

## General purchasing conditions of FLUX-GERÄTE GMBH

### Section 1 Scope, form

- (1) These general purchasing conditions (GPC) apply to all business relations with our business associates and suppliers ("Seller"). The GPC only apply when the Seller is an entrepreneur (Section 14 BGB [German Civil Code], a legal entity under public law or a special fund under public law.
- (2) The GPC apply in particular to contracts for the sale and/or delivery of movable goods ("Goods") regardless of whether the Seller produced the goods itself or bought them from other suppliers (Sections 433, 650 BGB). Unless otherwise agreed, the GPC apply in the version valid when the Purchaser places the order or in any case in the version most recently provided to it in text form (in writing or electronically) as master agreement also for similar future contracts without us having to refer to them again in every single case.
- (3) These GPC apply exclusively. General terms and conditions of the Seller that diverge, contradict or supplement them only become a part of the contract to the extent that we have expressly confirmed in writing that they apply. This requirement to obtain confirmation applies in every case, for example also if we accept deliveries of the Seller without reservation in full awareness of their general terms and conditions.
- (4) Individual or separate agreements with the Seller (including ancillary agreements, additions and modifications) always have priority over these GPC. In the absence of proof to the contrary, a written agreement or our written confirmation is decisive for the content of such arrangements.

- (5) Legally relevant declarations and notifications of the Seller regarding the agreements (e.g. deadlines, dunning, withdrawal) must be made in writing, i.e. in written or text form (e.g. by letter, email, fax). This does not affect statutory formal requirements and requirements to provide further verification, in particular in the case of doubts about the legitimacy of the person making the declaration.
- (6) References to the validity of statutory provisions are only significant as clarification. As such, the statutory provisions apply without any such clarification unless they have been directly amended or expressly excluded in these GPC.

## Section 2 Conclusion of contract

- (1) Our order is binding at the earliest upon written submission or confirmation. The Seller should draw our attention to obvious errors (e.g. clerical errors) and anything missing in the order including the order documents with a view to correcting or completing it before acceptance: otherwise the contract is deemed not to have been concluded.
- (2) The Seller is required to confirm our order in writing within a period of three working days (acceptance). Acceptance is given implicitly by unconditionally dispatching the goods.
- (3) Delayed acceptance constitutes a new offer and requires acceptance by the person or department at our company responsible for the order of the Seller.

## Section 3 Delivery period and delay in delivery

- (1) The delivery period prescribed by us in the order is binding. The Seller is required to inform us in writing without undue delay if the agreed delivery period - for whatever reason - can probably not be kept.

- (2) If the Seller fails to perform or deliver within the agreed delivery period or if delivery is delayed, our rights - in particular the right to rescind the contract or demand compensation - are governed by law. The rulings of paragraph 3 remain unaffected by this.
- (3) In the event of a delay in delivery by the Seller, we can - in addition to more far-reaching statutory claims - demand flat-rate compensation for the damage caused by the delay of 1% of the net price per completed calendar week, but not more in total than 5% of the net price of the delayed goods. We reserve the right to prove that higher damage was caused. The Seller reserves the right to prove that no or considerably less damage was caused.

#### **Section 4 Performance, delivery, transfer of risk, delayed acceptance**

- (1) The Seller is not permitted to have the performance owed by it rendered by third parties (e.g. subcontractors) without our prior written consent. The Seller bears the procurement risk for its services, unless otherwise agreed on a case by case basis (e.g. limited to own stock).
- (2) Within Germany, deliveries are made freight paid to our headquarters in Maulbronn (also referred to as “place of destination”), unless otherwise agreed. The place of destination is also the place of fulfillment for the delivery and any supplementary performance (obligation to fulfill the contract).
- (3) The delivery is to be accompanied by a delivery slip stating date (issue and dispatch), content of the delivery (article number and number of items) as well as our order reference (date and number). If the delivery slip is missing or incomplete, we are not responsible for any delays in processing or payment that this might cause.
- (4) The risk of accidental loss or deterioration of the item being delivered passes to us when it is handed over at the place of fulfillment. If acceptance of the goods has been agreed, this is decisive for the transfer of risk. In all other respects, the statutory provisions of the law governing contracts for work and services apply mutatis mutandis upon acceptance. If we are in default of acceptance, this is deemed to be equivalent to handover or acceptance.

- (5) When we are considered to be in default in acceptance is governed by the statutory provisions. The Seller must, however, expressly offer us their performance even if a specific or specifiable date has been agreed for an action or participation on our part (e.g. provision of certain materials). If we are in default in acceptance, the Seller is allowed by law to demand reimbursement of their additional expenses (Section 304 BGB). If the contract pertains to a non-fungible item to be manufactured by the Seller (custom production), the Seller has more far-reaching rights if we had agreed to cooperate and we are responsible for failing to cooperate.

### Section 5 Prices and terms of payment

- (1) The price prescribed in the order is binding. Unless otherwise stated, all prices are net prices. The invoice amount is the net price shown plus the respective legally owed value added tax.
- (2) Unless agreed otherwise on a case by case basis, the price includes all services and ancillary services of the Seller (e.g. assembly, fitting) as well as all incidental costs (e.g. proper packaging, transport costs, including any transport or third party liability insurance).
- (3) The agreed price is payable within 30 calendar days of full delivery of the goods and performance of services (including acceptance, if agreed) as well as receipt of a duly prepared invoice. If we pay within 14 calendar days, the Seller grants us a 3% discount on the net amount of the invoice. In the case of bank transfer, payment is deemed to have been duly made if our transfer order is received by our bank before the payment deadline; we are not responsible for delays caused by the banks involved in the payment transaction.
- (4) We do not owe default interest. In respect of default of payment the relevant statutory provisions apply.

- (5) We have the right to offset or retain amounts and plea non-fulfillment of the agreement within the legal scope. We are in particular entitled to retain due payments as long as we still have claims from incomplete or inadequate performance against the Seller.
- (6) The Seller only has the right to offset or retain amounts for non-appealable and undisputed counterclaims.

### Section 6 Confidentiality and retention of title

- (1) We reserve title and copyrights to diagrams, plans, drawings, calculations, instructions for use, product descriptions and other documents. Such documents are to be used exclusively for the contractual performance and must be returned to us upon termination of the agreement or if the Seller files for insolvency. We are entitled to demand that the documents be returned if and when we become aware of matters that constitute due cause for the termination of the underlying agreement. The documents must be kept secret from third parties, and this applies even after the end of the contract. The obligation to maintain secrecy does not expire until the knowledge contained in the documents provided has become public knowledge.
- (2) The above provision applies by analogy to substances and materials (e.g. software, finished goods and semi-finished products) such as tools, templates, patterns and other items which we provide to the Seller for the production process. Such items - provided they have not yet been processed - are to be stored separately at the expense of the Seller and appropriately insured against destruction and loss.
- (3) Items provided by us are processed, mixed or connected (further processing) for us (the Purchaser). The same applies to the processing of goods delivered by us so that we qualify as manufacturer and, in accordance with the law, acquired title to the product at the latest upon further processing.

- (4) Title to the goods has to be transferred to us without conditions and regardless of the prior payment of the purchase price. However, if in isolated instances we accept an offer of the Seller to transfer title subject to the payment of the purchase price, the retention of title of the Seller expires at the latest upon payment of the purchase price for the goods that have been supplied. We remain authorized to resell the goods in the ordinary course of business even prior to payment of the purchase price with advance assignment of the receivable arising therefrom (alternatively: validity of the simple reservation of title extended to include resale). In any case, this excludes all other forms of retention of title, in particular the extended retention of title, the passed-on retention of title and the retention of title extended to include further processing.

### Section 7 Defective delivery

- (1) The statutory provisions apply to our rights in the event of material defects and defects of title of the goods (including wrong delivery and short delivery as well as incorrect assembly, defective assembly or operating instructions) and in the event of other breaches of duty by the Seller, unless otherwise provided below.
- (2) According to the statutory provisions, the Seller is liable in particular for ensuring that the goods have the agreed-upon condition upon transfer of risk. In any case, those product descriptions which - in particular by designation or reference in our order - are the subject matter of the respective contract or have been included in the contract in the same way as these GPC are deemed to be an agreement on the quality. It does not make any difference whether the product description has been made by us, the Seller or the manufacturer.
- (3) We are not obligated upon concluding the contract to examine the goods or to undertake special investigations about possible defects. In some respects diverging from Section 442 (1) Sentence 2 BGB, we are therefore entitled to claims for defects without limitation even if we were unaware of the defect upon conclusion of the contract due to gross negligence.

- (4) The statutory provisions (Sections 377, 381 HGB [German Commercial Code]) apply to the commercial duty to inspect and give notice of defects with the following proviso: Our duty to inspect is limited to defects which become apparent during our incoming goods inspection under appraisal of the external condition including the delivery documents (e.g. transport damage, wrong and short delivery) or which become apparent during the subsequent inspection of incoming goods by the quality control department on a spot check basis. If acceptance of the goods has been agreed, there is no duty to inspect them beforehand. Otherwise, it depends on the extent to which an examination is feasible in the ordinary course of business, taking into account the circumstances of the individual case. This does not affect our duty to give notice of defects that are discovered at a later point in time. Notwithstanding our duty to inspect the goods, our complaint (notice of defect) is deemed to have been made without undue delay and in good time if it is sent within 5 working days of discovery or, in the case of obvious defects, within 5 working days after receipt of the delivery.
- (5) Subsequent performance also includes the removal of the defective goods and their re-installation, where the goods have been installed in another item or attached to another item in accordance with their nature and intended use; this does not affect our statutory claim to reimbursement of any expenses incurred as a result. The expenses incurred for the purpose of inspection and subsequent performance are borne by the Seller even if it turns out that there was actually no defect. This does not affect our liability for damages in the event of an unjustified request to remedy a defect; in this respect, however, we will only be held liable if we recognized there was no defect or were grossly negligent in not recognizing that there was no defect.
- (6) Without prejudice to our statutory rights and the provisions in paragraph 5 above, the following applies: If the Seller fails to meet its obligation to remedy the defect - at our discretion either by correcting the defect (remedy) or by delivering an item free of defects (replacement) - within a reasonable period set by us, we may remedy the defect ourselves and demand reimbursement from the Seller of the expenses incurred for this purpose or a

corresponding advance payment. If subsequent performance by the Seller fails or is unreasonable for us (e.g. due to particular urgency, risk to operational safety or imminent occurrence of disproportionate damage), no deadline need be set; we will inform the Seller of such circumstances without undue delay, if possible beforehand.

- (7) In the event of a material defect or defect of title, we are entitled to reduce the purchase price or to withdraw from the contract in accordance with the statutory provisions. In addition, we are entitled to claim damages and reimbursement of expenses in accordance with the statutory provisions.

### Section 8 Supplier recourse

- (1) We are entitled without limitation to our statutory rights of recourse within a supply chain (supplier recourse pursuant to Sections 445a, 445b, 478 BGB) in addition to our claims for defects. In particular, we are entitled to demand from the Seller exactly the type of subsequent performance (remedy or replacement) that we owe to our customer in the specific case. This does not limit our statutory option (Sec. 439 (1) BGB).
- (2) Before we acknowledge or fulfill a claim for defects asserted by our customer (including reimbursement of expenses pursuant to Sections 445a (1), 439 (2) and (3) BGB), we will notify the Seller and request a written statement, briefly stating the facts of the case. If a substantiated statement is not made within a reasonable period of time and if no amicable solution is brought about, the claim for defects actually granted by us is deemed to be owed to our customer. In this case, the onus of providing counterevidence is on the Seller.
- (3) Our claims from supplier recourse still apply even if the defective goods have been further processed by us or another company, e.g. by integrating them into another product.



## Section 9 Producer liability

- (1) If the Seller is responsible for damage to a product, it will upon first request hold us harmless from claims by third parties to the extent that the cause lies within the Seller's sphere of control and organizational area and it is itself liable in relation to third parties.
- (2) Within the scope of its duty to hold us harmless, the Seller will reimburse expenses pursuant to Sections 683, 670 BGB which result from or in connection with a claim by a third party including recall actions carried out by us. Where possible and reasonable, we will inform the Seller about the content and scope of the recall actions and give it the opportunity to make a statement. This does not affect more far reaching statutory claims.
- (3) The Seller has to take out and maintain product liability insurance with lump-sum coverage of at least EUR 5 million per case of damage to persons/property.

## Section 10 Statute of limitations

- (1) The claims of the contractual parties against each other become statute barred in accordance with the statutory provisions, unless otherwise regulated in the following.
- (2) In derogation of Section 438 (1) No. 3 BGB, the general period of limitation for claims for defects is 3 years from the transfer of risk. If acceptance has been agreed, the statute of limitations begins upon acceptance. The 3-year period of limitation applies accordingly also to claims arising from defects in title, whereby the statutory period of limitation for claims in rem for surrender by third parties (Section 438 (1) No. 1 BGB) remains unaffected; in addition, claims arising from defects in title will in no case become statute-barred as long as the third party can still assert the right - in particular in the absence of a statute of limitations - against us.

- (3) The limitation periods of the law on sales including the above extension apply - to the extent provided by law - to all contractual claims for defects. Insofar as we are also entitled to non-contractual claims for damages due to a defect, the regular statutory period of limitation applies (Sections 195, 199 BGB), unless the application of the period of limitation of the law on sales leads to a longer period of limitation in individual cases.

### Section 11 Applicable law and court of competent jurisdiction

- (1) The law of the Federal Republic of Germany applies to these GPC and the contractual relationship between us and the Seller excluding international uniform law, in particular the United Nations Convention on Contracts for the International Sale of Goods.
- (2) If the Seller is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special government-owned fund, the sole place of jurisdiction for all disputes (including international disputes) arising in connection with this agreement is Stuttgart, provided this is legally permitted. The same applies if the Seller is an entrepreneur within the meaning of Sec. 14 BGB. However, we are also entitled in all cases to bring an action at the place of performance of the delivery obligation in accordance with these GPC or a higher-ranking individual agreement or at the general place of jurisdiction of the Seller. This does not affect higher-ranking statutory provisions, in particular regarding exclusive jurisdiction.