

# General Conditions of Sale

## I. General/Scope

1. These **General Conditions of Sale (GTC)** shall apply to all business relationships with our customers (m/f/d - "**Customer**"). The GTC apply only to Customers who are entrepreneurs as defined in Sect. 14 para. 1 of the German Civil Code (BGB) and who are concluding the transaction in the exercise of their commercial, business, or professional activity, as well as to legal entities and special funds organized under public law.

2. These GTC shall particularly apply to contracts for the delivery of movable items ("**Goods**"), even if we purchase these from third parties (Sect. 433, 650 German Civil Code - BGB), and even if the Customer processes and/or resells the Goods. These GTC apply both to "**Collection Goods**", which are listed in one of our current catalogues and are regularly in stock, and to individually manufactured Goods according to the special wishes of the Customer ("**Custom Manufacturing**").

3. Our GTC shall apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the Customer shall only become part of the contract if and to the extent that we have expressly agreed to their validity in text form. This approval requirement shall apply in any case, e.g. even if the Customer refers to his general terms and conditions in connection with the order without our expressed objection.

4. All agreements made between the Customer and us in connection with the Goods shall result in particular from these GTC, our declaration of acceptance/order confirmations with price information and the "**Quality Specification**" which we make available for retrieval on the Internet and/or shall provide in text form on request.

5. References to the validity of statutory regulations are for the purpose of clarification only. Therefore, the statutory provisions shall therefore apply even without such clarification, unless they are directly amended or expressly excluded in these GTC.

## II. Form, Language

1. Individual agreements made with the Customer in individual cases (including collateral agreements, supplements, and amendments) shall in any case take precedence over these GTC.

2. All agreements made between us and the Customer, as well as any changes to these agreements, must be recorded in text form (e.g. letter, e-mail, fax) in order to be effective. This shall also apply to the text form requirement itself.

3. Also, legally relevant declarations and notifications with regard to the contract (e.g. setting of deadlines, notifications of defects, rescission or reduction) must be made in text form (e.g. letter, e-mail, telefax).

4. In any case, statutory format requirements shall remain unaffected.

## III. Conclusion of Contract

1. Our offers are subject to change and non-binding. This shall also apply to catalogues, Quality Specifications, technical documentation (e.g. drawings,

references to standards of the German Institute for Standardization - DIN), other product descriptions or documents, also in electronic form, for which we reserve property rights and copyrights in accordance with Art. IX. of these GTC.

2. The Customer's order shall be deemed to be a binding contractual offer. Unless otherwise stated in the order, we are entitled to accept this contractual offer within 3 working days (Monday-Friday) of its receipt.

#### **IV. Scope of Delivery**

1. Customary deviations from the order and those which are made on the grounds of legal regulations or represent technical improvements shall be permissible as far as they do not impair the use for the purposes intended by the contract and are reasonable for the Customer.

2. In accordance with the Quality Specification production-related (e.g. weaving-)defects of the Goods are marked and the corresponding value of the Goods is deducted from the order value. The maximum frequency of production-related defects and joints, as well as permissible tolerances of technical parameters of the Goods result in particular from the Quality Specification.

#### **V. Dispatch Time and Delay of Delivery**

1. The dispatch time may be agreed individually or stated in our order confirmation. In the case of Custom Manufacturing or if we otherwise notify the Customer in text form that the Goods are not in stock, the dispatch deadlines stated by us shall be deemed to be approximations and may therefore be exceeded by up to fourteen (14) working days (Monday-Friday), unless a fixed date of dispatch has been agreed.

2. Should we be unable to meet binding dispatch deadlines for reasons beyond our control (non-availability of performance), we shall notify the Customer immediately to this effect and inform him of the estimated new dispatch deadline. If performance remains unavailable within the new dispatch deadline, we shall be entitled to rescind the contract in whole or in part; we shall immediately refund any consideration already paid by the Customer. Non-availability of the performance in the meaning of this clause shall be deemed to be, in particular, our supplier's failure to deliver on time, if we have concluded a congruent hedging transaction, in the event of other disruptions in the supply chain, for example due to force majeure, or if we are not obliged to procure in the individual case.

3. The occurrence of our delay in delivery shall be determined according to the statutory provisions. In any case, however, a reminder by the Customer shall be required.

4. The rights of the Customer according to Art. XII. of these GTC (Liability) shall remain unaffected. The same applies to our statutory rights, especially if our obligation to perform is excluded (e.g. due to impossibility or unreasonableness of performance and/or supplementary performance).

#### **VI. Delivery and Transfer of Risks**

1. Delivery shall be ex works (EXW) in accordance with Incoterms 2020, which shall also be considered the place of performance for the delivery and any supplementary performance. At the demand and cost of the Customer, the Goods may be shipped to another destination ("**Mail Order Purchase**"). Unless otherwise agreed, we are entitled to determine the type of shipment (especially

the carrier, shipping route, packaging) ourselves. Our usual method of packaging is indicated in the Quality Specification; we can deviate therefrom in individual cases if necessary.

2. The risk of accidental loss and accidental deterioration of the Goods shall pass to the Customer upon handover, at the latest. In case of Mail Order Purchase, these risks as well as the risk of delay shall already pass upon delivery of the Goods to the freight forwarder, carrier or the person or institution otherwise designated to carry out the shipment.

3. If the Customer is in default of acceptance, fails to cooperate or our delivery is delayed for other reasons for which the Customer is responsible, we may demand compensation for the resulting damage including additional expenses (e.g. storage costs).

4. Partial deliveries shall be permissible as far as reasonable for the Customer.

## VII. Prices

1. Unless otherwise agreed for individual cases, our prices are quoted ex warehouse (EXW Incoterms 2020), plus value added tax (VAT) at the respective statutory rate, if applicable.

2. In case of Mail Order Purchase (Art. VI.1 of these GTC), the Customer shall bear the shipping costs ex warehouse. Any customs duties, fees, taxes and other public charges shall be borne by the Customer.

## VIII. Payment Conditions

1. The purchase price shall be due and payable without deduction within 30 days of invoicing and delivery or acceptance of the Goods. The Customer shall be in default upon expiry of the aforementioned payment deadline. The statutory default interest rate applicable at the time shall apply if we do not assert any further damages caused by delay. We reserve the right to claim the commercial due date interest rate towards merchants (Sect. 353 German Commercial Code – HGB).

2. We are at any time and also within an ongoing business relationship entitled to make a delivery in whole or in part dependent upon advance payment. We shall declare a corresponding reservation with the order confirmation, the latest.

3. The Customer shall be entitled to rights of set-off or retention only insofar as his claim has been legally established or is undisputed. In the event of defects in the delivery, the Customer's opposing rights shall remain unaffected (e.g. retention).

## IX. Retention of Title

1. We shall retain title to the sold Goods until all our present and future claims arising from the contract and ongoing business relationship ("**Secured Claims**") have been paid in full.

2. The Goods which are subject to retention of title may not be pledged to third parties or assigned as security before full payment of the Secured Claims. The Customer must inform us immediately in writing if an application is made

for opening insolvency proceedings or if third parties attempt to seize or attach Goods which are our property.

3. The Customer shall be authorized to resell and/or process the Goods which are subject to retention of title in the ordinary course of business. The Customer hereby already transfers all claims resulting from this resale to us in the amount of the invoice value of our claim, regardless if this resale takes place before or after a possible processing of the Goods delivered under retention of title. We accept this assignment. Notwithstanding our authority to collect the claim ourselves, the Customer shall remain entitled to collect the claim even after the transfer. In this context, we undertake not to collect the claim ourselves as long and if the Customer is not in default in payment, no filing for insolvency proceedings or other proceedings against his assets exists and if no cessation of payments is given.

4. If the realizable value of the securities exceeds our claims by more than 10%, we shall release securities of our choice at the Customer's request.

#### **X. Title to Information, Confidentiality**

1. We reserve the right to ownership and copyright of all offers, product descriptions, samples, illustrations, calculations, and other documents and information. Documents and information of this kind ("**Confidential Information**") shall be used exclusively for the contractual purposes and returned to us at our request at any time. Confidential Information and the content of our contractual relationship shall be kept confidential from third parties.

2. The obligations according to this Art. X. shall apply even after the end of our contractual relationships. They shall not apply with regard to such documents and information which were or have become public domain or known to the Customer without breach of a confidentiality obligation or developed by the Customer independently without use of or reference to Confidential Information.

#### **XI. Defects Investigation, Warranty**

1. The statutory provisions shall apply to the rights of the Customer in the event of material defects and defects of title (including incorrect and short delivery), unless otherwise stipulated below. The statutory provisions of supplier recourse (Sect. 478 German Civil Code - BGB) and the rights of the Customer arising from any separately issued guarantees, in particular on the part of the manufacturer, shall remain unaffected in all cases.

2. The primary basis of our liability for defects shall be the agreement reached on the quality and the presumed use of the Goods, which results in particular from the Quality Specification. Furthermore, all product descriptions and manufacturer's specifications which are subject of the contract, or which were publicly announced by us (in particular in catalogues or on our internet homepage) at the time of the conclusion of the contract shall be deemed to be an agreement on the quality of the Goods.

3. Insofar as the quality has not been agreed, it is to be assessed according to the statutory regulation whether a defect is present or not (Sect. 434 para.3 German Civil Code - BGB). Public statements made by the manufacturer or on his behalf, in particular in advertising or on a label attached to the Goods, take precedence over statements made by other third parties.

4. As a matter of principle, we shall not be liable for defects of which the Customer is aware at the time of conclusion of the contract or is not aware due to gross negligence (Sect. 442 German Civil Code - BGB). Furthermore, the Customer's claims for defects presuppose that he has fulfilled his statutory obligations to inspect and give notice (Sect. 377, 381 German Commercial Code - HGB).

5. If a defect becomes apparent during delivery, inspection or at any later time, we must be notified of this in text format without delay. In any case, obvious defects shall be notified within four (4) working days (Monday-Friday) from delivery and defects not recognizable during the inspection within the same period from discovery, in text form. If the Customer fails to carry out the proper inspection and/or give notice of defects, our liability for the defect not reported or not reported in time or not reported properly shall be excluded in accordance with the statutory provisions. In the case of Goods intended for fitting, mounting or installation, this shall also apply if, as a result of the breach of one of these obligations, the defect only became apparent after the corresponding processing; in this case the Customer shall in particular not be entitled to reimbursement of the corresponding costs.

6. If the delivered item is defective, we may initially choose whether to provide subsequent performance by remedying the defect (rectification) or by delivering a defect-free item (replacement). If the type of supplementary performance chosen by us is unreasonable for the Customer in the individual case, the Customer may reject it. Our right to refuse supplementary performance under the statutory conditions shall remain unaffected.

7. The Customer must provide to us the time and opportunity necessary for the supplementary performance owed, and in particular hand over the rejected Goods for inspection purposes. In the event of a replacement delivery, the Customer shall return the defective item to us at our request in accordance with the statutory provisions; however, the Customer shall not be entitled to return the Goods. The supplementary performance does not include the dismantling, removal or disassembly of the defective item or the re-fitting, mounting or installation of a defect-free item if we were not originally obliged to perform these services; any mandatory statutory claims of the Customer for reimbursement of corresponding dismantling and assembly costs remain unaffected.

8. We shall only bear or reimburse the expenses necessary for the purpose of inspection and supplementary performance, in particular transport, travel, labor and material costs and, if applicable, dismantling and assembly costs, in accordance with mandatory statutory provisions and these GTC.

9. If a reasonable deadline to be set by the Customer for the supplementary performance has expired unsuccessfully or is dispensable according to the statutory provisions, the Customer may withdraw from the contract or reduce the purchase price in accordance with the statutory provisions. In the case of an insignificant defect, however, there is no right of withdrawal.

10. Claims of the Customer for reimbursement of expenses pursuant to Sect. 445a para.1 German Civil Code - BGB are excluded, unless the last contract in the supply chain is a consumer goods purchase (Sect. 478, 474 BGB) or a consumer contract for the provision of digital products (Sect. 445c sentence 2, 327 para.5, 327u BGB). In case of defects, too, claims of the Customer for damages or reimbursement of futile expenses shall exist only in accordance with Art. XII. and XIII. of these GTC.

## **XII. Liability**

1. In the event of a breach of contractual and non-contractual obligations, we shall be liable in accordance with the statutory provisions, as far as nothing to the contrary arises from these GTC including the following provisions.

2. We shall be liable for damages - irrespective of the legal grounds - within the scope of fault-based liability in the event of intent and gross negligence. In the event of simple negligence, we shall be liable, subject to statutory limitations of liability (e.g. diligence in own affairs; insignificant breach of duty), only in the following cases:

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

b) for damages arising from the breach of an essential contractual obligation (obligation whose fulfilment is a prerequisite for the proper performance of the contract and upon whose observance the contractual partner regularly trusts and may trust); in this case, however, our liability shall be limited to compensation for the foreseeable, typically occurring damage.

3. The limitations of liability resulting from Art. XII.2 of these GTC shall also apply to third parties as well as to breaches of duty by (or in favor of) persons for whose fault we are responsible according to statutory provisions. They do not apply insofar as a defect has been fraudulently concealed or a guarantee for the quality of the Goods has been assumed and for claims of the Customer under the German Product Liability Act.

4. Due to a breach of duty which does not consist in a defect, the Customer may only withdraw or terminate if we are responsible for the breach of duty. The Customer's free right of termination (in particular according to Sect. 650, 648 German Civil Code - BGB) shall be excluded. In all other respects, the statutory requirements and legal consequences shall apply.

## **XIII. Limitation Period**

1. Notwithstanding Sect. 438 para.1 no.3 German Civil Code (BGB), the general limitation period for claims arising from material defects and defects of title shall be one (1) year from delivery.

2. The above limitation periods of commercial law also apply to the Customer's contractual and non-contractual claims for damages based on a defect in the Goods, unless the application of the regular statutory limitation period (Sect. 195, 199 German Civil Code - BGB) would result in a shorter limitation period in individual cases. Claims for damages by the Customer pursuant to Art. XII.2 sentence 1 and sentence 2(a) of these GTC as well as pursuant to the German Product Liability Act shall become time-barred exclusively in accordance with the statutory limitation periods.

## **XIV. Force Majeure**

The ICC force majeure clause (long version) is included or incorporated in the contracts between us and the Customer. This clause may be viewed here: <https://iccwbo.org/wp-content/uploads/sites/3/2020/03/icc-forcemajeure-hardship-clauses-march2020.pdf>.

## **XV. Governing Law, Place of Jurisdiction**

1. The law of the Federal Republic of Germany shall apply to the contractual relationship and these GTC, to the exclusion of all international and supranational (treaty) law systems, in particular the UN Convention on Contracts for the International Sale of Goods.

2. As far as the Customer is regarded as merchant within the meaning of the German Commercial Code or an entrepreneur within the meaning of Sect. 14 German Civil Code (BGB) or a legal entity under public law or public special assets, our principal place of business Hamminkeln-Dingden, Germany shall be the sole – even international – court of jurisdiction for all disputes arising from the contractual relationship. However, we shall always be entitled to file a suit at the place of fulfillment or at the general legal venue of the Customer. Overriding statutory regulations, especially with regard to exclusive jurisdictions, shall remain unaffected.

**van Clewe Sun Protection GmbH, June 2023**