# GTC for the Purchase Agreement

General Terms and Conditions (GTC) for the sale and delivery of our products:
Business customers

**1. General**

1.1 The vendor is to supply all deliveries and services exclusively on the basis of these general terms and conditions (GTC). The customer's own GTCs do not apply, even if the vendor has not expressly objected to this.

1.2 These GTCs also apply if the vendor performs the service for the customer without reservation whilst being aware of conflicting terms or terms of the customer that conflict with its terms. In such cases, the acceptance of the service by the customer is considered approval of these GTCs, with a simultaneous waiving of the validity of the customer's own GTCS hereby agreed to in advance.

**2. Offers and prices**

2.1 Offers are always non-binding. In the absence of a written agreement, a contract only comes into effect with a written order confirmation from the vendor. If the service is provided by the vendor without the customer receiving an order confirmation beforehand, then the contract comes into effect upon the delivery, or when the performance of the delivery or service begins.

2.2 The service is rendered to the prices and special terms of the respective purchase agreement, along with the service description where applicable. The prices cited therein are binding.

2.3 Packaging, freight, postal charges and other shipping costs are not included.

2.4 Provided nothing other has been agreed to in individual cases, the prices are net and subject to the respective, statutorily applicable sales tax (valid rates according to www.bundesfinanzministerium.de).

**3. Purpose of the agreement, deliveries and services**

3.1 Provided nothing other has been agreed to in individual cases, the content / nature and scope of the deliveries and services owed by the vendor are determined by the respective contract, along with the service description if applicable; or, if such does not exist, by the order confirmation, with the relevant product description in each case – and in this order. The product description can be inspected at the vendor's at any time.

3.2 The contract or service description is based on the customer's technical and functional requirements which have been communicated by the customer. The contract or service description expresses the agreed service criteria in particular.

3.3 With direct deliveries, the price and performance risk is transferred to the customer immediately from the delivering plant or distribution centre.

3.4 Transport and other packaging in accordance with the German Packaging Ordinance is not taken back. The cost of disposing of packaging is borne by the customer.

3.5 The vendor will only provide analysis, planning and advisory services associated with this for the service description on the basis of a separate contract.

**4. Delivery deadlines and time periods**

4.1 Deadlines and time periods are binding when they have been agreed as such in writing by the vendor and the customer in individual cases. Provided nothing other has been agreed to, the service period begins upon the conclusion of the contract or upon sending the order confirmation. The agreement of a fixed service period is subject to the proviso that the vendor itself obtains the deliveries and services that it requires from its respective subsuppliers on time and in accordance with the contracts.

4.2 Reasonable partial deliveries are permitted and can be billed separately.

4.3 If non-observance of a particular service period can be attributed to events for which the vendor is not responsible (including strikes or lock-outs), the performance deadlines are postponed by the duration of the disruption, including an appropriate start-up period.

4.4 If the vendor gets in arrears with service provision, either wholly or in part, the customer's compensation for damages and expenses resulting from every complete week of arrears is limited to 0.5% of the price for the part of the service which cannot be used due to the arrears. Liability for arrears is limited to a total of 5% of the total price of the respective order. This does not apply if the arrears are due to gross negligence or intent.

4.5 In the event of service delay, the customer only has a right to withdrawal in line with statutory regulations if the vendor is responsible for the delay. If, due to delays, the customer claims compensation for damages or expenses instead of the service, then the customer is entitled to demand 1% of the price of the part of the service which cannot be used due to the delay for each full week of delay. However, this is limited to a maximum of 10% of the total price of the respective order. Point 4.4, line 3 applies accordingly.



MOESCHTER Group GmbH
Hesslingsweg 65–69
44309 Dortmund (Germany)

Tel. +49 231 / 9250 00-0
info@moeschter-group.com
www.moeschter-group.com

Amtsgericht Dortmund
HRB 28945
Ust-IdNr. DE310916310

Geschäftsführung:
Dipl.-Ingenieur Georgios Kabitoglou

**5. Customer obligations / default of acceptance**

5.1 The customer nominates a contact person for the vendor who is able to make binding decisions on the customer's behalf during the performance of the contract. This party has to be available for the exchange of necessary information and get involved with the decisions necessary for executing the contract. Customer decisions that are required are to be brought about immediately by the contact person, and these are to be documented in writing jointly by the parties without delay.

5.2 The customer is obligated to check the deliveries immediately for their completeness, conformity with the delivery papers and for externally recognisable defects and to claim immediately for noticeable deviations and defects. In the event of noticeable transport damages or shortfalls being delivered, the customer must also note this on the forwarder's certificate of receipt. If a complaint is not raised within two weeks of customer receipt, that delivery is considered to have been performed according to the contract; unless the deviation was not able to be detected despite thorough examination. In the event of unnoticeable damages, the customer is to notify the vendor two weeks from when the damage was noticed. The regulation of § 377 HGB (German Commercial Code) remains unaffected.

5.3 If the customer finds itself behind schedule with accepting deliveries and services, the vendor is entitled to set the customer an appropriate period of time to accept the deliveries and services in writing, and, once that period has lapsed without effect, to demand a lump sum for damages amounting to 20% of the value of the deliveries and services not accepted in place of fulfilment of contract. The customer is free to prove that the vendor has incurred no damages or less damages. Reimbursement is then to be set lower or excluded based on the evidence.

**6. Reservation of proprietary rights**

6.1 The delivered goods remain the property of the vendor until full payment has been made of all claims from the business relationship, including incidental claims, claims for compensation for damages and the cashing of cheques and bills. Authorised defect retentions in accordance with point 7.6, line 2 are taken into consideration. The reservation of proprietary rights also remains if individual claims of the vendor are recorded in a running account, balanced and recognised.

6.2 If goods subject to reservation of title are processed into a new chattel by the customer, then this processing is performed for the vendor without it acquiring obligations as a result. The new item becomes the property of the vendor. In the event of processing, mixing or combining with goods not belonging to the vendor, the vendor procures joint ownership of the new item based on the ratio of the invoice values of the goods subject to reservation of title to the overall value. The customer is only entitled to resell or install the goods subject to reservation of title provided that the receivables in accordance with line 6.3 are actually transferred to the vendor. Within orderly business transactions, the customer's authority to resell, process or install goods that are subject to reservation of title ends with the vendor's cancellation resulting from sustained deterioration in the customer's financial situation, but by the time of its cessation of payments or the application for, or opening of, insolvency proceedings for its assets at the latest.

6.3 The customer would hereby assign the claims, with all ancillary rights, from the resale of the goods subject to reservation of title – including any account balance claims – to the vendor who accepts this. If the goods have been processed, mixed or combined, and if the vendor has acquired joint ownership of this amounting to the invoice values, it is entitled to a proportion of the purchase price based on the value of its share in the goods. If the customer sells the receivable as part of real factoring, the vendor's claim becomes payable immediately and the customer assigns the substitute receivable against the factor to the vendor and immediately passes its proceeds from the sale on to the vendor. The vendor now accepts the assignment in this regard.

6.4 The customer is authorised to collect the assigned receivables, provided it meets its payment obligations. Authorisation to collect expires in the event of cancellation; but by the time of default of payment by the customer or by the time of a significant deterioration in the customer's financial situation at the latest. In such an instance, the vendor is hereby authorised by the customer to inform the purchaser of the assignment and to collect the receivables itself. The customer is obligated, upon request, to supply the vendor with an exact list of the receivables which are due to the customer with the name and address of the purchaser, the amount of the individual receivables, the invoice date, etc. and to provide the vendor with all the information necessary for asserting the assigned claims and to allow this information to be checked.

6.5 If the value of securities existing for the vendor exceeds more than 20% of all its claims, then the vendor, upon the request of the customer or a third party affected by the vendor's overcollateralisation, is obligated to release securities of its choice to that extent.

6.6 Pledging as collateral goods subject to reservation of title or assigned claims, or transferring the above by way of security, is not permitted. The vendor is to be immediately notified of any pledging and provided details of the pledgee.

6.7 If the vendor takes back the object of delivery due to the reservation of title, then a withdrawal from the contract would only take place if the vendor expressly declares this. The vendor can satisfy its demands from the goods subject to reservation of title that are taken back through private sale.

6.8 The customer shall keep hold of the goods subject to reservation of title for the vendor free of charge. It is to insure them with customary coverage against the usual dangers; such as fire, theft and water. The customer hereby cedes to the vendor its claims for compensation, to which it is entitled from insurance companies or other parties with an obligation to compensation, resulting from damages of the nature described



MOESCHTER Group GmbH
Hesslingsweg 65–69
44309 Dortmund (Germany)

Tel. +49 231 / 9250 00-0
info@moeschter-group.com
www.moeschter-group.com

Amtsgericht Dortmund
HRB 28945
Ust-IdNr. DE310916310

Geschäftsführung:
Dipl.-Ingenieur Georgios Kabitoglou

above to the amount of the invoice value of the goods. The vendor accepts this cession.

6.9 All claims and rights from the reservation of proprietary rights in all special forms defined in these terms and conditions remain in place until there is complete release from all contingent liabilities that the vendor has incurred on behalf of the customer.

**7. Payments, billing and offsetting**

7.1 Provided nothing other has been agreed to in individual cases, payments are always due free of transaction charges and strictly net within seven calendar days from the date of invoice.

7.2 A term of payment granted to the customer requires a sufficiently available credit limit for each individual order. If the order in question exceeds the available credit limit, the vendor is entitled only to perform the fulfilment of this and further orders against prepayment or collateral in the form of a guarantee of fulfilment from a bank or credit insurer approved within the European Union. The same applies if the vendor becomes aware of circumstances justifying doubts about the customer's creditworthiness after order confirmation.

7.3 If the customer does not settle a payment due by the agreed payment deadline, either wholly or in part, the vendor is entitled to revoke any discounts that have been agreed to and agreements on payment terms for all receivables outstanding at that point in time and declare these to be due with immediate effect. Furthermore, the vendor is entitled only to render additional services against prepayment or a collateral in the form of a guarantee of fulfilment from a bank or credit insurer approved within the European Union.

7.4 In the event of the customer being unable to fulfil its obligations to the vendor financially, or a petition for insolvency proceedings with regard to the customer, the vendor may withdraw from the contract that exists with the customer. § 321 of the BGB (German Civil Code) and § 112 of the InsO (German Insolvency Code) remain unaffected. The customer is to inform the vendor of any impending inability to pay in good time.

7.5 A payment is only considered paid when it has been credited to one of the vendor's bank accounts.

7.6 The vendor is entitled to charge interest rates of 5% on maturity. In the event of arrears, the vendor is entitled to demand interest rates amounting to 8 percentage points above the base rate. The vendor's right to assert claims for higher damages remains unaffected.

7.7 The customer may only offset or withhold payments due to defects in so far as it is actually entitled to payment claims due to material defects and/or defects of title. As a result of defects, the customer may only withhold payments to a proportion corresponding to the seriousness of the defect, and only if the defect exists beyond any doubt. Point 8.2 applies accordingly. The customer has no right of retention if its claim of defects is time-barred. Otherwise, the customer may only offset with undisputed or legally established claims or by exercising a right of retention. The exercising of a right of retention by the customer with an opposing right that does not rely on a right from the contract based on these general terms and conditions is excluded. The rights of the customer from § 478 of the BGB (German Civil Code) remain unaffected.

**8. Material defects**

8.1 The vendor guarantees to the customer that the deliveries and services, when used in accordance with the contract, conform with the agreements outlined in point 3.1.

8.2 No claims of material defects may exist for merely insignificant deviations from the contractually agreed quality. Claims of material defects are also excluded if the deviation from the contractually agreed quality is based on excessive or improper use or natural wear. The same applies to such deviations that result from special external influences which are not provided for in the contracted. This also includes the use of deliveries and services in a usage environment not approved of by the vendor. Furthermore, claims are excluded with regard to the sale of second-hand articles.

8.3 The customer is to communicate in writing any material defects in comprehensible and detailed format, providing the information necessary for determining and analysing the defect. If nothing other has been agreed to, the customer shall use the vendor's relevant forms and procedures to do this. Point 12.1, line 3 applies accordingly. Furthermore, the customer is also to support the vendor in eliminating the defects, where required.

8.4 If the customer is entitled to claims for defects, it first only has the right to remedial action within an appropriate period of time. At the vendor's discretion, remedial action could entail the elimination of defects or a new delivery. The interests of the customer are to be considered properly in the vendor's choice. If remedial action is performed, ownership of the objects exchanged as part of the remedial action is transferred to the vendor at the time of the exchange. The processing of the customer's notification of material defects by the vendor shall only lead to a suspension to the period of limitation if statutory regulations for this exist. Remedial action can only influence the limitation period of the defect caused by the remedial action.

8.5 If the remedial action is unsuccessful or is not performed for other reasons, the customer may, in accordance with statutory requirements, reduce the remuneration, withdraw from the contract and/or demand compensation for damages or expenses in line with points 10.1–10.3. The customer can exercise its right – to which it is entitled – to choose what to do within an appropriate time period. This is usually taken as 14 calendar days from the opportunity to announce the chosen option by the customer.

8.6 If the customer withdraws, the vendor will take the goods back and reimburse monies paid by the customer minus the value of the usage possibilities granted to the customer.



MOESCHTER Group GmbH
Hesslingsweg 65–69
44309 Dortmund (Germany)

Tel. +49 231 / 9250 00-0
info@moeschter-group.com
www.moeschter-group.com

Amtsgericht Dortmund
HRB 28945
Ust-IdNr. DE310916310

Geschäftsführung:
Dipl.-Ingenieur Georgios Kabitoglou

8.7 The period of limitation for claims of material defects is one year from the statutory commencement of that period. Statutory time periods remain unaffected, as far as the law in § 438, para. 1, no. 2 of the BGB [German Civil Code] (buildings and items used for buildings) prescribes longer periods, and in the event of deliberate or grossly negligent breach of duty on the part of the vendor, especially its legal representatives or agents, in the event of a fraudulent concealment of a defect, and in cases of loss of life, personal injuries and harm to health, as well as claims from product liability law.

8.8 Provided nothing other has been agreed to, the customer is to bear any additional expenses necessary for the purpose of the remedial action, especially additional transport, travel, work and material costs, resulting from the fact that it has housed the owed good/ service in a different location to the location of usage mentioned to the vendor when the contract was concluded. The regulation of § 439 BGB (German Civil Code) remains otherwise unaffected.

8.9 The vendor may demand remuneration for its efforts, provided

- It follows up on a notification without a defect existing, unless the customer was not able to recognise that there was no defect with reasonable effort, or
- Additional efforts are required as a result of the customer failing to properly fulfil its obligations, especially in accordance with lines 8.2 and 8.3.

8.10 The regulations for customer recourse in line with § 478 and 479 of the BGB (German Civil Code) remain unaffected.

**9. Defect of title**

9.1 The vendor is liable to the customer for any violations caused to the rights of third parties resulting from its service only if the service is used by the customer in accordance with the contract, especially in the usage environment prescribed in the contract. Liability for third-party rights violations is also limited to the rights of third parties within the European Union and the European Economic Area, as well as the location where the service is used in accordance with the contract. Point 8.2, line 1 applies accordingly.

9.2 If a third party asserts to the customer that a service of the vendor infringes on its rights, the customer is obligated to notify the vendor of this immediately. The vendor is entitled, but not obligated, to defend against the asserted claims at its own costs, if permitted to do so.

9.3 If the rights of third parties are violated by a service of the vendor, at its own discretion and at its own costs, the vendor will:

- Provide the customer with the right to use the service or design the product/service such that it no longer infringes upon any rights
- Take back the service while reimbursing the monies paid for it by the customer (minus an appropriate amount of compensation based on use, as laid out in point 8.6, lines 2 and 3), if the vendor cannot provide any other remedy with a reasonable outlay. The interests of the customer are to be taken into consideration in this regard.

9.4 Customer claims based on defect of title are time-barred in accordance with point 8.7. Point 8.5 also applies to claims for compensation for damages and expenses.

**10. Liability**

10.1 The vendor is always liable to the customer for compensation for damages

- For damages caused by it, its legal representatives or its agents which is deliberate or grossly negligent,
- Based on the German Product Liability Act, and
- For damages caused by loss of life, personal injury or harm to health for which the vendor, its legal representatives or agents are responsible.

10.2 The vendor is liable in the event of slight negligence if it or its legal representatives or agents have violated an essential contractual obligation (a so-called cardinal obligation), without the fulfilment of which the orderly execution of the contract would not even be possible, or the violation of which endangers the achievement of the contractual objectives and on the fulfilment of which (such as the obligation for fault-free services) the customer may regularly rely. In all other respects, liability based on slight negligence is excluded. If the vendor is liable for slight negligence, the liability is limited to contract-typical and foreseeable damage in the event of material and pecuniary damages. Liability for other, remote consequential damages is excluded. Liability is limited to the value of the contract for a single instance of damage. Liability as laid out in point 10.1 remains unaffected by this paragraph.

10.3 Point 8.7 applies to time limitation accordingly.

10.4 Lines 10.1–10.3 apply to claims for compensation for expenses and other liability claims by the customer against the vendor accordingly.

**11. Export**

11.1 All deliveries and services are supplied by the vendor in compliance with the currently applicable German Foreign Trade Act (AWG) / the German Foreign Trade Ordinance (AWV) / EC dual-use regulations and US export regulations and are intended for use and to remain in the country of delivery agreed with the customer.

11.2 Provided there are no differing regulations from individual contracts, in the event of cross-border deliveries or services, the customer is to bear any duties, fees and other levies incurred.

11.3 If the customer intends to (re-)export, it is obligated to obtain the permits required to do this, especially the relevant

foreign trade authorities, before it exports the products. The customer is to learn about the respectively applicable regulations and ordinances independently and transact the (re-)export of its own responsibility. In this regard, the vendor does not have any obligation to provide notification, consultation, or cooperation.

11.4 If the customer violates any statutory regulations that apply to another country in which it is importing or (re-)exporting, and if claims are subsequently asserted on the vendor by the country of export/import or a transit state based on the statutory regulations there, the customer obligates itself to release the vendor of all financial obligations resulting from this and also has a duty to compensate the vendor for all damages resulting from the illegal (re-)export/import.

**12. Miscellaneous**

12.1 Modifications and additions to all contracts concluded between the two parties may only be agreed to in writing. Text form (126b of the BGB [German Civil Code]) satisfies the written form requirement. If the written form is expressly agreed to contractually (e.g. for contractual alterations, impediment notifications, withdrawals), text form will not suffice. Oral agreements only apply if they are confirmed by the vendor in text form within seven calendar days.

12.2 The vendor and the customer are obligated to keep secret any commercial or operational secrets or other information designated confidential which comes into their knowledge in connection with their contractual relationship or the contractual relations resulting from it. Such information may only be passed on to persons not involved with the conclusion, execution or processing of the contractual relationship with the express, written consent of the contractual partner – unless there is a legal obligation for this. Provided nothing else is agreed to, this duty shall end five years after the respective item of information is learned; however, not before the termination of the contractual relationship existing between the vendor and the customer. The contractual partners will also impose these obligations on their employees and any third parties employed on their behalves.

12.3 The vendor and customer are aware that electronic and unencrypted communication (e.g. via email) is exposed to security risks. Therefore, when using this form of communication, neither the vendor nor the customer will assert any claims based on the lack of encryption, unless encryption was agreed to beforehand.

12.4 All of the parties' contractual relationships are exclusively subject to the law of the Federal Republic of Germany. Application of the Viennese UN convention on contracts for the international sale of goods (CISG) is excluded.

**13. Place of fulfilment and court of jurisdiction**

13.1 The place of fulfilment for all obligations from the parties' contractual relationships is the headquarters of the vendor.

13.2 The court of jurisdiction for all legal disputes from the parties' contractual relationships and for disputes relating to the emergence and effectiveness of these contractual relationships with respect to merchants, a legal entity under public law or a special fund under public law, is the headquarters of the vendor. However, the vendor is entitled to sue the customer at its headquarters.



MOESCHTER Group GmbH
Hesslingsweg 65–69
44309 Dortmund (Germany)

Tel. +49 231 / 9250 00-0
info@moeschter-group.com
www.moeschter-group.com

Amtsgericht Dortmund
HRB 28945
Ust-IdNr. DE310916310

Geschäftsführung:
Dipl.-Ingenieur Georgios Kabitoglou