

GENERAL TERMS AND CONDITIONS OF PURCHASE OF THE MERKUR GROUP COMPANIES

§ 1 GENERAL, SCOPE

(1) These General Terms and Conditions of Purchase (hereinafter referred to as 'GTC') apply to all contracts concluded after 1 January 2023 for the delivery of movable items (hereinafter referred to as 'Goods') to a company of the MERKUR GROUP that is affiliated with MERKUR.COM AG under corporate law within the meaning of clause 15 et seqq. of the German Stock Corporation Act [Aktiengesetz, AktG] (hereinafter individually or collectively referred to as 'We'). Additional obligations assumed do not affect the validity of these Conditions of Purchase.

(2) These GTC apply exclusively. Conditions of the supplier that conflict with or deviate from these GTC or from the statutory provisions shall only form part of the contract if and to the extent that We have expressly agreed to their validity in writing. This approval requirement applies in all cases, for example, even if We accept the supplier's deliveries or order confirmations without reservation or provide our services without reservation in knowledge of the supplier's general terms and conditions of sale.

(3) These GTC only apply if the supplier is an entrepreneur (clause 14 German Civil Code [Bürgerliches Gesetzbuch, BGB]), a legal entity under public law or a special fund under public law.

(4) References to the validity of legal regulations only serve to have a clarifying effect. Even without such a clarification, statutory provisions apply unless they are directly modified or expressly excluded in these GTC.

§ 2 OFFER, CONTRACT CONCLUSION AND CONTENT

(1) All orders placed by Us shall only become effective when We have placed them in writing. The supplier shall inform Us prior to acceptance of any errors obvious to it (e.g. typing and calculation errors) or of the incompleteness of the order, including the order documents, for the purpose of correction or completion. If any uncertainties arise for the supplier regarding our order, it shall be obligated to clarify these with Us before the conclusion of the contract.

(2) The supplier is obligated to inform Us in writing before a contract is concluded if

- the Goods to be delivered are not exclusively suitable for the use agreed with it, known to it or discernible to it;
- there may be special risks or unusual consequences associated with the use of the Goods, which it knows or should know; or
- the resale of the Goods by Us domestically and/or abroad could infringe third parties' patents, licenses or other property rights.

(3) All agreements made between Us and the supplier for the purpose of executing the contract at the time the contract is concluded are set out in writing in the contract and these GTC.

(4) We reserve all property rights and copyrights to illustrations, drawings, calculations and other documents created by Us. This also applies to such written documents that are marked as 'Confidential'. The supplier requires our express written consent before passing them on to third parties.

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§ 3 DELIVERY, DELIVERY TIMES, TRANSFER OF RISK, CONSEQUENCES OF DELAY

(1) Unless another delivery modality has been agreed, delivery shall be made DDP Incoterms 2020 to the delivery address specified in our order or, to the extent that no delivery address is specified in the order, DDP to Merkur Allee 1-15, 32339 Espelkamp, Germany. If the delivery modality 'free to domicile', 'free to construction site' or similar is agreed with the supplier in deviation from clause 3 (1) sentence 1 of these GTC below, this clause, unless otherwise clearly interpreted otherwise, is to be understood in such a way that the delivery shall only be considered complete with the arrival of the Goods at the destination.

(2) The delivery shall take place on the dates agreed pursuant to the order. The delivery times or delivery dates specified by Us in the order are binding. If the delivery time is not specified in the order and not otherwise agreed, the supplier shall deliver without undue delay pursuant to clause 271 BGB, unless the circumstances indicate otherwise.

(3) In the case of a fixed transaction, if the delivery date is exceeded, We, contrary to clause 376 (1) sentence 2 of the German Commercial Code [Handelsgesetzbuch, HGB], are not required to provide notification that We insist on performance in order for our claim to performance to be maintained. The continued existence of our claim to performance shall not affect our unrestricted right of withdrawal under the statutory provisions.

(4) Early deliveries and partial deliveries are not permitted unless We individually agree to them in writing. We are entitled to refuse the acceptance of Goods that are delivered before the agreed date and to return the prematurely delivered Goods or to store such with third parties at the expense and risk of the supplier.

(5) The supplier is obligated to inform Us in writing without undue delay if it is unlikely to be able to meet the agreed delivery times or delivery dates, regardless of the reason. Such notification does not release the supplier from its obligation to perform in good time and does not affect our rights arising from delayed performance.

(6) The supplier shall notify Us in writing of delivery a reasonable amount of time in advance, without this being associated with a restriction of other notification obligations.

(7) If the last day on which the delivery should be made can be determined on the basis of the contract, the supplier shall be in default if the delivery has not been made by the end of that day, without a reminder being required on our part. The other legal regulations of clause 286 (2) nos. 2 to 4 BGB, under which provision a reminder is not required to fall into default, remain unaffected.

(8) In the event of default of delivery, We are entitled to the statutory claims without restriction, including the right of withdrawal and the right to compensation in lieu of performance after a reasonable fruitless grace period has expired, unless such a grace period is superfluous in accordance with these GTC and/or the statutory provisions. The regulations in clause 3 (9) below remain unaffected.

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(9) In the event of default, We are entitled – in addition to further legal claims – to demand lump sum compensation for damage We have incurred as a result of the default, in the amount of 0.5 % of the net purchase price of the Goods that were not delivered or delivered late per calendar week started, but not exceeding 5 % of the net purchase price of the Goods that were not delivered or delivered late. We reserve the right to prove that We have incurred greater damage. The supplier has the right to prove to Us that no damage or significantly lower damage was incurred as a result of the default. The lump-sum compensation according to this clause 3 (9) must be offset against the claim for compensation for default.

(10) The transfer of risk takes place upon delivery. Insofar as acceptance has been agreed, this is decisive for the transfer of risk in deviation of clause 3 (10) sentence 1 of these GTC. In addition, the statutory provisions of German law on contracts for work and services apply accordingly in the event of acceptance.

(11) The supplier is obligated to enclose a packing slip or delivery note with all deliveries, stating the date, our order number and the contents of the delivery. The use of a bar code is to be preferred. The delivery note must also contain information about the gross and net weight.

In the case of partial deliveries, the remaining quantity to be delivered must be specified. If the packing slip or delivery note is missing or incomplete, We shall not be responsible for any resulting delays in processing and payment.

(12) The values determined during the incoming Goods inspection are binding for the dimensions, weights and quantities of a delivery.

(13) If the Goods arrive in damaged packaging, We are entitled to reject the shipment without checking the content. The costs of the return shall be borne by the supplier.

(14) If We are in default of acceptance or debt, the supplier may demand reimbursement of its additional expenses according to the statutory provisions (clause 304 BGB), however, the claim for reimbursement of expenses to which the supplier is entitled is limited to 0.5 % of the net price of the Goods affected by the default of acceptance or debt per completed calendar week, insofar as the default of acceptance or debt is not due to intent or gross negligence. If the contract relates to an item to be manufactured by the supplier which cannot be re-sold (one-off production), the supplier will only be entitled to further rights if We are obligated to cooperate and are responsible for our failure to cooperate.

§ 4 INITIAL INSPECTION BY THE SUPPLIER; DUTY OF NOTIFICATION

(1) The supplier is committed to the zero-defect objective and to continuous improvement, just as We are to our customers. In order to minimise the likelihood of consequential damage from the delivery of defective Goods, the supplier is obligated to inspect the Goods prior to delivery for defects that would be identified by a proper inspection. The supplier is obligated to record the result of this initial inspection in writing and to send it to Us upon request. In this respect, it is assumed that 100 % of the delivered Goods have been checked by the supplier and are free of defects.

(2) If the supplier notices after delivery that the Goods are defective, it is obligated to notify Us of any such defects in writing without delay. This applies even if the defect does not give rise to a warning or a recall based on tort and/or product liability law.

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§ 5 PRICES, TERMS OF PAYMENT AND LATE PAYMENT

(1) The price stated in the order is binding. A price increase, for whatever reason, is not permitted unless We have provided our written consent. Unless otherwise agreed, all prices are exclusive of statutory VAT.

(2) The agreed purchase price includes the costs for delivery, transport and proper packaging for transport.

(3) The agreed purchase price is due for payment within 30 calendar days of complete delivery and provision of service (including any agreed acceptance) and receipt of a proper invoice. If We make the payment within 14 calendar days of the reference date specified in clause 5 (3) sentence 1 of these GTC, the supplier shall grant Us a 3 % discount on the net amount of the invoice. In the case of a bank transfer, payment shall be considered made in good time if the transfer is made before the payment deadline; receipt of payment by the supplier is irrelevant. The invoice will be considered proper if it contains the exact order details.

(4) We shall not owe any interest as of the due date (clause 353 HGB). In the event of a delay in payment, We will owe interest on arrears in the amount of five [5] percentage points above the base interest rate in accordance with clause 247 BGB. Otherwise, the statutory provisions apply to the payment default.

(5) We are entitled to rights of offsetting and retention as well as the defence of unperformed contract to the extent permitted by law. In particular, We are entitled to withhold payments that are due provided that We are still entitled to claims from incomplete or defective services against the supplier. Payments are made subject to reservation and do not affect the supplier's warranty obligations.

(6) The supplier is only entitled to offsetting and retention rights if its counterclaims have been legally established, are undisputed or recognised by Us or are based on the same contractual relationship.

§ 6 ASSIGNMENT PROHIBITION

Subject to Clause 354a HGB, the supplier is not entitled to assign its claims arising from the contractual relationship to third parties.

§ 7 MATERIAL DEFECTS AND DEFECTS OF TITLE

(1) In addition to the legally defined material defects, the Goods shall be considered materially defective if, at the time of the transfer of risk,

- they deviate from the agreed quality and/or suitability for use;
- they do not meet the statutory and/or other legal requirements that must be met if the Goods are resold in Germany;
- they deviate from the recognised rules of technology, the applicable rules for product safety, applicable DIN standards and/or applicable EU standards and/or were not manufactured according to their specifications; and or
- they are defective within the meaning of the German Product Liability Act [Produkthaftungsgesetz, ProdHaftG].

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(2) Any product descriptions that are the subject of the relevant contract or were included in the contract in the same way as these GTC – in particular by designation or reference in our order – also apply as an agreement on the quality of the Goods. The origin of the product description is irrelevant in this regard.

(3) The Goods are defective in title if they do not meet the requirements of clause 12 (1) of these GTC below at the time of the transfer of risk. In addition, liability for defects in title is based on clause 435 BGB.

§ 8 INSPECTION OF DEFECTS – LIABILITY FOR DEFECTS

(1) The statutory provisions apply to the commercial obligation to inspect and give notice of defects with the following proviso: We are obligated to inspect the Goods within a reasonable period of time with regard to typical deviations of the actual nature of the type, quantity, quality and packaging of the Goods delivered. The inspection method is limited to the method customary for Us. The involvement of third parties is not necessary, nor is an examination of the chemical composition. Objections shall be considered timely if received by the supplier within a period of 10 working days (working days are Mondays to Fridays with the exception of the public holidays applicable to our head office), calculated from the receipt of the Goods or, in the case of hidden defects, from their discovery. Objections may be issued verbally. We are not required to issue an objection if the supplier knew or should have known about the defect, in particular due to its initial inspection pursuant to clause 4 (1) of these GTC above.

(2) Contrary to clause 442 (1), sentence 2 BGB, We are also entitled to unrestricted claims for defects if We were left unaware of the defect at the time the contract was concluded as a result of gross negligence.

(3) The statutory provisions apply to our rights in the event of material defects and defects of title in the delivered Goods, unless otherwise stipulated in these GTC. In any case, We are entitled to demand that the supplier rectify the defect or deliver a new item, at our discretion. Should the supplier not meet its obligation to provide supplementary performance within a reasonable period determined by Us, We shall be entitled to remedy the defect ourselves and to demand reimbursement of the necessary expenses and a corresponding advance payment from the supplier. We expressly reserve the right to rescind the contract, to reduce the price and to claim damages, in particular claims for damages instead of performance.

(4) If the supplementary performance – whether by remedying the defect (repair) or by delivery of a defect-free item (replacement delivery), at our discretion – by the supplier fails or is unreasonable for Us (e.g. due to particular urgency, endangerment of operational safety or imminent occurrence of disproportionate damage), no such deadline shall be required. We shall inform the supplier without undue delay, and if possible beforehand, of such circumstances. The other legal regulations – according to which a prior setting of a deadline is not required – remain unaffected.

(5) The supplier shall bear the costs incurred for the purpose of testing and supplementary performance, even if it should arise that no defect was actually present. Our liability for damages in the event of unjustified requests to remedy defects remains unaffected thereby. However, We shall only be liable if We recognised or failed to recognise through gross negligence that there was no defect, but nevertheless requested subsequent performance.

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(6) If the supplier is an intermediary for the Goods in question, it cannot indemnify itself pursuant to clause 280 (1) sentence 2 BGB if it had recognised or could have recognised the defect due to the obligation to inspect vis-à-vis its supplier according to clause 377 HGB, but nevertheless delivered the Goods to Us.

§ 9 SUPPLIER RECOURSE

(1) Our rights of recourse according to clause 445 a BGB (our recourse against the supplier in the event that We have to bear expenses for supplementary performance in relation to our customers) and clause 478 BGB (special provision for entrepreneur recourse in the case of a purchase of consumer Goods) remain unrestricted in addition to claims for defects. In particular, We are entitled to demand from the supplier exactly the type of supplementary performance (repair or replacement delivery) that We owe our customer in each individual case. Our statutory right to choose (clause 439 (1) BGB) is not restricted by thereby.

(2) Our rights of recourse according to clause 445a BGB and clause 478 BGB also apply if the defective Goods were processed further by Us or one of our customers before they were sold to a consumer, e.g. by installing them in another product.

§ 10 STATUTE OF LIMITATIONS

(1) The supplier's claims against Us shall become time-barred in accordance with the statutory provisions.

(2) Our claims against the supplier shall become time-barred in accordance with the statutory provisions, unless stipulated otherwise in clause 10 (3) to (5) of these GTC. In all cases – even if not mentioned separately below – the special provision according to clause 445 b BGB (statute of limitations of recourse claims) shall remain unaffected.

(3) Contrary to clause 438 (1) no. 3 BGB, the statutory period of limitation for warranty claims due to material defects is three [3] years from the transfer of risk. Insofar as an acceptance is agreed which goes beyond the acceptance according to clause 433 (2) BGB, however, the statute of limitations only begins with the acceptance.

(4) Contrary to clause 438 (1) no. 3 BGB, the statutory limitation period for warranty claims due to defects in title is five [5] years; the statutory limitation period for the right of restitution of the property of third parties (clause 438 (1) no. 1 BGB) remains unaffected. In deviation of clause 10 (4) sentence 1 of these GTC, claims from defects of title do not become time-barred as long as the third party is not yet able to assert the right against Us – in particular due to the lack of a statute of limitations.

(5) The statutes of limitations of sales law, including the above extensions, apply – to the extent permitted by law – for all contractual claims for defects. To the extent that We are also entitled to non-contractual claims for damages due to a defect, the regular statutory limitation period (clauses 195, 199 BGB) applies, unless the application of the limitation periods under sales law, including the above extensions, leads to a longer limitation period in individual cases.

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§ 11 PRODUCT LIABILITY – INDEMNIFICATION – LIABILITY INSURANCE COVERAGE

(1) To the extent that the supplier is responsible for product damage and/or personal injury, it is obligated to indemnify Us from third parties' claims for damages upon first request if the cause lies within its sphere of control and organisation and it is itself liable in the external relationship.

(2) As part of its liability for damage within the meaning of clause 11 (1) of these GTC above, the supplier is also obligated to reimburse any expenses that arise from or in connection with a recall campaign carried out by Us. We shall inform the supplier – to the extent possible and reasonable – of the content and scope of the recall measures to be carried out and give it the opportunity to comment. This will not affect our other legal claims.

(3) The supplier undertakes to maintain flat rate product liability insurance with a coverage of at least EUR five [5] million per personal injury/property damage event; if We are entitled to further claims for damages, these remain unaffected thereby.

§ 12 PROPERTY RIGHTS

(1) The supplier shall deliver the Goods free of third-party rights. In particular, patents, utility models, designs or other property rights of third parties worldwide must not be violated through the delivery and/or use of the Goods.

(2) The supplier is obligated to indemnify Us from all claims asserted against Us by third parties due to the violation of third party rights according to clause 12 (1) of these GTC, and to reimburse Us for all necessary expenses in connection with such claims. This does not apply if the supplier proves that it is neither responsible for the infringement of property rights nor should it have known of such at the time of delivery if it had applied the due diligence of a prudent businessman. This will not affect our further legal claims due to defects in title of the Goods delivered to Us.

(3) The above-mentioned liability and indemnification obligation of the supplier does not apply if the deliveries have been performed exclusively according to our models, illustrations, drawings, plans or other documents and it does not know nor should have known that the manufacture of the Goods on the basis of our models, illustrations, drawings, plans and/or other documents constitutes an infringement of property rights.

(4) Ownership and rights to all designs, drawings, calculations, specifications, software and documents created for Us by the supplier shall be transferred to Us, regardless of the form. The supplier undertakes to ensure that all copyrights and ancillary copyrights to such documents are transferred to Us. To the extent that a transfer is not legally possible, the supplier hereby grants Us the exclusive right to use the aforementioned rights without restriction in terms of location, time or content.

§ 13 SPARE PARTS

The supplier is obligated to keep spare parts for the products delivered to Us for a period of at least ten [10] years after the last delivery of the Goods concerned.

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§ 14 PROVISIONS / FREE ISSUE EQUIPMENT

(1) If We should provide parts and/or other materials to the supplier, the latter is obligated to check the suitability of the parts and/or other materials provided by Us, to treat them appropriately and to store them temporarily.

(2) Tools, devices and models that We make available to the supplier or that are manufactured for contractual purposes and charged separately to Us by the supplier shall remain our property or become our property. They shall be marked by the supplier as our property, stored carefully, secured against damage of any kind and used only for the purposes of the contract.

§ 15 CONFIDENTIALITY

(1) We reserve the property rights and copyrights to drawings, drafts, samples, manufacturer's instructions, illustrations, plans, calculations, product descriptions and other documents. Such documents are to be used exclusively to provide the contractual service owed to Us. They must be treated confidentially and may not be made accessible to third parties without our express written consent, even after the end of the contract. The Supplier shall obligate any third parties that it uses to provide services with our consent to at least the same level of confidentiality. At our request, the above documents shall be returned to Us or destroyed without undue delay after the order has been processed. The non-disclosure obligation only expires if the supplier proves that it already had knowledge of the confidential information before We disclosed it or if such information became generally known during the term of the contract without being caused by a breach of contract on the part of the supplier.

(2) The supplier is prohibited from subjecting our products or items to reverse engineering by observing, examining, dismantling, testing or similar processes and from obtaining, using or imitating the confidential information embodied therein.

§ 16 CHANGE MANAGEMENT / AUDIT RIGHTS

(1) Changes to parts or drawings made specifically for Us are only permitted following our approval. We are to be informed of changes affecting the form, fit and function of standard products that We have previously purchased without undue delay after the supplier has received our order.

(2) The supplier shall allow Us to conduct audits with prior notification to determine whether the obligations resulting from the GTC are being fulfilled. We shall be granted access during normal business hours to the business premises, information regarding, and inspection of, all relevant documents, whereby inspection of confidential documents can be made dependent on the signing of a separate confidentiality agreement between the parties.

(3) We shall also be entitled to the aforementioned rights of access, information and inspection in relation to checking compliance with the obligations resulting from the German Supply Chain Act [Lieferkettensorgfaltspflichtengesetz, LkSG] and the German Minimum Wage Act [Mindestlohngesetz, MiLoG].

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§ 17 TERMINATION AND TEMPORARY SUSPENSION

(1) Notwithstanding the statutory rights of rescission and termination, We shall be entitled to rescind or terminate the contract with immediate effect if the supplier culpably ceases delivery, its financial situation deteriorates to such an extent that delivery is jeopardised, insolvency proceedings have been filed for or if it fails to meet its payment obligations.

(2) We shall be entitled to demand the temporary suspension of partial services or of the entire provision of services from the supplier at any time without being required to provide immediate justification. We shall subsequently inform the supplier of the reasons and the expected duration of the suspension upon request.

(3) In the event of a temporary suspension of more than three (3) months, the supplier shall be entitled to demand compensation for the costs actually incurred as a result of the delay, but not for lost profit. The supplier shall present the costs resulting from the delay in detail in order for the costs to be reimbursed.

§ 18 THE SUPPLIER'S RETENTION OF TITLE

(1) We shall become the owner of the Goods upon delivery.

(2) However, if, contrary to clause 17 (1) of these GTC above, the supplier transfers ownership of the Goods to Us on the condition that the purchase price is paid in full, the retention of title expires at the latest when the purchase price for the delivered Goods is paid and the retention of title only has the effect of a simple retention of title. In this case, however, We are still entitled to resell the Goods in the ordinary course of business even before the purchase price has been paid. In this case, We assign the claims arising from the resale, which We remain authorised to collect, to the supplier, which hereby accepts the assignment.

(3) All other forms of retention of title are excluded, in particular any extended retention of title, forwarded retention of title or retention of title extended for further processing.

§ 19 PLACE OF PERFORMANCE, APPLICABLE LAW AND PLACE OF JURISDICTION

(1) The place of delivery follows from clause 3 (1) of these GTC above. The place of payment and performance for all other obligations arising from the contract concluded with the supplier, including the provision of supplementary performance and refund as a result of a withdrawal, is 32339 Espelkamp, Germany.

(2) The law of the Federal Republic of Germany shall apply to these GTC and the contractual relationship between Us and the supplier, to the exclusion of the UN Sales Convention.

(3) If the supplier 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 for all disputes arising directly or indirectly from the contractual relationship is our place of business in 32339 Espelkamp, Germany. In all cases, however, We are also entitled to bring an action at the supplier's general place of jurisdiction. Overriding legal regulations, in particular regarding exclusive competences, remain unaffected.

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§ 20 MISCELLANEOUS

(1) Should provisions of these GTC be or become invalid in whole or in part, the remaining conditions shall remain in effect.

(2) We use an appropriate supplier management system to ensure and implement the obligations arising from the German Supply Chain Act. In this respect, the supplier shall be required to make the necessary declarations, including with regard to our Declaration of Principles and our Code of Conduct, following our corresponding request.

(3) Our energy management is ISO 50001 certified. We take energy aspects into account when procuring Goods and placing the corresponding orders.

(4) The supplier shall not be entitled to carry out any audits or system measurements on our premises unless the right to an audit arises from statutory provisions.

(5) Neither a personal signature nor an electronic signature is required to ensure the written form. Notifications via fax or email are sufficient for the written form.

(6) The personal data required for business transactions shall be stored and treated confidentially in compliance with the applicable data protection regulations.

(7) Any breach of any obligation contained in clause 20 (2) above shall be deemed a material breach of the relevant supply agreement. A material breach by either party shall entitle the other party to terminate the relevant supply agreement with immediate effect and without prejudice to any other rights or remedies under this Agreement or applicable law. Notwithstanding provisions to the contrary in the Supply Contract, the Supplier shall fully indemnify and hold the client harmless from any liability, damages, cost or expense arising from any such breach and termination of the contract or any export restrictions not disclosed by the supplier.