

# PROGROUP BOARD GMBH

## GENERAL TERMS AND CONDITIONS OF SALE

As of: November 2<sup>nd</sup> 2022

### 1. SCOPE

- a) The following General Terms and Conditions of Sale will apply exclusively to all – including future – our deliveries and services. We do not accept conditions of the customer conflicting with, deviating from or supplementing our General Terms and Conditions of Sale, in particular, delivery without reservations having knowledge of such conflicting or deviating conditions will not constitute acceptance. To the extent that our General Terms and Conditions of Sale do not contain any special provisions, the statutory provisions will apply, notwithstanding any customary trade practices.
- b) These General Terms and Conditions of Sale will only apply vis-à-vis entrepreneurs within the meaning of § 14 BGB (*German Civil Code*).

### 2. OFFER/CONCLUSION OF THE AGREEMENT

- a) Our offers are not binding. An agreement will only be concluded with our order confirmation, however, in any case upon delivery of the goods. Any comments regarding delivery must be recorded on our delivery note and on the CMR consignment note and must be countersigned by the driver; the customer is obliged to promptly provide us with a copy of each of these documents.
- b) Specifications regarding measures, weights and other product features contained in our offers and other enclosed documents are guidelines only and will only become part of the agreement if they are stated expressly as binding in our order confirmation. In deviation therefrom – in the following order – the tolerances stipulated in our **Technical Data Sheet** or, respectively – in the absence of such stipulations – the customary tolerances are deemed agreed,

even without express declaration of applicability. The Technical Data Sheet, as amended, will be sent at the request of the customer at our cost.

- c) We retain our title to and copyright for all compositions, manufacturing specifications, models and other specifications and information that we provide to the customer - be it in tangible or intangible form, including particularly in electronic form; access to the foregoing must not be provided to third parties without our express written approval. This applies, in particular, to such written documents that have been designated as „confidential“.
- d) Where the order qualifies as an offer pursuant to § 145 BGB, it will be binding on the customer for a period of 14 working days from the sending of the order. We are entitled to accept such offer within this period by sending of an order confirmation or the shipping of the goods ordered. With regard to the validity of the conclusion of the agreement, the customer waives receipt of the express or implied declaration of acceptance.
- e) Production and delivery shall take place at our discretion in one of our plants or through one of our Progroup Board sister companies; a list of our Progroup Board sister companies can be found on our website at <http://www.progroup.ag>. The customer agrees to a corresponding transfer of the contract by one of our Progroup Board sister companies by accepting the goods.

### **3. PRICE/PAYMENT/DEFAULT INTEREST/LUMP-SUM COMPENSATION**

- a) Our prices include free delivery to the place of delivery at the customer's location specified in our order confirmation, plus the applicable statutory VAT, except as otherwise expressly agreed in an individual case. Each delivery day will be aggregated in a collective invoice, except as otherwise agreed.
- b) The deduction of a discount requires a separate written agreement.

- c) Invoices are generally sent in electronic form as PDF or a comparable secure format to the e-mail address provided by the customer, at the express request of the customer also in paper form, whereby Progroup reserves the right to charge a processing fee. Insofar as it is within the sphere of influence of Progroup, the necessary measures will be taken to ensure secure dispatch in the case of electronic dispatch, in accordance with the respective state of security technology. We will not be liable for any damages incurred by the customer as a result of the invoice received by the customer being intercepted and/or modified by third parties during the transmission process and, as a result, no longer conforming to the invoice created and sent by us. In particular, any incorrect payments made by the customer as a result of such an occurrence shall be borne by the customer.
- d) All final invoice amounts are due for payment without deduction within 30 days from the date of the invoice and delivery, except as otherwise agreed in an individual case. For the date of payment, receipt by us will be relevant. In the event of default in payment, we are entitled – notwithstanding our right to claim additional losses und the opportunity for the customer to provide us with evidence that no or a substantially lower loss has been incurred – to charge interest in an amount of 15% p.a. above the base interest rate pursuant to § 247 BGB; however, at least we will be entitled to charge the statutory default interest rate.
- e) In the event that the customer is in default of payment with regard to an invoiced amount, we are entitled – without prejudice to any other rights of the customer – to accelerate all other claims based on deliveries made to the customer to be due immediately. We will inform the customer hereof in text form (Section 126b BGB – German Civil Code).
- f) We reserve the right to raise our prices reasonably, but not by more than 30% and, at the earliest, four weeks after the conclusion of the agreement, if increases of costs occur after the conclusion of the agreement that could not be taken into account before; in particular, this includes increases of costs due to increases of prices for preliminary products and imported goods as well as

changes in exchange rates. At the request of the customer, we will provide evidence of relevant changes.

- g) Where we accept cheques or promissory notes on the basis of a specific arrangement, this is done only on account of performance (*erfüllungshalber*); any cheque and bill charges have to be borne by the customer.
- h) In the event of unjustified non-performance and/or an unjustified withdrawal from the agreement on the part of the customer, we are entitled in any case to claim a lump-sum expenses compensation of 15% of the net value of the goods contained in the order, without prejudice to the opportunity for the customer to demonstrate to us that no or substantially lower expenses were incurred, and without prejudice to our right to claim additional losses.
- i) If after the conclusion of the agreement the insufficient ability of the customer to perform becomes apparent – in particular in the form of a fundamental deterioration of the customer's economic situation – and with it an endangerment of the customer's ability to provide consideration, we are entitled (1) to cancel agreed payment targets – also for future deliveries – and (2) to perform deliveries outstanding from all business relations with the customer – until the endangerment of the customer's ability to provide consideration is removed – only if the customer provides the consideration or provides customary bank securities for the delivery. This does not affect any additional statutory provisions.
- j) The customer is only entitled to setoff or retention rights to the extent that his claim has been recognised in a final and binding manner, is undisputed or has been acknowledged by us in writing. Any deviating provisions regarding the remedies available to the customer in the event of defects of a delivery – in particular pursuant to Section 5 sub-paragraph e) of these General Terms and Conditions of Sale – remain unaffected.
- k) We are entitled to assign our claims against the customer under or in connection with a delivery relationship to a third party – in particular for the

purposes of factoring or forfaiting. In the event that the general terms and conditions of the customer contain restrictions or prohibitions of assignment, we do not accept such restrictions or prohibitions.

#### **4. DELIVERY/FORCE MAJEURE/PACKAGING/TRANSPORT/PASSING OF RISK**

- a) We reserve due and timely self-delivery; the same applies to the availability of transport capacities at the time of delivery agreed with the customer. If such self-delivery fails due to circumstances for which we are not responsible, we will inform the customer accordingly without delay, at the latest within 5 working days after receipt by us of this information. In that case, we are entitled to withdraw from the agreement after an adequate waiting period has expired; we will promptly return any consideration already granted by the customer. In the event of a failure of due and timely self-delivery, the customer is also entitled to withdraw from the agreement after the expiry of an adequate subsequent period to be set in writing – or, respectively, in the exceptional cases provided for by statutory law also without such subsequent period. The assertion of any further damage caused by delay is excluded in accordance with Section 6.
- b) We will not be bound to delivery dates confirmed by us if we are not provided by the customer in a timely manner with the information and documents required for the scheduling, production and transport planning and/or the customer fails to fulfil his other contractual obligations which are a condition for or influence the timely delivery of the goods to him; these obligations include, in particular:
- (1) The final clarification of all technical details using the designations set forth in our **Technical Data Sheet**, as amended.
  - (2) the timely and due fulfilment of the obligations of the customer, in particular the receipt of all documents and official authorisations to be provided by the customer as well as

(3) timely making of an agreed advance payment.

The Technical Data Sheet, as amended, will be sent by us at the request of the customer at our cost.

- c) Delivery dates are binding only if they are expressly confirmed by us in writing and are subject to the reservations pursuant to Section 4 sub-paragraph a) and sub-paragraph b).
- d) Force majeure and other events not foreseeable at the time of the conclusion of the agreement for which we are not responsible, including war, riots, lawful industrial action and illegal strikes, official orders, shortage of energy or resources, interruptions of traffic and unavoidable interruptions of operations as well as fire – including at our suppliers' location – will relieve us from the obligation of delivery and performance for the duration of the interruption and the scope of its effects. If of unforeseeable duration, circumstances within the meaning of sentence 1 of this provision will entitle us, however, at the earliest 30 days after their occurrence, to withdraw from the agreement, in whole or in part, without the customer being entitled to a claim for damages; the same applies if said circumstances permanently render the performance of the agreement uneconomic and if we can no longer be reasonably expected to adhere to the agreement. We will inform the customer as soon as possible of the occurrence of force majeure or similar events; Section 4 sub-paragraph a) sent. 3 applies accordingly.
- e) We are entitled to partial deliveries and partial performance and - according to their respective invoicing - to request their separate payment, unless the partial delivery or partial performance, from an objective perspective, is not of interest to the customer or he cannot be reasonably expected to accept it. This does not affect the rights of the customer based on default or impossibility of our performance.
- f) The risk of accidental destruction or accidental deterioration of the goods passes to the customer, at the latest, upon delivery at the agreed place of

delivery. If the delivery or acceptance of the goods is delayed in case of delivery dates that are binding on us for reasons for which we are not responsible, the risk of destruction or deterioration of the goods passes to the customer, irrespective of other agreements on terms of delivery and payment, upon the expiry of the working day agreed as the delivery date. The same applies if we have announced an early delivery/performance at least 8 working days in advance, from the time of the early delivery/performance announced by us, unless the early delivery/performance is objectively of no interest to the customer or cannot reasonably be expected from him.

- g) The corrugated board sheets are delivered on wooden pallets or comparable carriers unless otherwise agreed. Each pallet is provided with plastic strapping.

## **5. WARRANTY**

- a) It is a precondition for any warranty claims of the customer that the latter has duly complied with his statutory duties of inspection and objection.
- b) Without prejudice to statutory provisions, the customer is obliged to have the driver record and confirm immediately on our delivery note as well as on the CMR consignment note those defects that are evident at the delivery of the goods, in particular short deliveries and transport damages, and thereafter is obliged to promptly provide us with a copy of such delivery note. In the event that a defect becomes apparent during inspection or at a later time, the customer is obliged to promptly give notice thereof in writing. The notice will be deemed to have been given promptly if it is given within two weeks; in order to meet the deadline it is sufficient to dispatch the notice in due time.
- c) Subject to Section 9 sub-paragraph a) of these General Terms and Conditions of Sale, the customer will carry the full burden of proof for all requirements of claims, in particular for the defect itself, the rejected amount of delivered goods, the time of the identification of the defect and the timeliness of the notification of defects.

- d) In the event of a justified complaint of defects for which we are responsible, we are entitled to subsequent performance at our choice to be made within adequate time, i.e. either by remedying the defect or by delivering goods that are free of defects within an appropriate period that also includes the time for the procurement of the goods from an upstream supplier. If the subsequent performance is not carried out successfully in adequate time, the customer is entitled, in accordance with applicable statutory provisions, to demand a reduction of the consideration or to rescind the agreement if the defect of the delivered goods is not only insignificant. Section 6 applies accordingly to any claims of the customer for damages based on defects of the goods.
- e) We are entitled to make the subsequent performance owed dependent on payment by the customer of the purchase price due. However, the customer will be entitled to retain a portion of the purchase price which is adequate in proportion to the defect.
- f) Statutory claims of recourse of the customer against us exist only to the extent to which the customer has not concluded any agreements with his customer that exceed the statutory warranty claims. Section 6 of these General Terms and Conditions of Sale applies to the scope of claims for damages and claims for the compensation of frustrated expenses by way of recourse claims.
- g) The customer further undertakes to accept and handle warranty claims of his customers in accordance with our warranty policies known to him.

## **6. DAMAGES, COMPENSATION OF FRUSTRATED EXPENSES**

- a) Claims for damages not based upon a grossly negligent or intentional breach of our contractual or statutory obligations are excluded, except as otherwise stipulated in these General Terms and Conditions of Sale or in individual agreements deviating therefrom. This applies to all claims for compensation, irrespective of their legal basis, in particular to claims for damages based on *culpa in contrahendo*, on other breaches of obligations, on claims in tort for



compensation of property damages pursuant to § 823 BGB or to claims for compensation of frustrated expenses.

- b) The exclusion of liability in the preceding sub-paragraph a) does not apply with regard to our liability for the culpable injury to life, body or health, our liability for the guaranteed quality of a delivery, our liability for defects which we fraudulently failed to disclose, our mandatory liability pursuant to the German Product Liability Act as well as those cases in which we have breached in a slightly negligent manner an essential contractual obligation (an obligation the fulfilment of which is a precondition for the due performance of the agreement and on the fulfilment of which the customer regularly relies and is entitled to rely). However, in cases of slightly negligent breaches of an essential contractual obligation and in cases of indirect damages and damages resulting from defects of the delivered goods, our liability is limited to the damages that are contract-specific and foreseeable at the time of the conclusion of the agreement, unless such breach of contractual obligations has caused damage to life, body or health.
- c) To the extent that our liability is excluded or limited, this applies also to the personal liability of our corporate bodies, personnel, employees, staff, representatives and vicarious agents.

## **7. RETENTION OF TITLE, EXTENDED RETENTION OF TITLE, PRODUCER CLAUSE**

- a) We retain the title to the delivery item (hereinafter "goods subject to retention of title") and to the documents enclosed with the delivery item for as long as we are still entitled to claims of any kind outstanding from present or future business relationships with the customer. In the event of current account, this retention of title also provides security for our respective claim for the account balance. In the event of a breach of contract by the customer, a default in payment or in case of the endangerment of the payment due to the insufficient ability to perform of the customer, we are entitled – as the case may be, if required by law, after the setting of a deadline – to withdraw from the agreement

in accordance with applicable statutory provisions as well as to the withdrawal of the goods subject to retention of title and the documents; the customer is obliged to return them. Following the withdrawal of the goods subject to retention of title, we are entitled to realisation of the latter; the realisation proceeds will be credited – less adequate realisation costs – to the liabilities of the customer.

- b) The customer is entitled to resell the goods subject to retention of title in the ordinary course of business. It does not constitute a resale in the ordinary course of business if the goods subject to retention of title are not resold subject to retention of title. The authorisation to resell the goods subject to retention of title in the ordinary course of business expires as soon as the customer fails to fulfil his payment obligations from the collected proceeds, is in default of payment, fails to duly fulfil his other essential contractual obligations owed to us, if a suspension of payment occurs, an application for the institution of composition or insolvency proceedings has been filed or another impairment of his ability to perform occurs.

The customer assigns to us already at this point in time all claims arising from the resale of the goods subject to retention of title together with ancillary rights and security interests in the amount of the invoice value of the goods subject to retention of title; this applies irrespective of whether the goods are processed further or are mixed/commingled [cf. sub-paragraphs g) and h) below]. We hereby accept the assignments set forth above.

The customer is also authorised to collect the assigned claims until the expiry of the authorisation to resell goods subject to retention of title in the ordinary course of business granted above. Upon expiry of such authorisation, we are entitled to inform the customers of the customer of the assignment and to collect the claims ourselves. Upon expiry of the authorisation to collect the claims, the customer is therefore obliged to promptly provide all information and hand over all documents necessary for the assertion of the assigned claims.

- c) The customer is not entitled to assign the claims designated in subparagraph b) above in order to have them collected by way of factoring, unless he irrevocably obligates the factor to provide the consideration directly to us as long as we are still entitled to claims against the customer.
- d) Transfer of ownership by way of security or, respectively, assignment for security as well as pledging the goods subject to retention of title or, respectively, of the assigned claims are not permissible. The customer must inform us immediately in writing of any attachments or other dispositions or interferences by third parties. In the event that the third party is unable to compensate us for the costs in and out of court incurred in connection with the enforcement of our ownership rights, the customer is liable in this regard.
- e) The customer holds in custody on our behalf free of charge the goods subject to retention of title and the documents. He is obliged to take proper care of them; in particular, he has to insure them sufficiently and at their replacement value against the usual risks, such as fire, burglary, theft and transport damages as well as water pipe damage. The customer assigns to us, already at this point in time, the claims arising from a case of loss against the insurer and any third parties in the amount of the invoice value of the affected goods subject to retention of title, plus any transport and disposal costs. We also accept this assignment. To the extent that maintenance or inspection works are necessary, the customer has to conduct such works in due time at his own costs.
- f) In the event that the realisable value of the securities to which we are entitled exceeds our aggregate claims by more than 10%, we are obligated to release securities at our choice at the respective request of the customer or of a third party affected by the excessive security.
- g) The processing or alteration of the goods subject to retention of title by the customer is always conducted on our behalf. In the event that the goods subject to retention of title are being processed together with other goods that are not our property, we acquire a co-ownership interest in the new product in

accordance with the proportion of the value of the goods subject to retention of title to the other goods processed at the time of the processing. In the event that no such acquisition of ownership by us occurs, the customer transfers to us, already at this point in time, his future ownership or – in the proportion set forth above – co-ownership interest in the new object. Other than that, the same applies with regard to the object created by processing as is the case with the goods subject to retention of title. In the event that the customer transfers his sole or co-ownership interest to us as described above, we hereby already declare our acceptance of such transfer.

- h) In the event that the goods subject to retention of title are being mixed inseparably with other goods that are not our property, we acquire a co-ownership interest in the new product in accordance with the proportion of the value of the goods subject to retention of title to the other goods mixed at the time of the mixing. In the event that the mixing occurs in such manner that the object of the customer is to be regarded as the principal component, it is deemed to be agreed that the proportionate co-ownership interest is assigned to us by the customer. The customer holds in custody on our behalf the ownership or co-ownership interest so created. Other than that, the same applies with regard to the object created by mixing as is the case with the goods subject to retention of title.

## **8. LIMITATION PERIOD**

Any warranty claims, claims for damages and claims for reimbursement of expenses of the customer based on defects of quality and defects of title become time-barred 12 months from delivery, unless otherwise provided for in the following provisions. In cases of gross fault, i.e. in cases of fraudulent intent, wilful intent and gross negligence, for claims under the Product Liability Act as well as in cases of injury to life, body or health, the statutory limitation periods apply. This does not affect the limitation period in the case of a delivery recourse claim pursuant to Sections 478, 479 BGB (German Civil Code); the latter is five years, calculated from the delivery of the defective goods.

## 9. FINAL PROVISIONS

- a) None of the preceding provisions constitutes a change of the burden of proof to the detriment of the customer to the effect that the burden of proof is imposed on the latter for circumstances which are within our sphere of responsibility.
- b) If the customer is a merchant within the meaning of the German Commercial Code (*Handelsgesetzbuch*), a legal person in public law or a public special estate (*öffentlich-rechtliches Sondervermögen*), Landau i. d. Pfalz is the exclusive place of jurisdiction for all disputes directly or indirectly arising out of the contractual relationship; however, we are entitled to bring action against the customer also at the latter's principal place of business. This provision does not affect any mandatory statutory provisions with regard to exclusive places of jurisdiction.
- c) The agreement is governed by the law of the Federal Republic of Germany, not including the UN Convention on Contracts for the International Sale of Goods of April 11, 1980 (CISG), also in the event that the registered office of the customer is situated abroad. However, to the extent that the choice of law made hereunder in favour of the law of the Federal Republic of Germany is prohibited or invalid, the requirements and effects of the retention of title pursuant to § 7 are governed by the law of the respective place of storage of the goods.
- d) The customer bears all fees, costs and expenses which are incurred in connection with any legally successful assertion of rights by us against the customer outside of the Federal Republic of Germany.
- e) All agreements made between the customer and us with regard to the latter's orders and their implementation are and will be recorded in writing, provided the parties did not agree otherwise or reach a deviating agreement in the future in an individual case. In order to be effective, all legally relevant declarations and notices which have to be made or given to us by the customer after the

conclusion of the agreement (e.g. setting of deadlines, notification of defects, declaration of withdrawal or reduction) must be made in writing.

The registered office of the company is Burg.

Local Court of Landau i.d. Pfalz  
HRB 31545