

GTC

General Terms and Conditions (GTC) of EPOXONIC GmbH Reaktionsharzsysteme

1. Scope of Applicability, General

- 1.1. These General Terms and Conditions (hereinafter “GTC”) apply to all our business relationships with our customers (hereinafter “Buyer”). The GTC only apply if the Buyer is an “entrepreneur” (section 14 of the German Civil Code (*BGB*)), a legal entity or special fund organized under public law.
- 1.2. The GTC particularly apply to contracts for the sale and/or the delivery of our products or movable things (hereinafter also “goods”), regardless of whether the goods are produced by ourselves or purchased from suppliers (sections 433, 651 of the German Civil Code). Unless agreed otherwise, the GTC in the version valid at the time of the order by the Buyer are deemed to be a general agreement for future contracts of the same kind without us having to refer to these again in each individual case.
- 1.3. Our GTC apply exclusively. Deviating, contradictory or supplementary General Terms and Conditions of the Buyer become part of the contract only if and to the extent that we have explicitly consented to their application. This consent requirement applies in any event, for example even if we, being aware of the General Terms and Conditions of the buyer, carry out the delivery to him without reservation.
- 1.4. Individual agreements reached with the Buyer in individual cases (including collateral agreements, supplements and modifications) have in any case priority over these GTC. The content of such agreements is governed, save for proof of the contrary, by a written contract or our written confirmation.
- 1.5. Legally relevant declarations and notifications by the Buyer relating to the contract (e.g. specification of a period of time, notification of defects, revocation or reduction), are to be submitted in writing, i.e. in written form or text form (e.g. letter, e-mail, telefax). Statutory form requirements and further evidence, especially if the legitimation of the person declaring is in doubt, remain unaffected.

- 1.6. References to the application of statutory provisions in these GTC are for clarifying purposes only. Accordingly, even without such a clarification, the statutory provisions apply to the extent that they are not directly modified or explicitly excluded in these GTC.

2. Conclusion of Contract

- 2.1. Our offers are always subject to confirmation and non-binding unless they are explicitly marked as binding. This also applies if we have provided the Buyer with catalogues, technical documentation (e.g. calculations, referrals to DIN standards), other product descriptions or documents – including those in electronic form – to which we reserve proprietary rights and copyrights.
- 2.2. The order of the goods by the Buyer shall be deemed a binding contract offer. Unless otherwise stated in the order, we are entitled to accept this contract offer within three weeks after its receipt by us.
- 2.3. Acceptance can either be declared in writing (e.g. by order confirmation) or by delivery of the goods to the buyer.

3. Delivery periods and delivery dates, delay in delivery

- 3.1. A delivery period or a delivery date indicated by us is always non-binding unless we have separately referred to the delivery period or the delivery date as a binding period or binding date or agreed on the delivery period or the delivery date with the client.
- 3.2. If we cannot meet these delivery periods and delivery dates for reasons for which we are not responsible (unavailability of performance), we will inform the Buyer of this without undue delay and at the same time notify him of the estimated new delivery period or the estimated new delivery date. If the performance is still not available within the new delivery period or at the new delivery date, we are entitled to revoke the contract in whole or in part; we will reimburse considerations already provided by the Buyer without undue delay. A case of unavailability of the performance within this meaning is in particular the late delivery to us by our supplier if we have concluded a congruent covering transaction, if neither we nor our supplier is at fault or if we are not committed to procurement in the individual case.
- 3.3. The occurrence of our delay in delivery is determined by the statutory provisions. However, a warning notice by the Buyer is required in all cases. If we are in default of delivery, the Buyer may demand a lump-sum reimbursement of his damage caused by the default. The lump-sum for damages is 0.5% of the net price (delivery value) for each full calendar week of the delay, not exceeding, however, a total of 5% of the delivery value of the goods delivered late. We reserve the right to prove that the Buyer has suffered no damage at all or that the damage is considerably lower than the above lump-sum.

- 3.4. The rights of the Buyer under no. 8 of these GTC and our statutory rights, in particular where the duty of performance is excluded (e.g. because of impossibility or unreasonableness of performance and/or cure), remain unaffected.

4. Delivery, Transfer of Risks

- 4.1. The delivery is 'EXW - ex Works' (Incoterms 2010) unless explicitly agreed otherwise.
- 4.2. We shall have fulfilled our obligation when our goods leave the works or warehouse or are handed over to a carrier. At that point in time all risks pass to the Buyer.
- 4.3. Deliveries also include packaging unless the packaging is explicitly lent. Any packaging which is lent as an exception must be sent back or returned by the Buyer at his own expense as soon as possible.

5. Prices and Payment conditions

- 5.1. Unless explicitly agreed otherwise in individual cases, our prices valid at the time of conclusion of the contract apply, ex warehouse plus legal value added tax.
- 5.2. Any transport costs and any customs duties, fees, taxes or other public charges will be borne by the Buyer.
- 5.3. Unless agreed otherwise, our prices include the required packaging. Reference is made to the provision in no. 4.3. Required or requested special packaging, however, is charged separately which we point out before the conclusion of the contract.
- 5.4. The purchase price is due and payment must be made without any deduction within 14 days of the issuing of the invoice and the delivery or the acceptance of the goods. We are, however, at all times, even in the context of a current business relationship, entitled to carry out deliveries wholly or partly only on advance payment. We will declare a corresponding reservation upon order confirmation at the latest.
- 5.5. Once the abovementioned term of payment has expired, the Buyer is in default of payment. During the default period, interest must be paid on the purchase price according to the legal interest rate at the time. We reserve the right to assert claims for further damages as a consequence of the default. In relation to "merchants", our claim to interests counting from the due date (section 353 of the German Commercial Code (*HGB*)) remains unaffected.
- 5.6. The Buyer shall have rights of set-off or retention only to the extent that his claim has been legally established or is uncontested. In the case of deficient delivery, the opposing rights of the Buyer remain unaffected, particularly in accordance with no. 7.6. sentence 2 of these GTC.

5.7. If, after the conclusion of the contract, it becomes apparent (e.g. through application for the opening of insolvency proceedings) that our claim to the purchase price is jeopardised by the inability to perform of the Buyer, we are entitled to refuse performance under the statutory provisions and – after the specification of a period of time where appropriate – to revoke the contract (section 321 of the German Civil Code). In the case of contracts for the production of things that are not fungible (single-item production), we can declare the revocation immediately; the statutory provisions on the dispensability of the specification of a period of time remain unaffected.

6. Retention of Title

6.1. Pending complete payment of all our current and future claims arising from the purchase agreement and a current business relationship (secured claims), we retain title to the goods that have been sold.

6.2. Pending complete payment of the secured claims, the goods under retention of title may neither be pledged nor transferred as a security to third parties. The Buyer must inform us without undue delay in writing of any application for the opening of insolvency proceedings or any seizures by third parties (e.g. attachments) of the goods owned by us.

6.3. If the Buyer acts in breach of the contract, particularly in the case of non-payment of the due purchase price, we are entitled to revoke the contract in accordance with the statutory provisions and/or to demand the return of the goods in consequence of the retention of title. The demand for the return of the goods does not include at the same time the declaration of revocation; rather, we are entitled to demand only the return of the goods and to reserve the right to revoke. If the Buyer does not pay the due purchase price, we may only assert these rights if we have previously specified a reasonable period for payment to the Buyer without result or if there is no need to specify such a period of time according to the statutory provisions.

6.4. Until revocation in accordance with the provision in (c), the Buyer is authorised to resell and /or process further the goods under retention of title within the framework of his properly conducted business operations. In this case, the following provisions apply additionally:

(a) The retention of title extends to the products created by processing, connecting or integrating our goods at their full value, and we shall be considered the manufacturer. If the ownership rights of third parties remain in existence during the processing, connecting or integration with their goods, we acquire co-ownership of the processed, connected or integrated goods in proportion to their invoice value. Apart from this, the same applies for the resulting product as applies for the goods delivered with retention of title.

(b) The Buyer as of now assigns to us by way of security the claims against third parties resulting from the resale of the goods or the product in total or in the amount of our approximate share of co-ownership according to the abovementioned provision in (a).

We accept the assignment. The obligations of the Buyer set out in no. 6.2. also apply with regard to the assigned claims.

- (c) The Buyer remains authorised to collect the claim in addition to us. We agree not to collect the claim as long as the Buyer meets his payment obligations towards us, his ability to perform is not limited and we don't assert the retention of title by the exercise of a provision under no. 6.3. If this is the case, however, we may demand that the Buyer state the claims that have been assigned and from which debtors, provide all information necessary for collection, deliver all corresponding documents and notify the debtors (third parties) of the assignment. In this case, we are also entitled to withdraw the authorisation of the purchaser to resell and process further the goods under retention of title.
- (d) If the realisable value of the securities exceeds the value of our claims by more than 10 per cent, we will, at the request of the Buyer, release securities of our choice.

7. Buyer's Claims for Defects

- 7.1. Statutory provisions shall apply to the rights of the Buyer regarding material and legal defects (including wrong and short delivery) unless stated otherwise in the following. Special statutory provisions in the event of a potential final delivery of the goods to a consumer remain in all cases unaffected (recourse against the supplier in accordance with sections 478, 479 of the German Civil Code).
- 7.2. The basis for our liability for defects is first and foremost the agreement made on the quality of the goods. All product descriptions which are the subject matter of the individual contract or which have been announced by us shall be considered agreements on the quality of the goods.
- 7.3. To the extent that the quality has not been agreed upon, it shall be evaluated according to the statutory provision if a defect is present or not (section 434 (1) sentence 2 and 3 of the German Commercial Code). We assume, however, no liability for public statements by the producer, provided that we are not the producer, or other third parties (e.g. for advertising statements).
- 7.4. Buyer's claims for defects will only be accepted if he has fulfilled the requirement to examine and to give notice of defects (sections 377, 381 of the German Commercial Code). If a defect comes to light at the time of the delivery, during the examination or at a later date, then this has to be reported to us without undue delay in writing. Obvious defects must in any case be reported in writing within 14 calendar days of the delivery and defects not visible during the examination within the same period from the discovery of the defect. If the Buyer fails to carry

out the proper examination and/or notice of defects, our liability is excluded under the statutory provisions for the defect that has not been reported or has not been reported in good time or properly.

- 7.5. If the delivered item is defective, we may choose to carry out cure either by remedying the defect (repair) or by supplying an item free of defects (substitute delivery). Our right to refuse cure under the statutory requirements remains unaffected.
- 7.6. We are entitled to condition the owed cure on the payment of the due purchase price by the Buyer. However, the Buyer is entitled to retain a part of the purchase price which is appropriate in proportion to the defect.
- 7.7. The Buyer shall provide us with the time and the opportunity required to carry out the owed cure and shall, in particular, hand over the faulty goods for examination. In the case of substitute delivery, the Buyer must return to us the defective item in accordance with the statutory provisions.
- 7.8. We will bear the expenditure necessary for examination and cure, including in particular transport, transport infrastructure, work and materials costs, if there really is a defect. Otherwise, we may demand that the Buyer compensate the costs incurred because of the unjustified demand for cure of the defect (particularly examination and transport costs) unless the lack of defectiveness was not visible to the Buyer.
- 7.9. In urgent cases, e.g. in the case of danger to operational safety or preventing disproportionate damage, the Buyer has the right to remedy the defect himself and to require reimbursement from us for the objectively necessary expenses. We are to be informed of such self-help without undue delay, if possible beforehand. There is no right to self-help if we are entitled to refuse a corresponding cure under the statutory provisions.
- 7.10. If the cure has failed, or if a reasonable period which must be specified by the Buyer for cure has expired without result, or if such a period can be dispensed with under the statutory provisions, then the Buyer may revoke the purchase contract or reduce the purchase price. There is, however, no right of revocation for insignificant defects.
- 7.11. Buyer's claims to damages or reimbursement of futile expenses exist even in the case of defects only in accordance with the following provisions under no. 8 and are otherwise excluded.

8. Other Liability

- 8.1. Unless it appears otherwise from these GTC including the following provisions, we are liable in case of breach of contractual and non-contractual obligations in accordance with the statutory provisions.
- 8.2. We are liable for compensation for damages – irrespective of the legal basis – within the scope of the fault-based liability in the case of intent and gross negligence. In the case of simple negligence, we are liable, save for a milder liability standard, in accordance with the statutory provisions (e.g. for standard of care in our own affairs), only
- (a) for damage from injury to life, body or health,
 - (b) for damage from non-trivial breach of an essential contractual obligation (obligation whose fulfilment is necessary for the proper execution of the contract in the first place and the observance of which the contractual partner regularly relies on and can expect); in this case however, our liability is limited to the compensation for the foreseeable, typically occurring damages.
- 8.3. The limitations of liability arising from no. 8.2. also apply in the case of a breach of obligations by or to the benefit of persons whose fault we are responsible for under the statutory provisions. They do not apply to the extent that we fraudulently concealed a defect or gave a guarantee of the quality of the goods and to claims by the Buyer as described in the German Product Liability Act (*Produkthaftungsgesetz*).
- 8.4. A breach of an obligation which does not consist in a defect enables the Buyer to revoke or terminate the contract only if we are responsible for the breach of obligation. A free right of termination of the Buyer (in particular according to sections 651, 649 of the German Civil Code) is excluded. Apart from this, the statutory requirements and legal consequences apply.

9. Limitation

- 9.1. Notwithstanding section 438 (1) no. 3 of the German Civil Code, the general limitation period for claims arising from material and legal defects is one year from delivery. If an acceptance has been agreed, the limitation begins on acceptance.
- 9.2. If, however, the goods are things that have been used for a building in accordance with the normal way they are used and have resulted in the defectiveness of the building (construction material), the limitation period is 5 years from delivery in accordance with the statutory provision (section 438 (1) no. 2 of the German Civil Code). Further special statutory provisions on limitation (in particular section 438 (1) no. 1, (3), sections 444, 479 of the German Civil Code) remain unaffected.

9.3. The abovementioned limitation periods of the sale of goods law also apply to contractual and non-contractual damage claims by the Buyer which are based on a defect of the goods unless the application of the standard statutory limitation (sections 195, 199 of the German Civil Code) would lead to a shorter limitation period in the individual case. The limitation of the Buyer's damage claims in accordance with no. 8.2., sentence 1 and sentence 2 (a) and in accordance with the German Product Liability Act, however, is governed exclusively by the statutory limitation periods.

10. Choice of Law and Court of Jurisdiction

10.1. These GTC and the contractual relationship between us and the Buyer are governed by the law of the Federal Republic of Germany and this excludes international uniform law, in particular the United Nations Convention on Contracts for the International Sale of Goods.

10.2. If the Buyer is a "merchant" (*Kaufmann*) within the meaning of the German Commercial Code (*HGB*), a legal entity or special fund organised under public law, the exclusive – and also international – court of jurisdiction in respect of all disputes arising directly or indirectly from the contractual relationship is our place of business in Landsham/Pliening. The same applies if the Buyer is an "entrepreneur" (*Unternehmer*) within the meaning of section 14 of the German Civil Code. We are, however, in all cases also entitled to file suit at the place of fulfilment of the obligation to deliver in accordance with these GTC or in accordance with individually agreed terms of higher priority or at the general court of jurisdiction of the Buyer. Statutory provisions of higher priority, in particular relating to exclusive jurisdictions, remain unaffected.

11. Language and Translation

These GTC are available in German and English. In the case of contradictions or interpretation problems, the German text version of these GTC shall prevail. Translations are not legally binding. The same applies if and to the extent that contracts between us and the Buyer are drafted in two languages.