

General Terms and Conditions of Sale

§ 1 Scope, form

- (1) The present General Terms and Conditions of Sale (GTCS) shall apply to all business relations of Hengst SE, Nienkamp 55 - 85, 48147 Münster, Germany, ("Hengst" or "us" or "we"), and/or our associated companies (§§ 15 et seq. AktG (German Stock Corporation Act)), with each and every of our customers ("Buyer"). The GTCS apply only if the Buyer is a merchant (§ 14 BGB), a legal entity under public law, or a special fund under public law.
- (2) The GTCS shall apply in particular, but not limited to, contracts for the sale and/or delivery of movable goods ("Goods"), irrespective of whether we manufacture the Goods ourselves or purchase them from a supplier (§§ 433, 650 BGB).
- (3) Our GTCS shall apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the Buyer shall form part of the contract only if and to the extent we have expressly given our prior consent to their application. This requirement of prior consent shall apply in all cases, for example even if we perform delivery to the Buyer without reservation despite being aware of the Buyer's general terms and conditions.
- (4) Individual agreements reached with the Buyer in individual cases (including but not limited to collateral agreements, supplements, addenda and/or amendments) shall in any case take precedence over the present GTCS. Subject to proof to the contrary, a written contract or our written confirmation shall be authoritative for establishing the content of such arrangements.
- (5) Legally relevant notices and/or notifications given by the Buyer with regard to the contract (e.g. setting of deadlines, notification of defects, notice of cancellation, of withdrawal or reduction of price) must be made in writing, i.e. in written or text form (e.g. letter, e-mail, fax). Legal form requirements and further proof, in particular in the case of, but not limited to, doubts about the legitimacy of the person making the notice, shall not be affected.
- (6) References to the application of statutory provisions shall serve for clarification only. Therefore, the provisions of statutory law shall apply even without such clarification, unless they are directly amended or expressly excluded in the present GTCS.

§ 2 Conclusion of contract

- (1) Our offers are subject to change and non-binding. This shall also apply if we have supplied to the Buyer any catalogues, technical documentation (e.g. drawings, plans, calculations, references to DIN standards), other product descriptions and/or documents – including in electronic form – to which we reserve all proprietary rights and intellectual property rights.
- (2) Purchase orders made by Buyer for the Goods shall be deemed to be binding offers to contract. Unless otherwise stated in the purchase order, we shall have the right to accept such contract offer within two weeks of its receipt by us.
- (3) Acceptance may be declared either in writing (e.g. by order confirmation) or by delivering the Goods to the Buyer.

§ 3 Delivery period and delay in delivery

- (1) The parties shall either agree the delivery period on a case-by-case basis or we may determine it upon acceptance of the purchase order.
- (2) We shall not be responsible for delays in delivery and performance caused by force majeure, labour disputes, riots, embargoes, import and/or export restrictions, delays or refusals of import and export licences applied for and/or the cancellation or revocation thereof, official measures, acts of terrorism or a threat thereof, pandemics and/or any other unforeseeable, unavoidable and serious events, even if they occur at our suppliers or their sub-suppliers, even in the case of binding agreed deadlines and dates. The foregoing shall also apply if said events occur at a time when we are in default. Each such event shall entitle us to postpone delivery or performance by the duration of the hindrance caused by the event plus a reasonable start-up period. We may only invoke the aforementioned circumstances if we notified the Buyer of the hindrance without undue delay and from the time of such notification. Further legal rights of the Buyer and us are not excluded by the foregoing.
- (3) The occurrence of default on delivery on our part shall be established in accordance with the provisions of statutory law. In any case, however, a reminder by the Buyer is required. If we are in default on delivery, the Buyer may claim liquidated damages for such delay. The payment of such liquidated damages shall amount to 0.5% of the net price (delivery value) for each completed calendar week of default, but in total not exceeding 5% of the delivery value of the Goods delivered late. We reserve the right to prove that the Buyer did not suffer any damage at all or that the damage was significantly lower in value than the aforementioned sum of liquidated damages.
- (4) The rights of the Buyer under § 8 of these GTCS and/or our statutory rights, in particular in the event of, but not limited to, an exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of performance and/or subsequent performance/remedy), shall not be affected.

§ 4 Delivery, transfer of risk, acceptance, default on acceptance

- (1) Delivery shall be EXW (Ex Works, Incoterms 2020) from the respective production site, which shall also be the place of performance for delivery and any subsequent performance/remedy. At the request and expense of the Buyer, the Goods shall be shipped to another destination (sale by delivery to a place other than the place of performance (German: *Versendungskauf*)). Unless agreed otherwise, we have the right to determine the type of shipment (in particular transport company, shipping route, packaging) ourselves.
- (2) The risk of accidental loss and accidental deterioration of the Goods shall pass to the Buyer upon handover of the Goods, at the latest. In the case of sale by delivery to a place other than the place of performance, however, the risk of accidental loss and accidental deterioration of the Goods and the risk of delay shall pass to the Buyer upon delivery of the Goods to the forwarding agent, the carrier or any other person or institute designated to carry out the shipment. If the Parties have agreed that the principle of acceptance of possession (German: *Abnahme*) shall apply, the risk shall pass upon acceptance of possession. In all other regards, if the parties have agreed that the principle of acceptance of possession shall apply the provisions of statutory law relating to contracts for works shall apply to it *mutatis mutandis*. Handover or acceptance of possession shall be deemed to have taken place if the Buyer defaults on acceptance of delivery (German: *Annahme*).
- (3) If the Buyer defaults on acceptance of delivery, if the Buyer fails to cooperate, or if our delivery is delayed for other reasons for which the Buyer is responsible, we shall have the right to demand compensation for the resulting damage including additional expenses (e.g. storage costs).

§ 5 Prices and terms of payment

- (1) Unless otherwise agreed in the respective individual case, our prices as applicable at the time of conclusion of the contract shall apply, namely EXW (Ex Works, Incoterms 2020), ex the respective production site, plus the statutory rate of VAT.
- (2) In the case of sale by delivery to a place other than the place of performance (§ 4 (1)), the Buyer shall bear the transport costs ex warehouse and the cost of any transport insurance requested by the Buyer. Any customs duties, fees, taxes and other public charges shall be borne by the Buyer.
- (3) The purchase price shall be due and payable immediately upon invoicing and delivery, or on acceptance of possession, of the Goods. However, we have the right at any time, also within an ongoing business relationship, to make a delivery contingent in whole or in part upon advance payment. We will declare the corresponding proviso when confirming the purchase order.
- (4) Upon expiry of the aforementioned payment deadline, the Buyer shall be in default. During the period of default, interest shall be charged on the purchase price at the then applicable statutory default interest rate. We reserve the right to claim further damage caused by default. With regard to merchants, our claim to the commercial interest on arrears (§ 353 HGB) shall not be affected.
- (5) The Buyer shall be entitled to rights of set-off or retention only if and to the extent Buyer's claim has become *res judicata* or is undisputed. In the event of defects in the delivered Goods, the Buyer's corresponding rights shall not be affected, in particular but not limited to those arising from § 7(6) sentence (2) of the present GTCS.
- (6) If, after conclusion of the contract, it becomes apparent (e.g. by a motion for insolvency proceedings) that our claim to the purchase price may be jeopardised by the Buyer's inability to pay, we shall have the right to withhold performance in accordance with statutory law and - after setting a deadline, if necessary - to cancel the contract (§ 321 BGB). In the case of contracts for the manufacture of non-fungible items (custom-made products), we may declare cancellation of the contract with immediate effect; the statutory regulations on the dispensability of setting a deadline shall not be affected.

§ 6 Retention of title

- (1) We retain title to the Goods sold until all our present and future claims arising from the purchase contract and any ongoing business relationship (secured claims) have been paid in full.
- (2) The Goods subject to retention of title may neither be pledged to a third party nor assigned as security before the secured claims have been paid in full. The Buyer must inform us immediately in writing if an application is made to open insolvency proceedings or if a third party has encroached (e.g. seizure, attachment) on the Goods owned by us.
- (3) In the event that the Buyer's conduct is in breach of the contract, in particular in the event of non-payment of the due purchase price, we shall have the right to cancel the contract in accordance with the provisions of statutory law or/and to demand that the Goods be returned on the grounds of retention of title. The return request shall not be construed to qualify at the same time as a notice of cancellation; we rather have the right to demand return of the Goods alone and to reserve our right to cancel. If the Buyer fails to pay the due purchase price, we may assert these rights only after we have set the Buyer a reasonable deadline for payment and the Buyer has failed to pay within such deadline or if setting such deadline is dispensable under statutory law.
- (4) Until revoked under point (c) below, the Buyer is authorised to resell and/or process the Goods subject to retention of title in the ordinary course of business. In such cases, the following provisions shall apply in addition.
 - (a) The retention of title shall extend to the products resulting from processing, mixing or commingling with our Goods at the full value of our Goods and we shall be deemed to be the manufacturer of such products. If, in the event that our Goods are processed, mixed or commingled with Goods of third parties, ownership remains with the third party we shall acquire co-ownership in proportion to the invoice value of the processed, mixed or combined Goods. The same shall apply to the resulting product as to the Goods delivered under retention of title.
 - (b) The Buyer hereby transfers to us as security the claims in total, or in part in proportion to our co-ownership share according to the preceding paragraph, against any third parties that may arise from reselling the Goods or the resulting product. We hereby accept the transfer. The obligations of the Buyer set forth in para. (2) shall apply to the transferred claims also.
 - (c) The Buyer shall remain authorised to collect the claim alongside us. We undertake to not collect the claim as long as the Buyer fulfills all of Buyer's payment obligations towards us, there is no deficiency in the Buyer's ability to pay and we do not

assert the retained title by exercising a right in accordance with para. (3). Otherwise, however, we may require the Buyer to disclose to us the transferred claims and the debtors, provide us with all information necessary for collection, hand over the relevant documents and inform the debtors (third parties) of the transfer. Furthermore, we shall have the right to revoke the Buyer's authorisation to resell and to process the Goods that are subject to a retention of title.

(d) If the realisable value of the securities exceeds our claims by more than 10%, we shall release securities of our choice at the Buyer's request.

§ 7 Buyer's claims for defects

- (1) The provisions of statutory law shall apply to the Buyer's rights in the event of material defects and/or defects of title (including wrong delivery and short delivery as well as improper assembly or defective assembly instructions), unless otherwise stipulated below. In all cases, the special provisions of statutory law shall not be affected in the case of final delivery of the unprocessed Goods to a consumer, even if the consumer has processed them further ("supplier's recourse" (German: *Lieferantenregress*), §§ 478 BGB). Claims from supplier recourse are excluded if the defective Goods are further processed by the Buyer or another merchant, e.g. by installing or incorporating them into another product.
- (2) The basis of our liability for defects is primarily the agreed quality/properties of the Goods. All product descriptions and manufacturer's specifications that form part of the subject matter of the individual contract, including those referred to, for example, by reference to publicly accessible catalogues, specifications and data sheets on our Internet homepage, shall be construed as agreements on the quality/properties of the Goods.
- (3) Where no specific qualities/properties have been agreed, the assessment whether a defect exists or not shall be made in accordance with the provisions of statutory law (§ 434 (1) sentences (2) and (3) BGB). However, we accept no liability whatsoever for any public statements made by the manufacturer or any other third party (e.g. advertising claims) to which the Buyer has not drawn our attention as being decisive for Buyer's decision to purchase. Furthermore, we shall not be liable if the Goods lose their effect due to any of their material composition, or due to any type of use, conform with recognised rules or if they are used after the expiry of a maximum storage period, furthermore we shall not be liable for any deterioration due to incorrect or negligent handling, for any improper storage, transfer, modification, application, processing or mixing of unsuitable materials which have not been agreed, any excessive stress, unsuitable use and/or to extraordinary natural influences/impact.
- (4) As a matter of principle, we shall not be liable for any defects of which the Buyer is aware at the time of conclusion of the contract or is not aware due to Buyer's gross negligence (§ 442 BGB). Furthermore, the Buyer's claims for defects are subject to the condition that Buyer has duly and properly fulfilled Buyer's statutory obligations to inspect the Goods and to give notice of any defects (§§ 377, 381 HGB). In the case of Goods intended for installation or other further processing, an inspection must in all cases be carried out immediately prior to processing. If a defect becomes apparent upon delivery, inspection or at any later point in time, we must be notified in writing without undue delay. In all cases, obvious defects must be notified to us in writing within 7 working days from the date of delivery, and defects that cannot reasonably be detected by inspection must be notified to us within the same period of time from the date of discovery. If the Buyer fails to perform proper inspection and/or fails to give notice of defects, our liability for the defect that was not notified or not notified in time or not notified properly shall be excluded in accordance with statutory law.
- (5) If the delivered item is defective, we may first choose whether to perform subsequent performance/remedy by remedying the defect (rectification) or by delivering a defect-free item (replacement). Our right to refuse to perform subsequent performance/remedy under the provisions of statutory law shall not be affected.
- (6) We have the right to make the subsequent performance/remedy owed contingent on the Buyer paying the due purchase price. However, the Buyer has the right to retain part of the purchase price reasonably in proportion to the defect.
- (7) The Buyer shall give us the time and opportunity required for the subsequent performance/remedy owed and shall in particular but without limitation hand over the Goods notified as defective, for inspection purposes. In the event of a replacement delivery, the Buyer shall return the defective item to us in accordance with the provisions of statutory law. Subsequent performance/remedy shall neither include the dismantling or removal of the defective item nor its re-installation if we were not originally obliged to install or mount it.
- (8) We will bear or reimburse the expenses necessary for inspection and subsequent performance/remedy, in particular but not limited to transport, travel, labour and material costs and, if applicable, removal and installation costs, in accordance with the provisions of statutory law if there actually is a defect. Otherwise, we may demand reimbursement from the Buyer of the costs incurred as a result of the unjustified request for remedy of the defect (in particular inspection and transport costs), unless it was impossible for the Buyer to discern the absence of a defect.
- (9) In urgent cases, e.g. if operational safety is at risk or to prevent disproportionate damage, the Buyer shall have the right to remedy the defect and to demand reimbursement from us of the expenses objectively necessary for that purpose. We must be notified immediately of such self-remedy, if possible in advance. There shall be no right to self-remedy if we had been entitled to refuse such subsequent performance/remedy under statutory law.
- (10) If subsequent performance/remedy has failed or a reasonable deadline to be set by the Buyer for such subsequent performance/remedy has expired to no avail or is dispensable under statutory law, the Buyer may cancel the purchase contract or reduce the purchase price. In the case of an insignificant defect, however, there is no right to cancellation.
- (11) The Buyer may only raise claims for damages or reimbursement of futile expenses as provided under § 8, even in the case of defects; otherwise such claims are excluded.

§ 8 Other liability

- (1) Insofar as nothing to the contrary arises from these GTCS, including but not limited to the following provisions, we shall be liable as provided by statutory law in the event of a breach of a contractual and/or non-contractual obligation.
- (2) We shall be liable for damages - irrespective of the legal grounds - within the scope of liability for fault in the event of intent and gross negligence. In the event of simple negligence, we shall be liable, subject to the legal limitations of liability (e.g. care in own affairs; insignificant breach of duty), only (a) for damages arising from injury to life, body or health, (b) for damages arising from the breach of a material contractual obligation (obligation the fulfilment of which is a prerequisite for the proper performance of the contract and on the observance of which the contractual partner regularly relies and may rely); in this case, however, our liability shall be limited to compensation for the foreseeable, typically occurring damage/loss.
- (3) The limitations of liability resulting from paragraph (2) shall also apply vis-à-vis third parties and in cases of breaches committed by persons (also in their favour) whose fault we are responsible for under statutory law. They shall not apply if a defect has been fraudulently concealed or a guarantee for a specific quality or property of the Goods has been given, and/or for claims of the Buyer under the Product Liability Act.
- (4) The Buyer may only cancel or terminate the contract on the grounds of a breach that does not constitute a defect if we are responsible for such breach. The Buyer shall have no free right of termination (in particular under, but not limited to, §§ 650, 648 BGB). In all other respects, the statutory requirements and legal consequences shall apply.

§ 9 Limitation

- (1) Notwithstanding § 438 (1) point (3) BGB, the general limitation period for claims arising from material defects and/or defects of title shall be one year from the date of delivery. If acceptance of possession has been agreed, the limitation period shall commence upon acceptance of possession.
- (2) If the Goods are a building or matter that has been used for a building in conformity with its customary use and has caused a deficiency of the building (construction material), the limitation period shall be 5 years from delivery in accordance with statutory law (§ 438 (1) point (2) BGB). Other special provisions of law on the limitation period (in particular § 438 (1) point (1), (3), § 444, 445 BGB) shall not be affected.
- (3) The above limitation periods of the laws on contracts for the sale of goods shall also apply to contractual and non-contractual claims for damages of the Buyer based on a defect of the Goods, unless the application of the regular statutory limitation period (§§ 195, 199 BGB) would lead to a shorter limitation period in the individual case. Claims of the Buyer for damages pursuant to § 8 (2) sentences (1) and (2)(a) and/or under the Product Liability Act shall become time-barred exclusively in accordance with the limitation periods of statutory law.

§ 10 Copyrights, Industrial Property Rights

- (1) We will indemnify and hold free the Buyer and its customers from and against any undisputed and/or non-appealable claims arising from infringements of copyrights and industrial property rights, unless the infringement was caused by the Buyer, in particular by a design for the goods that originates from the Buyer or by the Buyer having combined or used the Goods together with other products. Our indemnification obligation is limited in accordance with § 8 of the present GTCS. An additional prerequisite for indemnification is that the conduct of legal disputes is left to us at our request.
- (2) We shall have the option to discharge ourselves from the obligations assumed in paragraph (1) by either (a) procuring the necessary licenses with respect to the allegedly infringed copyrights and industrial property rights or (b) providing the Buyer with reasonably modified Goods or parts thereof which, by replacing the infringing delivered item or a part thereof with them, remove the allegation of infringement with regard to the Goods.

§ 11 Choice of law and place of jurisdiction

- (1) The laws of the Federal Republic of Germany shall apply to the present GTCS and to the contractual relationship between us and the Buyer to the exclusion of international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods.
- (2) If the Buyer is a merchant within the meaning of the German Commercial Code (German: *Handelsgesetzbuch*), a legal entity under public law or a special fund under public law, the exclusive - including international - place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be our registered office in Münster, Germany or the registered office of the selling affiliate pursuant to §§ 15 ff. AktG (German Stock Corporation Act). The same shall apply if the Buyer is a merchant within the meaning of § 14 BGB. However, in all cases we shall also have the right to bring an action at the place of performance of the delivery obligation under the present GTCS or under a prior individual agreement, or at the general place of jurisdiction of the Buyer. Overriding provisions of statutory law, in particular on exclusive jurisdiction, shall not be affected.