



## General Terms and Conditions of Sale and Delivery

### § 1 Scope of application, form

(1) These General Terms and Conditions of Sale (GTCS) apply to all our business relationships with our customers ("Buyer"). The GTCS shall only apply if the Buyer is an entrepreneur (§14 of the German Civil Code (BGB)), a legal entity under public law or a special fund under public law.

(2) The GTCS apply in particular to contracts for the sale and/or delivery of movable goods ("Goods"), irrespective of whether we manufacture the Goods ourselves or purchase them from suppliers (§§ 433, 650 BGB). Unless otherwise agreed, the GTCS in the version valid at the time of the Buyer's order or in any case in the version last communicated to him in text form shall also apply as a framework agreement for similar future contracts without us having to refer to them again in each individual case.

(3) Our GTCS shall apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the Buyer shall only become part of the contract if and to the extent that we have expressly agreed to their validity. This requirement of consent shall apply in any case, for example, even if the Buyer refers to his General Terms and Conditions in the context of the order and we do not expressly object to them.

(4) Individual agreements (e.g. framework supply agreements, quality assurance agreements) and information in our order confirmation shall take precedence over the GTCS. In case of doubt, commercial clauses shall be interpreted in accordance with the Incoterms® issued by the International Chamber of Commerce in Paris (ICC) in the version valid at the time of conclusion of the contract.

(5) Legally relevant declarations and notifications by the Buyer in relation to the contract (e.g. setting of deadlines, notification of defects, cancellation or reduction) must be made in writing. Statutory formal requirements and further evidence, in particular in the event of doubts about the legitimisation of the declaring party, shall 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.

(7) We reserve our unrestricted property and copyright utilisation rights to cost estimates, drawings, samples and other documents. The documents may only be made accessible to third parties with our prior consent and must be returned to us immediately upon request if an order is not placed with us.

### § 2 Conclusion of contract

(1) Our offers are subject to change and non-binding. This shall also apply if we have provided the Buyer with catalogues, technical documentation (e.g. drawings, plans, calculations, references to DIN standards), other product descriptions or documents - also in electronic form - to which we also reserve ownership rights and copyrights.

(2) The order of the goods by the Buyer shall be deemed a binding contractual offer. Unless otherwise stated in the order, we shall be entitled to accept this contractual offer within two weeks of its receipt by us.

(3) Acceptance can be declared either in writing (e.g. by order confirmation) or by delivery of the goods to the Buyer.

(4) We reserve the right to make technical changes and changes in shape, colour and/or weight within reasonable limits.

(5) If the order is placed electronically, we will confirm receipt as soon as possible. The confirmation of receipt does not constitute a binding acceptance of the order. The confirmation of receipt can be combined with the declaration of acceptance.

### § 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 shall be approx. 4 - 6 weeks from the conclusion of the contract, but not before the provision of any documents and approvals to be procured by the Buyer and not before receipt of an agreed down payment and clarification of all commercial and technical questions between the contracting parties. The delivery deadline shall be deemed to have been met if the delivery item has left our factory by the time it expires or readiness for dispatch has been notified. If acceptance is to take place, the acceptance date shall be decisive - except in the case of justified refusal of acceptance - or alternatively the notification of readiness for acceptance.

(2) If we are unable to meet binding delivery deadlines for reasons for which we are not re-sponsible (non-availability of the service), we shall inform the Buyer of this immediately and at the same time inform the Buyer of the expected new delivery deadline. If the service is also not available within the new delivery period, we shall be entitled to withdraw from the contract in whole or in part; we shall immediately reimburse any consideration already paid by the



Buyer. Non-availability of the service exists, for example, in the event of late delivery by our suppliers, if we have concluded a congruent hedging transaction, in the event of other disruptions in the supply chain, for example due to force majeure, other unforeseeable obstacles that are beyond our control, including strikes, war, lockouts, energy supply, transport and traffic disruptions or if 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 from the buyer is required.

(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 and/or subsequent fulfilment), shall remain unaffected.

#### **§ 4 Delivery, transfer of risk, acceptance, default of acceptance**

(1) Delivery shall be ex works, which is also the place of fulfilment for the delivery and any subsequent performance. At the Buyer's request and expense, the goods shall be dispatched to another destination (sale to destination). Unless otherwise agreed, we are entitled to determine the type of dispatch (in particular transport company, dispatch route, packaging) ourselves.

(2) We are entitled to partial performance and partial deliveries insofar as these are reasonable for the Buyer.

(3) The risk of accidental loss and accidental deterioration of the goods shall pass to the Buyer at the latest upon handover. In the case of sale by dispatch, however, the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay shall already pass upon delivery of the goods to the forwarding agent, the carrier or the person or institution otherwise designated to carry out the dispatch. If acceptance has been agreed, this shall be decisive for the transfer of risk. In all other respects, the statutory provisions of the law on contracts for work and services shall also apply accordingly to an agreed acceptance. If the Buyer is in default of acceptance, this shall be deemed equivalent to handover or acceptance. We are authorised and, at the request of the buyer, obliged to take out insurance for the risks in question at the Buyer's expense.

(4) If the Buyer is in default of acceptance, fails to co-operate or if our delivery is delayed for other reasons for which the Buyer is responsible, we shall be entitled to demand compensation for the resulting damage including additional expenses (e.g. storage costs).

#### **§ 5 Prices and terms of payment**

(1) Unless otherwise agreed in individual cases, our current prices at the time of conclusion of the contract shall apply, ex works (FCA Weingarten), plus statutory VAT. Payment shall be made without discount.

(2) In the case of sale to destination (§ 4 para. 1), the Buyer shall bear the transport costs including freight, packaging, loading and the like ex works and the costs of any transport insurance requested by the Buyer. Any customs duties, fees, taxes and other public charges shall be borne by the Buyer.

(3) The purchase price is due and payable within 30 days of invoicing and delivery or acceptance of the goods. However, we are authorised at any time, even within the framework of an ongoing business relationship, to make a delivery in whole or in part only against advance payment. We shall declare a corresponding reservation at the latest with the order confirmation.

(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 rights of set-off or retention to the extent that his claim has been legally established or is undisputed. In the event of defects in the delivery, the Buyer's counter-rights shall remain unaffected, in particular pursuant to § 7 para. 6 sentence 2 of these GTCS.

(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 jeopardised 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 (§ 321 BGB). In the case of contracts for the manufacture of non-fungible goods (customised products), we may declare our withdrawal immediately; the statutory provisions on the dispensability of setting a deadline shall remain unaffected.

#### **§ 6 Retention of title**

(1) We reserve title to the goods sold until full payment of all our current and future claims arising from the purchase contract and an ongoing business relationship (secured claims). The Buyer is obliged to treat our goods subject to



retention of title with care. If maintenance work is re-quired, the Buyer must carry this out regularly at his own expense.

(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 purchaser 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) In the event of breach of contract by the Buyer, in particular non-payment of the purchase price due, we shall be entitled to withdraw from the contract in accordance with the statutory provisions and/or to demand the return of the goods on the basis of the retention of title. The demand for the return of the goods does not at the same time include the declaration of cancellation; we are rather entitled to demand only the return of the goods and to reserve the right to cancel the contract. If the Buyer does not pay the purchase price due, we may only assert these rights if we have previously set the Buyer a reasonable deadline for payment without success or if setting such a deadline is dispensable according to the statutory provisions.

(4) Until revocation in accordance with (c) below, the Buyer is authorised 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 stated in paragraph 2 shall also apply in consideration of the assigned claims.

(c) The Buyer shall remain authorised to collect the claim in addition to us. We undertake not to collect the claim as long as the Buyer fulfils his payment obligations to us, there is no deficiency in his ability to pay and we do not assert the retention of title by exercising a right in accordance with paragraph 3. 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. In this case, we shall also be entitled to revoke the Buyer's authorisation to resell and process the goods subject to retention of title.

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

## **§ 7 Claims for defects of the Buyer**

(1) The statutory provisions shall apply to the Buyer's rights in the event of material defects and defects of title (including incorrect and short delivery as well as improper assembly/installation or defective instructions), unless otherwise specified below. In all cases, the statutory provisions on the sale of consumer goods (§§ 474 ff. BGB) and the rights of the Buyer arising from separately issued guarantees, in particular on the part of the manufacturer, shall remain unaffected.

(2) The basis of our liability for defects is above all the agreement reached on the quality and intended use of the goods (including accessories and instructions). All product descriptions and manufacturer's specifications which are the subject of the individual contract or which were made public by us (in particular in catalogues or on our Internet homepage) at the time of conclusion of the contract shall be deemed to be an agreement on quality in this sense. Insofar as the quality has not been agreed, it shall be assessed in accordance with the statutory provisions whether a defect exists or not (§ 434 (3) BGB). Public statements made by the manufacturer or on its behalf, in particular in advertising or on the labelling of the goods, shall take precedence over statements made by other third parties.

(3) In the case of goods with digital elements or other digital content, we shall only be obliged to provide and, if applicable, update the digital content insofar as this expressly results from a quality agreement in accordance with para. 2. We assume no liability in this respect for public statements made by the manufacturer and other third parties.

(4) In principle, we shall not be liable for defects which the Buyer is aware of or is grossly negligent in not being aware of when the contract is concluded (§ 442 BGB). Furthermore, the Buyer's claims for defects presuppose that he has complied with his statutory inspection and notification obligations (§§ 377, 381 HGB). In the case of goods intended for installation or other further processing, an inspection must always be carried out immediately prior to processing. If a defect is discovered during delivery, inspection or at any later time, we must be notified immediately in writing. In any case, obvious defects must be reported in writing within seven working days of delivery and defects not recognisable 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. In the case of goods intended for assembly, mounting or installation, this shall also apply if the defect only became apparent after the corresponding processing as a result of a breach of one of these obligations; in this case, the Buyer shall in particular have no claims for reimbursement of corresponding costs ("removal and installation costs").

(5) If the delivered item is defective, we may initially choose whether to provide subsequent fulfilment by remedying the defect (subsequent improvement) or by delivering a defect-free item (replacement delivery). If the type of subsequent fulfilment chosen by us is unreasonable for the Buyer in the individual case, he may reject it. Our right to refuse subsequent fulfilment under the statutory conditions remains unaffected. Subsequent fulfilment shall be carried out at our factory at our discretion. At the Buyer's request, the rectification can be carried out at the place of use. In this case, the labour time and costs for the defective parts on site shall not be charged. Travelling expenses, travelling time and incidental travelling expenses shall, however, be borne by the purchaser.

(6) We are entitled to make the subsequent fulfilment 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 fulfilment 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 at our request in accordance with the statutory provisions; however, the Buyer shall not be entitled to return the item. Subsequent fulfilment shall not include the removal, dismantling or disassembly of the defective item or the installation, attachment or assembly of a defect-free item if we were not originally obliged to perform these services; the Buyer's claims for reimbursement of corresponding costs ("dismantling and assembly costs") shall remain unaffected.

(8) We shall bear or reimburse the expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labour and material costs as well as any dismantling and installation costs, in accordance with the statutory provisions and these GTCS, if a defect actually exists. Otherwise, we may demand reimbursement from the Buyer for the costs incurred as a result of the unjustified request to remedy the defect if the Buyer knew or could have recognised that there was in fact no defect.

(9) In urgent cases, e.g. if operational safety is jeopardised or to prevent disproportionate damage, the Buyer shall have the right to remedy the defect himself and to demand compensation from us for the expenses objectively necessary 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 fulfilment in accordance with the statutory provisions.

(10) If a reasonable deadline to be set by the Buyer for subsequent fulfilment 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 accordance with the statutory provisions. In the case of an insignificant defect, however, there is no right of cancellation.

(11) Claims of the Buyer for reimbursement of expenses pursuant to § 445a para. 1 BGB are excluded, unless the last contract in the supply chain is a consumer goods purchase (§§ 478, 474 BGB) or a consumer contract for the provision of digital products (§§ 445c sentence 2, 327 para. 5, 327u BGB). Claims of the Buyer for damages or reimbursement of futile expenses (§ 284 BGB) shall only exist in accordance with the following §§ 8 and 9, even in the event of defects in the goods.

(12) We accept no liability in the following cases in particular: Non-observance of our operating instructions, unsuitable or improper use, overloading, faulty assembly or commissioning by the Buyer or third parties, natural wear and tear, faulty or negligent handling, improper maintenance, unsuitable operating materials, defective construction work, unsuitable building ground, chemical, electrochemical or electrical influences, if we are not responsible for these.

(13) If the Buyer or a third party carries out improper repairs or repairs, we shall not be liable for the resulting consequences. The same shall apply to modifications to the delivery item or other interventions in the delivery item carried out without our prior consent.

(14) If the use of the delivery item leads to an infringement of industrial property rights or copy-rights in Germany (Federal Republic of Germany) or abroad, we shall, at our expense, procure the right for the Buyer to continue using the delivery item or modify the delivery item in a way that is reasonable for the Buyer so that the infringement of property rights no longer exists. If this is not possible under economically reasonable conditions or within a reasonable period of time, the Buyer shall be entitled to withdraw from the contract. We are also entitled to withdraw from the contract under the aforementioned conditions. In addition, we shall indemnify the purchaser against any undisputed or legally established claims of the owners of the property rights concerned.



(15) Our aforementioned obligations (§ 7 para. 14) are final, subject to § 8 Other liability in the event of an infringement of property rights or copyright. They shall only apply if:

- the Buyer informs us immediately of any asserted infringements of industrial property rights or copyrights,
- the Buyer supports us to a reasonable extent in the defence of the asserted claims or enables us to carry out the modification measures in accordance with § 7 para. 14 above,
- We reserve the right to take all defence measures, including out-of-court settlements,
- the defect of title is not based on an instruction of the Buyer or execution drawings submitted by the Buyer and
- the infringement was not caused by the fact that the Buyer modified the delivery item without authorisation or used it in a manner not in accordance with the contract.

### **§ 8 Other liability**

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

(2) We 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, we shall only be liable, subject to statutory limitations of liability (e.g. care in our own affairs; insignificant breach of duty),

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

b) for damages arising from the breach of an essential contractual obligation (obligation whose fulfilment 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, our liability is limited to compensation for the foreseeable, typically occurring damage.

(3) The limitations of liability resulting from para. 2 shall also apply to third parties and in the event of breaches of duty by persons (including in their favour) whose fault we are responsible for in accordance with statutory provisions. They shall not apply if a defect has been fraudulently concealed or a guarantee for the quality of the goods has been assumed and for claims of the Buyer under the Product Liability Act.

(4) The Buyer may only withdraw from or terminate the contract due to a breach of duty that does not consist of a defect if we are responsible for the breach of duty. A free right of cancellation of the Buyer (in particular pursuant to §§ 650, 648 BGB) is excluded. In all other respects, 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. 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 Use of software**

(1) Insofar as software is included in the scope of delivery, this is legally protected. Copyrights, patent rights, trademark rights and all other property rights to the software as well as to other objects which we provide or make accessible to the Buyer in the context of the initiation and execution of the contract shall be exclusively due to us in the relationship between the contractual partners. Insofar as third parties are entitled to the rights, we have the corresponding rights of exploitation (see also § 7 para. 14).

(2) The Buyer shall be granted a simple, non-exclusive right to use the software supplied, including its documentation, including the right to rectify errors. The software is provided exclusively for use on the delivery item intended for this purpose; any other use is prohibited.

(3) The Buyer may make the backup copies of the programmes required for secure operation. The backup copies must be stored securely and, as far as technically possible, labelled with the copyright notice of the original data carrier or the version of the software transferred online. Copyright notices, trademarks and product labelling may not be deleted, changed or suppressed. Copies that are no longer required must be deleted or destroyed. The user manual and other documents provided by us may only be copied for internal purposes. The customer undertakes not to remove manufacturer's details - in particular copyright notices - or to change them without the prior express





consent of the supplier. All other rights to the software and documentation, including copies, shall remain with us. The granting of sub-licences is not permitted.

(4) The Buyer is only authorised to pass on the software to a third party if the transfer to the third party is made by sale on a permanent basis and without a right of return or repurchase option.

(5) The Buyer may only decompile the interface information of the programmes within the limits of § 69 e UrhG (German Copyright Act) and only if he has informed us in writing of his intention and requested the provision of the necessary interface information within a period of at least two weeks. All knowledge and information that the Buyer obtains about the software in the course of decompiling shall be protected by confidentiality and the Buyer therefore undertakes to treat as confidential all information that he receives or becomes aware of from us before or during the execution of the contract, which is legally protected or contains business or trade secrets or is designated as confidential, even beyond the end of the contract. Unless this information is publicly known without breach of the confidentiality obligation.

(6) All other acts of exploitation, in particular the rental, lending and distribution in physical or non-physical form, the use of the software by and for third parties (e.g. through outsourcing, computer centre activities, application service providing) are not permitted without our prior written consent.

### **§ 11 Export restrictions**

(1) In the event of an intended export of the products supplied by TOX® PRESSOTECHNIK SE & Co. KG, any export restrictions due to directly applicable legal acts of the European Community / European Union and any embargoes as well as use-related authorisation requirements, must be observed.

(2) The sale, export or re-export of TOX® products (including spare parts), whether installed or uninstalled, to countries affected by currently applicable sanctions (e.g. Russian Federation, Belarus) must be refrained from with reference to Art. 12g of EU Regulation No. 833/2014 of 31 July 2014 or Art. 8g of EC Regulation No. 765/2006 of 18 May 2006 in its current version. The same applies in the event that the sale, export or re-export does not take place directly to the countries concerned, but is intended for use in these countries.

(3) The Buyer shall use his best endeavours to ensure that the aforementioned sanction measures are also implemented in the further trade chain. The Buyer shall establish and maintain an appropriate monitoring mechanism to detect and prevent violations of the afore-mentioned sanction measures. In the event that such violations become known, the Buyer undertakes to inform TOX® immediately and agrees to provide written proof of the measures taken to ensure compliance with the sanction measures within two weeks of being requested to do so by TOX®.

(4) In the event of a culpable breach of the aforementioned obligations, the parties agree that the Purchaser shall pay TOX® a contractual penalty, the amount of which shall be determined by TOX® at its reasonable discretion in accordance with § 315 BGB. The rights pursuant to § 315 para. 3 BGB, in particular the right to have the amount of the contractual penalty determined by a court, remain reserved.

### **§ 12 Choice of law and place of jurisdiction**

(1) These GTCS and the contractual relationship between us 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. This shall also apply in particular if the Buyer has its registered office outside the Federal Republic of Germany.

(2) If the Buyer 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 - also international place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be our registered office in 88250 Weingarten. The same applies if the Buyer is an entrepreneur within the meaning of § 14 BGB. However, in all cases we shall also be entitled to bring an action at the place of fulfilment of the delivery obligation in accordance with these GTCS or an over-riding individual agreement or at the Buyer's general place of jurisdiction. Overriding statutory provisions, in particular regarding exclusive jurisdiction, shall remain unaffected.

(3) Should one or more provisions of the contract with the customer, including these General Terms and Conditions of Sale and Delivery, be or become invalid in whole or in part, this shall not affect the validity of the remaining provisions. The wholly or partially invalid provision shall be replaced by a provision whose economic success comes as close as possible to that of the invalid provision.

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