

General terms and conditions of UGA SYSTEM-TECHNIK GmbH & Co. KG

(hereinafter referred to as "GTC")

Section 1 – General information applicability

- Our GTC apply on a legal basis. They apply to all our quotations, sales, deliveries and services. If the buyer was unable to read the GTC upon the conclusion of the contract, they apply regardless whether the buyer was familiar with them or had to have been familiar with them from past business.
- We do not acknowledge any conflicting terms and conditions of the buyer that deviate from our GTC. If we carry out our delivery or service in the knowledge of such terms and conditions of the buyer, this does not constitute acknowledgment of terms and conditions of the buyer which do not conflict with our GTC.
- Our GTC only apply to entrepreneurs in the sense of section 310 of the German Civil Code (BGB) – that is, not if the customer's order cannot be connected to their commercial or independent professional activity (a consumer in the sense of section 13 of the BGB).
- No verbal ancillary agreements have been made. All future amendments to this contract must be set out in writing or text form in accordance with section 126b of the BGB (especially fax or email), the same applies to any waiver of this form requirement. As our field staff are not authorised to waive this form requirement verbally, amendments do not take effect until they are confirmed in writing or text form by the management or an authorised person.

Section 2 – Offers and conclusion of contract

- Unless stated otherwise, our offers are non-binding.
- If the order of the buyer is an offer to enter into a contract, we can accept it within ten days.
- We reserve all ownership rights and copyright to images, drawings, calculations and other documents. This applies to written documents which are marked as confidential in particular. The buyer may not disclose them to third parties without our express consent in writing or text form pursuant to section 126b of the BGB (especially fax or email).

Section 3 – Prices and terms of payment

- Unless agreed otherwise, all prices are FCA Boheim. Reasonable prices will be charged for packaging, freight, insurance, postage and all other agreed special or ancillary services. This applies even if the buyer orders special packaging or a special delivery method.
- Our employees are only authorised to collect receivables if our management or an authorised person confirms this to the buyer in writing in advance.
- The payment of the buyer is due immediately. The buyer will be in default 30 days after receiving the invoice at the latest.
- The buyer is only entitled to offset if their counterclaims have been established by final judgement, are undisputed or have been recognised by us.
- We are entitled to exercise a right of retention on the basis of all claims arising from the business relationship with the buyer.

Section 4 – Delivery and delivery time

- The delivery time we have indicated cannot commence until all technical issues have been resolved and the buyer has duly and punctually fulfilled all of their obligations. We reserve the right to cite nonfulfilment of the contract as a defence.
- Force majeure or business disruptions that affect us or our suppliers – for example due to a riot, strike or lockout – and temporarily prevent us from delivering the purchased goods by the agreed date or within the agreed deadline for reasons for which we are not responsible suspend our given delivery times or deadlines by the duration of the disruption caused by these circumstances. If such a disruption delays our service by more than two months, the buyer is entitled to withdraw from the contract.
- If the object of the contract is not a specific item, we are obliged to deliver an item of average kind and quality from the chosen category. This obligation to procure such an item is limited to the stock at our warehouse or goods from our factory. If we do not manufacture the chosen item ourselves or if it has not yet been supplied to us, our obligation is subject to punctual delivery to us on the part of our suppliers. The same applies analogously to purchases of specific goods over which we have not yet gained ownership. We cannot be held responsible if our upstream supplier does not receive a delivery for reasons for which we were not responsible. This also applies in cases of delayed delivery by our supplier for reasons for which we were not responsible.
- During the delivery period, the purchased item is subject to design and shape changes, colour deviations and changes to the scope of delivery by the manufacturer, as long as the purchased item is not changed significantly and the changes are reasonable for the buyer.
- We reserve the right to charge a surcharge for small quantities.

Section 5 – Delayed delivery

- We can be held liable for delays in accordance with the statutory provisions
 - where the underlying purchase contract is a transaction at a fixed date in the sense of section 361 of the BGB and section 376 of the German Commercial Code (HGB);
 - where the buyer no longer has an interest in the continued execution of the contract due to a delayed delivery for which we were responsible;
 - where the delayed delivery was due to an intentional or grossly negligent breach of contract for which we were responsible – this also applies where our legal representatives or vicarious agents are at fault.
- We can be held liable in accordance with the statutory provisions, although our liability is limited to the typical foreseeable damage
 - if the delayed delivery was due to an intentional or grossly negligent breach of contract for which we were responsible;
 - where the delayed delivery for which we were responsible was due to an ordinary negligent breach of a material contractual duty.
- If our delayed delivery was merely due to the culpable breach of a non-material contractual duty, the claim of the buyer is limited to 20% of the value of the delivery.

Section 6 – Threats to the service and insolvency

- If, after the conclusion of the contract, it becomes evident to us that the (continued) performance of the contract is in jeopardy due to non-performance on the part of the buyer, we are entitled to refuse to perform preliminary services under that contract until the buyer provides the relevant compensation or pledges collateral for it.
- We are entitled to withdraw from the contract or terminate it with immediate effect if the buyer, despite a reasonable subsequent deadline in which to provide the compensation having been set, fails to provide compensation for our services or pledge collateral.
- If the buyer is insolvent or unable to pay, if a petition is filed for insolvency or composition proceedings with regard to the buyer's assets or if such proceedings are initiated, we are entitled to withdraw from the contract or terminate it with immediate effect without setting a subsequent deadline.
- If we terminate or withdraw in accordance with paragraph 2 or 3, we can demand damages from the buyer instead of the payment or a reimbursement of expenses.

Section 7 – Acceptance

- The buyer is obliged to take the necessary action so that we are able to perform the contract, especially to accept the item. If the buyer breaches this obligation and cannot prove that they were not at fault, the buyer is obliged to pay damages for the loss we suffer, especially additional expenses. This does not affect our right to file more extensive claims.
- If the buyer fails to accept the purchased goods within 14 days of receiving the notification of their readiness for delivery or of the goods being duly delivered by us the first time, we can set the buyer a 14-day subsequent deadline in writing and declare that we will refuse to accept the purchased goods after the expiry of that deadline.
If the subsequent deadline expires, we are entitled to withdraw from the purchase contract by issuing a written declaration or demand compensation for the buyer's failure to perform. A subsequent deadline will not be necessary if the buyer's refusal to accept the goods is firm and final, or if the buyer is not capable of paying the purchase price even with a subsequent deadline. In this case, we are entitled to demand compensation equal to 10% of the agreed purchase price for lost profits. However, the buyer is entitled to provide evidence that we have suffered less damage or no damage at all. Likewise, we reserve the right to provide evidence of more severe damage and demand compensation for it.

Section 8 – Dispatch and transfer of risk

- Unless indicated otherwise in the order confirmation, delivery is FCA Boheim (Incoterms 2020).
- We charge for exchange pallets and cage pallets that are not exchanged. We charge a net price of EUR 25.00 per exchange pallet and EUR 150.00 per cage pallet.
- We only take out insurance for goods in transit if that has been contractually agreed. The buyer must cover the costs of this.
- We are entitled to carry out a reasonable number of partial deliveries.

Section 9 – General provisions concerning defects in purchased goods

- All rights of the buyer in connection with defects are contingent on the buyer having fulfilled their duties to perform an inspection and report defects pursuant to section 377 of the HGB.
- Promotional information from third parties is only binding for us if it has been approved by us or the manufacturer.
- If the buyer fails to follow our or the manufacturer's operating or maintenance instructions, modifies the products, replaces parts or uses consumables which do not meet the original specifications, the warranty becomes void if the buyer is unable to disprove a substantiated assertion that the defect was only caused by one of these circumstances.
- Otherwise, our terms of warranty apply.

Section 10 – Subsequent performance

- If an item is defective, the buyer is initially only entitled to demand subsequent performance from us, provided that subsequent performance is not unreasonable for us or we have not refused it in a firm, final manner.
- Subsequent performance can be delivery of a new item or repairs by us or a third party. In each case, we are obliged to bear all expenses necessary to remedy the defect, especially transport, travel, labour and material costs, provided that these expenses are not higher due to the fact that the purchased item has been moved to a different location than the place of fulfillment. With regard to the delivery of a replacement, the buyer must pay the costs of removal and installation of the purchased item if the buyer is an entrepreneur.
- We are free to choose between the various types of subsequent performance using equitable discretion (section 315 of the BGB). In any case, we are entitled to reject a type of subsequent performance chosen by the buyer if the cost of the other type of subsequent performance would be 15% lower for us. Where a replacement is delivered, the residual value of the item returned to us is factored into this calculation.
- We are entitled to make subsequent performance contingent on a reasonable portion of the purchase price having been paid. We are also entitled to refuse subsequent performance entirely if the costs of subsequent performance are higher than the purchase price. If we were responsible for the defect or guaranteed that the defect would not exist, we can only refuse subsequent performance entirely if the costs of subsequent performance are one-third higher than the purchase price. Where a replacement is delivered, the residual value of the item returned to us is factored into this calculation.
- Any subsequent performance carried out by us does not constitute recognition of a legal obligation unless we have expressly recognised the defect. Our employees and installers are authorised to recognise a defect.
- If the subject of this contract is a specific item, we are entitled to carry out subsequent improvement if it can be repaired by us or a third party on our behalf. We are also entitled to deliver a different item if it is just as suitable for the buyer's contractual purposes as the original item.
- If used items are the subject of this contract, the buyer – if the buyer is an entrepreneur – is obliged to immediately inspect them for latent defects. If the buyer fails to report such defects within three weeks of delivery, all rights of the buyer due to patent defects lapse unless the buyer can prove that the defect was already present when the item was delivered.

Section 11 – More extensive rights due to defects

- If subsequent performance fails pursuant to section 440 of the BGB, the buyer can exercise their rights under section 437, no. 2, of the BGB (withdrawal or a price reduction) or section 437, no. 3, of the BGB (damages or reimbursement of expenses) at their own discretion, provided that the statutory requirements have been met and with consideration for the provisions in sections 10, 11, 12 and 13 of these GTC.
- If an item is defective, the buyer is entitled to demand compensation pursuant to section 280(1) of the BGB. Likewise, the buyer is not entitled to a purchase price reduction due to trivial defects.

Section 12 – Limitation period for rights due to defects

- The rights of the buyer due to defects in the goods are limited to a period of five years after the delivery of the goods. The same applies to rights of the buyer to damages or damages instead of the service, including due to all damage to other protected interests of the buyer which have arisen due to the defect, except in cases of injury to the life, limb or health of the buyer or in which we were responsible for the defect through intent or gross negligence.
- If rights are also the subject of this contract, the limitation period for claims of the buyer due to defects commences when the contractual partners agree on when these rights transfer to the buyer.

Section 13 – Withdrawal and damages instead of the service due to a breach of duty

- A subsequent performance deadline set by the buyer must be at least 14 days, unless the subsequent performance has to be carried out at shorter notice for a special reason.
- Even after the fruitless expiry of a reasonable subsequent deadline, the buyer is only entitled to withdraw from the contract or demand damages instead of the service if the buyer gave prior notice of this when they set the subsequent deadline or any other reasonable amount of prior notice.
- If the buyer sets a deadline for subsequent performance multiple times, the buyer is not entitled to withdraw from the contract or demand damages instead of the service before the deadline has expired.

Section 14 – Returns

- Non-defective goods may not be returned and/or exchanged without our express consent. We are under no legal obligation to accept returns. Returns and exchanges must be addressed to our main office with the delivery order or invoice number enclosed at the expense of the buyer, including any prepaid freight we have paid; delivery must be as fast as possible. The buyer bears the risk until the delivery is accepted. We are entitled to charge warehousing costs or refuse to accept the return. A minimum net processing fee of EUR 50.00 applies to returns. If extraordinary expenses are necessary in order to identify the returned item or restore it to a flawless condition (repairs, cleaning, etc.), we are entitled to invoice the buyer for any such costs.
- The buyer is obliged to give us prior notice of returns. If the buyer breaches this duty, the buyer can be held liable for all resulting losses. We reserve the right to send back unannounced returns at the expense of the buyer without processing them or even refuse to accept such deliveries. Prior notice of returns must be given in writing or text form pursuant to section 126b of the BGB (especially by fax or email) and confirmed in writing by UGA – unannounced items will either be returned to the sender (at the expense of the sender) or a net fee of EUR 25.00 will be charged (in addition to the costs of returns set out below).

Section 15 – Liability

- We cannot be held liable for ordinarily negligent breaches of duty unless they concern material contractual duties or we have guaranteed fulfilment of the duty in question or the success which failed to materialise due to the breach of duty. The same applies to the actions of our bodies and vicarious agents.
- This disclaimer does not apply in cases of injury to life, limb or health, to claims under the German Product Liability Act (ProdHaftG) or to claims under data protection regulations (especially the European Union General Data Protection Regulation (GDPR) and the German Federal Data Protection Act (BDSG)).
- We have public liability and product liability insurance. If this insurance is activated, the disclaimer in paragraph 1 of this section does not apply to the extent that the entitlement to damages is limited to a maximum of EUR 1,500,000.00 in each individual case.
- All of the claims of the buyer to damages resulting from a grossly negligent breach of duty or a grossly negligent tort on our part are limited to the foreseeable damage from our perspective.
- Paragraphs 1 to 4 of this section apply analogously to torts committed by our employees and vicarious agents.

Section 16 – Retention of title

- We reserve ownership of the purchased item until we receive all payments owed under the delivery contract. If the buyer is in breach of contract, especially by being in default, we are entitled to take back the purchased item after the fruitless expiry of a subsequent deadline (unless one is not required by law). Our taking back the purchased item constitutes a withdrawal from the contract. After taking back the purchased item, we are entitled to make use of it; the proceeds from exploiting it are offset against the liabilities of the buyer, less reasonable exploitation costs.
- The buyer is obliged to treat the purchased item with care; in particular, they are obliged to insure it, at their own expense, against fire, water damage and theft with enough cover to match its reinstatement cost. Where maintenance and inspection work is necessary, the buyer must carry it out in good time and at their own expense.
- The buyer must notify us without undue delay in writing or text form pursuant to section 126b of the BGB (especially by fax or email) of seizures or interventions by third parties so that we are able to take legal action pursuant to section 771 of the German Code of Civil Procedure (ZPO). If the third party is unable to reimburse us for the judicial and extrajudicial costs of a lawsuit pursuant to section 771 of the ZPO, the buyer is liable for the expenditure we incurred.
- The buyer is entitled to resell the purchased item as part of the normal course of business. However, the buyer hereby assigns all claims they may have against their customers or third parties as a result of the resale in the amount of the first invoice amount of our receivables (including VAT), regardless of whether or not the purchased item has been resold without having been processed. The buyer remains entitled to collect these receivables even after assigning the claims. This does not affect our right to collect the receivables ourselves. However, we undertake not to collect the receivables as long as the buyer meets their payment obligations arising from the proceeds received, does not end up in default and, in particular, does not apply for composition or insolvency proceedings or suspense payments. If this is the case, however, we can demand that the buyer disclose the assigned claims and debtors to us, provide all necessary information for collecting the accounts receivable, provide the relevant documents and inform the debtors (third parties) of the assignment.
- If the buyer processes or reshapes the purchased item, this is always done on our behalf. If the purchased item is processed with other items that do not belong to us, we gain joint ownership of the new item based on the ratio between the value of the purchased item (the final invoice amount including VAT) and the other processed items at the time of processing. Otherwise, the same applies to the item created through the processing as to the purchased item that was delivered under reservation.
- If the purchased item is inseparably mixed with other items that do not belong to us, we gain joint ownership of the new item based on the ratio between the value of the purchased item (the final invoice amount including VAT) and the other mixed items at the time of mixing. If the items are mixed in such a way that the buyer's item is considered the main item, it is agreed that the buyer grants us proportional joint ownership. The buyer is to protect the resulting sole ownership or joint ownership for us.
- In order to secure our claims against the buyer, the buyer also assigns us the claims arising against a third party due to the connection of the purchased item with a plot of land.
- We undertake to release the collateral pledged to us at the request of the buyer if the realisable value of our collateral exceeds the accounts receivable by more than 10%; we are free to select what items of collateral to release.

Section 17 – Place of jurisdiction, place of fulfillment and data protection

- If the buyer is a merchant, the place of jurisdiction is our registered office in Germany. However, we are also entitled to file a lawsuit against the buyer at a court with jurisdiction over the buyer's place of residence or registered office.
- With regard to cross-border deliveries, the place of exclusive jurisdiction for all disputes arising from the contractual relationship directly or indirectly is Heidenheim an der Brenz, Germany, provided that the buyer is a merchant in the sense of the German Commercial Code (HGB). However, we are entitled to take legal action against the buyer at any other court that has jurisdiction under the Brussels I Regulation or other legal regulations and international agreements.
- If the buyer is a consumer, the place of jurisdiction is determined by the statutory provisions. However, the court at our registered office in Germany also has jurisdiction if the consumer's place of residence is unknown or the consumer moves abroad after the conclusion of the contract.
- Unless set out otherwise in the order confirmation, the place of fulfillment is our registered office in Germany.
- All legal relationships between us and the buyer arising from this contract are exclusively subject to the law which applies to legal relationships between domestic parties at our registered office (German law), excluding foreign law. The UN Convention on Contracts for the International Sale of Goods is excluded.
- Please read our privacy policy, which is available under [Privacy \(uga.eu\)](#) (data protection).

Boheim, July 2023