

# General Conditions of Sale of AEQORIS GmbH

## § 1 Scope, Form

(1) These General Terms and Conditions of Sale (GTCS) apply to all our business relationships with our customers (“buyers”). The GTCS only apply if the buyer is an entrepreneur (§ 14 BGB), a legal entity under public law or a special fund under public law.

(2) The GTCS apply in particular to contracts for the sale and/or delivery of movable items (“goods”), regardless of whether we manufacture the goods ourselves or buy them from suppliers (§§ 433, 650 BGB). Unless otherwise agreed, the GTC in the version valid at the time of the purchaser's order or at least in the version last communicated to him in text form shall also apply as a framework agreement for similar future contracts, without us having to refer to them again in each individual case.

(3) Our GTCS apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the buyer are only then and insofar

part of the contract when we have expressly agreed to their validity. This requirement for consent applies in any case, for example even if we carry out the delivery to the buyer without reservation, knowing the general terms and conditions of the buyer.

(4) Individual agreements made with the buyer in individual cases (including ancillary agreements, additions and changes) always take precedence over these GTCS. Subject to proof to the contrary, a written contract or our written confirmation is decisive for the content of such agreements.

(5) Legally relevant declarations and notifications by the buyer in relation to the contract (e.g. setting a deadline, notification of defects, withdrawal or reduction) must be made in writing, ie in written or text form (e.g. letter, e-mail, fax). Statutory formal requirements and other evidence, especially in the case of doubts about the legitimacy of the declarant, remain unaffected.

(6) References to the validity of legal regulations are only of clarifying importance. Even without such a clarification, the statutory provisions apply unless they are directly modified or expressly excluded in these GTCS.

## § 2 Conclusion of Contract

(1) Our offers are subject to change and non-binding. This also applies if we have provided the buyer with catalogues, technical documentation (e.g. drawings, plans, calculations, references to DIN

standards), other product descriptions or documents - also in electronic form - to which we have ownership rights and copyrights reserved.

(2) The ordering of the goods by the buyer is considered a binding contract offer. Unless otherwise stated in the order, we are entitled to accept this contract offer within 7 days of receipt.

(3) Acceptance can be declared either in writing (e.g. by order confirmation) or by delivery of the goods to the buyer.

### **§ 3 Delivery Period and Delay in Delivery**

(1) The delivery period is agreed individually or specified by us when accepting the order. If this is not the case, the delivery period is approx. 4 weeks from the conclusion of the contract.

(2) If we are unable to meet binding delivery deadlines for reasons for which we are not responsible (non-availability of the service), we will inform the buyer of this immediately and at the same time communicate the expected new delivery deadline. If the service is also not available within the new delivery period, we are entitled to withdraw from the contract in whole or in part; we will immediately refund any consideration already provided by the buyer. A case of non-availability of the service in this sense is, in particular, failure to receive delivery from our suppliers in good time if we have concluded a congruent hedging transaction, neither we nor our suppliers are at fault or we are not obliged to procure in individual cases.

(3) The occurrence of our delay in delivery is determined by the statutory provisions. In any case, however, a reminder by the buyer is required. If we are in default of delivery, the buyer can demand lump-sum compensation for his damage caused by the delay. The flat-rate compensation for damages is 0.5% of the net price (delivery value) for each full calendar week of delay, but no more than 5% of the delivery value of the goods delivered late. We reserve the right to prove that the buyer suffered no damage at all or only a significantly lower damage than the above flat rate.

(4) The rights of the buyer according to § 8 of these GTCS and our legal rights, in particular in the case of an exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of the service and/or supplementary performance), remain unaffected.

### **§ 4 Delivery, Passing of Risk, Acceptance, Default of Acceptance**

(1) The delivery takes place ex warehouse, which is also the place of performance for the delivery and any supplementary performance. At the request and expense of the buyer, the goods will be sent to another destination (sales by mail). Unless otherwise agreed, we are entitled to determine the type of shipment (in particular transport company, shipping route, packaging) ourselves.

(2) The risk of accidental loss and accidental deterioration of the goods is transferred to the buyer at the latest when the goods are handed over. In the case of mail-order sales, however, the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay is already transferred when the goods are delivered to the forwarding agent, carrier or other person or institution responsible for

carrying out the shipment. If acceptance has been agreed, this is decisive for the transfer of risk. For the rest, the statutory provisions of the law on contracts for work and services apply accordingly to an agreed acceptance. The handover or acceptance is the same if the buyer is in default of acceptance.

(3) If the buyer is in default of acceptance, fails to cooperate or if our delivery is delayed for other reasons for which the buyer is responsible, we are entitled to demand compensation for the resulting damage, including additional expenses (e.g. storage costs). For this we charge a flat fee of EUR 5.00 per calendar day, starting with the delivery period or - if there is no delivery period - with the notification that the goods are ready for dispatch. Evidence of greater damage and our legal claims (in particular reimbursement of additional expenses, reasonable compensation, termination) remain unaffected; however, the lump sum is to be offset against further monetary claims. The buyer is entitled to prove that we have suffered no damage at all or only a significantly lower damage than the above flat rate.

## **§ 5 Prices and Terms of Payment**

(1) Unless otherwise agreed in individual cases, our current prices at the time the contract is concluded shall apply, ex warehouse plus statutory sales tax.

(2) In the case of mail-order sales (§ 4 Paragraph 1), the buyer bears the transport costs ex warehouse and the costs of any transport insurance requested by the buyer. If we do not charge for the transport costs actually incurred in the individual case, a flat rate for transport costs (excluding transport insurance) of EUR 20.00 is agreed. Any customs duties, fees, taxes and other public charges are borne by the buyer.

(3) The purchase price is due and payable within 14 days of invoicing and delivery or acceptance of the goods. However, we are entitled at any time, even within the framework of an ongoing business relationship, to carry out a delivery in whole or in part only against advance payment. We declare a corresponding reservation at the latest with the order confirmation.

(4) With the expiry of the above payment period, the buyer is in default. Interest is to be paid on the purchase price during the delay at the applicable statutory default interest rate. We reserve the right to assert further damage caused by delay. Our claim to the commercial maturity interest (§ 353 HGB) remains unaffected in relation to merchants.

(5) The buyer is only entitled to set-off or retention rights insofar as his claim has been legally established or is undisputed. In the event of defects in the delivery, the counter rights of the buyer remain unaffected, in particular in accordance with Section 7 (6) sentence 2 of these GTCS.

(6) If, after conclusion of the contract, it becomes apparent (e.g. through an application for the opening of insolvency proceedings) that our claim to the purchase price is jeopardized by the buyer's inability to pay, we are entitled to refuse performance in accordance with the statutory provisions and - if necessary after setting a deadline - to withdraw authorized by the contract (§ 321 BGB). In the case of contracts

for the manufacture of non-fungible items (custom-made products), we can declare our withdrawal immediately; the statutory provisions on the dispensability of setting a deadline remain unaffected.

## **§ 6 Retention of Title**

(1) We reserve ownership of the goods sold until all our current and future claims from the purchase contract and an ongoing business relationship (secured claims) have been paid in full.

(2) The goods subject to retention of title may not be pledged to third parties or assigned as security before the secured claims have been paid in full. The buyer must inform us immediately in writing if an application is made to open insolvency proceedings or if third parties seize the goods belonging to us (e.g. attachments).

(3) In the event of breach of contract by the buyer, in particular non-payment of the purchase price due, we are entitled to withdraw from the contract in accordance with the statutory provisions and/or to demand the return of the goods on the basis of the retention of title. The demand for return does not include a declaration of withdrawal; on the contrary, we are entitled to only demand the return of the goods and to reserve the right to withdraw from the contract. If the buyer does not pay the purchase price due, we may only assert these rights if we have previously unsuccessfully set the buyer a reasonable deadline for payment or setting a deadline of this kind is unnecessary under the statutory provisions.

(4) Until revoked, the buyer is authorized in accordance with (c) below to resell and/or process the goods subject to retention of title in the ordinary course of business. In this case, the following provisions also apply.

(a) The retention of title extends to the products created by processing, mixing or combining our goods at their full value, whereby we are considered the manufacturer. If third-party goods are processed, mixed or combined with third-party goods, we acquire co-ownership in proportion to the invoice value of the processed, mixed or combined goods. Otherwise, the same applies to the resulting product as to the goods delivered under retention of title.

(b) The buyer hereby assigns to us as security the claims against third parties arising from the resale of the goods or the product in total or in the amount of our possible co-ownership share in accordance with the preceding paragraph. We accept the assignment. The obligations of the buyer mentioned in paragraph 2 also apply with regard to the assigned claims.

(c) The buyer remains authorized to collect the claim alongside us. We undertake not to collect the claim as long as the buyer meets his payment obligations to us, there is no deficiency in his ability to pay and we do not assert the retention of title by exercising a right in accordance with paragraph 3. If this is the case, however, we can demand that the buyer informs us of the assigned claims and their debtors, provides all the information required for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment. In this case, we are also entitled to revoke the buyer's authorization to further sell and process the goods subject to retention of title.

(d) If the realizable value of the securities exceeds our claims by more than 10%, we will release securities of our choice at the request of the buyer.

## **§ 7 Claims for defects by the buyer**

(1) The statutory provisions shall apply to the rights of the buyer in the event of material defects and defects of title (including incorrect and short deliveries as well as improper assembly or defective assembly instructions), unless otherwise specified below. In all cases, the special statutory provisions for the final delivery of the unprocessed goods to a consumer remain unaffected, even if the latter has processed them further (supplier recourse in accordance with §§ 478 BGB). Claims from supplier recourse are excluded if the defective goods have been further processed by the buyer or another entrepreneur, e.g. by installing them in another product.

(2) Our liability for defects is primarily based on the agreement made on the quality of the goods. All product descriptions and manufacturer information that are the subject of the individual contract or that were made public by us (in particular in catalogs or on our Internet homepage) at the time the contract was concluded are deemed to be an agreement on the quality of the goods.

(3) If the quality has not been agreed, it is to be assessed according to the statutory regulation whether there is a defect or not (§ 434 Para. 1 Clause 2 and 3 BGB). However, we assume no liability for public statements by the manufacturer or other third parties (e.g. advertising statements) that the buyer has not pointed out to us as decisive for his purchase.

(4) The buyer's claims for defects presuppose that he has complied with his statutory inspection and notification obligations (§§ 377, 381 HGB). In the case of building materials and other goods intended for installation or other further processing, an inspection must be carried out immediately before processing. If a defect becomes apparent upon delivery, inspection or at any later point in time, we must be notified of this in writing without delay. In any case, obvious defects must be reported in writing within 7 working days of delivery and defects that cannot be identified during the inspection must be reported in writing within the same period of time from discovery. If the buyer fails to carry out the proper inspection and/or notification of defects, our liability for the defect that is not reported or not reported in a timely manner or not properly is excluded in accordance with the statutory provisions.

(5) If the delivered item is defective, we can initially choose whether to provide supplementary performance by eliminating the defect (repair) or by delivering a defect-free item (replacement delivery). Our right to refuse supplementary performance under the statutory requirements remains unaffected.

(6) We are entitled to make the supplementary performance owed dependent on the buyer paying the purchase price due. However, the buyer is entitled to retain a part of the purchase price that is reasonable in relation to the defect.

(7) The buyer must give us the time and opportunity required for the supplementary performance owed, in particular to hand over the goods complained about for inspection purposes. In the case of a

replacement delivery, the buyer must return the defective item to us in accordance with the statutory provisions. Subsequent performance includes neither the removal of the defective item nor the reinstallation if we were not originally obliged to install it.

(8) We shall bear or reimburse the expenses required for the purpose of testing and supplementary performance, in particular transport, travel, labor and material costs as well as any dismantling and installation costs in accordance with the statutory provisions if there is actually a defect. Otherwise, we can demand reimbursement from the buyer for the costs incurred from the unjustified request for rectification of defects (in particular inspection and transport costs), unless the lack of defectiveness was not apparent to the buyer.

(9) In urgent cases, e.g. if operational safety is endangered or to prevent disproportionate damage, the buyer has the right to remedy the defect himself and to demand compensation from us for the expenses objectively required for this. We must be informed immediately, if possible beforehand, of such a self-performance. The right to take action ourselves does not exist if we were entitled to refuse subsequent performance in accordance with the statutory provisions.

(10) If the subsequent performance has failed or a reasonable period of time to be set by the buyer for the subsequent performance has expired without success or is unnecessary according to the statutory provisions, the buyer can withdraw from the purchase contract or reduce the purchase price. In a minor defect, however, there is no right of withdrawal.

(11) Claims by the buyer for damages or reimbursement of wasted expenses exist only in accordance with § 8, even in the case of defects, and are otherwise excluded.

## **§ 8 Other Liability**

(1) Unless otherwise stated in these GTCS including the following provisions, we are liable in the event of a breach of contractual and non-contractual obligations in accordance with the statutory provisions.

(2) We are liable for damages – for whatever legal reason – within the framework of fault-based liability in the event of intent and gross negligence. In the event of simple negligence, we shall only be liable, subject to statutory limitations of liability (e.g. diligence in our own affairs; insignificant breach of duty),

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

b) for damages resulting from the breach of a material contractual obligation (obligation, the fulfillment of which enables the proper execution of the contract in the first place and on the observance of which the contractual partner regularly relies and may rely); in this case, however, our liability is limited to compensation for the foreseeable, typically occurring damage.

(3) The limitations of liability resulting from paragraph 2 also apply to breaches of duty by or in favor of persons whose fault we are responsible for according to statutory provisions. They do not apply if

we have fraudulently concealed a defect or have assumed a guarantee for the quality of the goods and for claims by the buyer under the Product Liability Act.

(4) Due to a breach of duty that does not consist of a defect, the buyer can only withdraw or terminate if we are responsible for the breach of duty. A free right of termination of the buyer (in particular according to §§ 650, 648 BGB) is excluded. Otherwise, the statutory requirements and legal consequences apply.

## **§ 9 Statute of Limitations**

(1) Contrary to Section 438 Paragraph 1 No. 3 BGB, the general limitation period for claims arising from material and legal defects is one year from delivery. If acceptance has been agreed, the limitation period begins with acceptance.

(2) However, if the goods are a building or an item that has been used for a building in accordance with its usual purpose and has caused its defectiveness (building material), the limitation period is 5 years from delivery in accordance with the statutory provisions (§ 438 para. 1 no. 2 BGB). Other special statutory regulations on the statute of limitations remain unaffected (in particular § 438 Para. 1 No. 1, 71 Para. 3, §§ 444, 445b 72 BGB).

(3) The above limitation periods of sales law also apply to contractual and non-contractual claims for damages by the buyer based on a defect in the goods, unless the application of the regular statutory limitation period (§§ 195, 199 BGB) would result in a shorter limitation period in individual cases to lead. Claims for damages by the buyer according to § 8 paragraph 2 sentence 1 and sentence 2(a) as well as according to the Product Liability Act lapse exclusively according to the statutory limitation periods.

## **§ 10 Choice of Law and Place of Jurisdiction**

(1) The law of the Federal Republic of Germany applies to this GTCS and the contractual relationship between us and the buyer, to the exclusion of uniform international law, in particular the UN Sales Convention.

(2) If the buyer is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive – including international – place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is our place of business in Traunstein. The same applies if the buyer is an entrepreneur within the meaning of § 14 BGB. In all cases, however, we are also entitled to file suit at the place of performance of the delivery obligation in accordance with these GTCS or a prior individual agreement or at the buyer's general place of jurisdiction. Overriding legal regulations, in particular regarding exclusive responsibilities, remain unaffected.