Concluding a Contract, Conditions of Payment

2.1 . Our request for an offer regarding price, value, delivery date and validity is not binding. A contract is only formed once it has been confirmed in writing by us.

2.2 Provided that nothing to the contrary has been agreed to in writing, the Customer is obliged to pay the purchase price net cash (without any discount) immediately upon receipt of the invoice. Payments are deemed effective when the amount is available (deposited) in full to us in one of our bank accounts. It is understood that value-added tax in the amount stipulated by law will be added to our prices.

2.3 In the case of default/delay of payment by the Customer, we are entitled, without prejudice to further legal claims, to charge interest in the amount of 9% above the base interest rate and a default fee of EUR 40.00. Should we simultaneously have more than one debt claim against the purchaser, then we alone are authorised to determine the appropriation of payments to the individual claims. The default/delay by the Customer in satisfying a claim authorises us, without the need to provide special notification, to refuse all further deliveries until the Customer has provided cash in advance. The Customer is only entitled to withhold payment or offset payment against claims which have either been acknowledged or undisputed by us or which have been finally and conclusively determined by law. Furthermore, the Customer may only exercise a right of retention if its counter claim arises under the same contract.

### 3. Passing of Risk, Shipping

3.1 The Incoterms, as amended at the respective point in time, shall apply. The place of performance for our obligation to deliver is the respective distributing warehouse.

3.2 Provided that nothing to the contrary has been agreed to in writing, the goods are shipped for the account of and at the risk of the Customer. Any increases occurring with respect to shipping rates, additional costs for storage etc. after the contract has been entered into will be charged to the Customer. Unless an express written agreement has been reached, we retain the right to choose the shipping route and the shipping method.

3.3 With respect to accidental loss, loss or deterioration of the goods, even in the case of deliveries where freight is prepaid, risk shall pass to the Customer at the time of the transfer of the goods to the commissioned carrier, but no later than the time at which the goods leave the distributing warehouse or when the goods are made available for pick up by the Customer or a party commissioned by the Customer to do so.

### 4. Delivery, Time of Delivery and Delay in Delivery

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4.1 In cases where delivery of our suppliers made to us is incorrect, incomplete, late and/or completely fails to be made, we are entitled to rescind the contract as a whole or in part. In the case of a delivery to us which is incomplete, we are only entitled to rescind the contract in respect of the entire part which was not delivered to us or a portion thereof. In this case, the Customer is entitled to rescind the contract as a whole if the performance by us of that part of the contract which has not been rescinded, i.e. partial deliveries which have been made and/or which could be made, is of no interest to the Customer. The parties have no claim against the respective other party to compensation for loss / damage occasioned by the complete or partial rescission.

4.2 Should the Customer fail to take delivery of the goods, or fail to request delivery of goods ordered within the agreed upon time limits or within reasonable time limits, we are entitled, subsequent to the expiry of a reasonable time limit fixed by us, at our option, to charge the goods to the Customer and to forward these unsolicited to it, or to store the goods at its expense.

4.3 The time of delivery is understood as an approximate agreement unless an agreed upon time / period of delivery has been expressly agreed.

4.4 Cases of force majeure (government measures, epidemics, pandemics, riots, strikes, lockouts, fire, machine malfunctions, bottlenecks in the supply of materials or energy, transport obstructions) as well as other reasons beyond our control which delay the delivery of the goods (are deemed to be "force majeure") shall entitle us to postpone the delivery date accordingly. We are obliged to inform the customer immediately of such circumstances when we become aware of them. If the delay subsequently makes delivery impossible, especially in the case of trade embargoes, or if delayed service performance is unreasonable for one of the two parties due to the aforementioned events, this party shall be entitled to withdraw from the contract. In the case of such a rescission, neither party is entitled to claim compensation for loss occasioned by the rescission.

In the case of a personalised trade embargo against one of the parties, the other party is entitled for assertion of claims for damages, unless the trade embargo is in breach of applicable EU law.

4.5 Should we default in making a delivery, the Customer is only entitled, subsequent to the expiry of a reasonable extension of time of at least 14 days which it has given to us, to rescind the contract. § 6 shall apply for possible claims due to delay in delivery and impossibility, including the liability according to § 287 BGB.

## 5. Warranty

5.1 The Customer is obliged to inspect delivered goods immediately, if necessary by carrying out an analysis and/or a sample testing / processing, to determine whether these are in a flawless condition and suitable for the purpose for which they are intended. Where the Customer fails to carry out the inspection, the goods are deemed as approved of and any liability on our part for defects which are ascertainable by an analysis or sample testing carried out at same other time is excluded.

Any defects ascertainable by the inspection of the goods must be reported immediately upon receipt of the results of the proper inspection. Latent defects must be reported immediately once the Customer, by applying

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extreme care, is able to recognise such. The goods are deemed as proofed if we do not receive the notice of defects within three working days after receipt of the goods or, if the defect has not been ascertainable by the immediate inspection three working days after customer had recognized it (working days in this sense are Monday to Friday with the exception of public holidays at the place of delivery), unless in individual cases special circumstances make a different period of time appear appropriate.

5.2 Any further processing or disposition of the goods in respect of which defects were ascertained, or which could have been ascertained had extreme care been used, is done at the Customer's sole risk.

We are not liable for loss / damage incurred by the Customer in conjunction with the continuation of the processing or the disposition of the goods.

5.3 Where the Customer carries out a timely inspection of the goods and has submitted a notice of defects, we are entitled, at our option, to rectify the defects of the delivered goods or to make substitute delivery. If the rectification or the substitute delivery is unsuccessful, the Customer is entitled to reduce the purchase price by a reasonable amount or to rescind the contract. If we make a substitute delivery or if the customer rescinds the contract the customer has to compensate us for the use.

5.4 § 6 below applies for the liability to compensate damages out of warranty.

5.5 Warranty claims become time-barred within 12 months from date of delivery. The limitation period for recovery claim against the supplier under section §§ 445b, 478 BGB of the German Civil Code (Bürgerliches Gesetzbuch) shall not be affected by the foregoing sentence. Nor shall the foregoing provisions place any limit on claims for damages due to injury to life, limb or health caused by defects or claims under the product liability act.

Other claims for damages under a warranty in the event of gross negligence, intent or the breach of fundamental contractual obligations shall also remain unaffected by this provision (see clause 6).

## **6. Liability**

6.1 Claims for damages of any kind against us, our legal representatives and vicarious agents within the scope of the warranty and outside the scope of the warranty, in particular also in the case of damage that does not occur to the delivery item itself - e.g. due to breach of contractual ancillary obligations, incorrect advice, from culpa in contrahendo, from tortious acts are excluded, unless the following rules determine otherwise.

6.2. Liability shall only apply in the event of intent or gross negligence and in the event of breach of essential contractual obligations also in the event of simple negligence. Essential contractual obligations are those whose fulfilment makes the proper performance of the contract possible in the first place and on whose compliance the buyer regularly relies and may rely.

6.3 Unless there is intent, our liability is limited to the reasonably foreseeable damage typical for the contract. The above limitations of liability shall not apply in the event of injury to life, body or health, in the event of defects which we have cunningly withheld, or in the event of defects in the delivery item, insofar as liability exists under the Product Liability Act for damage to privately used items and for personal injury, as well as in the event of non-compliance with a quality guarantee.

6.4. Reimbursements of expenses of the customer according to § 284 BGB (German

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Civil Code) are waived insofar as a claim for compensation of damage instead of performance according to the above regulations is excluded.

6.5. The legal burden of proof is not changed by the provisions of this clause.

## **7. Retention of Title**

7.1 We retain property in the goods delivered by us until payment in full of all of our claims arising from the business relationship with the Customer. Cheques and bills of exchange are accepted by us only as conditional payment (4). Charges for cheques and bills, including the costs of a bill protest, shall be reimbursed to us by the Customer. The rights pursuant to this Section 7 shall be retained by us until complete and final payment of the cheque or the bill of exchange.

7.2 Addition or converting of the delivered goods is conducted for us without the result of any obligation for us. If our reserved goods are converted, compounded or confused with other goods that do not belong to us, we shall be entitled to ownership of the new property or confused stock in the proportion of invoiced value of the reserved goods to the value of the other converted, compounded or confused goods at the time of the converting, compounding or confusion. If the customer acquires sole ownership of the new product, he herewith undertakes to transfer to us coownership of a new product in the proportion of our invoiced value of our reserved goods to the value of the other converted, compounded or confused items at the time of converting, compounding or confusion, and shall hold the same in safe custody for us according to the principles of sound stewardship.

7.3 The Customer is entitled to dispose of conditional goods which are owned by us in the normal course of business. With respect to such goods, the Customer is not permitted to pledge, to transfer property by way of security nor make an assignment for security. The Customer's claims from the resale of the goods under reservation of title are hereby assigned to ourselves, regardless of whether these goods are sold without being processed or after being processed and regardless of whether they are sold to one or several customers. If the Customer sells the goods under reservation of title together with other goods that do not belong to us, the assignment of the claim from the resale shall only be valid to the equivalent of the invoice value of the goods that have been sold and that are under reservation of title. If the goods under reservation of title are sold after being processed, particularly after being processed with other goods that do not belong to us, the assignment shall only be valid in respect of our share of the item that has been sold.

7.4 The Customer undertakes to keep the conditional goods insured against the customary risks. It hereby assigns to us, in advance, its claims against the insurer to compensation for loss of or damage to the conditional goods.

7.5 We hereby accept the assignments made by the Customer in this Section 7.

7.6 Upon request by the Customer, we undertake to release those securities, the choice of which being ours, to which we are entitled pursuant to the foregoing provisions to the extent to which the amount of such securities exceeds 10% of the debt claims to be secured.

7.7 Should, pursuant to the law of the country of the Customer, the Customer's assistance be required to effect the retention of property (e.g. for making registrations), the purchaser is obliged to perform such acts.

7.8 If the Customer defaults/delays in making a payment, we are entitled to prohibit the Customer, either completely or partially (e.g. merely from selling or processing them further, etc.), from disposing of the conditional goods. Furthermore, we are

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entitled in these circumstances to demand the surrender of the conditional goods to us.

7.9 With respect to the Customer, if the objective requirements which give rise to the duty to make an insolvency application are present, the Customer undertakes to refrain from any disposition whatsoever of the conditional goods, regardless of their nature, without having to be specifically requested to refrain from doing so by us. The Customer is obliged to provide us immediately with an inventory of the conditional goods. In these circumstances, we are also entitled to demand the surrender of the conditional goods. The same applies analogously to debt claims which have been assigned to us pursuant to the foregoing paragraphs. In addition, without the need for a request by us, the Customer is obliged to provide us with copies of the names and addresses of all debtors and of the documents which evidence claims against the Customer.

## **8. Place of Jurisdiction, Place of Performance and Applicable Law**

8.1 The place of performance for all mutual claims is our place of business.

8.2 The law of the Federal Republic of Germany shall apply to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

8.3 If the customer has its registered office in the EU or in the European Economic Area, the exclusive place of jurisdiction shall be at our registered office. The parties are also free to sue the other party at their general place of jurisdiction.

If, on the other hand, the customer is domiciled outside the EU and the European Economic Area, the arbitration court of the Hamburg Chamber of Commerce shall have exclusive jurisdiction over all disputes arising from and in connection with the contracts concluded under the terms of these General Terms and Conditions and shall make its final decision to the exclusion of the ordinary proceedings. The defendant is entitled to file a counterclaim before the arbitration court. The place of arbitration shall be Hamburg, the language of the proceedings shall be German.

The proceedings and in particular the taking of evidence shall be made in accordance with the Rules of the Court of Arbitration of the Hamburg Chamber of Commerce and the rules of the 10th Book of the Code of Civil Procedure. Procedural principles of common law, such as in particular the submission of documents (so-called document production), shall not apply directly or appropriately. To the extent that one party may have to reimburse the other party for legal fees in connection with the arbitration proceedings, such fees shall be limited to those billable under the German Lawyers' Fees Act (Rechtsanwaltsvergütungsgesetz - RVG).

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