

General Terms and Conditions of Sale of abcr GmbH

Section 1 Scope of application, form

(1) Our offer is not directed at consumers as defined in section 13 of the German Civil Code (BGB), but rather at entrepreneurs (section 14 of the BGB), legal persons governed by public law or public-law special funds. We offer our products to them – unless provided otherwise – only for further processing and research purposes. Unless provided otherwise, our products may not be used in an unprocessed form as additives for foodstuffs or feedstuffs; human or veterinary medicinal products and cosmetics, nor for in vivo diagnostic purposes. We shall not enter into any contracts with consumers as defined in section 13 of the BGB for products and services offered by us. As a result, these General Terms and Conditions of Sale (GTCS) shall only apply if the Buyer is an entrepreneur (section 14 of the BGB), a legal person governed by public law or a public-law special fund. These GTCS shall apply to all our business relationships with our customers (“Buyers”).

(2) The GTCS especially applies to contracts for the sale and/or delivery of movable objects (“goods”), regardless of whether we manufacture the goods ourselves or purchase them from suppliers (sections 433 and 650 of the BGB). Unless provided otherwise, the GTCS in the version valid at the time of the Buyer’s order, or at any rate the version last communicated in text form, shall also apply as a framework agreement for similar future contracts, without us being required to refer to them again in each individual case.

(3) Our GTCS shall apply exclusively. Any differing, conflicting or additional general terms and conditions (GTC) of the Buyer shall become part of the contract insofar as we have expressly agreed to their validity. This approval requirement shall apply in every case, for instance, even if, knowing the GTC of the Buyer, we make a delivery to it without reservation.

(4) Any individual agreements with the Buyer (including supplementary agreements, additions and amendments) shall in any case take precedence over these GTCS. Subject to evidence to the contrary, a written contract or our written confirmation shall be the authoritative version for the content of such agreements.

(5) Legally relevant declarations and notifications by the Buyer in respect of the contract (e.g. setting deadlines, notification of defects, termination or reduction) shall be in written or text form (e.g. letter, email, telefax). Formal statutory requirements and supporting documents, in particular in cases of doubt as to the declarant’s identity, shall remain unaffected.

(6) References to the application of statutory provisions are for clarification purposes only. Therefore, statutory provisions shall apply even without such a clarification, as long as they are not directly modified or expressly exempted in these GTCS.

Section 2 Conclusion of the 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 reserve ownership rights and copyrights.

(2) The order of the goods by the Buyer shall be deemed a binding contractual offer. Unless stated otherwise in the order, we are entitled to accept this contractual offer within 14 business days of receipt.

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

(4) Unless provided otherwise between us and the Buyer in individual cases, the Buyer is responsible for complying with statutory and administrative provisions, in particular relating to the import, transport, storage and use of the goods.

Section 3 Product information/product condition, guarantees

(1) Unless provided otherwise, the contractually agreed condition of the goods is exclusively derived from our product specifications. A deviating contractual condition or designated use that is stipulated in the

contract also does not arise from one of the “identified uses” that are relevant for the goods concerned under the REACH European chemicals regulation.

(2) Information regarding the condition and durability of the goods, as well as all other information, shall represent guarantees only if expressly agreed upon and referred to as such.

(3) Our product information and consulting services are provided to the best of our knowledge. All the information and services shall not exempt the Buyer from its obligation to examine and test the goods itself and to check whether they are suitable for the respective purpose.

Section 4 Delivery deadline and delays

(1) The delivery deadline will be agreed on a case-by-case basis or stipulated by us when accepting the order. If this is not the case, the delivery deadline is approximately two weeks from the date the contract is concluded.

(2) If we are unable to meet binding delivery deadlines for reasons beyond our control (non-availability of the service), we will notify the Buyer immediately and indicate the estimated new delivery deadline at that time. If delivery can also not be made by the new deadline, we are entitled to terminate the contract in whole or in part; we will immediately refund any payments already made by the Buyer. Such unavailability of the service in this sense shall apply especially if our suppliers are late in making their delivery, if we have concluded a congruent covering transaction, if neither we nor our suppliers are responsible, or if we are not otherwise obliged to procure the delivery in this particular instance.

(3) The occurrence of a delay in delivery is determined in accordance with statutory provisions. In any case, the Buyer shall first issue a reminder.

(4) The Buyer’s rights pursuant to section 10 of these GTCS and our statutory rights shall remain unaffected, particularly if the obligation to perform is excluded (e.g. due to the impossibility or unreasonableness of the service and/or subsequent performance).

Section 5 Delivery, transfer of risk, acceptance, default of acceptance

(1) Delivery is made ex stock, which is also the place of execution of the delivery and any subsequent performance. At the Buyer’s request and expense, the goods will be shipped to another destination (mail order purchase). Unless provided otherwise, we are entitled to determine the type of shipment (in particular the transport company, shipping route, packaging) ourselves.

(2) The risk of accidental loss of and damage to the goods shall pass over to the Buyer at the latest on delivery. For sales shipments, the risk of accidental loss of and damage to the goods and the risk of delay shall pass to the customer upon delivery of the goods to the forwarder, carrier or any other person or institution instructed to perform the shipment to the Buyer. If an acceptance test is agreed, it shall be decisive for the transfer of risk. Otherwise, statutory provisions regarding service contracts shall be applicable to the agreed acceptance. The goods shall be deemed to have been transferred or accepted, if the Buyer is in default of acceptance.

(3) If the Buyer is in default of acceptance, fails to cooperate, or if the delivery is delayed for other reasons for which the Buyer is responsible, we are entitled to demand compensation for the resulting damage, including additional costs (e.g. storage costs).

Section 6 Force majeure

If incidents and circumstances beyond our control (e.g. natural disasters, war, industrial disputes, traffic or business disruptions, official decrees) lead to a restriction of the availability of the goods so that we can no longer perform the contractual obligations, for the duration of the impairment and to the extent that we are affected, we shall be released from our contractual obligations and are not obliged to procure the goods from third parties. Sentence 1 shall also apply to the extent that the events and circumstances may cause

the business concerned to be unprofitable for us. If the events and circumstances last for longer than three months, we are entitled to terminate the contract.

Section 7 Prices and terms of payment

(1) Unless otherwise agreed in individual cases, our prices valid at the time of concluding the contract shall apply, ex works, plus the statutory value-added tax.

(2) For a sales shipment (section 5 para. 1), the Buyer shall bear transport expenses ex stock and the expenses of a possible cargo insurance desired by the Buyer. The Buyer shall bear all customs duties, fees, taxes and other public levies.

(3) Unless provided otherwise in a contract, the Buyer shall pay us the agreed price no later than seven days after the delivery or provision of the service.

(4) Regardless of the place of delivery of the goods, the place of execution for Buyer’s payment liability is our registered office.

(5) The Buyer is only entitled to the rights of offset or retention to the extent that its claim has been established by a final judgement or is undisputed. In the event of defects in the delivery, the Buyer’s rights shall remain unaffected in particular according to section 9 para. 4 sentence 2 of these GTCS.

(6) If it becomes apparent after the conclusion of the contract (in case of default of payment or an application to initiate insolvency proceedings) that our entitlement to the purchase price is at risk due to lack of solvency on the part of the Buyer, we are entitled in accordance with statutory provisions to refuse performance and – after possibly setting a deadline – to terminate the contract (section 321 of the BGB). In the case of contracts for the manufacture of specific objects (customised production) we can immediately terminate the contract; statutory provisions on the dispensability of the deadline shall remain unaffected. We are also entitled to revoke agreed due dates and to make further deliveries conditional on the disposition of other securities.

Section 8 Retention of ownership

(1) In any case, we reserve ownership of the delivered goods until complete payment of the purchase price.

(2) If the Buyer has paid the purchase price for the delivered goods, but has not completely paid off other claims resulting from the running business relationship with us, we shall also retain ownership to the delivered goods until all claims against the Buyer are paid in full.

(3) The goods to which we retain ownership may neither be pledged to third parties nor transferred as a security until the full payment of the secured claims. The Buyer must immediately inform us in writing, if an application to initiate insolvency proceedings is made or if third parties exercise rights (e.g. seizures) over the goods we own.

(4) In case of any behaviour of the Buyer that breaches the contract, especially non-payment of the due purchase price, we are entitled to terminate the contract pursuant to statutory provisions or/and request the return of the goods on the basis of the retention of ownership. The request to return the goods does not at the same time contain the declaration of termination; we are rather entitled to only request the return of the goods and reserve the right to termination. Should the Buyer not pay the due purchase price, we may only exercise these rights if we have first unsuccessfully given the Buyer an adequate deadline to make payment or such a deadline is unnecessary according to statutory provisions.

(5) Until termination as set out in (5d) below, the Buyer is authorised to dispose of and/or process the goods to which we retain ownership in the proper course of business, provided it performs its obligations resulting from the business relationship with us at the due date. In this case the following terms shall additionally apply.

(5a) The retention of ownership also extends to the full value of the products created from processing our goods. In the case of processing of our delivered goods, we shall be regarded as the manufacturer and directly assume ownership of the newly-produced objects. If processing occurs together with other

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objects, we shall directly assume co-ownership of the new objects in proportion to the invoice value of the goods delivered by us for the other objects.

(5b) The retention of ownership also extends to the full value of the products resulting from combining or mixing our goods. If our delivered goods are combined or mixed with an object of the Buyer in such a way that the object of the Buyer is to be deemed the main object, the Buyer shall transfer co-ownership of the principal item to us, namely in proportion to the invoice value of the goods delivered by us to the invoice value of the main item or – in the absence of an invoice value – the market value. The Buyer shall safeguard the resulting sole ownership or co-ownership for us for no consideration. In addition, in the case of section 8 para. (5a) and (5b), the resulting product shall be subject to the same as for the goods delivered under retention of title.

(5c) The Buyer already assigns to us as a security all claims from third parties arising from the resale of the goods or products fully or to the extent of our possible co-ownership share according to the previous paragraph. We hereby accept the assignment. The obligations of the Buyer listed in para. 3 also apply in consideration of the assigned claims.

(5d) Apart from us, the Buyer remains authorised to collect the debt. We hereby undertake not to collect the debt, provided that the Buyer executes its payment obligations toward us, that there is no lack of solvency, and that we are not asserting the retention of ownership by exercising a right pursuant to para. 4. However, if this is the case, we can request 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. We are also entitled, in this case, to revoke the Buyer's permission to dispose of and process the goods, to which we retain ownership.

(5e) If the realisable value of the securities exceeds our claims by more than 15%, we shall release our choice of securities at the Buyer's request.

Section 9 Claims for defects of the Buyer

(1) Unless provided otherwise below, statutory provisions shall apply to the rights of the Buyer in case of material and legal defects (including incorrect and short delivery and improper assembly or defective assembly instructions). In all cases, the statutory special regulations shall remain unaffected for final deliveries of unprocessed goods to a consumer, even if the consumer continued their processing (supplier regress acc. to sections 478 of the BGB). Claims from supplier regress are excluded if the Buyer or another entrepreneur continued to process the defective goods, e.g. by installing them in another product.

(2) The Buyer's claims for defects require that it has performed its statutory obligations of inspection and notice (sections 377 and 381 of the German Commercial Code (HGB)). In the case of building materials and other materials intended for installation or other subsequent processing, the goods must be examined immediately before the processing at the latest. Should a defect be noticed during delivery, inspection or at some later date, we should be promptly notified of this in writing. The type and extent of the defects should be precisely described in the notice. In any event, obvious defects shall be reported within seven working days from the date of delivery or, if the defect was not detectable on examination, shall be notified in writing within the same period from the discovery of the defect. If the Buyer fails to carry out the proper inspection and/or notice of defects, our liability for the defect that is not notified or not promptly or not properly notified is exempted in accordance with statutory provisions.

(3) If the delivered object is defective, we may initially choose to carry out a subsequent performance by removing the defect (subsequent improvement) or to

deliver an object free of defects (replacement delivery). Our right to refuse subsequent performance by virtue of statutory provisions remains unaffected.

(4) We are entitled to make the subsequent performance due conditional on payment of the purchase price by the Buyer. However, the Buyer is entitled to retain an appropriate portion of the purchase price in proportion to the defect.

(5) The Buyer shall allow us the necessary time and opportunity to carry out the subsequent performance and shall in particular deliver the defective goods in question for inspection purposes. In case of a replacement delivery, the Buyer must return the defective object to us according to statutory provisions. The subsequent performance does not include the disassembly of the defective goods nor the reassembly, if we were not originally obliged to install them.

(6) In accordance with the statutory regulations, we will bear or reimburse any expenses necessary for the inspection and subsequent performance, in particular transport, travel, labour and material costs, if there is indeed a defect. Otherwise, we can require the Buyer to reimburse the costs arising from the unauthorised requests of removal of defects (in particular testing and transport costs), unless the lack of defectiveness could not be recognised by the Buyer.

(7) If the subsequent performance fails or if a reasonable deadline to be set by the Buyer for the subsequent performance has expired unsuccessfully, the Buyer may terminate the contract of sale or reduce the purchase price. There shall, however, be no termination right in the case of a minor defect.

(8) Claims from the Buyer for damages or reimbursement of unnecessary expenses incurred shall also only be asserted in the case of defects according to section 10 and are otherwise excluded.

Section 10 Other liability

(1) Unless required otherwise by these GTCS, including the following provisions, we assume liability in case of a breach of contractual and non-contractual obligations according to statutory provisions.

(2) We are liable for damages – irrespective of their legal grounds – in the context of faultbased liability in the case of intent and gross negligence. In case of simple negligence, we shall only be liable, subject to a more lenient standard of liability in accordance with statutory provisions (e.g. for diligence in our own affairs, insignificant breach of duty),

(2a) for damage arising from loss of life, limb or health, (2b) for damage arising from the breach of a material contractual obligation (a material contractual obligation is an obligation, whose performance enables the proper execution of the contract in the first place and in whose execution the contracting party regularly relies on and may rely on); in this case, our liability is however limited to compensation for the foreseeable, typically occurring damage.

(3) The limitations of liability shall also apply to breaches of duty by or in favour of persons, for whose negligence we are responsible in accordance with statutory provisions. They shall not apply if we have maliciously concealed a defect or have assumed a guarantee for the condition of the goods and to claims of the Buyer pursuant to the German Product Liability Act.

(4) The Buyer can only withdraw from or terminate the contract for a breach of duty not relating to defects, if we are responsible for the breach of duty. A free termination right of the Buyer (especially in accordance with sections 648 and 650 of the BGB) is exempted. The statutory requirements and legal consequences shall apply otherwise.

Section 11 Limitation

(1) Notwithstanding section 438 (1) para. 1 No. 3 of the BGB, the general limitation period for claims arising from material and legal defects shall be one year from delivery. If an acceptance is agreed, the limitation shall begin with the acceptance.

(2) If the goods are a building or an item used for a building according to its usual purpose and have caused a defect in the building (building material), the limitation period according to the statutory regulation is five years from the date of delivery (section 438 para. 1 No. 2 of the BGB). Other statutory special regulations concerning limitation periods (in particular § 438 para. 1 No. 1, para. 3, §§ 444, 445b of the BGB) shall remain unaffected.

(3) The above limitation periods of the purchase right also apply to the Buyer's contractual and non-contractual claims for damages based on goods defects, unless the application of the regular statutory limitation period (sections 195, 199 of the BGB) would lead to a shorter limitation period in individual cases. Claims for damages by the Buyer according to section 10 para. 2 sentence 1 and sentence (2a) as well as according to the Product Liability Act shall become time-barred exclusively in accordance with the statutory limitation periods.

Section 12 Special provisions for orders via our online shop

(1) The use of the online shop to initiate and process transactions is possible and permitted only when the user has previously registered and accepted the supplementary terms and conditions of use of the online shop. The Buyer is obliged to provide truthful and complete information during the registration process. The Buyer should always keep its information on file current. The online shop may only be used by the respective customer or authorised users.

(2) Our confirmation of receipt of the customer's order does not constitute an acceptance of the offer to buy.

(3) We reserve the right to minor deviations in the conditions of the ordered goods, particularly with regard to quantity and purity, provided that the deviations are customary in the trade.

(4) The delivery times indicated in the online shop refer to the date of shipment.

Section 13 Choice of law and place of jurisdiction

(1) The laws of the Federal Republic of Germany with the express inclusion of the United Nations Convention of 11 April 1980 on Contracts for the International Sale of Goods (CISG) shall apply to these GTCS and the contractual relationship between us and the Buyer, irrespective of whether the Buyer is based in a (CISG) signatory State.

(2) If the Buyer is a merchant as defined in the German Commercial Code, a legal person governed by public law or a public-law special fund, the exclusive international place of jurisdiction for disputes resulting directly or indirectly from the contractual relationship is our registered office. The same applies if the Buyer is an entrepreneur as defined in section 14 of the BGB. We are however entitled in all cases to bring an action at the place of execution of the delivery obligation according to these GTCS or an overriding individual agreement or at the general place of jurisdiction of the Buyer. Overriding statutory provisions, especially regarding exclusive jurisdictions, remain unaffected.

Section 14 Language of the contract

If the text of these General Terms and Conditions is also notified to the Buyer in a language other than German, this shall only serve to facilitate understanding. In any case, the German text shall prevail and is exclusively valid.

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