

# General Conditions of Sale, Delivery and Service

## Gut Grone GmbH & Co. KG

Date: 30/3/2022

### I. General Terms

1. The following terms and conditions apply for our deliveries and services to a natural person or legal entity or to a partnership with legal capacity when acting in its commercial or self-employed professional activity (entrepreneurs) at the time of conclusion of contract.
2. Conflicting, deviating or supplementary terms and conditions laid down by the buyer shall not be recognised unless previously and expressly approved by us in writing. Our terms and conditions shall also apply in the case of us supplying the buyer without reservation after having been informed of conflicting or deviating terms and conditions on the part of the buyer.
3. Our terms and conditions also apply to all future transactions with the buyer, without us having to refer to them in each individual case. In each case, the version valid at the time of contract conclusion shall apply. We will inform the buyer about changes of our business conditions. Deviating individual agreements shall take precedence over these terms and conditions.
4. German law shall exclusively apply in every case including the UN Convention on Contracts for the International Sale of Goods (CISG).

### II. Conclusion of Contract

1. Our quotations are non-binding and subject to change, unless we have explicitly specified that they are binding.
2. Upon placing an order for the required goods or service, the buyer makes a binding offer to enter into a contract.
3. We are entitled to accept the offer constituted by the purchase order within 2 weeks, either by sending an order confirmation, or by sending the ordered products within the same period.
4. The conclusion of contract is subject to the proviso that there are no impediments to performance, arising from national or international regulations, in particular due to export control regulations and embargoes or other sanctions.
5. If the buyer cancels the contract without legitimate cause, we are entitled to claim liquidated damages caused by the cancellation in the amount of 20 % of the gross sales price, notwithstanding our right to claim further damages actually occurred. The buyer is entitled to prove that we have sustained no or only a minor loss from the order cancellation.
6. We hereby reserve all our proprietary and intellectual property rights as well as copyrights to any and all illustrations, calculations, recipes, drawings and other documentation given to the buyer or his employees. The buyer and his employees may only disclose such items to third parties with our written consent, regardless of whether or not we have designated such items as confidential. The same shall apply to the transmission of information relating to our products which we have made available to the buyer and his employees. This does not apply with regard to information that (i) is generally known or becomes generally known without any fault on the buyer's part, (ii) has been handed over to him by a third party not bound by any confidentiality obligation, (iii) the buyer has to disclose because of a judicial or administrative decision

### III. Creditworthiness

1. If, following conclusion of a contract, information is obtained that the buyer's financial situation has deteriorated considerably, thus to the extent that granting credit would no longer be justified and could jeopardise our entitlement to the purchase price (e.g. insufficient credit insurance), we shall be entitled to demand security (e.g. in the form of advance payment) on due and/or not yet due claims arising from the contracts not yet fulfilled by us. Should the buyer fail to comply with such a request before the deadline, we shall be entitled to withdraw from the contract and to seek compensation for its non-fulfilment. Delivery obligation may be rejected until such advance payment or provision of securities has been effected. Regulations by the German Insolvency Law and the Receivership Law remain unaffected.
2. A material deterioration with regard to the buyer's financial standing can especially be assumed in the case of a handing over of bad cheques, protesting of bills of exchange, futile seizures, forced administration, suspension, application or opening of insolvency proceedings.

### IV. Price and Payments

1. Statutory VAT is not included in the stated prices. It shall be listed separately in the invoice at the legally valid rate on the day of our performance of the delivery.
2. In the case of any third party increasing, reducing or newly implementing any tax rates, duties, freight rates, fees and other charges concerning the delivery subsequent to the conclusion of the contract, such costs shall be borne by/credited to the buyer.
3. Unless otherwise agreed, all invoices are payable net within 7 days of date of invoice. Payment is to be effected by cashless transaction.
4. In addition, we are also entitled to charge interest on arrears from the due date at a rate of 9 percentage points above the base interest rate, as well as all costs incurred by reminder letters sent after the event of default. In particular, in accordance with § 288 V BGB [German Civil Code], we can assert a fixed rate sum for expenses in the amount of € 40. We reserve the right to verify and assert a higher amount for damages caused by the delay.
5. The buyer's inspection obligations or notices of defects do not put the payment term on hold. The buyer is only entitled to withhold a section of the purchase price which is reasonable in relation to the defect. Incoming payments shall amortise outstanding debts in the order in which they have occurred.
6. If the buyer is in culpable default of payment, all other claims can be made due against the buyer.
7. We hereby reserve the right to assign any of our existing and future claims arising from the contractual relationship to third parties, including any securities we are entitled to.

### V. Delivery

1. The general delivery conditions are "FCA Ibbenbüren" Incoterms 2020, if not agreed otherwise individually. We attempt to take the buyer's wishes and interests with regard to the mode and route of dispatch into account. The buyer shall bear any additional costs (e.g. for express delivery) incurred as a result thereof, even if carriage-paid delivery has been agreed.

2. We are only obliged to supply from our stock. The conclusion of an obligation in kind on its own does not constitute acceptance of the procurement risk.
3. If the transport is delayed at the buyer's request or through the buyer's fault, we shall store the goods at the buyer's own expense and risk. In such an event the notification of readiness for dispatch shall be deemed equivalent to dispatch.
4. Information provided regarding delivery dates or deadlines shall be deemed to be non-binding, unless explicitly declared as binding. The delivery time stated by us shall not commence until any preliminary questions regarding the product specification, or special requirements on the part of the buyer have been clarified with the buyer. Likewise, the buyer must fulfil all obligations incumbent upon him/her in a proper and timely manner, in addition to creating the conditions necessary for the performance of the agreed application technology (e.g. commissioning, maintenance) in his factory.
5. If the underlying purchase contract constitutes a transaction for delivery by a fixed date pursuant to § 286 Paragraph 2 No. 4 of the BGB [German Civil Code] or § 376 of the HGB [German Commercial Code], our liability shall be determined in accordance with the statutory provisions. The same shall apply if, as a result of a delay in delivery for which we are responsible, the buyer may claim to be no longer interested in the fulfilment of the contract. In such an event, our liability shall be limited to the foreseeable, typically arising damage, unless the delay in delivery results from a deliberate or grossly negligent breach of contract for which we are responsible. We are also held to be responsible for a default on the part of our representatives or vicarious agents.
6. If a delay in delivery for which we are responsible is based on the culpable breach of a material contractual obligation, the breach of which endangers the purpose of the contract – whereupon we are also held to be responsible for default on the part of our representatives or vicarious agents - we shall be liable according to the statutory regulations, with the proviso that, in such a case, our liability for indemnification shall be limited to the foreseeable, typically arising damage. If the delay in delivery does not constitute a breach of a material contractual obligation we are only liable according to this provision in cases of intentional or grossly negligent behaviour / omission.
7. If we are unable to meet binding delivery deadlines for reasons we are not responsible for (non-availability of the performance), we shall promptly inform the buyer and simultaneously notify him of the expected new delivery deadline. If the performance is also not available within the new delivery period, we shall be entitled to withdraw from the contract in whole or in part; we shall immediately reimburse any consideration already paid by the buyer. A case of non-availability of the performance in this sense is, in particular, the failure of our supplier to deliver on time if we have concluded a corresponding cover transaction. Further cases of non-availability of the performance exist if neither we nor our supplier are responsible or if we do not assume the procurement risk in the individual case.
8. Even in the event of bindingly agreed deadlines and dates, we shall not be held liable for delays in delivery and performance owing to force majeure, labour disputes, unrest, official measures, and other

unforeseeable, unavoidable and serious events (e.g. lack of material, shortage of fuel, transport difficulties or difficulties in energy supply) - also when these delays occur at our suppliers or their sub-suppliers. In the aforementioned cases we are entitled to postpone the delivery or service by the duration of the obstacle in addition to an adequate time period for start-up. We can only plead these mentioned obstacles if we have informed the buyer about the obstacles immediately. Legal cancellation rights are not affected by this provision.

9. Within the delivery periods and terms stated by us, we shall be entitled to render partial deliveries and partial performances insofar as this is tolerable for the buyer.
10. Should the buyer delay acceptance of the goods, we shall be entitled to demand compensation for any losses or additional costs incurred. The same shall apply if the buyer is in culpable breach of his obligation to cooperate. The risk of accidental deterioration or loss shall be transferred to the buyer as soon as he is in default of acceptance resp. in debtor's delay.
11. Deliveries made by lorry and/or waggon shall be unloaded by the buyer immediately. With failure to unload the goods, and when this failure is caused by the buyer, demurrage will be charged € 50.00 net per hour after a waiting time of two hours. The maximum daily rate is € 500.00 net.

#### **VI. Notice of Defects / Guarantee**

1. The basis of our liability for defects is the agreement reached regarding the quality of the goods or the service. All specifications that are the subject of the individual contract shall be deemed to be an agreement on quality. Insofar as no specification has been agreed, it must be decided according to the following legislative provisions whether or not there is an error: according to § 434 Par. 1 sections 2 and 3 BGB [German Civil Code] for deliveries within Germany or pursuant to Art. 35 Par. 2a, 2c, 2d CISG for deliveries to other countries.
2. The buyer shall be obliged to inspect the delivered goods for any apparent defects. Upon delivery, the buyer shall also be obliged to check the documentation accompanying the goods in order to verify conformity with the purchase order details relating to the goods. Complaints relating to the quantity of goods delivered and/or any other form of shortfall or damage are to be noted as ascertained facts on the consignment note and/or transport documents at the time of acceptance of the consignment and to be confirmed by means of the driver's signature.

After receipt of the goods at the point of destination, the buyer has to notify us immediately in writing of any apparent defects stating in detail the nature and extent of the defects. Notification in the normal course of business regarding defects that become apparent at a later date has to ensue immediately after detection, stating the nature and the extent of the defects in detail. The date of receipt by us shall be decisive for compliance with the complaint period.

Defective goods shall be provided to us at the premises of the buyer for our inspection.

With any infringement of the buyer's duty to inspect or to give notice of defects, the goods shall be deemed to have been approved with regard to the respective defect.

3. With regard to defects of the delivered goods, we hereby, first of all, warrant either to remedy the defect or to replace the consignment at our discretion. In the case of replacement, the buyer shall be obliged to return the defective good(s). We shall bear the expenses required for providing subsequent performance, in particular transport, travel, labour and material costs, provided that these are not increased by the fact that the object of sale, contrary to its intended use, has been taken to a place other than the place of performance (§439 BGB) [German Civil Code].

4. In the event that the defect may not be remedied within a reasonable period of time or that two attempts to remedy the defect or provide a replacement fail for whatever reason, the buyer shall, at his own discretion, be entitled to ask for a lower price for the goods (price reduction) or withdraw from the contract. Failure to remedy the defect shall only then be deemed to have occurred if, after being granted sufficient opportunity to remedy the defect or supply a replacement, the desired results are not achieved, a remedy or replacement consignment proves to be impossible, we refuse or unreasonably delay such a remedy or replacement consignment, there is reasonable doubt as to the prospects of success, or if other reasons constitute a hardship.

The buyer shall not be entitled to withdraw from the contract on the grounds of a minor breach of contract, especially with regard to minor defects.

5. If the use of the goods leads to an infringement of industrial property rights or copyrights in Germany, apart from the cases pursuant to Section VI. 6, we shall either, at our cost, provide the right of further use for the buyer or modify the goods in a manner acceptable to the buyer so that the infringement no longer exists, and this shall be done at our expense and at our discretion. If this is not possible within 6 weeks of receipt of a corresponding written request from the buyer, the buyer is entitled to withdraw from the contract. Under the aforementioned condition, or if the above-mentioned elimination of the infringement of property rights is not reasonably possible from an economical perspective, we also have the right to withdraw from the contract. In addition to this, we shall indemnify the buyer from undisputed or legally established claims of the relevant property rights holder.

6. In the event of breach of copyright or copyright, our obligations mentioned in Section VI. 5. are final. Such obligations only exist if:

- the defect of title is not based on an instruction made by the buyer or document submissions of the buyer or
- the violation of rights was not the result of the buyer having modified the goods on his own authority or having used them in a manner that is not in accordance with the contract.

The buyer must inform us without delay of any asserted infringements related to industrial property rights or copyrights and support us in defending the asserted claims to a reasonable extent, or enable us to carry out the modification measures in accordance with Section VI.5. We reserve the rights to all defensive measures, including out-of-court settlements.

7. Should the buyer opt to withdraw from the contract on the basis of a defect of title or a material defect after a

failed supplementary performance, he shall only be entitled to require compensation according to Paragraph VII.

8. Claims relating to defects in respect of the delivered goods shall become statute-barred within one year of the goods being delivered. Claims for services rendered shall become time-barred within one year after acceptance of the service. If we, our legal representatives or vicarious agents, act in a grossly negligent manner or with intent, or was a person's life, body or health subjected to harm due to this defect, for which we are responsible, the legal deadlines apply. The statutory limitation periods for cases of delivery recourse according to §§ 478, 479 BGB [German Civil Code] remain unaffected for deliveries within Germany.

#### **VII. Liability**

1. In accordance with the statutory provisions, we shall bear unlimited liability for damage to life, limb and health based on a negligent or intentional breach of duty on our part, on the part of our legal representatives or our vicarious agents, and for damages subject to liability pursuant to the applicable product liability law. We shall be liable to the extent provided for by law for damage which is not covered by Clause 1 and which is based on an intentional or grossly negligent breach of duty or malice on our part as well as that of our legal representatives or our vicarious agents. To the extent that we have issued a guarantee as to quality and/or durability with respect to the goods or parts thereof, we shall also be liable in the context of that guarantee. However, we shall only be liable for damages that are based on the absence of the guaranteed quality or durability, but which do not directly occur in the goods themselves, provided the risk of such damage is clearly covered by the quality and durability warranty.

2. We shall also be liable for damage caused by ordinary negligence, if such negligence relates to the breach of contractual obligations that endanger the achievement of the contract purpose (essential obligations). However, we shall only be liable if the damage is typically associated with the contract, and is predictable.

3. All other forms of liability shall be excluded, regardless of the legal nature of the claim asserted. This shall apply, in particular, to claims in tort, or claims for compensation for futile expenditure in lieu of performance; this shall not affect our liability pursuant to Paragraph V No. 4 to Paragraph V No. 5 of this contract. Any exclusion or limitation of our liability shall also apply to the personal liability of our white-collar and blue-collar employees, co-workers, representatives and vicarious agents.

4. Claims for damages asserted by the buyer in respect of a defect shall become statute-barred one year after delivery. The statutory limitation periods shall apply in the event of injury to life, limb or health caused by ourselves, our legal representatives or our vicarious agents, nor shall it apply if we, or our legal representatives, have acted in an intentional or grossly negligent manner, or if our ordinary vicarious agents have acted in an intentional manner.

#### **VIII. Retention of Title**

1. The goods shall remain our property according to § 449 German Civil Code (BGB), and in consideration of the following supplements, until full payment has been

effected.

2. The buyer's purchase price or labour cost claims deriving from the resale or processing of the goods delivered by us, together with all ancillary rights, are herewith assigned to us in advance. In the event that the buyer should sell the goods to which we have reserved title, together with other goods to which we do not have title, the assignment of the claim, or assignments of the claims, shall only apply to the extent of the value of the goods we have delivered. Should the goods be processed or converted with the help of objects or materials that do not belong to us, we shall acquire part ownership of the new object that shall represent the proportionate value of the goods supplied by us to the other processed or converted object. The same shall apply in cases where the goods are mixed with other objects or materials that do not belong to us.
3. The buyer shall only be entitled to resell or process the goods supplied by us in the ordinary course of business and under the presupposition that the purchase price or wage claims from such resale be transferred to us in accordance to Paragraph 2. Should the buyer be in payment arrears, he must obtain our specific consent in order to dispose of those goods in respect of which full payment has not yet been made.
4. Regardless of the assignment, the buyer shall nevertheless be entitled to collect sums due from the reselling or processing of the goods. Our entitlement to collect sums due shall not be affected by the right of the buyer to do the same. However, we shall not collect sums due, provided that the buyer continues to settle his obligations to pay. At our request, the buyer shall be obliged to inform the third-party of the assignment and to present us the necessary documents to assert our rights against said third-party.
5. Our right of retention is contingent on full payment of all receivables arising from our business relations being effected whereby ownership of the goods supplied by us and subject to retention shall then pass to the buyer and the assigned claims shall be due to the buyer. We hereby commit to release the appertaining securities in accordance with the above provisions at our discretion and to the extent that such value exceeds the secured debts by more than 10%; however, this presupposes that the release of securities for such goods or their replacement value occurs once they themselves have been paid for in full.
6. Upon reselling the goods, the buyer himself is to agree with his customer the right of retention on the goods supplied by us and which are subject to our right of retention in order to safeguard our ownership.
7. The buyer is obliged to sufficiently insure our goods against damage caused by the elements, in particular fire, water, storm, and hail as well as tap water damage and theft, and to provide us with evidence of the conclusion of the insurance policy on request. The goods are to be stored in such a way that our right of ownership remains unaffected.

#### **IX. Business correspondence and contract language**

1. In order to simplify business processes and improve their efficiency, invoices will be sent by us electronically, as is commonplace in the industry. The buyer shall inform us of the corresponding e-mail address for the receipt of invoices at the latest with

the first order and will notify us of any changes to this e-mail address without delay.

2. English shall be the contractual language for international contracts. In these cases, this shall also apply to all business correspondence.

#### **X. Jurisdiction / Place of Fulfilment**

1. In the event that the buyer is a businessman, a legal entity founded under public law or a public utility, the sole place of jurisdiction for all disputes arising from this contract shall be at our place of business. The same shall apply in the event that the buyer has no general place of jurisdiction in Germany or his permanent or habitual place of residence is unknown at the time the action is brought. We shall, however, also be entitled to take action against the buyer at his place of residence and/or registered place of business. In the event of a lawsuit outside of Germany which is lost by the buyer, the buyer shall bear our costs necessarily arising out of the prosecution or the defence, especially but not limited to court fees, attorney costs, experts' costs, travel costs and expenses.
2. Provided that nothing to the contrary has been stated in the order confirmation our place of business shall be the place of fulfilment.