

General Terms and Conditions of Sale (GTCS)

Leiber GmbH | Hafenstrasse 24 | D-49565 Bramsche

Section 1 Scope, Form

(1) These General Terms and Conditions of Sale (GTCS) shall apply to all business relationships with our customers ("Purchaser(s)"). The GTCS shall apply only if the Purchaser is an entrepreneur (Section 14 BGB (German Civil Code)), a legal entity under public law or a special fund under public law.

(2) The GTCS shall apply in particular to contracts concerning the sale and/or supply of movable items ("Goods"), irrespective of whether we manufacture the Goods ourselves or procure them from sub-suppliers (Sections 433 & 650 BGB). Unless agreed otherwise, the GTCS valid at the time of the placement of the order by the Purchaser or in the version last imparted to the latter in text form shall also be deemed a framework agreement for future contracts of the same type, without it being necessary for us to make specific reference to them again in each individual case.

(3) Our GTCS shall apply exclusively. Any deviating, opposing or supplementary General Terms and Conditions of the Purchaser shall only become components of the contract if and insofar as we have explicitly consented to their validity in writing. This consent requirement applies in every case, for example, even if the Purchaser, in the context of its order confirmation, should refer to its own GTC and we do not explicitly contradict this.

(4) Legally relevant declarations and notifications on the part of the Purchaser relating to the contract (e.g. the setting of deadlines, reminders, rescissions or reductions) are to be issued in writing. **Within the meaning of these GTCS, this includes both the written and text form (e.g. letter, e-mail, fax).** Statutory form stipulations and further proofs, particularly with regard to doubts concerning the legitimacy of the person issuing the declaration, remain unaffected by this.

(5) Pointers to the validity of statutory stipulations have only clarifying significance. The statutory provisions therefore apply even without any such clarification, inasmuch as they are not either directly amended or explicitly excluded in these GTCS.

Section 2 Contractual Conclusion

(1) Our offers are subject to alteration and non-binding. This shall also apply should we have supplied to the Purchaser catalogues, documentations (e.g. drawings, plans, computations, calculations, references to DIN norms, patterns, samples, formulae), other product descriptions or documents – also in electronic form – to which we reserve proprietary rights and rights of authorship.

(2) The placement of an order by the Purchaser for the Goods is deemed a binding offer of a contract. Insofar as nothing to the contrary may be derived from the order, we are entitled to accept this offer of a contract within a period of four weeks of having received it.

(3) Acceptance may be declared either in writing (e.g. order confirmation), by supplying the Goods to the Purchaser or by making the Goods available for collection by the Purchaser and informing the latter that they are ready for dispatch.

Section 3 Delivery Period and Delivery Default, Obstacles to Delivery, Contractual Adjustment

(1) The delivery period shall be agreed upon individually or indicated by us in our order acceptance. Insofar as this should not be the case, the delivery period shall be, provided the product is available, 6 months from the time of the conclusion of the contract.

(2) Delivery default on our part shall be determined according to the statutory provisions. A warning from the Purchaser is required in every case, however. Should we default on delivery, and the Purchaser incur any losses as a result, the Purchaser may demand flat-rate compensation for the losses it has suffered due to the delay to the amount of 0.5% of the net price (delivery value) for each complete calendar week of the delay, but restricted in total to not more than 5% of the net price of the Goods delivered too late. We shall retain the right to prove that the Purchaser has not suffered any losses at all or that the losses suffered were considerably lower than the above flat rate.

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(3) Insofar as we – without being in default of delivery according to Paragraph (2) – should be unable to adhere to binding delivery periods for reasons for which we do not bear the responsibility (non-availability of the performance) we shall inform the Purchaser hereof without delay and at the same time notify it of the probable new delivery period. Should the performance also not be available within the new delivery period, we shall be entitled to rescind the contract in part or in its entirety; we shall refund immediately any counter-service already performed by the Purchaser. Examples of a cases of non-availability of service within the meaning of the above are deemed to be in particular: if we have not ourselves been punctually supplied by our own sub-supplier, if we have concluded a congruent covering transaction, should neither we nor our sub-supplier be to blame for the circumstance or should we, in an individual case, not be under any procurement obligation.

(4) Notwithstanding Paragraphs (2) and (3), we may demand contractual adjustment insofar as circumstances that have become fundamental components of the contract should have changed profoundly subsequent to the conclusion of the contract and we would either not have concluded the contract at all or concluded it with different content had we foreseen said change. This shall apply insofar as, taking all circumstances of the individual case into account, in particular contractual or statutory risk-splitting, adherence to the unchanged contract cannot reasonably be expected of us. Should central ideas that have become fundamental components of the contract turn out to have been false, this shall be deemed equivalent to a change in the circumstances.

(5) The rights of the Purchaser according to Section 8 of these GTCS and our statutory rights, in particular in the event of the exclusion of the performance obligation (e.g. due to the impossibility or unreasonableness of performance and/or post-fulfilment) shall remain unaffected in all cases listed in this Section 3.

Section 4 Delivery, Transfer of Risk, Acceptance, Default on Acceptance

(1) Delivery shall be effected ex platform from our plant in Bramsche, which is also the place of fulfilment for the delivery and for any post-fulfilment. At the request and expense of the Purchaser, the Goods will also be sent to a different destination (consignment sale). Insofar as nothing to the contrary has been agreed, we shall be entitled to determine the nature of the consignment (in particular the transport company, route, packaging) ourselves.

(2) The risk of the accidental loss and accidental deterioration of the Goods shall be transferred to the Purchaser upon the handing over thereof at the very latest. In the case of a consignment sale, however, the risk of the accidental loss and accidental deterioration of the Goods, as well as that of any delays, shall be transferred already at the time of the delivery of the Goods to the carrier, forwarding agent or any other person or institution charged with the task of organising the consignment. Insofar as an acceptance procedure has been agreed, this shall be decisive for the transfer of the risk. Otherwise, the statutory provisions of the laws on contracts for services shall apply accordingly in the event of an acceptance procedure. Handover or acceptance shall be deemed to have taken place if the Purchaser is in default of acceptance.

(3) Should the Purchaser default on acceptance, fail to fulfil a cooperation obligation or should our delivery be delayed for any other reasons for which the Purchaser bears the responsibility, we shall be entitled to demand compensation for any resultant losses including extra expenditure (e.g. warehousing costs). We shall charge compensation for this to the amount of 0.25% of the delivery value (in the sense of the pure net sale value) of the Goods affected by the default on acceptance for each full week (7 days) or 0.036% of the delivery value per calendar day, beginning with the commencement of the delivery period or – in the absence of a delivery period – upon the sending of the notification that the Goods are ready for dispatch.

Proof of higher losses and our statutory entitlements (in particular refunding of extra expenditure, appropriate compensation, cancellation) remain unaffected; the flat-rate is, however, to be off-set against any further-reaching monetary claims. The Purchaser retains the right to prove that we have suffered either no losses at all or that the losses suffered were considerably lower than the aforementioned flat rate.

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Section 5 Prices and Terms of Payment

(1) Insofar as nothing to the contrary has been agreed in an individual case, our current prices at the time of the respective contractual conclusion shall apply, ex warehouse, plus the statutory rate of VAT.

(2) In the event of a consignment sale (Section 4, Para. 1), the Purchaser shall bear the transport costs ex warehouse and the costs for any transport insurance desired by the Purchaser. Any customs duties, fees, taxes and other public dues shall be borne by the Purchaser.

(3) The purchasing price shall mature and be payable within 14 days of the issuing of an invoice and delivery or acceptance of the Goods. In the course of an ongoing business relationship, we shall be entitled at any time to effect delivery in part or entirely only in return for payment in advance, however. We shall declare any such reservation along with our order confirmation at the very latest.

(4) The Purchaser shall be in default upon expiry of the above payment deadline. As long as this default persists, interest is to be paid on the purchasing price at the statutory rate of default interest applicable at the respective time. We reserve the right to assert further-reaching default losses. With respect to merchants, our claim to the commercial maturity interest (Section 353 HGB [German Commercial Code]) remains unaffected by this.

(5) The Purchaser shall hold rights of off-setting or retention only to the extent that its own claims have been legally established or are undisputed. In the event of delivery defects, the Purchaser's counter-rights, in particular in accordance with Section 7 Para. 6 Clause 2 of these GTCS, remain unaffected by this.

(6) Should it, subsequent to the conclusion of the contract, become clear (e.g. due to an application for the opening of insolvency proceedings) that our claim to the purchasing price is endangered through insufficient performance capability on the part of the Purchaser, we are, according to statutory provisions, entitled to refuse performance and – if appropriate, after the setting of a deadline – to rescind the contract (Section 321 BGB (German Civil Code)). In the case of contracts for the manufacturing of non-fungible items (individual constructions), we may rescind immediately, the statutory regulations governing the dispensability of the setting of a deadline remain unaffected.

Section 6 Reservation of Proprietary Rights

(1) Until such time as all our present and future claims deriving from the purchasing contract and an ongoing business relationship (secured receivables) have been paid in full, we reserve our proprietary rights to the Goods sold.

(2) Prior to the settlement in full of the secured receivables the Goods subject to the reservation of proprietary rights may not be pledged to third parties, nor may they be assigned as collateral. The Purchaser is required to inform us without delay in writing should an application for the opening of insolvency proceedings be filed or attempts made by any third parties to seize (e.g. by way of attachment) the Goods belonging to us.

(3) In the event of conduct on the part of the Purchaser contrary to the terms of the contract, especially failure to pay the due purchasing price, we shall, according to the statutory provisions, be entitled to rescind the contract and/or demand the return of those Goods subject to the reservation of proprietary rights. The demand for the return of the Goods does not at the same time constitute a declaration of rescission; it is rather the case that we are entitled to merely demand the return of the Goods and to reserve the right of rescission until later. Should the Purchaser not pay the due price, we may only exert these rights if we have previously unsuccessfully set the Purchaser a reasonable deadline for payment or the setting of such a deadline is dispensable according to statutory provisions.

(4) Until further notice, the Purchaser is authorised, in accordance with lit. (c) below, to sell on and/or, further process those Goods subject to the reservation of proprietary rights in the ordinary course of business. In this case the following provisions apply additionally.

a) The reservation of proprietary rights extends to those products created through the processing, mixing or combining of Goods to the full value of those products, whereby we shall be deemed the manufacturer. Should, in the course of the processing, mixing or combining of our Goods with those of a third party, the

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latter's proprietary rights remain intact, we shall acquire co-ownership according to the ratio of the invoice values of the processed, mixed or combined goods. Otherwise, the same shall apply to the product created as to the Goods supplied under the reservation of proprietary rights.

b) The Purchaser assigns at this point in time already any claims it might accrue towards third parties from the sale of the Goods or of the products in their entirety or to the extent of our co-ownership acquired in accordance with the previous paragraph to us as collateral. We accept the assignment. The Purchaser's duties named in Para. 2 shall also apply with a view to the assigned claims.

c) In addition to ourselves, the Purchaser shall remain empowered to collect the receivables. We undertake not to collect the receivable for as long as the Purchaser complies with its payment obligations towards us, its performance capability is not impaired and we do not assert our reserved proprietary rights by exercising any right held according to Para. 3. Should this be the case, however, we may demand that the Purchaser should make the assigned receivables and their debtors known to us, provide all details necessary for collection, hand over the relevant documents and inform the debtors (third parties) of the assignment. We are further entitled in such a case to revoke the Purchaser's authority to sell and process the Goods subject to the reservation of proprietary rights.

d) Should the realisable value of the securities exceed our claims by more than 10%, we will, at the demand of the Purchaser, release securities at our own discretion.

Section 7 Purchaser's Right to Claims based upon Defects

(1) The statutory rights of the Purchaser shall apply in the event of material or legal defects, insofar as nothing to the contrary is agreed in the following. In all events, the statutory special regulations on the refunding of expenditure in the case of final delivery of the newly created item to a consumer (Supplier Regress in accordance with Sections 478, 445a, and 445b or Sections 445c, 327 Para. 5, 327u BGB) shall remain unaffected insofar as no other equivalent form of compensation, e.g. in the context of a quality assurance arrangement, has been agreed upon.

(2) The basis of our liability for defects is in particular the agreement reached regarding properties and the presumed use of the Goods (including accessories and instructions). Insofar as the parties have agreed on the properties of a purchased item, objective demands upon that item shall not be applied in this respect.

a) All product descriptions and designations, representations of product features, data sheets (e.g. specifications, protein values, pH-values, analysis certificates, sample findings, etc.) are deemed in this sense to be agreements on properties, as are any other manufacturer's statements that are components of the individual contract or have been made public by us (in particular in catalogues or on our internet-homepage under www.leibergmbh.de) at the time of the conclusion of the contract.

b) Insofar as a property was not agreed upon, the question of whether a defect is given or not is to be assessed in accordance with statutory provisions (Section 434 Para. 3 BGB). Public statements made by the manufacturer or in the latter's name, especially in advertising or on the label attached to the Goods shall thereby take precedence over any statements made by any other third parties.

c) Both in the case of agreed (lit. a)) as well as of non-agreed (lit. b)) properties, the following peculiarities of natural products are to be taken into account when determining the extent of an agreed property and its suitability for standard application:

aa) Because the Goods are natural products, fluctuations in the colour structure and texture are usual within the same consignment (batch).

bb) In the case of natural products particularly, deviations and heterogeneity of the products with regard to measurements, colour, form, structure, granulation size, specific weight, density, and dry bulk density, are possible and usual, due to the natural materials.

cc) Insofar as these are not explicitly part of the agreed properties of the Goods, patterns and samples are considered merely non-binding and exemplary and show only the appearance and features of a section of the products as patterns and samples of the products – like the descriptions of the products listed above in Para. (2) a) – are never able to reflect all differences within a batch.

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dd) Samples and patterns are thus deemed to be merely approximate illustrations of features such as quality, colour and weight. Even if supply of a patterned product exactly as in this patterned batch is agreed and follows accordingly, we cannot assume any guarantee that the delivery will be totally identical with the patterns provided or that it will remain so.

(3) As a fundamental rule, it is the Purchaser who is responsible for the correct selection of the products, their suitability for their intended purpose and in particular whether the contractual product is suited to its presumed or standard use. This shall not apply insofar as it has explicitly availed itself of our advisory services; in such a case the Purchaser shall be obliged to provide us with accurate information pertaining to the intended purpose and place of usage as well as all other necessary information for the correct selection of products. Advisory services are provided by us - based upon the information from the Purchaser necessary for such a service – to the best of our knowledge.

(4) We do not, on principle, assume liability for defects of which the Purchaser is aware at the time of the conclusion of the contract or of which it is unaware due to gross negligence (Section 442 BGB). Furthermore, the Purchaser's claims based on defects also presuppose that the latter has complied with its statutory inspection and notification obligations (Sections 377 & 381 HGB (German Commercial Code)). In the case of Goods intended for further processing, an inspection must in all cases be undertaken immediately prior to processing. Should a defect reveal itself upon delivery, during the inspection or at a later date, this is to be reported to us in writing immediately. In all cases, evident defects are to be reported to us within five working days of delivery and defects not evident at the time of inspection within the same period of time subsequent to their discovery. Should the Purchaser fail to undertake the inspection and/or to issue the notification in due and proper fashion, our liability for the defect reported too late or not reported in due and proper fashion according to the statutory provisions is excluded.

(5) Should the item delivered be defective, we shall initially be entitled, at our own discretion, to attempt post-fulfilment through either rectification of the defect (reworking) or delivery of a defect-free item (substitute delivery). Should the form of post-fulfilment chosen by us be unreasonable to the Purchaser, it may refuse it. Our right to refuse post-fulfilment under statutory provisions shall remain unaffected.

(6) We are entitled to make the post-fulfilment required from us dependent upon the Purchaser paying the purchasing price. The Purchaser shall, however, be entitled to withhold a reasonable part of the purchasing price in relation to the defect.

(7) The Purchaser is required to grant us the necessary time and opportunity for post-fulfilment and in particular to hand over the Goods complained about for inspection purposes. In the event of substitute delivery the Purchaser shall be required to return the Goods complained about to us at our request; the Purchaser shall not, however, be entitled to have them returned to it once more.

(8) We shall bear or refund the necessary expenditure incurred for the purposes of inspection and post-fulfilment, in particular transport, route, labour and material costs plus, if applicable, removal and installation costs, in accordance with statutory provisions and these GTCS, should there have indeed been a defect. Otherwise we may demand from the Purchaser the refunding of costs resulting from unjustified demands for the rectification of defects should the Purchaser have recognised or failed to recognise due to gross negligence that there had not, after all been any defect.

(9) In urgent cases, e.g. for the averting of unreasonably high losses, the Purchaser shall have the right to rectify the defect itself and to demand from us the refunding of the expenditure objectively necessary for this purpose. We are to be informed of any self-help immediately, if possible beforehand. This right to self-help shall not be given should we have been entitled under statutory provisions to refuse the relevant post-fulfilment.

(10) Should a reasonable deadline to be set by the Purchaser for post-fulfilment expire without success or be dispensable according to statutory provisions, the Purchaser may, under statutory provisions, rescind the purchasing contract or reduce the price. In the case of a negligible defect, no right to rescission shall be given, however.

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(11) Any claims held by the Purchaser to compensation for or refunding of expenditure undertaken in vain are, also in cases of defects, given only according to the criteria of Section 8 and are otherwise excluded.

Section 8 Other Liability

(1) Inasmuch as nothing to the contrary may be derived from these GTCS including the following stipulations, we shall be liable for violations of contractual and non-contractual obligations in accordance with the statutory provisions.

(2) In cases of wilful intent or gross negligence, we are liable – notwithstanding the legal grounds – for compensation in the context of fault-based liability. In the event of simple negligence we shall be liable subject to the proviso of statutory restrictions upon liability (e.g. due care and attention when handling our own affairs; negligible violation of duty) only

a) for losses resulting from the violation of life, the body or health,

b) for losses resulting from the violation of a cardinal contractual obligation (an obligation the fulfilment of which makes the orderly implementation of the contract possible in the first place and in the adherence to which the contractual partner regularly places and is entitled to place its trust); in this case, however, our liability is restricted to the replacement of losses that are predictable and typical for this type of contract.

(3) The restrictions upon liability deriving from Para. 2 shall also apply towards third parties as well as in the event of violations of obligations by persons (also in their own favour), for whose culpability we are required to bear the responsibility according to statutory provisions. They do not apply insofar as a defect had been fraudulently concealed or a guarantee for the properties of the Goods had been assumed or to claims held by the Purchaser under the Product Liability Act.

(4) In the event of the violation of an obligation that does not constitute a defect, the Purchaser may only rescind or cancel should we bear the responsibility for the violation. A free right of cancellation on the part of the Purchaser (in particular according to Sections 650 and 648 BGB) is ruled out. Otherwise, the statutory provisions and legal consequences apply.

Section 9 Statute of Limitations

(1) By way of deviation from Section 438 Para. 1 No. 3 BGB, the general statute of limitations for claims based upon defects shall be one year from the transfer of risk. Insofar as an inspection procedure has been agreed, the statute of limitations shall commence at the time of inspection.

(2) The above statutory periods of limitations under commercial law also apply to contractual and non-contractual claims due to any defects to the Goods, unless the application of the regular statutory period of limitations (Sections 195 and 199 BGB) would, in an individual case, lead to a shorter limitation period. Claims held by the Purchaser according to Section 8 Para. 2 Clauses 1 and 2 (a) as well as according to the Product Liability Act, are exclusively subject to the statutory periods of limitation.

Section 10 Choice of Law and Court of Jurisdiction

(1) The law of the Federal Republic of Germany shall apply to these GTCS and to the contractual relationship between us and the Purchaser under exclusion of international uniform law, in particular of the UN Convention on the International Sale of Goods.

(2) Should the Purchaser be a merchant as defined in the commercial code, a legal entity under public law or a special fund under public law, the exclusive – also international – court of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be our head office in Bramsche, insofar as the Purchaser has its domicile in the Federal Republic of Germany or a state belonging to the European Union (EU). We are, however, in all cases also entitled to file a suit at the place of fulfilment for the delivery obligation according to these GTCS or an overriding individual agreement or at the Purchaser's general court of jurisdiction. Overriding statutory provisions, in particular concerning exclusive jurisdictions, remain unaffected.

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(3) Inasmuch as the Purchaser should not have its domicile in the Federal Republic of Germany or a state belonging to the European Union (EU) the following agreement regarding a court of arbitration is concluded:

All disputes arising in connection with this contract or concerning its validity shall be decided in accordance with the regulations of the German Institution for Arbitration (DIS), in their version valid at the time of initiation, under exclusion of standard legal procedures. The arbitration proceedings shall be held in Bramsche. The language spoken in the court of arbitration is German. The court of arbitration is required to base its decision upon the agreed substantive law. Decisions will be taken by three arbiters, whereby the president must be qualified to hold the position of a judge.