

General Purchasing Conditions of CHOCOTECH GmbH

§ 1 General information, scope of application

(1) Our General Purchasing Conditions ("Purchasing Conditions") apply to contracts regarding the delivery of movable items ("goods") with Suppliers, whose main business address is in Germany. Any additional obligations that are assumed do not affect the application of these Purchasing Conditions.

(2) Our Purchasing Conditions apply exclusively; we do not recognise Supplier conditions that conflict with or deviate from our Purchasing Conditions or from legal regulations, unless we expressly agreed to their validity in writing. Our Purchasing Conditions also apply if we, with knowledge of the Supplier's conditions that are in conflict with or deviate from our Purchasing Conditions, accept the Supplier's service without reserve or provide our services without reserve.

(3) Our Purchasing Conditions only apply when the Supplier is a contractor (§ 14 of the German Civil Code), a legal entity under public law or a special fund under public law.

(4) References to the validity of statutory regulations only have a clarifying function. Even without such clarification, the legal regulations shall also apply insofar that they are not directly changed or expressly excluded in these Purchasing Conditions.

§ 2 Offer, contract conclusion and content of the contract

(1) All orders by us become effective when we issue them in writing. In the case of errors that are obvious for the Supplier (e.g. clerical or computation errors) or incompleteness of the order, including the order documents, the Supplier must inform us of them for the purpose of correction and completeness prior to acceptance. If anything concerning our order is not clear to the Supplier, the Supplier is obligated to clarify this with us prior to concluding the contract.

(2) If our order does not clearly indicate a commitment period, we are bound to our order for one (1) week from the date of the order. Receipt of the declaration of acceptance by the Supplier is decisive for the timely acceptance of our order.

(3) Prior to the conclusion of the contract, the Supplier is obligated to inform us in writing if

- the goods to be delivered are not intended to be used exclusively for the use agreed with him or the use known and recognizable for him,
- the use of the goods could be connected to particular risks or unusual injurious effects, of which he is or should be aware, or
- the further sale of the goods by us domestically and/or internationally could infringe upon patents, licenses or other third party property rights.

(4) All agreements entered into between us and the Supplier for the purpose of performing this contract at the moment of concluding the contract, are indicated in writing in the contract and in these Purchasing Conditions.

(5) We reserve all property rights and copyrights to the illustrations, drawings, calculations and all other documents. This also applies to written documents designated as "confidential". Prior to disclosing them to third parties, the Supplier must receive our express, written agreement.

§ 3 Delivery, delivery period, transfer of risk, consequences of delay

(1) Unless another delivery method is agreed upon, delivery shall take place on basis of Incoterms 2020 DDP to the delivery address indicated in our order or, if a delivery address is not indicated in the order, to DAP Dornbergsweg 32, 38855 Wernigerode. If the delivery method is agreed as "free delivery", "free site" or similar in deviation from section 3, par. 1 of these Purchasing Conditions, unless otherwise clearly interpreted, this clause shall be understood that delivery shall be completed only after the goods have reached their destination.

(2) The Seller is obligated to deliver the quantity indicated in the order.

(3) The delivery period indicated by us in the order is mandatory. If the delivery period is not indicated in the order and has not otherwise been agreed upon, the Supplier shall perform delivery immediately, in accordance with § 271 of the German Civil Code, unless otherwise justified by circumstances.

(4) In the case of a transaction to be performed on a fixed date, we are not required to provide notification in the case the delivery period is exceeded, contrary to § 376 para. 1 sentence 2 of the German Commercial Code, in order to maintain our claim for performance. The continuation of our claim for performance does not affect our unlimited right to withdraw from the contract in accordance with legal regulations.

(5) Early deliveries and partial deliveries are not permitted unless agreed upon in writing on a case-by-case basis.

(6) The Supplier is obligated to inform us immediately in writing if the Supplier anticipates not being able to meet the delivery times – for any reason. This notification does not release the Supplier from the obligation of performance on time and does not affect our rights related to late performance.

(7) If the latest date on which delivery is to occur based on the contract passes without delivery, then the Supplier is in default without this requiring a reminder from us. The other legal regulations according to § 286 para. 2 no. 2 to 4 of the German Civil Code, whereby under these conditions a reminder is not required for notice of default, remain unaffected.

(8) In the case of a delivery delay, we are entitled to statutory claims without restrictions, including the right of withdrawal and the claim for damages instead of performance after the expiry of a reasonable grace period without performance, provided that such a grace period is not unnecessary according to these Purchasing Conditions and/or legal regulations. The regulations in § 3 para. 9 of these Purchasing Conditions remain unaffected.

(9) If the Seller is in delay, we have the right to demand – in addition to other statutory claims – flat rate compensation for our damage in the amount of 0.5 % of the net purchase price of the undelivered goods or goods delivered late per calendar week or part thereof, however no more than 5% of the net purchase price of the undelivered goods or goods delivered late. We reserve the right to furnish proof that greater damage has been incurred. The Seller retains the right to prove that no damage or only slight damage was caused.

(10) The transfer of risk takes place upon delivery. If acceptance has been agreed upon, in deviation from § 3 para. 10 sentence 1 of these Purchasing Conditions, this is the determining factor for the transfer of risk. Upon acceptance, also the legal regulations of the law governing contracts for services apply accordingly.

(11) The Supplier is obligated to indicate our order number and parts number exactly on all shipping documents and delivery notes if indicated in our order. Notifications of dispatch are to be sent to our goods acceptance department. A delivery note must be included with every shipment. The invoice should be sent to us on the day of dispatch if possible. The delivery note and invoice must contain our order number and parts number, if these are indicated in our order.

(12) If the Supplier fails to properly send the information indicated above in § 3 para. 11 of these Purchasing Conditions to the correct location, we shall not be held responsible for processing delays.

(13) Our signature on a delivery note only provides confirmation that goods were received. It is however not any confirmation that the goods are in order or that the quantity indicated on the delivery note was actually delivered. If deviations are found during a subsequent incoming goods inspection, all resulting rights are reserved.

§ 4 Pre-delivery inspection by the Supplier, obligation to notify

(1) To prevent consequential damage resulting from the delivery of defective goods, the Supplier is obligated to inspect the goods prior to delivery for defects that can be found when performing a proper inspection. The Supplier is obligated to record the results of the pre-delivery inspection in writing and to provide it to us upon request.

(2) If the Supplier becomes aware after delivery that the goods are defective, he is obligated to inform us of this defect immediately in writing. This also applies if the defect gives no reason for a warning based on criminal and/or product liability law or a recall based on criminal and/or product liability law.

§ 5 Prices, terms of payment and late payment

(1) The agreed upon purchase price is binding. An increase in the price is impermissible, for any reason, unless we agreed to it in writing. The agreed upon purchase price shall be understood as inclusive of statutory sales tax, unless otherwise indicated.

(2) The agreed upon purchase price includes costs for delivery, transport and the appropriate packaging needed for transport.

(3) The agreed upon purchase price is due for payment within 30 calendar days from the completed delivery and service (including any agreed upon acceptance inspection) as well as receipt of a proper invoice. If payment is made within 14 calendar days after the applicable deadline according to § 5 para. 3 sentence 1 of these Purchasing Conditions, the Supplier shall grant us a 2% discount on the net amount of the invoice. If making a bank transfer, payment shall be considered as made on time when the transfer is made before the expiration of the payment term, receipt of payment by the Supplier is not the determining factor.

(4) Interest on late payments in accordance with § 353 of the German Commercial Code shall not be owed by us.

(5) The legal regulations apply for late payment.

(6) We shall have the right to offsetting and retention as well as the defence that the contract was not fulfilled. We are entitled in particular to withhold payments that are due as long as we are still entitled to claims against the Seller arising from incomplete or faulty services. Payments shall be made under reservation and do not affect the warranty obligation of the Supplier.

(7) The Supplier shall be entitled to offsetting and retention rights only if such counter-claims have been legally upheld, are undisputed, have been recognized by us or are based on the same contractual relationship.

§ 6 Material defects and defect of title

(1) Without prejudice to the legally defined material defects, the goods shall be considered defective if at the moment of the transfer of risk

- they deviate from the agreed upon quality and/or suitability of the goods;
- they do not fulfil the statutory and/or other legal requirements, which must be complied with when the goods are resold in Germany;
- the goods deviate from the recognised rules of technology, the respectively applicable rules for product safety, applicable DIN standards and/or applicable EU standards and/or were not manufactured according to their requirements; and/or
- are defective in terms of the law on product liability.

(2) The goods have a deficiency in title when at the moment of the transfer of risk, they do not comply with the requirements according to § 11 para. 1 of these Purchasing Conditions. Defectiveness of title is based on § 435 of the German Civil Code.

§ 7 Inspection for defects - liability for defects

(1) The legal regulations apply to the commercial obligation to inspect and to submit complaints with the following conditions: We are obligated to inspect the delivered goods within a reasonable period for typical deviations of any type regarding type, amount, quantity and packaging. The inspection method is limited to our usual method of inspection. The involvement of third parties is not required, nor is an analysis of the chemical composition. The complaint is considered in good time if it is received by the Supplier within a period of 10 working days, starting from the receipt of the goods, or in the case of hidden defects, from their discovery. We are not required to make this complaint as the Supplier was aware or should have been aware of the defect, in particular based on the pre-delivery inspection according to § 4 para. 1 of these Purchasing Conditions.

(2) For our rights in the case of material defects and defects of title regarding the delivered goods, the legal regulations shall apply unless otherwise specified in these conditions, in any case we shall have the right to demand that the Supplier remedies the defect or delivers a new item at our discretion. If the Supplier does not honour his obligation for supplementary performance within a period indicated by us, we shall have the right to remedy the defect ourselves and demand compensation for the expenses necessary or an appropriate advanced payment from the Seller. The right to withdrawal, reduction or compensation, and in particular to compensation instead of performance, remains explicitly reserved.

(3) Subsequent performance also includes the removal of the faulty goods as well as the re-installation of the repaired or replaced goods.

(4) It shall not be necessary to set a grace period for subsequent performance if the Supplier seriously and finally rejects performance or in the case of certain circumstances that justify the immediate enforcement of claims for compensation after taking the interest of both parties into account.

(5) A grace period does not need to be set prior to withdrawal if

- the Supplier seriously and finally rejects the performance, or
- the Supplier does not effect the performance by a contractually specified date or within a period specified in the contract although the timely performance, following notification by us to the Supplier prior to contract conclusion or due to circumstances related to the conclusion of the contract, is essential for us, or
- in the case of a service not provided in compliance with the contract, if certain circumstances are present that justify immediate withdrawal after taking the interest of both parties into account.

(6) The costs incurred for the purpose of inspection and supplementary performance shall be paid by the Supplier even if it turns out that there was actually no defect. Our liability for compensation in the case of unwarranted request to remedy a defect remains unaffected. We shall only be liable if we recognised or were grossly negligent in failing to recognise that there was no defect, and we still demanded supplementary performance.

(7) If the Supplier is an intermediary for the concerned goods, he is not able to exonerate himself according to § 280 para. 1 sentence 2 of the German Civil Code, if he, based on the inspection obligations under § 377 of the German Commercial Code vis-a-vis his Supplier, was aware of or should have been aware of the defect, yet the goods were delivered to us anyhow.

§ 8 Statute of limitations

(1) The Supplier's claims against us fall under the statute of limitations according to legal regulations.

(2) Our claims against the Supplier fall under the statute of limitations according to legal regulations unless otherwise determined below in § 8 para. 3 to para. 5 of these Purchasing Conditions.

(3) In deviation from § 438 para. 1 no. 3 of the German Civil Code, the general period of limitation for warranty claims for defects due to material defects is three (3) years from the transfer of risk. If acceptance has been agreed upon, the statute of limitations starts with acceptance.

(4) In deviation from § 438 para. 1 no. 3 of the German Civil Code, the general period of limitation for warranty claims for defects due to defects of title is five (5) years; the statutory statute of limitations for third party claims for recovery of property according to § 438 para. 1 no. 1 of the German Civil Code remains unaffected. In deviation from § 8 para. 3 sentence 1 of these Purchasing Conditions, claims regarding defects of title shall not be covered by the statute of limitations as long as the third party can assert the right against us - in particular in the absence of limitation.

(5) The statutes of limitations for the purchase right, including the aforesaid extension apply - within the legal scope - for all contractual warranty claims. If due to a defect we also are entitled to non-contractual claims for compensation, the regular statutory limitation period applies according to §§ 195, 199 of the German Civil Code, unless the application of the limitation periods of commercial law in an individual case leads to a longer limitation period.

§ 9 Supplier recourse

(1) In addition to claims for defects, we are entitled to the unrestricted right of recourse according to §§ 478, 479 of the German Civil Code. We are entitled in particular to demand the exact type of supplementary performance (repair or replacement) from the Supplier that we owe to our buyer in the individual case. This does not in any way limit our legal right to make the choice (§ 439 para. 1 of the German Civil Code).

(2) Our recourse claims according to §§ 478, 479 of the German Civil Code also apply when the goods were processed by us or one of our customers before being sold to a consumer, e.g. by means of installation in another product.

§ 10 Product liability - Indemnity - Third party insurance coverage

(1) If the Supplier is responsible for product damage and/or personal injury, he is obligated to indemnify us from damage claims of third parties at the first request, insofar that the cause of this damage was in the Supplier's sphere of control and organisation and he himself is liable in relation to third parties.

(2) Within the scope of his liability for damage claims under § 10 para. 1 of these Purchasing Conditions, the Supplier is also obligated to reimburse all expenses that result from or are connected to a recall program undertaken by us. We will inform the Supplier about the content and scope of the recall measures to be performed - to the extent possible and reasonable - and give him the opportunity to comment. Our other legal claims remain unaffected.

(3) The Supplier is obligated to have product liability insurance with the insured sum of EURO five (5) million per personal injury/proper damage – lump sum; if we are entitled to further damage claims, these remain unaffected.

§ 11 Property rights

(1) The Supplier shall deliver the goods free of third party rights. In particular, the delivery and/or use of the delivered goods shall not infringe upon patents, licenses or any other third party property rights world-wide.

(2) If claims are asserted against us by third parties due to the infringement of third party rights according to § 11 para. 1 of these Purchasing Conditions, – the Supplier shall indemnify us against these claims - without waiving our further claims for compensation. The Supplier's duty to indemnify shall apply to all expenses that we incur in connection with the claims asserted by the third party.

(3) The Supplier's duty to be liable and to indemnify shall not apply if the deliveries were made exclusively according to our models, illustrations, drawings, plans or other documents and he did not know or need to know that the production of the goods based on our models, illustrations, drawings, plans and/or other documents represented a violation of property rights.

§ 12 Spare parts

The Supplier is obligated to provide spare parts for the products supplied to us for a period of at least ten (10) years after the last delivery of the concerned goods.

§ 13 Provisions

(1) If we make parts and/or other materials available to the Supplier, he is obligated to check the parts and/or other materials supplied by us for their suitability, to handle them properly and to use them only for their intended use.

(2) If the Supplier processes the parts and/or other materials supplied by us or combines or mixes them with other movable items, we shall become co-owners of the derived products in a ratio of the value of the materials provided relative to the value of the total product.

(3) Tools, devices and models that we make available to the Supplier or that are produced for the purpose of the contract and for which the Supplier charges us separately shall remain our property or shall become our property. The Supplier shall clearly mark them as our property, carefully store them, protect them against any type of damage and use them only for the purposes of the contract.

§ 14 Confidentiality

The Supplier is obligated to keep confidential the written and oral information that we make available to him in connection with this contract and/or that we make known to him in another manner. This confidentiality obligation refers in particular to data, drawings, manufacturing instructions and all other information expressly marked as confidential or similar or that due to the content would be reasonably considered as being information that should be kept confidential. This obligation to confidentiality no longer applies when the Supplier proves that the confidential information was already known to him before it was disclosed by us or if this information became generally known during the duration of the contract without this being caused by a breach of contract by the Supplier.

§ 15 Prohibition of assignment

Subject to § 354a of the German Commercial Code, the Supplier is not entitled to assign his claims from the contractual relationship to third parties.

§ 16 Supplier's retention of title

(1) Upon delivery, we become the owner of the goods.

(2) However, in deviation from § 16 para. 1 of these Purchasing Conditions, if the assignment of the goods by the Supplier to us takes place under the condition of payment of the complete purchase price, the retention of title shall lapse at the latest with the payment of the purchase price of the delivered goods and the retention of title has only the effect of a simple retention of title. In this case, we shall have the right to resell the goods in during the normal course of business also before payment of the purchase price; the claims arising from the resale, for which we remain authorised to collect, shall be assigned by us to the Supplier, who hereby accepts the assignment.

(3) All other forms of retention of title remain excluded, in particular the extended or transferred retention of title, and retention of title extended for further processing.

§ 17 Place of fulfilment, applicable law and competent court

(1) The place of delivery results from § 3 para. 1 of these Purchasing Conditions. The place of payment and fulfilment for all other obligations resulting from this contract with the Supplier, including subsequent performance and return in case of withdrawal, is 38855 Wernigerode.

(2) For these Purchasing Conditions and the contractual relationship between us and the Supplier, the law of the Federal Republic of Germany shall apply with the exclusion of the UN Convention on the International Sale of Goods.

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(3) If the Supplier is a contractor in terms of the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive jurisdiction for all disputes that arise directly or indirectly from this contractual relationship shall be our place of business in 38855 Wernigerode. We shall also have the right in all cases to file suit at the place of general jurisdiction of the Supplier. Legal regulations that have precedence, in particular those regarding exclusive competence, remain unaffected.

§ 18 – Miscellaneous

(1) If provisions of these Purchasing Conditions should be or become fully or partially ineffective, the validity of the other provisions shall not be affected.

(2) Observation of the written form requires neither a personal signature nor an electronic signature. Notifications via fax or e-mail fulfil the requirement of the written form.

(3) The personal data required for processing the transaction shall be handled confidentially and in accordance with the applicable data protection regulations.

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