

General Terms and Conditions of Sale and Delivery

of Graphite Materials GmbH (hereinafter referred to as "Graphite Materials")

as at: August 23, 2019

Article 1 General Provisions

- (1) The following General Terms and Conditions of Sale and Delivery (GCS) shall apply to all our business relationships with our customers (hereinafter referred to as "Purchaser"). The GCS shall only apply if the Purchaser is a contractor (section 14 of the German Civil Code), a corporate body organized under public law or a legal entity under public law.
- (2) The GCS shall apply in particular to contracts covering the sale and/or delivery of moveable goods (hereinafter also referred to as "Goods"), regardless of whether we manufacture the Goods ourselves or purchase them from subcontractors (sections 433, 651 of the German Civil Code). The GCS, in the version currently in effect, shall apply as a framework agreement for future contracts entered into with the same Purchaser for the sale and/or the supply of moveable goods, obviating the need for us to make reference to them in each individual instance; however, in this case, the Purchaser shall be immediately informed about amendments to our GCS.
- (3) These GCS shall apply exclusively. Differing, conflicting or supplementary general conditions and terms submitted by the Purchaser shall only apply to the extent that we have expressly consented to their validity. This requirement of consent shall apply in every instance, for example, even when, despite our awareness of the Purchaser's General Terms and Conditions, we nevertheless perform the delivery to the Purchaser without reservation.
- (4) Individual arrangements made with the Purchaser in specific cases (including supplementary agreements, additions and amendments) shall always prevail over these GCS. The content of such arrangements shall be subject to a written contract or our written confirmation.
- (5) Legally relevant declarations and notifications that the Purchaser is required to make or provide to us following conclusion of the contract (e.g. deadlines, notice of defects, declaration of rescission or reduction) must be given in writing in order to be effective.
- (6) References made to valid statutory provisions shall only have a clarifying significance. Even without such clarification, the statutory provisions shall apply provided that they have not been directly amended or expressly excluded in these GCS.

Article 2 Conclusion of Contract

- (1) Our offers are subject to change and without obligation. This shall also apply if we have provided the Purchaser with catalogues, technical documentation (e.g. drawings, plans, calculations, DIN standard references) and any other product descriptions or documents – also electronic documents – to which we reserve the rights of ownership and copyright.
- (2) An order for Goods placed by the Purchaser shall be deemed to be a binding offer of contract. Unless otherwise stated in the order, we shall be entitled to accept this offer of contract within four weeks of its receipt by us.
- (3) Acceptance can be made either in writing (e.g. by order confirmation), by text message or by delivery of the Goods to the Purchaser.

Article 3 Delivery Term and Default in Delivery

- (1) The delivery term shall be agreed individually or stated by us upon order acceptance. If this is not the case, the delivery period shall be approx. 12 weeks after contract conclusion. The delivery period shall commence with order confirmation.
- (2) Only delivery periods that have been confirmed by us in writing shall be binding.
- (3) If we are unable to meet binding delivery periods for reasons beyond our control (non-availability), we shall be entitled to extend the delivery period by the duration of the obstruction. In this case, we shall immediately inform the Purchaser accordingly and also notify him of the expected new delivery period. If the service is not available within the new delivery period, we shall be entitled to cancel the contract in full or in part; in this case, we shall immediately reimburse the Purchaser for any performance already provided. A particular instance of non-availability of service in this respect is late delivery by our supplier, if we have concluded a congruent hedging transaction and neither our supplier nor we are at fault or we are not required to procure performance in individual cases. The same shall also apply in the event of force majeure, labour disputes or other operational disturbances in our company.
- (4) The occurrence of our delay in delivery shall be determined according to the statutory regulations. In each case, a reminder shall be required from the Purchaser. If we are in default, the Purchaser shall be entitled to demand a lump-sum payment of his default damages. The lump-sum payment shall be 0.5% of the net price (delivery value) per full calendar week but shall not exceed 5% of the value of the Goods that have not been delivered in time. We shall reserve the right to prove that the Purchaser suffered no damages whatsoever or considerably lower damage than the aforementioned lump-sum.

- (5) The Purchaser's rights pursuant to Article 8 of these GCS and our legal rights in particular if the obligation to perform is excluded (e.g. impossibility or unreasonableness of performance and/or subsequent performance) shall remain unaffected.

Article 4 Delivery, Passing of risk, Acceptance, Default of Acceptance

- (1) Partial deliveries shall be permissible provided they are acceptable to the Purchaser.
- (2) The delivery shall be made from our warehouse. This shall also be the place of performance. At the request and cost of the Purchaser, the Goods shall be delivered to a different destination (sale to destination according to buyer's instructions). Unless otherwise agreed, we shall be entitled to determine the type of dispatch (in particular forwarding company, shipment route, packaging) ourselves.
- (3) The risk of accidental loss and deterioration of the Goods shall be transferred to the Purchaser upon transfer at the place of performance. However, in the event of a sale to destination according to buyer's instructions, the risk of accidental loss and deterioration of the Goods, as well as the risk of delay, shall be transferred when the Goods are delivered to the forwarding agent, the freight carrier or to other persons or institution in charge of dispatching the Goods. If an acceptance has been agreed, this shall be authoritative for the transfer or risk. The statutory provisions of the law on contracts for work and service shall apply analogously in other respects to an agreed acceptance. Default of acceptance by the Purchaser shall be equivalent to delivery or acceptance.
- (4) If the Purchaser is in default of acceptance, if he fails to provide an act of assistance or if our delivery is delayed for other reasons for which the Purchaser is responsible, we shall be entitled to request compensation for the resulting damage, including all additional expenses (e.g. storage costs). For this we shall charge a lump-sum compensation in the amount of 200 EUR per calendar day starting from the delivery period or – in the absence of a delivery period – with the notification that the Goods are ready for dispatch.
- (5) The proof of higher damages and our statutory claims (in particular reimbursement of additional expenses, reasonable compensation, termination) shall remain unaffected; however, the lump-sum shall be offset against additional monetary claims. The Purchaser shall have to prove that we did not suffer any damages at all or only substantially less damages than the aforementioned lump-sum.

Article 5 Prices and Terms of Payment

- (1) Unless otherwise agreed in individual cases, our current prices that are valid at the time of contract conclusion shall apply. These prices shall apply ex stock plus statutory value-added tax.
- (2) In the event of sale to destination according to buyer's instructions (Art. 4 par. 1), the Purchaser shall bear the actual transportation costs ex stock, any customs duties, fees, taxes and other public charges as well as the costs of any transport insurance that may be requested by the Purchaser. The costs for this shall be charged to the Purchaser. Transport packaging, as well as all other packaging in accordance with the Packaging Ordinance, is non-returnable and becomes the property of the Purchaser, except for pallets.
- (3) The purchase price shall be due and payable within 14 days from invoicing and delivery or acceptance of the Goods. For contracts with a delivery value above 1,000.00 EUR, we shall, however, be entitled to request a deposit in the amount of 50 % of the purchase price. The deposit shall become due and payable within 14 days from invoicing. The date on which the amount owed is credited to one of our bank accounts shall be authoritative.
- (4) Upon expiry of the aforementioned term of payment, the Purchaser shall be in default. During the default period, interest at the statutory default interest rate at the time shall be due on the purchase price. We shall reserve the right to claim further damage caused by default. With regard to business people, our claim for the commercial maturity interest (section 353 of the German Commercial Code) shall remain unaffected.
- (5) The Purchaser shall have rights of offsetting or retention only if his claim is legally enforceable or undisputed. In the event of defective deliveries, the Purchaser's opposing rights in particular pursuant to Art. 7 par. 6 clause 2 of these GCS shall remain unaffected.
- (6) If after conclusion of the contract it becomes apparent that our claim to the payment of the purchase price is jeopardized by the Purchaser's inability to pay (e.g. an application for commencement of insolvency proceedings), we shall be entitled pursuant to the statutory provisions to the right to refuse performance and – if necessary after fixing a deadline – to withdraw from the contract (section 321 of the German Civil Code). In the case of contracts for the manufacture of goods that cannot be exchanged (custom-made items), we shall have the right to withdraw immediately; this shall not affect the statutory provisions for the dispensability of deadlines.

Article 6 Retention of Title; Assignment of Claim

- (1) We retain title to all Goods sold until full payment of all our present and future claims arising from the purchase contract and a current business relationship (secured debt).
- (2) Until the secured claims have been satisfied in full, the goods subject to retention of title shall not be pledged to a third party or assigned as security. The Purchaser shall inform us immediately in writing if and insofar as a third party executes attachment of our Goods.
- (3) In the event of contract-breaching behaviour by the Purchaser, in particular failure to pay the purchase price, we shall be entitled in accordance with the statutory provisions to withdraw from the contract and/or to reclaim the Goods on the basis of the retention of title. The demand to surrender the Goods shall not at the same time constitute declaration of withdrawal; instead, we shall be entitled to reclaim the Goods and to reserve the right of withdrawal. If the Purchaser does not pay the purchase price due, we shall only be entitled to assert these rights after having set a reasonable deadline for payment without result, or if such a deadline is not necessary pursuant to statutory provisions.

- (4) In the regular course of business, the Purchaser shall be entitled to resell and/or further process the delivered Goods subject to retention of title. In this case, the following provisions shall additionally apply.
- a) Retention of title extends to the full value of the items manufactured by processing, mixing or combining of our Goods. In this case, we shall be deemed the manufacturer. If during the processing, mixing or combining with third party's goods their right of retention still exists, we shall acquire joint ownership in proportion to the invoice value of the processed, mixed or combined goods. In addition, the manufactured item shall be subject to the same provisions as the Goods delivered under retention of title.
- b) The Purchaser shall assign to us as security the claims against third parties arising from the sale of the Goods or the manufactured item in total, or, if applicable, in the amount of our joint ownership share, in accordance with the previous clause. We shall accept this assignment. The Purchaser's duties according to clause 2 shall also apply with regard to the assigned claims.
- (c) Apart from us, the Purchaser shall be authorized to collect the claim. We shall undertake not to collect the claim as long as the Purchaser fulfils his payment obligations towards us, is not in default of payment, no petition for the commencement of insolvency proceeding has been filed and his ability to pay is not otherwise impaired. However, if this is the case, we can demand that the Purchaser informs us of the assigned claims and their debtors, supplies all the necessary details for collection, hands over the corresponding documents and informs the debtors (third parties) of the assignment.
- (d) If the realisable value of the securities exceeds our claims by more than 10%, upon request from the Purchaser, we shall release securities of our choice.
- (5) By repaying all the claims of the Purchaser arising from the business relationship, ownership of the assigned goods and of the goods subject to retention of title shall be transferred to the Purchaser.
- (11) If subsequent performance is unsuccessful or an appropriate deadline fixed by the Purchaser has expired without result or is not necessary pursuant to statutory provisions, the Purchaser shall be entitled to withdraw from the purchase contract or to demand a reduction of the purchase price. However, no right of withdrawal shall apply in the event of a minor defect.
- (12) The Purchaser's claims for damages or for reimbursement of expenses incurred in vain shall only apply in accordance with Article 8; otherwise, such claims shall be excluded.

Article 8 Liability and Limitation of Liability

- (1) Unless otherwise provided in these GCS and the provisions below, in the event of a breach of contractual and extra contractual duties, we shall be liable in accordance with the relevant statutory provisions.
- (2) Irrespective of the legal basis, we shall be liable for damages in the event of intent or gross negligence. In the event of ordinary negligence we shall only be liable
- a) for damages resulting from injury to life, limb or health,
b) for damages resulting from the breach of an essential contractual duty (an obligation that has to be fulfilled to enable the contract to be duly performed and on the satisfaction of which the other party regularly relies and may rely); in this case, our liability shall, however, be limited to compensation for the foreseeable damage typically occurring. In particular, no liability for claims arising from consequential damage caused by a defect shall apply.
- (3) The limitation of liability according to clause 2 shall not apply if we have willfully concealed a defect or have taken over a guarantee for the quality of Goods. The same shall apply to the Purchaser's claims under the Product Liability Act.
- (4) The Purchaser shall only be entitled to withdrawal or cancellation on the grounds of a breach of duty if we are responsible for the breach of duty. The Purchaser's free right of termination (especially in accordance with sections 651, 649 of the German Civil Code) shall be excluded. Otherwise, the statutory requirements and consequences shall apply.

Article 9 Limitation of Claims

- (1) Unless otherwise agreed below, the statutory provisions shall prevail with regard to the Purchaser's rights in the event of defects and lack of title (including incorrect and partial delivery, as well as improper assembly or defective assembly instructions). The special statutory provisions for ultimate delivery of the Goods to a consumer (supplier's recourse pursuant to sections 478, 479 of the German Civil Code) shall remain unaffected in all cases.
- (2) The agreement made concerning the quality of the Goods shall constitute the primary basis for our liability for defects. Such an agreement concerning the quality of the Goods shall cover all product descriptions (also those of the manufacturer) that were given to the Purchaser prior to his order or that have been included in the contract in the same way as these general terms and conditions. Any guarantee on our part must be expressly accepted by us, designated as such and must be in writing in order to be effective. Statements made in our catalogues, promotional leaflets, brochures or other general information shall never constitute a guarantee.
- (3) In the absence of any quality agreement, the existence or non-existence of a defect shall be assessed according to the statutory provision (section 434 par. 1 clause 2 and 3 of the German Civil Code). However, we shall not be liable for any public statements made by the manufacturer or third parties (e.g. advertising messages).
- (4) Warranty claims submitted by the Purchaser shall imply that he has fulfilled the statutory duties of inspection, notification and rejection (sections 377, 381 of the German Commercial Code). Upon delivery of the goods, the buyer must immediately carry out a first visual inspection and quantity inspection. Deviations, such as incorrect deliveries and short deliveries, must be reported in writing within five days of delivery, whereby the timely dispatch of the notice is sufficient to meet the deadlines. Notwithstanding the first visual and quantity inspection, the buyer shall carry out a proper inspection to identify and report defects within four months in the case of graphite electrodes, or within two weeks in the case of speciality graphite products and other goods. Proper inspection includes, inter alia, trial processing of the goods. When larger quantities are supplied, not less than a meaningful amount of random samples must be investigated. If the buyer fails to notify us in due time, our liability for the defect of which we were not notified in time is excluded, unless there is a defect that could not be detected despite proper inspection.
- (5) claims submitted by the Purchaser shall imply that he has fulfilled the statutory duties of inspection, notification and rejection (sections 377, 381 of the German Commercial Code). Any defect discovered during inspection or later shall be notified to us immediately in writing. A notice shall be deemed immediate if it is given within two weeks; the time shall be deemed observed if the notice is sent in time. Irrespective of this duty of inspection, notification and rejection, the Purchaser shall have to give written notice of obvious defects (including incorrect and partial delivery) within two weeks from the delivery; the time shall be deemed observed if the notification is sent in time. Should the Purchaser neglect a proper inspection and/or notice of defects, our liability for defects not notified shall be excluded.
- (6) If the delivered item is defective, we shall have the choice of subsequent performance either by eliminating the defect (subsequent improvement) or by supplying an item free of defects (replacement). Our right to refuse the subsequent performance pursuant to the statutory provisions shall remain unaffected.
- (7) We shall be entitled to make the due subsequent performance conditional upon the payment of the purchase price due by the Purchaser. However, the Purchaser shall be entitled to withhold an appropriate part of the purchase price in proportion to the defect.
- (8) The Purchaser shall allow us the necessary time and opportunity for due subsequent performance, in particular to hand over the rejected Goods for inspection purposes. In the case of a replacement, the Purchaser shall return the defective item in accordance with the statutory provisions. The subsequent performance shall not include either disassembly of the defective item or new assembly, provided that we were not obliged to assemble the item in the first place.
- (9) Should a defect actually exist, the expenses necessary for the inspection and subsequent performance, in particular transportation, infrastructure, work and material costs (not: disassembly and assembly costs), shall be borne by us. Should a claim for elimination of a defect submitted by the Purchaser be proven to be unjustified, we shall be entitled to demand reimbursement of the resulting costs from the Purchaser.
- (10) In urgent cases, e.g. risks to the general plant safety or to prevent disproportionate damage, the Purchaser shall have the right to remedy the defect himself and to demand reimbursement by us of the objectively necessary expenses. We shall be informed immediately of such self-performance – if possible in advance. The right of self-performance shall not apply if we would have been entitled to refuse a corresponding subsequent performance pursuant to statutory provisions.
- (1) Section 438 par. 1 no. 3 of the German Civil Code notwithstanding, the general limitation period for claims arising from defects and legal imperfections shall be 12 months from delivery. If acceptance has been agreed, the limitation period shall commence at acceptance.
- (2) However, if the Goods are a building or an item used for a building as a result of its customary mode of use and has caused its defectiveness (building material), the limitation period according to statutory provisions shall be five years from delivery (section 438 par. 1 no. 2 of the German Civil Code). Statutory special provisions for real surrender by third parties (section 438 par. 1 no. 1 of the German Civil Code), for fraudulent intent by the Seller (section 438 par. 3 of the German Civil Code) and for claims in connection with the supplier's recourse in case of final delivery to a consumer (section 479 of the German Civil Code) shall also be unaffected.
- (3) The aforementioned limitation periods of the law on sales shall also apply to the Purchaser's contractual and extra contractual claims to damages based on a defect in the Goods, unless the application of the regular statutory barring by limitation (sections 195, 199 of the German Civil Code) would lead to a shorter limitation period in the individual case. The limitation periods of the Product Liability Act shall remain unaffected in any case. Apart from this, the statutory limitation periods shall exclusively apply to the Purchaser's claims for damages pursuant to Article 8.

Article 10 Final Provisions

- (1) The law of the Federal Republic of Germany shall apply to these GCS and to all legal relations between Graphite Materials and the Purchaser to the exclusion of international uniform law and especially the UN Convention on Contracts for the International Sale of Goods. The prerequisites for and effects of reservation of title shall be subject to the law of the country where the Goods are located when, according to such law, the choice of German law is prohibited or ineffective.
- (2) If the Purchaser is a business person within the meaning of the German Commercial Code, a corporate body organized under public law or a legal entity under public law, the exclusive place of performance and jurisdiction – including internationally – for all disputes arising out of the contractual relationship shall be our place of business in Oberasbach. However, Graphite Materials shall also be entitled to initiate legal proceedings at the Purchaser's place of jurisdiction.