

General Terms and Conditions

Paccor (Zell) Deutschland GmbH

§ 1 Scope and Form

(1) These General Terms and Conditions (GTC) are applicable to all contractual relationships with our customers (henceforth: **Purchaser**). The GTC are only applicable when the Purchaser is an entrepreneur (§ 14 German Civil Code – BGB), a legal entity of public law or a separate estate of public law.

(2) The GTC apply in particular to all contracts concerning the sale and/or the delivery of moveable merchandise (henceforth: **Goods**), regardless of whether we have produced the Goods ourselves or if they were bought from suppliers (§§ 433, 650 German Civil Code). In as far as not otherwise agreed, these GTC shall apply in the respective valid written version which was communicated to the customer at the time of the Purchaser's order and which formed part of the framework agreement, and also as an integral part of similar future contracts without us having to draw attention to these conditions in every singular case.

(3) Our GTC shall apply exclusively. Any deviating, opposing or supplementary General Terms and Conditions of the Purchaser shall only then and insofar become a part of the contract to the extent that we have explicitly approved their validity. This requirement of consent shall apply in all events, even for example if we unconditionally make deliveries knowing of the GTC of the Purchaser.

(4) Individual agreements made with the Purchaser in any particular case (including side agreements, supplements and changes) shall take priority over these GTC. A written contract or our written confirmation respectively is decisive for the content of such agreements, subject to the proof of the contrary.

(5) Legally relevant declarations and notifications which are to be submitted to us by the Purchaser regarding the contract (e.g. setting of deadlines, notifications of defects, declaration of cancellation or reduction) require the written form i.e. in writing or text (e.g. letter, e-mail, telefax) in order to be valid. Legal formalities and other further proof especially in the case of any justified doubts about the legitimacy of the declaring person remain unaffected.

(6) References to the validity of statutory regulations shall only have clarifying significance. Even without such clarification, the legal provisions shall therefore apply unless directly amended or expressly excluded in these conditions.

§ 2 Conclusion of Contract

(1) Our offers are subject to change without notice and are unbinding. This also applies if we provide the Purchaser with catalogues, technical documentation (e.g. drawings, plans,

calculations, and referrals to DIN standards), other product descriptions or documents – including in electronic form - to which we reserve ownership rights and copyrights.

(2) An order of Goods placed by the Purchaser has the effect of a binding offer. Unless otherwise stated in the order, we shall be entitled to accept this offer within 14 days after receipt.

(3) Acceptance shall either be declared in writing (written or text form e.g. by order confirmation) or through the supply of goods to the Purchaser.

§ 3 Delivery deadline and Delay in delivery

(1) The delivery time is agreed upon individually and respectively stated by us at acceptance of the order. However, this does not represent a binding commitment but rather a general estimation of the delivery time.

(2) In as far as we are unable to meet binding delivery dates for any reasons for which we cannot be held responsible (non-availability of the object of performance), we will inform the Purchaser without undue delay and simultaneously fix a new reasonable delivery date depending on the given circumstances. If the service is not available within the new delivery deadline either we shall be entitled to cancel the contract in full or in part; we will in this case refund, without undue delay, any payments already made by the Purchaser. The case of a non-availability of the services shall particularly include untimely and late self-delivery by our suppliers if we have concluded a congruent covering operation, and that neither we nor our supplier is at fault or that we are not obliged to provide procurement in the individual case.

(3) The occurrence of our delay in delivery is determined according to the statutory regulations. In each case, however, a reminder is required from the Purchaser. If we default on delivery, the Purchaser can claim a lump-sum reimbursement for damages caused by delay.

(4) The rights of the Purchaser according to § 8 of these GTC and our legal rights, especially in the case of exclusion of the obligation to perform (e.g. when performance and/or subsequent performance become(s) impossible or unreasonable) shall remain unaffected.

§ 4 Delivery, Transfer of Risk, Acceptance, Delay in Acceptance

(1) Delivery is ex warehouse, and this is also the place of performance for the delivery and possible replacement. At the request and expense of the Purchaser the Goods may be shipped to another destination (Sales to Destination). Unless otherwise agreed, we are entitled to determine the type of shipment (especially transport company, shipment route, packaging) ourselves.

(2) The risk of accidental loss or accidental impairment of the Goods shall be transferred to the Purchaser as soon as the consignment has been handed over. In the case of Sales to Destination

the risk of accidental loss or accidental impairment of the Goods as well as the risk of delay passes over immediately after the goods are delivered to the forwarding company, freight carrier or any other person or company performing the transportation. As soon as acceptance is agreed, this is decisive for the transport of risks. Apart from that the statutory regulations of the works contract also apply to the agreed acceptance in accordance with the law. It is deemed equivalent to the handover or acceptance if the Purchaser is in default of acceptance.

(3) If the purchaser is in default of acceptance or fails to act in cooperation or in case that our delivery is delayed for any other reason caused by the Purchaser, we are entitled to demand a claim for compensation for the damage resulting from it, including additional expenses (e.g. costs for warehousing). For this purpose, we will charge a lump sum compensation amounting to 0.5 % of the net price (delivery price) per calendar week and up to maximum 10 % in the case of final non-acceptance commencing with the delivery period or - if there is no delivery deadline - with the notification of shipment readiness of the Goods.

The proof of higher damages and our statutory claims (in particular reimbursement of additional expenses, reasonable compensation, and termination) remain unaffected; the lump sum is however to be offset against further monetary claims. The Purchaser is at liberty to prove that damages either have not taken place at all or are substantially lower than the lump sum claimed.

§ 5 Prices and Terms of Payment

(1) Unless otherwise agreed in a particular case our prices current at the time of conclusion of contract shall be valid on the basis ex warehouse, plus the applicable rate of value added tax.

(2) We are entitled to alter the agreed price as well as the terms of payment or delivery or the minimum quantity which is deemed necessary for any shipment by written information with a period of notice of at least fifteen (15) days. If the Purchaser does not object in writing prior to the alteration going into effect, then this is considered as an acceptance of the alterations. If the Purchaser does object within this period of notice, we shall have the choice of (a) to perform the delivery according to the previous valid conditions or (b) to immediately cancel all orders for the products in question and thereby to inform the Purchaser of this action within fifteen days as of receipt of the objection.

(3) We reserve the right to increase the prices according to this contract at any time prior to the dispatch of the shipment through written notice if the price increase or the cost of our products is due to exchange rate fluctuations, currency regulations, changes in duties or taxes, increase in costs for raw materials, labour or transport costs or any other reasons that lie outside of our control. If the Purchaser is of the opinion that such price increases are unreasonable, he can object to the price increase within 15 days in writing after receipt of our notice of price increase; we shall then be entitled to perform the delivery of the products to the Purchaser at the current valid price or to terminate this contract with immediate effect.

(4) With the Sales to Destination (§ 4 Section 1) the Purchaser bears the transport costs ex warehouse and the costs of any transport insurance requested by the Purchaser.

(5) The purchase price is due and payable within 14 days from the date of issue of the invoice and delivery or acceptance of the goods respectively. We are, however, entitled, within the framework of any current business relationship, to perform delivery completely or partially only against pre-payment. We notify to the Purchaser of the any reservations at the latest with the confirmation of order.

(6) With the expiry of the above-mentioned term of payment the Purchaser will be in default. Interest is to be paid on the purchase price at the respective applicable legal interest rate for default during the default period. We reserve the right to assert claims for higher default damages as a consequence of the default. Our claim for the commercial maturity interest (§ 353 HGB German Commercial Code) against merchants remains unaffected.

(7) The Purchaser is only entitled to set-off or to exercise any rights of lien or retention to the extent its claim has been finally adjudicated upon by the court or is undisputed. In case of defects to the delivery the counter rights of the Purchaser in particular according to § 7 section 4 sentence 2 of these GTC remain unaffected.

(8) Should it become apparent after conclusion of the contract (e.g. due to an application for the opening of insolvency proceedings) that our claim for the purchase price is threatened due to lacking performance capability of the Purchaser, we shall be entitled, according to the statutory provisions, to refuse performance and - if applicable, after affixing a deadline - to rescind the contract (§ 321 BGB German Civil Code). In the case of contracts for the manufacture of specific items (custom-made products) we can withdraw immediately; this shall not affect the legal provisions concerning the dispensability of fixing a time limit.

§ 6 Retention of Title

(1) We reserve the right to the property of the sold goods until the full payment of all of our current and future claims from the purchase contract and our current business relationship (secured claims).

(2) Goods subject to retention of title may neither be pledged to third parties nor ownership thereof transferred as security prior to full payment of all claims. The Purchaser shall inform us immediately in writing if an application for the opening of insolvency proceedings has been made or any other interventions by third parties (e.g. Seizures) on Goods owned by us have occurred.

(3) For behaviour by the Purchaser that is contrary to the contract, in particular for default in payment by the Purchaser, we are entitled by legal provisions to withdraw from the contract and/or to demand the temporary surrender of the goods to which we hold title. Any demand for the return of goods shall not be deemed to include a simultaneous declaration of

withdrawal; on the contrary, we shall be entitled to claim return of the Goods and reserve the right of withdrawal. Where the Purchaser fails to pay the purchase price due, we may only assert these rights after having set a reasonable grace period for the Purchaser to pay and such deadline has elapsed without payment being made, or where the setting of any such grace period is not required by law.

(4) The Purchaser shall be authorized until revoked according to (c) below to resell and/or to process Goods under reservation of our ownership in the ordinary course of business. In this case the following stipulations are valid:

(a) The retention of title covers the products which are produced by processing, mixing or combination of our goods at their full value whereby we are deemed the manufacturer. If the ownership rights of third parties remain in existence during the processing, mixing or combination with their goods, we shall acquire co-ownership in relation to the objective value of these goods to be processed, mixed or combined. Incidentally the same shall apply to the produced product as to the goods delivered under reservation of title.

(b) The receivables owed by third parties due to the resale of the goods or products are assigned to us as security by the Purchaser as of now in total or to the extent of our possible co-ownership share pursuant to sub-section above. We accept the assignment. The obligations of the Purchaser as stated in Paragraph 2 shall also apply in view of the assigned claims.

(c) Beside ourselves, the Purchaser is also entitled to collect the receivables. However, we undertake not to collect the receivables as long as the Purchaser meets his payment obligations, does not fall into arrears, no other fault in his performance ability occurs and we do not exercise our right of retention based on rights indicated in sub-section 3. If this is the case, we can request that the Purchaser informs us of the assigned claims and their debtors, provides all information which is necessary for the collection, hands over the relevant documents and informs the debtors (third parties) of the assignment. Furthermore, we are entitled in this case to revoke the rights of the Purchaser to resale or process the Goods subject to retention of title.

(d) Should the realizable value of the securities exceed the aggregate of our claims which are to be secured by more than 10 %, the Purchaser shall be entitled to request a release at our choice.

§ 7 Purchaser's Warranty Claims

(1) The statutory regulations apply for the rights of the Purchaser in the event of material defects or defects of title (including incorrect supplies and shortfalls as well as incorrect assembly or faulty assembly instructions) if no other provisions are made in the following sections. Special statutory provisions on final deliveries of unfinished products to a consumer shall in any case remain unaffected even if these were processed by him (Recourse against supplier see §§ 478, 479 BGB German Civil Code). Claims arising out of the recourse against

suppliers shall be excluded if the faulty goods have been further processed by the Purchaser or any other entrepreneur e.g. through assembly into another product.

(2) The primary basis of our liability for defects shall be the agreement made concerning the quality of the Goods. The agreement made concerning the quality of the Goods apply to the sales specifications which were agreed with you. Any general descriptions, drawings, photographs, illustrations, performance and technical data, proportions, weights, etc. given in advertising or technical publications may change without prior information and cannot be considered as sales specifications.

(3) In the absence of any agreed specification of the goods, the existence of defects therein shall be determined in accordance with statutory provisions (§ 434 section 1, pages. 2, 3 BGB German Civil Code). This also excludes our liability for public statements (e.g. advertisements) made by the manufacturer or any third parties in which the Purchaser does not draw attention to us as a crucial decisive factor for buying the product.

(4) The Purchaser's claims for defects presume that he has satisfied his statutory obligations for inspection and reporting of complaints (§§ 377, 381 HGB German Commercial Code). In the case of construction materials and other materials needed for assembly or other processing, examination should take place immediately prior to processing. In the event that a defect is revealed on delivery, during the inspection or at a later date, we must be notified in writing without delay. If the Purchaser fails to carry out the proper inspection and/or report of defects our liability for the defect which was not timely reported or not correctly reported according to legal stipulations is excluded.

(5) If the delivered object is faulty, we can initially choose whether we shall provide subsequent performance by remedying the defect (subsequent improvement) or by delivery of a faultless object (substitute delivery). Our right to refuse the chosen rectification under the legal requirements remains unaffected.

(6) We are entitled to make remedial performance conditional upon the Purchaser paying the purchase price due. The Purchaser is, however, entitled to retain an appropriate portion of the purchase price.

(7) The Purchaser shall allow us the necessary time and opportunity for due subsequent improvement and shall in particular hand over the goods concerned for inspection. In the event of the substitute delivery the Purchaser must return the faulty object to us according to the statutory regulations. The subsequent improvement does not include either the disassembly of the defective object or the renewed assembly if we were originally not obliged to assemble the part.

(8) The expenses which are necessary for the purpose of inspection and subsequent performance, in particular transport, route, work and material costs as well as disassembly and assembly costs shall be reimbursed by us in pursuance to the legal regulations if there is actually a defect on hand. Otherwise we can, however, demand that the incurred costs

(especially inspection and transport costs) be reimbursed by the Purchaser should a demand for repair be proven unjustified, unless the lack of defectiveness was not recognizable to the Purchaser.

(9) Claims of the Purchaser for damages or reimbursement of fruitless expenses shall only exist according to § 8 even in the case of faults and are incidentally excluded.

§ 8 Other Liability

(1) We shall be liable to compensate - irrespective of legal grounds - within the framework of encumbrance liability for intent and gross negligence.

In cases of minor negligence, we are only liable to a minor degree according to legal stipulations (e.g. care in our own affairs) in the following events:

a) For damage resulting from death, physical injury or harm to human health;

b) for damage resulting from the breach of an essential contractual obligation (an obligation whose proper fulfilment makes fulfilment of the agreement possible at all and on whose observance the contractual partner regularly relies and may rely; in this case, our liability is restricted to the replacement of foreseeable and typically occurring damage.

(2) The limitations of liability defined in subparagraph 2 are also applicable for breaches of duty by or in favour of any persons for whose faults we are responsible as laid down in the legal stipulations.

They do not apply in as far as we have deceitfully concealed a fault or if we have taken over a guarantee for the condition of the Goods and for claims made by the Purchaser covered by product liability law.

(3) The Purchaser may only withdraw or terminate the contract due to a breach of duty which is not a defect if we are responsible for the violation of the obligation. A free right of termination of the Purchaser (in particular according to §§ 651, 649 BGB) is excluded. Otherwise the statutory requirements and legal consequences shall apply.

§ 9 Statute of Limitation

(1) Notwithstanding § 438 section 1, No. 3 BGB German Civil Code the limitation period for claims concerning material defects and defects of title comes to one year after the acceptance of the goods or services. If acceptance has been agreed, the limitation period begins with the acceptance.

(2) However, if the goods are a building or an object which has been used as a building in accordance with its normal use and which have caused its defectiveness (construction material), according to the statutory regulations the period of limitation is five years from delivery (§438

section 1 No. 2 BGB German Civil Code. Other statutory special regulations relating to the statute of limitation (§438 section 1 No. 1, 71 section 3, §§ 444, 445b BGB German Civil Code) remain untouched.

(3) The above-mentioned limitation period shall also apply to the Purchaser's contractual and extra-contractual compensation claims based on defective goods, except if the use of the standard legal limitation period (§§ 195, 199 BGB) would result in a shorter limitation period in individual cases. Claims for damages by the Purchaser according to § 8 section 2 sentences 1 and 2 (a) as well as the claims brought under German product liability law become time-barred in accordance with the statutory limitation periods exclusively.

§ 10 Performance by Affiliated Companies

(1) All contractual obligations may be fulfilled by us or by one of our associated companies at our discretion. Deliveries made in such a way can be invoiced by the company involved and shall be considered as fulfilment of contract by the Seller.

§ 11 Applicable Law, Place of Jurisdiction, Severability Clause

(1) All legal relationships and these General Terms and Conditions between us and the Purchaser shall be governed by the laws of the Federal Republic of Germany, excluding the references to private international law and the UN Convention on the International Sale of Goods (CISG).

(2) If the Purchaser is a merchant in the sense of the HGB (German Commercial Code), legal entity under public law or a separate estate of public law, the exclusive – and international place of jurisdiction for all disputes arising out or in connection with the contractual relationship, shall be our principal domicile in Zell. The same shall apply if the Purchaser is an entrepreneur in the sense of § 14 BGB (German Civil Code). We are, however, entitled in all cases to file an action at the point of destination according to these GTC or an individual separate agreement or at the general place of jurisdiction of the Purchaser respectively. Primary statutory regulations in particular beyond exclusive jurisdiction remain unaffected.

(3) Should any single provision in these general terms and conditions not be legally effective or for any reason lose its legal effectiveness, the validity of these general terms and conditions is not affected in any way.

(4) These General Terms and Conditions are executed in German and English. If there is a discrepancy between both versions, the German version shall prevail.