

## **General Terms and Conditions of Purchase**

### **I. General, scope, and form**

1. These General Terms and Conditions of Purchase shall only apply if the Seller is an entrepreneur (Section 14 German Civil Code (Bürgerliches Gesetzbuch, BGB)), a legal person under public law or a special fund under public law.
2. These General Terms and Conditions of Purchase shall apply exclusively to the entire business relationship between Albert Pasvahl (GmbH & Co.) and the Seller/Supplier (hereinafter: Seller) including future purchases. Different, conflicting or supplemental General Terms and Conditions of the Seller only become part of the Contract if and to the extent that Albert Pasvahl (GmbH & Co.) has expressly agreed in writing to their application. Unconditional acceptance of the delivery does not constitute agreement pursuant to the foregoing.
3. The General Terms and Conditions of Purchase shall apply in particular to contracts regarding the sale and/or delivery of movable goods ("goods"), regardless of whether the Seller produces the goods itself or purchases them from suppliers (Sections 433, 650 BGB). Unless otherwise agreed, the General Terms and Conditions of Purchase also apply, in the version valid at the time the order is placed or in any case in the version last provided to the Seller in text form, as a Framework Agreement for similar future contracts, without a requirement for us to refer to them again in each individual case.
4. Only orders placed in writing shall be binding on Albert Pasvahl (GmbH & Co.). Verbal agreements (including by phone) require written approval from Albert Pasvahl (GmbH & Co.).
5. Offers shall be prepared for Albert Pasvahl (GmbH & Co.) free of charge.
6. Documents or other production material such as samples, drawings, models, tools, technical specifications or similar which are supplied to the Seller or for which Albert Pasvahl (GmbH & Co.) pays the Seller, may only be used for deliveries to Albert Pasvahl (GmbH & Co.). They may neither be forwarded to third parties nor used for the Seller's own purposes; this also applies to the goods produced thereafter or therewith. They must be kept confidential, and must be returned to Albert Pasvahl (GmbH & Co.) in perfect condition without undue delay and without retention of copies, individual items, etc., as soon as the order has been processed.

7. Any reference to the application of statutory provisions is provided for clarification purposes only. Consequently, the statutory regulations shall also apply without such clarification unless they are directly modified or expressly excluded in these General Terms and Conditions of Purchase.

## **II. Prices, payment terms, default**

1. The agreed prices essentially include delivery to the receiving point specified by Albert Pasvahl (GmbH & Co.), inclusive of freight, packing, and ancillary charges. If free delivery is not agreed, then Albert Pasvahl (GmbH & Co.) shall only cover the lowest available freight rates. To the extent that packing was not included in the agreed price, this may only be charged at cost price. Reusable packaging such as crates, containers, etc. will be returned to the Seller by Albert Pasvahl (GmbH & Co.) with carriage paid, and must be credited to the full invoice amount. Other packaging or filler material such as wood shavings, papers, etc. may not be additionally charged.
2. The right to increase prices requires express written consent from Albert Pasvahl (GmbH & Co.).
3. Invoices shall be settled by Albert Pasvahl (GmbH & Co.) either within 14 days with a 3% discount or within 30 days without discount.
4. Payment and discount terms run from receipt of the invoice, though not before receipt of the goods, or in the case of services not before their acceptance, and insofar as documentation or similar information forms part of the scope of service not before their contractual handover to Albert Pasvahl (GmbH & Co.).
5. Payments can be made by cheque or bank transfer; dispatch of the cheque by post on the due date or transfer by the bank on the due date shall be sufficient to meet this requirement.
6. Albert Pasvahl (GmbH & Co.) may assert the right of offsetting and retention to the extent permitted by law.

## **III. Delivery deadlines, scope of delivery, transfer of risk**

1. Agreed delivery dates and deadlines are binding; Albert Pasvahl (GmbH & Co.) shall be notified promptly of any potential delay in delivery. If the Seller does not provide such notification, it may not claim that the delay is based on a legitimate reason with regard to Albert Pasvahl

(GmbH & Co.), even where force majeure or other circumstances for which it is not responsible exist. This does not affect Section 275 of the German Civil Code (BGB).

2. Statutory claims existing at the time of the delay cannot be excluded. In the event of delay, after expiry of a reasonable set grace period, Albert Pasvahl (GmbH & Co.) may rescind the contract and demand compensation in lieu of performance.
3. Partial deliveries shall only be permitted with the express consent of Albert Pasvahl (GmbH & Co.); excessive or short deliveries shall only be permitted within the limits usual in the industry.
4. The Seller shall bear the risk of accidental loss or deterioration until handover of goods at their destination. Deliveries must be insured against transport damage at its cost.

#### **IV. Retention of title**

1. Ownership of goods shall transfer to Albert Pasvahl (GmbH & Co.) unconditionally and regardless of payment of the price. However, if Albert Pasvahl (GmbH & Co.) accepts an offer from the Seller in cases where transfer of ownership is contingent on payment of the purchase price, the Seller's retention of title shall expire no later than on payment of the purchase price for the delivered goods. Albert Pasvahl (GmbH & Co.) shall also remain authorised to resell the goods in the normal course of business even before payment of the purchase price, with prior assignment of the claim arising from the resale (alternatively application of simple retention of title extended for resale). In each case, all other forms of retention of title are excluded, including but not limited to the expanded and assigned retention of title extended for further processing.
2. If Albert Pasvahl (GmbH & Co.) supplies parts to the Seller free of charge, Albert Pasvahl (GmbH & Co.) shall reserve the right to ownership of these. Any processing or alteration by the Seller shall be carried out on behalf of Albert Pasvahl (GmbH & Co.). If these goods subject to the retention of title are processed with other goods which do not belong to Albert Pasvahl (GmbH & Co.), Albert Pasvahl (GmbH & Co.) shall acquire co-ownership of the new goods in the ratio of the value of goods belonging to Albert Pasvahl (GmbH & Co.) (purchase price excluding VAT) to the other processed goods at the time of processing.
3. If the goods provided by Albert Pasvahl (GmbH & Co.) are inseparably mixed with other goods that do not belong to Albert Pasvahl (GmbH & Co.), Albert Pasvahl (GmbH & Co.) shall acquire co-ownership of the new goods in the ratio of the value of the goods subject to retention of title (purchase price excluding VAT) to the other mixed goods at the time of mixing. If goods are mixed in such a way that the Seller's goods are deemed the main goods, the Parties shall agree that the Seller shall transfer co-ownership on a pro rata basis to Albert Pasvahl (GmbH & Co.); the Seller shall hold sole ownership or co-ownership on behalf of Albert Pasvahl (GmbH & Co.).

## **V. Warranty, compensation, limitation period**

1. Delivery shall be made free of material defects and defective title, and must conform to good engineering practice and the contractually agreed characteristics, standards, and safety, occupational health and safety, accident prevention, and other provisions.
2. In the case of a defect, Albert Pasvahl (GmbH & Co.) shall be fully entitled to the statutory rights and claims. In derogation of Section 442 paragraph 1 (2) BGB, Albert Pasvahl (GmbH & Co.) shall have the unlimited right to assert claims for defects even if the defect remained unknown on formation of the contract due to gross negligence.
3. The expenses required for subsequent performance shall be borne by the Seller, including those that are caused by the fact that the deliverable or the service provided has been taken to a place other than the place of performance. The claim also includes the cost of uninstalling the deficient deliverable or the deficient other service, and installing a deliverable or other service that is free from deficiencies, and the cost of comparable scenarios (e.g. unpacking and repacking of goods). Where Albert Pasvahl (GmbH & Co.) incurs external or internal expenses due to the delivery of deficient deliverables, for example for investigations, sorting work, repacking and warehouse work or administrative activities, the Seller shall provide adequate compensation. With respect to work performed by staff members employed by Albert Pasvahl (GmbH & Co.), the gross hourly wage paid to the employee by Albert Pasvahl (GmbH & Co.), including all ancillary expenses, shall be deemed adequate compensation.
4. Where the Seller has provided a warranty for the quality or durability of the deliverable, Albert Pasvahl (GmbH & Co.) may also bring claims under that warranty.
5. The limitation period for claims for defects is three years from transfer of risk or, in the case of a contract for work and services, three years from acceptance. This shall not apply to goods which are used for the first time for a construction project in accordance with their normal purpose. In the latter case, the statutory limitation periods apply. In the event of remediation or subsequent delivery, the limitation period shall restart.
6. Albert Pasvahl (GmbH & Co.) shall inspect the delivery for any defects within a reasonable period, and report them to the Seller if required. The obligation to inspect shall be limited to defects which can be identified by a visual examination, including shipping documents, during incoming inspection (e.g. transport damage, incorrect and short delivery) or can be identified through inspection of random samples during quality control. Furthermore, this depends on the

extent to which an inspection is feasible in the ordinary course of business with due regard to the specific circumstances of the case.

7. The report shall be deemed submitted on time insofar as it is sent to the Seller within a period of ten working days (Monday to Friday except statutory public holidays), calculated from receipt of goods or, in the case of hidden defects, from discovery of these. The notification may be sent in any format.
8. If the Seller has made declarations on the original ownership of the delivery, it shall be obliged to compensate damage which is incurred by non-recognition of the declared origin as a result, for example, of an incorrect certificate or impossibility of verification, unless it is not at fault for the defect.
9. With regard to the goods to be delivered, the Seller shall be obliged to indemnify Albert Pasvahl (GmbH & Co.) against legal claims from domestic and foreign third parties which may arise from domestic and foreign patents, utility models, copyright or other rights; or to indemnify Albert Pasvahl (GmbH & Co.) against any damage incurred in the event of a third-party claim of this kind. This also covers process costs, compensation for damage, and any conversion and redesign work.
10. If the Seller is responsible for product damage, it shall indemnify Albert Pasvahl (GmbH & Co.) against third-party claims to the extent that the cause can be found within its area of authority and responsibility, and it is liable itself with regard to third parties. Under its obligation to indemnify, the Seller, pursuant to Sections 683, 670 BGB, shall reimburse expenses that arise from or in relation to a third-party claim, including recall actions conducted by Albert Pasvahl (GmbH & Co.). Insofar as is possible and reasonable, Albert Pasvahl (GmbH & Co.) shall notify the Seller of the content and purpose of the recall actions to be carried out and give it an opportunity to comment. This does not affect any further statutory claims.
11. Furthermore, the Seller must pay a reasonable contractual penalty to be set by Albert Pasvahl (GmbH & Co.), if the Seller is at fault for the product defect. The contractual penalty shall be deemed reasonable if Albert Pasvahl (GmbH & Co.) takes due account of the significance of the breached obligation, the actual or potential detriment to Albert Pasvahl (GmbH & Co.), and the degree of fault of the Seller when determining the amount of the contractual penalty. The right to assert a claim for compensation, which is offset however against the contractual penalty, shall remain unaffected. The amount defined is fully judicable

## **VI. Recourse against the Seller**

1. Albert Pasvahl (GmbH & Co.) shall have the unlimited statutory right of recourse within a supply chain (recourse against the Seller pursuant to Sections 445a, 445b, 478 BGB) alongside claims for defects. Albert Pasvahl (GmbH & Co.) is entitled in particular to demand the exact type of subsequent performance (remediation or replacement delivery) from the Seller which it owes to its customer in the specific case. Its statutory right of choice (Section 439 Paragraph 1 BGB) is not restricted by this.
2. Before Albert Pasvahl (GmbH & Co.) acknowledges or fulfils a claim for defects asserted by its customer (including reimbursement of expenses pursuant to Sections 445a paragraph 1, 439 paragraphs 2 and 3 BGB), it will notify the Seller and ask for a written response containing a brief statement of the facts. If a substantiated response is not received within a reasonable period, and no amicable solution is found, the claim for defects allowed by Albert Pasvahl (GmbH & Co.) shall be deemed owing to its customer. The Seller shall be obliged to provide evidence to the contrary in this case.
3. The claims of Albert Pasvahl (GmbH & Co.) arising from recourse against the Seller shall also apply if the defective goods have been processed by it or another entrepreneur, e.g. through integration into another product.

## **VII. Place of performance, place of jurisdiction, applicable law**

1. Unless otherwise contractually agreed, place of performance for payment and delivery is the registered office of Albert Pasvahl (GmbH & Co.).
2. If the Seller has its registered office in the EU or in the European Economic Area, sole jurisdiction shall be the registered office of Albert Pasvahl (GmbH & Co.). The parties are each free to bring an action against the other party in their general jurisdiction of the registered office.

On the other hand, if the Seller's registered office is located outside the EU and the European Economic Area, all disputes arising under and in connection with the contracts concluded subject to the applicability of these General Terms and Conditions of Purchase shall exclusively be settled by the court of arbitration of the Hamburg Chamber of Commerce. Its decisions are final and there is no recourse to the ordinary courts. The defendant is entitled to bring a counter-claim before the court of arbitration. The place of arbitration is Hamburg; the language of the proceedings is German. The proceedings, in particular the taking of evidence, will be conducted pursuant to the Rules of the Court of Arbitration of the Hamburg Chamber of Commerce and the rules of Book 10 of the German Code of Civil Procedure (Zivilprozessordnung). Procedural principles of common law, including, without limitation, regarding the production of documents, do not apply (neither directly nor by analogy). If, in connection with the arbitration proceedings, one party must pay the other party's legal costs, then such costs are limited to the costs that

may be charged according to the German Lawyers' Compensation Act (Rechtsanwaltsvergütungsgesetz, RVG).

3. The law of the Federal Republic of Germany shall apply exclusively to the exclusion of UN Convention on Contracts for the International Sale of Goods.

Issue 07/2019