

General Terms and Conditions of GMG GmbH

- only for Business Customers -

Valid from 01/11/2018

§ 1 Scope / Other regulations

(1) **Parties and object.** The following Terms and Conditions apply for all offers, sales and deliveries of goods (“**Contractual Item**”) from GMG Gesellschaft für modulare Greifersysteme mbH, Coesterweg 45c, 59494 Soest, Germany (“**GMG**” or “**we**”) to you as the Customer. These Terms and Conditions also apply to all future offers, sales and deliveries even if they are not expressly agreed upon again.

(2) **No deviating regulations.** Provisions that deviate from or go beyond these regulations shall only apply if we expressly consent to them in a particular case. The Customer’s general terms and conditions shall not apply even if GMG accepts an order from the Customer in which the Customer mentions its general terms and conditions and/or the Customer’s general terms and conditions are attached and GMG does not object to them.

(3) **Partial invalidity.** Should a provision of these General Terms and Conditions be or become invalid or unenforceable, this shall not affect the validity of the remaining terms and conditions.

(4) **Obligations in the case of electronic business transactions.** § 312i para. 1 clause 1 no. 1, 2 and 3 as well as § 312i para. 1 clause 2 BGB (Code of Civil Procedure), which stipulate particular obligations of the business person for agreements in electronic business transactions, are waived.

(5) **Sale only to business customers.** We sell exclusively to persons who act in their commercial or self-employed professional capacity when concluding the agreement as well as to legal entities under public law or special assets under public law.

§ 2 Conclusion of agreement / Procurement risk / Commitment period

(1) **Formation of the agreement.** Our offers are non-binding. The agreement shall become effective if the Customer submits an order and we accept this order from the Customer. Our acceptance can be given expressly (e.g. in the form of an order confirmation) or by delivery of the Contractual Item.

(2) **No procurement risk.** We do not undertake any procurement risk upon concluding the agreement.

(3) **Commitment period.** The Customer - unless otherwise specified in its order - is bound to its order for two weeks.

§ 3 Description of the Contractual Item

The information contained in general catalogues, prospectuses, circulars, advertisements, images, drawings and price lists about weights, measurements, prices and services are considered to be examples. This information is only binding if it was expressly agreed in writing. Otherwise, the features of our products due under the agreement comply exclusively with our product

specifications. Expectations expressed unilaterally by the Customer are only binding if we expressly confirm them.

§ 4 Delivery

(1) **Place of delivery.** Delivery of the Contractual Item shall take place EXW from our registered office in Soest (Incoterms 2010).

(2) **Transfer of risk upon shipment.** If the Contractual Item is sent to the Customer at its request, the risk of accidental loss and of accidental damage to the Contractual Item shall transfer to the Customer upon handover of the Contractual Item to the carrier, freight forwarder or shipping agent. This applies even if the product is not shipped from the place of performance and/or if we bear the costs of freight.

(3) **Transfer of risk in the event of delayed shipment.** If the Contractual Item is ready for dispatch, and shipping is delayed for reasons for which the Customer is responsible, the risk shall pass to the Customer on receipt of the notification by the Customer that the item is ready for dispatch.

(4) **Partial deliveries.** Partial deliveries are permitted if this does not involve excessive expense for the Customer. Partial deliveries can be invoiced separately by GMG.

(5) **Delivery time.** The deadline specified in our order confirmation shall be considered the delivery time.

§ 5 Cooperation of the Customer

(1) **Extension of the delivery time.** The agreed delivery time requires the cooperation of the Customer for clarification of all technical queries. If the Customer does not provide information or documents to be supplied by it on time or if it does not comply with its contractual obligations (e.g. advance payment, acceptance of drawings for approval etc.) in time, the delivery time shall be extended appropriately (at least by the period of the delay caused by the Customer).

(2) **Compensation for damages.** If the Customer delays acceptance or violates other duties of cooperation, we are entitled to claim the damages incurred by us in this respect, including any possible additional expenses. Further claims remain reserved.

§ 6 Prices and terms of payment

(1) **Prices.** The prices apply for delivery EXW from our registered office in Soest (Incoterms 2010). If we undertake to organise additional services for the Customer at its request (e.g. packaging, transport, insurance, customs clearance, product certification for the distribution area etc.), the costs incurred shall be invoiced to the Customer in addition.

(2) **Net prices.** All prices exclude the relevant applicable statutory sales tax.

(3) **Payment period.** Unless otherwise agreed, all payments are to be made by wire transfer 30 days after delivery and invoicing without deduction.

(4) **Samples.** Samples shall only be provided against payment.

(5) **Price adjustment.** If the harmonised index of consumer prices (HICP) – total index for Germany published by Eurostat (cf. <https://ec.europa.eu/eurostat/>) changes between conclusion of the agreement and the delivery date by at least 5%, either party can request of the other party that the agreed prices for the delivery concerned be adjusted to the price development at reasonable discretion.

§ 7 Payment disruptions / Set-off and retention

(1) In the event of delay in payment as well as justified doubts in the Customer's ability to pay, we are authorised - regardless of our other rights - to request advance payment for deliveries of Contractual Items that have not yet been carried out, to revoke payment periods granted and to make all claims from the business relationship due immediately. Our delivery obligation shall be suspended as long as the Customer is in default of a payment that is due. The Customer in default is obliged to refund to us all reasonable dunning, collection and information costs.

(2) The Customer can only offset with claims other than its contractual counterclaims from the legal business concerned or assert a right of retention if the Customer's claim is undisputed by us or has been legally established.

§ 8 Delays in delivery / Fixed-date transaction / Consequences of delay

(1) **Force majeure.** Breakdowns, if they were not foreseeable as well as strikes, lockouts, official orders and other instances of force majeure release us from the obligation to deliver for the duration of the disruption and to the extent of their effect. If this delays the delivery or service by more than a month, either party is entitled, to the exclusion of all further claims, to withdraw from the agreement with respect to the amount affected by the delay in delivery.

(3) **Fixed-date transaction.** If the delivery deadline has not been expressly agreed in writing as "fixed", a delivery is made as per the agreement if it arrives at the Customer within a week after the non-binding delivery deadline.

(4) **Consequences of delay.** The Customer can only legally withdraw from the agreement if the delay in delivery is caused by us. This regulation does not imply a change to the burden of proof to the detriment of the Customer. At our request, the Customer is bound to state within two weeks whether it is withdrawing from the contract due to a delay in delivery or it is insisting on delivery and/or requesting compensation.

§ 9 Notice of defects / Claims in the event of defects

(1) **Obligation to inspect and give notice of defects.** The Customer must immediately check whether the Contractual Items delivered correspond to the contractually agreed quantity and quality. Visible defects are to be notified immediately; defects that are not visible are to be notified immediately after discovery, stating the order date and invoice number. The Customer may not refuse acceptance of Contractual Items due to insignificant defects. Transport damages must be communicated immediately by the Customer to the carrier and documented by the latter.

(2) **Quality.** GMG guarantees that the Contractual Items are of the agreed quality upon transfer of risk. The quality of the goods is set out in the offer and the product description referred to in the offer. No defects are considered to exist

- a) due to natural wear and tear;
- b) due to damages which have arisen through improper handling or overuse by the Customer or third parties;
- c) due to unintended use;
- d) if installation and handling instructions prescribed by law or by us are not followed by the Customer or third parties, unless the defect is not due to this;
- e) if the Contractual Item was created on the basis of the Customer's guidelines, particularly in accordance with drawings provided by it and the defect of the Contractual Item is due to these guidelines/drawings;
- f) in case of solution of a construction requirement specified by the Customer, which corresponded to the state of the art at the time of its realisation; or
- g) in the event of colour deviations in the Contractual Item.

(3) **Supplementary performance.** We can remedy the defect of a Contractual Item at our option by new delivery of a defect-free Contractual Item or by removal of the defect. The Customer shall bear the additional expenses necessary for the supplementary performance if these increase due to the Contractual Item being moved to a location other than the agreed place of performance.

(4) **Cancellation and reduction.** If the new delivery or removal of the defect fails, is impossible, is denied by us, is unreasonable for the Customer or is not carried out within an appropriate period set by the Customer, the Customer can withdraw from the agreement or request reduction. The Customer can also withdraw from the agreement immediately in certain circumstances which justify it taking into consideration the interests of both parties.

(5) **Limitation of time.** The Customer's claims for defects shall expire 12 months after handover of the Contractual Items to the Customer. This does not apply for fraudulently concealed defects, for claims from a guarantee as well as for claims due to injury to life, limb or health.

(6) **Exclusion of seller recourse.** The regulations on the recourse of the seller in accordance with § 445a para. 1 BGB and § 445a para. 2 BGB (also with respect to the relevant application under § 445a para. 3 BGB) are excluded.

(7) **Burden of proof.** The Customer shall bear the burden of proof for the existence of a defect or another defective performance by us.

(8) **Reimbursement of costs.** If the Customer has asserted claims against us on the basis of alleged rights in the event of defects and it turns out that either there is no defect or the defect asserted is based on a circumstance which does not justify claims against us, the Customer must reimburse us the costs incurred through the unjustified claim.

§ 10 Limitation of liability

(1) **Exclusion in specific cases.** GMG is liable for damages if they

- a) were caused by GMG intentionally or through gross negligence, or

- b) were caused by GMG through slight negligence and can be attributed to essential violations of duty which threaten the achievement of the contractual purpose or to the violation of duties, the fulfilment of which enables the proper implementation of the contract and on compliance of which the Customer may rely.

Otherwise the liability of GMG is excluded regardless of the legal basis (i.e. also with regard to tortious claims), except that GMG is absolutely liable by law, particularly as a result of injury to life, limb or health of a person, acceptance of a guarantee, fraudulent concealment of a defect or in accordance with the Product Liability Act. Guarantees by GMG shall only be made in writing and are to be expressly indicated as such.

(2) Limitation of amount. In the case of paragraph (1) b) as well as in the event of grossly negligent fault of ordinary vicarious agents of GMG (i.e. not bodies or executive employees), GMG is only liable to the limit of the foreseeable damages typical for an agreement of this type.

(3) Further limitation of amount. In cases of paragraph (2) liability is excluded for indirect damages, consequential damages and lost profit. In cases of paragraph (2), it is refutably presumed for both sides that the “typically foreseeable damages” corresponds to not more than the net compensation from GMG for all cases of damage arising as part of an order, which is intended for the order concerned in accordance with the agreement.

(4) Employees and agents of GMG. The limitations of liability of paragraphs (1) to (3) also apply in the event of claims against employees and agents of GMG.

§ 11 Retention of title

(1) Retention of title. We shall retain title to the Contractual Items (reserved goods) until fulfilment of all claims from us against the Customer from the business relationship. In redeeming reserved goods, there is only withdrawal from the contract if we have expressly declared this in writing.

(2) Additional securities. The Customer shall assign to us all receivables from the resale of reserved goods, including bills of exchange and checks, for security of our payment claims from deliveries. We accept the assignment. In the sale of Contractual Items, where we are co-owners, the assignment is limited to the portion of the claim which corresponds to our co-ownership share.

(3) Disposals of the Customer. As long as the Customer is willing and able to meet its obligations towards us properly, it may make use of the Contractual Items, of which we are owners or co-owners, in the normal course of business and collect the receivables assigned to us itself. The Customer may only carry out chattel mortgages, pledges and assignments of claims, even in the way of sale of claims, with our prior written consent.

(4) Foreign legal systems. If the retention of ownership is not permitted under the statutory provisions applicable in the Customer’s home country or is only permitted to a limited extent, our aforementioned rights are limited to the extent permitted by law.

(5) Approval. If the value of the reserved goods exceeds the claim to be secured by more than 20%, GMG shall approve further claims on request at its discretion.

§ 12 Confidentiality

(1) **Confidential information.** Both parties shall disclose anticipated confidential information or have already done this as part of their contractual relationship. Confidential means all information expressly identified as “confidential” as well as that information whose confidentiality is based on its content or circumstances of its disclosure. Confidential information particularly includes the economic agreements between the parties as well as product descriptions, images, drawings and calculations. If there are doubts regarding the confidentiality of information, the Party who has received this information shall immediately contact the other party and ask for clarification, but in any case before disclosure of this information to third parties takes place.

(2) **Exceptions.** Information that is not considered confidential is that information regarding which the party that has received it can prove that (a) it was known to it before disclosure by the other party; (b) it has developed the information independently without recourse to or use of information from the other party; (c) it has received the information lawfully from third parties, who were to its knowledge not obliged to confidentiality to the other party, (d) it was known to it or to the public without violation against these provisions or against other provisions existing for the protection of the business secrets of the other party; or (e) it must be disclosed on the basis of a statutory obligation or official or legal order. In the last case, the party who has received the information must inform the other party immediately before its disclosure to third parties.

(3) **Obligation to confidentiality.** If it is not necessary for fulfilment of the agreement, both parties are obliged to treat the contractual information of the respective other party in strict confidence and to protect it with at least the same care as it uses to protect its own confidential information.

(4) **Duration of confidentiality obligation.** The mutual confidentiality obligations under this paragraph have no time limitation.

§ 13 Export control

(1) **Reservation of services.** Our deliveries and services are subject to the reservation, that no national or international export control regulations (such as embargoes or other sanctions) shall obstruct their performance. Any delays due to export inspections or approval procedures shall invalidate these deadlines and delivery times. If the necessary permits are not issued or if the delivery or service cannot be approved, the agreement shall be regarded as not concluded with respect to the affected parts. We are entitled to terminate the agreement without notice if termination is necessary for us to comply with national and international provisions. In the case of such a termination, the assertion of damages or of other rights by the Customer is excluded on the basis of the termination.

(2) **Duty to inform.** The Customer undertakes to disclose to us all information and documents that are required for an export or shipment of the Contractual Items to countries outside the European Union.

(3) **Responsibility of the Customer.** The Customer must comply with the respective applicable national and international export control provisions in the case of transfer of our Contractual Items to third parties domestically and abroad.

§ 14 Applicable law / Place of performance / Place of jurisdiction

(1) **Applicable law.** German substantive law shall apply to the legal relationship between the Customer and us to the exclusion of (i) the UN Convention on Contracts for the International Sale of Goods (CISG) and (ii) any references to other legal systems.

(2) **Place of performance.** Unless otherwise specified in the order confirmation, our registered office is the place of performance for payment and for delivery.

(3) **Place of jurisdiction.** If the Customer is a merchant within the meaning of the Commercial Code, a legal person under public law or a special asset under public law, the exclusive place of jurisdiction for all disputes of the parties from or during the business relationship is at the local courts responsible for Soest (Germany). The same applies if the Customer has no general place of jurisdiction in Germany, or its place of residence or habitual abode moves outside of Germany after conclusion of the agreement or its place of residence or habitual abode is not known at the time that the suit is filed. The statutory place of jurisdiction for the default actions as well as other statutory courts of jurisdiction, from which party agreement cannot deviate, remain unaffected. However, we are entitled to file a suit against the Customer at its general place of jurisdiction.