

## **General Terms and Conditions (GTC) of DIECKERS GmbH & Co. KG**

### **§ 1 Scope of application, formal requirements**

(1) These General Terms and Conditions (GTC) apply to all our business relationships with our customers ('Buyer'). The GTC shall 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 GTC apply in particular to contracts for the sale and/or delivery of movable goods ('Goods'), irrespective of whether we manufacture the Goods ourselves or purchase them from suppliers (§§ 433, 650 BGB [German Civil Code]). Unless otherwise agreed, the GTC in the version valid at the time of the Buyer's order or in any case 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 GTC shall apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the Buyer shall only become part of the contract if and insofar as we have expressly agreed to their validity. This requirement of consent shall apply in any case, for example even if the Buyer refers to his General Terms and Conditions in the context of the order and we do not expressly object to this or if we carry out the delivery to the Buyer without reservation in the knowledge of the Buyer's General Terms and Conditions.

(4) Individual agreements made with the Buyer in individual cases (including collateral agreements, supplements and amendments) shall in any case take precedence over these GTC. Subject to proof to the contrary, a written contract or our written confirmation shall be authoritative for the content of such agreements.

(5) Legally relevant declarations and notifications by the Buyer in relation to the contract (e.g. setting of deadlines, notification of defects, cancellation or reduction) must be made in writing, i.e. in written or text form (e.g. letter, e-mail, fax). Statutory formal requirements and further evidence, in particular in the event of doubts about the legitimacy of the declaring party, shall remain unaffected.

(6) References to the validity of statutory provisions are for clarification purposes only. Even without such clarification, the statutory provisions shall therefore apply unless they are directly amended or expressly excluded in these GTC.

### **§ 2 Conclusion of contract**

(1) Our offers are subject to change and non-binding. This shall also apply if we have provided the Buyer with catalogues, technical documentation (e.g. drawings, plans, calculations, costings, references to DIN standards), other product descriptions or documents - including in electronic form - to which we reserve ownership rights and copyrights.

(2) The order of the goods by the Buyer shall be deemed a binding contractual offer. Unless otherwise stated in the order, we shall be entitled to accept this contractual offer within 4 weeks of its receipt by us.

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

(4) Information on the object of the delivery or service (e.g. weights, dimensions, utility values, load-bearing capacity, tolerances and technical data) as well as representations of the same (e.g. drawings and illustrations) are only approximate, unless the usability for the contractually intended purpose requires exact conformity. They are not guaranteed characteristics, but descriptions or labelling of the delivery or service. Deviations that are customary in the trade and deviations that occur due to legal regulations or represent technical improvements, as well as the replacement of components with equivalent parts, are permissible insofar as they do not impair the usability for the contractually intended purpose.

### **§ 3 Delivery period and delay in delivery**

(1) The delivery period shall be agreed individually or specified by us upon acceptance of the order.

(2) Compliance with the delivery period presupposes that all commercial and technical questions between the contracting parties have been clarified and that the Buyer has fulfilled all obligations incumbent upon him, such as the provision of the necessary official certificates or authorisations or the payment of a deposit. If this is not the case, the delivery time shall be extended accordingly. This shall not apply if we are responsible for the delay.

(3) The delivery period shall be deemed to have been met if the delivery item has left our works by the expiry of the delivery period or if we have notified the customer that the goods are ready for dispatch. If acceptance is to take place, the acceptance date shall be decisive - except in the case of justified refusal of acceptance - or alternatively the notification of readiness for acceptance.

(4) If we are unable to meet binding delivery deadlines for reasons for which we are not responsible (non-availability of the service), we shall inform the Buyer of this immediately and at the same time inform the Buyer of the expected new delivery deadline. If the service is also not available within the new delivery period, we shall be entitled to withdraw from the contract in whole or in part; we shall immediately reimburse any consideration already paid by the Buyer. A case of non-availability of the service in this sense shall be deemed to be in particular the failure of our supplier to deliver to us in good time if we have concluded a congruent hedging transaction, in the event of other disruptions in the supply chain, for example due to force majeure, neither we nor our supplier are at fault or we are not obliged to procure in individual cases.

(5) The occurrence of our default in delivery shall be determined in accordance with the statutory provisions. In any case, however, a reminder from the Buyer is required.

(6) The rights of the Buyer pursuant to § 8 of these GTC and our statutory rights, in particular in the event of an exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of performance and/or subsequent fulfilment), shall remain unaffected.

#### **§ 4 Delivery, transfer of risk, acceptance, default of acceptance**

(1) Delivery shall be ex works, which is also the place of fulfilment for the delivery and any subsequent fulfilment. At the request and expense of the Buyer, the goods shall be dispatched to another destination (sale to destination). Unless otherwise agreed, we shall be entitled to determine the type of dispatch (in particular transport company, dispatch route, packaging) ourselves.

(2) The risk of accidental loss and accidental deterioration of the goods shall pass to the Buyer at the latest upon handover. In the case of sale by dispatch, however, the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay shall already pass upon delivery of the goods to the forwarding agent, the carrier or the person or organisation otherwise designated to carry out the shipment. If acceptance has been agreed, this shall be decisive for the transfer of risk. In all other respects, the statutory provisions of the law on contracts for work and services shall also apply accordingly to an agreed acceptance. If the Buyer is in default of acceptance, this shall be deemed equivalent to handover or acceptance.

(3) If the Buyer is in default of acceptance, fails to co-operate or if our delivery is delayed for other reasons for which the Buyer is responsible, we shall be entitled to demand compensation for the resulting damage including additional expenses (e.g. storage costs). For this we charge a lump-sum compensation in the amount of 2% of the gross purchase price of the goods per calendar month up to a maximum of 15% of the gross purchase price, beginning with the delivery deadline or - in the absence of a delivery deadline - with the notification that the goods are ready for dispatch.

Proof of higher damages and our statutory claims (in particular reimbursement of additional expenses, reasonable compensation, cancellation) shall remain unaffected; however, the lump sum shall be offset against further monetary claims. The Buyer shall be entitled to prove that we have suffered no loss at all or only a significantly lower loss than the above lump sum.

(4) We are entitled to make partial deliveries if the partial delivery is usable for the Buyer within the scope of the contractual purpose, the delivery of the remaining ordered goods is ensured and the Buyer does not incur any significant additional expenses or additional costs as a result (unless we declare our willingness to assume these costs).

#### **§ 5 Prices and terms of payment**

(1) Unless otherwise agreed in individual cases, our current prices at the time of conclusion of the contract shall apply, ex works, plus statutory VAT.

(2) In the case of sale to destination (§ 4 Abs. 1), the Buyer shall bear the transport costs ex warehouse and the costs of any transport insurance requested by the Buyer. Any customs duties, fees, taxes and other public charges shall be borne by the Buyer.

(3) The purchase price is due and payable within 30 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 make a delivery in whole or in part only against advance payment. We shall declare a corresponding reservation at the latest with the order confirmation.

(4) The Buyer shall be in default upon expiry of the aforementioned payment period. During the period of default, interest shall be charged on the purchase price at the applicable statutory default interest rate. We reserve the right to claim further damages caused by default. Our claim against merchants for commercial maturity interest (§ 353 HGB [German commercial code]) remains unaffected.

(5) The Buyer shall only be entitled to rights of set-off or retention to the extent that his claim has been legally established or is undisputed. In the event of defects in the delivery, the Buyer's counter-rights shall remain unaffected, in particular in accordance with § 7 Abs. 6 S. 2 of these GTC.

(6) If it becomes apparent after conclusion of the contract (e.g. through an application to open insolvency proceedings) that our claim to the purchase price is jeopardised by the Buyer's inability to pay, we shall be entitled to refuse performance in accordance with the statutory provisions and - if necessary after setting a deadline - to withdraw from the contract (§ 321 BGB). In the case of contracts for the manufacture of non-fungible goods (customised products), we may declare our withdrawal immediately; the statutory provisions on the dispensability of setting a deadline shall remain unaffected.

## **§ 6 Retention of title**

(1) We reserve title to the goods sold until full payment of all our present and future claims arising from the purchase contract and an ongoing business relationship (secured claims).

(2) The goods subject to retention of title may not be pledged to third parties or assigned as security before full payment of the secured claims. The buyer must inform us immediately in writing if an application for the opening of insolvency proceedings has been filed or if third parties have access to the goods belonging to us (e.g. seizures).

(3) In the event of behaviour by the Buyer in breach of contract, in particular non-payment of the purchase price due, we shall be 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 the return of the goods does not at the same time include the declaration of cancellation; we are rather entitled to demand only the return of the goods and to reserve the right to cancel the contract. If the buyer does not pay the purchase price due, we may only assert these rights if we have previously set the buyer a reasonable deadline for payment without success or if setting such a deadline is dispensable according to the statutory provisions.

(4) The Buyer is authorised to resell and/or process the goods subject to retention of title in the ordinary course of business until revoked in accordance with § 6 Abs. 4 (c). In this case, the following provisions shall apply in addition.

(a) The retention of title shall extend to the full value of the products resulting from the processing, mixing or combining of our goods, whereby we shall be deemed to be the manufacturer. If, in the event of processing, mixing or combining with goods of third parties, their right of ownership remains, we shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined goods. In all other respects, the same shall apply to the resulting product as to the goods delivered under retention of title.

(b) The Buyer hereby assigns to us as security any 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 above paragraph. We accept the assignment. The obligations of the buyer mentioned in paragraph 2 shall also apply in consideration of the assigned claims.

(c) The Buyer shall remain authorised to collect the claim in addition to us. We undertake not to collect the claim as long as the buyer fulfils 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 Abs. 3. If this is the case, however, we can demand that the buyer informs us of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment. In this case, we shall also be entitled to revoke the Buyer's authorisation to resell and process the goods subject to retention of title.

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

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

(1) The statutory provisions shall apply to the Buyer's rights in the event of material defects and defects of title (including incorrect and short delivery as well as improper assembly/installation or defective instructions), unless otherwise specified below. In all cases, the statutory provisions on the sale of consumer goods (§§ 474 ff. BGB) and the rights of the buyer from separately issued guarantees, in particular on the part of the manufacturer, remain unaffected.

(2) The basis of our liability for defects is above all the agreement reached on the quality and intended use of the goods (including accessories and instructions). All product descriptions and manufacturer's specifications which are the subject of the individual contract or which were made public by us (in particular in catalogues or on our Internet homepage) at the time of conclusion of the contract shall be deemed to be an agreement on quality in this sense. Insofar as the quality has not been agreed, it shall be assessed in accordance with the statutory provisions whether a defect exists or not (§ 434 Abs. 3 BGB). Public statements made by the manufacturer or on its behalf, in particular in advertising or on the labelling of the goods, shall take precedence over statements made by other third parties.

(3) In the case of goods with digital elements or other digital content, we shall only be obliged to provide and, if applicable, update the digital content insofar as this expressly results from a quality agreement in accordance with § 7 Abs. 2. We assume no liability in this respect for public statements made by the manufacturer and other third parties.

(4) In principle, we shall not be liable for defects which the Buyer is aware of or is grossly negligent in not being aware of when the contract is concluded (§ 442 BGB). Furthermore, 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 always be carried out immediately prior to processing. If a defect is discovered during delivery, inspection or at any later time, we must be notified immediately in writing. In any case, obvious defects must be reported in writing within five working days of delivery and defects not recognisable during the inspection must be reported in writing within the same period from discovery. If the Buyer fails to carry out the proper inspection and/or report defects, our liability for the

defect not reported or not reported on time or not reported properly shall be excluded in accordance with the statutory provisions. In the case of goods intended for assembly, mounting or installation, this shall also apply if the defect only became apparent after the corresponding processing as a result of a breach of one of these obligations; in this case, the Buyer shall in particular have no claims for reimbursement of corresponding costs ('removal and installation costs').

(5) If the delivered item is defective, we may initially choose whether to provide subsequent fulfilment by remedying the defect (subsequent improvement) or by delivering a defect-free item (replacement delivery). If the type of subsequent fulfilment chosen by us is unreasonable for the buyer in the individual case, he may refuse it. Our right to refuse subsequent fulfilment under the statutory conditions remains unaffected.

(6) We are entitled to make the subsequent fulfilment owed dependent on the Buyer paying the purchase price due. However, the Buyer shall be entitled to retain a reasonable part of the purchase price in proportion to the defect.

(7) The Buyer shall give us the time and opportunity required for the subsequent fulfilment owed, in particular to hand over the rejected goods for inspection purposes. In the event of a replacement delivery, the Buyer shall return the defective item to us at our request in accordance with the statutory provisions; however, the Buyer shall not be entitled to return the item. Subsequent fulfilment shall not include the removal, dismantling or disassembly of the defective item or the installation, attachment or assembly of a defect-free item if we were not originally obliged to perform these services; the Buyer's claims for reimbursement of corresponding costs ('dismantling and assembly costs') shall remain unaffected.

(8) We shall bear or reimburse the expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labour and material costs and, if applicable, dismantling and installation costs, in accordance with the statutory provisions and these GTC if a defect actually exists. Otherwise, we may demand compensation from the Buyer for the costs incurred as a result of the unjustified request to remedy the defect if the Buyer knew or could have recognised that there was in fact no defect.

(9) In urgent cases, e.g. if operational safety is jeopardised or to prevent disproportionate damage, the Buyer shall have the right to remedy the defect himself and to demand compensation from us for the expenses objectively necessary for this purpose. We must be notified immediately, if possible in advance, of any such self-remedy. The right of self-remedy does not exist if we would be entitled to refuse a corresponding subsequent fulfilment in accordance with the statutory provisions.

(10) If a reasonable deadline to be set by the Buyer for subsequent fulfilment has expired unsuccessfully or is dispensable in accordance with the statutory provisions, the Buyer may withdraw from the purchase contract or reduce the purchase price in accordance with the statutory provisions. In the case of an insignificant defect, however, there is no right of cancellation.

(11) Claims of the Buyer for reimbursement of expenses pursuant to § 445a Abs. 1 BGB are excluded, unless the last contract in the supply chain is a consumer goods purchase (§§ 478, 474 BGB) or a consumer contract for the provision of digital products (§§ 445c S. 2, 327 Abs. 5, 327u BGB). Claims



of the buyer for damages or reimbursement of futile expenses (§ 284 BGB) shall only exist in accordance with the following §§ 8 and 9, even in the event of defects in the goods.

## **§ 8 Other liability**

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

(2) We shall be liable for damages - irrespective of the legal grounds - within the scope of fault-based liability in cases of intent and gross negligence. In the event of simple negligence, we shall be liable, subject to statutory limitations of liability (e.g. care in our own affairs; insignificant breach of duty), only

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

b) for damages arising from the breach of an essential contractual obligation (obligation whose fulfilment is essential for the proper execution of the contract and on whose compliance 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 Abs. 2 shall also apply to third parties and in the event of breaches of duty by persons (including in their favour) whose fault we are responsible for in accordance with statutory provisions. They shall not apply if a defect has been fraudulently concealed or a guarantee for the quality of the goods has been assumed and for claims of the Buyer under the Product Liability Act.

(4) The Buyer may only withdraw from or terminate the contract due to a breach of duty that does not consist of a defect if we are responsible for the breach of duty. A free right of cancellation on the part of the Buyer (in particular in accordance with §§ 650, 648 BGB) is excluded. In all other respects, the statutory requirements and legal consequences shall apply.

## **§ 9 Limitation period**

(1) Notwithstanding § 438 Abs. 1 Nr. 3 BGB, the general limitation period for claims arising from material defects and defects of title is one year from delivery. If acceptance has been agreed, the limitation period shall commence upon acceptance.

(2) If the goods are a building or an item that has been used for a building in accordance with its normal use and has caused its defectiveness (building material), the limitation period shall be 5 years from delivery in accordance with the statutory regulation (§ 438 Abs. 1 Nr. 2 BGB). Further special statutory provisions on the limitation period (in particular § 438 Abs. 1 Nr. 1, Abs.3, §§ 444, 445b BGB) remain unaffected.

(3) The above limitation periods of the law on sales shall also apply to contractual and non-contractual claims for damages of the Buyer based on a defect of the goods, unless the application of the regular statutory limitation period (§§ 195, 199 BGB) would lead to a shorter limitation period in individual cases. The Buyer's claims for damages pursuant to § 8 Abs. 2 S. 1 and S. 2(a) and pursuant to the

Product Liability Act shall become time-barred exclusively in accordance with the statutory limitation periods.

## **§ 10 Industrial property rights**

(1) In accordance with this § 10, we guarantee that the delivery item is free from industrial property rights or copyrights of third parties. Each contracting party shall immediately notify the other contracting party in writing if claims are asserted against it due to the infringement of such rights.

(2) In the event that the delivery item infringes an industrial property right or copyright of a third party, we shall, at our discretion and at our expense, modify or replace the delivery item in such a way that the rights of third parties are no longer infringed, but the delivery item continues to fulfil the contractually agreed functions, or procure the right of use for the purchaser by concluding a licence agreement with the third party. If we do not succeed in doing so within a reasonable period of time, the buyer is entitled to withdraw from the contract or to reduce the purchase price appropriately. Any claims for damages by the buyer are subject to the limitations of § 8 of these GTC.

(3) In the event of infringements of rights by products of other manufacturers supplied by us, we shall, at our discretion, assert our claims against the manufacturers and upstream suppliers for the account of the Buyer or assign them to the Buyer. In such cases, claims against us shall only exist in accordance with this § 10 if the judicial enforcement of the aforementioned claims against the manufacturers and upstream suppliers was unsuccessful or has no prospect of success (e.g. due to insolvency).

## **§ 11 Export control**

(1) Unless otherwise agreed in writing with the customer, the customer shall be responsible for compliance with the statutory and official regulations for the import, transport, storage, use, distribution and export of the goods delivered by us.

(2) When passing on the goods delivered by us to third parties, irrespective of the legal grounds, the customer shall comply with the applicable provisions of national and international (re-)export control law, including any embargoes, sanctions or other restrictions on the movement of goods, in particular the (re-)export control regulations of the Federal Republic of Germany and the European Union.

(3) The customer assures and will also take appropriate measures to ensure that the goods delivered by us

(a) are not passed on to third parties in violation of an embargo of the Federal Republic of Germany, the European Union or the United Nations - also taking into account any restrictions on domestic business and any prohibitions on circumvention;

(b) are not intended for the prohibited development or production of biological, chemical or nuclear weapons or for a weapons-related use requiring authorisation, unless the necessary authorisations for such use have been obtained;

(c) are not transferred in violation of statutory registration, authorisation or reporting obligations;



(d) only be passed on in compliance with the regulations of all relevant sanctions lists of the Federal Republic of Germany and the European Union concerning business transactions with companies, persons or organisations named therein.

(4) Upon request, the customer shall immediately provide us with all information about the final recipient, the final destination and the intended use of the goods delivered by us as well as any applicable export control restrictions, insofar as this is required by the authorities to carry out export control checks.

(5) If a statutory or official authorisation requirement exists at the time of delivery of the goods to the customer or if an export licence is not granted upon application, we shall be entitled to terminate the contract concluded with the customer. The customer shall not be entitled to claim damages in this case. Delays in obtaining such licences from the competent authorities shall not entitle the customer to compensation.

(6) If, at the time of delivery to the customer, there is a ban on trading or a product registration obligation and the registration has not been applied for or granted at the time of delivery, we are also entitled to cancel accepted orders.

(7) In the event of non-compliance with the above export control obligations by the customer, the customer shall indemnify us against all claims by third parties (authorities or other third parties, etc.). Furthermore, the customer shall be obliged to compensate us for all damages and expenses asserted against us by third parties (authorities or other third parties, etc.) in this connection.

## **§ 12 Use of software**

(1) If software is included in the scope of delivery, the Buyer shall be granted a non-exclusive right to use the software supplied, including its documentation. It is provided for use on the delivery item intended for this purpose. Use of the software on more than one system is prohibited.

(2) The purchaser may only reproduce, revise, translate or convert the software from the object code into the source code to the extent permitted by law (§§ 69a ff. UrhG [German copyright act]). The purchaser undertakes not to remove manufacturer's details - in particular copyright notices - or to change them without our prior express consent or that of the software manufacturer/supplier. All other rights to the software and the documentation, including copies, shall remain with us or the software manufacturer/supplier. The granting of sub-licences is not permitted.

## **§ 13 Choice of law and place of jurisdiction**

(1) These GTC and the contractual relationship between us and the Buyer shall be governed by the law of the Federal Republic of Germany, excluding international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods.

(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 - also international - place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be our registered office in Willich. The same applies if the buyer is an entrepreneur within the meaning of § 14 BGB. However,

in all cases we shall also be entitled to bring an action at the place of fulfilment of the delivery obligation in accordance with these General Terms and Conditions or an overriding individual agreement or at the Buyer's general place of jurisdiction. Overriding statutory provisions, in particular regarding exclusive jurisdiction, shall remain unaffected.

(3) Insofar as the contract or these GTC contain loopholes, those legally effective provisions shall be deemed agreed to fill these loopholes which the contracting parties would have agreed in accordance with the economic objectives of the contract and the purpose of these GTC if they had been aware of the loophole.

Willich, February 2025