

# General Terms and Conditions of Purchase

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### wemonte AG

#### § 1 Scope of application, form

- (1) These General Terms and Conditions of Purchase (GTC) shall apply to all business relationships with our business partners and suppliers ("Supplier"). The GPC shall only apply if the Supplier is an entrepreneur (§ 14 BGB), a legal entity under public law or a special fund under public law.
- (2) The GPC shall apply in particular to contracts for the sale and/or delivery of movable goods ("Goods"), irrespective of whether the Supplier manufactures the Goods itself or purchases them from suppliers (§§ 433, 650 BGB). Unless otherwise agreed, the GPC in the version valid at the time of the Buyer's order or, in any case, in the version last notified to the Supplier in text form shall also apply as a framework agreement for similar future contracts without our having to refer to them again in each individual case.
- (3) These GPC shall apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the supplier shall only become part of the contract if and to the extent that we have expressly consented to their application in writing. This consent requirement shall apply in any case, for example even if the supplier refers to its GTC within the scope of the order confirmation and we do not expressly object to this.
- (4) Individual agreements (e.g. framework supply agreements, quality assurance agreements) and specifications in our order shall take precedence over the GTCs. In case of doubt, commercial clauses shall be interpreted in accordance with the Incoterms® published by the International Chamber of Commerce in Paris (ICC) in the version valid at the time of conclusion of the contract.
- (5) Legally relevant declarations and notifications by the Supplier with regard to the contract (e.g. setting of deadlines, reminders, withdrawal) shall be made in writing. Written form within the meaning of these GPC includes written and text form (e.g. letter, e-mail, fax). Legal formal requirements and further proof, in particular in the case of doubts about the legitimacy of the person making the declaration, shall remain unaffected.
- (6) References to the applicability of statutory provisions shall only have a clarifying significance. Even without such clarification, the statutory provisions shall therefore apply unless they are directly amended or expressly excluded in these GPC.

## **§ 2 Conclusion of contract**

- (1) Our order shall be deemed binding at the earliest upon written submission or confirmation. The supplier 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) The Supplier shall confirm our order in writing within a period of three days or, in particular, execute it without reservation by dispatching the goods (acceptance).
- (3) A delayed acceptance shall be deemed a new offer and shall require acceptance by us.

## **§ 3 Delivery time and delay**

- (1) The delivery time specified by us in the order is binding. If the delivery time is not specified in the order and has not been agreed otherwise, it shall be 2 weeks from the conclusion of the contract. The supplier shall be obliged to inform us immediately in writing if it is likely that it will not be able to comply with agreed delivery times - for whatever reason.
- (2) If the Supplier fails to perform or fails to perform within the agreed delivery period or if the Supplier is in default, our rights - in particular to rescission and damages - shall be determined in accordance with the statutory provisions. The provisions in para. 3 shall remain unaffected.
- (3) If the Supplier is in default, we may - in addition to further statutory claims - demand lump-sum compensation for our damage caused by default 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 delivered late. We reserve the right to prove that higher damages have been incurred. The supplier reserves the right to prove that no damage at all or only a significantly lower damage has been incurred.

## **§ 4 Performance, delivery, transfer of risk, default of acceptance**

- (1) Without our prior written consent, the supplier shall not be entitled to have the performance owed by him rendered by third parties (e.g. subcontractors). The supplier shall bear the procurement risk for its services unless otherwise agreed in individual cases (e.g. limitation to stock).
- (2) Delivery shall be made "free domicile" within Germany to the place specified in the order. If the place of destination is not specified and nothing else has been agreed, delivery shall be made to our place of business in Stuttgart. The respective place of destination shall also be the place of performance for the delivery and any subsequent performance (obligation to deliver).
- (3) The delivery shall be accompanied by a delivery bill stating the date (issue and dispatch), the contents of the delivery (article number and quantity) and our order

identification (date and number). If the delivery bill is missing or incomplete, we shall not be responsible for any delays in processing and payment resulting therefrom. A corresponding dispatch bill with the same content must be sent to us separately from the delivery bill.

- (4) The risk of accidental loss and accidental deterioration of the item 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. If we are in default of acceptance, this shall be deemed equivalent to handover or acceptance.
- (5) The statutory provisions shall apply to the occurrence of our default in acceptance. However, the supplier must also expressly offer us his performance if a specific or determinable calendar time has been agreed for an action or cooperation on our part (e.g. provision of material). If we are in default of acceptance, the supplier may demand compensation for its additional expenses in accordance with the statutory provisions (§ 304 BGB). If the contract relates to a non-representable item to be manufactured by the supplier (individual production), the supplier shall only be entitled to further rights if we have undertaken to cooperate and are responsible for the failure to cooperate.

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

- (1) The price stated in the order is binding. All prices shall be inclusive of statutory value-added tax if this is not shown separately.
- (2) Unless otherwise agreed in individual cases, the price shall include all services and ancillary services of the supplier (e.g. assembly, installation) as well as all ancillary costs (e.g. proper packaging, transport costs including any transport and liability insurance).
- (3) The agreed price shall be 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 Supplier 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 expiry of the payment deadline; we shall not be responsible for any delays caused by the banks involved in the payment process.
- (4) We do not owe any interest on arrears. Default in payment shall be governed by the statutory provisions.
- (5) We shall be entitled to rights of 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 supplier arising from incomplete or defective performance.

- (6) The supplier shall have a right of set-off or retention only on the basis of counterclaims that have become res judicata or are undisputed.

## **§ 6 Secrecy and retention of title**

- (1) We reserve the property rights and copyrights to:
- orders and purchase orders placed by us
  - illustrations, plans, drawings, calculations, execution instructions, product descriptions and other documents made available by us to the supplier.
- Such documents are to be used exclusively for the contractual performance and are to be 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 secrecy shall only expire if and to the extent that the knowledge contained in the documents provided has become generally known. Special confidentiality agreements and statutory regulations on the protection of secrets shall remain unaffected.
- (2) The above 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 Supplier for production. Such items - as long as they are not processed - shall be stored separately at the Supplier's expense and insured to a reasonable extent against destruction and loss.
- (3) Any processing, mixing or combination (further processing) of provided items by the supplier shall be carried out on our behalf. The same shall apply in the event of further processing of the supplied goods 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.
- (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 transfer of title by the supplier conditional on payment of the purchase price, the supplier'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 Proofs of origin, export restrictions**

- (1) Upon our request, the supplier shall immediately fully identify the origin of the goods delivered by it, the manufacturer or the upstream supplier(s) and submit any

proofs of origin requested by us in full and signed; this shall include in particular any customs tariff numbers (HS-/KN-Code).

- (2) If the goods to be supplied or delivered by the Supplier are subject to export restrictions in whole or in part, the Supplier shall inform us thereof in writing without being requested to do so and without restriction. In particular, the supplier shall inform us of how the restrictions arise under the law applicable in the Federal Republic of Germany.

## **§ 8 Quality and documentation**

- (1) The supplier shall comply with the recognized rules of technology, the respectively applicable safety regulations and standards as well as any quality assurance agreements concluded for its deliveries, including the development and manufacture of the respective goods.
- (2) The Supplier shall comply with the respective applicable statutory regulations of the European Union and the Federal Republic of Germany, in particular the requirements of the Chemicals Regulation EC No. 1907/2006 (REACH Regulation) and the RoHS Directive as amended. There is no obligation on our part to obtain approval under the Reach Regulation for any goods delivered by the supplier. The supplier is obliged to indemnify us from any liability in connection with the supplier's non-compliance with the above-mentioned regulations or to compensate us for damages incurred by us as a result of or in connection with such non-compliance. REACH and RoHS conformity shall be confirmed on offers and delivery notes/invoices as a matter of principle.
- (3) The supplier shall constantly monitor the quality of the goods as well as his other deliveries and services to us. For this purpose, the Supplier shall implement a quality assurance system in accordance with ISO 9001 or another standard agreed with us. Upon conclusion of the contract, the Supplier confirms that it has certified its company in accordance with the best possible quality assurance system.
- (4) Changes to the delivery item without our prior consent shall not be permitted.
- (5) The supplier shall record in writing for all goods delivered to us when, in what manner and by whom the defect-free manufacture of the goods was carried out and ensured.
- (6) In addition, in the case of technical documents or delivery parts agreed separately as requiring documentation, the supplier shall always record in special records at what time, in what manner and by whom the subject matter of the contract has been tested with regard to the parameters requiring documentation and what the results of the tests / quality tests were in each case.
- (7) The supplier shall keep these documentation records for fifteen years from the date of performance of the test and submit them to us upon request at its own expense. This obligation shall be imposed on a pre-supplier to an unlimited extent within the

framework of existing and customary procedures and possibilities. The fulfillment of a documentation obligation shall thus always be ensured by us.

## **§ 9 Defective delivery, inspection, complaint**

- (1) The statutory provisions and, exclusively in our favor, the following supplements and clarifications shall apply to our rights in the event of material defects and defects of title of the goods (including wrong delivery and short delivery as well as improper assembly/installation or defective instructions) and in the event of other breaches of duty by the supplier.
- (2) In accordance with the statutory provisions, the supplier shall be liable in particular for ensuring that the goods have the agreed quality at the time of transfer of risk to us. In any case, those product descriptions which - in particular by designation or reference 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, from the supplier or from the manufacturer.
- (3) In the case of goods with digital elements or other digital content, the supplier shall owe the provision and updating of the digital content in any case to the extent that this results from a quality agreement pursuant to para. 2 or other product descriptions of the manufacturer or on its behalf, in particular on the Internet, in advertising or on the goods label.
- (4) We shall not be obliged to inspect the goods or to make special inquiries about any defects upon conclusion of the contract. In partial deviation from Section 442 (1) sentence 2 of the German Civil Code (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.
- (5) Prior to each delivery of the goods, the supplier shall be obliged to carry out the necessary and appropriate outgoing inspections on the subject matter of the contract and to retain samples of each batch to be delivered. The Supplier shall keep these samples at its own expense for at least 10 years.
- (6) The statutory provisions (§§ 377, 381 HGB) shall apply to our 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 by means of external examination including the delivery documents (e.g. transport damage, wrong delivery and short delivery) or which are identifiable during our quality control by means of random sampling. Insofar as 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 circumstances of the individual case. Our obligation to give notice of defects discovered later shall remain unaffected.

Notwithstanding our duty to inspect, our notice of defect shall be deemed to have been given without undue delay and in good time if it is sent within ... working days of discovery or, in the case of obvious defects, of delivery.

- (7) Subsequent performance shall also include the removal of the defective goods and their re-installation, provided that the goods were installed in another item or attached to another item in accordance with their type and intended use before the defect became apparent; our statutory claim to reimbursement of corresponding expenses (removal and installation costs) shall remain unaffected. The Supplier shall bear the expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labor and material costs and, if applicable, removal and installation costs, 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.
- (8) Notwithstanding our statutory rights and the provisions in para. 5 and (6), the following shall apply: If the Supplier fails to meet its obligation to remedy the defect - at our option by remedying the defect (rectification) or by delivering a defect-free item (replacement) - within a reasonable period set by us, we may remedy the defect ourselves and demand reimbursement from the Supplier of the expenses required for this purpose or a corresponding advance payment. If subsequent performance by the supplier 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 be set; we shall inform the supplier of such circumstances without undue delay, if possible in advance.
- (9) Otherwise, in the event of a material defect or defect of title, 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.

## **§ 10 Supplier recourse**

- (1) Our legally determined claims for expenses and recourse within a supply chain (supplier recourse pursuant to §§ 478, 445a, 445b or §§ 445c, 327 para. 5, 327 BGB) shall accrue to us without restriction in addition to the claims for defects. In particular, we shall be entitled to demand exactly the type of subsequent performance (repair or replacement) from the supplier that we owe our customer in the individual case; in the case of goods with digital elements or other digital content, this shall also apply with regard to the provision of necessary updates. Our statutory right of choice (Section 439 (1) BGB) shall not be restricted hereby.

- (2) Before we acknowledge or fulfill a claim for defects asserted by our customer (including reimbursement of expenses pursuant to Sections 445a (1), 439 (2), (3), (6) sentence 2, 475 (4) of the German Civil Code), we shall notify the Supplier and request a written statement, briefly setting out the facts. 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 supplier shall be responsible for providing evidence to the contrary.
- (3) Our claims from supplier recourse shall also apply if the defective goods have been combined with another product or further processed in any other way by us, our customer or a third party, e.g. by installation, attachment or installation.

### **§ 11 Producer liability**

- (1) If the supplier is responsible for product damage, it shall indemnify us against third-party claims to the extent that the cause lies within its sphere of control and organization and it is liable itself in relation to third parties.
- (2) Within the scope of its indemnification obligation, the Supplier shall reimburse expenses pursuant to Sections 683, 670 of the German Civil Code (BGB) arising from or in connection with a claim by third parties including recall actions carried out by us. We shall inform the supplier about the content and scope of recall measures - to the extent possible and reasonable - and give him the opportunity to comment. Further legal claims shall remain unaffected.
- (3) The supplier shall take out and maintain product liability insurance with a lump sum coverage of at least EUR 10 million per personal injury/property damage.

### **§ 12 Property Rights, Indemnification, Copyrights**

- (1) The supplier shall be responsible for ensuring that no third-party rights are infringed in connection with its delivery, including the manufacture of the subject matter of the contract, in particular no industrial property rights, patents, registered designs/utility models and trademark rights. If claims are asserted against us by third parties (in particular by customers) due to such an infringement of rights, the supplier shall be obliged to indemnify us against all claims and to bear all costs and expenses in connection with the claim.
- (2) The supplier shall be exempt from any obligation to pay compensation insofar as it has manufactured the subject matter of the contract in accordance with drawings, models or other instructions or information provided by us and has not been notified by us of any third-party property rights.
- (3) If one of the contracting parties becomes aware of infringement risks or alleged cases of infringement in this context, the contracting parties shall inform each other



accordingly and give the other contracting party the opportunity to counteract corresponding third-party claims of infringement by mutual agreement.

- (4) Upon our request, the Supplier shall inform us about the use of published or unpublished, own or licensed industrial property rights and applications for industrial property rights on its product.
- (5) Insofar as copyrights arise from services or works commissioned by us from the supplier, the supplier shall grant us the exclusive and transferable right of use in this respect, unlimited in time and space. The right of use shall extend to all types of use, in particular also to the publication and utilization of adaptations of the respective work on image and sound carriers as well as any public reproduction of the work.

### **§ 13 Statute of limitation**

- (1) The mutual claims of the contracting parties shall become statute-barred in accordance with the statutory provisions, unless otherwise stipulated below.
- (2) Notwithstanding Section 438 (1) No. 3 of the German Civil Code (BGB), the general limitation period for claims for defects shall be 3 years from the passing of risk. Insofar as acceptance has been agreed, the limitation period shall commence upon acceptance. The 3-year limitation period shall also 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 (Section 438 (1) No. 1 BGB) shall remain unaffected; claims arising from defects of title shall not become time-barred in any case as long as the third party can still assert the right against us - in particular in the absence of a limitation period.
- (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 in this case, unless the application of the limitation periods of the law on sales leads to a longer limitation period in individual cases.

### **§ 14 Liability of us, limitation of liability**

- (1) Unless otherwise provided in these GPC including the following provisions, we shall be liable for a breach of contractual and non-contractual obligations in accordance with the statutory provisions.
- (2) We shall be liable for damages - irrespective of the legal grounds - within the scope of fault 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. care in own affairs; insignificant breach of duty), only
  - a) for damages resulting from injury to life, body or health,

- b) for damages resulting from the breach of an essential contractual obligation (obligation, the fulfillment of which enables the proper execution of the contract in the first place and on the compliance with which the contractual partner regularly relies and may rely); in this case, however, our liability shall be limited to the compensation of the foreseeable, typically occurring damage.
- (3) The limitations of liability resulting from para. 2 shall also apply to breaches of duty by or in favor of persons whose fault we are responsible for according to statutory provisions. They shall not apply to claims for which we are liable regardless of fault, e.g. in the case of claims under the Product Liability Act or insofar as we have assumed a guarantee.
- (4) The Supplier may only withdraw from or terminate the contract due to a breach of duty if we are responsible for the breach of duty. Otherwise, the statutory requirements and legal consequences shall apply.

### **§ 15 Choice of law, place of jurisdiction**

- (1) The law of the Federal Republic of Germany shall apply to these GPC and the contractual relationship between us and the supplier, excluding international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods (CISG).
- (2) If the supplier 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 - including international - place of jurisdiction for all disputes arising from the contractual relationship shall be our registered office in Stuttgart. The same shall apply if the supplier is an entrepreneur within the meaning of § 14 BGB (German Civil Code). However, we shall also be entitled in all cases to bring an action at the place of performance of the delivery obligation pursuant to these GPC or a prior individual agreement or at the general place of jurisdiction of the supplier. Overriding statutory provisions, in particular regarding exclusive jurisdiction, shall remain unaffected.

### **§ 16 Severability clause**

- (1) Should individual provisions of this contract be or become invalid, the validity of the remaining provisions shall remain unaffected.
- (2) In the event of an invalid provision of this contract, the contracting parties shall be obliged to negotiate a replacement provision that comes as close as possible to the economic purpose pursued by the contracting parties with the invalid provision and has the legally permissible content.