

**GENERAL TERMS AND CONDITIONS (PURCHASE)**

OR-00-1192-Rev.1\_AGB-Einkauf-EN

**1. GENERAL SCOPE OF APPLICATION**

- 1.1 These General Terms and Conditions (GTC) apply to all business relations between the Seller and Bray Armaturen & Antriebe GmbH (hereinafter referred to as "Purchaser") (Seller and Purchaser hereinafter jointly the "Parties" or individually the "Party"), which concern the purchase and/or other delivery of chattels ("Goods") to the Purchaser, irrespective of whether the Seller manufactures the Goods itself or purchases them from suppliers (§§ 433, 651 German Civil Code (BGB)). These GTC shall only apply if the Seller is an entrepreneur (§ 14 BGB), a legal entity under public law or a special fund under public law.
- 1.2 In addition to these purchase GTC, the contractual provisions individually agreed between the Parties for individual purchases of Goods shall apply. Deviating, conflicting or supplementary GTC of the Seller shall only apply if and to the extent that the Parties have expressly agreed their validity in writing. This requirement shall apply in any case, for example even if the Purchaser accepts the Seller's deliveries without reservation in the knowledge of the Seller's GTC.
- 1.3 If any individual provisions mentioned in 1.2 of these GTC are contradictory, the following order of precedence shall apply, whereby the provisions of the higher-ranking contractual agreements shall prevail over the lower-ranking ones:
- (1) in the case of individual purchases of Goods, individually agreed contractual provisions between the Parties;
  - (2) these GTC of the Purchaser;
  - (3) in exceptional cases, the GTC of the Seller which have been included by an appropriate, express written agreement.
- 1.4 In order to be effective, legally relevant declarations and notifications to be made by the Seller to the Purchaser (e.g. setting of deadlines, reminders, declaration of withdrawal) must be made in writing.
- 1.5 References to the validity of statutory provisions within these GTC only have a clarifying meaning. 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**

- 2.1 An order placed by the Purchaser shall be deemed binding at the earliest upon submission or confirmation in writing or in text form (e.g. e-mail). The Seller shall notify the Purchaser of obvious errors (e.g. typing and calculation errors) and incompleteness of the order, including the order documents for the purpose of correction or completion before acceptance; otherwise the individual purchase contract shall be deemed not to have been concluded.
- 2.2 The Seller is obliged to confirm an order of the Purchaser in writing or in text form (e.g. e-mail) within a period of 2 (two) days or, in particular, to execute it without reservation by dispatching the Goods ("Acceptance"). A delayed acceptance shall be deemed to be a new offer and shall require acceptance by the Purchaser.
- 2.3 Changes or adjustments to the order on the part of the Seller require the written consent of the Purchaser to be effective.

**3. DELIVERY TIME AND DELAY IN DELIVERY**

- 3.1 The order specified by the Seller in the order confirmation is generally binding. If the delivery time was not stated in the order confirmation and was not otherwise agreed, it is one week from the conclusion of the contract. The Seller is obliged to inform the Purchaser in writing without delay if the Seller is likely to be unable to meet agreed delivery times - for whatever reason.
- 3.2 If the Seller does not perform his service or does not perform it within the agreed delivery time or if he is in default, the rights of the Purchaser - in particular with regard to withdrawal and compensation for damages - shall be determined in accordance with the statutory provisions. The provisions in Section 3.3 of these GTC shall remain unaffected. In addition, the Purchaser shall have the right to reject a delivery of Goods before the agreed delivery date. In such cases the Seller shall bear the costs of return shipment and shall remain obliged to perform on the agreed delivery date.
- 3.3 If the Seller is in default, the Purchaser can - in addition to further legal claims - demand lump-sum compensation for the damage caused by the delay in the amount of 1% of the net price of the delayed delivered Goods per completed calendar week, but not more than 5% of the net price of the delayed delivered Goods in total. The Purchaser reserves the right to prove that higher damages have occurred. The Seller reserves the right to prove that no damage at all or only a considerably lower damage has occurred.

**4. PERFORMANCE, DELIVERY, PASSING OF RISK, DELAY IN ACCEPTANCE**

- 4.1 The Seller shall not be entitled to have any performance owed by the Seller rendered by third parties (e.g. subcontractors) without the prior written consent of the Purchaser. The Seller shall bear the procurement risk for its services ("Beschaffungsrisiko") unless otherwise agreed in individual cases (e.g. limitation to stock).
- 4.2 Delivery shall be DDP (delivered duty paid) to the place indicated in the order in accordance with Incoterms 2020. If the place of destination is not specified and unless otherwise agreed, delivery shall be made to the Purchaser's place of business at Halskestraße 25 in 47877 Willich. The respective place of destination shall also be the place of performance for the delivery and any subsequent performance (so-called 'Bringschuld').
- 4.3 The Seller possesses all licences, official permits and other authorisations required to fulfil its obligations in connection with the sale of the Goods to the Purchaser. The Seller undertakes to comply with all import and export regulations of the countries involved in the sale and transport of these Goods. The Seller shall be solely responsible for obtaining any necessary import permits.
- 4.4 The delivery must be accompanied by a delivery note stating the date (issue date and date of dispatch), the contents of the delivery (item number and quantity) and the Purchaser's order identifier (date and number). If the delivery note is missing or incomplete, the Purchaser shall not be responsible for any resulting delays in processing and payment. Separated from the delivery note, the Purchaser shall be sent a corresponding dispatch note with the same content without delay. The Goods shall be packed for dispatch in accordance with the Purchaser's instructions or, if no instructions are available, in such a way as to ensure that they reach their destination in an undamaged condition.
- 4.5 The risk of accidental perishing and accidental deterioration of the Goods shall pass to

the Purchaser upon delivery at the place of performance (so-called 'Bringschuld'). If acceptance has been agreed, the acceptance is decisive for the passing of the risk. In case of acceptance, the statutory provisions of the law on contracts to produce a work (§§ 631 et seq. BGB) shall apply accordingly. If the Purchaser is in default of acceptance, this shall be deemed equivalent to handover or acceptance.

- 4.6 With regard to the occurrence of default of acceptance by the Purchaser, the statutory provisions shall apply. If a certain or determinable calendar time has been agreed for an action or contribution of the Purchaser (e.g. provision of material), the Seller must even then expressly offer his performance to the Purchaser. In the event that the Purchaser is in default of acceptance, the Seller may demand compensation for additional expenses in accordance with the statutory provisions (§ 304 BGB). If the contract relates to a non-fungible item to be manufactured by the Seller (custom-made item), the Seller shall only be entitled to further rights if the Purchaser has undertaken to cooperate and is responsible for the failure to cooperate.

**5. PRICES AND TERMS OF PAYMENT**

- 5.1 The purchase price stated in the order confirmation is binding. All prices include statutory value added tax unless displayed separately.
- 5.2 Unless otherwise agreed in individual cases, the purchase price shall include all services and ancillary services provided by the Seller (e.g. assembly, installation) and all ancillary costs (e.g. proper packaging, transport costs including any transport and liability insurance).
- 5.3 The agreed purchase price is due for payment within 45 (forty-five) calendar days from complete delivery and performance (including any agreed acceptance) and receipt of a proper invoice. If the Purchaser makes the payment within 14 calendar days of complete delivery and performance (including any acceptance if agreed) and receipt of a proper invoice, the Seller shall grant a 3% discount on the net amount of the invoice.
- 5.4 The Purchaser does not owe any commercial maturity interest within the means of § 353 German Commercial Code (HGB). In cases of default of payment, the statutory provisions shall apply.
- 5.5 The Purchaser shall be entitled to offset rights and rights of retention as well as the defence of non-performance of the contract to the extent permitted by law. In particular, the Purchaser shall be entitled to withhold due payments as long as he still has claims against the Seller arising from incomplete or defective performance.
- 5.6 The Seller has an offset right or right of retention only in the case of counterclaims which have been legally established or are undisputed between the Parties.

**6. OBLIGATION TO CONFIDENTIALITY AND RETENTION OF TITLE**

- 6.1 All confidential information of the Purchaser which the Purchaser makes available to the Seller, whether disclosed or made available orally or in writing, electronically or otherwise, or in any other media, and whether marked or not marked, designated or otherwise identified as "confidential", is confidential. They are intended solely for use in the performance of this Agreement and may not be disclosed or copied unless the Purchaser has given its prior written consent.
- 6.2 In any event, the Seller is strictly prohibited, for whatever purpose, from carrying out reverse engineering with regard to the products and/or items provided by the Purchaser to the Seller for the execution of the contract until the respective trade secret is made publicly available. Reverse engineering refers to the observation, examination, dismantling or testing of a product or object, in particular for the purpose of obtaining a trade secret contained therein or connected with it (cf. § 3 para. 1 No. 2 lit. b Trade Secret Act (GeschGehG)).
- 6.3 After the delivery of the Goods, all confidential information received from the Purchaser must be returned to the Purchaser immediately and without demand or must be demonstrably destroyed.
- 6.4 This obligation of secrecy shall only expire if and insofar as the business secrets and other confidential information of the Purchaser were demonstrably already known to the Seller or were already known or generally accessible to the public or were subsequently made known or accessible to the Seller or the public through no fault of the Seller.
- 6.5 The Purchaser reserves the property rights and copyrights to illustrations, plans, drawings, calculations, instructions for execution, product descriptions and other documents which the Purchaser hands over or makes available to the Seller within the scope of the execution of the contract.
- 6.6 Such items (e.g. software, finished and semi-finished products) as well as tools, templates, samples and other items which the Purchaser provides to the Seller for production shall - as long as they are not processed - be stored separately at the expense of the Seller and insured to a reasonable extent against destruction and loss.
- 6.7 Any processing, mixing or combination ("further processing") of items by the Seller which are provided by the Purchaser shall be carried out for the Purchaser. The same shall apply in the event of further processing of the delivered Goods by the Purchaser, so that the Purchaser shall be deemed to be the manufacturer and shall acquire property to the product concerned at the latest upon further processing in accordance with the statutory provisions.
- 6.8 The transfer of ownership of the Goods to the Purchaser must be made unconditionally and without regard to the payment of the purchase price. If, however, the Purchaser accepts a conditional offer of transfer of property made by the Seller in individual cases, the Seller's reservation of title shall expire at the latest upon payment of the purchase price for the Goods delivered. In such a case, the Purchaser shall remain entitled to resell the Goods in the ordinary course of business prior to the payment of the purchase price, with advance assignment of the resulting claims (alternative application of the simple reservation of title ("einfacher Eigentumsvorbehalt") and the extended reservation of title ("verlängerter Eigentumsvorbehalt") directed at the resale). All other forms of retention of title are thus excluded in any case, in particular the expanded, the forwarded and the retention of title extended to further processing.

**7. DEFECTIVE DELIVERY**

- 7.1 The statutory provisions regarding the rights of the Purchaser in the event of material defects and defects of title of the Goods (including wrong and short delivery as well as incorrect assembly, defective assembly and operating instructions or defective user manual) and in the event of other breaches of duty by the Seller, shall apply unless otherwise provided for in the following.
- 7.2 In accordance with the statutory provisions, the Seller shall be particularly liable for ensuring that the Goods have the agreed legal and factual nature at the time of passing of the risk to the Purchaser. In any event, the product descriptions which are the subject matter of the respective contract - in particular by designation or reference in the Purchaser's order - shall be deemed to be an agreement on the legal and factual nature. It makes no difference whether the product description originates from the Purchaser, the Seller or the manufacturer.
- 7.3 The Purchaser reserves the right to refuse a delivery of Goods if the quantity of the Goods delivered is less than the quantity ordered. If the Purchaser rejects the short delivery, it shall be returned to the Seller at the Seller's risk and expense. However, if the Purchaser accepts the short delivery, the total purchase price for the Goods shall be reduced proportionately. The Purchaser also reserves the right to refuse an additional delivery if the Goods are indivisible.
- 7.4 Notwithstanding § 442 para. 1 sentence 2 BGB, the Purchaser shall be entitled to unrestricted claims for defects even if the defect has remained unknown to him at the time of conclusion of the contract due to gross negligence.
- 7.5 For the commercial duty of inspection and notification of defects, the statutory provisions (§§ 377, 381 HGB - 'kaufmännische Untersuchungs- und Rügepflicht') shall apply with the proviso that: The Purchaser's duty of inspection shall be limited to defects which become apparent during the Purchaser's incoming Goods inspection within an external examination including the examination of the delivery documents and during the Purchaser's quality control by random sampling (e.g. transport damage, wrong and short delivery). If an acceptance (cf. § 640 BGB) has been agreed, there shall be no obligation to inspect the Goods. In all other respects, it depends on the extent to which an inspection is feasible in the ordinary course of business, considering the circumstances of the individual case. The Purchaser's obligation to give notice of defects discovered later, shall remain unaffected. In all cases, the Purchaser's complaint (notice of defect) shall be deemed to be prompt and timely if it is made within 5 (five) working days of the discovery of the defect.
- 7.6 The costs incurred by the Seller for the purpose of inspection and subsequent performance (including any dismantling and installation costs) shall be borne by the Seller even if it turns out that no defect actually existed. The Purchaser's liability for damages in the event of an unjustified request for the removal of defects shall remain unaffected; however, the Purchaser shall only be liable in this respect if it has recognised or grossly negligently failed to recognise that there was no defect.
- 7.7 If the Seller does not fulfil his obligation to supplementary performance - at the Purchaser's option by remedying the defect (rectification of defects) or by delivering a defect-free item (replacement delivery) - within a reasonable period of time set by the Purchaser, the Purchaser may remedy the defect itself and demand reimbursement of the necessary expenses or a corresponding advance payment from the Seller. If the subsequent performance by the Seller has failed or is unreasonable for the Purchaser (e.g. due to endangerment of operational safety or pending occurrence of disproportionate loss), a deadline is not required; the Purchaser shall inform the Seller of such circumstances without delay, if possible in advance.
- 7.8 Otherwise, the Purchaser shall be entitled to reduce the purchase price or to withdraw from the contract in the event of a material defect or defect in title in accordance with the statutory provisions. In addition, the Purchaser shall be entitled to compensation for damages and expenses in accordance with the statutory provisions.

**8. SUPPLIER REGRESS**

- 8.1 In addition to the claims for defects, the Purchaser shall have unrestrained entitlement to statutorily determined rights of recourse within a supplier chain ('Lieferantenregress' according to §§ 445a, 445b, 478 BGB). The Purchaser shall in particular be entitled to demand precisely the kind of subsequent performance from the Seller (subsequent improvement or substitute delivery) that the Purchaser owes its customer in the individual case. This shall not restrict the Purchaser's statutory right of choice (§ 439 para. 1 BGB).
- 8.2 Before the Purchaser acknowledges or fulfils a claim for defects asserted by its customer (including reimbursement of expenses in accordance with §§ 478 para. 2, 439 para. 2 BGB), it shall notify the Seller and, giving a brief description of the facts, request a written statement from the Seller. If the statement is not made within a reasonable period of time and no mutual solution is found within this period of time, the claim for defects actually granted by the Purchaser shall be deemed to be owed by the Purchaser to its customer; in this case it rests with the Seller to produce proof of the contrary.
- 8.3 Claims of the Purchaser arising from supplier recourse ('Lieferantenregress') shall also apply if the Goods have been further processed by the Purchaser or one of its customers prior to their sale to a consumer, e.g. by assembling into another product or attachment to another product.

**9. MANUFACTURER'S LIABILITY**

- 9.1 If the Seller is responsible for a product defect, it shall indemnify the Purchaser from third party claims insofar as the cause lies within the Seller's sphere of control and organisation and it is liable itself in relation to third parties.
- 9.2 Within the scope of its obligation to indemnify the Purchaser, the Seller shall reimburse all expenses pursuant to §§ 683, 670 BGB which arise from or in connection with a claim by third parties, including product recalls carried out by the Purchaser. The Purchaser shall inform the Seller of the content and scope of recall measures - as far as possible and reasonable - and give the Seller the opportunity to comment. Further statutory claims shall remain unaffected.
- 9.3 The Seller shall take out and maintain product liability insurance with a lump sum coverage of at least EUR 10,000,000.00 (in words: ten million euros) per personal injury/material damage. The Seller undertakes to provide the Purchaser with annual confirmations from the insurance company as proof of such coverage, each confirmation having to state its scope of cover.

**10. SPARE PARTS**

- 10.1 The Seller is obliged to keep spare parts for the products delivered to the Purchaser for a period of at least 10 (ten) years after delivery.
- 10.2 If the Seller intends to discontinue the production of spare parts for the products delivered to the Purchaser, it shall notify the Purchaser thereof immediately after the decision on discontinuation has been made. Such decision must be made at least 6 (six) months prior to the discontinuation of production subject to Section 10.1.

**11. CLAIMS BY THIRD PARTIES**

- 11.1 If the Goods conveyed to the Purchaser infringe any intellectual property rights of third parties (in particular, but not limited to, patents or utility models, designs/design patents ('Gebrauchsmuster'), trademarks, copyrights or related property rights), the Seller shall indemnify the Purchaser against all claims of such third parties and shall reimburse the Purchaser for all damages, expenses and other costs incurred by the Purchaser as a result.
- 11.2 Such indemnification of the Purchaser by the Seller shall also apply to any other claims, which third parties (e.g. subcontractors of the Seller, suppliers) may assert against the Purchaser in respect of the Goods.

**12. LIMITATION**

- 12.1 The reciprocal claims of the Parties shall become statute-barred in accordance with the statutory provisions, unless otherwise agreed hereinafter.
- 12.2 Notwithstanding § 438 para. 1 No. 3 BGB, the general limitation period for claims for defects is three years from the passing of the risk. If an acceptance has been agreed in accordance to § 640 BGB, the limitation period shall commence upon acceptance. The three-year period of limitation shall apply correspondingly for claims arising from defects of title, whereby the statutory limitation period for third party claims in rem for the restitution of the property ('dingliche Herausgabeansprüche') (§ 438 para. 1 No. 1 BGB) shall remain unaffected; moreover, claims arising from defects of title shall on no account become time-barred as long as the third party can still assert the right - in particular in the absence of limitation - against the Purchaser.
- 12.3 The limitation periods of the law on the sale of goods including the above extension apply to all contractual claims for defects. Insofar as the Purchaser is also entitled to non-contractual claims for damages due to a defect, the regular statutory limitation period (§§ 195, 199 BGB) shall apply, unless the application of the limitation periods of the law on the sale of goods leads to a longer limitation period in an individual case.

**13. RELATIONSHIP OF THE PARTIES**

- 13.1 The Parties agree that nothing in this Agreement shall be construed as constituting a joint venture, partnership, franchise or similar relationship between the Parties, nor as authorizing either Party to act as an agent for the other Party and to create contractual obligations for the latter.

**14. CHOICE OF LAW AND PLACE OF JURISDICTION**

- 14.1 The contractual relationship between the Purchaser and the Seller as a whole shall be governed by the laws of the Federal Republic of Germany with the exception of its conflict of laws provisions of international private law. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.
- 14.2 If the Seller is a merchant ('Kaufmann') as defined in 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 from the contractual relationship shall be the place of business of the Purchaser. However, the Purchaser shall also in all cases be entitled to file a suit at the place of performance of the supply obligation in accordance with these GTC or in accordance with a contractual provision agreed individually between the Parties for individual purchases of Goods or at the general place of jurisdiction of the Seller. Prior statutory provisions, in particular regarding exclusive jurisdiction, shall remain unaffected.
- 14.3 The Seller is obliged to comply with the Purchaser's "Code of Conduct for Suppliers".