

Terms and Conditions for the GOECKE GmbH & Co. KG, Ruhrstraße 38, 58332 Schwelm and the GOECKE AUSTRIA GmbH, Am Hochrain 8, A-3454 Thallern

## I. Applicability and Validity

1. These terms and conditions are applicable for all contracts and contractual activities of the GOECKE GmbH & Co. KG and/or the GOECKE AUSTRIA GmbH („the seller“), as long as the appropriate contact has the manufacturing, sale, and/or the delivery of good by the GOECKE GmbH & Co. KG and/or the GOECKE AUSTRIA GmbH as a contractual object. For sales made at GOECKE GmbH & Co. KG's online shop, the separate "GOECKE GmbH & Co. KG's terms and conditions for the online shop" shall take precedence in applicability.

2. Furthermore, these terms and conditions are only applicable for business, pursuant §§ 310, 14 BGB ("the buyer"), contractual partners of the seller.

3. Contracts, contractual activities, deliveries or other services from the seller will be only be performed on these conditions. These are also applicable if the seller, with the knowledge of differing conditions of the contractual partners, performs the delivery/services without any reservations. The buyer's terms and conditions are only applicable if the seller confirms this in writing. Should special conditions be agreed in writing upon for certain orders, then the terms and conditions here are subordinate and complementary.

4. As long as it is foreseen in the provided terms and conditions in written form, the transmission of declarations by means of fax or e-mail is permitted. A written agreement has a materialized validity, in which the buyer and the contractual partner each have indicated the content declaration of coverage in writing.

## II. Offer and Conclusion of Contract

1. The seller's offers are non-binding. This is also notably applicable for the contents of the seller's sales catalogs, which can, for example, differ from the catalog because of raised manufacturer prices in the interim. A contract between the buyer and the seller shall only be materialized, when the seller makes a statement to the buyer in writing of order acceptance. Seller reticence with regards to an order placed by the buyer does not correspond to explanatory power and cannot justify conclusion of contract. A commercial letter of confirmation by the buyer even without an objection from the seller does not substantiate the conclusion of contract with contents deviating from the offer, the order confirmation or other written explanations of the seller.

2. The content of the contract arises only from an order confirmation and these terms and conditions. As long as the seller's confirmation of the order differs from the order of the buyer, the contract shall materialize with the mentioned content in the confirmation of the order.

3. Other content, especially from catalogs or other sales documents used by the seller, shall only then be the object of the contract, if it is explicitly stated in the confirmation of the order.

## III. Price and Payment

1. The prices named by the seller are denominated in Euro, and the buyer shall make payments in Euro, unless otherwise agreed upon. All named prices are net prices and are to be understood as ex-work excluding VAT, unless otherwise agreed upon.

2. Should the seller's purchase price increase between conclusion of contract and execution of the order, among contracts that are to be fulfilled by the seller later than four months after the conclusion of the contract or for reasons for which the buyer is responsible cannot be fulfilled until four months after conclusion of the contract, the seller shall be entitled to request a higher price of the proportionate portion of the affected purchase price. In case of continuing obligations, the seller also has this right, if the period between conclusion of the contract and fulfillment is shorter than the four-month period.

3. The buyer shall only be granted a discount, if this is agreed upon in writing. However, the seller has the right to negate the granting of a discount even after conclusion of the contract, even if only one invoice- excluded are invoices with a valid objection from the buyer- is not paid by the buyer. For discounted invoices, the listed net invoice amount are decisive after deducting discounts, shipping, returned goods credits, etc..

4. As long as the buyer places an order based on the sales catalog, the seller shall grant a volume discount for articles marked in the catalog with a "\*" according to the following stipulations:  
 Net order value starting at  
 300,00 € a volume discount of 5,00 %,  
 600,00 € a volume discount of 8,00 %,  
 1000,00 € a volume discount of 10,00 %.  
 Only volume discount products shall be taken into account when figuring out the proper level of discount. The seller reserves the right to remove individual articles from the list of the volume discount articles.

5. The seller shall issue the buyer an invoice or invoices for services. Invoices from the seller are to be paid within 30 days of invoicing at the latest after reception of delivery or services without any discount of payment.

6. Payments shall be made to the seller's business account in the respective invoice. Should various business accounts be listed, payments can be made to any of the listed accounts. Checks and bill of exchange are not accepted by the seller.

7. Against payment claims of the seller, offsetting is not permissible with disputable and/or non-legal determinable counterclaims from the seller. Due to notice of defects, the buyer may only withhold payment, if there is no doubt about the notice of defects. Additionally, the withheld payment must be in an appropriate relationship with the occurring defect.

## IV. Shipment deliveries and transfer of risk

1. The seller shall ship goods to the shipping and delivery address. The shipping and delivery address is the, or one of the, address provided in the seller's order confirmation, unless the buyer has explicitly provided other information to the seller.

2. The seller has the discretion to choose shipping material and type, unless something else was explicitly agreed upon with the buyer. Incurred shipping – and packaging costs and other costs, which incurred through import and export of the goods, public law or civil law, shall also be picked up by the buyer. Provided, it does not involve costs caused by the seller's gross negligence.

3. In any case, the risk is transferred from the seller to the buyer upon the dispatching of the goods. This applicable regardless of the place of shipment, if freight-free delivery or delivery to free places has been agreed upon (as an exception), and / or the seller, in addition to the delivery, has yet to provide other services (e.g. installation, installation, commissioning) at the buyer's place of use. This does not apply in cases where the seller's own employees have transported, or the seller's employees are at fault for the destroying the product or damage.

4. Only by explicit agreement with the buyer and at the buyer's expense, the delivery item shall be insured by the seller against all desired and insurable risks of the buyer, notably theft and transport damaged. Damage during transport shall be immediately notified to the seller. Additionally, upon delivery, the recipient shall ensure the registration of appropriate claims and reservations toward the carrier.

5. The seller shall be entitled, but is not obligated, to carry out partial deliveries and to calculate them separately. Provided, the partial deliveries are reasonable for the buyer, and the seller has justified grounds for these partial deliveries. Other provisions are for the seller only compulsory if they were agreed upon in writing.

6. Upon conclusion of contracts with an order value not exceeding 50,00 € net, the seller is entitled to apply a "small quantity surcharge" for the increased administrative expenses in the amount of 10,00 €.

## V. Delivery Date, Delivery Deadlines and Delays

1. Delivery date and/or delivery deadlines are only then binding for the seller, if this is agreed upon in writing.

2. The payment deadline starts with the seller's acceptance of an order, but not before the receipt of a possible payments by the buyer. If prepayment is agreed upon, the delivery shall be dispatched after full payment of the invoice has been made.

3. The seller shall be entitled to charge the buyer an increase sales price, if the agreed upon date of delivery is more than four months after conclusion of the contract and if, after conclusion of the four months, unforeseen costs, which are not the seller's responsibility, result in connection with the products. The seller shall conveyed this to the buyer in written form and with a justification.

4. The delay of delivery can only be attributed to the seller and justify the buyer's claims for damages, if the seller has intentionally caused or was grossly negligent towards the seller. Or, if the delay of delivery involves damages from the loss of life, personal injury, health damages or the freedom of our contractual partner. Insofar delays, caused by force majeure or other events and out of the seller's control, cannot be attributed to the seller. Latter shall, for example, be assumed if the seller is dependent on the manufacturing or delivery of the goods in the contract or services of a third party and if the third party does not provide these goods or service on time. The buyer's right to rescind from the contract in case of delays in delivery by the seller remains unaffected, insofar it exists by law.

5. Should the shipment be delayed by the buyer's preference or for other reasons or should the buyer be in default of acceptance, the seller is entitled to store the goods at the buyer's expense and risk. In this case, the risk is transferred to the buyer with the notification of delivery of readiness. There is no obligation for the buyer to insure the stored goods.

6. Should the buyer wind up in complete or partial default with the acceptance of the services, the seller is allowed either to rescind from the contract or to demand compensation instead of the service. This occurs after the unsuccessful expiration of a reasonable deadline set by the seller, where a warning of an expired deadline results in the rejection of the acceptance of service. This is only applicable for the not already completed part of the contract by the seller. In case of acceptance delay by the buyer, the legal rights of the seller remain otherwise unaffected.

## VI. Defects of the Sold Goods

1. Information about the properties or use of the goods, provided to the buyer by the seller through sales catalogs, price lists and other information materials do not constitute a quality agreement, let alone a guarantee by the seller. These sort of agreements between the contractual partners must be explicitly agreed upon in writing.

2. Images, dimensions, weight, information about color and surface quality and other qualities, which are contained in catalogs, brochures, price lists, descriptions, drawings or other documents of the seller present only approximate values usual in the line of business. Samples are only applicable, insofar, as an approximate representative sample for quality, dimensions and other properties.

3. In case of technical conditional necessities, the seller shall be authorized to deliver the ordered goods with deviations in properties, dimensions and other properties. The seller will notify the buyer as to such changes in a timely manner. In this case, the buyer is not entitled to any claims of guarantee, if and, insofar, as the changes do not lead to significant impairments of the product's usage for the buyer.

4. The seller shall be entitled to render excess or short deliveries up to ten percent of the agreed upon quantity of goods without a potential triggering of buyer's guarantee claims. Other provisions are only applicable, if they were explicitly agreed upon between the contractual partners.

5. The buyer is obligated to inspect the goods upon receiving them for transport damages or other defects. In cases of sales and/or deliveries of surveying products, this involves a general inspection of the functioning provided this is reasonable for the buyer. Should there be defects, the buyer must promptly document them and notify these defects to the seller in writing with pictures. Should the buyer not comply with these obligations, the goods are therefore effectively approved. For defects, which are not recognizable upon delivery, the notification of defects must take place promptly after discovering the defect. § 377 HGB is applicable otherwise.

6. Upon request, the buyer is obligated to provide the seller with a sufficient amount of the defective parts in question for the purpose of examination and assessment of a claim of the defective good or work, which is to be tested by the seller or a third party in a timely manner. However, the seller will cover the cost of shipment. Otherwise, the seller shall be entitled to provide the buyer with a complaint form for the notification of defect, which is to be filled out by the buyer. The buyer will also be informed about further action. The buyer is not entitled to resend the good to the seller before filling out and returning the complaint form.

7. The buyer's rights due to defect are laid out by legal provisions, insofar not otherwise regulated in these terms and conditions and, otherwise, with the following stipulations:

a) The buyer shall grant the seller a reasonable deadline-- at least four weeks-- to rectify the situation. In individual situations, a deadline of less than four weeks may be granted, where a four-week deadline is not reasonable for the buyer. In no event, the deadline for rectification begins before the point-in-time, where the buyer returned the defective products back to the seller. Whereby, the seller covers the costs of resending, or, before the point-in-time, where the seller has recognized the defect in written form without conducting its own inspection for a defect.

b) Should only part of the seller's delivered goods be defective, the rights of the buyer are limited to demand cancellation of the contract or damages instead of demanding performance for the defective part of the delivery, unless this limitation is impossible or unreasonable for the buyer.

c) The buyer's claims for damages due to defects of delivery or service are limited in scope to clause VII below.

8. Should the buyer's notice of defect prove to be unjustified, the seller shall refund the buyer all necessary and reasonable expenses, which have arisen from this unjustified notice of defect.

9. The period of guarantee is two years at the time point of passing of risk for purchases and factory delivery contracts – for used items, one year at the time point of passing of risk. For a service contract, the period of guarantee is two years at the time point of acceptance, should these be either formally or implied concluded.

## VII. Claims for Damages of the Buyer

In all cases where reference is made to this provision in these terms and conditions and where nothing else is stipulated in these terms and conditions, the buyer's claims for damages against the seller are excluded, unless

a) they are based on a intentional or grossly negligent breach of obligation by the seller, one of his legal representatives or vicarious agents;

b) it involves a breach of a significant contractual obligation. In this case, the seller is also liable for minor negligence. However, it is limited to the contract typical and reasonable predictable damages;

c) it involves damages resulting from the loss of life, personal injury, health damages or the freedom of our contractual partner, which are based on a culpable seller's breach of obligation;

d) it involves claims for damages based on product liability law;

e) they are based on the lack of assured properties, if and insofar the assurances had the purpose to protect the buyer from damages, which did not emerge on the delivered goods or the services.

## VIII. Retention of Title and Further Processing of the Goods

1. The buyer's ordered products remains the property of the seller until full payment of all receivables from the business connection has been made. The cessation of individual receivables in a running invoice and balance as well as their recognition does not affect retention of title.

2. The buyer is entitled to sell, further process, mix and connection conditional goods within the course of orderly business practices according to §§ 946- 950 BGB. In these cases, the following applies:

a) in the case of a combination, mixing or processing of the reserved goods in accordance with §§ 946-950 BGB, the seller acquires proportional co-ownership of the new goods. The amount corresponds to the value ratio of the goods and the associated, mixed or processed objects. § 947 para. 2 BGB remains unaffected insofar as the goods of the seller are the main object;

b) in the event of resale and transfer of the goods or of the article produced in accordance with letter below (a) manufactured product, the buyer is obligated to notify the seller in writing of the assignment of the claims arising from the resale within a period of seven days, insofar as these are transferable. The seller shall accept this transfer now. An additional and separate declaration of acceptance is no longer required. The transfer shall occur with priority over the rest.

3. Other legal or material dispositions of the reserved goods are only permitted with the explicit consent of the seller in written form.

4. In case of the preceding clause 2 b), the seller, hereby, authorizes the buyer, subject to revocation, to collect claims. The buyer shall promptly pay the withdrawn amounts to the seller, as long as and as soon as the respective claims are due. As long as these claims are not due, the withdrawn amount are to be recorded separately by the buyer. The seller's authority to collect the claim by itself remains unaffected.

5. Upon cessation of payment, application for or commencement of insolvency proceedings, court or out-of-court settlement proceedings, the purchaser's rights under this clause VIII shall expire with regard to the reserved goods and the authorization to collect the transferred claims even without the revocation of the vendor.

6. In the case of clause 2 b), the seller is obligated to release the claims transferred to the seller at the request of the buyer to the extent that the realizable value of the securities exceeds the claims due to the seller by more than 20 percent. The selection of securities, which are to be released, shall made by the seller.

7. In case of clause 2 a), the buyer is entitled to reassignment of property and, in case of clause 2 b), is entitled to reassignment of claims, if and, as soon as, the buyer has completely fulfilled his payment obligations within the entire business relationship.

8. Upon seizure or other infringements by third parties of the condition goods, the buyer must indicate the reserved property and promptly notify the seller so that he can file a law suit pursuant § 771 ZPO. As long as the buyer does not comply to this obligation, he is liable for the incurred damages.

## IX. Other Rights and Obligations of the Buyer

1. The buyer may only transfer rights arising out the contractual activities to a third party with the seller, if the seller has give a written declaration for this purpose. The buyer must promptly indicate an intent assign to the seller in writing. Should it come to a transfer, even though the seller did not consent to this, the omitted or rejected approval between the contractual partners ranks equal to a prohibition of transfer. § 354a HGB remains unchanged.

2. A setoff is for the buyer– even in other than in III. Clause 7 of these terms and conditions are only permissible with undisputed or legally established counterclaims. The counterclaim is only uncontested, if there is agreement on the reason and amount among the contractual parties. A right of retention from previous or other transactions of the current business relationship cannot be asserted.

## X. Documents, Property Rights and Non-disclosure

1. The seller is entitled to an absolute property and copyright law for cost estimates, calculations, drawings, drafts, forms, patterns, copies, tools, simulations, files and other documents or files, which the buyer received either directly or indirectly from the seller or at his behest of a third party.

2. If the goods are to be produced according to drawings, samples or other information provided by the buyer, the buyer shall guarantee that no third party rights, especially patents, utility models, property or copyright laws will be infringed upon. The buyer shall release the seller of third party claims, which may arise from a potential infringement of the above mention rights. Furthermore, the buyer shall cover all costs, which the seller should incur in case of an infringement of the above mentioned rights and for the defense thereof. The same applies to the usage of generated samples, designs or templates, etc. by the buyer or such left to the seller.

3. Should solutions or techniques arise from the seller in the process of developmental work, which are worthy of property law protection, only the seller is the owner of the resulting property, copyright and usage rights. It is his discretion to register and place the appropriate property protection laws in the owner's name.

4. The buyer or third parties shall take no actions putting intellectual property rights in danger which the seller uses in connection with the product. In particular, labels or other distinguishing features, which are affixed to the seller's goods, shall not be concealed, altered or removed.

5. In case the buyer further processes the good, and, in particular, manufactures a new product, the buyer shall ensure to the seller that these new products do not infringe on third party commercial property rights. Insofar, X clause 2 is applicable analogously.

## XI. Data Protection

In the framework of the business relationship, the seller shall treat the personal data of the buyer according to the legal directives. Otherwise, reference will be made to the seller's privacy statement, which can be found at <https://goecke.de/info/datenschutzerklaerung.html>.

## XII. Final Clauses

1. These applicable terms and conditions underlie the directive and provisions of German law, as long as the GOECKE GmbH & Co. KG is the seller. These applicable terms and conditions underlie the directive and provisions of Austrian law, as long as the GOECKE AUSTRIA GmbH is the seller. As long as these terms and conditions do not have diverging regulations, the legal directives are applicable. The directive and regulations of the UN Convention on Contracts for the International Sale of Goods (CISG) do not apply.

2. Within the framework of contracts, in which these are applicable, the provisions of these terms and conditions can only be altered if the contractual partners explicitly and consensually agree upon this in writing.

3. The jurisdiction is – providing legal permissibility – the competent court of the seller's location of business or by the seller's choice the general jurisdiction of the buyer. The place of fulfillment is the seller's business location, if nothing else should materialize from the confirmation of order.

4. The conditions remain effective in case of invalidity or non-enforceability of individual parts.

**Date: 09/2018**