

General Terms and Conditions of Sale (B2B)

§ 1 Scope of application; Form

(1) These General Terms and Conditions of Sale (GTCs) apply for all our business relationships with our customers („Purchaser“). The GTCs apply only where the Purchaser is an entrepreneur (Section 14 BGB - Bürgerliches Gesetzbuch - German Civil Code), a legal entity established under public law or a separate body of public assets.

(2) The GTCs apply in particular for contracts for the sale and/or delivery of movable items („Goods“) irrespective of whether we manufacture the goods ourselves or purchase the same from suppliers (Sections 433, 651 BGB).

(3) Exclusively our GTCs apply. Any deviating, contradictory or supplementary General Terms and Conditions of Business of the Purchaser shall only become an integral part of the contract if and to the extent we have expressly consented to their application. This requirement of consent applies in each case, for example also where, in knowledge of the General Terms and Conditions of Business of the Purchaser, we make delivery to it without reservation.

(4) Any individual agreements made with the Purchaser in a specific case (including ancillary agreements, supplements and changes) take precedence in each case over these GTCs. A written contract or our written confirmation shall, subject to any evidence to the contrary, be authoritative in regard to the content of any such agreements.

(5) Material legal declarations and notices of the Purchaser in relation to the contract (e.g. setting of a deadline, notification of defects, cancellation of the contract or reduction in the price) are to be given in writing, i.e. in written or text form (e.g. letter, e-mail, fax). Statutory provisions governing form and further supporting evidence, in particular, in the case of doubts as to the legitimation of the person making the declaration, remain unaffected.

(6) References to the applicability of statutory provisions are for the purposes of clarification only. Accordingly, even without any such clarification, the statutory provisions shall apply unless they are directly amended or expressly excluded in these GTCs.

§ 2 Conclusion of the contract

(1) Our offers are subject to alteration without notice and are non-binding. This also applies where we have provided the Purchaser with catalogues, technical documentation (e.g. drawings, plans, computations, calculations, references to DIN standards), samples, other product descriptions or documents - also in electronic form - in which we reserve proprietary rights and copyrights.

(2) The order of the goods by the Purchaser constitutes a binding offer of contract. Unless otherwise stipulated in the order, we shall be entitled to accept this offer of contract within 5 working days following receipt of the same by us.

(3) The acceptance may be declared either in writing (e.g. through confirmation of order) or by delivery of the goods to the Purchaser.

§ 3 Delivery period and default in delivery

(1) The delivery period will be agreed individually or quoted by us upon acceptance of the order. Where this is not the case, the delivery period amounts to 4 weeks as from the conclusion of the contract. Performance shall be deemed to have been made within the delivery period if the goods have been dispatched or their readiness for dispatch has been notified within the delivery week quoted.

(2) Should we be unable to meet binding delivery periods for reasons for which we are not responsible (non-availability of the performance), we shall notify the Purchaser hereof without delay and at the same time notify it of the anticipated new delivery period. Should the performance also not be available within the new delivery period, we shall be entitled to cancel the contract, either in whole or in part; we will promptly refund any payments already made by the Purchaser. Cases of the non-availability of goods or services within this meaning include in particular the failure of our supplier to make delivery in due time where we have concluded a congruent covering transaction, cases where neither we nor our supplier are at fault or where we are not obliged to procure supplies in the individual case.

(3) Whether we are in default in delivery is to be determined in accordance with the statutory provisions. Should we fall into default in delivery, the Purchaser may demand lump-sum damages for the damage suffered by it through the delay. The lump-sum damages shall amount to 0.5 % of the net price (delivery value) for each complete calendar week of delay, subject, however, to a maximum of 5 % of the delivery value of the goods delivered late. We reserve the right to provide evidence that the Purchaser has suffered no damage at all or only a significantly lower amount of damage than the above-mentioned lump-sum.

(4) The rights of the Purchaser under § 8 of these GTCs and our statutory rights, in particular in the case of any exclusion of our duty of performance (e.g. by reason of impossibility or unconscionability of performance and/or remedial measures) remain unaffected.

§ 4 Delivery; Passing of risk; Acceptance; Default in acceptance

(1) Delivery is made ex works, which is also the place of performance for the delivery and any remedial measures to eliminate possible defects. At the demand and expense of the Purchaser, the goods will also be dispatched to another destination (sale to destination in accordance with Purchaser's instructions). Unless agreed to the contrary, we shall be entitled ourselves to determine the nature of shipment (in particular the transport company, transport route, packaging).

(2) The risk of accidental loss and of incidental deterioration of the Goods shall pass to the Purchaser at the latest upon delivery. However, in the case of a sale involving the shipment of goods, the risk of accidental loss and incidental deterioration of the Goods and also the risk of delay passes already upon delivery of the Goods to the carrier, freight forwarder or other person or institution charged with the performance of the shipment. In so far as an acceptance has been agreed, this shall be the decisive time for the passing of risk. Also in all other respects, the statutory provisions governing contracts for work and services shall apply accordingly in regard to any acceptance agreed. Should the Purchaser be in default with acceptance, this shall have the equivalent effect of delivery or acceptance.

(3) Should the Purchaser fall into default with acceptance, should it fail to perform any act of co-operation or should our delivery be delayed for other reasons for which the Purchaser is responsible, we shall be entitled to demand compensation for the damage thereby arising, including additional expenditure (e.g. storage costs). For storage, we will charge a flat rate as compensation in an amount of 10 EUR per calendar day and m³ (always rounded up to the next figure), beginning with the delivery period or - in the absence of any specified delivery period - with the notification of the readiness of the Goods for dispatch.

The right to produce evidence that we have suffered a higher amount of damage and also our statutory rights (in particular reimbursement of additional expenditure incurred, reasonable compensation, and cancellation of the contract) remain unaffected; the flat rate sum is, however, to be set off against further-reaching monetary claims. The Purchaser is entitled to produce evidence that we have suffered no damage at all or only a significantly lower amount of damage than the flat rate sum provided for above.

(4) We shall be entitled to make part deliveries provided the Purchaser can reasonably be expected to accept the same. Where part deliveries are made, you will only be charged shipping costs for the first part delivery. Where part deliveries are made at your request, we will charge shipping costs for each part delivery.

§ 5 Prices and terms and conditions of payment

(1) Except as agreed to the contrary in any individual case, our respective current prices as at the date of conclusion of the contract apply, namely ex works and plus the statutory value added tax.

(2) In the case of a sale involving the carriage of goods (§ 4 (1)), the Purchaser shall bear the transport costs ex works and the costs of any transport insurance requested by the Purchaser. Except where we charge the actual transport costs arising in any individual case, a flat rate transport charge (excluding transport insurance) in an amount of 25 EUR is deemed as agreed for shipment within Germany. Any customs duties, fees, taxes and other public levies shall be borne by the Purchaser.

(3) The purchase price is due and payable within 10 days of the issue of the invoice and delivery or acceptance of the Goods. We shall, however, be entitled at any time, also within the scope of an ongoing business relationship, to make a delivery, either in whole or in part, only upon advance payment. We shall declare any reservation in this respect no later than with the confirmation of order.

(4) Upon the expiration of the payment period specified above, the Purchaser falls into default. During the period of default, interest shall be payable on the purchase price at the respectively applicable statutory default interest rate (currently 9 % p. a. above the base interest rate, Section 288 (2) BGB). We reserve the right to assert further-reaching claims for damages on account of the default. Vis-à-vis business dealers, our commercial claim to interest as from the date when the purchase price fell due (Section 353 HGB - Handelsgesetzbuch - German Commercial Code) remains unaffected.

(5) The Purchaser shall only be entitled to exercise rights of set-off or withholding in so far as its claim has been judicially decided and is final and legally binding or is undisputed. In the case of any defects in the delivery, the counterclaims of the Purchaser, in particular under § 8 (6), sentence 2, of these GTCs remain unaffected.

(6) If, following the conclusion of the contract, it becomes apparent (e.g. through an application for the opening of insolvency proceedings) that our claim to the purchase price is at risk due to the lack of financial capacity on the part of the Purchaser, we shall be entitled in accordance with the statutory provisions to refuse performance and - where appropriate, after setting a time limit - to cancel the contract (§ 321 BGB). In the case of contracts for the manufacture of single items (custom-made products) we may cancel the contract immediately; the statutory provisions concerning the lack of necessity of setting a time limit remain unaffected.

§ 6 Reservation of title

(1) We reserve title to the Goods sold up until payment in full of all our present and future claims arising from the contract of purchase and any ongoing business relationships (secured claims).

(2) The goods subject to reservation of title may not, prior to payment in full of the secured claims, either be pledged to third parties or assigned by way of security. The Purchaser shall notify us in writing without delay if any application for the opening of insolvency proceedings is made or if any attempts at seizure (e.g. attachments) of the Goods belonging to us are made by third parties.

(3) In the case of any conduct on the part of the Purchaser in breach of contract, in particular failure to pay the purchase price due, we shall be entitled in accordance with the statutory provisions to cancel the contract and/or to demand the return of the Goods pursuant to the reservation of title. The demand for the return of the Goods does not at the same time constitute any notice of cancellation of the contract; rather, we shall be entitled simply to demand the return of the Goods and to reserve the right of cancellation. Should the Purchaser fail to pay the purchase price due, we may only exercise these rights if we have previously, to no avail, set the Purchaser a reasonable period for payment or if the setting of any such period for payment may be dispensed with under the statutory provisions.

(4) Up until revocation of our permission under para. (c) below the Purchaser is authorised to re-sell and/or process the Goods subject to the reservation of title in its ordinary course of business. In this case, the following provisions shall apply by way of amplification.

(a) The reservation of title extends to the products arising through the processing, commingling or combination of our Goods at the full value of these new products, whereby we shall be deemed to be the manufacturer. If, in the event of any processing, commingling or combination with goods of third parties, their rights of ownership remain in existence, we shall acquire co-ownership in the ratio of the invoice values of the goods processed, commingled or combined. In all other respects, the same applies for the new product arising as for the Goods delivered subject to reservation of title.

(b) By way of security, the Purchaser hereby assigns to us its claims against third parties arising from the re-sale of the Goods or the products in the total amount or in the amount of any co-ownership share which we may acquire pursuant to the foregoing paragraph. We accept this assignment. The duties of the Purchaser set out in para. 2 also apply in regard to the claims assigned.

(c) In addition to ourselves, the Purchaser remains authorised to collect the claim. We undertake not to collect the claim as long as the Purchaser fulfils its payment obligations towards us, no lack of financial capacity exists on its part and we do not assert our reservation of title through exercise of any rights pursuant to para. 3. Where, however, this is the case, we may demand that the Purchaser disclose to us details of the claims assigned and of the respective debtors, provide us with all information necessary to collect the debts, hand over the pertinent documents and notify the debtors (third parties) of the assignment. We shall furthermore be entitled in such case to revoke the right of the Purchaser to re-sell and process the Goods subject to the reservation of title.

(d) Should the realisable value of the security exceed our claims by more than 10 %, we shall, at the demand of the Purchaser, release collateral of our choice to such extent.

§ 7 Special designs and modifications of standard products

(1) For special designs and modifications of standard products, the particularities set out in paras. 4 to 7 apply.

(2) Special designs are goods which are tested, designed and manufactured in accordance with customer stipulations (e.g. in the form of a schematic diagram, renderings, technical specifications or such like). In this connection, various existing products from our product portfolio may be integrated.

(3) A modification of standard products is any change desired by the customer to the product from our product portfolio defined by us. This may include:

- an individual colour choice outside the colours offered by us;
- a change to the dimensions outside the product measurements offered;
- technical changes, e.g. a change to the LED used, to the busbar adapter or to other components in deviation from the standard product defined by us.

(4) Special designs and modifications to standard products will be manufactured by us in accordance with individual customer stipulations. Smaller changes (e.g. individual colour choice) will be noted in the order confirmation. In the case of major modifications and special designs, we will prepare a design drawing containing all relevant points prior to the commencement of production. In this connection, the customer will confirm the release on the drawing.

(5) Where special designs and the modified standard product are manufactured on the basis of your specifications, you alone are responsible for ensuring that no industrial property rights of third parties are infringed in this respect. Should we nevertheless be exposed to claims from third parties on account of any breach of industrial property rights, you shall indemnify us from these claims in the full scope.

(6) The delivery period will be agreed individually or quoted by us upon acceptance of the order. Where this is not the case, the delivery period for special designs and any modifications of standard products amounts to 8 weeks following the release of the design drawing or confirmation of the order and receipt of the payment on account. The delivery period shall be deemed to have been met where the goods are dispatched or readiness for dispatch is notified within the delivery week quoted.

(7) In the case of special designs or modified standard products, a payment on account in an amount of 50 % of the order value shall be due or a performance bond for the total order value delivered within 5 days following the conclusion of the contract. We may make the commencement of our work conditional upon receipt of the payment on account.

§ 8 Claims of the Purchaser for defects

(1) Except as provided to the contrary below, the statutory provisions shall apply to the rights of the Purchaser in the event of any material defects or flaws in legal title (including wrong or short delivery and also incorrect installation or inadequate installation instructions). In all cases, the special legal provisions governing the ultimate delivery of the unprocessed Goods to a consumer remain unaffected, even if the latter has processed the Goods further (recourse against the supplier pursuant to Section 478 BGB). Claims arising from recourse against the supplier are excluded if the defective Goods were further processed by the Purchaser or any other entrepreneur, e.g. through installation in another product.

(2) The basis of our liability for defects is primarily the agreement made concerning the quality of the Goods. An agreement concerning the quality of the Goods includes all product descriptions which are the object of the individual contract or which have been published by us (in particular in catalogues or on our Internet home page).

(3) Where no specific quality has been agreed, it is necessary to assess whether a defect exists or not according to the statutory provisions (Section 434 (1), sentences 2 and 3, BGB). However, we assume no liability for any public statements made by third parties (e.g. assertions contained in advertisements).

(4) A pre-requisite for the assertion of any claims by the Purchaser on account of defects is that it has complied with its statutory duties of examination and notification of any defects (Sections 377, 381 HGB). Should any defect be apparent upon delivery, upon the examination or at any later point in time, we are to be notified hereof in writing without delay. In any event, obvious defects are to be notified in writing within 5 working days as from delivery, and any defects not apparent upon examination notified in writing within the same period as from their discovery. Should the Purchaser fail to undertake a proper examination and/or to notify any defects, our liability for defects which were not notified or not notified promptly or not properly notified is excluded under the statutory provisions.

(5) Should the item delivered prove to be defective, we may initially choose whether we remedy the defect through elimination of the fault (rectification) or through delivery of an item free from defects (replacement delivery). Our right to refuse to remedy the defect in accordance with the statutory conditions remains unaffected.

(6) We are entitled to make the remedial performance owed conditional upon payment of the purchase price due by the Purchaser. However, the Purchaser shall be entitled to withhold a reasonable part of the purchase price proportionate to the defect.

(7) The Purchaser shall give us the time and opportunity necessary for the remedial performance owed by us, in particular to hand over the Goods which are the subject of complaint for purposes of examination. Where replacement delivery is made, the Purchaser shall return the defective item to us in accordance with the statutory provisions. The remedial measures do not comprise dismantlement of the defective item or renewed installation where we were not originally obliged to perform the installation.

(8) We shall bear or reimburse the necessary expenses for the purpose of examination and remedying the defect, in particular costs for transport, travel, labour and material and also any costs for dismantlement and installation in accordance with the statutory provisions if a defect actually exists. We may otherwise demand from the Purchaser reimbursement of the costs which we have incurred through the unjustified demand to have a defect eliminated (in particular the costs of examination and transport) unless the lack of existence of a defect was not recognisable for the Purchaser.

(9) In urgent cases, e.g. where operational safety is at risk or in order to avert disproportionate damage, the Purchaser has the right to eliminate the defect itself and to demand from us reimbursement of the objectively necessary expenses incurred in this connection. We are to be notified of any such self-remedy without delay, where possible beforehand. The right of the Purchaser to undertake remedial action itself shall not apply where we would have been entitled to refuse corresponding remedial measures in accordance with the statutory provisions.

(10) If the remedial measures have proved unsuccessful, or should any reasonable period set by the Purchaser for performance of the remedial measures have expired or be dispensable under the statutory provisions, the Purchaser can may cancel the contract of purchase or reduce the purchase price. Where, however, the defect is insignificant, no rights of cancellation exist.

(11) Claims of the Purchaser for damages or reimbursement of expenditure incurred in vain shall only exist under the terms of § 8, even in the case of defects, and are in all other respects excluded.

(12) We give no guarantee as to compatibility of control systems at the installation site with our products or as to operation with non-recommended operating devices and dimmers, and this is not included in the scope of performance.

(13) Lighting design and light calculation files are prepared with the greatest care in accordance with the best of our knowledge. In this connection, light measurements are, in particular, performed in our in-house light laboratory with corresponding measurement technology and trained personnel. The measurements are taken under ideal conditions. In reality, deviations in the measured values may occur through e.g. reflections, other light sources, solar radiation and such like.

(14) According to the product group, various LED designs are used; the colour coordinate precision is stipulated in Step-MacAdam (SDCM) or ANSI (C78.377-2008). By reason of technical progress and the usage-related change in the luminous flux of the products, deviations may arise in the light properties in comparison to the original products where subsequent deliveries of LED modules are made.

§ 9 Other liability

(1) Except as provided to the contrary under the GTCs, including the following provisions, we shall, in the case of any breach of contractual or extra-contractual duties, be liable in accordance with the statutory provisions.

(2) We shall be liable for damages – irrespective on which legal ground - within the scope of fault-based liability in the case of deliberate intent or gross negligence. In the case of ordinary negligence, we shall be liable, subject to any milder measure of liability in accordance with the statutory provisions (e.g. for the same degree of care as we exercise in own matters), only

a) for damage arising from injury to life, limb or health,

b) for damage arising from a not inconsiderable breach of a fundamental contractual obligation (obligation the performance of which makes the proper performance of the contract possible in the first place and upon compliance with which the contract partner generally relies and is entitled to rely); however, in this case, our liability shall be limited to reimbursement of the foreseeable damage typically arising in contracts of this nature.

(3) The limitations of liability deriving from para. 2 shall also apply in the case of breaches of duty by or in favour of persons for whose culpable acts we are responsible in accordance with statutory provisions. They shall not apply where we have fraudulently concealed any defect or where we have given a guarantee for a specific quality of the Goods or for any claims of the Purchaser under the *Produkthaftungsgesetz* [Product Liability Act].

(4) The Purchaser may only cancel or terminate contracts on account of a breach of duty not consisting in a defect where we are responsible for the breach of duty. An unrestricted right of termination on the part of the Purchaser (in particular under Sections 651, 649 BGB) is excluded. In all other respects, the statutory conditions and legal consequences shall apply.

§ 10 Limitation period

(1) In deviation from Section 438 (1), no. 3, BGB, the general limitation period for claims arising from material defects and flaws in legal title amounts to one year as from delivery. Where acceptance has been agreed, the limitation period shall commence with the acceptance.

(2) Where, however, the Goods are a building or an object typically used as a building and are responsible for its defective nature (building material), the limitation period shall amount to 5 years as from delivery in accordance with the statutory provisions (Section 438 (1), no. 2, BGB). The further special statutory regulations concerning the limitation of claims also remain unaffected (in particular Section 438 (1), no. 1, (3), Sections 444, 445 b BGB).

(3) The foregoing limitation periods under the law governing the sale of goods also apply for contractual and extra-contractual claims for damages by the Purchaser based on a defect in the Goods, unless the application of the regular statutory period of limitation (Sections 195, 199 BGB) would lead to a shorter limitation period in the individual case. Claims of the Purchaser to damages under § 9 (2), sentence 1, and sentence 2(a) and also under the Produkthaftungsgesetz shall, however, lapse by limitation exclusively in accordance with the statutory limitation periods.

§ 11 Choice of law and court venue

(1) These GTCs and the contractual relationship between ourselves and the Purchaser shall be governed by the law of the Federal Republic of Germany to the exclusion of uniform international law, in particular the UN Convention on Contracts for the International Sale of Goods (CISG).

(2) Where the Purchaser is a businessman within the meaning of the Handelsgesetzbuch, a legal entity established under public law or a separate body of public assets, the exclusive - also international - court venue for all disputes arising directly or indirectly from the contractual relationship shall be the location of our business headquarters in Michendorf (Germany). The same shall apply accordingly where the Purchaser is an entrepreneur within the meaning of Section 14 BGB. However, in all cases, we shall also be entitled to bring an action at the place of performance of the delivery commitment pursuant to these GTCs or any overriding individual agreement, or at the general court venue of the Purchaser. Any overriding statutory provisions, in particular provisions concerning exclusive competence, remain unaffected.