

General terms and conditions of sale (“GTCs”)

of SORACO Deutschland GmbH – status: 01.05.2019

1. Scope of application, form

1.1. The general terms and conditions of sale (“GTCs”) apply to all business relationships with our customers (“purchasers”). The GTCs only apply if the seller is an entrepreneur (§ 14 BGB {German Civil Code}), a legal entity under public law or a special fund under public law.

1.2. These GTCs apply in particular to contracts for the sale and/or supply of moveable objects (“goods”), irrespective of whether we manufacture the goods ourselves or purchase them from suppliers (§§ 433, 650 BGB). To the extent nothing else is agreed the GTCs apply in the version valid at the time of the order by the purchaser or at least in the last text version provided to him in the general agreement, also for similar future contracts, without us having to expressly refer to them again in each individual case.

1.3. Our GTCs apply exclusively. Deviating, contradictory or supplementary general terms and conditions of the seller only become part of the contract if we have expressly approved their validity. This requirement of approval applies in any case, for example, even if we carry out the delivery to the purchaser without reservation in knowledge of the purchaser’s general terms and conditions.

1.4. Individual agreements met in specific cases with the purchaser (including collateral agreements, supplements and amendments) shall in all cases take precedence over these GTCs. A written contract or our written confirmation is authoritative for the content of such agreements subject to proof to the contrary.

1.5. Legally relevant declarations and notifications of the purchaser with regard to the contract (e.g. setting of a deadline, notification of defects, withdrawal or reduction) must be made in writing, i.e. in written or text form (e.g. letter, email, fax). Legal form regulations and further evidence, in particular in case of doubts as to the legitimacy of the person making the declaration, remain unaffected.

1.6. References to the validity of legal provisions are for purposes of clarification only. The legal provisions therefore apply even without such clarification, to the extent they are not directly amended or expressly excluded in these GTCs

2. Contract conclusion

2.1. Our offers are subject to change and non-binding. This shall also apply if we have provided the purchaser with catalogues, technical documentation (e.g. drawings, plans, calculations, references to DIN standards), other product descriptions or documents - also in electronic form - to which we reserve ownership and copyright.

2.2. The ordering of the goods by the purchaser is considered a binding offer of contract. Unless otherwise stated in the order, we are entitled to accept this contractual offer within ten calendar days of its receipt by us.

2.3. Acceptance can be declared either in writing (e.g. by order confirmation) or by delivery of the goods to the purchaser.

3. Delivery period and delay in delivery

3.1. The delivery time will be agreed individually or stated by us when the order is accepted. If this is not the case, the delivery period is eight calendar weeks from conclusion of the contract.

3.2. If we are unable to meet binding delivery deadlines for reasons beyond our control (non-availability of the service), we will inform the purchaser of this without delay and at the same time inform him of the expected new delivery deadline. If the service is also not available within the new delivery period, we are entitled to withdraw from the contract in whole or in part; we will reimburse any consideration already provided by the purchaser without delay. A case of non-availability of performance in this sense shall be deemed to be in particular the non-timely self-supply by our supplier if we have concluded a congruent hedging transaction, neither we nor our supplier are at fault or we are not obliged to procure in an individual case.

3.3. The occurrence of our delay in delivery shall be governed by the statutory provisions. In any case, however, a reminder from the purchaser is required. If we are in default of delivery, the purchaser may

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demand lump-sum compensation for his damage caused by delay. The lump-sum compensation shall amount to 0.5% of the net price (delivery value) for each completed calendar week of delay, but in total not more than 5% of the delivery value of the goods delivered late. We reserve the right to prove that the purchaser has not incurred any damage at all or only a considerably lower damage than the above lump sum.

3.4. The rights of the purchaser according to section 8. of these GTCs and our legal rights, in particular in the event of an exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of performance and/or subsequent performance), shall remain unaffected.

4. Delivery, transfer of risk, acceptance, default of acceptance

4.1. Unless otherwise agreed, delivery shall be ex "distribution warehouse/works" (place of delivery), which is also the place of performance for the delivery and any subsequent performance. As soon as the goods leave the place of delivery, the risk of accidental loss and accidental deterioration as well as the risk of delay passes to the purchaser. This shall also apply if a delivery free or carriage paid delivery or a delivery "free house" has been agreed. We have fulfilled our delivery obligation when the goods are handed over to the forwarding agent, the carrier or the person otherwise authorised to carry out the shipment.

4.2. Unless otherwise agreed, we are entitled to determine the type of shipment (in particular transport company, route, packaging) ourselves. In the case of delivery from "distribution warehouse/works", we will only cover the delivery with transport insurance at the express request of the purchaser and at the purchaser's expense.

4.3. At the request and expense of the purchaser, the goods will be shipped to another destination (sale to destination). In the case of sale to destination, however, the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay shall pass to the purchaser upon delivery of the goods to the forwarding agent, carrier or other person designated to carry out the shipment.

4.4. To the extent that acceptance has been agreed, this is decisive for the transfer of risk. The legal provisions of the law on contracts for work and services shall also apply accordingly to an agreed acceptance. The transfer or acceptance are deemed equivalent if we are in default of acceptance.

4.5. Decisive for the delivery quantity is the weight or volume determined at the delivery place by e.g. land tank measurement or empty/full weighing of the means of transport or determined by customs. For consignments from tankers or tank wagons the supply quantity is determined by way of a flow meter or other measuring equipment from the means of transport. The data determined by the despatch location (e.g. refinery warehouse) is significant for the quality.

4.6. If the purchaser is in default of acceptance, fails to cooperate or if our delivery is delayed for other reasons for which the purchaser is responsible, we are entitled to demand compensation for the resulting damage including additional expenses (e.g. storage costs, shipping costs). For this we charge a flat-rate compensation of EUR 100 per calendar day, but not exceeding a total of 5% of the delivery value, beginning with the delivery period or - in the absence of a delivery period - with the notification that the goods are ready for dispatch. The proof of higher damages and our statutory claims (in particular compensation for additional expenses, reasonable compensation, termination) remain unaffected; however, the lump sum shall be offset against further monetary claims. The purchaser shall be entitled to prove that we have not incurred any damage at all or that the damage incurred by us is considerably less than the above lump sum.

4.7. The purchaser is responsible for the use of the goods for the intended purpose permitted under tax and customs law and for ensuring that the taxable recipient has the necessary customs permit for untaxed deliveries. He is liable through no fault of his own for tax and customs duties which we have to pay due to the intended use of the goods or lack of customs permits.

4.8. The purchaser shall provide at his own expense any energy (e.g. steam) required to heat up goods delivered from boiler and tank trucks. We shall only be liable for certain input temperatures if expressly assured in writing.

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5. Transport means and containers

5.1. The purchaser shall empty means of transport (road tankers, tank wagons, ISO tanks, containers, tankers, etc.) and loaned containers immediately upon arrival at the place of receipt and return them in proper condition and free of freight and expenses to the place determined by us or, in the absence of a destination, to the place of delivery.

5.2. Tank cars/wagons are available to the purchaser at the place of receipt 24 hours free of charge. If the deadline is exceeded, the usual daily rental fee will be charged per wagon and working day commenced. A credit note for returned freight remains will not be issued, costs for additional expenses or disposal costs will be charged to the purchaser. The filling from road tank lorries or heavy goods vehicles is free of charge for the first two hours. For every further hour commenced a fee of an eighth of the normal market daily rate can be charged. For the unloading of inland water vessels, half of the time specified in the TTB (influenceable time of activity), in terms of loading tonnes, is available to the recipient free of charge. If the deadline is exceeded, demurrage will be charged.

5.3. If hired containers are not returned within three months after receipt by the purchaser a reasonable rent, to be determined by us, shall be paid. If containers are damaged or are not returned to us within a reasonable extension period set by us, we may refuse to take them back and demand the costs for procurement of a new container of the same type. The purchaser indemnifies us from all claims of third parties.

5.4. If the purchaser has to provide means of transport and containers, he has to send them at his own risk in due time and free of freight and expenses to the agreed filling station. We may return damaged means of transport and containers to the purchaser at the purchaser's risk and expense and instead provide and dispatch rented or our own means of transport and containers for a reasonable fee. We are not liable for contamination of goods or for other damage which arise due to unclean transport means and containers of the purchaser or for any other defective characteristics.

5.5. We are not obliged to check tanks/containers at the purchaser's premises for compliance with legal regulations or for technical defects. We are not obliged to inspect the brand and type purity of the tank contents, but we are authorised, with the consent of the customer, to ensure the quality purity by affixing brand seals. Prior to delivery, the purchaser must determine the condition of the tanks, the extent and type of their contents, the proper condition of the supply lines and connections to the transport vehicle as well as all other prerequisites for proper filling and monitor these during filling. Overflow damage which occurs because containers (e.g. tank, tank lorry, ship) or measuring equipment are in poor technical condition or the capacity or quantity to be filled has been incorrectly stated by the recipient, as well as damage caused by contamination and/or mixing in a container provided by the recipient (including IBC containers provided by the recipient) will not be compensated. Measures initiated by us in such cases do not constitute an acknowledgement of the obligation to pay compensation.

5.6. We shall not be liable for overfilling, mixing or other damage caused by carriers engaged by us. The purchaser shall indemnify us from all third-party claims whether of a civil or public nature, in particular those under the Water Resources Act and the German Federal Soil Protection Act.

5.7. Loaned containers and containers with NLD trademarks may not be refilled by the purchaser, especially not with competitive products or for the purpose of resale. If those buying from the purchaser are resellers themselves, the purchaser has to impose a corresponding obligation on them. If the purchaser violates one of the aforementioned obligations, he shall indemnify us against all claims of third parties under civil or public law, in particular those arising from product liability.

5.8. The purchaser shall only be entitled to claims arising from exceeding loading or unloading times if he notifies us in writing immediately after delivery.

6. Prices and payment terms

6.1. Unless otherwise agreed in individual cases, our current prices at the time of conclusion of the contract shall apply, namely ex distribution warehouse/works (delivery point), plus statutory VAT, unless otherwise agreed.

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6.2. We reserve the right to increase the prices accordingly if cost increases occur after conclusion of the contract for reasons for which we are not responsible, in particular due to public charges on the goods, an increase in the statutory charges on which the price agreement is based or the ancillary charges covered by the price or an increase in the costs of production, product components, loading and dispatch. The same applies if, after conclusion of the contract, force majeure leads to an increase in the prime costs. Recharges of public duties to the purchase price are made at a flat rate. If the freight costs included are based on a minimum quantity tariff, any freight differences shall be borne by the purchaser if the agreed quantity is not achieved.

6.3. As events of force majeure within the meaning of Section 6.2. are all unforeseeable circumstances whose origin lies outside our sphere of influence; these may include, for example, war or warlike conditions, boycott, strike, riot, sabotage, fire, power failure, lawful lockout, computer malfunctions, cessation or restriction of production or other restrictive measures of any kind by governments and/or authorities, blockage or other hindrance in carriage. This may include disruptions or impediments to the supply of raw materials or products in relation to an existing or prospective source of supply, identification of a supply crisis by the International Energy Agency, and allocation and consumption restriction measures that are voluntary or ordered in connection with the implementation of the "International Energy Programme" or the Energy Security Act or related regulations.

6.4. We also reserve the right to a corresponding price increase if, in order to maintain the delivery, we make use - without any legal claim on the part of the purchaser - of sources of supply which have not been used to date or not to this extent, and if this leads to an increase in the prime costs. Within one week after notification of the price increase, the purchaser can reject the price increase; we can then terminate the contract with immediate effect or withdraw from it.

6.5. In the case of sale to destination (to the term Section 4.3.), the purchaser shall bear the transport costs from the distribution warehouse/works (delivery point), unless otherwise agreed, and the costs of any transport insurance requested by the purchaser. If we do not invoice the transport costs actually incurred in the individual case, a flat rate for transport costs (excluding transport insurance) shall be deemed agreed. The amount of the flat rate for transport costs depends in particular on the postal code area of the customer and the weight of the goods and can be determined using a tool which SORACO provides to the customer. Any customs duties, fees, taxes and other public charges shall be borne by the purchaser.

6.6. The purchase price is due and payable immediately after invoicing and delivery or acceptance of the goods without deduction. 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 declare a corresponding reservation at the latest with the order confirmation.

6.7. With the expiry of the aforementioned payment period, the purchaser is in default. During the period of default, interest shall be charged on the purchase price at the statutory default interest rate applicable at the time. We reserve the right to assert further damages caused by default. Our claim to the commercial interest on arrears (§ 353 HGB {German Commercial Code}) against merchants shall remain unaffected.

6.8. The purchaser is only entitled to set-off or retention rights to the extent that his claim is legally established or undisputed. In the event of defects in the delivery, the purchaser's counter rights, in particular in accordance with Section 8.7, shall remain unaffected. Sentence 2 of these GTCs shall remain unaffected.

6.9. If it becomes apparent after conclusion of the contract (e.g. through an application for the opening of insolvency proceedings) that our claim to the purchase price is endangered by the purchaser's lack of ability to pay, we are entitled to refuse performance in accordance with the statutory provisions and - if necessary after setting a deadline - to withdraw from the contract (§ 321 BGB). In the case of contracts for the manufacture of unacceptable goods (custom-made products), we may declare withdrawal immediately; the statutory provisions on the dispensability of setting a deadline remain unaffected.

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7. Reservation of title

7.1. Until full payment of all our present and future claims arising from the purchase contract and an ongoing business relationship (secured claims), we reserve title to the goods sold.

7.2. The goods subject to retention of title may not be pledged to third parties or transferred by way of security before full payment of the secured claims. The purchaser must inform us immediately in writing if an application for the opening of insolvency proceedings is made or if third parties have access (e.g. seizure) to the goods belonging to us

7.3. If the purchaser acts in breach of contract, in particular if he fails to pay the due purchase price, we are entitled to withdraw from the contract in accordance with the statutory provisions and/or to demand the return of the goods on the basis of the reservation of title. The demand for return does not at the same time include the declaration of withdrawal; we are rather entitled to demand only the return of the goods and to reserve the right of withdrawal. If the purchaser does not pay the purchase price due, we may only assert these rights if we have previously set the purchaser a reasonable deadline for payment without success or if such a deadline is dispensable according to the statutory provisions.

7.4. Until revocation according to (c) below, the purchaser is authorised to resell and/or process the goods subject to retention of title in the ordinary course of business. In this case, the following provisions shall apply additionally:

(a) The retention of title extends to the products resulting from the processing, mixing or combination of our goods at their full value (so-called extended retention of title), whereby we are seen as manufacturer within the meaning of § 950 BGB. If, in the event of processing, mixing or combining with goods of third parties, their right of ownership remains, we shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined goods. In all other respects, the same applies to the resulting product as to the goods delivered under retention of title.

(b) The purchaser hereby assigns to us by way of security all claims against third parties arising from the resale of the goods or product, either in full or in the amount of our possible co-ownership share in accordance with the preceding paragraph. We accept the assignment. The obligations of the purchaser mentioned in section 7.3. shall also apply with regard to the assigned claims.

(c) In addition to us the purchaser remains authorized to collect the claim. We undertake not to collect the claim as long as the purchaser fulfils his payment obligations to us, there is no deficiency in his ability to pay and we do not assert the reservation of title by exercising a right in accordance with section 7.3. If this is the case, however, we can demand that the purchaser informs us of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment. Furthermore, in this case we are entitled to revoke the purchaser's authority to further sell and process the goods subject to retention of title.

d) If the realisable value of the securities exceeds our claims by more than 10%, we will release securities of our choice at the request of the purchaser.

8. Defect claims of the purchaser

8.1. For the rights of the purchaser in the event of material defects and defects of title (including wrong and short delivery as well as improper assembly or faulty assembly instructions) the statutory provisions shall apply, unless otherwise stipulated below. In all cases, the special statutory provisions shall remain unaffected in the case of final delivery of the unprocessed goods to a consumer, even if the consumer has processed them further (supplier recourse according to §§ 478 BGB). Claims from supplier recourse are excluded if the defective goods have been further processed by the purchaser or another entrepreneur, e.g. by incorporation into another product.

8.2. The basis of our liability for defects is above all the agreement reached on the quality of the goods. All product descriptions and manufacturer information which are the subject of the individual contract or which were made public by us (in particular in catalogues or on our Internet homepage) at the time of the conclusion of the contract shall be deemed to be an agreement on the quality of the goods. All sample and analysis data only provide non-binding indications of the average quality of the goods, unless a specific quality has been expressly agreed in writing.

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8.3. If the quality has not been agreed upon, it is to be judged according to the legal regulation whether a defect is present or not (§ 434 (1) p. 2 and 3 BGB). However, we do not assume any liability for public statements made by the manufacturer or other third parties (e.g. advertising statements) to which the purchaser has not pointed out to us as being decisive for his purchase.

8.4. The purchaser's claims for defects presuppose that he has fulfilled his statutory obligations to examine and give notice of defects (§§ 377, 381 HGB). In the case of goods intended for installation, mixing or other further processing, an inspection must in any case be carried out immediately before processing.

Complaints must be asserted immediately by sending a 2 kg/l sample or the goods complained about. In any case, obvious defects must be reported in writing immediately after delivery and defects not detectable during inspection within five working days of discovery. If the purchaser fails to carry out the proper inspection and/or report defects, our liability for the defect not reported or not reported in time or not properly is excluded according to the statutory provisions.

8.5. Claims for damages and material defects are also excluded if a subsequent inspection of the goods complained about is not possible for reasons for which we are not responsible or if the goods have been mixed with additives or other goods without our consent. The purchaser is obliged to protect rights of recourse against third parties (e.g. forwarding agents, carriers, warehouse keepers, railways) and to take all steps necessary to assert and maintain claims, including the preservation of evidence, in coordination with us or according to our instructions, as long as we have not assumed the assertion of the rights.

8.6. If the delivered item is defective, we may initially choose whether we provide subsequent performance by eliminating the defect (rectification of defects) or by delivering a defect-free item (replacement delivery). Our right to refuse subsequent performance under the statutory conditions remains unaffected.

8.7. We are entitled to make the subsequent performance owed dependent on the purchaser paying the purchase price due. However, the purchaser is entitled to retain a reasonable part of the purchase price in relation to the defect.

8.8. The purchaser must give us the time and opportunity necessary for the supplementary performance owed, in particular to hand over the rejected goods for inspection purposes. In the event of a replacement delivery, the purchaser shall return the defective item to us in accordance with the statutory provisions. Subsequent performance does not include either the removal of the defective item or its re-installation if we were not originally obliged to install it.

8.9. We shall bear or reimburse the expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labour and material costs and, if applicable, dismantling and installation costs, in accordance with the statutory provisions if a defect is actually present. Otherwise, we can demand reimbursement from the purchaser of the costs incurred as a result of the unjustified request for the removal of defects (in particular testing and transport costs), unless the lack of defect was not recognisable to the purchaser.

8.10. In urgent cases, e.g. if operational safety is endangered or in order to prevent disproportionate damage, the purchaser has the right to remedy the defect himself and to demand compensation from us for the expenses objectively necessary for this. We are to be informed immediately, if possible, in advance, of any such self-remedy. The right of self-remedy does not exist if we would be entitled to refuse a corresponding subsequent performance according to the statutory provisions.

8.11. If the supplementary performance has failed or a reasonable period of time to be set by the purchaser for the supplementary performance has expired without success or is dispensable according to the statutory provisions, the purchaser may withdraw from the purchase contract or reduce the purchase price. In the case of an insignificant defect, however, there is no right to withdraw from the contract.

8.12. Even in the case of defects, the purchaser's claims for damages or reimbursement of futile expenses shall only exist in accordance with Section 9 of these GTCs and shall otherwise be excluded.

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9. Other liability

9.1. Unless otherwise stated in these GTCs including the following provisions, we shall be liable for any breach of contractual and non-contractual obligations in accordance with the statutory provisions.

9.2. We shall be liable for damages - regardless of the legal basis - within the scope of the liability for culpability in the case of intent and gross negligence. In the case of simple negligence, we shall be liable subject to a milder scale of liability according to statutory provisions (e.g. for care in our own affairs) only

a) for damages resulting from injury to life, body or health

b) for damages resulting from the not insignificant breach of a material contractual obligation (obligation whose fulfilment makes the proper execution of the contract possible in the first place and on whose observance the contractual partner regularly relies and may rely); in this case, however, our liability is limited to compensation for the foreseeable, typically occurring damage.

9.3. The limitations of liability resulting from section 9.2. shall also apply in the event of breaches of duty by or in favour of persons whose fault we are responsible for according to statutory provisions. They shall not apply if we have fraudulently concealed a defect or have assumed a guarantee for the quality of the goods and for claims of the purchaser under the Product Liability Act.

9.4. Due to a breach of duty which does not consist of a defect, the purchaser may only withdraw or terminate the contract if we are responsible for the breach of duty. A free right of termination of the purchaser (in particular according to §§ 650, 648 BGB) is excluded. In all other respects, the statutory requirements and legal consequences shall apply.

10. Limitation period

10.1. Notwithstanding § 438 (1) No. 3 BGB, the general limitation period for claims arising from material defects and defects of title is one year from delivery. If acceptance has been agreed, the limitation period shall commence upon acceptance.

10.2. The aforementioned limitation periods of the law on sales also apply to contractual and non-contractual claims for damages of the purchaser which are based on a defect of the goods, unless the application of the regular statutory limitation period (§§ 195, 199 BGB) would lead to a shorter limitation period in individual cases. However, claims for damages of the purchaser pursuant to Section 9.2, Sentence 1 and Sentence 2 (a) as well as pursuant to the Product Liability Act shall become statute-barred exclusively according to the statutory limitation periods.

11. Choice of law and place of jurisdiction, severability clause

11.1. These GTCs and the contractual relationship between us and the purchaser shall be governed by the law of the Federal Republic of Germany to the exclusion of international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods (CISG) and the standards of international private law referring to it.

11.2. Place of performance for both parties is Buxtehude. If the purchaser is a merchant within the meaning of Commercial Code, legal entity under public law or a special fund under public law, the exclusive - also international - place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be the District Court of Stade. The same applies if the purchaser is an entrepreneur within the meaning of § 14 BGB. In all cases, however, we shall also be entitled to bring an action at the place of performance of the delivery obligation in accordance with these GTCs or a prior individual agreement or at the general place of jurisdiction of the purchaser. Priority statutory provisions, in particular those concerning exclusive jurisdiction, shall remain unaffected.

11.3. The invalidity of individual provisions of these GTCs shall not affect the validity of the remaining provisions. Ineffective provisions shall be deemed to be replaced by such effective provisions which are suitable to achieve the economic purpose of the omitted provision as far as possible.