

# General Terms and Conditions of Purchase

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## 1. General, Area of Application

1.1. The following general terms and conditions shall apply exclusively to all business relationships between us (Solutions) and any supplier/seller as contracting party. Amendments may only be made by mutual written agreement.

1.2. Hereby, we object to any conflicting general terms and conditions of the contracting party. Contracts come into existence only on the basis of the following general terms and conditions. Other general terms and conditions will not be accepted and shall not be binding.

1.3. Our general purchase conditions shall also apply to all future business relationships with the contracting party.

1.4. Our general purchase conditions shall only apply to firms pursuant to § 14 German Civil Act (BGB), legal persons of public law or estates subject to public law.

## 2. Conclusion of the Contract

2.1. Purchase orders are only binding if placed or confirmed in writing. Subsequent agreements, supplementary agreements and amendments require our written confirmation to be valid.

2.2. Solutions is entitled to request changes regarding the delivery item even after the conclusion of the contract to the extent that can be reasonably expected of the contracting party. If such changes are requested, the impacts hereof for both parties have to be adequately considered, in particular with respect to extra or reduced costs and the delivery date.

2.3. We can object at any time to a third party performing the contracting party's obligations.

## 3. Delivery, Right of Retention

3.1. The scale and the content of the delivery obligation or performance owed by the seller and the respective prices result from our written purchase- or order confirmation. The seller undertakes to ensure that the delivery or part-delivery correspond in quality and composition as stipulated and accepted by us.

3.2. A written agreement is decisive for the scale of the delivery. We accept only the volumes and quantities ordered by us. Additional delivery or short delivery are only acceptable, if expressly agreed in writing.

3.3. Unless otherwise expressly agreed, the delivery should be free of all charges including packaging. Delivery and distribution shall be at supplier's risk and expense. The seller is released from his delivery duty only by hand over to the addressee.

3.4. The seller is liable for any defects of the delivered goods inclusive of any damages in transit. In case of a bad delivery we are entitled to retain the payment pro-rata by the time the delivery is duly performed. Part-deliveries are accepted only if expressly agreed in written form in advance. If a part-delivery is agreed, the remaining quantity has to be listed on the delivery receipt.

## 4. Delivery time, Default

4.1. Agreed delivery terms have to be regarded as fixed terms in the meaning of Section 376 Commercial Code (Handelsgesetzbuch) and have to be necessarily met. If agreed delivery dates are not met, the seller defaults without the need of an additional dunning letter. The decisive time for the adherence of the delivery date is the receipt of the delivery to the addressee.

4.2. In case of delay in delivery, we are entitled to legal claims including claims for non-performance. We are entitled to rescind from the contract without giving further notice and to demand an indemnification of 10% of the net purchase price unless the seller proves the occurrence of a lesser loss or the non-occurrence of a loss or if we prove a higher loss.

## 5. Payments

5.1. If not otherwise agreed in the purchase agreement, the purchase price is payable within 30 days after receipt of the proper invoice. However, the term of payment will not start before the receipt of the defects-free delivery.

5.2. If payment will be made within 10 days, we are entitled to retain a three per cent discount.

## 6. Seller's Warranties, Prescription

6.1. The seller guarantees the accurate delivery. He is in particular liable for the lack of guaranteed qualities as well as for faults in the manner and the volume of the delivery.

6.2. Defects of delivery are to be noticed to the seller immediately after the detection of the defect in the ordinary course of business.

6.3. If the goods are redirected or forwarded to third parties we comply with our notice-of-defects duty by forwarding the notice-of-defects of the third party immediately to the seller.

6.4. Defects shall be treated as hidden defects if unhidden defects are not detected by a random sample test investigation.

6.5. The seller guarantees that the delivered goods have the stipulated quality, in particular with respect to those characteristics that are listed in our sales confirmation and that the delivered goods are in every respect suitable for the purpose designated in the contract. The seller further guarantees that the goods correspond as appropriate with all regulations and requirements of the existing legislation regarding structure, quality, packaging, declaration and specification.

6.6. If the seller fails to fulfill his warranty obligations within a reasonable time set by us, we are entitled at the seller's expense to carry out the necessary measures to remedy defects by ourselves or by a third party (Ersatzvornahme). Besides this, we are also entitled to arrange a compensation delivery (Ersatzlieferung) by a third party.

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6.7. The seller is obliged to release us from any tortious liability or liability (regardless of negligence or fault) with respect to product liability, if the seller is responsible for the liability accruing from the defect

6.8. If a third party claims against us due to product defects which the seller has caused or is responsible for, the seller is obliged to release us from liability as far as the seller is liable to the third party.

6.9. If we have to withdraw the delivery delivered to us by the seller or if the purchase price is reduced by our clients due to the deficiency of the products, the prescription period regarding our claims is three years, beginning with the receipt of the goods by us (Lieferantenregress § 478 BGB).

6.10. The prescription period for our warranty claims acts otherwise in accordance with sec. 438 German Civil Act (BGB).

## **7. Liability for Deficiency in Title**

7.1. The seller guarantees that the delivered goods are free from third party industrial property rights in Germany.

7.2. However, should the use of the delivered goods give rise to an infringement of industrial property rights or copyrights in Germany, the seller shall indemnify us and hold us harmless from any claims, actions and judgments, including all costs of defense and attorney's fees incurred in defending against any ensuing claims.

## **8. Set-off, Sellers Right of Retention**

8.1. The set-off of any seller's claim against our counterclaims is only admissible if the seller's claim is indisputable or legally recognized.

8.2. The exercise of any rights to refuse the performance or lien rights against us is only valid if the counterclaims of the seller are legally effective, recognized or indisputable; the same applies if rights to refuse the performance or the lien rights are based on the same contractual relationship.

## **9. Recession of the Contract**

9.1. Should a considerable financial deterioration of the seller occur after the conclusion of the contract or should the seller's assets be subject of an insolvency proceeding, we will be entitled to resign from the contract.

9.2. The right to resign from the contract may apply to the whole contract or for the not yet fulfilled part of the contract upon our choice. The statutorily or contractually existing claims for non-performance are not excluded by the exercise of this contractual resignation right.

## **10. Place of Performance**

Place of performance for the delivery is Hamburg or the place where the seller has contracted to deliver the goods. Place of performance for our payments and the payments of the seller is also Hamburg.

## **11. Jurisdiction/Applicable Law**

11.1. The exclusive jurisdiction for disputes arising directly or indirectly from the contractual relationship is Hamburg.

11.2. These conditions and all legal relations between us and the seller are exclusively subject to the law of the Federal Republic of Germany; the application of the UN-Purchase Law is excluded.

11.3. In the event that individual provisions of these terms and conditions are invalid or unenforceable either entirely or in part, the validity of the remaining provisions of these terms and conditions shall not be affected. The invalid or unenforceable provision shall be replaced by a provision closest to the meaning and purpose of the invalid or unenforceable provision.