

## § 1 Scope of application

- (1) These Terms and Conditions of Sale apply exclusively and only to entrepreneurs, legal entities under public law and special funds under public law within the meaning of Section 310 (1) of the German Civil Code (BGB). Conflicting or deviating terms and conditions of the Buyer shall only be recognized if we have expressly agreed to their validity in writing. This requirement of consent shall also apply if the Buyer refers to its General Terms and Conditions in the context of the order and we have not expressly objected to the General Terms and Conditions.
- (2) These Terms and Conditions of Sale apply also to all future transactions with the Buyer.

## § 2 Offer and conclusion of contract

- (1) Our offers are subject to change and non-binding. The order of the goods by the Buyer is considered a binding contractual offer. Insofar as nothing to the contrary is stated in the order, we are entitled to accept this contractual offer within two weeks of its receipt by us.
- (2) The acceptance of the contract offer on the part of the Buyer can be declared either in writing (e.g. by an order confirmation) or conclusively by delivery of the goods to the Buyer.
- (3) Changes or cancellations are only possible with our consent and up to a maximum of two weeks before the agreed delivery date.

## § 3 Documents provided

- (1) We reserve ownership rights and copyrights to all documents provided to the Buyer in connection with the order placement. These documents may not be made accessible to third parties unless we give the Buyer our express written consent to do so. If we do not accept the Buyer's offer in accordance with §2, these documents must be returned to us immediately.

## § 4 Product quality, samples and prototypes, Guarantees

- (1) The quality of the products is determined exclusively by the product specifications. Subjective requirements and objective requirements that go beyond the agreed product specifications are excluded.
- (2) The features of samples and prototypes are only binding insofar as they have been expressly agreed as characteristics of the products.
- (3) Accessories or instructions are not due unless explicitly agreed. Menzerna's instructions are for information purposes only and do not constitute an agreement on a corresponding contractual quality of the products or a suitability for use assumed under the contract.
- (4) Quality and durability specifications as well as other specifications constitute a guarantee only if they are expressly agreed and designated as such.

## § 5 Prices and payment

- (1) Unless otherwise agreed in writing, our prices are ex works plus packaging and VAT at the applicable rate.
- (2) In the case of a sales shipment, the Buyer shall bear the transportation costs ex works and the costs of any transportation insurance requested by the Buyer. Any

Customs duties, fees, taxes and other public charges shall be borne by the Buyer.

- (3) Our calculations will be based on the dimensions and weights determined by us.
- (4) In the event we change our prices on the goods to be delivered during the time between conclusion of the contract and delivery, we are entitled to apply the prices valid on the day of delivery. In the event of a price increase, the Buyer is entitled to withdraw from the contract within 14 days of notification of the price increase.
- (5) Payment of the purchase price must be made exclusively to the account specified in our invoices. Any change in bank details must be confirmed by the Buyer to us before the first transfer to the new bank account.
- (6) Unless otherwise agreed, the purchase price must be paid within 14 days of the invoice date. However, we are entitled at any time, even within the framework of an ongoing business relationship, to make a delivery in whole or in part only against advance payment. We shall declare a corresponding reservation at the latest with the order confirmation. The deduction of a discount is not permitted.
- (7) Default interest shall be due at a rate of 2% per month and invoiced to the Buyer in arrears. If statutory regulations conflict with this practice, the statutory default interest rate pursuant to Section 288 (2) BGB shall apply. We reserve the right to assert higher damages caused by default.
- (8) We reserve the right to use payments to settle the oldest due invoice items plus the interest on default and costs accrued thereon in the following order: costs, interest, principal claim.
- (9) If it is foreseeable after conclusion of the contract that our claim to payment of the purchase price is jeopardized due to the Buyer's inability to pay (e.g. due to an application for the opening of insolvency proceedings), we shall be entitled to refuse performance in accordance with the statutory provisions and, if necessary after setting a deadline, to withdraw from the contract (Section 321 BGB). In the case of contracts for which the manufacture of non-fungible items (custom-made products) is owed, we may declare our withdrawal immediately. The statutory provisions on the dispensability of setting a deadline shall remain unaffected in this respect.

**§ 6 Offsets and retention**

- (1) The Buyer shall only be entitled to offset if his counterclaims have been legally established or are undisputed. The Buyer is only authorized to exercise a right of retention to the extent that his counterclaim is based on the same contractual relationship.

**§ 7 Delivery and delivery period**

- (1) The validity of the delivery periods presupposes that all technical issues have been clarified and that the Buyer has fulfilled all obligations in a timely and proper manner. This also includes that the Buyer has fulfilled all payments due for earlier deliveries.
- (2) In the event that a delivery cannot be made within the delivery period due to non-availability of the service, we are entitled to withdraw from the contract in whole or in part; we must immediately reimburse any consideration already provided by the Buyer (in the form of payment of the purchase price). The non-availability of the service is deemed, for example, if our supplier does not deliver on time in the case of a congruent hedging transaction or if there are other disruptions in the supply chain (for example due to force majeure §13).
- (3) Our delivery dates refer to the time of dispatch ex works.
- (4) Partial deliveries are permissible.
- (5) The Buyer shall tolerate excess or short deliveries of up to 10% of the ordered quantity per item.
- (6) If freight paid delivery has been agreed, we shall select the shipping route and the shipping method. If the Buyer requests a different shipping route or a different shipping method and this is complied with, the additional freight costs compared to the most favorable shipping option shall be borne by the Buyer.
- (7) If delivery is not freight paid, any increases in freight rates occurring after conclusion of the contract, any additional costs for redirection, storage costs, etc. shall be borne by the Buyer.
- (8) In the event that the Buyer is in default of acceptance or culpably violates other obligations of cooperation, we will be entitled to claim compensation for the damage incurred by us in this respect, including any additional expenses. For goods collected by the Buyer, we reserve the right to charge a storage fee of 2% of the value of the goods per month for collections more than two weeks late. We reserve the right to assert further claims. Should the above conditions exist, the risk of accidental loss or deterioration of the purchased goods shall pass to the Buyer at the point in time at which the Buyer is in default of acceptance or on payment.

**§ 8 Transfer of risk on shipment**

- (1) If the goods are shipped to the Buyer, the risk of accidental loss or accidental deterioration of the goods shall pass to the Buyer when the goods leave the factory. This shall apply regardless of whether the goods are shipped from the place of performance or another location and regardless of who bears the freight costs.
- (2) If an INCOTERM has been agreed in the individual contract, where Menzerna is responsible for or organizes the transport, the Buyer must notify the transport company directly of any transport damage and send a copy to Menzerna within the specified deadlines provided for this purpose.

- (3) Unless otherwise agreed in individual cases, the Buyer is responsible for compliance with statutory and official regulations regarding import, transportation, storage and use of the goods. This also includes the regular, successful performance of all necessary training of its employees with regard to the handling and use of the goods.

**§ 9 Retention of title**

- (1) We retain title to the delivered goods until full payment of all claims arising from the purchase contract. This shall also apply to all future deliveries, even if we do not always expressly refer to this. We are entitled to demand the return of the goods if the Buyer acts in breach of contract.
- (2) The Buyer is obliged to treat the goods with due care as long as ownership has not yet been transferred to the Buyer. In particular, the Buyer is obliged to insure them adequately at its own expense against theft, fire and water damage at replacement value. Until ownership has been transferred, the Buyer must inform us immediately in writing if the delivered goods are seized or exposed to other interference by third parties. If the third party is not in a position to reimburse us for the court and out-of-court costs of an action pursuant to Section 771 ZPO, the Buyer shall be liable for the loss incurred by us.
- (3) The Buyer is entitled to resell the goods in the normal course of business. The Buyer hereby assigns to us the claims against the customer arising from the resale of the goods in the amount of the final invoice amount agreed with us, including VAT. This assignment shall apply irrespective of whether the goods have been resold without or after processing. The Buyer shall remain entitled to collect the claim even after the assignment. Our authorization to collect the claim ourselves remains unaffected. However, we shall not collect the claim as long as the Buyer meets his payment obligations from the proceeds collected, is not in default of payment and, in particular, no application for the opening of insolvency proceedings has been filed and payments have not been suspended.
- (4) The Buyer shall process the goods in our name and on our behalf. In this case, the Buyer's expectant right to the goods shall remain in the transformed item. In the event that the purchased item is processed with other items not belonging to us, we shall acquire co-ownership of the new item in accordance with the objective value of our goods in relation to the other processed items at the time of processing. The same shall apply in the event of mixing. In the event that the mixing is carried out in such a way that the Buyer's item is to be regarded as the main item, the Buyer shall transfer proportional co-ownership to us and shall retain sole ownership or co-ownership for us.
- (5) In the event that the realizable value of the securities exceeds our claims by more than 20%, we shall release securities of our choice at the Buyer's request.

**§ 10 Warranty and notice of defects**

- (1) Claims under warranty on the part of the Buyer shall be subject to the condition that the Buyer has complied with its inspection and notification obligations in accordance with Sections 377 ff. HGB (German Commercial Code). Should claims arise despite the utmost attention, obvious defects must be reported immediately, but at the latest within eight days of receipt of the goods, non-apparent defects immediately after their discovery, otherwise the goods shall be deemed approved.

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- (2) We shall not be liable for defects which the Buyer is aware of or grossly negligently unaware of at the time of conclusion of the contract in accordance with Section 442 BGB (German Civil Code).
- (3) Rights to claim for defects shall be limited to a period of 12 months after delivery of the goods supplied by us to our Buyer. The date of delivery ex works determines the limitation period.
- (4) Any return of goods shall be subject to our prior approval.
- (5) If, despite all due care, the delivered goods have a defect that already existed at the time of the transfer of risk, we may choose to repair or replace them, subject to the timely notification of defects. The Buyer must grant us the necessary time and opportunity required for the subsequent performance due. For inspection purposes and at our request, the Buyer must hand over the goods for which a defect has been claimed. In addition, we are entitled to make the supplementary performance dependent on the Buyer payment of the purchase price due. The Buyer is, however, entitled to retain a reasonable part of the purchase price in proportion to the defect. The Buyer is not, however, entitled to a right of return.
- (6) If the supplementary performance fails, the Buyer may - without prejudice to any claims for damages - withdraw from the contract or reduce the purchase price. The Buyer may not demand compensation for futile expenses.
- (7) There shall be no claims for defects in the event of only insignificant deviations from the agreed quality, only insignificant impairment of usability, damage arising after the transfer of risk as a result of incorrect or negligent handling, excessive use, use of unsuitable equipment or due to external influences which are not provided for in the contract. If the Buyer or third parties make improper modifications, no claims for defects shall exist for these and the results thereof.
- (8) In principle, the quality of the goods shall only be the quality described in our product descriptions, specifications and labeling. Public statements, promotions or advertising do not constitute quality descriptions of our goods.
- (9) Technical advice given by the Seller, whether verbal, in writing or by means of tests, is given to the best of its knowledge, but is only non-binding information, also with regard to any industrial property rights of third parties, and does not release the Buyer from its own obligation to test the goods supplied by Menzerna for their suitability for the intended processes and purposes. The application, use and processing of the goods are beyond the control of the Seller and are therefore the sole responsibility of the Buyer.
- (10) Claims by the Buyer for expenses incurred for the purpose of supplementary performance, in particular transport, travel, labor and material costs, are excluded if the expenses increase because the goods delivered by us have subsequently been taken to a place other than the Buyer's branch office, unless the transfer corresponds to their intended use.
- (11) The Buyer's rights of recourse against us shall only exist insofar as the Buyer has not made any agreements with its customer that go beyond the legally mandatory claims for defects. Furthermore, paragraph (§10.7) shall apply accordingly to the scope of the Buyer's right of recourse against his customer.
- (12) Further claims or claims other than those regulated here in §10 by the Buyer against us and our vicarious agents due to a defect are excluded.
- (13) In the event of fraudulent concealment of a defect or in the event of the assumption of a warranty for the goods at the time of the transfer of risk within the meaning of Section 444 BGB, the rights of the Buyer shall be governed exclusively by the statutory provisions.
- (14) The Buyer's right of termination (in particular pursuant to Sections 650, 648 BGB) is excluded. In all other respects, the statutory requirements and legal consequences shall apply.
- ### § 11 Liability
- (1) Within the scope of fault-based liability, we shall be liable for damages, irrespective of the legal grounds, only in the event of intent and gross negligence. In the event of simple negligence, we shall be liable, subject to statutory limitations of liability (e.g. care in our own affairs; insignificant breach of duty), only for damages resulting from injury to life, body or health, as well as for damages resulting from the breach of an essential contractual obligation. In this case, however, our liability shall be limited to compensation for foreseeable, typically occurring damage.
- ### § 12 Brand name
- (1) It is not permitted to offer or supply other goods to third parties under Menzerna's brand name.
- (2) It is furthermore not permitted to use the Seller's product designations, in particular its brand names, on the goods or its packaging or in the associated printed matter and advertising material when using Menzerna's products under a different brand (private label) without the Seller's prior written consent.
- ### § 13 Force majeure
- (3) Should events and circumstances occur that are beyond Menzerna's control (such as, for example, natural events, war, labor disputes, shortages of raw materials and energy, traffic and operational disruptions, cyber-attacks, fire and explosion damage, floods, epidemics or pandemics, sovereign measures and official orders), affect the availability of the goods so that Menzerna is unable to fulfill its contractual obligations, Menzerna shall be released from its contractual obligations for the duration of the disruption and to the extent of its effects and shall not be obliged to procure the goods from third parties. This shall also apply if the events and circumstances make the execution of the affected transaction uneconomical for Menzerna in the long term or if Menzerna's suppliers are subject to force majeure. If these events last longer than three months, Menzerna is entitled to withdraw from the contract.
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**§ 14 Confidentiality of information**

- (1) All information shared between Menzerna and the Buyer is confidential. This applies to all types of information (e.g. financial, technical, legal or other) as well as to all forms (e.g. written, verbal, digital, samples or other forms).
- (2) Any confidential information shall only be used for the agreed purpose of the business relationship.
- (3) It must be adequately protected against unauthorized access by third parties. Disclosure of data within and outside the company is only permitted if
- (3.1) the third parties need to know the information for the agreed purpose,
  - (3.2) they have been informed of the confidentiality of the information and
  - (3.3) they have entered into an employment or other contractual agreement with the recipient with an equal confidentiality obligation.
- (4) Copies or summaries of the confidential information may only be made for the agreed purpose; all rights - including intellectual property rights - are retained by the Disclosing Party.
- (5) The Disclosing Party must be informed immediately of any breach of confidentiality and all necessary steps must be taken to minimize the negative effects of the breach.
- (6) The Disclosing Party shall at all times retain all intellectual property rights to the Confidential Information it provides.
- (7) Both parties shall protect and handle personal data within the meaning of the EU General Data Protection Regulation in accordance with the data protection regulations applicable in the EU.

**§ 15 IT Security**

- (1) Should the Buyer place electronic orders, Menzerna shall only provide the interfaces for this purpose. The Buyer is obliged to handle its own data (user name and password) for accessing these interfaces with diligence. In the event of loss or unauthorized access to said data, the Buyer undertakes to notify Menzerna immediately. Should the Buyer fail to notify Menzerna immediately of such loss or unauthorized access, the Buyer shall be liable to Menzerna for all resulting damages.

**§ 16 No Russia Clause**

- (1) The Buyer shall not sell, export or re-export, directly or indirectly, to the Russian Federation or for use in the Russian Federation any goods supplied by Menzerna that fall under the scope of Article 12g of Council Regulation (EU) No 833/2014
- (2) The Buyer shall undertake its best efforts to ensure that the purpose of paragraph (16.1) is not frustrated by any third parties further down the commercial chain, including by possible resellers.
- (3) The Buyer shall set up and maintain an adequate monitoring mechanism to detect conduct by any third parties further down the commercial chain, including by possible resellers, that would frustrate the purpose of paragraph (16.1).
- (4) Any violation of paragraphs (16.1), (16.2) or (16.3) shall constitute a material breach of an essential element of the purchase agreement, and Menzerna shall be entitled to cancel any open orders and end the business relationship with buyer.
- (5) The Buyer shall immediately inform Menzerna about any problems in applying paragraphs (16.1), (16.2) or (16.3), including any relevant activities by third parties that could frustrate the purpose of paragraph (16.1). The Buyer shall make available to Menzerna any information concerning compliance with the obligations within two weeks of the simple request of such information

**§ 17 Other provisions**

- (6) This Contract and the entire legal relationship between the parties shall be governed by the laws of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods.
- (7) The place of performance is Ötigheim; the place of jurisdiction for all claims is Rastatt. Furthermore, we shall be entitled to bring an action at the place of performance of the delivery obligation in accordance with these General Terms and Conditions of Sale or an overriding individual agreement or at the Buyer's general place of jurisdiction. This shall not affect overriding statutory provisions (exclusive places of jurisdiction).
- (8) Amendments and supplements to this contract must be made in writing. This shall also apply to amendments of this written form clause.
- (9) Insofar as individual provisions of this contract are or become invalid or contain a loophole, the remaining provisions shall remain unaffected. The contracting parties undertake to replace the invalid provision with a legally permissible provision that comes closest to the purpose of the invalid provision or fills this loophole.