

## General Terms and Conditions of Purchase of SOMACK GmbH

As of 05.03.20

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### Section 1 Scope, form

1. These General Terms and Conditions of Purchase (AEB) apply to all business relations with business partners and suppliers (hence the "seller") of SOMACK GmbH (hereafter "Orderer" or "we/us"). The General Terms and Conditions of Purchase only applies if the seller is an entrepreneur (Section 14 of the German Civil Code), a legal entity under public law or a special fund under public law.
2. This apply in particular to contracts for the sale and/or supply of movable goods ("goods"), regardless of whether the seller manufactures the goods himself or buys them from suppliers (Sections 433, 651 of the German Civil Code). Unless otherwise agreed, the AEB shall also be deemed to be a framework agreement for similar future contracts in the version valid at the time of the order or in any case in the version recently communicated to it in text form, without us having to point them out again in each case.
3. These General Terms and Conditions of Purchase apply exclusively. Deviating, conflicting or supplementary general terms and conditions of business or delivery of the seller shall only become part of the contract if and to the extent that we have expressly agreed to their validity in writing. This consent requirement applies in any case, for example even if we accept his deliveries without reservation in the knowledge of the General Terms and Conditions of the Seller.
4. Individual agreements made with the Seller on a case-by-case basis (including ancillary agreements, additions and amendments) shall, in any case, take precedence over these General Terms and Conditions of PurchaseBs. Subject to the evidence to the contrary, the content of such agreements shall be subject to a written contract or our written confirmation.
5. Legally significant declarations and advertisements by the. Seller in relation to the Contract (e.g. B. deadline, reminder, withdrawal) is in writing, d. h. in font or text form (e.g.. B. letter, e-mail, **fax**). Legal formal requirements and further evidence, in particular in the event of doubts as to the legitimation of the decant, remain unaffected.
6. References to the validity of legal provisions have only clarifying significance. Even without such clarification, the statutory provisions, therefore, apply, insofar as they are not directly amended or expressly excluded in these General Terms and Conditions of Purchase.

## **Section 2 Conclusion of the contract**

1. Our order shall be deemed binding at the earliest with written submission or confirmation. On obvious errors (e.g.. B. writing and arithmetic errors) and incompleteness of the order, including the order documents, the seller must inform us for the purpose of correction or completion before acceptance; otherwise, the contract shall be deemed not to have been concluded.
2. The seller is required to confirm our order in writing at the latest within a period of 14 days or, in particular, to execute the goods without reservation (acceptance).
3. A late acceptance is considered a new offer and requires acceptance by us.

## **Section 3 Delivery time and delay in delivery**

1. The delivery time specified in the order is binding and is understood to arrive at the place of performance. If the delivery time is not specified in the order and has not been agreed otherwise, it is 14 days from the conclusion of the contract. The seller is obliged to inform us immediately in writing if he is unlikely to be able to meet agreed delivery times, for whatever reason.
2. If the seller does not perform his performance or does not perform within the agreed delivery time or if he is in arrears, our rights – in particular to withdrawal and compensation – shall be determined in accordance with the statutory provisions. The provisions in clause 3 remain unaffected.
3. If the seller is in default, we can – in addition to further statutory claims – compensate for our damage caused by delay. H. v. 1% of the net price per completed calendar week, but not more than 5% of the net price of the late delivered goods. We reserve the right to prove that higher damage has occurred. The seller reserves the right to prove that no or only significantly lesser damage has occurred.
4. Partial deliveries are in principle inadmissible unless we have expressly agreed.

## **Section 4 Performance, delivery, transfer of risk, delay in acceptance and force majeure**

1. The Seller is not entitled to use the performance owed by him by third parties (e.g. B. subcontractor). The seller bears the procurement risk for his services unless otherwise agreed in individual cases (e.g.. B. Restriction to stock).
2. Delivery takes place within Germany "free house" to the place specified in the order. If the destination is not specified and nothing else has been agreed, the delivery to our registered office must take place in 35325 Mücke. The respective destination is also the place of performance for the delivery and any subsequent performance (debt).
3. The delivery must be encased in a delivery note stating the date (issue and dispatch), the contents of the delivery (item number and number) and our order identification (date and number). If the delivery note is missing or is incomplete, we are not responsible for any resulting delays in processing and payment. Separately from the delivery note, a corresponding shipping notice with the same content must be sent to us.

4. The risk of accidental loss and accidental deterioration of the item passes to us upon handover at the place of performance. Insofar as acceptance has been agreed, this is decisive for the transfer of risk. In addition, the statutory provisions of contract law shall also apply in the event of acceptance. The handover or acceptance is the same if we are in default of acceptance.
5. The statutory provisions apply to the occurrence of our delay in acceptance. However, the seller must also expressly offer us his performance if, for an action or participation on our part (e.g. B. supply of material) a specified or determinable calendar time is agreed. If we are in default of acceptance, the seller may demand compensation for his additional expenses in accordance with the statutory provisions (Section 304 of the German Civil Code). If the contract relates to an indefensible thing to be manufactured by the seller (individual production), the seller shall only be entitled to further rights if we have committed ourselves to cooperate and are responsible for the failure to cooperate.
6. Force majeure, involuntary operational disruptions, unrest, industrial disputes, official measures and other unavoidable events release us from the obligation to accept or accept them in good time for the duration of their existence.

## **Section 5 Prices and Terms of Payment**

1. The price stated in the order is binding. All prices are inclusive of statutory value-added tax if this is not shown separately.
2. Unless otherwise agreed in individual cases, the price includes all services and ancillary services of the seller (e.g. B. installation, installation) as well as all incidental costs (e.g.. B. packaging, transport costs including possible transport and liability insurance).
3. The agreed price is due for payment within 60 calendar days from full delivery and service (including any agreed acceptance) as well as receipt of a proper invoice. If we make payment within 14 calendar days, the seller grants us a 3% discount on the net amount of the invoice. In the case of bank transfer, payment is made in good time if our transfer order is received by our bank before the end of the payment period; we are not responsible for delays caused by the banks involved in the payment process.
4. We do not owe any interest on due dates. The statutory provisions apply to late payment.
5. We are entitled to set-off and retention rights as well as to the objection of the unfulfilled contract. In particular, we are entitled to withhold due payments as long as we are still entitled to claims against the seller for incomplete or defective services.
6. The seller has a right of set-off or retention only because of legally established or undisputed counterclaims.

## **Section 6 Confidentiality and retention of title**

1. We reserve title and copyright to illustrations, plans, drawings, calculations, execution instructions, product descriptions and other documents. Such documents shall be used exclusively for the contractual service and shall be returned to us after

completion of the contract. The documents must be kept secret from third parties, even after the termination of the contract. The obligation of confidentiality shall expire only when and to the extent that the knowledge contained in the documents provided has become generally known.

2. The above provision applies accordingly to substances and materials (e.g. B. software, finished and semi-finished products) as well as for production equipment, such as tools, templates, samples and other items that we provide to the Seller for the production. If costs for production equipment have been borne pro-rata or entirely by us, the same applies. Such items shall be stored separately at the Seller's expense and adequately insured against destruction and loss, as long as they are not processed.
3. Processing, mixing or connecting (further processing) of supplied items by the seller is carried out for us. The corpse shall apply to the further processing of the delivered goods by us so that we are considered as a manufacturer and acquire ownership of the product at the latest with further processing in accordance with the statutory regulations.
4. The transfer of the goods to us must be made unconditionally and without regard to the payment of the price. However, if we accept in individual cases an offer of the seller for transfer due to the payment of the purchase price, the seller's retention of title expires at the latest with payment of the purchase price for the delivered goods. In the proper course of business, we remain authorized to resell the goods before payment of the purchase price, with an advance assignment of the resulting claim (in the alternative, the simple retention of title extended to the resale). In any event, all other forms of retention of title are excluded, in particular the extended retention of title, the forwarded and the extended retention of title extended to further processing.

## **Section 7 Defective delivery**

1. The statutory provisions shall apply to our rights in the event of material and legal defects of the goods (including incorrect and under-delivery as well as improper assembly, defective assembly, operating or operating instructions) and other breaches of duty by the seller, unless otherwise specified below.
2. In accordance with the statutory provisions, the seller is liable in particular for the fact that the goods have the agreed quality at the time of transfer of risk to us. In any event, the quality agreement shall be those product descriptions which are the subject of the respective contract or have been incorporated into the contract in the same way as these AEBs, in particular by name or reference in our order. It does not make any difference whether the product description comes from us, from the seller or the manufacturer.
3. By way of derogation from Section 442 (1) p. 2 of the German Civil Code (BGB), we are entitled to claims for defects without restriction even if the defect has remained unknown to us at the time of conclusion of the contract as a result of gross negligence.
4. The statutory provisions (Sections 377, 381 Of the German Commercial Code) apply to the commercial inspection and complaint obligation with the following proviso: Our duty of investigation is limited to defects that are exposed during our incoming goods inspection under external inspection, including the delivery documents (e.g. transport damage, incorrect and under-delivery) or are recognizable in our quality control in the

sampling procedure. Insofar as acceptance has been agreed, there is no obligation to investigate. Moreover, it is important to what extent an investigation is appropriate after the proper course of business, taking into account the circumstances of the case. Our obligation to complain about defects discovered later remains unaffected. Without prejudice to our duty to investigate, our complaint (notification of defects) shall, in any case, be deemed to be immediate and timely if it is sent within 7 working days from the discovery or, in the case of obvious defects, from delivery.

5. Subsequent performance shall also include the removal of the defective goods and the re-installation, provided that the goods have been incorporated into another object by their purpose of the use or affixed to another object; our statutory right to reimbursement of such expenses remains unaffected. The seller shall bear the expenses required for verification and subsequent performance even if it is found that there was, in fact, no defect. Our liability for damages in the event of an unjustified request for rectification of defects remains unaffected; in this respect, however, we shall only be liable if we have recognized or grossly negligently failed to recognise that there was no defect.
6. Without prejudice to our statutory rights and the provisions in Point5, if the Seller fails to fulfil his obligation to perform the defect – at our discretion by remedying the defect (repair) or by delivering a defect-free item (replacement delivery) – within a reasonable period set by us, we may remedy the defect ourselves and demand compensation from the Seller for the expenses required for this purpose or a corresponding advance. If the subsequent performance by the seller has failed or is unreasonable for us (e.g.. B. there is no need to set a time limit because of particular urgency, a risk to operational safety or the threat of disproportionate damage; of such circumstances, we will inform the Seller immediately, if possible in advance.
7. In the event of a material or legal defect, we are entitled to reduce the purchase price or to withdraw from the contract following the statutory provisions. Besides, we are entitled to compensation for damages and expenses by the statutory provisions.

## **Section 8 Supplier Recourse**

1. Our legally determined claims for recourse within a supply chain (supplier recourse according to Sections 445a, 445b, 478 BGB) are unrestricted in addition to the claims for defects. In particular, we are entitled to the type of supplementary performance (repair or replacement delivery) from the seller, which we owe to our customer in individual cases. Our statutory right to vote (Section 439 (1) of the German Civil Code) is not restricted by this.
2. Before we acknowledge or comply with a claim for defect asserted by our customer (including reimbursement of expenses according to Sections 445a (1), 439 (2) and 3 of the German Civil Code), we will notify the Seller and ask for a written opinion in a brief statement of the facts. If a substantiated opinion is not made within a reasonable period and no amicable solution is reached, the claim for defect granted by us shall be deemed to be owed to our customer. In this case, the seller is responsible for the counter-proof.
3. Our claims arising from supplier recourse shall also apply if the defective goods are delivered by us or another entrepreneur, e.g. further processed by installation in another product.

### **Section 9 Productive liability**

1. If the seller is responsible for product damage, he must infer us from claims of third parties to the extent that the cause is set in his area of domination and organization and he is liable in the external relationship himself.
2. As part of its indemnification obligation, the Seller shall reimburse expenses by Sections 683, 670 of the German Civil Code (BGB) arising out of or in connection with the use of third parties, including recall actions carried out by us. We will inform the Seller of the content and scope of recall measures, as far as possible and reasonable, and will allow him to comment. Further legal claims remain unaffected.
3. The seller must take out and maintain product liability insurance with a lump sum of at least EUR 2.5 million per personal injury/property damage.

### **Section 10 Intellectual Property Rights**

1. The seller is liable for the fact that patents, trademarks or other intellectual property rights of third parties are not infringed by the delivery and use of the products.
2. If we are therefore used by a third party, the seller is obliged to free us from these claims in its entirety. Furthermore, the seller is obligated to compensate us for all damages resulting from this.
3. The Seller's obligation to indemnify refers to all expenses that we necessarily incur from or in connection with the claim by a third party.

### **Section 11 Limitation period**

1. The reciprocal claims of the contracting parties shall be time-barred by the statutory provisions unless otherwise specified below.
2. By way of derogation from Section 438 (1) No. 3 of the German Civil Code (BGB), the general limitation period for claims for defects is 3 years from the transfer of risk. Insofar as acceptance has been agreed, the limitation period begins with acceptance. The three-year limitation period accordingly also applies to claims arising from defects of title, whereby the statutory limitation period for claims for the return of third parties in rem (Section 438 (1) No. 1 BGB) remains unaffected; Claims arising from defects of title shall in no case be time-barred in any case, as long as the third party can still assert the right against us, in particular in the absence of a statute of limitations.
3. The limitation periods of the right to purchase, including the above extension, apply – to the extent permitted by law – to all contractual claims for defects. Insofar as we are also entitled to non-contractual claims for damages due to a defect, the regular statutory limitation period (Sections 195, 199 BGB) applies to this, unless the application of the limitation periods of the right to purchase in individual cases leads to a longer limitation period.

## **Section 12 Choice of law and place of jurisdiction**

1. This AEB and the contractual relationship between us and the seller are governed by the law of the Federal Republic of Germany to the exclusion of international uniform law, in particular, the UN Convention on Contracts for the International Sale of Goods.
2. Is the seller merchant i. S. d. Commercial Code, a legal entity under public law or a special fund under public law, is the exclusive – also international – place of jurisdiction for all disputes arising from the contractual relationship at our registered office in 35325 Mücke. The same applies if the seller is an entrepreneur. S. v. Section 14 of the German Civil Code (BGB). However, we are also entitled in all cases to bring an action at the place of performance of the delivery obligation by these AEB or a priority individual agreement or at the general place of jurisdiction of the seller. Priority legal regulations, in particular on exclusive competences, remain unaffected.