

**Gätcke's General Terms and Conditions of Sale and Delivery**  
(Status: November 2019)

1. General

1.1 All transactions relating to sales, work performances and services of C.E. Gätcke's Glasgesellschaft (GmbH + Co KG) (**Supplier**) to its contract partners (**Purchasers**) shall be governed **exclusively** by the following **Terms and Conditions of Sale and Delivery**. They shall likewise be applicable for any future transactions . Any opposing, differing or supplementary conditions of Purchaser shall be rejected, unless Supplier has explicitly agreed to them. This shall be applicable even where Supplier receives such conditions from Purchaser and raises no further objection to them, or executes delivery without raising objection. Such agreement shall be valid only if given **in writing** (*Textform*, pursuant to Section 126b BGB [German Civil Code], including in particular e-mail and fax).

1.2 The closing of contracts, contract additions of any kind and/or subsequent changes to contracts shall be valid only if confirmed in writing. Waiver of this requirement is valid only if effected in writing. Confirmation in writing is not required for actions by Managing Directors, Prokuristen (holders of commercial power of attorney) or persons registered with the Commercial Register as holding entitlement to represent.

2. Offers, closure of contract, prices

2.1 All offers or assurances given by employees of Supplier shall be without obligation and non-binding. Orders are binding on Supplier only after he has confirmed closure of contract in writing. Art. 1.2 sentence 3 shall be applicable mutatis mutandis.

2.2 If a period of more than two months has elapsed between closure of contract and delivery, and if decreases or increases in cost have occurred within this period, in particular due to price increases by suppliers of input materials or by changes in or new introduction of freight rates, insurance premiums or import levies, Supplier shall be entitled to adjust the price. If such increase amounts to more than 10% of the total price, Purchaser shall be entitled to rescind the contract within one week after receipt on the information of the price increase. Such declaration shall only be valid if made in writing.

2.3 Unless otherwise agreed, the prices of Supplier are net prices ex warehouse Hamburg exclusive of packaging and other subsidiary costs. All prices are to be understood such that the value added tax (VAT) applicable at the time of delivery is to be added. Deduction of discount (*Skonto*) shall be applicable only on explicit agreement to this effect.

2.4 Payments shall be due within 14 days from invoicing, without any deductions. Invoicing shall be effected on delivery, unless advance payment was agreed. Cheques shall be accepted only on account of performance (*erfüllungshalber*).

### 3. Delivery and delay in delivery

3.1 There shall be no fixed delivery dates for Supplier, such as would make a reminder pursuant to Section 286 para. 2 No. 1 or 2 BGB dispensable.

3.2 Purchaser shall be entitled to withdraw from the contract (*Rücktritt*) or to claim damages instead of performance (*Schadenersatz statt der Leistung*) only if he after or at the time of the occurrence a formal state of delayed delivery (*Verzug*) has set a reasonable subsequent period for delivery (*Nachfrist*) and Supplier fails to deliver within the subsequent period for reasons for which he is responsible. Such period shall be 14 days or, in the case of customised manufacture, at least 4 weeks. The setting of the subsequent period shall be valid only if effected in writing.

3.3 If goods necessary for fulfilment of the order are not received by Supplier himself in a correct and timely manner and in undamaged condition, he shall be released from the obligation for delivery of the goods ordered, provided that he had himself initiated receipt of such necessary goods with common care and within a period that is usually sufficient. Supplier will inform Purchaser without undue delay of the non availability and will reimburse any considerations already made by Purchaser without undue delay.

3.4 A right of withdrawal from contract available to Supplier or Purchaser shall as a rule be applicable only to the part of the contract not yet fulfilled. That does not apply if part deliveries already effected are of no interest for the party that is entitled to the right of withdrawal.

3.5 Supplier is entitled to make part delivery in the part quantities normally acceptable in the trade; Purchaser is required to pay for such part quantities.

3.6 A reference to quantities as "approximate" (*zirka* or *circa*) means that Supplier is permitted to deliver up to 10% more or 10% less.

3.7 Flat pallets or other transport and storage aids delivered with the goods remain property of Supplier. They are made available free of charge to Purchaser only for a period of three months from transfer of the goods, and shall be returned in proper condition at the end of said period. If said period is exceeded, Supplier shall be entitled to charge a usage fee of EUR 2.00 (plus VAT if applicable) per pallet for each month or part of a month. If Purchaser notifies the Supplier of a loss or impossibility of return of such pallets, the usage fees up to the time of such notification shall be payable. Further Purchaser is then required to pay the cost of purchase of equivalent new pallet(s) as compensation of damages.

3.8 The obligation to accept delivery or for call of part deliveries shall be considered a principal contractual obligation (*Hauptpflicht*).

#### 4. Delay in payment, offset

4.1 If Purchaser is in a state of formal delay in payment of all or a part of the due payments, Supplier shall be entitled after fruitless elapse of a reasonable period for payment set, to cancel all periods for payment granted or contractually agreed, or periods of grace for payment relating to the contractual relationship in which Purchaser has got into a formal status of delay, and to make such amounts immediately payable. This shall not apply if Purchaser proves that his delay in payment is due to reasons for which he is not responsible. If any further contracts exist with Purchaser, this right of cancellation and call for immediate payment also shall be applicable to all other contracts with Purchaser. The same shall apply to any acceptance of bills of exchange (*Wechselakzpte*) by Purchaser.

4.2 Purchaser shall not be entitled to offset claims against the claim of Supplier for payment of the purchase price or other claims from or relating to the contract, or to avail himself of a right of retention, unless his claim is recognised, undisputed or established by final judicial decision. He shall be entitled to exercise a right of retention only in so far as it relates to warranty claims arising from the same contractual relationship.

#### 5. Reservation of title and assignment of receivables

5.1 The goods delivered shall remain the property of Supplier until Purchaser has fulfilled all obligations resulting from the business relationship, including obligations arising in the future (**goods subject to reservation of title**). For deliveries on open account, reservation of title shall serve to secure the receivables on balance of Supplier. Purchaser is obliged to take out reasonable insurance for goods subject to reservation of title at his own expense, for all usual risks, in particular fire and theft, and to provide proof of this on demand. In the event of recourse by third parties to goods subject to reservation of title, in particular in the event of order of attachment (*Pfändung*), Purchaser shall refer to the reservation of title for Supplier and shall notify supplier without undue delay. Purchaser shall reimburse Supplier for all steps necessary to avert such recourse.

5.2 Acquisition of title by Purchaser pursuant to Section 950 BGB is excluded. Any union, mixing, filling or any processing or treatment of the goods subject to reservation of title with other goods not belonging to Supplier shall only be effected by the Purchaser in the ordinary course of business and only on behalf of Supplier in such a way that Supplier acquires co-ownership (*Miteigentum*) of the new object in proportion equivalent to the invoice value of the goods subject to reservation of title (including VAT) related to the total selling value of the new object. The new object shall be regarded as goods subject to reservation of title as set out in the present provisions, and shall be stored (*verwahrt*) by Purchaser for Supplier. If Supplier does not already acquire respective co-ownership as provided above the Purchaser

transfers to Supplier here and now a share in such new object equivalent to the provisions above.

5.3 Purchaser is permitted to sell the goods subject to reservation of title only in the ordinary course of business and only as long as he is not in a formal status of delay. Purchaser assigns to Supplier here and now all and any receivables arising for him vis-à-vis third parties from further sale of the goods subject to reservation of title. Such assignment shall be effected on account of performance (*erfüllungshalber*). Such assignment also be applicable to all future receivables arising from onward sale of goods subject to reservation of title. If the goods subject to reservation of title are sold by Purchaser together with other goods not delivered by Supplier or in processed state, assignment of the receivable from onward sale shall be applicable only to the amount of the invoice value of the goods subject to reservation of title that were sold (including VAT). In the event of onward sale of new objects in which Supplier has acquired co-ownership, assignment of receivable shall be applicable to the amount of the co-ownership share. Assigned receivables can be used to the same extent to secure claims of Supplier as goods subject to reservation of title.

5.4 Purchaser shall be permitted to collect such assigned receivables himself, provided that he meets his payment obligations from the business relationship, does not get into a state of formal delay in payment, and that no insolvency application is filed with respect to Purchaser.

5.5 Supplier is entitled to revoke Purchaser's right for an onward sale of the goods and the collection of the assigned receivables if Purchaser's financial circumstances deteriorate or threaten to deteriorate materially or if a ground for insolvency (*Insolvenzgrund*) exists. Further rights remain unaffected.

5.6 If Supplier demands return of the goods subject to reservation of title this shall at the same time constitute withdrawal from the contract. In so far as Supplier can re-sell goods subject to reservation of title, the revenues resulting therefrom shall be offset against the liabilities of Purchaser. Supplier shall in all cases of withdrawal and return of goods remain entitled to claim damages.

5.7 Supplier undertakes that he will on request by Purchaser release securities to which he is entitled, selecting them at his own option, where the value which can be realised from them exceeds the total receivables by more than 10%.

## 6. Fulfilment, shipment, bearing of risk

6.1 The place of fulfilment for all obligations of Supplier shall be the company location of Supplier in Hamburg. The same shall also apply where Supplier has undertaken shipment of the goods, or where the terms of delivery are "charges prepaid by sender" (*franko*).

6.2 The transport risk for the shipment shall be borne by Purchaser. This shall also apply in the event of terms of delivery "charges prepaid to named destination" (*franko*)

*Bestimmungsort*) and on transportation of the goods by means of transport of the Supplier. Transport costs may be invoiced separately.

6.3 In the event of transport of goods with own means of transport, Supplier shall be responsible only for intent (*Vorsatz*) and gross negligence on the part of his employees, except in the event of physical injury, damage to health or loss of life. Apart from such cases, Purchaser shall still be obliged to make full payment.

#### 7. Duty of inspection and raising of complaint, tolerances

7.1 Purchaser is obliged to inspect the goods immediately after delivery, at the latest without delay after unloading from the means of transport. In the event of defects, wrong deliveries or wrong quantities he shall raise complaint (*Mängelrüge*), giving details, without undue delay. Such complaint shall be valid only if made in writing. If the goods are shipped onward by Purchaser, inspection must nevertheless be carried out at the first destination. Purchaser shall thereby make use of experts if his own expertise is not sufficient.

7.2 The period for raising complaints in the event of non-conforming goods shall be three business days from delivery or release at the agreed place, where defects can be determined by proper commercial examination in the ordinary course of business, or three business days from their discovery where defects are initially not detectable (latent defects; *versteckte Mängel*).

7.3 On raising of a complaint, Purchaser must give Supplier the opportunity to examine such defect immediately, and for that purpose must inform him of the place where the goods are located and enable him to have access to the goods. If this obligation is infringed, or if the goods are previously processed, forwarded to a third party or modified, the goods shall be deemed to be approved in the case of defects which could be determined in advance. In the case of latent defects, the onus of proof is on the Purchaser to show that the goods were already in defective condition at the time of delivery.

7.4 The goods are deemed to be approved in the event of failure to comply with the duties set out in Arts. 7.1 to 7.3 and in the event of the complaint not being submitted in proper form and in due time, where defects can be detected by ordinary inspection. Unless otherwise provided in the present Terms and Conditions of Sale and Delivery, Section 377 HGB (German Code of Commercial Law) shall be applicable.

7.5 Supplier does not owe absolute conformity to and maintenance of colour shades, as it is not possible to determine in advance exactly how they will turn out. This shall not apply only in the event of sale in accordance with a specimen, on the basis of existing goods.

7.6 The agreements on the content of bottles delivered shall be understood as subject to the tolerances usual in the market.

## 8. Warranty

8.1 Where there is a defect in goods delivered, Supplier shall at his own option provide subsequent fulfilment (*Nacherfüllung*) in the form of remedying such defect, or shall supply goods free of defects. He shall be obliged to bear all expenditures necessary in order to remedy such defect, in particular transportation, travel and material costs, provided that these are not increased by the goods being taken to a place other than the place of fulfilment, unless relocation there is in accordance with the proper use of the goods.

8.2 If subsequent fulfilment is not effected within a reasonable period, which shall be at least 2 weeks, or if it is also unsuccessful at the second attempt, Purchaser shall be entitled at his own option to demand withdrawal from contract or reduction in purchase price.

8.3 Claims for damages shall be governed by Art. 9.

## 9. Damages

9.1 Supplier shall be liable without limitation in accordance with the statutory provisions for damage due to intent or gross negligence, including intent or gross negligence of any agents or persons employed for fulfilment of contract (*Erfüllungsgehilfen*). By way of deviation from the above, in the event of grossly negligent breach of contract by ordinary persons employed for fulfilment of contract (*einfache Erfüllungsgehilfen*), liability shall be limited to the damage which is foreseeable and typically occurs in such cases.

9.2 In the event of simple negligence (*einfache Fahrlässigkeit*), Supplier shall be liable if he infringes a principal contractual obligation (*wesentliche Vertragspflicht*). Principal contractual obligations are especially such obligations, the performance of which is a prerequisite for the achievement of the purpose pursued by Purchaser in execution of the Agreement and upon the performance of which Purchaser reasonably relied. Such liability is restricted to the foreseeable, typically occurring damage in such cases. In all other cases of simple negligence, liability of the Supplier is excluded. This shall not apply in the cases set out in Art. 9.3.

9.3 In accordance with the statutory regulations, Supplier is liable without limitation for damage resulting from loss of life or injury to physical integrity or health. The mandatory liability of Supplier under product liability law (*Produkthaftungsgesetz*) also remains unaffected. Liability limitations as set out in Arts. 9.1 and 9.2 do not apply to such cases.

9.4 Except where otherwise regulated above, compensation claims shall be excluded. The provisions of this article shall also apply to non-contractual compensation claims and in favour of the employees and other persons employed by Supplier in fulfilment of contract.

9.5 Except in cases where Supplier had unlimited liability under the above provisions of Art. 9, all claims arising from defects shall be limited by the statute of prescriptions to 12 months from the statutory beginning of the period of limitation. The same shall also apply to claims for consequential damage caused by a defect (*Mangelfolgeansprüche*). The period of limitation in the event of claims arising from a delivery recourse pursuant to Sections 478, 479 BGB remains unaffected. It is two years.

9.6 The provisions of this Art. 9 do not imply any change of the burden of proof.

#### 10. Place of jurisdiction, law applicable

10.1 The place of jurisdiction for all and any disputes arising from or in connection with this contract shall be Hamburg. Supplier shall also be entitled to institute legal action against Purchaser at the latter's place of business.

10.2 The law of the Federal Republic of Germany shall be applicable. The law on the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) shall not be applicable.

10.3 In case of uncertainties or discrepancies the meaning of the German terms given in these Terms & Conditions in brackets and in italic shall prevail.

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