

General Terms of Sale of MAL Germany GmbH & Co KG

(Date of issue: October 2019)

§ 1 Scope

(1) The following general terms of sale (hereinafter known as “**GTS**”) shall apply to all our business relationships with our customers (hereinafter known as “**Purchaser**”). These GTS shall only apply if the Purchaser is a company (Section 14 of the German Civil Code (BGB)), a legal entity under public law or a public law special asset.

(2) The GTS shall particularly apply to contracts for the sale and / or the delivery of movable items (hereinafter known as “**Goods**”), regardless of whether we manufacture the Goods ourselves or buy them from suppliers (Sections 433, 650 of the Civil Code (BGB)). Unless otherwise agreed, the GTS shall apply in the version in force at the time at which the Purchaser places the order or the last version provided in writing in the form of a blanket contract, also for future contracts of the same type without our having to refer to them in each individual case. The GTS are available at:

[<https://mal-germany.de/agb/>].

(3) These GTS shall apply exclusively. Deviating, contrary or supplementary general terms of business issued by the Purchaser shall only become an integral part of the contract if and in as far as we have expressly agreed to them. This requirement for agreement shall apply in any event, for example, even if we deliver Goods to the Purchaser without reservation in the knowledge of its general terms of business.

§ 2 Contract conclusion

(1) Our quotations shall be non-binding and subject to change. This shall apply even if we have sent the Purchaser catalogues, technical documentation (for example drawings, plans and calculations), other product descriptions or documents (including in electronic form) to which we retain title and copyright.

(2) The purchase order for the Goods by the Purchaser shall be a binding contract offer. Unless specified to the contrary in the purchase order, we shall be entitled to accept this contract offer within 2 weeks of its receipt by us.

(3) The acceptance can either be declared in writing (for example by an order confirmation, receipt of our delivery note or invoice) or by delivering the Goods to the Purchaser.

§ 3 Delivery period and delayed delivery

(1) Delivery periods shall be agreed individually or specified by us when we accept the purchase order. (2) If we are unable to meet binding delivery periods for reasons for which we are not responsible (non-availability of the service), we shall notify the Purchaser about this without delay and at the same time provide the likely new delivery period. If the service is also not available within the new delivery period, we shall be entitled to cancel the contract in full or in part; we shall reimburse any payment made to us by the Purchaser without delay. A case of the non-availability of the service in this sense shall in particular be the late delivery of Goods by our suppliers if we have concluded a congruent cover transaction, neither we nor our supplier bears any blame, or we have no obligation to make a purchase in the specific case.

(3) The start of our being in default with the delivery shall be determined by the statutory regulations. In any event, however, a reminder by the Purchaser shall be required.

(4) The rights of the Purchaser under § 8 of these GTS and our statutory rights, particularly in the event of an exclusion of the obligation to provide the service (for example as a result of it and/or re-fulfilment being impossible or unreasonable) shall not be affected.

§ 4 Delivery, transfer of risk, acceptance procedure, delayed acceptance

(1) Unless otherwise agreed, the Goods shall be delivered EX WORKS which means our premises shall also be the place of fulfilment for the delivery and any re-fulfilment. At the request and expense of the Purchaser, the Goods shall also be sent to a different consignee address (sale by dispatch). Unless otherwise agreed, we shall be entitled to determine the type of shipment ourselves (in particular the transport contractor, method of transport and packaging).

(2) The risk of accidental loss and accidental deterioration of the Goods shall be transferred to the Purchaser at the latest when the Goods are handed over, unless otherwise agreed. In the event of a sale by dispatch, however, the risk of accidental loss and accidental deterioration of the Goods and the risk of delay shall be transferred on delivery of the Goods to the forwarder, the freight driver or another person or institution engaged to complete the transport. If an acceptance procedure has been agreed, it shall decide when the risk is transferred. In addition, in the event of an acceptance procedure having been agreed, the statutory regulations of factory contract law shall apply as and where appropriate. The transfer or acceptance procedure shall be identical if the Purchaser is in default with accepting the Goods. The Purchaser undertakes to accept Goods which comply with the contract, to verifiably document any damage and to notify us of it in writing.

(3) If the Purchaser is in default with accepting the Goods, fails to provide an agreed cooperation task, or our delivery is delayed for other reasons which are the responsibility of the Purchaser, we shall be entitled to demand compensation for the resulting damage, including additional expenses (for example warehousing costs). For this, we shall charge a lump sum compensation amount of EUR 150.00 per calendar day, starting on the date of delivery or, if there is no date of delivery, on the date on which notification that the Goods are ready for shipment was sent. We reserve the right to provide evidence that the damage was higher and make our statutory claims (in particular reimbursement of additional expenses, reasonable compensation and termination); however, the lump sum compensation must be set off against any other monetary claims. The Purchaser reserves the right to provide evidence that we suffered no damages or that they were significantly lower than the above lump sum.

(4) We shall not accept liability if the delivery is impossible or for delays in delivery if they are caused by forces majeure or other events which could not be foreseen at the time that the contract was concluded (for example operational problems of any kind, difficulties with the supply of material or energy, transport delays, strikes, legal lock-outs, lack of workforce, energy or raw materials, difficulties in obtaining required official licences, official action or the failure of suppliers to supply us, supply us promptly or supply the correct items), if we are not responsible for them. If these events make the delivery of the Goods or provision of the service significantly more difficult or impossible, and the problems are not just of a temporary nature, we shall be entitled to cancel the contract. In the event of problems of a temporary nature, the delivery or service completion deadlines shall be extended or the delivery or service completion dates shall be postponed by the duration of the problem plus a reasonable start-up period. If the Purchaser cannot reasonably be expected to accept the Goods or service as a result of the delay, they may cancel the contract by means of an immediate written declaration.

(5) We shall be entitled to make part-deliveries if the part-delivery can be used by the Purchaser for the purpose set out in the contract, the delivery of the remaining Goods is assured and the Purchaser does not suffer any significant additional work or costs as a result (unless the seller states that they are prepared to pay these costs).

§ 5 Prices and terms of payment

(1) Unless otherwise agreed in the specific case, our current prices at the time of the contract conclusion shall apply, on an EX WORKS basis, plus statutory value-added tax.

(2) In the event of a sale by dispatch (§ 4 paragraph 1), unless otherwise agreed, the Purchaser shall pay the transport costs from the warehouse and the costs of any transport insurance required by the Purchaser. Any duties, fees, taxes and other public charges shall be paid by the Purchaser unless otherwise agreed.

For Goods delivered to the consignee address in containers, any costs incurred for demurrage or detention or costs incurred by a customs inspection or an order from the veterinary department shall be invoiced separately as they are not included in the quoted price.

If the agreed prices are based on our list prices and the delivery is not to be made for more than four months after the conclusion of the contract, the list prices in force at the time of delivery shall apply. Changes are possible, particularly as a result of events which are unforeseeable at the time of the contract conclusion.

(3) The purchase price shall be due and payable within five days from the date of the invoice and the delivery or acceptance of the Goods. However, even in an ongoing business relationship, we shall be entitled at any time to demand payment in advance for a consignment in full or in part. We shall declare any such reservation at the latest in our order confirmation.

(4) At the end of the above payment period, the Purchaser shall be in default. During default, the purchase price shall attract interest at the current statutory default interest rate. We reserve the right to claim additional default damages. Our claim to commercial late payment interest (Section 353 of the Commercial Code) against business people shall not be affected.

(5) The Purchaser shall only be entitled to rights of setting off and retention if its claim has been established in a court of law or is undisputed. In the event of defects in the consignment, the rights of the Purchaser against us, particularly those set out in § 7 paragraph 6 sentence 2 of these GTS shall not be affected.

§ 6 Reservation of title

(1) We shall reserve title to the sold Goods until all our current and future accounts receivable from the purchase contract and any current business relationship (secured accounts receivable) have been settled in full.

(2) The reserved title Goods must not be pledged to third parties or ownership of them transferred by way of security before all secured accounts receivable have been settled in full. The Purchaser must notify us immediately in writing if an application for opening insolvency proceedings is submitted or if third parties attempt to access Goods which belong to us (for example seizures).

(3) If the Purchaser acts contrary to the contract, particularly if they fail to pay the due purchase price, we shall be entitled to cancel the contract under the statutory regulations and/or to demand the return of the Goods covered by the reservation of title. The demand for the return of the Goods shall not necessarily include cancellation of the contract; in fact, we shall be entitled simply to demand the return of the Goods and reserve the right to cancel. If the Purchaser fails to pay the due purchase price, we may only claim these rights if we have previously set the Purchaser a reasonable deadline for payment or the statutory regulations do not require us to set such a deadline.

(4) The Purchaser shall be authorised until further notice as described in (c) below to resell and/or to process the reservation of title Goods as part of its normal business activities. In this case, the following provisions shall also apply.

(a) The reservation of title shall extend to the products resulting from the processing, mixing or connecting of our Goods at their full value, wherein we shall be deemed to be the manufacturer. If the processing, mixing or connecting with Goods from third parties results in their title rights being retained, we shall acquire co-title proportionate to the invoice values of the processed, mixed or connected Goods. Otherwise the same shall apply to the resulting product as to Goods supplied with reserved title.

(b) The accounts receivable from third parties resulting from the resale of the Goods or the product are hereby assigned by the Purchaser to us in full or up to any co-title due to us as described in the previous paragraph as security. We hereby accept this assignment. The Purchaser's duties set out in paragraph 2 shall also apply to the assigned accounts receivable.

(c) The Purchaser shall remain authorised to collect the account receivable in addition to us. We undertake not to collect the account receivable as long as the Purchaser fulfils its payment obligations to us, there is no problem with its solvency and we do not claim the reservation of title by exercising one of the rights set out in paragraph 3. If, however, this is the case, we may demand that the Purchaser notifies us of the assigned accounts receivable and the debtors concerned, provides all the information required for collection, issues us with the relevant documents and notifies the debtors

(third parties) of the assignment. Furthermore, in this case we shall be entitled to revoke the Purchaser's authorisation for reselling and processing the reservation of title Goods.

d) If the realisable value of the securities exceeds our claims by more than 10%, we shall release securities covering the excess value at our discretion at the request of the Purchaser.

§ 7 Defect claims by the Purchaser

(1) The statutory regulations shall apply to the rights of the Purchaser in the event of material and legal defects (including incorrect and short delivery) unless specified to the contrary below. The special statutory regulations for the final delivery of the unprocessed Goods to a consumer, even if the latter has processed them, shall not be affected in any event (supplier recourse under Section 478 of the Civil Code (BGB)). Claims for supplier recourse shall be excluded if the defective Goods have been further processed by the Purchaser or another company, for example by being installed in another product.

(2) The basis for our defect liability shall, above all, be the agreement relating to the properties of the Goods. Details of the Goods or service (for example weights, dimensions, utility values, load capacity, tolerances and technical data) as well as our illustrations (for example drawings and figures) shall only be regarded as approximate unless their use for the purpose specified in the contract requires precise compliance. They shall not be guaranteed property features but descriptions or identifiers for the Goods or service. Standard commercial deviations and deviations made on the basis of legal regulations or technical improvements shall also be permitted as shall the replacement of components by equivalent parts as long as they do not adversely affect their use for the purpose set out in the contract.

(3) If the properties were not agreed, an assessment must be made on the basis of the statutory regulation as to whether the Goods are defective or not (Section 434 (1) sentence 2 and 3 of the Civil Code (BGB)). However, we cannot accept any liability for public statements made by the manufacturer or other third parties (for example advertising statements), which the Purchaser has not brought to our attention as statements on which its decision to make the purchase was based.

(4) The defect claims by the Purchaser assume that the Purchaser has satisfied its statutory duties to inspect the Goods and register complaints (Section 377 and 381 of the German Commercial Code (HGB)). For building materials and other Goods designed for installation or other processing, an inspection must be made in any event immediately before their use. If a defect is identified on delivery, during the inspection or at any later time, we are to be notified in writing of it without delay. In any event, obvious defects must be reported in writing within seven working days from the delivery and any defects which are not identified during the inspection must be reported in writing within the same deadline after their discovery. If the Purchaser fails to conduct a proper inspection and/or report defects correctly, our liability for the defect not reported or not reported promptly or correctly shall be excluded under the statutory regulations.

(5) If the supplied item is defective, we may initially choose whether we provide the re-fulfilment by means of rectifying the defect (rework) or by supplying a perfect item (replacement delivery). Our right to refuse the re-fulfilment under the statutory regulations shall not be affected.

(6) We shall be entitled to make the re-fulfilment conditional on the Purchaser paying the due purchase price. However, the Purchaser shall be entitled to retain a reasonable part of the purchase price commensurate with the defect.

(7) The Purchaser has to provide us with the time and opportunity required to complete the re-fulfilment, and in particular to hand over the defective Goods for testing. In the event of a replacement delivery, the Purchaser must return the defective Goods to us as required by the statutory regulations. The re-fulfilment shall not include the removal of the defective Goods or their reinstallation if we were not originally obliged to install them.

(8) The expenses required for inspection and re-fulfilment, particularly transport, travelling, labour and material costs and any removal and installation costs shall be borne or reimbursed by us on the basis of the statutory regulation if the Goods are actually defective. Otherwise, we may demand the reimbursement of the costs incurred from the unjustified defect rectification demand from the Purchaser (particularly inspection and transport costs) unless the Purchaser was unable to identify that the Goods were not defective.

(9) In urgent cases, for example if operational safety is jeopardised or to prevent disproportionate damages, the Purchaser shall be entitled to rectify the defect themselves and to demand reimbursement from us of the actual expenses required for this process. We must be notified without delay, if possible, beforehand, of any such work being carried out by the Purchaser themselves. The Purchaser shall not be entitled to carry out the work themselves if we would have been entitled to refuse re-fulfilment under the statutory regulations.

(10) If the re-fulfilment fails or a reasonable deadline set by the Purchaser passes without any action, or no such deadline is required under the statutory regulations, the Purchaser may cancel the purchase contract or reduce the purchase price. However, the right to cancel shall not exist for a minor defect.

(11) Claims by the Purchaser for compensation or the reimbursement of costs paid in vain shall only apply on the basis of the condition set out in § 8, even if there is a defect, and shall otherwise be excluded.

(12) The warranty on our products is only valid if they are stored properly, for the period until the best before date and for Goods in our undamaged, unopened original containers. When opening our original bulk containers, for example for the purpose of taking samples, further processing or decanting, the Purchaser himself must ensure that the Goods are not exposed to any risk of contamination. We expressly point out that we cannot be held liable for damage of any kind that has occurred outside our sphere of influence.

§ 8 Other liability

(1) Unless specified to the contrary in these GTS, including the following provisions, we shall accept liability under the statutory regulations if we breach contract and non-contract duties.

(2) We shall be liable for compensation, regardless of the legal basis for it, for malice and gross negligence under fault-based liability. In the event of simple negligence, we shall only accept liability, notwithstanding the statutory limitations of liability (for example care in one's own affairs and not insignificant breach of duty)

a) for damage based on death, physical injury or health impairment,

b) for damage based on the breach of a cardinal contract duty (duty, compliance with which makes the correct execution of the contract possible in the first place and on compliance with which the contract partner normally relies and may rely); in this case, however, our liability shall be restricted to compensation for the typically foreseeable damage in such a situation.

(3) The limitations of liability set out in paragraph 2 shall also apply to breaches of duty by or for the benefit of persons for whose culpability we are responsible under the statutory regulations. They shall not apply if we maliciously fail to mention a defect or have accepted a guarantee for a property of the Goods and for claims by the Purchaser under the Product Liability Law.

(4) The Purchaser may only cancel the contract or give notice of termination for it due to a breach of duty which does not relate to a defect if we are responsible for this breach of duty. A free right of termination on the part of the Purchaser (in particular under Section 650 and 648 of the Civil Code (BGB)) shall be excluded. Otherwise the statutory requirements and legal consequences shall apply.

§ 9 Statute of limitations

(1) Contrary to Section 438 (1) No. 3 of the Civil Code (BGB), the general statute of limitations for material and legal defects shall be one year from the date of delivery. If an acceptance procedure has been agreed, the statute of limitations shall commence with the acceptance.

(2) The statute of limitation periods under purchasing law set out above shall also apply to contract and non-contract compensation claims by the Purchaser based on a defect in the Goods unless the application of the regular statute of limitations (Section 195 and 199 of the Civil Code (BGB)) would result in a shorter statute of limitations in the specific case. Compensation claims by the purchaser based on § 8 paragraph 2, sentence 1 and sentence 2(a) and under the Product Liability Law,

however, shall become statute-barred exclusively on the basis of the statutory statute of limitations periods.

§ 10 Selection of law and place of jurisdiction

(1) The laws of the Federal Republic of Germany shall apply to these GTS and the contract relationship between us and the Purchaser with the exclusion of international standard law, particularly the UN Convention on Contracts for the International Sale of Goods.

(2) If the Purchaser is a businessman in the sense of the Commercial Code (HGB), a legal entity under public law or a public law special asset, the exclusive (including international) place of jurisdiction for all disputes arising from the contract shall be our place of business in Mainbernheim. The same shall apply if the Purchaser is a company in the sense of Section 14 of the Civil Code (BGB). However, we shall also be entitled in all cases to lodge a lawsuit at the place of fulfilment of the delivery duty under these GTS or a priority individual agreement or at the general place of jurisdiction of the Purchaser. Priority statutory regulations, particularly relating to exclusive jurisdiction, shall not be affected.
