

## General Terms and Conditions (GTC) for our Products and Services

- Graepel Lönningen GmbH & Co. KG
- Graepel Seehausen GmbH & Co. KG

### § 1 Scope of Application

These sales conditions apply in relation to entrepreneurs and businesses, legal entities under public law, and special funds under public law, but not in relation to end users.

Our sales conditions shall be applicable exclusively; we do not recognize any orderer's conditions, either supplementary, inconsistent with or deviating from our sales conditions unless we explicitly agree in writing to their applicability. Our sales conditions shall apply also if we deliver without reservation to the orderer with knowledge of any orderer's conditions inconsistent with or deviating from our sales conditions.

Our sales conditions shall apply also to all future business with the orderer, even if they are not explicitly agreed upon again.

### § 2 General Conditions

- (1) Our offers are subject to change (without notice) and contain a specific acceptance period.
- (2) All terms and conditions for this order can be summarized in a confirmation of order and placed at the orderer's disposal in writing.
- (3) Oral agreements must always be confirmed promptly in writing.
- (4) Legally relevant statements to be made or notices to be given to us by the orderer after the conclusion of the agreement (e.g. fixing of deadlines, complaints about defects) must be in writing to be effective.
- (5) The information and illustrations in prospectuses and catalogues constitute approximate information customary in our branch of business unless explicitly referred to by us as binding.

### § 3 Long-Term Agreements, Contracts for Delivery on Call, Price Adjustments

- (1) Agreements for an indeterminate term can be terminated with 2 months' notice effective from the end of a calendar quarter.
- (2) If the production costs change substantially for a long-term contract (contracts with a term of more than 4 months or contracts with an indeterminate term), either contracting party has the right to demand an adjustment of the price.
- (3) If no binding order volume is agreed on, we base our calculation on the non-binding order volume (target volume) expected by the orderer for a specific period of time. If the orderer purchases less than the target volume, the prices must be negotiated again.

If the orderer purchases more than the target volume, we will reasonably reduce the unit price, provided the orderer announced the additional demand at least 3 months before delivery.

- (4) In the case of a supply agreement on call, binding volumes must be communicated to us at least 2 months before the delivery date by means of a call, unless otherwise agreed. Extra costs caused by a late call or by subsequent changes regarding the time or volume of a call by the orderer shall be borne by the orderer; our calculation shall be decisive for this purpose.

#### **§ 4 Confidentiality**

- (1) Each contracting party shall use all documents (including samples, models and data) and knowledge obtained through the business relationship only for the purposes jointly pursued and with the same care as for its own documents, and keep knowledge secret from third parties insofar as the other contracting party has designated such knowledge as confidential or has a manifest interest in keeping it secret.
- (2) This obligation begins when such a document or knowledge is first received and ends 36 months after the end of the business relationship. The obligation shall not apply to documents and knowledge generally known or already known to the contracting party at the time of receipt without any confidentiality obligation, or transmitted thereafter by a third party entitled to disclose such documents or knowledge, or developed by the receiving contracting party without any use of the other contracting party's documents or knowledge to be kept secret.

#### **§ 5 Drawings and Descriptions**

If a contracting party makes drawings or other technical documents available to the other contracting party regarding the goods to be delivered or regarding their production, the contracting party providing such drawings or technical documents shall retain title thereto.

#### **§ 6 Terms of Payment**

- (1) Any payment terms deviating from our quotation must be individually agreed on. If, deviating from our general principles, a payment period with a discount is individually agreed on, the orderer can make this deduction only if he is not in default of any payment. The relevant date of payment is the day of receipt by us. Cheques shall be regarded as payment only after actual payment is received.
- (2) If partly defective goods have undisputedly been delivered by us, the orderer shall nevertheless be obliged to make payment for the defect-free part, unless the partial delivery is of no interest to him. Apart from that, the orderer can set off only counterclaims only if they have been awarded by final judgement or are undisputed.
- (3) In the event of payment after the due date, according to §288 BGB (German Civil Code) we have the right to charge default interest, but at least 9 percent above the applicable base interest rate as well as the legally applicable flat rate. Our right to demand a higher interest rate as well as further damages in the event of default shall remain unaffected.

- (4) Bills of exchange and cheques will be accepted only if that is separately agreed on and only as conditional payment and on condition of eligibility for discount. Discount charges are payable from the due date of the invoice amount. Any warranty for the timely presentation of the bill of exchange or cheque and for the entering of protest is excluded.

## **§ 7 Delivery**

- (1) Delivery dates and delivery periods indicated by us are only approximate unless a fixed date or period is expressly promised or agreed on.
- (2) Unless otherwise agreed, we deliver “ex works”. Our notice announcing our readiness for shipment or readiness to collect the goods determines whether delivery is made on time.
- (3) The delivery period begins when our confirmation of order is mailed and shall extend for a reasonable period if the conditions in § 14 are fulfilled.
- (4) Partial deliveries are admissible within reasonable limits. A partial delivery is reasonable if
- it is useful for the orderer’s contractually agreed purposes;
  - delivery of the remaining goods is ensured, and
  - the orderer does not incur considerable additional expenditures or additional costs
- (unless we declare our willingness to take over these costs).

Partial deliveries will be invoiced separately.

## **§ 8 Shipment, Passing of the Risk**

- (1) Goods reported ready for shipment must be taken over promptly by the orderer. Otherwise we shall have the right either to ship them at our option or to store them at the orderer’s expense and risk. The orderer must pay a storage fee to us for such storage amounting to 0.5% at the beginning of every month, but no more than 5% in total of the price of the goods to be delivered. The contracting parties shall remain free to prove higher or lower costs.
- (2) In the absence of any special agreement, we will choose the means and itinerary of transportation.
- (3) The risk shall pass over to the orderer when the goods are handed over to the railway company, the forwarder or the carrier or, as the case may be, at the beginning of storage, but no later than when they leave the works or the warehouse, even if we undertake to effect delivery.
- (4) If the shipment or delivery is delayed in consequence of circumstances caused by the orderer, the risk shall pass over to the orderer on the day on which the goods to be delivered are ready for shipment and we have notified the orderer.

## **§ 9 Delay in Delivery**

- (1) If we can foresee that the goods cannot be delivered within the delivery period, we will inform the orderer, stating the reasons and if possible also the expected time of delivery.

- (2) If delivery is delayed by one of the circumstances described in § 14 or due to the orderer's acts or omissions, an extension of the delivery time reasonable under the circumstances shall be granted.
- (3) The observance of dates and deadlines for deliveries is contingent upon the timely receipt of all documents, necessary permits and releases to be made available by the orderer and on the performance of the agreed conditions of payment and other obligations by the orderer. If these conditions are not fulfilled in time, the periods shall be extended reasonably unless we are responsible for the delay.
- (4) The orderer has the right to cancel the agreement only if we are responsible for the failure to keep the delivery date and he granted us a reasonable additional period without delivery being made. The orderer is obliged at our request to declare within a reasonable period whether he wishes to cancel the agreement because of the delay in delivery or insists on delivery.
- (5) Delivery by us is late if the statutory conditions for delay are fulfilled. In any case, a reminder by the orderer is necessary.
- (6) Damage claims based on late delivery and damage claims instead of performance are limited as set out in § 13.

## **§ 10 Retention of Title**

- (1) We retain title to the goods delivered until all claims arising from the business relationship with the orderer have been settled.
- (2) The orderer has the right to sell these goods in the ordinary course of business as long as he performs his obligations arising from the business relationship with us in time. However, the orderer must neither pledge the goods delivered subject to retention of title nor transfer title thereto by way of security. The orderer is obliged to safeguard our rights in the event of a credit resale of such goods.
- (3) In the event of breach of contract by the orderer, in particular failure to pay the purchase price when due, we shall have the right in accordance with the provisions of the law to cancel the agreement and/or to demand that the goods be surrendered to us on the basis of our retention of title. The claim for possession shall not at the same time constitute a cancellation of the agreement; instead we shall have the right to merely demand that the goods be returned, reserving the right at the same time to cancel the agreement. If the orderer does not pay the price when due, we may assert these rights only if we first unsuccessfully fixed a reasonable period for payment by the orderer or if the fixing of such a period is dispensable according to the provisions of the law. Furthermore, we shall be entitled to cancel the agreement if an application is made for the institution of insolvency proceedings regarding the orderer's assets.
- (4) All claims and rights arising from the sale or from the permitted leasing of goods by the orderer are assigned already hereby to us by the orderer by way of security, provided we are the owners of the goods. We hereby accept the assignment. The orderer remains entitled to collect these claims even after the assignment. Our right to collect the claims ourselves shall remain unaffected. However, we undertake not to collect the claims as long as the orderer performs his payment obligations arising from the proceeds received, is not in default in payment, and in particular no application has been made for the institution of composition or insolvency proceedings and payments have not been stopped. But if that is the case, we can demand that the orderer inform us of the claims assigned and their

debtors, provide all information necessary for collection, hand over the related documents, and notify the debtors (third party) of the assignment. This regulation is not valid in the Netherlands and must be separately agreed upon for business contracts in this country.

- (5) Any treatment or processing of the goods sold subject to retention of title shall always be effected by the orderer for us. If such goods are processed or inseparably mixed with other things not belonging to us, we shall acquire co-ownership of the new thing in the proportion between the invoice value of the goods sold subject to retention of title and the other processed or mixed things at the time of processing or mixing. If our goods are combined or inseparably mixed with other movable things, forming a single thing, and if the other thing is to be regarded as the principal thing, the orderer shall transfer pro rata co-ownership to us insofar as the principal thing belongs to him. The orderer shall safekeep ownership or co-ownership for us. Apart from that, the rules for the goods sold subject to retention of title shall apply likewise to the thing created by processing or combining or mixing.
- (6) The orderer must inform us promptly of any execution by third parties against the goods sold subject to retention of title, the claims assigned to us or against other security, handing over all documents necessary for intervention. The same shall apply to any interferences of any kind.
- (7) If the value of the existing security exceeds the secured claims by more than 20 % in total, we shall be obliged at the orderer's request to release security at our option.

## § 11 Quality Defects

- (1) The quality and characteristics of the goods shall be determined exclusively by the agreed technical delivery specifications. Guarantees in the legal sense are not assumed by us. If we are obliged to deliver in accordance with the orderer's drawings, specifications, samples etc., he shall bear the risk of suitability for the intended use. The decisive point in time for the contractual condition of the goods is the time of the passing of the risk according to § 8.
- (2) We shall not be liable for quality defects caused by unsuitable or improper use, faulty assembly or commissioning by the orderer or third parties, usual wear and tear, wrong or negligent treatment, nor for the consequences of improper changes or maintenance made by the orderer or third parties without our consent. The same applies to defects which only insignificantly reduce the value or suitability of the goods.
- (3) Warranty claims due to material defects that become apparent within 12 months of delivery shall be time-barred after 12 months. This does not apply if the law prescribes longer periods, especially in the case of a building and goods which were used for a building in accordance with their usual purpose and which caused its defectiveness. The first sentence shall also not apply in the cases referred to in § 13 letters b), c) and g). The legal provisions on suspension of the statute of limitations, suspension and recommencement of time limits remain unaffected.
- (4) The buyer's warranty claims or any other claims of the buyer are contingent upon his having performed his legal duties to examine the goods and to complain of defects (secs. 377, 381 HGB – German Commercial Code). The orderer has to examine the goods promptly upon delivery to his address or any delivery address indicated by him, insofar as this is feasible in the ordinary course of business. The following rules are applicable:

- a. Visible transport damage must be reported to the transport person upon receipt of the goods.
  - b. After installation of the goods into another object or attachment of the goods to another object or after processing or treatment of the goods, the customer is only entitled to assert rights in respect of such defects which could not have been detected during an inspection. Such defects (hidden defects) must be reported in writing within 7 working days of their discovery, but not later than the expiry of the warranty period.
  - c. If an acceptance of the goods or an initial sample test has been agreed, the notification of defects which the customer could have detected during careful acceptance or initial sample test is excluded.
  - d. The timely dispatch of the notification shall be sufficient to meet the deadline. The type and scope of the alleged defect must be recognisable from the notice of defects. The Buyer is obliged to keep the goods subject to complaint properly stored for inspection or to return them to us immediately upon our request; we shall bear the transport costs if the complaint is justified.
  - e. Goods which are not complained about in due form and time are considered as approved and accepted.
  - f. The commencement of negotiations/investigations concerning the defects notified by the customer shall only represent an attempt to reach an amicable settlement. This does not constitute a tacit waiver of the objection of a delayed notice of defects.
- (5) In case of any justified complaint about quality defects made in time, we will remedy the defect or, at our option, deliver a defect-free product.
  - (6) We must first be given at least two opportunities for subsequent performance within a reasonable period.
  - (7) If subsequent performance finally fails, the orderer can – without prejudice to any damage claims according to § 13 – cancel the agreement or reduce the remuneration.
  - (8) Claims according to § 439 sec. 2 BGB, relating to the expenditures necessary for the purpose of subsequent performance, in particular transportation, travelling, labour costs and the cost of materials, shall be excluded for the orderer insofar as the expenditures increase because the item to be delivered was subsequently moved to some other place, unless it is in accordance with the intended use of the goods.
  - (9) Insofar as we are required by law to assume dismantling or installation costs in accordance with § 439 sec. 3 BGB, the following shall apply: In the case of material defects which do not result in an impairment of the functionality of the goods, a disproportionality of the costs within the meaning of § 439 sec. 4 BGB shall be assumed in any case, if the costs exceed the net sales price of the goods concerned. Any further rights on our part to refuse subsequent performance in accordance with the statutory provisions shall remain unaffected.
  - (10) The orderer shall only have the rights of recourse provided by law against us if we are responsible for the existence of the defect, and only insofar as the orderer has not made any agreements with his customer going beyond the legal warranty claims. Furthermore, the final sentence of (8) shall apply analogously to the extent of the rights of recourse.

- (11) Damage claims shall in addition be governed by § 13 (Other Claims, Liability). Other claims than those dealt with in this § 13 and further claims against us and against persons employed by us in the performance of our contractual obligations shall, to the extent based on a quality defect, be excluded for the orderer.
- (12) In case of a warranty claim, the orderer may retain payments in an amount which is reasonable in proportion to the quality defects. The orderer can retain payments only if a complaint about a quality defect has been made and is undoubtedly justified or justified by the court. If the complaint is unjustified, we shall have the right to demand compensation from the orderer for the expenditures incurred by us.

## § 12 Industrial Property Rights and Copyrights, Defects of Title

- (1) Unless otherwise agreed, we are obliged to make delivery only in the country of the place of delivery, free from any third-party commercial property rights and copyrights (hereinafter: Property Rights). If a third party makes justified claims against the orderer based on the infringement of Property Rights through goods delivered or services rendered by us and used in accordance with the agreement, we shall be liable to the orderer within the period fixed in § 11 (3) as follows:
- a) We will at our option and at our expense either obtain the right to use the goods delivered or change them in such a way that the property right is not infringed, or replace them. If this is not reasonably possible for us, the orderer shall have the rights to cancel the agreement or to reduce the price provided for by law.
  - b) Our obligation to pay damages is determined by § 15.
  - c) The obligations described above shall exist only insofar as the orderer informs us promptly in writing of the claims asserted by the third party, does not acknowledge an infringement, and all defensive measures and settlement negotiations remain reserved for us. If the orderer discontinues the use of the goods in order to mitigate the damage or for other important reasons, he must point out to the third party that the discontinuation of use does not constitute an acknowledgement of the infringement of the property right.
- (2) The orderer's claims are excluded insofar as he is responsible for the infringement of the property right.
- (3) The orderer's claims shall also be excluded insofar as the infringement of the property right is caused by the orderer's specific requirements, by use unforeseeable by us, or due to the fact that the goods delivered are changed by the orderer or used together with products delivered by us.
- (4) In case of an infringement of the property right, the orderer's claims dealt with in (1) a) shall also be governed by § 11 (7) and (11).
- (5) In case of other defects of title, the provisions in § 11 (Quality Defects) shall apply analogously.
- (6) Other claims than those dealt with in this § 12 and further claims against us and against persons employed by us in the performance of our contractual obligations shall, to the extent based on a defect of title, be excluded for the orderer.

### § 13 Other Claims, Liability

Our liability for damages, for whatever legal reason, in particular for impossibility, defective or incorrect delivery, delay in delivery, other breach of contract, reimbursement of expenses and tortious acts, is limited as follows, insofar as fault is involved:

- a) We shall be liable for damages in accordance with the statutory provisions in the event of intent and gross negligence (subject to letter b), in the absence of warranted characteristics, the exceptional assumption of guarantees and in the event of fraudulent intent.
- b) In cases of gross negligence by simple vicarious agents and non-managerial employees without breach of an essential contractual obligation (= *obligation whose fulfilment makes the proper execution of the contract possible in the first place and on whose observance the customer regularly relies and may rely*), we shall be liable, in deviation from letter a), limited to compensation for foreseeable damage typical of the contract.
- c) In the case of simple negligence, we shall only be liable for damages arising from the breach of an essential contractual obligation (*as defined in letter b*); in this case, however, our liability shall be limited to compensation for the foreseeable damage typical of the contract.
- d) Our liability is otherwise excluded.
- e) As far as our liability is excluded or limited according to reason or amount, this shall also apply to any personal liability of employees, legal representatives and vicarious agents.
- f) The legal regulations on the burden of proof remain unaffected.
- g) The provisions or limitations of liability provided for shall not apply to the Seller's liability for wilful conduct, for guaranteed characteristics, for injury to life, body or health or under the Product Liability Act. They shall also not apply if we have concluded a purchase contract with the Buyer and are obliged to reimburse the expenses required for the purpose of subsequent performance in accordance with § 439 (3) BGB.

The customer is obliged to notify us immediately in writing of any damage within the meaning of the above liability provisions or to have us record such damage so that we are informed as early as possible and can possibly reduce the damage together with the customer.

### § 14 Force Majeure

Our delivery or service obligation is subject to correct and timely delivery to us, unless we are responsible for the incorrect or delayed delivery to us. We must prove the lack of fault.

Events of force majeure, labour disputes, unrest, government action, failure by our suppliers to supply, and other unforeseeable, unavoidable and serious events shall release the contracting parties from their obligations to perform for the duration of the disruption and to the extent that it has an effect. This applies also if the events occur at a time in which the contracting party concerned is in default. The contracting parties are obliged to the extent



reasonable to promptly provide the necessary information and to adjust their obligations in good faith to the changed circumstances.

## § 15

### **Place of Performance, Jurisdiction, Governing Law, Binding Nature of the Agreement**

- (1) Our domicile is the place of performance unless stated otherwise in the confirmation of order.
- (2) If the orderer is a merchant, the sole place of jurisdiction is our domicile in case of any disputes arising directly or indirectly from the contractual relationship. However, we shall also have the right to sue at the orderer's domicile.
- (3) The legal relations in connection with this agreement shall be governed by German substantive law excluding the United Nations Convention on the International Sale of Goods (CISG).
- (4) Even if any provisions of the agreement are legally invalid, the remaining provisions of the agreement shall remain effective. This shall not apply if the continuation of the agreement would constitute an unreasonable hardship for one of the contracting parties.

June 2020