

# **General Terms and Conditions of Sale of Mohaba GmbH & Co. KG**

## **§1**

### **Scope, form**

1. These General Terms and Conditions of Sale (GTCS) apply to all our commercial relations with our customers ("Purchasers"). The GTCS will only apply if the Purchaser is an entrepreneur (§14 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 procure them from suppliers (§§433, 651 BGB). Unless otherwise agreed, the GTCS in the version valid at the time of the Purchaser's order or in any case in the version last notified to him in text form will also apply as a framework agreement for similar future contracts without our having to refer to them again in each individual case.
3. Our GTCS apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the Purchaser will only become part of the contract if and to the extent that we have expressly agreed to their validity. This requirement of consent will apply in any case, e.g. even if we carry out the delivery to the Purchaser without reservation in the knowledge of the Purchaser's General Terms and Conditions.
4. Individual agreements made with the Purchaser in individual cases (including collateral agreements, supplements and amendments) will in all cases take precedence over these GTCS. Subject to proof to the contrary, a written contract or our written confirmation will be decisive for the content of such agreements.
5. Legally relevant declarations and notifications of the Purchaser with regard to the contract (e.g. setting of deadlines, notifications of defects, withdrawal or reduction) require written form, i.e. written or text form (e.g. letter, email, fax). Legal formal requirements and further proof, in particular in the event of doubts about the legitimacy of the declarant, remain unaffected.

6. References to the applicability of statutory provisions are exclusively for the purpose of clarification. Even without such clarification, the statutory provisions will therefore apply, unless they are directly amended or expressly excluded in these GTCS.

## **§2**

### **Conclusion of the contract**

1. Our offers are subject to change and non-binding. This will also apply if we have provided the Purchaser with catalogues, technical documentation (e.g. drawings, drafts, etc.), other product descriptions or documents - including in electronic form. We reserve the property rights and copyrights to all documents provided.
2. The order of the goods by the Purchaser is considered a binding offer of contract. Unless otherwise stated in the order, we are entitled to accept this offer of contract within 7 days 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 Purchaser.

## **§3**

### **Delivery deadline, delay in delivery**

1. The delivery deadline will be agreed individually or stated by us on acceptance of the order. If this is not the case, the delivery deadline will be approx. 8 weeks from conclusion of the contract.
2. If we are unable to meet binding delivery deadlines for reasons for which we are not responsible (non-availability of the service), we will inform the Purchaser of this immediately and at the same time inform him of the expected new delivery deadline. If the service is also not available within the new delivery deadline, we will be entitled to withdraw from the contract in whole or in part; we will immediately refund any consideration already paid by the Purchaser. A case of non-availability of performance in this sense will be deemed to arise in particular on the failure of our supplier to deliver to us in good time if we have concluded a congruent covering transaction, neither we nor our supplier are at fault or we are not required to procure in the individual case.

3. The occurrence of our delay in delivery will be determined under the statutory provisions. In this case, however, a reminder by the Purchaser is required. If we are in default of delivery, the Purchaser may demand lump-sum compensation for the damage caused by the delay. The lump-sum damages will amount to 0.5 % of the net price (delivery value) for each completed calendar week of the delay, but in total not more than 5 % of the delivery value of the goods delivered late. We reserve the right to prove that the Purchaser has not suffered any damage at all or that the damage is significantly lower than the above lump-sum.
4. The rights of the Purchaser according to §8 of these GTCS and our statutory rights, in particular in the event of an exclusion of the duty to perform (e.g. due to impossibility or unreasonableness of performance and/or repair), will remain unaffected.

#### **§4**

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

1. Delivery is made ex warehouse, which is also the place of performance for the delivery and any repair. At the request and expense of the Purchaser, the goods will be shipped to another destination (mail order purchase). Unless agreed otherwise, we are entitled to determine the type of dispatch (in particular transport company, shipping route, packaging) ourselves.
2. The risk of accidental loss and accidental deterioration of the goods will pass to the Purchaser at the latest on handover. However, in the case of sale by delivery to a place other than the place of performance, the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay will already pass on delivery of the goods to the forwarding agent, the carrier or any other person or institution designated to carry out the dispatch. Insofar as acceptance has been agreed, this will be decisive for the transfer of risk. In all other respects, the statutory provisions of the law on contracts for work and services will also apply as appropriate to an agreed acceptance. Handover or acceptance will be deemed to have taken place if the Purchaser is in default of acceptance.
3. If the Purchaser is in default of acceptance, fails to cooperate or if our delivery is delayed for other reasons for which the Purchaser is responsible, we are entitled to demand compensation for the resulting damage, including additional expenses (e.g. storage costs). In this case, we will charge a lump-sum fee of €8.00 per pallet, starting with the delivery date or - in the absence of a delivery date - with the notification that the goods are ready for dispatch.

4. The proof of a higher damage and our legal claims (in particular compensation for additional expenses, reasonable compensation and termination) remain unaffected; however, the lump sum is to be credited against further monetary claims. The Purchaser is entitled to prove to us that we have incurred no damage at all or only significantly less damage than the above lump sum.

## **§5**

### **Prices and terms of payment**

1. Unless agreed otherwise in individual cases, our prices current at the time of conclusion of the contract will apply, ex warehouse, plus statutory value added tax.
2. In the event of a sale by dispatch to a place other than the place of performance (§4 para. 1), the Purchaser will bear the transport costs ex warehouse as well as the costs of any transport insurance requested by the Purchaser. If we do not invoice the transport costs actually incurred in the individual case, a lump-sum for transport costs (without transport insurance) of €130.00 per pallet will be deemed to have been agreed. Any customs duties, fees, taxes and other public charges will be borne by the Purchaser.
3. The purchase price is due and payable within 14 days of the invoice date and delivery or acceptance of the goods. However, we are entitled at any time, even within the context of an ongoing commercial relationship, to make a delivery in whole or in part only against advance payment. We will declare a corresponding reservation at the latest with the order confirmation.
4. After expiry of the above payment deadlines, the Purchaser is in default. During the period of default, interest will be charged on the purchase price at the statutory arrears interest rate applicable at the time. We reserve the right to claim further damages caused by delay. With respect to merchants, our claim to the commercial due date interest rate (§353 HGB) remains unaffected.
5. The Purchaser will only be entitled to rights of set-off or retention insofar as his claim has been legally established or is undisputed. In the event of defects in the delivery, the Purchaser's counter rights will remain unaffected, in particular under §7 para. 6 sentence 2 of these GTCS.

6. If it becomes apparent after the 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 Purchaser's inability to pay, we will be entitled to refuse performance under 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 items for which we are not responsible (custom-made products), we may declare withdrawal immediately; the statutory provisions on the dispensability of setting a deadline will remain unaffected.

## **§6**

### **Retention of title**

1. Until full payment of all our present and future claims arising from the purchase contract and an ongoing commercial relationship (secured claims), we retain title to the goods sold.
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 (e.g. seizures) access the goods belonging to us.
3. In the event of conduct in breach of contract on the part of the Purchaser, in particular in the event of non-payment of the purchase price due, we will be entitled to withdraw from the contract under the statutory provisions and/or to demand the return of the goods on the basis of the reservation of title. The demand for return does not at the same time include the declaration of withdrawal; we are rather entitled to demand only the return of the goods and to reserve the right of withdrawal. If the Purchaser does not pay the purchase price due, we may only assert these rights if we have previously set the Purchaser a reasonable deadline for payment without success or if setting such a deadline is dispensable according to the statutory provisions.
4. Until revocation according to lit. c), the Purchaser is entitled to resell and/or process the reserved goods in the ordinary course of business. In this case, the following provisions will apply in addition.
  - a) The retention of title will extend to the products resulting from the processing, mixing or combining of our goods at their full value, such that we will be deemed to be the manufac-

turer. If, in the event of processing, mixing or combining with goods of third parties, their right of ownership remains, we will acquire co-ownership in proportion to the invoice values of the processed, mixed or combined goods. For the rest, the same applies to the origin of the products as to the goods delivered under reservation of title.

- b) The Purchaser hereby assigns to us by way of security all 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 under the above paragraph. We accept the assignment. The duties of the Purchaser mentioned in paragraph 2. also apply to the assigned claims.
- c) The Purchaser remains authorised to collect the claim in addition to us. We undertake not to collect the claim as long as the Purchaser meets his payment duties towards us, there is no deficiency in his ability to pay and we do not assert the reservation of title by exercising a right under paragraph 3. If this is the case, however, we may demand that the Purchaser inform us of the assigned claims and their debtors, provide all information necessary for collection, hand over the relevant documents and inform the debtors (third parties) of the assignment. In addition, in this case we are entitled to revoke the Purchaser's authority 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 will release securities of our choice at the request of the Purchaser.

5. Tools, moulds etc. remain our property.

## §7

### Warranty claims of the Purchaser

1. The statutory provisions will apply to the rights of the Purchaser in the event of material defects and defects of title (including incorrect and short delivery as well as improper assembly or defective assembly instructions), unless stipulated otherwise below. In any case, the special statutory provisions remain unaffected in the case of final delivery of unprocessed goods to a consumer, even if the consumer has processed them further (supplier recourse under §§478 ff. of the Civil Code). Claims from supplier recourse are excluded if the defective goods have been further processed by the Purchaser or another entrepreneur, e.g. by installation in another product.
2. The basis of our liability for defects is above all the agreement reached on the quality of the goods. All product descriptions which are the subject of the individual contract or which are publicly announced by us (in particular in catalogues or on our website) will be deemed to be an agreement on the quality of the goods. In the case of porcelain and ceramic goods, the standard "oven-aged" with the usual deviations in form and size, unevenness and impurities will be deemed to be an agreement on the quality of the goods. As an agreement on the quality of the goods with regard to the decorative printing, the screen printing process is deemed to be agreed. The position of the decors may vary due to production. With regard to the colour reproduction, the usual standards of ceramic coloured inks in the screen printing process and not other colour systems, such as Pantone, HKS or RAL, will apply as an agreement on the quality of the goods. Production in Pantone, HKS, RAL or other colour systems is not possible for technical production reasons. Due to thermal influences during decor firing and chemical reactions, the colours of the decor colours may mix with the glaze behind them; the darker the glaze colour, the higher the risk of colour mixing.
3. As far as the quality was not agreed on, it is to be judged according to the statutory provision whether a lack is present or not (§434 exp. 1 p. 2 and 3 BGB). However, we accept no liability for public statements made by the manufacturer or other third parties (e.g. promotional statements).
4. The Purchaser's claims for defects presuppose that he has fulfilled his statutory duties to examine the goods and give notice of defects (§§377, 381 BGB). If a defect becomes apparent on delivery, acceptance or at a later point in time, we must be notified of this immediately in writing. Obvious defects must in any case be notified in writing within 3 working

days after delivery and defects which cannot be discovered during the inspection must be notified within the same period after discovery. If the Purchaser fails to carry out a proper inspection and/or to give notice of defects, our liability for the defect which has not been notified or which has not been notified in time or which has not been notified properly will be excluded under the statutory provisions.

5. If the delivered item is defective, we may initially choose whether to provide repair by remedying the defect (rectification) or by delivering an item free of defects (replacement). Our right to refuse repair under the statutory conditions remains unaffected by this.
6. We are entitled to make the repair owed dependent on the Purchaser paying the purchase price due. However, the Purchaser is entitled to retain an appropriate part of the purchase price due to the defect.
7. The Purchaser must give us the time and opportunity necessary for the repair owed, in particular to hand over the rejected goods for inspection purposes. In the event of a replacement delivery, the Purchaser must return the defective item to us under the statutory provisions. Repair will neither include the removal of the defective item nor its re-installation if we were not originally required to install it.
8. We will bear or reimburse the expenses necessary for the purpose of inspection and repair, in particular transport, travel, labour and material costs and, if applicable, removal and installation costs, under the statutory provisions if a defect is actually present. Otherwise, we may demand reimbursement from the Purchaser of the costs incurred as a result of the unjustified request to remedy the defect (in particular inspection and transport costs), unless the lack of defectiveness was not apparent to the Purchaser.
9. In urgent cases, e.g. if operational safety is endangered or to prevent disproportionate damage, the Purchaser will have the right to remedy the defect itself and to demand reimbursement from us of the expenses objectively necessary for this purpose. We must be informed immediately of any such self-performance, if possible in advance. The right to self-performance does not exist if we would be entitled to refuse a corresponding repair under the statutory provisions.
10. If the supplementary performance has failed or if a reasonable period to be set by the Purchaser for the supplementary performance has expired unsuccessfully or is dispensable according to the statutory provisions, the Purchaser may withdraw from the purchase con-

tract or reduce the purchase price. In the case of an insignificant defect, however, there is no right of withdrawal.

11. Claims of the Purchaser for damages or reimbursement of futile expenses will also exist in the case of defects only under §8 and are otherwise excluded.

## **§8**

### **Other liability**

1. Insofar as nothing to the contrary arises from these GTCS including the following provisions, we will be liable under the statutory provisions in the event of a breach of contractual and non-contractual duties.
2. We will be liable for damages - irrespective of the legal grounds - within the scope of fault liability in the event of intent and gross negligence. In the event of simple negligence, we will only be liable within the context of a medium standard of liability under the statutory provisions (e.g. for diligence in our own affairs) for
  - a) damages resulting from injury to life, body and health,
  - b) damages arising from the non-trivial breach of a material contractual duty (an duty the fulfilment of which is a precondition for the proper performance of the contract and on the observance of which the contractual partner regularly relies and may rely); in this case, however, our liability will be limited to compensation for the foreseeable, typically occurring damage.
3. The limitations of liability resulting from paragraph 2. will also apply in the event of breaches of duty by or in favour of persons for whose fault we are responsible under the statutory provisions. They do not apply if we have fraudulently concealed a defect or have given a warranty for the quality of the goods and for claims of the Purchaser under the Product Liability Act.
4. Due to a breach of duty which does not consist of a defect, the Purchaser may only withdraw from or terminate the contract if we are responsible for the breach of duty. A free right of termination of the Purchaser (in particular according to §§651, 649 BGB) is excluded. In all other respects, the statutory provisions and legal consequences will apply.

## **§9**

### **Liability of the Purchaser**

1. Insofar as the Purchaser provides us with templates for use in the design of goods, he gives us an assurance that he is entitled to hand over and use these templates.
2. If claims are asserted against us by third parties in connection with the manufacture of goods using the Purchaser's templates due to the breach of an industrial property right, copyright and/or other industrial property rights, the Purchaser undertakes to indemnify us against claims for payment, and in particular to bear the costs and damages imposed by the courts.

## **§10**

### **Limitation**

1. By derogation from §438 para. 1 No. 3 BGB, the general limitation period for claims arising from material defects and defects of title will be one year from delivery. Insofar as acceptance has been agreed, the limitation period will commence on acceptance.
2. The above limitation periods of the law on sales will also apply to contractual and non-contractual claims for damages of the Purchaser which are 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 the individual case. However, claims for damages by the Purchaser under §8 para. 2 sentence 1 and sentence 2 (a) as well as under the Product Liability Act will be subject to limitation exclusively under the statutory limitation periods.

## **§10**

### **Choice of law and legal venue**

1. The law of the Federal Republic of Germany will apply to these GTCS and the contractual relationship between us and the Purchaser to the exclusion of international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods.

2. If the Purchaser is a merchant within the meaning of the Commercial Code, a legal entity under public law or a special fund under public law, the exclusive - including international - legal venue for all disputes arising directly or indirectly from the contractual relationship will be our registered office in Düren. The same applies if the Purchaser is an entrepreneur in the sense of §14 BGB. However, we are also entitled in all cases to bring an action at the place of performance of the delivery duty according to these GTCS or a prior individual agreement or at the general legal venue of the Purchaser. Overriding statutory provisions, in particular those concerning exclusive legal venue, will remain unaffected.

Düren, 01.11.2018

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