

General Terms and Conditions

of Teknos Deutschland GmbH

Version: February 2023

§ 1 Scope

1. These General Terms and Conditions shall apply to any and all business relationships between us and our customers (hereinafter individually a “**Customer**” and collectively “**Customers**”). These General Terms and Conditions shall only apply to Customers that are entrepreneurs (as defined in Section 14 of the German Civil Code – BGB), public law entities or special funds under public law.
2. The General Terms and Conditions shall in particular apply to contracts relating to the sale and/or delivery of movable items (“**Goods**”), irrespective of whether we produce such Goods ourselves or purchase them from sub-suppliers (Sections 433 and 650 of the German Civil Code).
3. Unless otherwise agreed upon, the General Terms and Conditions shall apply – in the form applicable at the time the Customer places their order and/or in the most current form presented to the Customer in text form – and shall be deemed to be a framework agreement for similar future contracts, releasing us from the obligation to make reference thereto in every individual case.
4. Our General Terms and Conditions shall apply exclusively. Any deviating, conflicting or amending general terms and conditions of the Customer shall not become part of the contract unless we expressly gave our consent to their applicability. This requirement of consent shall apply in all cases, including without limitation in cases where the Customer, during the ordering process, makes reference to the Customer’s general terms and conditions and we fail to expressly object thereto.
5. Individual agreements (e.g. framework agreements, quality assurance agreements) and any information contained in our order confirmation shall supersede the provisions contained in these General Terms and Conditions. In case of doubt, Incoterms are to be interpreted in accordance with the Incoterms® issued by the International Chamber of Commerce in Paris (ICC), in the version valid at the time the contract is concluded.
6. References to the applicability of statutory regulations shall only be for clarification purposes. This means statutory regulations shall apply, irrespective of whether reference is made thereto, unless they are directly changed or expressly excluded in these General Terms and Conditions.

§ 2 Conclusion of contract

1. Unless otherwise agreed upon, our offers are non-binding and without engagement, even if we provided the Customer with catalogues, technical documentation (e.g. drawings, plans, calculations, references to DIN standards) or other product descriptions or documents, in electronic and other form, to which we have reserved title and copyrights.
2. The order of the Goods by the Customer shall be deemed to be a binding contractual offer. Unless otherwise stipulated in the order, we shall be entitled to accept such an offer within three (3) working days upon receipt.

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3. Such acceptance can be in writing, e.g. by sending an order confirmation, or can be effected by delivering the Goods to the Customer.

§ 3 Prices

1. Unless otherwise agreed upon in any individual case, the prices applicable at the time the contract is concluded shall apply ex stock and plus statutory VAT (if applicable).
2. The calculation of prices shall be based on the weights, unit numbers and quantities as determined by us, if and to the extent the Customer does not object thereto without delay.
3. If, after the contract was concluded, the execution of the contract becomes economically unreasonable for us due to cost developments, we reserve the right to initiate new price negotiations with the Customer. As a general rule, “economically unreasonable” means that the constituent factors and/or bases used for calculation of the agreed prices change considerably. In such cases, we will cooperatively enter into price negotiations with the Customer.

§ 4 Quality of the Goods, technical consultation, use and workmanship

1. As a general rule, only our product descriptions, specifications and manufacturer’s specifications, which form the subject matter of the individual contract or which we made publicly known at the time the contract is concluded (in particular in catalogues or on our website) shall be deemed to be the agreed quality of the Goods. Public statements, advertising or promotions not initiated by us shall not be considered as statements relating to the quality of the Goods.
2. The advice we issue as to the use of the Goods – orally, in writing and by trial – will be provided to the best of our knowledge and belief; however, such advice shall only be deemed to be information without binding force (with regard to property rights of third parties, if any, as well) and shall not exempt the Customer from the obligation to verify if the Goods we deliver are suitable for the intended processes and purposes. The application, use and processing of the Goods are beyond our reasonable control and are therefore exclusively within the Customer’s scope of responsibility.

§ 5 Delivery, transfer of risk and delay in delivery/acceptance

1. Unless expressly otherwise agreed upon, delivery and transfer of risk are in accordance with DAP (ICC Incoterms®2020) to the delivery address provided by the Customer.
2. In the event that we agree that the Customer is to pick up the Goods, the risk of accidental loss and accidental deterioration of the Goods shall be transferred to the Customer at the time we inform the Customer that the Goods are ready for collection.
3. Excess or short deliveries caused by the production process are admissible, provided the deviation from the ordered quantity is not more than 10%. Partial deliveries shall be admissible to the extent this is reasonable for the Customer.
4. The delivery period/date shall be agreed upon on an individual basis and/or stipulated by us in the order confirmation.
5. Should we be unable to meet the agreed binding delivery date for reasons for which we are not responsible (e.g. non-performance), we shall immediately inform the Customer thereof and of the planned new delivery date. If performance is still not possible within

such a new delivery period, we shall be entitled to rescind the contract in whole or in part; in such case, we will return and/or reimburse any consideration (e.g. payment) already rendered by the Customer. Non-performance is deemed to apply in the event our sub-suppliers fail to deliver on time if we concluded a matching covering transaction or in case of other disturbances in the supply chain, e.g. due to force majeure.

6. If and when a delay in delivery occurs shall be determined in accordance with statutory regulations. However, in each case, the Customer shall be obliged to send a reminder.
7. The Customer's rights in accordance with Section 10 of these General Terms and Conditions, and our statutory rights, in particular in case of an exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of performance and/or subsequent performance) shall remain unaffected.
8. If the Customer is in delay in acceptance or fails to comply with their obligation to cooperate or if delivery is delayed for other reasons attributable to the Customer's scope of responsibility, we shall be entitled to demand compensation for any damage resulting thereof, including additional expenses (e.g. storage costs).

§ 6 Transport and packaging

1. Unless otherwise agreed upon, we shall be entitled to stipulate the method of shipment (in particular the transport company, the transport route and the packaging).
2. We will pack the Goods using the due care of a diligent business person and load and store them in accordance with the usual transport and handling requirements.
3. In case the Goods are delivered in leased containers, such containers are to be returned within 45 days after receipt of the Goods, empty without any residues and with carriage paid. Starting on the 46th day after receipt of the Goods, we will charge a leasing fee of EUR 4.00 per calendar day until we receive the leased container. Any loss or damage of a leased container that occurs before we receive it will be at the Customer's expense, provided the reason for such loss or damage is in the Customer's scope of responsibility. Leased containers may not be used for any other purpose or for the storage of any other products. They are only intended for the transport of the delivered Goods. Labels or markings may not be erased.
4. We will not accept the return of non-returnable packaging; however, we will inform the Customer of a third party that will accept and recycle such packaging in accordance with the Packaging Act.

§ 7 Payment

1. Unless otherwise agreed upon, the purchase price will become due and payable within 14 days after the date of the invoice we issue for the delivery in question. The date of our invoice shall also form the basis of the calculation of the discount period, if any such period has been agreed upon. However, we shall have the right at any time, including during an ongoing business relationship, to only execute delivery against payment in advance of the entire or any part of the purchase price. We will stipulate our intention to exercise this right when we issue the order confirmation at the latest.
2. Upon expiry of the above-stipulated term of payment, the Customer shall be deemed to be in delay. During the delay period, interest amounting to the applicable statutory default interest rate shall incur on the purchase price. We reserve the right to assert any additional damage caused by the delay. Our right to assert commercial due date interest

(Section 353 of the German Commercial Code (HGB)) against merchants shall remain unaffected.

3. If it becomes obvious after conclusion of contract (e.g. by an application for the initiation of insolvency proceedings) that our claim for the purchase price is endangered due to the Customer's bad payment behaviour, we shall be entitled, based on statutory regulations, to refuse performance and, after setting a grace period, if required, to rescind the contract (Section 321 of the German Civil Code). We shall be entitled to rescind contracts concerning the production of unsellable items (production to Customer's specifications) with immediate effect; the statutory regulations regarding cases in which setting a deadline is not necessary shall remain unaffected. In such cases, we are also entitled to demand additional advance payments or other security or guarantees.

§ 8 Retention of title

1. We reserve the title to the sold Goods until full payment of our present and future receivables from the purchase contract and the current business relationship (secured receivables).
2. The Goods subject to retention of title must neither be pledged nor transferred by way of security to third parties until full payment of the secured receivables. The Customer is obliged to notify us immediately in writing of any application made for the initiation of insolvency proceedings or of any third-party attachment to the Goods subject to retention of title.
3. In case of any breach of contract by the Customer, including but not limited to failure to pay the purchase price when due, we shall be entitled to rescind the contract in accordance with statutory regulations and/or to request the return of the Goods based on the retention of title. Such request for return of the Goods shall not be deemed to be a declaration of rescission of contract; however, we shall be entitled to request the return of such Goods and to reserve the right to rescind the contract. Should the Customer fail to pay the purchase price when due, we shall only be entitled to assert such rights after having set a reasonable deadline for payment and such deadline expired fruitlessly, or if setting a deadline is not necessary in accordance with statutory provisions.
4. Until we withdraw our consent in accordance with para. (c) below, the Customer is entitled to resell and/or process the Goods subject to retention of title in the ordinary course of business. In such case, the following supplementary provisions shall apply:
 - (a) The retention of title shall apply to the full value of the products created by processing, blending or combining our Goods and we shall be deemed to be the manufacturer thereof. If our Goods are processed, blended or combined with third-party goods and such third party's title remains in force, we shall acquire co-ownership on a pro-rata basis with regard to the invoice values of such processed, blended or combined Goods. In addition, the newly created product shall be subject to the same conditions that are applicable to the Goods delivered subject to retention of title.
 - (b) The Customer shall immediately assign to us as a security (as a whole or in the amount of our pro-rata share in accordance with the above paragraph) any accounts receivable from third parties resulting from the resale of the Goods or of such a newly created product. We accept such assignment. The Customer's obligations stipulated in no. 2 shall apply mutatis mutandis to the assigned accounts receivable.

- (c) We as well as the Customer shall be entitled to collect such receivables. We undertake to refrain from collecting such receivables for as long as the Customer fulfils their payment obligations towards us, there is no deficiency in the Customer's performance and we do not assert the retention of title by exercising any right stipulated in no. 3. If one or more of these events should occur, we shall be entitled to demand that the Customer disclose the assigned receivables and the related debtors to us and provide any information necessary for collection and also hand over the related documents and inform the debtors (third parties) of such assignment. In such case, we shall also be entitled to revoke the Customer's right to resell and process the Goods that are subject to retention of title.
 - (d) If the realisable value of the securities exceeds our receivables by more than 10%, we shall release such securities as we deem fit upon the Customer's request.
5. To the extent the retention of title is ineffective in accordance with the laws of the country to which the Goods were delivered, the Customer, upon our request, must provide us with a security of equal value. Should the Customer refuse to do so, we are entitled to demand immediate payment of all outstanding invoices without regard to agreed-upon payment terms, if any.

§ 9 Customer's claims based on defects

1. The Customer's rights with regard to defects in quality and defects of title (including wrong delivery, short delivery, improper assembly/installation or defective installation manual) shall be subject to the statutory provisions unless otherwise stated hereinafter. The statutory specific provisions regarding compensation for expenses relating to the final delivery of newly produced Goods to a consumer (supplier's recourse in accordance with Sections 478, 445a, 445b and/or 445c, 327(5) and 327u of the German Civil Code) shall remain unaffected unless we agreed on a compensation of equal value, e.g. within the framework of a quality assurance agreement.
2. As a general rule, we shall not be liable for any defects the Customer knows of or fails to know of based on gross negligence (Section 442 of the German Civil Code).
3. In addition, the Customer shall only be entitled to assert claims based on defects if the Customer duly fulfilled their statutory obligations to investigate and to make a complaint in respect of a defect immediately upon receipt of the Goods (in accordance with Sections 377 and 381 of the German Commercial Code). In the case of construction materials and other Goods that are intended for installation or other further processing, such investigation must in any case be made immediately before processing. If a defect is detected upon delivery, inspection or at a later time, the Customer shall be obliged to notify us of such defect immediately and in writing. In any case, the Customer must notify us in writing of any obvious defects within five (5) working days upon delivery and, in the case of defects that are undetectable upon delivery and inspection, within five (5) working days after detection thereof. If the Customer fails to perform such proper investigation and/or to send a notification of defects, our liability for the defect that was not duly reported or not reported in due time is excluded in accordance with statutory provisions. In case of Goods intended for mounting, fixing or installing, this shall also apply if the defect, due to the violation of one of these obligations, only became obvious after processing; in such case, the Customer shall expressly not be entitled to claim compensation of related costs (costs for assembly and disassembly).

4. In case of a defect of the delivered item, we shall be entitled to decide whether we wish to effect subsequent performance by repairing such defect (rectification of defect) or by delivering a non-defective item (replacement delivery). The Customer shall be entitled to refuse subsequent performance if the type of subsequent performance we choose is unreasonable for the Customer in a particular case. Our right to refuse subsequent performance in accordance with statutory requirements shall remain unaffected.
5. We shall be entitled to make the required subsequent performance conditional upon the Customer paying the purchase price due. However, the Customer shall be entitled to retain a reasonable part of the purchase price that is appropriate for the defect.
6. The Customer shall be obliged to grant us the required time and opportunity to effect subsequent performance, and in particular provide us with the Goods complained about so that we may inspect them. In case of a replacement delivery, the Customer must return the defective item to us upon our request and in accordance with statutory provisions. However, the Customer does not have a right of restitution. Subsequent performance neither includes the de-installation, removal or disassembly of the defective Goods nor the installation, fixing or assembly of Goods that are free from defects if we were not obliged to such performance originally; any claims of the Customer for compensation of associated costs (costs for assembly and disassembly) shall remain unaffected.
7. In case of an actual defect, we will cover and/or reimburse in accordance with statutory provisions and with these General Terms and Conditions any expenses required for inspection and subsequent performance, including but not limited to costs for transport, travel, work and materials as well as costs for assembly and disassembly, if any. If there is no actual defect, we shall be entitled to demand repayment of any costs incurred by the Customer's unjustified request for the remedy of a defect if the Customer knew or negligently failed to know that there was no actual defect.
8. In urgent cases, e.g. if operational safety is endangered or if disproportionate damage must be prevented, the Customer shall be entitled to rectify the defect themselves and to demand compensation for reasonably required expenses from us. The Customer shall be obliged to inform us immediately of any such rectification, if possible in advance. The Customer shall not be entitled to perform rectification if we would be entitled to refuse such subsequent performance in accordance with statutory regulations.
9. If a reasonable period of time set by the Customer expired fruitlessly or if the Customer is not obliged to set a period of time in accordance with statutory regulations, the Customer shall be entitled to rescind the contract or reduce the purchase price in accordance with statutory provisions. However, there is no right of rescission in case of minor defects.
10. The Customer's claims for damages and/or compensation for futile expenses, if any, shall be subject to Section 10 exclusively, including in case of defects. All other claims for damages and/or compensation for futile expenses, if any, shall be excluded.

§ 10 Other liability

1. We do not assume any warranty for the final products manufactured by the purchaser, since the proper processing of the goods supplied by us takes place outside our control. If thinners, hardeners, additional varnishes, or other components not recommended by us are used, the products will no longer comply with our technical specifications.

2. Unless otherwise stipulated in these General Terms and Conditions, including the provisions stipulated below, our liability for any violation of contractual and other obligations shall be subject to the relevant statutory regulations.
3. Our liability for damages based on fault, irrespective of the legal reason, shall be limited to wilful intent and gross negligence (fault-based liability). Subject to statutory limitations on liability (e.g. due diligence in our own affairs, irrelevant violation of duties), our liability for ordinary negligence shall be limited as follows to:
 - (a) any damage resulting from injury to life, limb or health;
 - (b) any violations of material contractual obligations (e.g. any obligation that is necessary for the proper execution of the contract and on the fulfilment of which the other party regularly relies and is entitled to rely on); in such case, our liability is limited to the compensation for the foreseeable typical damage.
3. The limitations on liability resulting from no. 2 shall also apply via-à-vis third parties as well as to any violation of obligations by persons (including for their benefit), provided we are liable for such persons' faults in accordance with statutory provisions. The limitations shall not apply if a defect was fraudulently concealed or a guarantee for the quality of the Goods was assumed; likewise, they shall not apply to any claims the Customer may have based on the Product Liability Act.
4. In case of a violation of obligations that is not a defect, the Customer shall only be entitled to rescind or terminate the contract if such violation of obligations is attributable to our scope of responsibility. The Customer shall not be entitled to terminate the contract without cause (in particular in accordance with Sections 650 and 648 of the German Civil Code). In addition, the statutory requirements and legal consequences shall apply.

§ 11 Force majeure

1. We will not be liable for any event of force majeure that materially hinders our contractual performance obligations or temporarily hinders or makes impossible the execution of the contract.
2. Force majeure means any and all events beyond the parties' scope of influence and intent, such as natural disasters, pandemics, epidemics, shortages of energy or raw materials, government actions, decisions by public authorities (including but not limited to imposed regulations or delayed official acceptances), blockades, war, other military conflicts, mobilisation, riots, terrorist attacks, strikes, lockouts and other labour disputes, seizures, embargoes, import difficulties or any other circumstances that are unforeseeable, material and not caused by the parties' and which occur after the contract was concluded.
3. To the extent an event of force majeure hinders us from performing our contractual duties, such failure to perform shall not be deemed to be a violation of contract, and the periods, deadlines, etc. stipulated in the contract or based on the contract will be reasonably extended in accordance with the duration of the event of force majeure. The same shall apply, mutatis mutandis, in situations in which we depend on third-party performance and such third-party performance is delayed. We will do our utmost, to the extent required and reasonable, in order to minimise the effect of the consequences of such event of force majeure. In particular, we will inform the Customer of the beginning and of the end of the event of force majeure without delay and in writing. If we become reasonably certain that such event of force majeure will last longer than six months, the Customer shall be entitled to rescind the contract by registered letter.

§ 12 Statute of limitations

1. In deviation from Section 438(1)(3) of the German Civil Code, the general limitation period for claims based on defects in quality or defects of title shall be one year after delivery.
2. Should the Goods be an item that is used for a building in accordance with its usual purpose of use and caused the defect of the building (building material), the limitation period shall be five (5) years after delivery in accordance with statutory regulations (Section 438(1)(2) of the German Civil Code). Other statutory special regulations regarding the statute of limitations shall also remain unaffected, including but not limited to Section 438(1)(1), 438(3), 444, 445b of the German Civil Code.
3. The above limitation periods applicable to the sale of goods and purchase rights shall also apply to the Customer's contractual and non-contractual claims for damages based on a defect of the Goods, unless the application of the regular statutory limitation periods in accordance with Sections 195 and 199 of the German Civil Code provides for a shorter limitation period in a particular case. The statute of limitations applicable to Customer claims for damages in accordance with Sections 10(2)(1) and 10(2)(2)(a) as well as in accordance with the Product Liability Act is exclusively subject to the statutory limitation periods.

§1 3 Set-off, right of retention

1. The Customer shall not be entitled to set off their claims against our claims unless the Customer's claims are established by declaratory judgement, recognised or indisputable. However, the Customer shall be entitled to set off their claims against our claims if the Customer asserts claims based on defects or asserts counter-claims from the same purchase contract.
2. The Customer shall not be entitled to execute any right of retention unless their counter-claim is based on the same purchase contract.

§ 14 Data protection

1. We store the data and information that are collected during the initiation of the business relationship in order to enable the execution of the contract. We are entitled to process such data and information.
2. For the purpose of contract execution, we are entitled to disclose such data and documents to third parties, always complying with applicable data protection regulations to the extent that such disclosure is for the purpose of contract execution and the protection of our legitimate interests.

§ 15 Place of performance, place of jurisdiction and choice of law

1. Place of performance for any and all liabilities resulting from the business relationship with the Customer is our point of shipment; however the place of performance for payment transactions shall be our registered office.
2. The exclusive place of jurisdiction (including international cases) for any disputes directly or indirectly arising out of the business relationship with the Customer shall be the location of our registered office. However, we, at our sole discretion, shall be entitled to file a law suit at the Customer's general place of jurisdiction as well. Priority statutory provisions, including but not limited to regulations regarding exclusive places of jurisdiction, shall remain unaffected.
3. These General Terms and Conditions and the business relationship with the Customer are exclusively subject to German substantive law; the UN Sales Convention (CISG – Vienna Sales Convention) and the conflicts of law provisions shall be excluded.

§ 16 Final provisions

1. Any and all agreements made between the Customer and ourselves regarding the execution of any contract must be made in writing in order to be effective. Any declarations and information of legal relevance provided by the Customer regarding the contract (e.g. delivery periods , notification of defects, rescission of contract or reduction of the purchase price) must be made in writing as well. For the purpose of these General Terms and Conditions, "in writing" includes the written form and text form (e.g. letter, e-mail, fax). This shall not affect legal requirements of form and other evidence, in particular in case of doubt regarding the authorisation of the person making such declarations.
2. If and to the extent contractual documents, annexes to the contract, General Terms and Conditions or other documents are translated into another language in whole or in part, the German version of these documents shall take precedence in case of any disputes.
3. The Customer may not assign any rights or claims to any third party without our express written consent.
4. Should any provision contained in these General Terms and Conditions or in any other agreement be or become ineffective, this shall not affect the effectiveness of the other provisions or agreements. Such an invalid or ineffective provision shall be replaced by a provision that comes as close as possible to the intended purpose of the invalid or ineffective provision in legally effective way. The above provision shall apply to regulatory gaps mutatis mutandis.