

**TOKYO SANGYO EUROPE GmbH**  
**GENERAL PURCHASE CONDITIONS**

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**1. Scope of application, form of contract**

- 1.1. These General Purchase Conditions (“GPC”) shall apply to all business relations with our business partners and suppliers (“Seller”). The GPC shall only apply if the Seller is an entrepreneur (§ 14 German Civil Code – “BGB”), a legal entity under public law or a special fund under public law.
- 1.2. The GPC shall apply in particular to contracts for the sale and/or delivery of movable Goods (“Goods”), irrespective of whether the Seller manufactures the Goods itself or purchases them from suppliers (§§ 433, 650 BGB). Unless otherwise agreed, the GPC in the version used at the time we make the order or, in any case, the version last notified in text form shall also apply as a framework contract for similar future contracts without us having to refer to them again in each individual future contract.
- 1.3. These GPC shall apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the Seller 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, for example even if we accept the Seller's deliveries without reservation in the knowledge of the Seller's general terms and conditions.
- 1.4. Individual contracts made with the Seller in individual cases (including collateral agreements, supplements and amendments) shall in any case take precedence over these GPC. Subject to proof to the contrary, such individual contract shall prevail upon a written contract or our written confirmation.

- 1.5. Legally relevant declarations and notifications of the Seller with regard to the contract (e.g. setting of a deadline, reminder, withdrawal) shall be made in writing, i.e. in written or text form (e.g. letter, e-mail, fax). Legal formal requirements and further evidence, in particular in case of doubt regarding the legitimacy of the declarant, shall remain unaffected.
- 1.6. References to statutory provisions shall only be used for clarifying definitions. Even without such clarification, the statutory provisions shall apply, unless they are directly amended or expressly excluded in these GPC.

**2. Conclusion of contract**

- 2.1. Our order shall be deemed binding at the earliest upon written submission or confirmation. The Seller 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.
- 2.2. The Seller is required to confirm our order in writing within a period of 2 weeks or, in particular, to execute it without reservation by dispatching the Goods (acceptance). A delayed acceptance is considered a new offer and requires acceptance by us.

**3. Delivery time and delay**

- 3.1. The delivery time specified by us in the order is binding. The Seller is obliged to inform us immediately in writing if he is unlikely to be able to meet the agreed delivery time - for whichever reason.

3.2. If the Seller does not perform or fails to perform within the agreed delivery time or is in delay, our rights - in particular to rescission and damages - shall be determined in accordance with the statutory provisions. The provisions in Section 3.3 shall remain unaffected.

3.3. If the Seller is in delay, we may - in addition to further statutory claims – demand a lump-sum compensation for our damages due to the delay in the amount of 1% of the net price per completed calendar week, but in total not more than 5% of the net price of the Goods late delivered. We reserve the right to prove if higher damages have incurred. The Seller reserves the right to prove if there is no damage at all or only a significantly lower damage has incurred

#### **4. Performance, delivery, transfer of risk, delay in acceptance**

4.1. The Seller shall not be entitled to render the performance owed by it to third parties (e.g. subcontractors) without our prior written consent. The Seller shall bear the procurement risk for its services unless otherwise agreed in individual cases (e.g. stock restriction).

4.2. Delivery shall be made within Germany to the place specified in the order without fee. If the place of destination is not specified and nothing else has been agreed, the delivery shall be made to our place of business in Frankfurt am Main. The respective place of destination shall also be the place of performance for the delivery and any subsequent performance (obligation to deliver).

4.3. The delivery must be accompanied by a delivery bill stating the date (issue and dispatch), the content of the delivery (article number and quantity) and our order ID (date and number). If the delivery bill is missing

or incomplete, we shall not be responsible for any delay in the process and payment resulting therefrom. A corresponding dispatch bill with the same content must be sent to us separately from the delivery bill.

4.4. The risk of accidental loss and accidental deterioration of the Goods 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* in the event of acceptance. The handover or acceptance shall be deemed equivalent if we are in delay of acceptance.

4.5. The statutory provisions shall apply to the occurrence of our delay in acceptance. However, the Seller must also expressly offer us its performance if a determined or determinable calendar time has been agreed for an action or cooperation on our part (e.g. provision of material). If we are in delay of acceptance, the Seller may demand compensation for its additional expenses in accordance with the statutory provisions (§ 304 BGB). If the contract relates to an unjustifiable item to be manufactured by the Seller (individualized product), the Seller shall only be entitled to further rights if we have undertaken to cooperate and are responsible for the failure to cooperate.

#### **5. Price and terms of payment**

5.1. The price stated in the order is binding. All prices include statutory value added tax if this is not shown separately.

5.2. Unless otherwise agreed in the individual case, the price includes all services and ancillary services by the Seller (e.g. assembly, installation) as well as all

ancillary costs (e.g. proper packaging, transport costs including any transport and liability insurance).

- 5.3. The agreed price is due for payment within 30 calendar days of complete delivery and performance (including any agreed acceptance) and receipt of a proper invoice. If we make payment within 14 calendar days, the Seller shall grant us a 3% discount on the net amount of the invoice. In the case of 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 delay caused by the banks involved in the payment process.
- 5.4. We do not owe any maturity interest. The statutory provisions shall apply to payment delay.
- 5.5. We shall be entitled to the rights to set-off and retention as well as the defense of non-performance of the contract to the extent provided by law. In particular, we shall be entitled to withhold payments due as long as we are still entitled to claims against the Seller arising from the Seller's incomplete or defective performance.
- 5.6. The Seller shall have a right to set-off or retention only in respect of counter-claims which have become *res judicata* or are undisputed.

## **6. Confidentiality and retention of title**

- 6.1. We reserve the property rights and copyrights to illustrations, plans, drawings, calculations, implementation instructions, product descriptions and other documents. Such documents are to be used exclusively for the contractual performance and returned to us after completion of the contract. The documents must be kept secret from third parties, even after termination of the contract. The obligation to maintain confidentiality shall only expire if and to

the extent that the knowledge contained in the documents provided has become generally known.

- 6.2. 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 Seller for production. Such items shall - as long as they are not processed - be stored separately at the Seller's expense and insured to a reasonable extent against destruction and loss.
- 6.3. Any processing, mixing or combination (further processing) of provided items by the Seller shall be carried out for us. The same shall apply in the event of further processing of the Goods supplied by us, so that we shall be deemed to be the manufacturer and shall acquire ownership of the product at the latest upon further processing in accordance with the statutory provisions.
- 6.4. 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 Seller for transfer of title conditional on payment of the purchase price, the Seller'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 prior to payment of the purchase price with advance assignment of the claim arising therefrom (alternatively, the simple reservation of title extended to the resale shall apply). This excludes all other forms of retention of title, in particular the extended retention of title, the passed-on retention of title and the retention of title extended to further processing.

## 7. Deficient delivery

- 7.1. The statutory provisions shall apply to our rights in the event of quality and title defects of Goods (including wrong and insufficient delivery as well as improper assembly, defective assembly, operating or instruction manual) and in the event of other breaches of duty by the Seller, unless otherwise stipulated below.
- 7.2. In accordance with the statutory provisions, the Seller shall be liable in particular for ensuring that the Goods have the agreed quality when the risk passes to us. In any case, those product descriptions, which - in particular designated or referenced in our order - are the subject matter of the respective contract or have been included in the contract in the same way as these GPC, shall be deemed to be an agreement on the quality. It makes no difference whether the product description originates from us, the Seller or the manufacturer.
- 7.3. We are not obliged to inspect the Goods or make special inquiries about any defects upon conclusion of the contract. In partial deviation from § 442 para.1 sentence 2 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.
- 7.4. The statutory provisions (§§ 377, 381 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 appraisal including the delivery documents (e.g. transport damage, wrong and insufficient delivery) or which are recognizable during our quality control in the random sampling procedure. If acceptance has been agreed, there shall

be no obligation to inspect. Otherwise, it shall depend on the extent to which an inspection is feasible in the ordinary course of business, taking into account the circumstance in an individual case. Our obligation to give notice of defects discovered later shall remain unaffected. Notwithstanding our duty to inspect, our complaint (notice of defect) shall be deemed to have been made without undue delay and in good time if it is sent within working days after the defect is found, or after delivery in the case of obvious defects.

- 7.5. Subsequent performance shall also include the removal of the defective Goods and their re-installation, provided that the Goods have been installed in another item or attached to another item in accordance with their type and purpose of use; our statutory claim to reimbursement of corresponding expenses shall remain unaffected. The expenses necessary for the purpose of inspection and subsequent performance shall be borne by the Seller even if it turns out that there was actually no defect. Our liability for damages in the event of an unjustified request to remedy a defect shall remain unaffected; in this respect, however, we shall only be liable if we recognized or were grossly negligent in not recognizing that there was no defect.
- 7.6. Without prejudice to our statutory rights and the provisions in Section 7.5, the following shall apply: If the Seller fails to meet its obligation to provide subsequent performance - at our choice, 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 shall be entitled to remedy the defect ourselves and to demand reimbursement from the Seller of the expenses required for this purpose or a corresponding advance payment. If subsequent performance by the Seller 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 to be set; we shall inform the Seller of such circumstances without undue delay, if possible in advance.

7.7. Otherwise, in the event of a quality or title defect, 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.

## **8. Supplier recourse**

8.1. We shall be entitled to our statutory rights of recourse within a supply chain (supplier recourse pursuant to §§ 445a, 445b, 478 BGB) without restriction in addition to the claims for defects. In particular, we shall be entitled to demand from the Seller exactly the type of subsequent performance (repair or replacement delivery) that we owe to our customer in an individual case. Our statutory right of choice (§ 439 para.1 BGB) shall not be restricted hereby.

8.2. Before we acknowledge or fulfill a claim for defects asserted by our customer (including reimbursement of expenses pursuant to §§ 445a para.1, 439 para.2 and 3 BGB), we shall notify the Seller and request a written statement, briefly explaining 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 Seller shall be responsible for proving the contrary.

8.3. Our claims for supplier recourse shall also apply if the defective Goods have been further processed by us or

another contractor, e.g. by incorporation into another product.

## **9. Product liability**

9.1. If the Seller is responsible for product damage, he shall indemnify us against claims by third parties to the extent that the cause lies within his sphere of control and organization and he himself is liable in relation to third parties.

9.2. Within the scope of its indemnification obligation, the Seller shall reimburse expenses pursuant to §§ 683, 670 BGB arising from or in connection with a claim by third parties including recall actions carried out by us. We shall inform the Seller about the content and scope of recall measures - to the extent possible and reasonable - and give him the opportunity to explain. Further legal claims shall remain unaffected.

9.3. The Seller shall take out and maintain a product liability insurance with a lump sum coverage of at least EUR 10 million per personal injury/property damage.

## **10. Statute of limitations**

10.1. The mutual claims of the contracting parties shall become statute-barred in accordance with the statutory provisions, unless otherwise stipulated below.

10.2. Notwithstanding § 438 para.1 no.3 BGB, the general limitation period for claims based on defects shall be 3 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 § 438 para.1 no.1

BGB) shall remain unaffected; in addition, claims arising from defects of title shall in no case become time-barred as long as the third party can still assert the right against us - in particular in the absence of a limitation period.

10.3. 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 non-contractual claims for damages due to a defect, the regular statutory limitation period (§§ 195, 199 BGB) shall apply for this, unless the application of the limitation periods of the law on sales leads to a longer limitation period in individual cases.

## **11. Choice of law and place of jurisdiction**

11.1. The law of the Federal Republic of Germany shall apply to these GPC and the contractual relationship between us and the Seller to the exclusion of international uniform law, in particular the UN

Convention on Contracts for the International Sale of Goods.

11.2. If the Seller 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 address in Frankfurt am Main. The same shall apply if the Seller is an entrepreneur within the meaning of § 14 BGB. However, we shall also be entitled in all cases to bring an action at the place of performance of the delivery obligation in accordance with these GPC or a prior individual agreement or at the general place of jurisdiction of the Seller. Overriding statutory provisions, in particular regarding exclusive jurisdiction, shall remain unaffected.