

GENERAL TERMS AND CONDITIONS OF SALE

§ 1 General, scope of application

(1) All deliveries, services and offers of Demka GmbH ("Demka") are made exclusively on the basis of these General Terms and Conditions of Sale and Delivery ("GTCS"). These GTCS shall only apply if the contractual partner ("Customer" or "Buyer") is an entrepreneur (Section 14 of the German Civil Code (BGB)), a legal entity under public law or a special fund under public law within the meaning of Section 310 (1) BGB.

(2) The GTCS apply in particular to contracts for the sale and/or delivery of movable goods (hereinafter also referred to as "Goods"), irrespective of whether Demka manufactures the Goods itself or purchases them from suppliers (Sections 433, 651 BGB). The GTCS shall also apply in their respective version as a framework agreement for future contracts for the sale and/or delivery of movable goods with the same customer, without us having to refer to them again in each individual case; in this case, we shall inform the customer immediately of any changes to our GTCS.

(3) These GTC shall apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the customer shall only become part of the contract if and to the extent that Demka has expressly consented to their validity. This requirement of consent shall apply in any case, for example even if Demka carries out deliveries to the customer without reservation in the knowledge of the customer's GTC.

(4) Demka points out and the customer is aware that the products purchased from Demka must comply with the (food) legal requirements of the agreed country of sale and therefore a direct or indirect resale of the delivered products to other countries may not be permitted. Any resale shall be at the customer's own risk.

(5) Legally relevant declarations and notifications of the Buyer in relation to the contract (e.g. setting of deadlines, notification of defects, withdrawal or reduction) must be made in writing, i.e. in written or text form (e.g. letter, e-mail, fax). Statutory formal requirements and further evidence, in particular in the event of doubts about the legitimacy of the declaring party, remain unaffected.

(6) References to the validity of statutory provisions are for clarification purposes only. Even without such clarification, the statutory provisions shall therefore apply unless they are directly amended or expressly excluded in these GTCS.

§ 2 Conclusion of contract

(1) All offers from Demka are subject to change and non-binding, unless they are expressly marked as binding or contain a specific acceptance period.

(2) Customer orders may be placed in writing (including fax and e-mail) or by telephone. An order by the customer is a binding contractual offer. Unless otherwise stated in the order, Demka shall be entitled to accept this contractual offer within 14 days of receipt by Demka.

(3) Acceptance can be declared by Demka either in writing (including fax/e-mail), for example by order confirmation or by delivery to the customer. The order confirmation issued in writing or, in the case of immediate delivery to the customer, the content of the customer's order shall be decisive for the scope and the obligation to provide deliveries and services, unless the customer has accepted a binding offer issued by Demka without change.

§ 3 Delivery period and delay in delivery

(1) The delivery period shall be agreed individually or specified by us upon acceptance of the order. If this is not the case, the delivery period is approx. 4 weeks from conclusion of the contract.

(2) If Demka is unable to meet binding delivery deadlines for reasons for which it is not responsible (non-availability of the service), it shall inform the purchaser of this immediately and at the same time notify the purchaser of the expected new delivery deadline. If the service is also not available within the new delivery period, Demka shall be entitled to withdraw from the contract in whole or in part; we shall immediately reimburse any consideration already paid by the Buyer. A case of non-availability of the service in this sense is in particular the non-timely self-delivery by our supplier if we have concluded a congruent hedging transaction, neither we nor our supplier are at fault or we are not obliged to procure in individual cases.

(3) The occurrence of our delay in delivery shall be determined in accordance with the statutory provisions. In any case, however, a reminder by the Buyer is required. If we are in default of delivery, the Buyer may demand lump-sum compensation for the damage caused by the delay. The lump-sum compensation shall amount to 0.5% of the net value (delivery value) for each completed calendar week of delay, but not more than a total of 5% of the delivery value of the goods delivered late. We reserve the right to prove that the buyer has suffered no damage at all or only significantly less damage than the above lump sum.

(4) The rights of the Buyer pursuant to § 8 of these GTCS and our statutory rights, in particular in the event of an exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of performance), shall remain unaffected.

§ 4 Performance, delivery, transfer of risk, default of acceptance

(1) Delivery is generally ex warehouse, which is also the place of performance for the delivery and any subsequent performance (obligation to collect). At the request and generally at the expense of the buyer, the goods shall be shipped to another destination (sale to destination). Unless otherwise agreed, Demka shall be entitled to determine the type of shipment (in particular transport company, shipping route, packaging) itself.

(2) Demka shall be entitled to make partial deliveries to a reasonable extent. The customer may not reject such partial deliveries. Compliance with our delivery obligation further presupposes the timely and proper fulfillment of the customer's obligation. The defense of non-performance of the contract (§ 320 BGB) and the defense of uncertainty (§ 321 BGB) remain reserved.

(3) If the Buyer is in default of acceptance, fails to cooperate or if our delivery is delayed for other reasons for which the Buyer is responsible, we shall be entitled to demand compensation for the damage incurred by as a result, including additional expenses (e.g. storage costs). For this we charge a flat-rate compensation of 1% of the delivery value per calendar day, beginning with the delivery deadline or - in the absence of a delivery deadline - with the notification that the goods are ready for dispatch.

(4) Proof of higher damages and our statutory claims (in particular reimbursement of additional expenses, reasonable compensation, termination) shall remain unaffected; however, the lump sum shall be offset against further monetary claims. The Buyer shall be entitled to prove that we have suffered no loss at all or only a significantly lower loss than the above lump sum.

(5) If the conditions of paragraph (3) are met, the risk of accidental loss or accidental deterioration of the purchased item shall pass to the Buyer at the point in time at which the Buyer is in default of acceptance.

§ 5 Prices, terms of payment, default, offsetting

(1) Unless otherwise agreed in individual cases, our current prices at the time of conclusion of the contract shall apply, ex warehouse, plus statutory VAT. We reserve the right to change our prices accordingly if cost reductions or cost increases occur after conclusion of the contract, in particular due to collective wage agreements or changes in the price of materials and/or raw materials.

(2) In the case of sale by delivery to a place other than the place of performance (§ 4 para. 1), the Buyer shall bear the transport costs ex warehouse and the costs of any transport insurance requested by the Buyer, provided that we actually invoice the transport costs incurred in the individual case. Any customs duties, fees, taxes and other public charges shall be borne by the Buyer.

(3) The purchase price is due and payable within 14 days of invoicing and delivery or acceptance of the goods.

(4) The Buyer shall be in default upon expiry of the above payment period. During the period of default, interest shall be charged on the purchase price at the applicable statutory default interest rate. We reserve the right to claim further damages caused by default. Our claim to commercial maturity interest (§ 353 HGB) against merchants remains unaffected.

(5) The Buyer shall only be entitled to set-off rights if his counterclaims have been legally established, are undisputed or have been recognized by us. In addition, he is authorized to exercise a right of retention insofar as his counterclaim is based on the same contractual relationship.

(6) If it becomes apparent after conclusion of the contract (e.g. through an application for the opening of insolvency proceedings) that our claim to the purchase price is jeopardized by the Buyer's inability to pay, we shall be entitled to refuse performance in accordance with the statutory provisions and - if necessary after setting a deadline - to withdraw from the contract (Section 321 BGB).

§ 6 Retention of title

(1) We reserve title to the goods sold until full payment of all our present and future claims arising from the purchase contract and an ongoing business relationship (secured claims).

(2) The goods subject to retention of title may neither be pledged to third parties nor assigned as security before full payment of the secured claims. The buyer must inform us immediately in writing if an application is made to open insolvency proceedings or if third parties have access to the goods belonging to us (e.g. seizures).

(3) The Buyer is authorized to resell and/or process the goods subject to retention of title in the ordinary course of business. In this case, the following provisions shall apply in addition.

(a) The retention of title shall extend to the full value of the products resulting from the processing, mixing or combining of our goods, whereby we shall be deemed to be the manufacturer. If, in the event of processing, mixing or combining with goods of third parties, their right of ownership remains, we shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined goods. In all other respects, the same shall apply to the resulting product as to the goods delivered under retention of title.

(b) The Buyer hereby assigns to us as security any claims against third parties arising from the resale of the goods or the product in total or in the amount of our possible co-ownership share in accordance with the above paragraph. We accept the assignment.

The obligations of the buyer mentioned in paragraph 2 shall also apply in consideration of the assigned claims.

(c) The Buyer shall remain authorized to collect the claim in addition to us. We undertake not to collect the claim as long as the Buyer meets his payment obligations to us, is not in default of payment, no application for the opening of insolvency proceedings has been filed and there is no other deficiency in his ability to pay. If this is the case, however, we can demand that the buyer informs us of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment.

(d) If the realizable value of the securities exceeds our claims by more than 10%, we shall release securities of our choice at the buyer's request.

§ 7 Buyer's claims for defects; duty to inspect and give notice of defects

(1) The statutory provisions shall apply to the Buyer's rights in the event of material defects and defects of title, unless otherwise specified below. In all cases, the special statutory provisions for final delivery of the goods to a consumer (supplier recourse pursuant to §§ 478, 479 BGB) shall remain unaffected.

(2) The basis of our liability for defects is above all the agreement reached on the quality of the goods. All product descriptions which are the subject of the individual contract or which have been made public by us shall be deemed to be an agreement on the quality of the goods

(3) Insofar as the quality has not been agreed, it shall be assessed in accordance with the statutory provisions whether a defect exists or not (Section 434 (1) sentences 2 and 3 BGB). However, we accept no liability for public statements made by the manufacturer or other third parties (e.g. advertising statements).

(4) The Buyer's claims for defects presuppose that he has complied with his statutory duties of inspection and notification of defects (§§ 377 HGB). If a defect becomes apparent upon delivery, inspection or at any later point in time, we must be notified of this immediately in writing. In any case, obvious defects must be reported in writing within 5 working days of delivery and defects not recognizable during the inspection within the same period from discovery. If the Buyer fails to carry out the proper inspection and/or report defects, our liability for the defect not reported or not reported on time or not reported properly shall be excluded in accordance with the statutory provisions.

(5) If the delivered item is defective, we may initially choose whether to provide subsequent performance by remedying the defect (subsequent improvement) or by delivering a defect-free item (replacement delivery). Our right to refuse subsequent performance under the statutory conditions remains unaffected.

(6) We are entitled to make the subsequent performance owed dependent on the Buyer paying the purchase price due. However, the Buyer shall be entitled to retain a reasonable portion of the purchase price in proportion to the defect.

(7) The Buyer shall give us the time and opportunity required for the subsequent performance owed, in particular to hand over the rejected goods for inspection purposes. In the event of a replacement delivery, the Buyer shall return the defective item to us in accordance with the statutory provisions.

(8) We shall bear or reimburse the expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labor and material costs, in accordance with the statutory provisions, if a defect actually exists. Otherwise, we may demand compensation from the Buyer for the costs incurred as a result of the unjustified request to remedy the defect (in particular inspection and transport costs), unless the lack of defectiveness was not recognizable to the Buyer.

(9) In urgent cases, e.g. if operational safety is at risk or to prevent disproportionate damage, the Buyer shall have the right to remedy the defect itself and to demand compensation from us for the expenses objectively required for this purpose. We must be notified immediately, if possible in advance, of any such self-remedy. The right of self-remedy does not exist if we would be entitled to refuse a corresponding subsequent performance in accordance with the statutory provisions.

(10) If the subsequent performance has failed or a reasonable deadline to be set by the buyer for the subsequent performance has expired without success or is dispensable according to the statutory provisions, the buyer may withdraw from the purchase contract or reduce the purchase price. In the case of an insignificant defect, however, there is no right of withdrawal.

(11) Claims of the Buyer for damages or reimbursement of futile expenses shall only exist in accordance with § 8, even in the case of defects, and are otherwise excluded.

§ 8 Other liability

(1) Unless otherwise provided for in these GTCS, including the following provisions, Demka shall be liable in the event of a breach of contractual and non-contractual obligations in accordance with the statutory provisions.

(2) Demka shall be liable for damages - irrespective of the legal grounds - within the scope of fault-based liability in cases of intent and gross negligence. In the event of simple negligence, Demka shall only be liable, subject to a milder standard of liability in accordance with statutory provisions (e.g. for care in its own affairs)

(a) for damages resulting from injury to life, body or health,

(b) for damages arising from the not insignificant breach of a material contractual obligation (obligation whose fulfillment is essential for the proper execution of the contract and on whose compliance the contractual partner regularly relies and may rely); in this case, however, Demka's liability is limited to compensation for foreseeable, typically occurring damages.

(3) The limitations of liability resulting from paragraph 2 shall also apply to breaches of duty by or in favor of persons whose fault Demka is responsible for according to statutory provisions. They shall not apply if Demka has fraudulently concealed a defect or has assumed a guarantee for the quality of the goods and for claims of the Buyer under the Product Liability Act.

(4) The purchaser may only withdraw from or terminate the contract due to a breach of duty which does not consist of a defect if Demka is responsible for the breach of duty. A free right of termination of the buyer is excluded. Otherwise, the statutory requirements and legal consequences shall apply.

§ 9 Statute of limitations

(1) Notwithstanding § 438 Para. 1 No. 3 BGB, the general limitation period for claims arising from material defects and defects of title shall be one year from delivery. If acceptance has been agreed, the limitation period shall commence upon acceptance.

(2) The above limitation periods of the law on sales shall also apply to contractual and non-contractual claims for damages of the Buyer based on a defect of the goods, unless the application of the regular statutory limitation period (§§ 195, 199 BGB) would lead to a shorter limitation period in individual cases. However, the Buyer's claims for damages pursuant to § 8 para. 2 sentence 1 and sentence 2(a) and pursuant to the Product Liability Act shall become time-barred exclusively in accordance with the statutory limitation periods.

§ 10 Choice of law and place of jurisdiction

(1) These GTCS and the contractual relationship between Demka and the Buyer shall be governed by the law of the Federal Republic of Germany to the exclusion of international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods.

(2) If the purchaser is a merchant within the meaning of the German Commercial Code. Commercial Code, a legal entity under public law or a special fund under public law, the exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be Demka's registered office in Mannheim.

(3) The same shall apply if the customer does not have a general place of jurisdiction in Germany or if his place of residence or habitual abode is unknown at the time the action is filed. However, in all cases we shall also be entitled to bring an action at the place of performance of the delivery obligation in accordance with these GTCS or an overriding individual agreement or at the Buyer's general place of jurisdiction. Overriding statutory provisions, in particular regarding exclusive jurisdiction, shall remain unaffected.