



General Terms and Conditions of

Peter Emming Agrarkontor- und Handel GmbH & Co. KG

**Winterswijker Straße 8
46354 Südlohn-Oeding, Germany**

These General Terms and Conditions (hereinafter the "General Terms and Conditions" or "GTC") form an integral part of all orders and contracts between the parties.

§ 1 Scope

- (1) Our General Terms and Conditions (GTC) apply to all deliveries and services to merchants and entrepreneurs within the meaning of Section 14 of the German Civil Code (BGB) as well as to legal entities under public law or special funds under public law ("öffentlich-rechtliches Sondervermögen").
- (2) Our GTC apply exclusively; we do not recognise any terms and conditions of the customer that conflict with or deviate from our GTC, unless we have expressly agreed to their validity. Our GTC shall also apply if, with knowledge of the customer's terms and conditions that conflict with or deviate from our General Terms and Conditions, we perform deliveries and services without reservation.
- (3) Any prohibition of assignment to the contrary is hereby expressly rejected.
- (4) We are entitled to assign the claims arising from our business relationship.

§ 2 Conclusion of Contract – Declarations – Rights

- (1) The customer's order constitutes a binding offer. Any prior offers or cost estimates submitted by us are subject to change and are non-binding. We may accept orders or assignments within fourteen days of their receipt.
- (2) Oral assurances given by our representatives or other vicarious agents require our written confirmation.
- (3) We reserve title and copyright in illustrations, drawings, designs, calculations and other documents. This also applies to written documents that are designated as confidential. Prior to their disclosure to third parties, the customer requires our express written consent.

§ 3 Subject Matter of the Contract and Performance – Quality of Goods

- (1) Unless expressly commissioned to do so, we do not owe any advisory services, in connection with the delivery of specifically requested and/or precisely described or specified goods, as to whether the customer can use the goods supplied by us for its processes and applications, unless we have obtained knowledge of circumstances that are material to the contract in this respect or should have obtained such knowledge without gross negligence.
- (2) Information provided by us regarding the subject matter of the delivery or service (e.g. weights, dimensions, utility values, load-bearing capacity, tolerances and technical data), as well as our related illustrations (e.g. drawings and

illustrations), are only approximate unless usability for the contractually intended purpose requires exact conformity.

- (3) Descriptions of the subject matter of the contract or of the scope of delivery and services, specifications of characteristics and technical data are not to be understood as guarantees of quality.
- (4) The customer may only assert claims concerning the quality of the ordered goods to the extent that such claims can reasonably or customarily be made with respect to goods in the price range of the goods ordered.
- (5) Deviations that are customary in trade, required by legal provisions or constitute technical improvements, as well as the replacement of components with equivalent parts, shall be permissible provided they do not impair the usability of the goods for their contractually intended purpose.

§ 4 Prices

- (1) The prices apply to the agreed scope of services and deliveries. Additional or special services will be charged separately.
- (2) Unless otherwise agreed in the respective individual contract, prices are FCA our place of business in Südlohn-Oeding in accordance with Incoterms 2020 or the then current version thereof, plus packaging, statutory value added tax and, in the case of export deliveries, customs duties as well as fees and other public charges. For shipments by sea, the port of shipment is the seaport nearest to our place of business. A different port of shipment expressly designated in the individual contract shall take precedence.
- (3) If delivery or performance is delayed by more than four months after conclusion of the contract and if, in the meantime, the costs for wages, materials, packaging materials, freight, taxes or charges have increased, the agreed price may be adjusted in accordance with the impact of the aforementioned cost factors. If our list prices form the basis of the agreed prices and delivery or performance is to take place only more than four months after conclusion of the contract, our list prices valid at the time of delivery or performance shall apply (in each case less any agreed percentage or fixed discount). If, as a result, the price changes by more than 5% compared to the contractually agreed price, the customer shall have the right to withdraw from the contract if we insist on the price increase despite the customer's announcement of its intention to withdraw.

§ 5 Terms of Payment

- (1) Unless otherwise specified or agreed by us, payment shall become due in full, without any deduction of discount, immediately upon delivery of the goods or other performance in accordance



with the Incoterm agreed between the parties. Our claims against certain customers have been assigned to factoring companies, including BFS finance GmbH, Verl. In such cases, payments may only be made with debt-discharging effect to the respective factoring company to which the claim has been assigned. The respective factoring company and its bank details can be found in the information on the invoice.

- (2) The customer shall only be entitled to set-off if its counterclaims have been finally adjudicated, are undisputed or have been acknowledged by us.
- (3) The customer shall not be entitled to any rights of retention (*"Zurückbehaltungsrecht"*) unless the customer's counterclaim arises from the same contractual relationship and is undisputed or has been finally adjudicated.
- (4) If the customer is in default of payment of a due claim, all existing claims which we have against the customer (also from other legal relationships) and which have already arisen shall become immediately due and payable; in this case, all payment terms, extensions or similar payment facilities granted by us shall lapse. Statutory default interest shall apply.
- (5) If, after conclusion of the contract, it becomes apparent that our claim to the purchase price is endangered by the customer's lack of ability to perform (e.g. by the filing of a petition to open insolvency proceedings), we shall be entitled, in accordance with the statutory provisions, to refuse performance and – if applicable, after setting a deadline – to withdraw from the contract pursuant to Section 321 BGB. In the case of contracts for the manufacture of non-fungible items (custom-made products), we may declare withdrawal immediately; the statutory provisions on the dispensability of setting a deadline shall remain unaffected.

§ 6 Performance and Time of Performance

- (1) Binding dates for deliveries or services require our written confirmation for evidentiary purposes. Where cooperation by the customer is required, any agreed period for performance shall not commence before the customer has fulfilled this duty. Compliance with payment arrangements also constitutes a duty of cooperation in this sense.
- (2) We are entitled to make partial deliveries if
 - the partial delivery can be used by the customer within the scope of the contractual purpose,
 - delivery of the remaining goods ordered is ensured, and
 - no significant additional effort or costs arise for the customer as a result (unless the customer agrees to bear such costs).
- (3) If, for reasons for which we are not responsible, we do not receive deliveries or services from our upstream suppliers or subcontractors at all, not correctly or not on time despite proper procurement, or if events of force majeure occur, we shall inform the customer in good time. In such a case, we shall be entitled to postpone the delivery or performance for the duration of the impediment or to withdraw from the contract in whole or in part with respect to the part not yet performed, provided that we have complied with our above duty to inform and have not assumed the procurement risk or the risk of manufacture. Events equivalent to force

majeure include strikes, lockouts, official interventions, shortages of energy and raw materials, non-culpable transport bottlenecks, non-culpable operational disruptions, e.g. due to fire, water and machine damage, and all other impediments which, when viewed objectively, have not been culpably caused by us.

- (4) If a delivery or performance date or a delivery or performance period has been agreed as binding and, due to events pursuant to paragraph 3 above, the agreed delivery or performance date or the agreed delivery or performance period is exceeded by more than four weeks, or if, in the case of a non-binding performance date, adherence to the contract is objectively unreasonable for the customer, the customer shall be entitled to withdraw from the contract with respect to the part not yet performed. In such case, the customer shall have no further rights, in particular no claims for damages.

§ 7 Liability in the Case of Obligations to Deliver Goods Defined by Type (*"Gattungsschulden"*) and Withdrawal

- (1) Where the item to be delivered is defined only by generic characteristics, we shall be liable for damages only if we cannot prove that we are not responsible for the non-performance, delayed delivery or defective performance. In addition, the provisions of Sections § 10 and § 11 of these General Terms and Conditions shall apply.
- (2) The customer may withdraw from the contract within the scope of the statutory provisions only if we are responsible for the breach of duty.

§ 8 Performance – Transfer of Risk – Acceptance

- (1) Unless otherwise agreed in the respective individual contract, delivery shall be made FCA our place of business in accordance with Incoterms 2020 or the respective current version thereof, which shall also be the place of performance (*"Erfüllungsort"*). At the customer's request and expense, the goods shall be shipped to another place of destination (*"Versendungskauf"*). Unless otherwise agreed, we shall be entitled to determine the type of shipment ourselves (in particular the transport company, shipping route and packaging). In the event that, in an individual case, the parties have agreed on carriage by sea and on the Incoterm FOB, CFR or CIF, it is hereby clarified that delivery shall be deemed successfully effected as soon as the goods are on board the vessel in the named port of shipment and we have fulfilled the further requirements necessary under the respective Incoterm.
- (2) The consignment shall be insured by us against theft, breakage, transport damage, fire and water damage or other insurable risks only upon the



- customer's express request and at the customer's expense.
- (3) The risk of accidental loss and accidental deterioration of the goods shall pass to the customer at the latest upon handover. In the case of a sale involving carriage of goods ("*Versendungskauf*"), however, the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay shall already pass to the customer upon delivery of the goods to the carrier, the freight forwarder or any other person or institution designated to carry out the shipment. Where the parties have agreed in an individual case that the goods are to be carried by sea, the risk shall pass to the customer as soon as the goods have been placed on board the vessel at the named port of shipment and we have fulfilled all further requirements under the applicable Incoterm.
- (4)
- (5) Where acceptance has been agreed, such acceptance shall be decisive for the transfer of risk. In all other respects, the statutory provisions of the law on contracts for work and services ("*Werkvertrag*") shall apply mutatis mutandis to any agreed acceptance. Handover or acceptance shall be deemed equivalent if the customer is in default of acceptance.

§ 9 Customer's Default of Acceptance

- (1) If the customer is in default of acceptance, fails to perform an act of cooperation or if our delivery is delayed for other reasons for which the customer is responsible, we shall be entitled to claim compensation for the loss incurred as a result, including additional expenses (e.g. storage costs). For this purpose, we shall charge lump-sum compensation amounting to 0.25% of the invoice amount of the items to be stored for each week or part thereof that elapses, commencing with the delivery period or – in the absence of a delivery period – with notification that the goods are ready for dispatch. 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 set off against any further monetary claims. The customer shall be entitled to prove that no damage at all or substantially less damage than the above lump sum has been incurred by us.
- (2) If, despite the due date of payment and default, the customer fails to accept the goods ordered by it and we are thereby entitled to claim damages, we may demand 15% of the purchase price for the costs incurred in processing the order and for lost profit. The customer shall be entitled to prove that no damage has been incurred by us at all or that such damage is substantially lower than the lump sum.

§ 10 Liability for Defects – Limitation Period

- (1) The customer shall comply with the obligations set out in Section 377 of the German Commercial Code (HGB). In addition, any defects that are apparent upon delivery must be notified to the transport company and the transport company must be requested to record such defects. Notices of defects must contain a description of the defect that is as detailed as can reasonably be expected. Failure to give

- notice of defects in due time shall exclude any claims of the customer.
- (2) We shall not assume any liability for public statements, commendations or advertising by any manufacturer other than ourselves or by other third parties; such statements do not constitute contractual descriptions of the quality of the goods.
- (3) Once processing, treatment, combination or mixing with other items has commenced, the goods delivered shall be deemed to have been approved by the customer as being in conformity with the contract. The same shall apply in the event that the goods are forwarded from the original place of destination.
- (4) Claims of the customer for reimbursement of expenses required for the purpose of subsequent performance, in particular transport, travel, labour and material costs, shall be excluded to the extent that such expenses are increased because the goods delivered by us have subsequently been brought to a place other than the customer's place of business, unless such transfer is in accordance with the goods' intended use.
- (5) If a notice of defects is unjustified because the customer knew, or negligently failed to know, that the cause of the symptoms on the basis of which it suspected a defect lay within its own sphere of responsibility, we shall be entitled to demand reimbursement from the customer of the expenses incurred by us.
- (6) The limitation period for claims based on defects shall be 12 months. This shall not apply to construction contracts, to items which, in accordance with their customary use, have been used for a building and have caused defects therein, to claims based on injury to life, body or health, or to at least grossly negligent breaches of duty by us or by one of our legal representatives or vicarious agents. Statutory special provisions shall also remain unaffected, in particular for third parties' in rem claims for surrender (dingliche Herausgabeansprüche), in cases of fraudulent intent on the part of the seller and for claims for supplier recourse (Lieferantenregress) where the final delivery is made to a consumer.

§ 11 Liability for Damages

- (1) We shall be liable for damages, irrespective of the legal grounds, without limitation
- a) in the event of wilful misconduct or gross negligence,
 - b) in the event of culpable injury to life, body or health,
 - c) in the event of defects which we have fraudulently concealed or the absence of which we have guaranteed,
 - d) in the event of claims pursuant to the special statutory provisions governing the ultimate delivery of the goods to a consumer,



- e) in the event of defects in the delivered goods, to the extent that liability arises under the German Product Liability Act ("*Produkthaftungsgesetz*") for personal injury or damage to privately used items.
- (2) In the event of culpable breach of material contractual obligations, we shall also be liable; however, our liability shall be limited to damages that were foreseeable at the time the contract was concluded as a typical consequence of such breach, taking into account the intended use of the delivered goods. Material contractual obligations are those obligations which protect contractual rights of the customer that are essential to the contract and which the contract must grant to the customer according to its content and purpose, as well as obligations the fulfilment of which is a prerequisite for the proper performance of the contract and on the observance of which the customer regularly relies and may rely.
- (3) We are also liable for loss or damage caused by gross negligence. However, where the loss or damage does not involve injury to life, body or health, our liability for gross negligence is limited to losses that, at the time the contract was entered into, we foresaw, or ought reasonably to have foreseen had we exercised the standard of care customary in the relevant trade, as a possible consequence of the breach and that are typically foreseeable when the goods supplied are used for their intended purpose.
- (4) Any further claims shall be excluded.
- (5) The exclusions and limitations of liability set out in paragraphs 1 to 4 above shall also apply in the event of corresponding breaches of duty by our vicarious agents.
- (6) Where liability for damages on our part is excluded or limited, this shall also apply with regard to the personal liability for damages of our corporate bodies, legal representatives, employees and other vicarious agents.

§ 12 Retention of Title

- (1) Until full payment has been made of all our present and future claims arising from the contract and from an ongoing business relationship (secured claims), we retain title to the goods sold.
- (2) The goods subject to retention of title may not be pledged to third parties or transferred as security before full payment of the secured claims has been made. The customer shall notify us in writing without undue delay if and to the extent that any third party seeks access to the goods belonging to us. This shall also apply in the event of any other impairment of our ownership rights. Irrespective of this, the customer shall be obliged to inform third parties in advance of the rights existing in the goods. The customer shall bear the costs of any intervention by us, to the extent that the third party is unable to reimburse such costs.
- (3) The customer shall be entitled to resell and/or process the goods subject to retention of title in the ordinary course of business. In such cases, the following provisions shall apply in addition:
 - a) The retention of title shall extend to the goods resulting from the processing, mixing or combination of our goods at their full value, whereby we shall be deemed to be the manufacturer. If, in the event of processing, mixing or combination with third-party

goods, the ownership rights of third parties remain in existence, 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 goods as to the goods delivered subject to retention of title.

- b) The claims against third parties arising from the resale of the goods subject to retention of title or of the resulting goods are hereby assigned by the customer to us, in their entirety or in the amount of our possible co-ownership share pursuant to paragraph (a) above, as security. We hereby accept the assignment. The obligations of the customer set out in paragraph 2 shall also apply with regard to the assigned claims. If a current account relationship ("*Kontokorrentverhältnis*") within the meaning of Section 355 HGB exists between us and the customer, the advance assignment shall also extend to the acknowledged balance.
- c) The customer shall remain authorised, alongside us, to collect the claims. We undertake not to collect the claims as long as the customer meets its payment obligations towards us, does not fall into payment default, no petition for the opening of insolvency proceedings has been filed and there is no other deficiency in its ability to perform. However, if this is the case, we may demand that the customer disclose to us the assigned claims and their debtors, provide all information necessary for collection, hand over the corresponding documents and notify the debtors (third parties) of the assignment.
- d) If the realisable value of the securities exceeds our claims by more than 10%, we shall, at the customer's request, release securities of our choice. It shall not be necessary to withdraw from the contract in order to assert the retention of title, unless the customer is a consumer, which, however, is excluded pursuant to Section 1 (1) of these GTC.

§ 13 Invoicing

We issue and send invoices exclusively in electronic form in PDF file format.

§ 14 Third-Party Intellectual Property Rights

- (1) If a third party asserts claims based on intellectual property rights or copyrights (hereinafter "intellectual property rights") arising from the goods supplied by us against the customer, and the contractual use of the goods by the customer is thereby impaired or prohibited, the customer shall notify us without undue delay. The customer shall



not acknowledge the alleged infringement and shall conduct any dispute with the third party regarding the alleged infringement of such rights only in consultation with us. If the customer discontinues use of the goods for reasons of damage mitigation or other important reasons, it shall be obliged to inform the third party that such discontinuation of use does not constitute recognition of an infringement of such rights.

- (2) The customer shall have no claims based on infringement of intellectual property rights to the extent that the infringement of intellectual property rights is attributable to the customer itself, is based on specific requirements of the customer, results from an application not provided for in the goods documentation, or is caused by the goods having been modified by the customer or used together with goods not supplied by us.

§ 15 Choice of Law – Jurisdiction

- (1) The law of the Federal Republic of Germany shall apply, to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG) and of conflict-of-law rules that refer to another legal system. The parties hereby agree that the provisions of the United Nations Convention on the Assignment of Receivables in International Trade shall apply to their contractual relationship upon, and subject to, the Convention's entry into force.
- (2) The exclusive place of jurisdiction shall be the courts having jurisdiction in Borken (Westphalia).

§ 16 Severability Clause

If any provision of these GTC is or becomes invalid or unenforceable, the validity of the remaining provisions shall remain unaffected.