

General Terms of Sale

Cross GmbH, Status: February 2021

§ 1

General information, scope

- 1.1 Our General Terms of Sale (hereinafter “**AVB**”) shall apply exclusively. Deviating, contradictory or supplementary General Business Terms of our contractual partners, in particular of our customers (hereinafter “**Buyers**”) shall only become a part of the contract if and insofar as we have explicitly approved their validity in writing. This requirement of approval shall apply in any case, for example also if we carry out the delivery to the Buyer without reservation in the knowledge of the General Business Terms of the Buyer.
- 1.2 The AVB shall apply to all of our business relationships with Buyers. The AVB shall only apply if the Buyer is an entrepreneur (§ 14 BGB [German Civil Code]), a legal entity under public law or special assets under public law.
- 1.3 The AVB shall apply in particular to contracts concerning the sale and/or the delivery of movable objects (hereinafter also: “**Good(s)**”). Goods are not produced by us, but by manufactures known to us on their own responsibility. In contracts for the sale and/or delivery of Goods, we act as a reseller/trader.
- 1.4 The AVB shall also apply in their respective version as a framework agreement to future contracts concerning the sale and/or the delivery of movable objects with the same buyer without us having to refer hereto again in each individual case; in this case we shall inform the Buyer about changes to our AVB immediately.
- 1.5 Individual agreements with the Buyer, which deviate from the AVB, shall have precedence over the AVB. The contents of the deviating individual agreement are to be recorded in writing.
- 1.6 References to statutory provisions have a clarifying meaning. The statutory regulations shall apply insofar as they have not been directly amended or are explicitly exclusively in these AVB.

§ 2

Conclusion of contract

- 2.1 Our offers are also without obligation and non-binding with the sending or handing over of catalogues, technical documentation such as drawings, plans, calculations or other product specifications or documents; we explicitly reserve the property rights and copyrights hereto. Without a deviating written agreement merely simple, revocable, non-transferrable rights of use and rights of use, for which sub-licences are not possible, shall be granted to such materials.

TRANSLATION FOR INFORMATION ONLY; The German language version alone shall prevail; the translations into English is provided for information purposes only.

- 2.2 The order of the Goods by the Buyer shall be deemed as a binding offer for a contract. The acceptance can be declared in writing or by the delivery of the Goods to the Buyer.

§ 3

Property rights and indemnification

- 3.1 We are entitled to describe ourselves as its supplier for the duration of the business relationship with a Buyer and for the purpose of executing the contracts with the Buyer to use its property rights such as patent, utility model, registered design, trademark rights and copyrights.
- 3.2 The Buyer shall bear the sole responsibility for the fact that the Goods do not infringe property rights of third parties such as patent, utility model, registered design, trademark rights and copyrights insofar as features are affected, which are a result of its stipulations for the production of the Goods.
- 3.3 The Buyer shall indemnify us from all claims of third parties owing to the infringement of property rights such as patent, utility model, registered design, trademark rights and copyrights insofar as features are affected, which are a result of its stipulations for the production of the Goods.
- 3.4 The Buyer shall independently ensure the protection, the maintenance and defence of its property rights and at its own costs.

§ 4

Default as debtor

- 4.1 Insofar as binding delivery deadlines cannot be adhered to for reasons, for which we are not responsible, – e.g. non-availability of the service – we shall inform the Buyer hereof immediately and at the same time notify of the expected new delivery deadline. If the delivery is not available within the new delivery deadline either we are entitled to cancel the contract in full or in part; we shall reimburse already provided considerations of the Buyer immediately. Deemed as a case of the non-availability of the service within this meaning is in particular, however not conclusively, the delivery by our component suppliers, which is not in time, if we have concluded a congruent hedging transaction or neither we, nor our component suppliers are at fault or we are not obliged to the procurement in an individual case.
- 4.2 The occurrence of a delay in delivery is determined according to the statutory regulations. However, a reminder by the Buyer is necessary for the occurrence of the delay in delivery in any case.
- 4.3 The rights of the Buyer to set a reasonable final deadline and to cancellation according to § 323 BGB as well as our statutory rights in particular with an exclusion of the service obligation owing to impossibility of the service or if the service is deemed unreasonable and/or subsequent satisfaction according to § 275 BGB shall remain unaffected.

TRANSLATION FOR INFORMATION ONLY; The German language version alone shall prevail; the translations into English is provided for information purposes only.

§ 5

Force majeure

We shall not be liable for the impossibility of the delivery or for the delays of delivery, insofar as these are caused by force majeure or by other events which were unforeseeable at the time of conclusion of the contract (e.g. war, pandemics, damages due to fire or explosion, operational disruptions of any kind, difficulties in the procurement of materials or energy, delay of transportation, strikes, lawful lock-outs, shortages of labour, energy or raw materials, cyber-attacks, difficulties in obtaining necessary governmental approvals, governmental sanctions, or absent, incorrect or untimely deliveries by suppliers) and we are not responsible for. If such events render the delivery considerably more difficult or impossible for us, and if the obstacle is not only of temporary duration, we shall be entitled to withdraw from the contract. In the case of temporary obstacles, the delivery deadline shall be extended, or the delivery dates shall be postponed by the period of the obstruction plus a reasonable start-up period. If, as a result of a delay of more than six months, the Buyer can no longer reasonably be expected to accept the delivery, the Buyer shall be entitled to withdraw from the contract by means of an immediate declaration in written form.

§ 6

Delivery / passing of risk / acceptance / delay in acceptance

- 6.1 The delivery is carried out by us or by third parties and component suppliers commissioned by us. The delivery is carried out ex warehouse / warehouse of the component supplier, which is also the place of satisfaction. The warehouse / warehouse of the component supplier can also be located in the European overseas countries. At the request and costs of the Buyer the Goods shall be sent to another place of destination (contract of sale involving the carriage of goods). Insofar as not otherwise agreed we are entitled to determine the type of the shipment (in particular transport company, dispatch route, packaging) ourselves.
- 6.2 The risk of the accidental loss and the accident deterioration of the goods shall pass to the Buyer by no later than with the hand-over to the Buyer. In case of a contract of sale involving the carriage of goods however the risk of the accidental loss and the accident deterioration of the Goods as well as the risk of delay shall pass already with the delivery of the Goods to the carrier, the freight forwarder or the person or institution otherwise determined to carry out the shipment (§ 447 Par. 1 BGB). Insofar as an acceptance has been agreed this shall be decisive for the passing of risk. In this case the statutory regulations of the law governing contracts for work and services shall apply accordingly to an agreed acceptance. The delay in acceptance of the Buyer shall be deemed equivalent to the hand-over respectively acceptance.
- 6.3 If the Buyer is in delay with the acceptance, if it fails to provide an act of assistance or if our delivery is delayed for other reasons, for which the Buyer is responsible, then we shall be entitled to request compensation for the thus suffered damages including additional expenses, in particular for storage costs.

TRANSLATION FOR INFORMATION ONLY; The German language version alone shall prevail; the translations into English is provided for information purposes only.

§ 7

Terms of payment, price adjustment / offsetting and retention

- 7.1 Price details are respectively deemed plus the applicable rate of value added tax. This is currently 19 % in Germany.
- 7.2 In case of unforeseeable changes in costs, in particular in transport, labour or production costs, which occur after the conclusion of the contract, we reserve the right to increase the prices according to the increased costs, if the delivery is made more than four months after the conclusion of the contract. The adjustments of the costs will be proven to the Buyer upon request.
- 7.3 If the Buyer is in default with the payment of the purchase price, interest is to be paid on this price during the default at the respective applicable statutory interest rate on default of currently 8 percentage points above the respective base lending rate. We reserve the right to assert further damages on default. The claim to maturity interest according to § 353 HGB [German Commercial Code] shall remain unaffected towards merchants.
- 7.4 The right of the Buyer to offsetting or retention is limited to counter-claims determined final and binding or which are undisputed. In case of defects to the delivery the counter-rights of the Buyer shall remain unaffected.

§ 8

Pre-notification deadline with SEPA direct debit

Insofar as the Buyer authorizes us to collect receivables by means of direct debit with a separate SEPA direct debit mandate, in deviation from the statutory provisions of a 14-day pre-notification for SEPA direct debits (so-called Pre-Notification), a reduced pre-notification deadline of 5 days shall be agreed for the first and follow-up direct debits.

§ 9

Reservation of title

- 9.1 Until the full payment of all of our current and future receivables from the purchase contract and a regular business relationship (the "**secured receivables**") we reserve the property to the sold Goods (extended reservation of title).
- 9.2 The Goods under reservation of title may neither be pledged to third parties, nor assigned as collateral, before the full payment of the secured receivables. The Buyer has to inform us immediately in writing if and insofar as third parties access the Goods belonging to us.
- 9.3 In case of a conduct of the Buyer in breach of the contract, in particular with the non-payment of the due purchase price, we are entitled to cancel the contract according to the statutory regulations and to request that the Goods are handed over owing to the reservation of title and the cancellation. If the Buyer does not pay the due purchase price, we may only assert these rights if we have unsuccessfully set the Buyer a

TRANSLATION FOR INFORMATION ONLY; The German language version alone shall prevail; the translations into English is provided for information purposes only.

reasonable deadline for the payment in advance or the setting of such a deadline is dispensable according to the statutory regulations.

9.4 The Buyer is authorized to further sell and/or to process the Goods under reservation of title in the proper course of business. The following is agreed for this case:

9.4.1 The reservation of title shall cover the products produced by processing, mixing or connection of our goods at their full value, whereby we shall be deemed as manufacturer (extended reservation of title). If in case of a processing, mixing or connection with the goods of third parties, their property right continues to exist, we shall acquire the co-ownership in the ratio of the invoice values of the processed, mixed or connected goods. Incidentally, the same shall apply to the produced product as to the goods delivered under reservation of title.

9.4.2 The Buyer hereby now already assigns receivables against third parties produced from the resale of the goods or of the product as collateral to us in total respectively in the amount of our respective co-ownership share according to § 9.4.1 (the **“receivables ceded as collateral”**). We hereby now already accept this assignment. The restrictions of § 9.2 shall apply accordingly to the receivables ceded as collateral.

9.4.3 The Buyer is authorized to collect the receivable in addition to us. We undertake not to collect the receivable as long as cumulative

- a) the Buyer satisfies its payment obligations towards us,
- b) the Buyer is not in default of payment,
- c) the Buyer or otherwise a third party has not filed an application for the opening of insolvency proceedings,
- d) a reason for insolvency which is relevant according to the legal form of the customer
- e) and there is no other deficiency to its ability to pay.

If this however the case the Buyer shall disclose the assigned receivables and their debtors to us upon first request, provide all details which are necessary for the collection, hand over the documents, which substantiate the receivables together with other associated documents, and disclose the assignment to us to the third party debtors (debtors of the customer).

9.4.4 If the realisable value of the collateral items exceeds our receivables by more than 10% we shall release collateral items at our choice at the request of the Buyer.

§ 10

Additional services

Insofar as we undertake additional services such as participating in the development of goods or specifications for goods or the performance of product tests according to technical standards or guidelines (e.g. DIN, EN), these AVB, and in particular the limitation to liability according to § 12, shall apply.

TRANSLATION FOR INFORMATION ONLY; The German language version alone shall prevail; the translations into English is provided for information purposes only.

§ 11

Claims for defects of the Buyer

- 11.1 The statutory regulations shall apply to the rights of the Buyer in case of defects of quality and to title (including false and shortfall in delivery as well as improper assembly or faulty assembly instructions) insofar as not otherwise determined below. In all cases, the special regulations with the end delivery of unprocessed goods to a consumer shall remain unaffected, even if the consumer has processed them further (supplier recourse according to § 478). Claims for supplier recourse are excluded if the faulty object has been further processed by the Buyer or another entrepreneur, e.g. by installation in another product.
- 11.2 Claims for defects of the Buyer are excluded insofar as they are a result of the implementation of the stipulations of the Buyer for the production of goods.
- 11.3 We do not assume any liability for public statements of the manufacturer or other third parties such as for example advertising statements.
- 11.4 Obligations for examination and to report defects:
- 11.4.1 Claims for defects of the Buyer presume the compliance with the statutory obligations for examination and to report defects (§§ 377, 381 HGB). Claims are to be reported to us immediately in writing. The report is deemed as carried out immediately if it is made within two weeks, whereby the timely dispatch of the report is sufficient in order to safeguard the deadline.
- 11.4.2 Irrespective of the obligation for examination and to report defects the Buyer undertakes to report obvious defects (including false and shortfall in delivery) in writing within two weeks from delivery, whereby the timely dispatch of the report is also sufficient here in order to safeguard the deadline.
- 11.4.3 If the Buyer fails to carry out the proper examination and/or report of defects, our liability for the defect which is not reported or not reported in due time or not reported properly shall be excluded.
- 11.5 Subsequent improvement / follow-up delivery and retention
- 11.5.1 In case of goods which are delivered faulty, we can initially choose whether we shall satisfy the subsequent satisfaction by remedying the defect (subsequent improvement) or by the delivery of a faultless object (substitute delivery). Our right to refuse the subsequent satisfaction under the statutory pre-requisites, remains unaffected.
- 11.5.2 We are entitled to render the owed subsequent satisfaction – both in the form of the subsequent improvement as well as the substitute delivery – dependent on the fact that the Buyer pays the due purchase price. However, the Buyer is entitled to retain a part of the purchase price, which is deemed reasonable in the ratio to the defect.
- 11.5.3 The Buyer has to give us the time and opportunity, which are necessary for the owed subsequent satisfaction, in particular to hand over the goods, for which a complaint is made, for purposes of testing. In the event of the substitute delivery the Buyer has to return the faulty object to us according to the statutory regulations. The subsequent

TRANSLATION FOR INFORMATION ONLY; The German language version alone shall prevail; the translations into English is provided for information purposes only.

satisfaction includes neither the dismantling of the faulty object, nor the renewed installation, if we were not originally obliged to the installation.

- 11.5.4 If a defect actually exists, we shall bear the expenses, which are necessary for the purpose of the testing and subsequent satisfaction, in particular transport, route, labour and material costs as well as, if applicable, dismantling and installation costs in accordance with the statutory provisions. Insofar as there is no defect, we can request that the costs incurred owing to the defect investigation and remedy are reimbursed by the Buyer, unless the lack of defectiveness was not recognizable to the Buyer
- 11.6 If the subsequent satisfaction has failed or a reasonable deadline, set for the subsequent satisfaction by the Buyer, has expired unsuccessfully or is dispensable according to the statutory regulations, the Buyer can cancel the purchase contract or reduce the purchase price, whereby there is no right to cancellation in case of an insignificant defect.
- 11.7 § 12 shall apply to claims of the Buyer for compensation or the reimbursement of fruitless expenses.

§ 12

Limitation to liability and damages

- 12.1 Subject to regulations of these AVB to the contrary we shall be liable according to the relevant statutory regulations in case of a breach of contractual and non-contractual duties.
- 12.2 We shall be liable for damages – no matter for what legal grounds – in case of wilful intent and gross negligence. With simple negligence we shall only be liable
- 12.2.1 for damages from the injury to life, the body or the health,
- 12.2.2 for damages from the breach of essential contractual duties. Essential contractual duties are such obligations, the satisfaction of which makes the proper execution of the contract possible at all and on the compliance with which the contractual partner relies and may rely upon as a rule. With the breach of essential contractual obligations our liability is limited to the compensation of the foreseeable, typically occurring damages.
- 12.3 The limitations to liability according to § 12.2 shall not apply insofar as we have maliciously failed to disclose a defect or have taken over a guarantee for the condition of the goods. The same shall apply to claims of the Buyer according to the Product Liability Act.
- 12.4 The Buyer indemnifies us from all claims of third parties, including those arising from product liability, which are a result of the implementation of the stipulations of the Buyer for the production of goods.
- 12.5 The Buyer can only cancel or terminate owing to a breach of duty, which does not consist of a defect, if we are responsible for the breach of duty. A free right of

TRANSLATION FOR INFORMATION ONLY; The German language version alone shall prevail; the translations into English is provided for information purposes only.

termination of the Buyer (in particular according to §§ 651, 649 BGB) is excluded. Incidentally, the statutory pre-requisites and legal consequences shall apply.

§ 13

Statute-of-limitations

- 13.1 Notwithstanding § 438 Par 1 No. 3 BGB the general statute-of-limitations for claims from defects of quality and title is one year from the delivery. Insofar as an acceptance has been agreed the statute-of-limitations shall begin with the acceptance.
- 13.2 This shall have no effect on statutory special regulations on the statute of limitations (in particular §§ 438 Par 1 No. 1, 444, 445b BGB).
- 13.3 The afore-mentioned statutes-of-limitations of the purchase law shall also apply to contractual and non-contractual claims for damages of the Buyer, which are due to a defect of the good, unless the application of the regular legal statute-of-limitation (§§ 195, 199 BGB) would lead to a shorter statute-of-limitation in an individual case. The statutes-of-limitations of the Product Liability Act shall remain unaffected. Incidentally, the legal statutes-of-limitations shall apply exclusively to claims for damages of the Buyer according to § 12.

§ 14

Measures to ensure product safety, governmental measures

In the event that governmental measures by authorities are taken at or against the Buyer with respect to Goods (e.g. the ordering of a product recall) or if the Buyer intends to take measures of its own to ensure product safety, he shall inform us thereof immediately and coordinate his steps with us and the manufacturer, as far as this is possible and does not conflict with the Buyer's mandatory legal obligations. Upon our request, the Buyer shall provide the authorities with the cooperation and support which may reasonably be expected.

§ 15

Choice of law / place of jurisdiction

- 15.1 The law of the Federal Republic of Germany shall apply to these AVB and all legal relationships between us and the Buyer under the exclusion of international standard law, in particular the UN Convention on the International Sale of Goods.
- 15.2 If the Buyer is a merchant within the meaning of the HGB, legal entity under public law or special assets under public law, the exclusive – also international – place of jurisdiction for all disputes ensuing directly or indirectly from the contractual relationship is Hamburg. We are however also entitled to file an action at the general place of jurisdiction of the Buyer. Mandatory statutory provisions about exclusive places of jurisdiction shall remain unaffected by this provision.

TRANSLATION FOR INFORMATION ONLY; The German language version alone shall prevail; the translations into English is provided for information purposes only.

§ 16
Written form

Declarations and reports, which are to be submitted towards us by the Buyer after conclusion of the contract, in particular the setting of deadlines, reports of defects, complaints of defects, declaration and exercising of design rights such as cancellation or reduction require a written form in order to be valid.