

General Terms and Conditions of Sale (GTCS) for Commercial Customers of MoldGuard GmbH

Status Mai 2022

I. Scope of Application

The following General Terms and Conditions of Sale (GTCS) shall apply to all contracts concluded between the Buyer and us for the delivery of goods and/or the provision of services as well as consulting services. They shall also apply to all future business relations, even if they are not expressly agreed upon again. Any deviating terms and conditions of the Buyer which we do not expressly acknowledge shall not be binding on us, even if we do not expressly object to them. The following terms and conditions of sale shall also apply if we execute the Buyer's order without reservation in the knowledge of conflicting or deviating terms and conditions of the Buyer.

2. all agreements made between the buyer and us for the execution of the sales contracts are set down in writing in the contracts.

3. agreements made in individual cases between the contracting parties (including subsidiary agreements, supplements and amendments) shall in any case take precedence over these terms and conditions.

4. our offers are directed only to commercial customers. Consumers in the sense of § 13 BGB are not supplied.

II. Offer and conclusion of contract

1. we can accept an order of the buyer, which is to be qualified as an offer for the conclusion of a sales contract, within one week by sending an order confirmation or by sending the ordered products within the same time period.

2. our offers are subject to change and non-binding, unless we have expressly designated them as binding.

We reserve our property rights, copyrights and other industrial property rights to all illustrations, calculations, drawings and other documents. The purchaser may only pass these on to third parties with our written consent, irrespective of whether we have marked them as confidential. If the buyer does not accept our offer within the period of one week, these documents are to be returned to us immediately.

III. Prices, Terms of Payment and Default of Payment

1. our prices are ex works without packaging, unless otherwise specified in the order confirmation. Our prices do not include the statutory value added tax. We will show this separately on the invoice at the statutory rate on the day of invoicing. 2.

2. a cash discount deduction is only permissible with a special written agreement between us and the buyer. The net purchase price (without deduction) is due for payment immediately upon receipt of the invoice by the Buyer, unless the order confirmation specifies a different term of payment. Payment shall only be deemed to have been made when we can dispose of the amount. 3.

If the buyer is in default of payment, the statutory provisions shall apply. 4.

(4) We are entitled to issue invoices in electronic form (by email or as an email attachment). If the buyer requests an invoice in paper form, we are entitled to charge an expense allowance of 10 EUR per invoice.

(5) Legally relevant declarations and notifications by the Buyer with regard to the contract (e.g. setting of deadlines, notification of defects, withdrawal or reduction) shall be made in writing, i.e. in written or text form (e.g. letter, e-mail, fax).

(6) If it becomes apparent after the conclusion of the contract (e.g. by filing for insolvency proceedings) that our claim to the purchase price is jeopardized by the Buyer's inability to pay, we shall be entitled to refuse performance in accordance with the statutory provisions and - if necessary after setting a deadline - to withdraw from the contract (§ 321 BGB). In the case of contracts for the manufacture of unjustifiable items (custom-made products), we may declare withdrawal immediately; the statutory provisions on the dispensability of setting a deadline shall remain unaffected.

IV. Assignment, right of set-off and right of retention

1. the purchaser shall only be entitled to set-off, even if notices of defects or counterclaims are asserted, if the counterclaims have been legally established, have been acknowledged by us or are undisputed. The buyer shall only be entitled to exercise a right of retention if his counterclaim is based on the same contractual relationship. 2.

2. we are entitled to assign all claims against the buyer to a third party and in particular to affiliated companies without the need for the buyer's consent.

IV. Time of Delivery and Performance, Delay in Delivery, Force Majeure

1. delivery dates or periods which have not been expressly agreed as binding are exclusively non-binding information. The delivery period stated by us shall not commence until the technical issues have been clarified. Likewise, the buyer must fulfill all obligations incumbent upon him properly and in a timely manner.

If the underlying purchase contract is a firm deal in the sense of § 286 para. 2 no. 4 BGB (German Civil Code) or § 376 HGB (German Commercial Code), we shall be liable 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 purchaser is entitled to claim that he is no longer interested in the further performance of the contract. In this case, our liability shall be limited to the foreseeable, typically occurring damage if the delay in delivery is not due to an intentional breach of contract for which we are responsible, whereby fault on the part of our representatives or vicarious agents shall be attributed to us. Likewise, we shall be liable to the purchaser in the event of a delay in delivery in accordance with the statutory provisions if this is based on an intentional or grossly negligent breach of contract for which we are responsible, whereby fault on the part of our representatives or vicarious agents is to be attributed to us. Our liability is limited to the foreseeable, typically occurring damage if the delay in delivery is not due to an intentional breach of contract for which we are responsible. In any case, however, a reminder by the purchaser shall be required.

(3) In the event that a delay in delivery for which we are responsible is due to a culpable breach of a material contractual obligation, whereby fault on the part of our representatives or vicarious agents is attributable to us, we shall be liable in accordance with the statutory provisions, subject to the proviso that in this case the liability for damages shall be limited to the foreseeable, typically occurring damage.

Otherwise, in the event of a delay in delivery for which we are responsible, the Buyer may claim a lump-sum compensation of 3% of the value of the delivery for each full week of the delay, but not more than 15% of the delivery value.

Any further liability for a delay in delivery for which we are responsible shall be excluded. The Buyer's further statutory claims and rights to which he is entitled in addition to the claim for damages due to a delay in delivery for which we are responsible shall remain unaffected. 6.

(6) We shall be entitled to make partial deliveries and render partial services at any time, provided that this is reasonable for the customer. Call-offs and orders for individual partial deliveries shall be made in such a way that we are able to manufacture, fill and deliver in accordance with the contract.

7. if we are unable to meet binding delivery deadlines agreed in individual cases for reasons for which we are not responsible, we shall inform the customer of this without delay and at the same time notify the customer of the expected new delivery deadline. If the service 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 refund any consideration already paid by the Buyer. A case of non-availability of the service in this sense shall be deemed to be, in particular, the failure of our suppliers to deliver on time. 8.

8. if the buyer is in default of acceptance, we shall be entitled to demand compensation for the damage incurred and any additional expenses. The same shall apply if the buyer culpably violates duties to cooperate. The risk of accidental deterioration and accidental loss shall pass to the purchaser upon the occurrence of default in acceptance or debtor's delay.

9. we are not responsible for delays in delivery and performance due to force majeure. Events of force majeure shall entitle us to postpone delivery by the duration of the hindrance and a reasonable start-up period or to withdraw from the contract in whole or in part on account of the part not yet fulfilled. Force majeure shall include strikes, lockouts, mobilization, war, blockades, export and import bans, epidemics/pandemics and other sovereign interventions, irrespective of whether they occur at our premises or those of our supplier. We shall notify our Buyer immediately of the occurrence of an event of force majeure which impedes an imminent delivery. If the impediment lasts longer than two months, the purchaser may withdraw from the contract with regard to the part of the delivery not yet fulfilled after setting a reasonable period of grace. In the case of contracts with a term of at least six months, the performance obligations shall be suspended for the duration of the impediment; they shall cease to apply if it is unreasonable to expect one of the contracting parties to make good the impediment. Advance payments already made by the purchaser in this respect shall be refunded without delay.

V. Transfer of risk, shipment, packaging

1. loading and shipment shall take place uninsured at the risk of the buyer. We shall endeavor to take into account the wishes and interests of the Buyer with regard to the type and route of shipment; any additional costs incurred as a result - even in the case of agreed freight-free delivery - shall be borne by the Buyer. 2.

2. we do not take back transport packaging and all other packaging in accordance with the packaging ordinance; pallets are excepted. The Buyer shall dispose of the packaging at its own expense and shall assume this obligation even if we have a statutory obligation to take back non-returnable packaging. The buyer shall provide us with appropriate proof of disposal upon request. 3.

3. if the shipment is delayed at the request or through the fault of the buyer, we shall store the goods at the expense and risk of the buyer. In this case, notification of readiness for dispatch shall be deemed equivalent to dispatch. 4.

4. at the request and expense of the buyer, we will insure the delivery by transport insurance.

VI. Notification of Defects and Warranties

1. the statutory provisions shall apply to the purchaser's rights in the event of material defects and defects of title, unless otherwise stipulated below.
2. the buyer's warranty rights presuppose that he has properly fulfilled his obligations to inspect and give notice of defects in accordance with § 377 of the German Commercial Code (HGB). If a defect becomes apparent upon delivery, inspection or at any later time, we must be notified thereof in writing without delay. In any case, obvious defects must be reported in writing within 3 working days of receipt of the goods. Hidden defects, i.e. defects that cannot be detected during the inspection, must be reported within the same period from the time of discovery. If the purchaser fails to properly inspect the goods and/or notify us of defects, our liability for the defect that was not notified in time or not properly notified shall be excluded in accordance with the statutory provisions. 3.
- In the event of justified notices of defects, we shall be obliged to provide subsequent performance to the exclusion of the Buyer's rights to withdraw from the contract or to reduce the purchase price (reduction), unless we are entitled to refuse subsequent performance on the basis of the statutory provisions. The purchaser shall grant us a reasonable period of time for subsequent performance. Subsequent performance may be effected, at the purchaser's option, by remedying the defect (subsequent improvement) or by delivery of new goods. In the event of rectification of the defect, we shall bear the necessary expenses insofar as these are not increased because the subject matter of the contract is located at a place other than the place of performance. If the subsequent performance has failed, the purchaser may, at his discretion, demand a reduction of the purchase price (abatment) or declare his withdrawal from the contract. The subsequent improvement shall be deemed to have failed after the second unsuccessful attempt, unless further attempts at subsequent improvement are reasonable and acceptable to the Buyer due to the subject matter of the contract. Claims for damages under the following conditions due to the defect can only be asserted by the buyer if the subsequent performance has failed. The Buyer's right to assert further claims for damages under the following conditions shall remain unaffected. 4.
4. claims for defects shall become statute-barred 12 months after delivery of the goods delivered by us to our purchaser, however, at the latest upon expiry of the minimum durability date or period indicated on the goods.
5. samples of the rejected goods shall be enclosed with the notifications of defects. Our consent must be obtained before any goods are returned. 6.
- (6) In accordance with the statutory provisions, we shall be obliged to take back the new goods or to reduce the purchase price even without setting the otherwise required deadline if the Buyer's customer as a consumer of the sold new movable goods (purchase of consumer goods) could demand the return of the goods or the reduction of the purchase price due to the defect of these goods or if the Buyer is subject to a similar resulting right of recourse. In addition, we shall be obliged to reimburse expenses of the Buyer, in particular transport, travel, labor and material costs, which the Buyer had to bear in relation to the end consumer within the scope of subsequent performance due to a defect of the goods existing at the time of transfer of risk from us to the Buyer. The claim shall be excluded if the Buyer has not properly complied with his obligations to inspect the goods and to give notice of defects pursuant to Section 377 of the German Commercial Code (HGB). 7.
7. the obligation according to section VI point 4 is excluded if the defect is based on advertising statements or other contractual agreements which do not originate from us, or if the buyer has given a special guarantee to the end user. The obligation is also excluded if the purchaser himself was not obliged to exercise the warranty rights towards the end user on the basis of the statutory regulations or did not make this notification towards a claim made to him. This shall also apply if the Buyer has assumed warranties vis-à-vis the end consumer that exceed the statutory scope.
- (8) Irrespective of the following limitations of liability, we shall be liable in accordance with the statutory provisions for damage to life, limb and health caused by a negligent or intentional breach of duty by us, our legal representatives or our vicarious agents, as well as for damage covered by liability under the Product Liability Act. For damages which are not covered by sentence 1 and which are based on intentional or grossly negligent breaches of contract as well as fraudulent intent by us, our legal representatives or our vicarious agents, we shall be liable in accordance with the statutory provisions. In this case, however, the liability for damages shall be limited to the foreseeable, typically occurring damage, unless we, our legal representatives or our vicarious agents have acted intentionally. To the extent that we have given a guarantee of quality and/or durability with regard to the goods or parts thereof, we shall also be liable within the scope of this guarantee. However, we shall only be liable for damage based on the absence of the guaranteed quality or durability, but which does not occur directly to the goods, if the risk of such damage is obviously covered by the quality and durability guarantee. 9.
- (9) We shall also be liable for damage caused by simple negligent breach of such contractual obligations, the fulfillment of which is a prerequisite for the proper performance of the contract and on the observance of which the Buyer regularly relies and may rely. However, we shall only be liable to the extent that the damage is typically associated with the contract and is foreseeable. 10.
- (10) Any further liability shall be excluded irrespective of the legal nature of the claim asserted; this shall apply in particular to tortious claims or claims for reimbursement of futile expenses in lieu of performance; this shall not affect our liability pursuant to Section IV No. 2 to Section IV No. 5 of this contract. Insofar as our liability is excluded or limited, this shall also apply to the personal liability of our employees, workers, staff, representatives and vicarious agents.
11. claims for damages by the buyer due to a defect shall become time-barred one year after delivery of the goods. This shall not apply in the event of injury to life, limb or health for which we, our legal representatives or our vicarious agents are responsible, or if we, our legal representatives have acted with intent or gross negligence, or if our ordinary vicarious agents have acted with intent.

VII. Retention of title

1. the delivered goods (goods subject to retention of title) shall remain our property until all claims, including all current account balance claims, to which we are entitled against the buyer now or in the future have been satisfied. In case of breach of contract by the buyer, e.g. default of payment, we have the right to take back the reserved goods after setting a reasonable deadline. If we take back the reserved goods, this shall constitute a withdrawal from the contract. If we seize the reserved goods, this shall constitute a withdrawal from the contract. We are entitled to utilize the reserved goods after taking them back. After deduction of a reasonable amount for the utilization costs, the utilization proceeds shall be offset against the amounts owed to us by the Buyer. 2.
2. the buyer shall handle the reserved goods with care and insure them adequately at replacement value against fire, water and theft damage at his own expense. Maintenance and inspection work that becomes necessary shall be carried out by the Buyer in due time at its own expense.
3. the purchaser is entitled to sell and/or use the reserved goods properly in business transactions as long as he is not in default of payment. Pledges or transfers of ownership by way of security are not permitted. The Buyer hereby assigns to us in full, by way of security, all claims arising from the resale or any other legal reason (insurance, tort) with respect to the reserved goods (including all current account balance claims); we hereby accept the assignment. We revocably authorize the buyer to collect the claims assigned to us for his account in his own name. The direct debit authorization can be revoked at any time if the buyer does not properly meet his payment obligations. The Buyer shall also not be authorized to assign this claim for the purpose of collecting the claim by way of factoring, unless the obligation of the factor is simultaneously established to effect the counter-performance in the amount of the claims directly to us for as long as we still have claims against the Buyer. 4.
- Any processing or transformation of the reserved goods by the Buyer shall in any case be carried out on our behalf. If the goods subject to retention of title are processed with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the value of the goods subject to retention of title (final invoice amount including VAT) to the other processed items at the time of processing. The same shall apply to the new item created by processing as to the reserved goods. In the event of inseparable mixing of the reserved goods with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the value of the reserved goods (final invoice amount including VAT) to the other mixed items at the time of mixing. If the Buyer's item is to be regarded as the main item as a result of the mixing, the Buyer and we agree that the Buyer shall transfer co-ownership of this item to us on a pro rata basis; we hereby accept the transfer. The Buyer shall hold our sole or co-ownership of an item thus created in safe custody for us. 5.
- In the event of third party access to the goods subject to retention of title, in particular seizure, the Buyer shall point out our ownership and notify us immediately so that we can enforce our ownership rights. Insofar as the third party is not in a position to reimburse us for the court or out-of-court costs incurred in this connection, the purchaser shall be liable for these. 6.
- We shall be obliged to release the securities to which we are entitled insofar as the realizable value of our securities exceeds the claims to be secured by more than 10%; in this context, we shall be responsible for selecting the securities to be released.

VIII. Place of Performance, Jurisdiction, Applicable Law

- (1) The place of performance and jurisdiction for deliveries and payments (including actions on checks and bills of exchange) as well as all disputes arising between us and the Buyer from the purchase contracts concluded between us and the Buyer shall be our registered office. However, we shall also be entitled to sue the Buyer at his place of residence and/or business.
- (2) The relations between the contracting parties shall be governed exclusively by the law applicable in the Federal Republic of Germany. The application of the UN Convention on Contracts for the International Sale of Goods is excluded.

IX. Other

1. Within the scope of permissibility according to the valid legal regulations, in particular according to the data protection act, we store and process data and information which are transmitted to us and become known to us in the course of the cooperation. The buyer hereby agrees and approves the transfer of such data and information to our affiliated companies.
2. Insofar as the use of our products is subject to special legal requirements, it is the Buyer's responsibility to observe these and to check whether our products are suitable for the intended specific application.
3. the products supplied by us are subject to a prohibition of analysis. In particular, they may not be analyzed with the aim of determining the chemical and compositional composition of the product. The transfer of our products to third parties with the aim of reproducing our products or developing imitation products as similar as possible to them is strictly prohibited.
- 4) Should any provision of these General Terms and Conditions be or become invalid, this shall not affect the legal validity of the remaining provisions. The invalid or unenforceable provision shall be replaced by a valid and enforceable provision the effects of which come closest to the economic objective pursued by the contracting parties with the invalid or unenforceable provision. The above provisions shall apply mutatis mutandis in the event that the contract proves to be incomplete