

General Terms and Conditions

01/2015



punker GmbH

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Sec. 1 General, Applicability

(1) The present General Terms and Conditions of Sale (GTC) are applicable for all our business relations with our customers (in the following: "Purchaser"). The GTC only apply if the Purchaser is an entrepreneur (Sec. 14 German Civil Code [Bürgerliches Gesetzbuch, in the following: BGB]), a corporate body under public law or a special fund under public law.

(2) The GTC in particular apply for contracts for the sale and/or delivery of movables (in the following also: "Goods"), regardless of whether we produce the Goods ourselves or purchase them from suppliers (contracts pursuant to Sec. 433 BGB or Sec. 651 BGB). The GTC in their respective version also apply as framework agreement for future contracts on the sale and/or delivery of movables with the same Purchaser without us having to make reference to them again in each individual case.

(3) Our GTC apply exclusively. Deviating, opposing or amending general terms and conditions of the Purchaser only become an integral part of the contract if and insofar as we expressly consented to their applicability. This consent requirement applies in any case, e.g. also if we have knowledge of the general terms and conditions of the Purchaser and perform a delivery to the Purchaser without any reservations.

(4) Individual agreements made with the Purchaser in the individual case (including collateral agreements, amendments and alterations) always take priority over these GTC. Decisive for the contents of such agreements is a written contract and/or our confirmation in writing.

(5) Declarations and notifications relevant in law which are to be given to us by the Purchaser after the conclusion of the contract (e.g. reminders, deadlines, notices of defects, declaration of rescission or reduction) require the written form in order to be effective. To fulfil the written form requirement, a transmission via telefax is sufficient. Apart from that a transmission via telecommunications, in particular via e-mail, is not sufficient.

(6) References to the applicability of statutory provisions only serve as clarification. Even without such a clarification, the statutory provisions are applicable insofar as they are not directly altered or expressly excluded in these GTC.

Sec. 2 Conclusion of Contract

(1) Our offers are subject to confirmation and not binding. This is also applicable if we have submitted to the Purchaser catalogues, technical documents (e.g. drawings, plans, computations, calculations, references to standards by the German Institute for Standardization [i.e. DIN standards]), other product descriptions or records – also in electronic form – in which we reserve title and copyright.

(2) An order for Goods by the Purchaser is deemed to be a binding contract offer. Unless the order states otherwise, we are entitled to accept this contract offer within 14 days after its receipt.

(3) The acceptance may be declared either in writing (e.g. by order confirmation) or by delivery of the Goods to the Purchaser.

(4) Our information on the Goods (e.g. weights, measures, practical values, capacity, tolerance values and technical data) as well as our presentations of the same (e.g. drawings and illustrations) are only approximate, unless the usability for the contractually intended purpose requires an exact conformity. The information does not constitute guaranteed quality features but descriptions or markings of the Goods. Deviations customary in the industry and deviations made on the basis of legal regulations or constituting technical improvements are admissible insofar as they do not impair the usability for the contractually intended purpose. We have the right to replace components by equal parts insofar as this does not impair the usability for the contractually intended purpose.

Sec. 3 Delivery Time and Delay in Delivery

(1) The delivery time is agreed upon individually and/or stated by us upon acceptance of the order. If this is not the case, the delivery time is approx. 6 to 10 weeks from conclusion of contract.

(2) We are not liable for impossibility of delivery or for delays in delivery insofar as such have been caused by force majeure or other occurrences not foreseeable at the point of time of the conclusion of the contract (e.g. operational breakdowns of all kind, difficulties in obtaining materials or energy, transport delays, strikes, lawful lock-outs, shortages of manpower, energy or raw materials, difficulties in obtaining necessary official permits, official measures or non-delivery, incorrect or late delivery by suppliers) which are beyond our control (non-availability of performance). We will inform the Purchaser about such without delay. Insofar as such occurrences considerably complicate or render our delivery impossible and if the obstruction is not only temporary, we are entitled to rescind the contract. We will refund without delay any consideration already made by the Purchaser. In case of temporary obstructions, the delivery times are prolonged by the period of the obstruction plus a reasonable start-up period. Our statutory rights of rescission and termination as well as the statutory provisions concerning the execution of the contract in case of an exclusion of the obligation to perform (e.g. impossibility or unreasonableness of performance and/or subsequent performance) remain unaffected. The Purchaser's rights of rescission and termination according to Sec. 8 of these GTC also remain unaffected.

(3) The occurrence of our delay in delivery is determined according to the statutory provisions. In deviation from Sec. 286 para. 2 no. 1 and 2 BGB, a reminder is also required if a period of time according to the calendar has been specified or if performance must be preceded by an event and a reasonable period of time for performance has been specified in such a way that it can be calculated, starting from the event, according to the calendar. In case of a delay in delivery, the Purchaser may demand a flat rate compensation



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of its damage caused by the delay. The flat rate for the damage amounts to 0.5% of the net price (delivery value) for each full calendar week of delay, however, to a maximum total of 5% of the delivery value of the Goods that are delivered late. We reserve to prove that the Purchaser did not suffer any damage at all or only a substantially lower damage than the above flat rate. Pursuant to the requirements of Sec. 8 of the GTC, the Purchaser may prove that he did suffer a higher damage caused by the delay; the flat rate compensation is to be set-off.

Sec. 4 Delivery, Transfer of Risk, Inspection, Default in Acceptance

(1) The delivery is made ex works and/or ex warehouse which also constitutes the place of performance. Upon request and at cost of the Purchaser, the Goods are dispatched to another destination (sale by dispatch). Unless agreed otherwise we are entitled to decide on the type of dispatch (in particular carrier, dispatch route, packaging).

(2) We are entitled to make partial deliveries if

(a) the partial delivery is useful for the Purchaser within the framework of the contractual intended use,

(b) the delivery of the remaining Goods ordered is ensured and

(c) this does not result in considerable additional work or additional costs for the Purchaser (unless we are prepared to assume such costs).

(3) The risk of accidental perishing and of accidental deterioration of the Goods passes to the Purchaser at the latest upon handing over. In case of a sale by dispatch, however, the risk of accidental perishing and of accidental deterioration of the Goods as well as the risk of delay passes already upon delivery of the Goods to the carrier, the freight forwarder or the other person or organisation designated to carry out the dispatch. This is also applicable if partial deliveries are made. Insofar as an inspection has been agreed upon, this is decisive for the transfer of risk. Moreover, the statutory provisions of the laws regarding contracts for work and services apply accordingly for an agreed inspection. The handing over and/or inspection are equivalent to the Purchaser being in default with the acceptance.

(4) If the Purchaser breaches the duty to accept the goods and therefore is in default of the obligor, fails to perform an act of obligated cooperation or if our delivery is delayed for other reasons for which the Purchaser is responsible, we are entitled to demand compensation of the damage resulting from this, including additional expenses (e.g. warehouse charges). This does not apply if the obligor is not responsible for the breach of duty (Sec. 280 para. 1 s. 2 BGB). For this we charge a flat rate compensation in the amount of 0.5% of the net price (delivery value) per calendar day, beginning upon delivery time and/or - if there is no delivery time - upon notification that the Goods are ready to be dispatched, however, a maximum total of 5% of the delivery value of the Goods that were accepted late.

Proof of a higher damage and our statutory claims (in particular reimbursement of additional expenses, reasonable compensation, notice of termination) remain unaffected. However, the flat rate is to be set off against additional pecuniary claims. The Purchaser may prove that we did not suffer any damage at all or only a substantially lower damage than the above flat rate.

Sec. 5 Prices and Payment Terms

(1) Unless agreed upon otherwise in the individual case, our respective current prices at the point of time of the conclusion of the contract are applicable ex works and/or ex warehouse and exclude statutory turnover tax.

(2) Unless agreed upon otherwise in the individual case, for a sale by dispatch (Sec. 4 para. 1) the Purchaser bears the costs of transport ex works and/or ex warehouse as well as the costs of a transport insurance possibly requested by the Purchaser.

(3) The purchase price is due and to be paid without charges to the Vendor within 30 days from invoicing and delivery and/or inspection of the Goods 13, unless Vendor and Purchaser agreed upon otherwise in the individual case.

(4) Upon the expiry of the above term of payment, the Purchaser is in default. During the period of default, the purchase price bears interest at the respective current statutory default interest rate. We reserve the right to assert further damage caused by default. Vis-à-vis businessmen our claim for the commercial default interest (Sec. 353 German Commercial Code [Handelsgesetzbuch, in the following: HGB]) remains unaffected.

(5) The Purchaser is entitled to rights of set-off or of retention only insofar as its claim is res judicata or undisputed. In case of a defective delivery, Sec. 7 para. 6 remains unaffected.

(6) If it becomes discernible after conclusion of the contract that our claim for the purchase price is endangered due to a lack of capability of the Purchaser (e.g. due to an application for initiation of insolvency proceedings), we are entitled according to the statutory provisions to refuse performance and - if need be after setting a time limit - to rescind the contract (Sec. 321 BGB). For contracts concerning the production of unique items (custom-made items), we may declare rescission without delay; the statutory provisions regulating the dispensability of a time limit remain unaffected.

Sec. 6 Reservation of Title

(1) Until full payment of all our present and future receivables from the purchase contract and an ongoing business relationship (secured receivables) we reserve title in the Goods sold.



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(2) Prior to full payment of the secured receivables, the Goods which are subject to a reservation of title may neither be pledged to third parties nor be transferred by way of security. The Purchaser has to inform us in writing without delay if and insofar as third parties access Goods belonging to us.

(3) In case of a conduct of the Purchaser that is in breach of the contract, in particular in case of non-payment of the purchase price due, we are entitled to rescind the contract in accordance with the statutory provisions and to demand the return of the Goods on the basis of the reservation of title and the rescission. If the Purchaser fails to pay the purchase price due, we only may assert these rights if we first fruitlessly set the Purchaser a reasonable time limit for payment or such a time limit can be dispensed with according to the statutory provisions.

(4) The Purchaser is entitled to re-sell and/or process the Goods, which are subject to the reservation of title, in the ordinary course of business. In this case, the following supplementary provisions apply.

(a) The reservation of title covers the full value of those products created by processing, combination or integration of our Goods with us being deemed to be the manufacturer. If in case of a processing, combination or integration together with goods of third parties the reservation of title of those third parties remains in effect, we acquire joint ownership in the proportion of the invoice values of the processed, combined or integrated goods. Moreover, the same applies for the product created as for the Goods delivered subject to the reservation of title.

(b) The receivables from third parties originating from the resale of the Goods or of the product are assigned to us as security by the Purchaser already now in total and/or in the amount of our possible joint ownership share according to the preceding paragraph. We accept this assignment. The duties of the Purchaser mentioned in para. 2 are also applicable with regard to the assigned receivables.

(c) In addition to us, the Purchaser remains authorised to collect the receivable. We commit ourselves not to collect the receivable as long as the Purchaser fulfils its payment obligations vis-à-vis us, is not in default with its payments, no application for initiation of insolvency proceedings has been filed and no other deficiency of its capability is applicable. However, if this is the case, we may demand that the Purchaser notifies to us the assigned receivables and their debtors, gives all details required for the collection, delivers the pertaining documents and notifies the debtors (third parties) of the assignment.

(d) If the realisable value of the securities exceeds our receivables by more than 10%, we will release securities at our option upon request of the Purchaser.

Sec. 7 Purchaser's Claims Based on Defects

(1) The statutory provisions apply for the rights of the Purchaser in case of material defects and defects of title (including wrong and short delivery as well as improper assembly or defective assembly instruction), unless stipulated otherwise in the following. The special statutory provisions for final delivery of the Goods to a consumer remain unaffected in all cases (supplier recourse according to Secs. 478, 479 BGB).

(2) Basis of our liability for defects is above all the agreement made on the quality of the Goods. Deemed to be an agreement on the quality of the Goods are all product descriptions which are the object of the individual contract. In this connection, there is no difference whether the product description comes from the Purchaser, the manufacturer or from us.

(3) Insofar as the quality was not agreed upon, it has to be assessed in accordance with the statutory provision whether a defect is given or not (Sec. 434 para. 1 s. 2 and 3 BGB). However, public statements made by the manufacturer, by persons the manufacturer uses to perform his obligations or by any other third parties (e.g. in advertising) are irrelevant as far as the question whether the good is defective is concerned.

(4) The Purchaser's claims based on defects require that the Purchaser fulfilled its statutory duties to examine and to make a complaint (Secs. 377, 381 para. 2 HGB). If a defect becomes apparent during the inspection or later, we are to be notified of this in writing without delay. The notification is deemed to have been made without delay if it is made within two weeks. The timely sending of the notification is sufficient to keep the time limit. Independent of these duties to examine and to make a complaint, the Purchaser has to notify in writing obvious defects (including wrong and short delivery) within two weeks from delivery. The timely sending of the notification is sufficient to keep the time limit also in this respect. If the Purchaser fails to properly examine the Goods and/or submit a notice of defect, our liability is excluded for the defect that was not notified.

(5) If the delivered item is defective, we may select at first whether we render subsequent performance by removing the defect (subsequent improvement) or by delivering an item free of defects (replacement delivery). Our right to refuse the selected type of subsequent performance under the statutory conditions remains unaffected. In this case the Purchaser is entitled to the other type of subsequent performance; our right to refuse this type of subsequent performance according to legal requirements remains unaffected, too.

(6) We are entitled to make the subsequent performance owed dependent on the Purchaser paying the purchase price due. However, the Purchaser is entitled to retain a share of the purchase price which is reasonable in proportion to the defect.

(7) The Purchaser has to grant us the time and opportunity needed for the subsequent performance owed, in particular it has to hand over the faulty Goods for examination purposes. In case of a replacement delivery, the Purchaser has to return the defective item in accordance with the statutory provisions.

(8) The expenses required for the purposes of examination and subsequent



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performance, in particular costs of transport, call-out fees, labour costs and costs of materials, will be borne by us if a defect actually exists. However, if a request for removal of a defect made by the Purchaser turns out to be unjustified, we may demand reimbursement of the costs incurred from the Purchaser. The statutory provisions concerning contributory negligence (Sec. 254 BGB) remain unaffected.

(9) In urgent cases, e.g. in case of danger to operational safety or in order to avoid excessive damages, the Purchaser has the right to remove the defect itself and to demand from us reimbursement of the expense objectively required for this purpose. We are to be informed about such a self-performance without delay, if possible before it is carried out. The right of self-performance does not exist if we would be entitled to refuse a corresponding subsequent performance according to the statutory provisions.

(10) If the subsequent performance failed or a reasonable time limit to be set by the Purchaser for the subsequent performance expired fruitlessly or can be dispensed with according to the statutory provisions, the Purchaser may rescind the purchase contract or reduce the purchase price. However, a right of rescission does not exist in case of an unsubstantial defect.

(11) Claims for damages of the Purchaser and/or claims for reimbursement of wasted expenses exist only subject to Sec. 8 and are furthermore excluded.

Sec. 8 Other Liability

(1) Unless these GTC including the following provisions state otherwise, we are liable according to the relevant statutory provisions in case of a violation of contractual and non-contractual duties.

(2) We are liable for damages - irrespective of the legal basis - in case of intent and gross negligence. In case of simple negligence we are liable only

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

(b) for damages resulting from the violation of an essential contractual duty (obligation whose fulfilment facilitates the proper performance of the contract and on the compliance with which the contracting partner regularly relies and may rely); in this case our liability, however, is limited to the compensation of the foreseeable damage which typically occurs.

(3) The limitations of liability resulting from para. 2 are not applicable insofar as we fraudulently concealed a defect or guaranteed the quality of the Goods. The same applies for claims of the Purchaser under the Product Liability Act.

(4) The Purchaser can only rescind or terminate due to a breach of duty which does not constitute a defect if we are responsible for the breach of

duty. A free right of termination of the Purchaser (in particular according to Secs. 651, 649 BGB) is excluded. Apart from that, the statutory prerequisites and legal consequences are applicable.

(5) Insofar as we give technical information or advice and the information or advice is not part of the contractually agreed scope of performance owed by us, this is made free of charge and under exclusion of any liability.

(6) In case of a transfer of software we are liable for the loss of data and/or programmes only up to that amount which would have incurred for the restoration of data in case of proper and regular data backup.

Sec. 9 Statute of Limitations

(1) In deviation from Sec. 438 para. 1 no. 3 BGB, the general limitation period for claims from material defects and defects of title is one year from delivery. Insofar as an inspection has been agreed upon, the limitation period begins upon the inspection.

(2) However, if the Goods are a building or an item which was used for a building in accordance with its usual manner of use and caused the defectiveness of the building (building material), the limitation period is 5 years from delivery according to the statutory provision (Sec. 438 para. 1 no. 2 BGB). Special statutory provisions concerning material claims for surrender of third parties (Sec. 438 para. 1 no. 1 BGB), fraudulent intent of the vendor (Sec. 438 para. 3 BGB) and claims from supplier recourse for a final delivery to a consumer (Sec. 479 BGB) also remain unaffected.

(3) The above limitation periods of the law on sales also apply for contractual and non-contractual claims for damages of the Purchaser which are due to a defect of the Goods, unless the application of the regular statutory limitation period (Secs. 195, 199 BGB) would result in a shorter limitation period in the individual case. The limitation periods of the Product Liability Act remain unaffected in any case. Otherwise, the statutory limitation periods apply exclusively for claims for damages of the Purchaser according to Sec. 8.

Sec. 10 Rights of the Purchaser in Transferred Software

(1) With regard to the software transferred to it we grant the Purchaser the non-exclusive, non-sublicensable and non-transferable right to use the software for its own use within the framework of its business operations for the contractually intended purpose. "Use" is any permanent or temporary duplication (copying) in whole or in part by way of loading, displaying, running, transferring or saving of the programmes and data for the purpose of their execution. Use also includes the execution of the acts mentioned for the purpose of monitoring, examining or testing the programmes transferred. The contractual use moreover includes the production of backup copies of the programmes transferred and the data contained therein, insofar as this is required for the future use of the programme, the data or the system as a whole.



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(2) Notwithstanding the rights of use granted according to para. 1, we retain all rights in the programmes, the documentation and/or other data, including all copies or partial copies of the same that were made by the Purchaser. The ownership of the Purchaser in data carriers, data storage devices and other hardware is not affected by this. The Purchaser commits itself to keep in unaltered form any proprietary notices such as copyright notices and other legal reservations as well as to transfer them in unaltered form to all full or partial copies made by the Purchaser of the programmes, documentation and/or other data.

Sec. 14 Recording and Disclosure of Customer Data

The Purchaser acknowledges that we store data pertaining to the contractual relationship according to Sec. 28 BDSG [Bundesdatenschutzgesetz] for the purpose of the data agreement and reserve the right to disclose the data to third parties (e.g. insurance companies) insofar as this is required for the fulfilment of the contract.

Sec. 11 Secrecy

(1) The Purchaser commits itself to treat confidentially all objects it receives from us or becomes acquainted with prior to or during the performance of the contract (e.g. software, records, information), which are protected by law or contain trade or business secrets or are marked as confidential, even after the end of the contract, unless they have become public knowledge without a violation of the secrecy obligation. The Purchaser keeps and secures these objects in such a manner that an access by third parties is excluded.

(2) The Purchaser only makes the contractual objects accessible to those employees and other third parties who require the access in order to exercise their work duties. The Purchaser will instruct these persons about the secrecy requirement with regard to the objects.

Sec. 12 Protection Clause

Any and all contracts entered and concluded by us shall be subject exclusively to our general and standard terms and conditions of business even if other party's general and standard terms and conditions of business are not specifically opposed. Any general and standard terms and conditions in variance to our own shall be invalid and shall only be recognized if explicitly referred to in writing as part of the contract.

Sec. 13 Choice of Law and Place of Jurisdiction

(1) The laws of the Federal Republic of Germany under exclusion of all international and supranational (contractual) legal systems, in particular the UN Sales Convention, are applicable for these GTC and all legal relationships between us and the Purchaser insofar as contractual obligations are at issue. In particular, the taken choice of law does not comprise conditions and effects of the reservation of title according to Sec. 6.

(2) If the Purchaser is a businessman in the meaning of the Commercial Code, a corporate body under public law or a special fund under public law, the exclusive - also international - place of jurisdiction for all disputes directly or indirectly arising from the contractual relationship is our business seat in Eckernförde. However, we are entitled to file a complaint at the general place of jurisdiction of the Purchaser.

