

## General Terms And Conditions of Sale For Entrepreneurs

### 1. Scope

- 1.1 These General Terms and Conditions of Sale for Entrepreneurs (hereinafter referred to as "GTCS") shall apply to all declarations of intent, contracts and transactional or quasi-transactional acts between the Customer and us. Following effective inclusion thereof, they shall also apply to all present and future contracts and other services. We hereby object to any terms and conditions of the Customer that are contrary or supplementary to or otherwise deviate from our GTCS. Such will not become part of any agreement unless we have expressly agreed to their validity.
- 1.2 Our GTCS shall also apply in cases where we have knowledge of conflicting or additional terms or of terms of the Customer deviating from our GTCS and nonetheless execute deliveries without reservation.
- 1.3 Our GTCS shall only apply to entrepreneurs ("*Unternehmer*") within the meaning of section 14 of the German Civil Code (*BGB*).

### 2. Offers

- 2.1 Our offers are subject to alteration and non-binding as long as do not contain a commitment period. This shall also apply in the event that we have provided the Customer with catalogues, technical documentation (such as drawings, blueprints, calculations, references to DIN standards), other product descriptions or documents - also in electronic form - to which we reserve property rights and copyrights.
- 2.2 The order of goods by the Customer shall be deemed a binding offer of contract. Unless otherwise stated in the order, we shall be entitled to accept such offer of contract within 5 banking days following receipt. We will not confirm orders separately that are placed by delivery schedule. Such delivery schedules shall be deemed accepted unless we object to them in text form within 5 banking days following receipt.
- 2.3 Acceptance may be declared either in writing (i.e. in written or text form, e.g. letter, e-mail, fax or order acknowledgement) or by delivery of the goods to the Customer.
- 2.4 Public statements made by us or our suppliers, in particular information given in catalogues on web sites or in advertising materials, do not constitute a binding offer of contract and do not describe objective requirements applicable for goods delivered by us. The same applies for documents forming part of and submitted with the offer, such as drawings, images, technical data, references to applicable standards, unless expressly designated as descriptions of such objective requirements.
- In any case, subjective requirements for the goods delivered by us shall take precedence over objective requirements and assembly requirements (if any). This shall especially apply in cases where the subjective requirements fall short of the objective ones.
- In cases where we effect delivery whilst having been informed by the Customer about the usage of the goods ordered, this shall not constitute consent to such usage. Suitability for use must be expressly agreed in each case.

### 3. Prices

- 3.1 Unless otherwise stated in the order acknowledgement, our prices are quoted in Euro EXW (Incoterms 2020) loaded Kropfmühl or Wedel including standard commercial packaging, exclusive of the respective VAT in each case.
- 3.2 We shall only be obliged to grant rebates, discounts or other price reductions if they have been expressly agreed when placing the order.
- 3.3 In the case of contracts with a minimum term of more than 3 months, we shall be entitled to adjust contractually agreed prices on a quarterly basis whenever the costs of the following price elements (hereinafter referred to as "Price Elements") has changed in a given quarter and, as a result of such change, the contractually agreed price is subject to alteration:

- o raw material costs
- o energy costs
- o transport costs

Any such price adjustment shall not result in additional profit on our part. Whether changing costs of Price Elements will affect the price agreed, must be determined separately for each contractual product. To this purpose, reductions in the costs of one Price Element must be netted against increases in the costs of another Price Element. There will be no netting between several contractual products. When changes in the average costs of Price Elements derived in this way on a quarterly basis effect a reduction in the agreed price for the contractual product concerned, we shall be obliged to reduce the price for the contractual product in the following quarter; when they effect to an increase, we shall be entitled to increase the agreed price in the following quarter. The price adjusted in the following quarter shall be deemed to be the contractually agreed price. We will first prove the entitlement to price adjustment to the Customer by presenting the cost development of the Price Elements. Should the Customer dispute the entitlement to price adjustment within 4 weeks from receipt of the notification on price adjustment provided in text form, we will substantiate such entitlement by submitting a chartered accountant's certificate. The costs pertaining thereto shall be borne by the Customer, provided that the chartered accountant's certificate confirms that the price adjustment was justified; otherwise, we will bear the costs.

### 4. Terms of Payment

- 4.1 Unless provided otherwise in the order acknowledgement, the net purchase price (without deduction) is due for payment within 30 days of shipment of the goods. When making payment, the Customer must indicate the individual invoice number as well as their Customer number or order number. Should the Customer fail to collect the goods provided within the appointed time, the invoice must be settled within 30 days from the agreed date of delivery.
- 4.2 Any deduction of early payment discount from the amount payable shall require an express agreement as well as full settlement of all liabilities of the Customer due at the time of such deduction.
- 4.3 Checks and bills of exchange shall only be accepted on the basis of a special written agreement and on account of performance against reimbursement of bill and discount charges. If payment is made by SEPA direct debit, we shall notify the Customer of the debit at least three business days in advance ("pre-notification period"). The Customer shall ensure that their bank account has the required coverage at the debit date notified. We reserve the right to exclude certain types of payment in each individual case or to demand advance payment as a prerequisite for deliveries. In any case, we shall be entitled to subject deliveries to advance payment if the solvency index of our Customer provided by Creditreform amounts to 299 points or more. In the case of newly established business relationships, the three first deliveries are usually made against advance payment or payment on delivery only.
- 4.4 In the event of default of payment by the Customer and without prejudice to the assertion of further damages, we shall be entitled to charge interest in the amount of the respective bank rates for overdraft facilities, or in the amount of 9 percentage points above the respective base interest rate, whichever is the higher amount.
- 4.5 If following the conclusion of the contract it becomes apparent that our claim for payment is in jeopardy by the Customer's lack of solvency, we shall be entitled to exercise the rights set out in section 321 of the German Civil Code (*BGB*) (plea of uncertainty). We shall then also be entitled to call due all claims against the Customer from the current business relationship that are not subject to the statute of limitations. In the event of default in payment we shall also be entitled to demand the return of the delivered goods after the expiry of a reasonable grace period

and, to this extent, to prohibit the resale or further processing of the delivered goods. The Customer may avert these legal consequences by either making payment or providing security in the amount of our jeopardised claim of payment. The provisions of the German Insolvency Code shall remain unaffected by the above provisions.

- 4.6 Offsetting by the Customer shall only be permissible if his counterclaims have been assessed in a legally binding judgment, are undisputed or have been acknowledged by us. Furthermore, they shall be entitled to exercise a right of retention insofar as their counterclaim is based on the same contractual relationship.

## 5. Delivery Period, Delays in Delivery, Provisioning

- 5.1 Delivery shall be EXW (Incoterms 2020) loaded ex Kropfmühl warehouse or Wedel warehouse, which shall also be the place of performance for delivery and any alternative performance. On demand and at the expense of the Customer, the goods shall be sent to a different destination (mail order purchase), without impacting the place of performance or alternative performance. Unless agreed otherwise, we are entitled to freely determine the type of shipment (in particular carrier, shipping route, packaging).

- 5.2 Each delivery period shall commence with the dispatch of our order acknowledgement to the Customer, but not before the provision of required documents, approvals or releases by the Customer or receipt of the agreed down payment. Defences based on non-performance of the contract are reserved.

- 5.3 Unless otherwise agreed, delivery dates or periods shall be deemed fulfilled when prior to their expiry the goods have been made available in our plant in Kropfmühl or Wedel or, in cases where we have agreed to assume shipping, when such goods have been consigned.

We will make goods ready for shipment available for collection at the place agreed (i.e. at Kropfmühl or Wedel) generally from Monday to Thursday between 07:00 a.m. and 03.00 p.m. and on Fridays between 07:00 a.m. and 12:00 p.m. The exact day and time is to be agreed between the Customer and their carrier and should be advised to us in advance and in good time.

- 5.4 We shall notify the Customer without undue delay if circumstances arise effecting that the delivery date agreed cannot be met (non-availability of performance) and shall propose a new delivery date to the Customer. If the Customer agrees to the delivery date proposed or if he fails to object within 3 bank business days, the delivery date notified shall be deemed to the new agreed delivery date for the respective delivery concerned. In the notification of the new date, we shall expressly inform the Customer on this consequence of their silence.

If the delivery still is not available within the new delivery period, we are entitled to withdraw from the contract; we shall then refund any consideration already paid by the Customer without undue delay. Non-availability of delivery in this sense shall in particular include cases where our supplier fails to effect timely self-delivery, where we have a concluded a congruent covering transaction, when neither we nor our supplier are at fault or when in the individual case we are not obliged to procure.

- 5.5 The rights of the Customer as set out in sections 10 and 11 of these GTCS and our statutory rights shall be unaffected, in particular in cases that exclude the obligation to perform (e.g. for reason of incapability to or unreasonableness of performance and/or alternative performance).

## 6. Default in Acceptance

- 6.1 If the Customer is in default in acceptance, the risk of accidental loss, destruction or deterioration of the goods shall pass to the Customer at the time the goods are made available for collection on the agreed delivery date, without the need to notify the Customer of the availability of the goods.

- 6.2 In the event of default in acceptance of the Customer, we shall be entitled to demand compensation for the damage incurred,

including additional expenses (if any) and in particular to store goods that have not been accepted for the account and at the risk of the Customer. For goods stored on our own premises we will charge EUR 1.50 per each full or partial week; for goods stored on third-party premises, we will charge our own costs. The Customer shall be at liberty to prove that we have incurred no damage or less damage than the aforementioned lump sum. In the event of default in acceptance, we shall alternatively be entitled to withdraw from the contract and/or claim damages after expiry of a reasonable grace period set by us.

- 6.3 Further claims against the Customer remain reserved.

## 7. Delivery, Call-Off Contracts

- 7.1 Unless agreed otherwise at least in text form, the risk of accidental loss, destruction or deterioration of the goods shall pass to the Customer when the goods are made available for collection or, in the case of a shipping agreement, when the goods are consigned.

- 7.2 If the Customer orders several items that we cannot dispatch together due to lack of immediate availability or for other reasons, we shall deliver the goods in partial shipments depending on their availability, unless a partial shipment apparently is not in the interest of the Customer or unreasonable for the Customer due to a functional correlation or for other reasons. In these cases, the Customer will be charged shipping costs only once.

- 7.3 In the case of call-off contracts, i.e. contracts for a fixed quantity of goods whose delivery or acceptance is called off in partial quantities within a certain period of time, we shall be entitled to manufacture or have manufactured the entire order quantity in one go. Change requests, if any, cannot be considered after the order has been placed, unless this has been expressly agreed. In the case of call-off contracts, we shall be entitled to the rights arising from default in acceptance as soon as the Customer breaches the commitment to purchase and accept individual partial deliveries. Each partial delivery called off is deemed an individual transaction to the statutory obligation of the Customer to inspect and notify defects as set out in section 377 of the German Commercial Code (HGB).

## 8. Property Rights and Copyrights

- 8.1 We reserve the property rights and copyrights for images, designs, calculations, drawings and similar documents, including documents in electronic form. Prior to any disclosure thereof to third parties, the Customer shall obtain our express written consent.

- 8.2 In cases where we have manufactured or delivered the goods according to drawings, models, designs or other documents provided by the Customer, the Customer shall warrant that no third parties property rights (such as copyrights, trademark, design, patent or utility model rights) or other statutory provisions (e.g. competition regulations) are infringed. Should third parties prohibit us the manufacturing or delivery of such goods in particular, by referring to such property rights or other legal provisions, we shall be entitled to cease any further activities - without being obliged to examine the legal situation - and, in cases where there has been fault on the part of the Customer, to demand damages. The Customer also undertakes to indemnify us against all related claims of third parties upon first request. We shall inform the Customer of any third party claim and give him the opportunity to state their view on such claims. The Customer shall be obliged to immediately provide us with all information and documents required for the defense.

## 9. Retention of Title

- 9.1 We retain title to the goods until all payments under the delivery contract have been received. In case of default of payment we are entitled to redeem the goods. A request to return the goods is deemed a withdrawal from the contract. We are entitled to utilise the goods redeemed. The utilisation proceeds shall be credited against the Customer's liabilities, less reasonable utilisation costs.

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- 9.2 The Customer shall handle the goods with care; in particular, they shall at their own expense maintain suitable insurance at the full reinstatement value of the goods against fire, water damage and theft.
- 9.3 Goods subject to retention of title must not be given as a lien or transferred as a security to third parties prior to the full settlement of the secured claims. The Customer shall notify us in writing without undue delay if an application is made to open insolvency proceedings or third parties have access to goods (e.g. by way of attachments) retained by us.
- 9.4 The Customer shall be entitled to resell or process the goods in the ordinary course of business; however, they hereby assign to us all claims in the amount of the invoice value of our claims accruing to him against their purchasers or third parties from resale and/or processing, irrespective of whether the goods have been resold without or after processing. The Customer shall remain authorised to collect this claim even after such assignment. Our right to collect the claim on or own account remains unaffected, though. We undertake, however, not to collect the claim, as long as the Customer meets their payment obligations from the proceeds collected, in particular as long as they are not in default of payment, no application for the opening of composition or insolvency proceedings has been filed, and payments have not been suspended. If this is the case, however, we may demand that the Customer inform us of the assigned claims and their debtors, provide all information required for collection, hand over the relevant documents and inform the debtors (third parties) of the assignment. Furthermore, in this case we shall be entitled to revoke the Customer's entitlement to pursue the sale or processing of goods subject to retention of title.
- 9.5 The retention of title extends to the products resulting from the processing, mixing or combining of our goods at their full value; here, we shall be deemed to be the manufacturer. In cases where third parties retain the ownership of their goods involved in the processing, mixing or combining, we shall acquire co-ownership in proportion to the invoice amount of the processed, mixed or combined goods. In all other respects, the resulting product shall be subject to the same regulations as the goods delivered under retention of title.
- 9.6 We undertake to release the securities to which we are entitled at the Customer's request to the extent that the realisable value of our securities exceeds the claims to be secured by more than 10%; We shall choose the securities to be released at our own discretion.
- 10. Warranties and Liability**
- 10.1 Warranty claims of the Customer are subject to the condition that they have duly fulfilled their obligations regarding inspection and objection and giving notice of defects in accordance with section 377 of the German Commercial Code (HGB). For goods intended for installation or other further processing, an inspection must in any case be carried out immediately before processing.
- 10.2 In case of a defective goods, we shall be entitled, at our discretion, to alternative performance in the form of rectification of the defect or to delivery of new goods free of defects. We are entitled to subject the alternative performance owed to the Customer's payment of the purchase price due. The Customer may, however, retain a part of the purchase price which is reasonable in relation to the defect.  
In cases where we opt for a rectification of defects, we shall bear all expenses incurred for the rectification, in particular transport, travel, labour and cost of materials, as far as the expenses are not increased because the object of delivery was subsequently taken to a place other than the place of performance. If the alternative performance fails, the Customer shall be entitled, at their option, to withdraw from the contract or demand a reduction of the purchase price. The statutory rights of recourse pursuant to section 445a of the German Civil Code (BGB) shall remain unaffected.
- 10.3 The limitation period for any claims arising from defects is 12 months from the transfer of risk. This shall, however, not apply for purchased goods that are normally used for a building and have caused the defect. The statutory limitation periods for rights of recourse (as set out in section 445b of the German Civil Code, "BGB") shall remain unaffected. The aforementioned warranty period shall not apply in cases of intent or fraudulent concealment of a defect or where we have assumed a guarantee for the quality of the delivery item. It also shall not apply for claims of defects in cases of injury to life, body or health, to claims under the German Product Liability Act (*Produkthaftungsgesetz*), or in cases of grossly negligent breach of duty or culpable breach of fundamental contract obligations, i.e. of those contractual obligations the fulfilment of which is a prerequisite for the proper performance of the contract and the observance of which the customer may regularly rely on, and the breach of which, on the other hand, jeopardises the achievement of the purpose of the contract.
- 10.4 The specifications for the storage and shelf life of the goods notified to the Customer are mandatory and must be observed. We are not liable for any defects of the goods caused by non-observance of the specifications for storage or shelf life.
- 10.5 Claims of the Customer for damages or the reimbursement of futile expenses shall also in the case of defects be limited to the provisions of section 11 and are otherwise excluded.
- 11. Further Liability Provisions**
- 11.1 Insofar as nothing to the contrary arises from these GTCS including the following provisions, our liability in the event of a breach of contractual or non-contractual obligations will be that prescribed by the statutory provisions.
- 11.2 We shall be liable for damages, irrespective of the legal grounds, within the scope of fault-based liability in cases of intent or gross negligence. Our liability (if any) arising from simple negligence shall be restricted, subject to statutory limitations of liability (diligence we exercise for our own matters; insignificant breach of duty) to:
- damage resulting from injury to life, body or health,
  - for damages from breach of a material contractual obligation (obligation the fulfilment of which is a prerequisite for the proper performance of the contract and the compliance of which the other party regularly relies and may rely); in such case, our liability, however, shall be limited to the compensation of the typical predictable damage.
- 11.3 The liability limitations of section 11.2 shall also apply for any breach of duty by or in favour of persons for whose fault we shall be responsible in accordance with the statutory provisions. They do not apply in cases where we have fraudulently concealed a defect or have assumed a guarantee for the quality of the goods or for claims of the Customer under the German Product Liability Act.
- 11.4 In the event of a breach of duty that it not attributable to a defect, the Customer shall not be be entitled to withdraw from or terminate the contract unless we are responsible for said breach of duty. A free right of termination of the Customer (in particular in accordance with sections 650, 648 of the German Civil Code) shall be excluded. In all other respects, the statutory requirements and legal consequences shall apply.
- 11.5 The limitations of this section 11 shall also apply in cases where the Customer demands compensation for useless expenses instead of the contractual performance or a claim for damages.
- 12. Export Regulations, Export License in Case of Resale of The Goods**
- 12.1 The Customer represents and warrants that they will observe all applicable laws and regulations regarding export control, including and in particular the European Dual-Use Regulation, as well as any other applicable national or international laws and export regulations to the extent that they relate to the agreed activities.
- 12.2 The Customer represents and warrants that the goods purchased from us shall not be exported to countries listed as

prohibited destinations in the laws or regulations referred to in Clause 12.1 without an appropriate governmental authorisation. At our request, the Customer shall provide evidence of such authorisation. The Customer shall not resell the goods to a purchaser of which they know or have reason to believe that the purchaser intends to export the goods without first obtaining the required governmental export license.

- 12.3 If the Customer resells to a reseller, they undertake to impose the obligations on the reseller corresponding to the aforementioned obligations set out in clauses 12.1 and 12.2.

### 13. Date Processing And Data Storage

We attach particular importance to complying with the provisions of data protection law, in particular with the provisions of the Data Protection Regulation (GDPR). Any personal data of the Customer shall be collected, stored and processed for no other purpose than the performance of the contracts within the framework of the business relationship and the processing of payments. More detailed information are contained in our Privacy Policy available to the Customer under the following link: [www.gk-graphite.com/de/datenschutz](http://www.gk-graphite.com/de/datenschutz).

### 14. Force Majeure

- 14.1 Insofar as a party to the contract is prevented from fulfilling its obligations as a result of force majeure as set out in section 2, it shall be released from these obligations.
- 14.2 Force majeure is an external event that is not foreseeable and also cannot be averted in time through reasonably expected care and technically and economically reasonable means. This shall include, in particular, natural disasters, terrorist attacks, power failure, failure of telecommunications connections, industrial action, strikes and lockouts, pandemics or legal provisions or acts of government, law courts or authorities (regardless of their legality).
- 14.3 The party concerned shall notify the other party without undue delay and must inform them on the reasons for and probable duration of the event of force majeure. They shall endeavour to use all technical and economically reasonable means to ensure that they can fulfil their duties again as soon as possible.

### 15. Final Provisions

- 15.1 The relevant laws of the Federal Republic of Germany shall apply exclusively, without regard to the international uniform law, and in particular without regard to the Convention on Contracts for the International Sale of Goods.
- 15.2 The exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is Passau. This place of jurisdiction shall apply exclusively to actions brought by the Customer. Furthermore, we shall also be entitled to bring an action at the place of performance of the delivery obligation if delivery has been agreed in deviation from these GTCS, or at the general place of jurisdiction of the Customer.  
Higher ranking statutory provisions, in particular those relating to exclusive jurisdictions, shall remain unaffected.
- 15.3 If the Customer's principal office is outside the European Union and Switzerland, the following arbitration agreement shall apply in deviation from the above choice of jurisdiction provision (set out in clause 14.2):  
All disputes arising out or in connection with the contract or its validity shall be finally settled by an arbitral tribunal in accordance with the Arbitration Rules of the *Deutsche Institution für Schiedsgerichtsbarkeit e.V. (DIS)* (German Institution of Arbitration) without recourse to the ordinary courts of law. The arbitral tribunal shall consist of one arbitrator in cases where the value claimed is less than EUR 50,000.00 and of three arbitrators in cases where the value claimed is 50,000.00 or higher. The place of arbitration is Munich. The language of the proceedings is English, unless the parties mutually agree on another language of proceedings.
- 15.4 In cases of doubt, the German version of these GTCS shall prevail.

- 15.5 In the event that any provisions contained in the contract or these GTCS are or become fully or partially unenforceable, this shall not effect the validity of the other provisions. The parties undertake to replace fully or partially unenforceable provisions by provisions which come as close as possible to the economically intended purpose of the unenforceable provisions. The same applies in the event of any gaps in the contract including these GTCS.
- 15.6 Individual agreements made with the Customer in the individual case (including collateral agreements, supplements and amendments) shall in any case take precedence over these GTCS. Subject to the proof to the contrary, the content for such agreements shall be determined by a contract drawn up at least in text form or our confirmation provided in text form.
- 15.7 Legally relevant declarations and notifications by the Customer with regard to the contract (e.g. setting of deadlines, notification of defects, withdrawal or reduction) must be made in writing, i.e. in written or text form (e.g. letter, e-mail, fax). Statutory formal requirements and further verifications, in particular in the event of doubts about the legitimacy of the person making the declaration, shall remain unaffected.

Graphit Kropfmühl GmbH, this 14th day of July, 2022