

General Terms & Conditions of Sale



> CASEA GmbH

General Terms & Conditions of
Sale of CASEA GmbH
As of January 2017

casea-gips.de

> GENERAL TERMS & CONDITIONS OF SALE

> 1 General Provisions; Scope of Application

- (1) The present General Terms and Conditions of Sale (GTCS) shall apply to all of our business relationships with our customers (hereinafter referred to as: the "Buyer"). The GTCS shall only apply if the Buyer is an entrepreneur (Section 14 German Civil Code [Bürgerliches Gesetzbuch, BGB]), a legal entity under public law or a special fund under public law.
- (2) The GTCS shall apply, in particular, to contracts concerning the sale and/or the delivery of movable objects (hereinafter also: "Goods"), irrespective of whether we produce the Goods ourselves or purchase these from suppliers (Sections 433, 651 German Civil Code [BGB]). The GTCS shall also apply in their respective version as a framework agreement for future contracts concerning the sale and/or the delivery of movable objects with the same buyer without us having to refer to these again in each individual case. Any changes to the GTCS shall be communicated to the buyer in writing or by electronic means. They shall be deemed to be approved, unless the Buyer raises any objection in writing or by the electronic means agreed upon. The Buyer shall make specific reference to this consequence when making such notification. The Buyer shall raise the objection within a period of four (4) weeks after notification of the changes.
- (3) Our GTCS shall apply exclusively. Any deviating, contrary or supplementary General Terms and Conditions of the Buyer shall become an integral part of the contract only if and to the extent that we have given our explicit consent to their applicability. This consent requirement shall apply in any case, for example also if, with the knowledge of the GTCS of the Buyer, we carry out the delivery to the Buyer without reservation.
- (4) Any individual agreements reached in an individual case with the Buyer (including ancillary arrangements, amendments and modifications) shall in all cases have precedence over the present GTCS. A written contract and/or our written confirmation shall be decisive for the contents of any such agreements.
- (5) Any legally relevant declarations and notifications, which are to be submitted towards us by the Buyer after the conclusion of the contract (for ex. setting of deadlines, notifications of defects, declaration of cancellation or reduction), shall require written form in order to become effective.
- (6) Any references to the applicability of statutory regulations shall only have clarifying significance. Therefore, the statutory regulations shall also apply without such a clarification insofar as they are not directly altered or are explicitly excluded in the present GTCS.

> 2 Conclusion of Contracts

- (1) Our offers are subject to change and non-binding. This shall also apply if we have handed over to the Buyer any catalogues, technical documentation (for ex. drawings, plans, computations, calculations, references to DIN standards), any other product descriptions or documents, also in an electronic form, to which we reserve property rights and copyrights.
- (2) The order of the Goods by the Buyer shall be deemed as a binding contractual offer. Insofar as not otherwise derived from the order, we shall be entitled to accept this contractual offer within a period of four (4) weeks after its receipt by us.
- (3) The acceptance can either be declared in writing (for ex. by an order confirmation) or by delivery of the Goods to the Buyer.

> 3 Delivery Deadline and Delay in Delivery

- (1) The delivery deadline shall be agreed individually and/or stated by us upon acceptance of the order. To the extent that this has not been the case, the delivery deadline shall be four (4) weeks from the conclusion of the contract.
- (2) Insofar as we cannot observe any binding delivery deadlines for any reasons for which we are not responsible (non-availability of the service), we shall inform the Buyer hereof immediately, communicating the expected new delivery deadline at the same time. If the service is also not available within the new delivery deadline, we shall be entitled to withdraw from the contract either in full or in part; any consideration already provided by the Buyer shall be reimbursed by us without undue delay. Deemed as a case of non-availability of the service within this meaning shall be, in particular, the late availability of supplies from our supplier if we have concluded a congruent hedging transaction, if any fault is attributable neither to us nor to our supplier or if we are not obliged to procure the service in the individual case.
- (3) The occurrence of our delay in delivery shall be governed by the statutory regulations. However, a reminder by the Buyer shall be required in each case.
- (4) The rights of the Buyer in accordance with section 8 of the present GTCS and our statutory rights, in particular in case of any exclusion of the obligation to perform (for ex. due to impossibility or unreasonableness of performance and/or supplementary performance), shall remain unaffected.

> 4 Delivery; Passing of Risk; Acceptance; Delay in Acceptance

- (1) The delivery shall be carried out ex warehouse/ex works where the place of performance is also respectively located. At the request and expense of the Buyer, the Goods shall be sent to another place of destination (contract of sale involving the carriage of goods). Unless anything to the contrary has been agreed upon, we shall be entitled to determine the type of shipment (in particular transport company, shipment route, packaging) ourselves. The delivery of any packaged Goods shall not include unloading, unless this is an explicit item of the order.
- (2) The risk of accidental loss and accidental deterioration of the Goods shall pass to the Buyer once the Goods are handed over. In case of any contract of sale involving the carriage of goods, however, the risk of accidental loss and accidental deterioration of the Goods as well as the risk of delay shall pass upon delivery of the Goods to the carrier, the freight forwarder or the other person or institution determined to carry out the shipment. Insofar as any acceptance has been agreed upon, this shall be decisive for the passing of risk. Apart from that, the statutory regulations of the law governing contracts for work and services shall also apply accordingly to an agreed acceptance. It shall be deemed equivalent to the handover and/or acceptance if the Buyer is in default with the acceptance.
- (3) If the Buyer is in default of acceptance, if the Buyer fails to provide any act of assistance or if our delivery is delayed for any other reasons for which the Buyer is responsible (for ex. inappropriate place of unloading), then we shall be entitled to request compensation for any damage arising therefrom, including any additional expenses (for ex. storage costs, transport costs).

> 5 Prices and Terms of Payment

- (1) Unless anything to the contrary has been agreed upon in the individual case, our respective actual prices applicable at the time when the contract is concluded shall apply, namely ex warehouse, plus the statutory value added tax. Settlement shall be governed by the weight determined at the place of fulfilment or by the weight indicated on the packaged Goods. To the extent that the requirements for this have been met, settlement shall be effected in accordance with the reverse-change mechanism.
- (2) In case of any contract of sale involving the carriage of goods (section 4 para. 1), the Buyer shall bear the transport costs ex warehouse and the costs of any transport insurance requested by the Buyer, where applicable. Any customs duties, charges, taxes and other public duties shall be borne by the Buyer. Any transport and all other packaging in accordance with the German Packaging Ordinance [Verpackungsverordnung] shall not be taken back by us, but shall become the property of the Buyer, with the exception of pallets.
- (3) Unless anything to the contrary has been agreed upon, the purchase price shall be due for payment without deduction within a period of fourteen (14) days from invoicing and delivery and/or acceptance of the Goods. Any cash discount shall be granted on the basis of a written arrangement and only if any outstanding old receivables have already been settled. Any cash discount on the freight costs included in the invoice amount or any other logistics services shall not be granted in any case. In case of any agreements being concluded with a delivery value of more than € 2,500, however, we shall be entitled to request an advance payment in the amount of 30 % of the purchase price. Such advance payment shall be due for payment fourteen (14) days after invoicing.
- (4) In case of any payments being effected by means of direct debit, the customer shall be obliged to give a binding direct debit mandate. We shall be entitled to send back the preliminary information ("pre-notification") to the customer subject to a shorter time limit than fourteen (14) days before the date of maturity.
- (5) To the extent that the credit note procedure has been agreed upon, settlement of the delivery shall be effected on the basis of the delivery note. As a means of proof of the recorded delivery, the Buyer shall provide us with an advice of credit within a period of fourteen (14) days from the date of delivery and/or acceptance of the Goods. This document shall specify the delivery for each delivery note with regard to its method and quantity, net prices, value added tax rate and value added tax amount as well as its total amount. The credit note arrangement may be terminated by either party under observance of a period of notice of six (6) weeks to the end of the month.
- (6) The Buyer shall be deemed to be in default with the expiry of the payment deadline agreed upon. Interest shall be paid on the purchase price during the default at the respective applicable statutory interest rate for default. We reserve the right to assert any further damages on default. Our claim for the commercial maturity interest (Section 353 German Commercial Code [Handelsgesetzbuch, HGB]) against merchants shall remain unaffected.
- (7) The Buyer shall only be entitled to rights of set-off or retention to the extent that the Buyer's entitlement has been established as final and binding or is undisputed or if it is subject to any close relationship requiring reciprocal performance to our claim. The Buyer shall likewise only be authorised to exercise any right of retention to the extent that the Buyer's counter-claim is based on the same contractual relationship. In case of any defects to the delivery, the rights of the Buyer, in particular those in accordance with section 7 para. 6 sentence 2 of the present GTCS, shall remain unaffected.

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- (8) In the event that there are any indications after the conclusion of the contract that our entitlement to the purchase price is at risk due to any insufficient ability of the Buyer to pay (for ex. by an application for opening of insolvency proceedings), then we shall be entitled in accordance with the statutory regulations to refuse performance and, where applicable after setting a deadline, to withdraw from the contract (Section 321 German Civil Code [BGB]). In case of any contracts concerning the production of unreasonable objects (individual productions), we may declare the withdrawal immediately; the statutory regulations concerning the lack of necessity to set a deadline shall remain unaffected.

> 6 Reservation of Title

- (1) We reserve the right to the property of the sold Goods until all of our current and future claims from the purchase contract and from any current business relationship (secured claims) have been paid in full.
- (2) The Goods subject to reservation of title may neither be pledged to third parties, nor assigned as a collateral before the secured claims have been paid in full. The Buyer shall inform us in writing without undue delay if and to the extent that any access of third parties to the Goods belonging to us takes place.
- (3) In the event of any conduct of the Buyer which is in breach of the contract, in particular in any case of non-payment of the due purchase price, we shall be entitled to withdraw from the contract in accordance with the statutory regulations and/or to request that the Goods be handed over to us owing to the reservation of title. The request for handing over shall not include the declaration of the withdrawal at the same time; we shall rather be entitled to merely request that the Goods be handed over to us and reserve the right to withdraw from the contract. If the Buyer does not pay the due purchase price, we may only assert these rights if we have unsuccessfully set the Buyer a reasonable deadline for payment in advance or if any such setting of a deadline is not necessarily required in accordance with the statutory regulations.
- (4) The Buyer shall be authorised to resell and/or to process in proper business transactions the Goods which are subject to reservation of title. In this case, the following provisions shall apply in addition.
 - (a) The reservation of title shall cover the products which are produced by any processing, mixing or combination of our Goods at their full value, whereby we shall be regarded as the manufacturer. If the right of ownership of any third parties continues to exist in case of any processing, mixing or combination with goods of third parties, then we shall acquire co-ownership in the ratio of the invoice values of the processed, mixed or combined Goods. Incidentally, the same shall also apply to the ensuing product just as to the Goods delivered under reservation of title.
 - (b) The Buyer shall hereby already now assign to us in accordance with the aforementioned paragraph, in total or in the amount of our possible co-ownership share, any such claims against third parties that are established from the resale of the Goods or of the product. We hereby accept the assignment. The obligations of the Buyer as stated in para. 2 shall also apply in view of the assigned claims.
 - (c) The Buyer shall remain authorised to collect the claim, in addition to us. We shall be obligated to not collect the claim as long as the Buyer meets their payment obligations towards us, is not in default of payment, no application has been filed for the opening of insolvency proceedings and there is no other deficiency in the Buyer's ability to pay. If this is the case, however, we may request that the Buyer inform us of the assigned claims and of their debtors, provide all information which is necessary for the collection, hand over the relevant documents and inform the debtors (third parties) of the assignment.
 - (d) If the realisable value of the collateral securities exceeds our claims by more than 10 %, we shall, upon request of the Buyer, release collateral securities at our choice.

> 7 Claims for Defects of the Buyer

- (1) The statutory regulations shall apply to the rights of the Buyer in case of any defects of quality and title (including incorrect delivery and shortfall in delivery), unless anything to the contrary has been provided for below. The special statutory regulations in case of any final delivery of the Goods to a consumer shall remain unaffected in all cases (recourse against the supplier in accordance with Sections 478, 479 German Civil Code [BGB]).
- (2) The basis of our liability for defects shall primarily be the agreement concluded on the quality of the Goods. All those product descriptions designated as such shall be regarded as an agreement concluded on the quality of the Goods that had been provided to the Buyer before the Buyer's order was placed or that had been included in the contract in the same manner as the present GTCS.
- (3) To the extent that no agreement has been concluded in terms of quality, it shall be assessed in accordance with the statutory regulations whether or not any defect exists (Section 434 Para. 1 Sentences 2 and 3 German Civil Code [BGB]). However, we shall not assume any liability for any public statements of the manufacturer or of any other third parties (for ex. advertising statements).

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- (4) The Buyer's claims for defects shall be conditional upon the Buyer having satisfied their statutory obligations for inspection and the reporting of complaints (Sections 377, 381 German Commercial Code [HGB]). If any defect is determined during the inspection or at any later point in time, then this shall be notified to us in writing without undue delay. The notification shall be deemed as having been made without undue delay if it is made within three (3) days upon gaining any knowledge of it, whereby the timely dispatch of the notification is sufficient to safeguard the deadline. Irrespective of this obligation for inspection and reporting of complaints, the Buyer shall report in writing any obvious defects (including incorrect delivery and shortfall in delivery) within one week from the date of delivery, whereby the timely dispatch of the notification is also sufficient here to safeguard the deadline. If the Buyer fails to carry out the proper inspection and /or notification of defects, our liability for the defect which was not notified shall be excluded. In case of any unpackaged Goods, any discrepancies in weight within the permissible tolerance limits shall not be regarded as defects.
- (5) If the delivered object is faulty, we may initially choose whether we shall provide subsequent performance by remedying the defect (subsequent improvement) or by delivery of a defect-free object (substitute delivery). Our right to refuse the chosen type of subsequent performance under the statutory pre-requisites shall remain unaffected.
- (6) We shall be entitled to make the subsequent performance owed dependent on the fact that the Buyer pays the purchase price due. The Buyer shall be entitled, however, to retain such part of the purchase price that is reasonable in proportion to the defect.
- (7) The Buyer shall give us the time and opportunity which are necessary for the subsequent performance owed, in particular to hand over the Goods for which a complaint was made for purposes of inspection. In the event of substitute delivery, the Buyer shall return the faulty object to us in accordance with the statutory regulations. The subsequent performance shall include neither the disassembling of the defective item nor its re-installation, provided that we had initially not been obliged to install it.
- (8) The expenses which are necessary for the purpose of inspection and subsequent performance, in particular transport, route, work and material costs (with the exception of any disassembling and installation costs) shall be borne by us if there is actually a defect. However, if it is determined that a request for remedy of a defect by the Buyer is unjustified, we may request reimbursement of the costs incurred hereby from the Buyer.
- (9) In urgent cases, for ex. where there is any risk to operational safety or to avert any disproportionate further damage, the Buyer shall have the right to remedy the defect themselves or to require us to reimburse to the Buyer the expenses objectively necessary for such remedy. We shall be notified of any such self-remedy without undue delay, if possible even in advance. The right to perform a self-remedy shall not exist if we would be entitled to refuse any corresponding subsequent performance in accordance with the statutory regulations.
- (10) If the subsequent performance has failed or in the event that any reasonable deadline, which is to be set by the Buyer for the subsequent performance, has expired unsuccessfully or is dispensable in accordance with the statutory regulations, the Buyer may withdraw from the purchase contract or reduce the purchase price. However, no right to cancellation shall exist in case of any insignificant defect.
- (11) Any claims of the Buyer for compensation for damages and/or reimbursement of fruitless expenses shall only exist in accordance with section 8 and shall incidentally be excluded.

> 8 Liability

- (1) Unless anything to the contrary results from the present GTCS including the provisions stipulated below, we shall be liable in accordance with the relevant statutory regulations in case of any breach of contractual and non-contractual duties.
- (2) We shall be liable for compensation for damages, no matter for what legal grounds, in any case of wilful intent and gross negligence. In case of simple negligence, we shall only be liable:
 - (a) for any damage from injury to life, the body or health;
 - (b) for any damage from the breach of an essential contractual duty (obligation, the satisfaction of which only enables the proper execution of the contract at all and on the fulfilment of which the contractual partner regularly relies and may rely); in this case, however, our liability shall be limited to the reimbursement of the foreseeable, typically occurring damage.
- (3) The liability restrictions which can be derived from para. 2 shall not apply insofar as we have maliciously failed to disclose any defect or have assumed any guarantee for the condition of the Goods. The same shall apply to any claims of the Buyer in accordance with the German Product Liability Act [Produkthaftungsgesetz].
- (4) The Buyer may only withdraw from or terminate the contract owing to the breach of any duty, which does not consist of a defect, if we are responsible for the breach of such duty. Any free right of termination of the Buyer (in particular in accordance with Sections 651, 649 German Civil Code [BGB]) shall be excluded. Apart from that, the statutory pre-requisites and legal consequences shall apply.

> 9 Statute of Limitations

- (1) By way of derogation from Section 438 Para. 1 No. 3 German Civil Code [BGB], the general statute of limitations for any claims from defects of quality and title shall be one (1) year from the date of delivery. Insofar as any acceptance has been agreed upon, the statute of limitations shall begin with the date of acceptance.
- (2) In the event that the Goods are a building or a thing that has been used for a building in accordance with the normal way it is used and has resulted in the defectiveness of the building (building material), however, the statute of limitations in accordance with the statutory regulations shall be five (5) years from the date of delivery (Section 438 Para. 1 No. 2 German Civil Code [BGB]). Any special statutory regulations regarding third-party claims for return based upon a property right (Section 438 Para. 1 No. 1 German Civil Code [BGB]), in case of any fraudulent intent on the part of the Seller (Section 438 Para. 3 German Civil Code [BGB]) and for any claims of recourse against the supplier in case of any final delivery to a consumer (Section 479 German Civil Code [BGB]) shall likewise remain unaffected.
- (3) The aforementioned statutes of limitations of the law governing purchases shall also apply to any contractual and non-contractual claims for compensation for damages of the Buyer which are based on any defect of the Goods, unless the application of the regular legal statute of limitations (Sections 195, 199 German Civil Code [BGB]) would lead to a shorter statute of limitations in an individual case. The statutes of limitations of the German Product Liability Act shall remain unaffected in any case. Otherwise, the legal statute of limitations shall apply exclusively to any claims for compensation for damages of the Buyer in accordance with section 8.

> 10 Choice of Law and Place of Jurisdiction

- (1) The laws of the Federal Republic of Germany shall apply to the present GTCS and to all legal relationships between us and the Buyer under the exclusion of international uniform law, in particular the United Nations Convention on Contracts for the International Sale of Goods (UN sales law). The pre-requisites and effects of the reservation of title in accordance with section 6 shall be subject to the laws applicable at the respective storage location of the object insofar as, according to said laws, the choice of law made in this respect is inadmissible or ineffective for the benefit of German law.
- (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 place of jurisdiction, also international, for all disputes arising directly or indirectly from the contractual relationship shall be our registered office in Ellrich, Germany. However, we shall also be entitled to file an action at the general place of jurisdiction of the Buyer.