



WORLDWIDE INDUSTRIAL SERVICES SINCE 1900

## General Terms and Conditions for the Purchase of Goods of thenex GmbH

### § 1 Scope of application; Form

- (1) The present General Terms and Conditions for the Purchase of Goods ("GTC") shall apply to all business relationships by and between us and our business partners and suppliers ("Vendor"). These GTC shall only apply if the Vendor is an entrepreneur (Sec. 14 BGB (German Civil Code)), a legal entity under public law, or a public separate estate.
- (2) These GTC shall particularly apply to agreements on the purchase and/or the delivery of goods ("goods"), without regard to whether the Vendor manufactures the goods itself or purchases the same from suppliers. Unless agreed otherwise in writing, these GTC shall be deemed a general framework agreement, also for similar future contracts in its valid version at the time of our order to the Vendor, or in the version most recently communicated to the Vendor in text form, without us having to refer back to it in every individual case.
- (3) These GTC shall apply exclusively. Deviating, conflicting, or amending Vendor terms and conditions shall only be included in the agreement, if and insofar as we expressly agreed to their application in writing. This requirement for our consent shall apply in any case, for instance also if we accept the Vendor's delivery without reservations knowing its terms and conditions.
- (4) Individual agreements concluded with the Vendor (including ancillary verbal agreements, amendments, and changes) shall in any case prevail over the present GTC. For the content of such agreements, subject to evidence to the contrary, a written contract or our written confirmation shall be decisive.

- (5) Legally relevant declarations and notifications by the Vendor with regard to the agreement (e.g. setting of deadlines, warning, withdrawal) shall be made in writing (i.e. text form such as letter, email, fax). Statutory form requirements shall remain unaffected as well as additional proof regarding the legal authorization of the declaring party, particularly in the case of doubt.
- (6) References to the application of statutory provisions shall be for clarification purposes only. Therefore, statutory provisions shall apply even without such clarification, unless they are directly amended or explicitly excluded in these GTC.

## **§ 2 Conclusion of contract**

- (1) Our order shall become binding at the earliest upon its written submission or our written confirmation. Prior to acceptance, the Vendor shall notify us of obvious errors (e.g. typos and calculation errors) and incompleteness of the order, including the order documents, for the purpose of correcting and/or completing the same; otherwise, the contract shall be deemed not concluded.
- (2) The Vendor shall confirm our order within a period of 5 (five) working days in writing or, as the case may be, by delivering the goods without reservations (acceptance).

## **§ 3 Delivery time and default**

- (1) The delivery time stated by us in the order shall be binding. The exact compliance with the dates or deadlines agreed for delivery shall be a material contractual obligation of the Vendor; time is of the essence. The Vendor shall be obligated to immediately notify us in writing if it can presumably not adhere to agreed delivery times – irrespective of the reasons.
- (2) If the Vendor does not perform its contractual duties at all or not within the agreed delivery time, or if it is in default, our rights – in particular to withdrawal and payment of

damages – shall be defined according to the statutory provisions. The regulations in subpara. 3 shall remain unaffected.

- (3) If the Vendor is in default, we may assert – aside from additional statutory claims – payment of a lump-sum compensation for the damage caused by the default in the amount of 1% of the net price per commenced calendar week, however, no more than a total of 5% of the net price of the delivered goods in default. We reserve the right to provide evidence of damage in excess of such amount. The Vendor retains the right to prove that no damage or only significantly smaller damage was incurred.

#### **§ 4 Performance; delivery; passing of the risk; acceptance delay**

- (1) Without our prior written consent, the Vendor shall not be entitled to have third parties (e.g. subcontractors) render the performance owed by it. The Vendor shall bear the procurement risk for its owed deliveries, unless otherwise agreed in writing.
- (2) Domestic delivery in Germany to the location designated in the order shall be made free of charge. Should the destination not be designated and nothing else has been agreed in writing, delivery must be made at our company's seat in Bocholt, Germany. The respective destination shall also constitute the place of performance for the delivery and a potential supplementary performance.
- (3) Each delivery must contain a delivery note with a date (issuance and shipping), delivery content (item number and quantity), as well as our order ID (date and number). Originals of the bill of lading, commercial invoice and packing lists must be signed and stamped, including the correct customs tariff numbers, and sent to us or a third party designated by us by e-mail prior to delivery. A stamped and signed original invoice must be sent with the goods, a copy must be sent to us by e-mail immediately after delivery. If and to the extent requested by us or customary in the industry, the Vendor shall also provide us with the necessary test certificates. If one or more of the aforementioned documents or



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information is missing, processing and payment delays resulting therefrom shall not be our responsibility.

- (4) Notwithstanding any other provisions in our order or these GTC, the Vendor guarantees compliance with the customs, import and product safety regulations applicable to the goods in Germany at the time of delivery and shall be fully responsible to us for ensuring that the goods comply with all legal requirements applicable to their placing on the market in Germany, the European Union or any other market worldwide that we have brought to the Vendor's attention with our order.
- (5) The Vendor shall ensure that the statutory provisions and internationally recognized standards for the protection of the environment and respect for human rights, in particular prohibitions of child and forced labour and discrimination, regulations on minimum wages as well as safety and fundamental rights of employees are complied with throughout the entire supply chain of the goods. At our request, the Vendor shall provide evidence of compliance with these obligations by procuring and transmitting suitable documents. If the Vendor culpably violates these obligations, he shall compensate us for the resulting damage.
- (6) The risk of accidental loss or deterioration of the goods shall pass to us upon handing over of the goods at the place of performance. If a formal acceptance is agreed, the same shall be decisive for the passing of the risk.
- (7) Whether we are in default with regard to taking resp. accepting the goods, shall be determined in accordance with the statutory provisions. The Vendor shall expressly offer us the performance owed by it also in cases where a particular or determinable calendar time has been agreed for an action or cooperation on our part (e.g. providing material). If the contract concerns goods to be specifically manufactured by the Vendor for us, the Vendor shall only have additional rights if we were obligated to cooperate and intentionally or in a grossly negligent manner failed to do so.

## § 5 Prices and terms of payment

- (1) The price stated in the order shall be fix and binding. All prices include statutory sales tax, unless such sales tax is posted as an additional item.
- (2) Unless agreed otherwise in writing, the price includes all services and ancillary services by the Vendor (e.g. assembly, installation, etc.) as well as all ancillary costs (e.g. proper packaging, transportation costs, including potential transportation and liability insurance, etc.).
- (3) The agreed price shall be due for payment within 30 calendar days as of complete delivery and performance (including a potentially agreed acceptance) as well as receipt of a proper invoice. If we make payment within 14 calendar days, the Vendor shall grant us a 3% discount on the net amount of the invoice. In the case of a bank transfer, payment shall be deemed to be made on time if our transfer order is submitted to our bank prior to the end of the payment period; we shall not be at fault for delays in the banks participating in the transaction.
- (4) We shall not owe any interest payable after the due date. The statutory provisions shall apply to cases of payment default.
- (5) We are entitled to the rights to offset and retention as well as the plea of the unfulfilled contract within the scope of statutory provisions. We are in particular entitled to retain payments which are due if we still have claims resulting from incomplete or deficient performance against the Vendor.
- (6) The Vendor shall only have a right to offset and retention in the event of finally adjudicated or undisputed counterclaims.

## § 6 Rights of ownership; Secrecy; Retention of title

- (1) We reserve ownership rights and copyrights to illustrations, plans, drawings, calculations, execution instructions, product descriptions and other documents. Such documents shall be used exclusively for the contractual performance and shall be returned to us after completion of the contract. The documents must be kept secret from third parties, even after termination of the contract. The confidentiality obligation shall only expire if and insofar as the knowledge contained in the documents provided has become generally known, but no earlier than 5 years after fulfillment of the contract.
- (2) The above provision shall apply accordingly to substances and materials (e.g. software, finished and semi-finished products) as well as to tools, templates, samples and other items which we provide to the Vendor for production. Such items shall – as long as they are not processed – be stored separately at the Vendor's expense and insured to a reasonable extent against destruction and loss.
- (3) Any processing, mixing or combination of items provided by us to the Vendor by the Vendor shall be carried out on our behalf. The same shall apply to further processing of the delivered goods by us, so that we shall be deemed to be the manufacturer and shall acquire ownership of and title to the product at the latest upon further processing in accordance with the statutory provisions.
- (4) The transfer of title to us shall take place upon delivery and irrespective of the payment of the purchase price. However, if in individual cases we accept an offer of the Vendor for transfer of title being conditional on payment of the purchase price, the Vendor's retention of title shall expire at the latest upon payment of the purchase price for the delivered goods. We shall remain authorized to resell the goods in the ordinary course of business prior to payment of the purchase price, assigning the resulting claim to the Vendor in advance. All other forms of retention of title are excluded.

## § 7 Defects; Warranty

- (1) Unless otherwise agreed hereinafter, the statutory provisions shall apply to our rights in terms of material defects and deficiencies in title of the goods (including wrong and short delivery as well as improper assembly, deficient assembly or operating instructions) and to other violations of obligations owed by the Vendor.
- (2) Pursuant to the statutory provisions, the Vendor shall in particular be liable for the goods having the agreed quality upon the passing of the risk to us. The agreed quality shall in any case comprise such product specifications which are – in particular by designation or reference in our order – part of the respective agreement or were included in the agreement in the same manner as the present GTC. It does not make a difference whether the product specification comes from us, the Vendor, or the manufacturer.
- (3) The Vendor guarantees that the delivered goods comply with the statutory and official provisions applicable to their distribution and use on the market in Germany, in the European Union or another market worldwide which we have brought to the Vendor's attention with our order, and that they do not infringe the rights of third parties.
- (4) In deviation from Sec. 442 para. 1 sentence 2 BGB (German Civil Code), we shall have unlimited warranty claims even if we were not aware of the defect at the conclusion of the contract due to gross negligence.
- (5) The statutory provisions regarding our duty to examine the goods and notify the Vendor of any defects shall apply subject to the following stipulation: Our duty to examine shall be limited to defects which are clearly noticeable during our incoming goods inspection and our inspection of the shipping documents (e.g. damage due to transportation, wrong and short delivery) or which become obvious when taking samples under our quality assurance process. If a formal acceptance is agreed, there shall be no obligation to examine. Apart from that, it depends to what extent an examination in consideration of the circumstances of each individual case is practical under the proper course of business. Our duty to notify the Vendor of a defect discovered at a later time shall remain



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unaffected. Regardless of our duty to examine, our notification shall be deemed in due time if it is sent within 14 working days as of the discovery, or in the case of obvious defects, as of the delivery.

- (6) Subsequent performance also includes disassembly of the defective goods and a new installation, insofar as the goods were installed into a different object in accordance with their intended purpose. The costs incurred by the Vendor for the purpose of examination and subsequent performance (including potential disassembly and installation costs) shall also be borne by it if it becomes obvious that actually there was no defect. Our liability for damages in the event of unjustified warranty claims shall remain unaffected; however, we shall only be liable if we discovered or did not discover due to gross negligence that there was no defect.
- (7) Should the Vendor fail to fulfill its obligation of subsequent performance – by means of remedying the defect (subsequent improvement) or delivering goods free of defects (replacement delivery), as we may choose – within a reasonable period set by us, we may select to remedy the defect ourselves and demand compensation from the Vendor for the expenditures required or an according advance payment. If the subsequent performance by the Vendor failed or is unreasonable for us (e.g. due to urgency, endangerment of operational safety or impending occurrence of unreasonably grave damage), determining a time period will not be necessary; we will immediately notify the Vendor of such circumstances; if possible, even before the occurrence.
- (8) Generally, we shall be entitled to purchase price reduction or withdrawal from the contract in the event of a material defect or deficiency in title pursuant to the statutory provisions. Moreover, we shall have a claim for damages and reimbursement of expenditures pursuant to the statutory provisions.

## § 8 Vendor's liability; Indemnification; Insurance

- (1) The Vendor shall indemnify us from any third-party claims, be it product safety, product liability or similar claims, if and insofar as the cause for such claims stems from its sphere of responsibility and it is liable itself in relation to third parties.
- (2) As part of its obligation to indemnify, the Vendor shall reimburse us for all expenditures which may arise from or in connection with claims brought by third parties, including recalls issued by us. We shall inform the Vendor regarding content and scope of recall measures – insofar as possible and reasonable – and provide it with the opportunity to make a statement. Additional statutory claims shall remain unaffected.
- (3) The Vendor shall conclude and maintain product liability insurance with a lump-sum coverage of at least ten million EUR per occurrence of damage.

## § 9 Statute of limitation

- (1) The mutual claims of the contractual parties shall expire and become time-barred according to the statutory provisions, unless stipulated otherwise below.
- (2) In deviation from Sec. 438 para. 1 No. 3 BGB (German Civil Code), the general statute of limitation for warranty claims shall be 3 years from the passing of the risk. Insofar as an acceptance is agreed, the period of limitation shall begin with the acceptance. The 3-year statute of limitation shall also apply accordingly to claims from deficiencies in title, whereby the statutory period of limitation for actio in rem regarding third parties (Sec. 438 para. 1 No. 1 BGB (German Civil Code)) shall remain unaffected; moreover, claims from deficiencies in title shall not become time-barred in any case as long as a third party can assert a right – in particular due to the lack of a statute of limitation – against us.
- (3) The periods of limitation provided by the sale of goods laws, including the above-mentioned extension, shall apply – within the statutory scope – to all contractual warranty claims. Insofar as we have non-contractual claims for damages due to a defect, the

regular statutory period of limitation shall apply provided the application of the periods of limitation of the sale of goods laws does not result in a longer period of limitation in the individual case.

### **§ 10 Applicable law; place of jurisdiction; Severability**

- (1) The law of the Federal Republic of Germany shall apply to these GTC and to the contractual relationship between us and the Vendor. Conflict of laws provisions and the United Nations Convention on Contracts for the International Sale of Goods (CISG) are expressly excluded.
- (2) The exclusive place of jurisdiction for all disputes arising from or in connection with the contractual relationship shall be our business seat. However, in all cases, we shall also be entitled to bring an action at the place of performance of the delivery pursuant to the present GTC or a prevailing individual agreement or at the general place of jurisdiction of the Vendor.
3. Should a provision of these GTC be or become partially or fully invalid, this shall not affect the validity of the remaining provisions of these Conditions. The parties hereby already agree at this point in time to replace any invalid provisions with effective provisions which come as close as possible to achieving the economic purpose intended by the parties.

Bocholt, 11.07.2024