

# General Terms and Conditions of Purchase of Häcker Küchen GmbH & Co. KG

## **Preamble**

The basis for a lasting and enduring business relationship is not purchasing conditions but committed cooperation and mutual trust. Nevertheless, for all transactions with our business partners and suppliers, we cannot avoid clarifying a few points in our terms and conditions of purchase in the following in addition or contrary to the statutory provisions.

## **§1 General information, scope of application**

- (1) These General Terms and Conditions of Purchase (hereinafter referred to as "GTCP") apply to all business relationships with our business partners and suppliers (hereinafter referred to as "Contracting Party"), from whom we purchase movable goods (hereinafter also referred to as "Goods") or from whom we are supplied with Goods (the latter hereinafter also referred to as "Supply"), provided that the contractual partners are entrepreneurs (section 14 of the German Civil Code (BGB)), legal entities under public law or special funds under public law.
- (2) The GTCP apply in particular to contracts for the purchase of and/or the supply of goods, irrespective of whether the contracting party produces the goods itself or purchases them from suppliers (sections 433, 650 (1) BGB). Unless expressly agreed otherwise, the GTCP in the version valid at the time of our order or in any case in the version last notified to the Contracting Party in text form shall also apply as a framework agreement for future contracts concerning the purchase and/or supply of goods with the same contracting party, without our having to refer to them again in each individual case.
- (3) These GTCP apply exclusively. Conflicting, differing or supplementary general terms and conditions of the Contracting Party will only become part of the contract if we have expressly given our consent to their application in text form (e.g. fax or email, but also, for example, in writing by letter). This requirement of consent applies consistently and without exception, including if we accept the deliveries of the Contracting Party unconditionally in the knowledge of its terms and conditions.
- (4) If, in individual cases, we do not purchase Goods but sell them to the Contracting Party, the sale shall be effected subject to our General Terms and Conditions of Sale and Delivery (GTCS) in the version applicable at the time of sale.
- (5) Any individual agreements concluded with the Contracting Party in individual cases (including collateral agreements, supplements and amendments) shall in any case take precedence over these GTCP. The content of such agreements is dependent on a written contract and/or our written acknowledgement unless there is proof to the contrary.
- (6) Legally relevant declarations and notifications to be submitted to us by the Contracting Party after conclusion of the contract (e.g. setting deadlines, reminders, notice of withdrawal), shall require the text form to be effective. Legal formalities and further evidence, particularly in case of doubt concerning the legitimation of the person making the declaration remain unaffected.
- (7) References to the validity of statutory regulations shall only have clarifying significance. Therefore, the statutory regulations shall also apply without such a clarification insofar as they are not directly changed or explicitly excluded in these GTCP.

## **§2 Conclusion of contract**

- (1) Our orders shall only be deemed binding upon submission or confirmation by us in text form. The Contracting Party must point out to us obvious errors (e.g. typing or calculation errors) and incompleteness in the order including the order documents for the purpose of correction or completion prior to acceptance, otherwise the contract shall be regarded as not concluded.
- (2) The Contracting Party is required to confirm our order in writing within two weeks or to execute the order unconditionally by shipment of the goods (acceptance). Delayed acceptance shall be regarded as a new offer and shall require our acceptance.

## **§3 Delivery date and delayed delivery**

- (1) The delivery date we defined in the order is binding. If the delivery period is not specified in the order and no other arrangements have been made, the period will amount to 4 weeks from the conclusion of the contract. The Contracting Party is obliged to notify us in writing without delay if it anticipates that it will not be able to meet the arranged delivery dates – for whatever reason.
- (2) If the Contracting Party does not provide its service or does not provide it within the arranged delivery period or is behind schedule, our rights will be compliant with the legal provisions – in particular with regard to withdrawal and compensation. The provisions defined in paragraph 3 shall remain unaffected.
- (3) If the Contracting Party is in default, we shall be able to demand – beside the assertion of further legal or contractual claims – a lump-sum compensation for our loss caused by default amounting to 1.25% of the net price per completed calendar week, however, no more than a total of 5% of the net price of the goods delivered too late. We shall retain the right to prove that greater damage has been incurred. The seller shall retain the right to prove that no damage has been incurred or only significantly less damage has been incurred.

## **§4 Performance, delivery, transfer of risk, delay in acceptance**

- (1) Without our prior written consent, the Contracting Party is not entitled to have the performance it owes rendered by third parties (e.g. subcontractors). Except in the event of a product made to specification, the Contracting Party shall bear the procurement risk for its services.
- (2) Delivery shall be effected "franco domicile" within Germany to the destination specified in the order. If no destination is not specified and no other arrangements have been made, delivery shall be made to our registered office in Rödinhäuser. The respective destination is also the place of performance for the delivery and any subsequent performance (debt to be discharged at creditor's domicile).
- (3) The delivery must be accompanied by a delivery note stating the supplier and delivery note number, date (issue and dispatch), contents of the delivery (Häcker article number and quantity), our purchase order identifier (date and number) and the place of delivery. If the delivery note is missing or incomplete, we shall not be responsible for the resulting delay in processing and payment.
- (4) The risk of accidental loss and accidental deterioration of the Goods shall be transferred to us upon handover at the place of performance. If an acceptance procedure has been agreed, this is decisive for the transfer of risk. In all other respects too, the statutory provisions governing contracts for work and services (*Werkvertragsrecht*) shall apply accordingly. The handover/acceptance shall remain the same even if we are in default of acceptance.
- (5) The legal provisions are applicable in the case of default of our acceptance. The Contracting Party must however explicitly offer us its performance even if a defined or definable calendar period is agreed for an act or contribution on our part. In the event that we are in default of acceptance, the Contracting Party can demand compensation for its extra expenses in accordance with the legal provisions (section 304 BGB). If the contract concerns non-fungible goods to be produced by the Contracting Party (custom-made goods), the Contracting Party shall be entitled to more extensive rights only if we have committed ourselves to provide assistance and are responsible for the failure to do so.
- (6) The contracting party is not entitled to make partial deliveries without our prior consent in text form.

## **§5 Prices and payment terms**

- (1) The order is effected according to the relevant prices stored in our database (list price). The contracting party may at any time request information on the currently stored prices. If, in exceptional cases, no list price exists, the price stated in the order shall apply.
- (2) Unless otherwise agreed in the individual case, the price shall include all services and ancillary services of the contracting party as well as all ancillary costs (e.g. proper packaging, customs duties, transport costs, including any transport and liability insurance). In case of doubt, all prices are inclusive of the statutory value added tax. The Contracting Party shall return the packaging material at our request.
- (3) The agreed price is due for payment within 90 calendar days of the completion of delivery and service (including any agreed acceptance) and receipt of a proper invoice. If we make payment within 45 calendar days, the contracting party shall grant us a 5% discount on the net invoice amount once the conditions specified above have been met. In case of bank transfer, the payment is considered to be in time when our payment order is received by our bank prior to expiry of the payment period; we shall not be responsible for any delays by the banks involved in the payment transaction.
- (4) We shall not owe any default interest. The right of the contracting party to payment of statutory default interest remains unaffected. The legal provisions are applicable in case of our default. In any case, however, a written reminder by the contracting party is required.

- (5) Insofar as receipts/certificates of material tests and/or quality controls carried out are to be submitted, this is an essential contractual obligation. The receipts/certificates shall be sent with the execution of the delivery. Payment and discount periods shall not be set in motion before receipt of the receipts/certificates.
- (6) Payment by us does not imply any acknowledgement of the goods being in conformity with the contract or waiver of the assertion of any rights, in particular any waiver of the assertion of warranty and/or compensation claims.
- (7) We shall be entitled to offsetting rights and rights of retention as well as the objection of non-fulfilment of contract within the statutory limits. In particular, we shall be entitled to retain due payment as long as we have the right to assert claims against the Contracting Party for incomplete or deficient performances.
- (8) The Contracting Party shall only have the right of offset or retention for counterclaims which have been finally established in law or are undisputed.

## **§6 Confidentiality and reservation of title**

- (1) We retain the ownership and copyrights of illustrations, plans, drawings, calculations, performance instructions, product descriptions and other documents. Such documents may only be used for the purpose of the contractual performance and must be returned to us following the execution of the contract. Confidentiality towards third parties must be maintained with regard to documents, even after the end of the contract. The obligation to secrecy shall only lapse if and insofar as the knowledge contained in the documents provided has become generally known.
- (2) The aforementioned provisions are accordingly applicable for substances and materials (e.g. software, finished and semi-finished-products), as well as for tools, templates, samples and other items which we provide to the Contracting Party for production. As long as they are not processed, such items must be stored separately at the Contracting Party's expense and insured against destruction and loss to the customary extent.
- (3) Processing, mixing or combining of items provided by the Contracting Party shall be undertaken for us. The same shall apply for the further processing of the delivered goods by us so that we are considered as producer and, according to the legal provisions, acquire ownership of the product with the further processing at the latest.
- (4) If, after processing, mixing or combining with goods of third parties, the latter continue to have title to the products, then we shall acquire joint title to the new item in proportion to the value of the item we supplied compared with the other items.
- (5) The transfer of ownership of the goods to us is unconditional and shall take place regardless of payment of the agreed price. If, however, in individual cases we accept an offer of the seller for transfer of ownership that is conditional on payment of the purchase price, the seller's retention of title shall end not later than at the time of payment of the purchase price for the delivered goods. In the ordinary course of business, we shall remain entitled, even prior to payment of the purchase price, to the further sale of the goods under advance assignment of the resulting claim (or alternatively, the application of the simple retention of title shall be extended to resale). This excludes all other forms of retention of title, in particular the extended or forwarded retention of title and retention of title extended for further processing.

## **§7 Deficient delivery**

- (1) For our rights in case of defects as to quality and defects of title of the goods (including incorrect and incomplete delivery as well as improper assembly, deficient assembly or operating instructions) and in case of other breaches of duty by the Contracting Party, the statutory provisions apply unless agreed otherwise in the following.
- (2) According to the statutory provisions, the Contracting Party is particularly liable for the Goods having the agreed quality at the time when the risk passes to us. In any case, those product descriptions that are the subject matter of the respective contract or incorporated in the contract in the same way as these conditions of purchase – in particular due to identification or reference in our order – shall be valid as an agreement on the properties and condition, whereby it shall be immaterial whether the product description originates from us, from the Contracting Party or from the manufacturer.
- (3) All goods delivered by the Contracting Party must comply with the applicable statutory provisions (German law and EU law) and the latest state of the art. The obligation extends equally to the legal provisions of those countries with which the goods come into contact in accordance with their intended use and which are recognisable to the Contracting Party.
- (4) The contractual partner guarantees that the goods and their intended use do not infringe any industrial property rights/rights of use of third parties.
- (5) We are not obliged to inspect the goods or make any special enquiries about any defects at the time the contract is concluded. Notwithstanding section 442 (1) sentence 2 BGB, we shall be entitled to claim for defects without restriction even if we were unaware of the defect at the time the contract was concluded as a result of gross negligence.
- (6) The commercial duty to inspect the Goods and give notice of any defects shall be governed by our statutory provisions (sections 377, 381 of the German Commercial Code (HGB)), save that our duty to inspect shall be limited to defects that are obvious from a visual inspection during our incoming goods inspection, including inspection of the shipping documents (e.g. damage in transit, incorrect and incomplete delivery) or our quality control during random sample testing. Insofar as an acceptance procedure has been agreed, there shall be no inspection obligation. Apart from that, it will depend on the extent to which an inspection would be feasible in accordance with proper business practice, taking into account the circumstances of the individual case. Our obligation to give notice of any subsequently discovered defects shall remain unaffected. Our complaint (notification of defects) shall in any event be deemed prompt and timely if it is sent within 5 working days of discovery or, in the case of obvious defects, of delivery.
- (7) Subsequent performance shall also include the removal of the defective goods and their re-installation, provided that the goods have been installed in another item or attached to another item in accordance with their type and intended use; our statutory claim to reimbursement of corresponding expenses shall remain unaffected. The costs incurred by the Contracting Party for the purposes of testing and rectification shall be borne by the Contracting Party even if it transpires that there was in fact no defect. Our liability to pay damages in the case of unjustified requests to remedy a defect shall remain unaffected; we shall only be liable if we recognised or were grossly negligent in failing to recognise that there was no defect.
- (8) Irrespective of our legal rights and the provisions in the aforementioned para. (7), the following applies: If the Contracting Party fails to honour its obligation to provide subsequent performance – at our discretion either by rectifying the defect (repair) or by supplying a non-defective item (substitute delivery) – within a reasonable period of time set by us, we shall be entitled to rectify the defect ourselves and demand from the Contracting Party reimbursement of the costs required or an appropriate advance payment. If subsequent performance by the Contracting Party has failed or is unacceptable to us (e.g. because of particular urgency, risk to operational safety or imminent occurrence of disproportionate damage), we shall not be obliged to set a deadline; we shall notify the Contracting Party of such circumstances immediately and, if possible, in advance.
- (9) In the event of a defect in quality or title we shall additionally be entitled to a reduction of the purchase price or rescission from the contract in accordance with the statutory provisions. We shall furthermore be entitled to claim damages and reimbursement of expenses in accordance with the statutory provisions.

## **§8 Special quality requirements and quality agreements**

- (1) In addition to the applicable legal provisions, the Contracting Party shall also be obliged to comply with the respective current specifications and guidelines of the associations AMK "Arbeitsgemeinschaft Moderne Küche" (Modern Kitchen Working Group) and EFM "Europäische Vereinigung der Hersteller folienummantelter Möbeltüren" (European Association of Manufacturers of Foil-Covered Furniture Doors). This is a quality agreement within the meaning of section 434 (2) sentence 1 No. 1 BGB. Compliance with these specifications and guidelines must be ensured through regular quality controls in the manufacturing process as well as a mandatory final inspection.
- (2) The Contracting Party is also obliged to comply with all current legal requirements (limit values, etc.) in the areas of environment and health – be they German or EU requirements. This is also a quality agreement within the meaning of section 434 (2) sentence 1 No. 1 BGB. At our request, suitable proof, documentation (e.g. expert opinions) shall be submitted; the costs of the proof, documentation shall be borne by the Contracting Party.

- (3) If we find evidence of possible defects, e.g. within the scope of our quality control in the sampling procedure, we are entitled to subject all delivered goods that are likely to have the defect in question to a comprehensive inspection. The Contracting Party shall bear the expenses required for the purposes of the inspection even if it turns out that there was actually no defect. Our liability to pay damages in the case of unjustified requests to remedy a defect shall remain unaffected; we shall only be liable if we recognised or were grossly negligent in failing to recognise that there was no defect. We expressly reserve the right to assert further claims.
- (4) In the case of the delivery of hazardous substances, the Contracting Party shall be obliged to ensure proper transport in accordance with the statutory provisions. A complete safety data sheet must be sent before the first delivery (as well as for any subsequent change).
- (5) The Contracting Party shall undertake to grant us access to its business premises and works in connection with previously announced quality and environmental audits and to provide all the necessary information.
- (6) At our request, suitable proof of the material tests and/or quality controls carried out at the premises of the Contracting Party shall be submitted without delay.

#### **§9 Recourse against supplier**

- (1) In addition to the claims for defects, we shall be fully and unrestrictedly entitled to our statutory right of recourse within the supply chain (supplier recourse in accordance with sections 445a, 445b, 478 BGB). In particular, we shall be entitled to demand from the Contracting Party exactly the type of subsequent performance (remedy of defects or replacement) that we owe to our customer in the individual case. This shall not restrict our statutory option (section 439 (1) BGB).
- (2) Before we accept or meet a claim for defects made by our customer (including reimbursement of expenses in accordance with sections 445a, 439 (2) and (3) BGB), we shall contact the Contracting Party with a brief description of the circumstances of the case and ask for a written statement. If no such statement is received within a reasonable period of time and no mutually acceptable solution is found, the claim for defects actually granted by us shall be deemed owed to our customer, in which case it shall be incumbent upon the Contracting Party to furnish proof to the contrary.
- (3) Our claims from recourse against the supplier shall apply even if the Goods have been processed by us or by one of our customers, e.g. by way of incorporation into another product, prior to their sale to a consumer.

#### **§10 Producer's liability**

- (1) If the Contracting Party is responsible for a product defect, the Contracting Party shall indemnify us against all third-party claims insofar as the cause is within the Contracting Party's sphere of control and/or organisation and the Contracting Party itself is liable to third parties.
- (2) As part of its obligation to indemnify, the Contracting Party shall reimburse any expenses in accordance with sections 683, 670 BGB that arise from or in connection with a third-party claim, including any product recall carried out by us. We shall notify the Contracting Party of the content and scope of any recall measures – as far as this is possible and reasonable – and give the Contracting Party the opportunity to comment. Any additional statutory claims shall remain unaffected.
- (3) The Contracting Party shall take out and maintain product liability insurance with a lump-sum amount insured of at least € 10 million per person/property damage.

#### **§11 Rights of Use and Copyrights**

If already existing industrial property rights, copyrights or unprotected know-how of the contractual partner are used within the framework of the fulfilment of the respective contract, and if these are necessary for us to use the work result, we receive a non-exclusive right of use of the industrial property rights, the copyrights and the unprotected know-how. This includes all types of use.

#### **§12 Release from Claims by Third Parties**

The contractual partner is responsible for ensuring that all services provided are free of third-party rights. If this is not the case, they must contractually agree with the originators that they are able to grant the aforementioned rights. They indemnify us from all third-party claims they make against us due to the infringement of rights to the services provided by the contractual partner.

#### **§13 Limitation period**

- (1) The mutual claims of the parties to the contract shall become time-barred in accordance with the statutory provisions unless otherwise specified below.
- (2) Contrary to § 438 Section 1 No. 3 of the German Civil Code ("BGB"), the general limitation period for claims for defects is three years from the transfer of risk. If acceptance has been agreed upon, the limitation period begins with acceptance. The three-year limitation period also applies accordingly to claims for legal defects, whereby the statutory limitation period for material surrender claims of third parties (§ 438 Para. 1 No. 1 of the German Civil Code) remains unaffected;
- (3) claims on the grounds of defects in title shall not become statute-barred as long as the third party is still entitled to assert the right against us, in particular in the absence of limitation.
- (4) The limitation periods of the German sales law, including the aforementioned extension, shall apply to the extent permitted by law to all contractual claims for defects. Insofar as we are also entitled to non-contractual compensation due to a defect, the regular statutory limitation period (sections 195, 199 BGB) shall apply unless the application of the limitation periods of the German sales law results in a longer period of limitation in any individual case.

#### **§14 Applicable law and place of jurisdiction**

- (1) These GTCP and all the legal relationships between us and the Contracting Party 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 (CISG). The prerequisites for and the effects of retention of title shall be governed by the law in force at the place where the Goods are stored if, under that law, the choice of German law would be inadmissible or invalid.
- (2) The exclusive – also international – place of jurisdiction for all disputes arising from the contractual relationship is our registered office in Rödinghausen. However, we shall always be entitled to bring an action at the place of performance of the delivery obligation or at the Contracting Party's general place of jurisdiction. Overriding statutory provisions, in particular in respect of exclusive judicial competence, shall remain unaffected.
- (3) Only the German language version shall be authoritative for the interpretation of these General Terms and Conditions of Purchase.