

## GENERAL TERMS AND CONDITIONS OF SALE

AS OF JANUARY 2015

### **1. General**

1.1 The following “General Terms and Conditions of Business – Sale” (hereinafter GTC) apply to all purchase agreement relationships between True Balance GmbH, Bahnhofstrasse 9, D-72800 Eningen, (hereinafter “Seller”) and enterprises (Section 14 of the German Civil Code [BGB]), legal bodies and special assets under public law (hereinafter each called “Buyer”).

1.2 No contradictory or deviating General Terms and Conditions of Business of the Buyer will become the subject of the contract, even if the Seller performs a contract without having expressly protested such terms. Thus deviations will only apply if expressly recognised by the Seller in writing.

### **2. Instigation and conclusion of contract, tenders, orders**

2.1 The Seller’s offers are not binding but are to be understood as a request to the Buyer to make the Seller a purchase offer. The contract will be made through the Buyer’s purchase order (offer) and the Seller’s acceptance. The contract is made subject to supply to the Seller itself. If the latter differs from the purchase order, it will be considered a new offer by the Seller without commitment.

2.2 By placing the purchase order, the Buyer states in a binding form its wish to buy the ordered goods or services. The Seller has the right to accept the contractual offer made in the purchase order within 2 weeks of receiving it. By placing a purchase order, the Buyer expresses its consent to the present GTC. This also applies to future purchase transactions even if no express reference is made to the same.

2.3 The Buyer must inspect the Seller’s statement of acceptance/confirmation of order immediately. Notification of any deviations from said Buyer’s purchase order must be given without delay. If such notification is not given, the content of the contract will be based on the content of the Seller’s statement of acceptance/confirmation of order. If there is no formal statement of acceptance/confirmation of order, the above shall apply accordingly to the instalment payment invoice and the partial and final invoice.

2.4 A warranty of a certain feature or of the suitability of the goods for a certain intended purpose and the assumption of a guarantee shall only be binding if confirmed by the Seller in writing. Features of samples and specimens are only binding if they have been expressly agreed to be properties of the goods.

2.5 If the Seller renders consultancy or other support services, this is done to the best of said Seller's knowledge. Data and information on the suitability (especially colour suitability) and application of the goods do not release the Buyer from performing its own tests and trials, in particular in relation to the suitability of the supplied goods for the Buyer's scheduled processes and purposes.

### **3. Purchase price, payment, default, offsetting, retention, assignment**

3.1 (a) All prices are quoted as of the Seller's seat of business.

(b) The purchase price is always quoted excluding the statutory value-added tax applicable at the time when the contract is made. It will be added if and insofar as there is tax liability or tax has to be entered in the case in hand. If, in such a case, the rate of statutory value-added tax is increased in the period between the time when the contract is made and the time of invoicing, the Buyer must pay the higher rate of VAT, provided that the agreed supply period exceeds 4 months.

(c) For deliveries and services within the EU, the Buyer must, before performance of the contract, notify the Seller of its relevant VAT identification number under which it handles purchase taxation within the EU. For non-electronic export clearance not handled or instigated by the Seller and relating to deliveries and services from the Federal Republic of Germany to countries outside the EU, the Buyer must furnish the Seller with the export certificate required for tax purposes. If such a certificate is not provided, the Buyer will also have to pay the value-added tax chargeable for the service within Germany for the invoiced amount.

(d) The Seller has the right to require payment of instalments to the amount of the partial services it has rendered.

3.3 If the agreed delivery period is more than 4 months, the Seller reserves the right to adjust the price to a reasonable extent in accordance with the change in its production costs, including material and wage costs and transportation costs, if applicable. The same applies if customs duties or other charges for the delivery payable by the Seller are increased. If the price rises well out of proportion to the cost-of-living index, the price rise will be limited to the price paid on the market. Section 4.13 is not prejudiced thereby.

3.4 If no express agreement has been made to the contrary, the purchase price will be payable within 7 days without any deductions, calculated from the time of delivery of the goods to the Buyer. The same applies to partial performance. Any agreed discount can only be deducted if the relevant payment is credited to the Seller within the discount period and the Buyer is not in default on other amounts owing to the Seller at the time of payment. A discount will only be granted on the net amount, i.e. not on costs, freight, etc., in particular.

3.5 Bills of exchange and cheques will only be accepted by express agreement and only on account of performance; they will not be deemed to be payment until they have been honoured. Any discount, bill charges, bill tax, etc., will be payable by the Buyer after the end of the agreed payment period.

3.6 The customer will be in default after the 7<sup>th</sup> day following delivery of the goods but no later than after the last day of the payment period allowed.

3.7 (a) The Buyer may only offset the Seller's claims against liabilities which are undisputed or have been finally established by a court of law.

(b) Letter (a) applies accordingly to the exercising of retention rights by the Buyer.

3.8 The Buyer has no right to exercise a retention right relating to the Seller's claims under one contract for reason of another claim not originating from this same contract.

3.9 The Buyer's commercial right of retention under Section 369 of the German Commercial Code [HGB] does not apply to the Buyer.

3.10 If there are justified reasons to doubt the Buyer's solvency or credit standing and said Buyer is not prepared to make advance payment or furnish suitable security despite being requested to do so, the Seller has the right – if it has not already delivered – to require cash payment before making any further delivery. This applies in particular to follow-up transactions already agreed but not yet performed.

3.11 The Seller reserves the right to use payment to settle the oldest invoiced items that are due plus the default interest incurred on the same and any costs, this being in the order: costs, interest, principal.

3.12 The Seller has the right to assign the claims arising from and in connection with the purchase transaction. Without prejudice to the ruling in Section 354a HGB, the Buyer is not permitted to assign its claims against the Seller to third parties.

3.13 The weight to be used in calculation of the invoice will be established by the Seller's dispatch department. It must be objectively correct.

3.14 In the event of default, the Seller has the right to require payment of default interest at a rate 8 percentage points above the basic interest rate applicable at the time at which default begins in compliance with Section 247 of the German Civil Code [BGB]. Neither a claim for actual additional default damages suffered nor statutory rights to claim non-performance damages and to rescind the contract are prejudiced by this.

3.15 In the event of default, all liabilities from all contractual relationships between the parties will fall due immediately, unless default only relates to minor parts of liabilities.

#### **4. Delivery, passage of risk**

4.1 If the Seller has not undertaken to observe an express delivery period, delivery cannot be required any earlier than 8 weeks after the contract has been made. Any agreed delivery period will not begin until all the necessary documents and information scheduled to be provided by the Buyer have been received.

4.2 If the Seller has undertaken to observe a certain delivery period, it will be deemed observed if the relevant item has been handed over to the Buyer before said period expires. If a purchase contract covers several separate deliveries, acceptance of deliveries shall be performed at regular and equal intervals during the agreed delivery period.

4.3 Delivery is performed by provision of the goods at the Seller's seat of business ("Delivery Point"). When collecting the goods from the Delivery Point, the Buyer or, respectively, its authorised agents are responsible for safe loading of the vehicle for transportation and for compliance with relevant statutory regulations (e.g. relating to transportation of hazardous goods).

4.4 If shipment has been agreed, the Seller will always ship the goods at the request of the Buyer at the latter's risk and expense, in compliance with Section 447 BGB.

4.5 Insofar as staff employed by the Seller help with loading work in cases as per Sections 4.3 and 4.4, this being outside of the scope of services contractually agreed but at the request of the Buyer, they will be acting solely by order of the Buyer.

4.6 (a) The risk is transferred no later than upon hand-over of the purchased item to the carrier at the Delivery Point as per Section 4.3 and this also applies if partial deliveries are made or if the Seller has also undertaken other services, e.g. shipment or delivery. At the request of the Buyer, the goods shipment will be insured by the Seller at said Buyer's expense against theft and against damage through breakage, transportation, fire and water and against other insurable risks, with the Seller only acting as the agent in this connection.

(b) If the Buyer is in default on acceptance, the Seller can store the goods at the Buyer's expense and risk without sending any further prior notification/reminder.

(c) If the Buyer is in default on acceptance, the purchase price will fall due immediately.

4.7 Partial deliveries by the Seller are permitted, provided the Buyer can be reasonably expected to tolerate them with due consideration of the interests of both parties.

4.8 Reusable logistic implements (e.g. reusable pallets) must be returned to the Seller without delay and in a functioning condition at the expense and risk of the Buyer; if this obligation is not met within 1 month of delivery, they will be billed to the Buyer.

4.9 If the carrier accepts the consignment without objection, this is deemed to be evidence of both the flawless condition of packaging and due loading, unless the Buyer provides evidence that the packaging was defective when the shipment was handed over to the carrier or that loading was not duly performed. Within the special scheduled periods, the Buyer must send written notification of any transportation damage directly to the carrier company and forward a copy to the Seller.

4.10 If and as far as the parties apply INCOTERMS clauses in the relevant individual contract, the version of the INCOTERMS applicable when the individual contract was made shall be used for interpretation of such clauses. The agreed INCOTERMS clauses shall have priority in the event of any contradictions with the other content of this Section 4 of the GTC.

4.11 The Buyer is responsible for compliance with statutory and public authority regulations on the import, delivery, storage and use of the goods supplied by the Seller in the country or, respectively, at the place of destination and in the transit countries of the shipment and for the procurement of the necessary import and transit papers (customs, etc.), insofar as they do not have to be procured exclusively by the Seller for legal reasons.

4.12 Supply is subject to correct and on-time delivery to the Seller itself.

4.13 If, in exceptional cases, it has been agreed that the Seller will pay the customs duties or import/export charges of the country of origin/destination or of transit countries, any increases in such duties or charges which may occur between acceptance of the purchase order and delivery of the goods will be payable by the Buyer.

## **5. Reservation of title**

5.1 The goods remain the property of the Seller until full payment of all liabilities resulting from the business relationship with the Buyer.

5.2 Reservation of title shall continue to apply even if individual claims of the Seller are incorporated into a current account and it has been balanced and confirmed.

5.3 Repossession of the reserved goods shall only constitute rescission of the contract if expressly stated by the Seller in writing. If the Seller rescinds the contract, it can require reasonable remuneration for the time for which the goods were supplied for use.

5.4 (a) The Buyer has the right to dispose of the goods owned by the Seller in the due course of business, this being for as long as it meets its obligations resulting from the business

relationship with the Seller in due time. The due course of business does not include, for example, the Buyer agreeing with its customers that assignment of the purchase price claim shall be prohibited. In particular, the Buyer is not authorised to pledge the goods, transfer them as security or encumber them in any other way.

(b) The Buyer hereby assigns to the Seller as security all claims resulting from the sale of goods to which the Seller holds ownership rights, such assignment being, if applicable, to the amount of the Seller's co-ownership share in the goods sold. At the time of entering into the contract with the Seller, the Buyer already assigns to the latter the confirmed balanced claims based on current account agreements, this being to the amount of the Seller's claims then still outstanding. In the event of payment default by the Buyer, the Seller has the right, even without rescinding the purchase contract and without allowing a period of grace, to require at the Buyer's expense the interim surrender of the goods owned by the Seller.

(c) If the Seller's goods are processed by the Buyer, the Seller is deemed to be the manufacturer and acquires co-ownership in the ratio of the invoice value of its own goods to that of the other materials.

(d) If the Seller's goods are combined or mixed with an item of the Buyer and the latter is to be regarded as the principal item, co-ownership of the item is transferred to the Seller in the ratio of the invoice value of the Seller's goods to the invoice value or – if no such value has been established – the market value of the principal item. In such cases, the Buyer is considered to be the keeper.

5.5. In the event of resale of the goods, the Buyer must, for its part, agree reservation of title with its customer without disclosing the reservation of title agreed with the Seller (second-tier reservation of title).

5.6 If the Seller has specific reason to fear that the Buyer cannot or will not duly meet its obligations to said Seller, the Buyer must, at the Seller's request, notify its customers of assignment, refrain from any disposal of the claims, supply the Seller with all required information about the status of the goods owned by the Seller and about the claims assigned to the Seller and must hand over the documents for assertion of the assigned claims. The same applies in the event of revocation of collection authorisation. The Seller must be notified immediately of any attachment of the reserved goods and the assigned claims by third parties.

5.7 If the value of securities exceeds the Seller's claims by more than 10 %, the Seller will release appropriate securities at its discretion upon request of the Buyer.

## **6. Warranty, guarantee**

6.1. (a) If no agreement to the contrary has been made in individual contracts, the Seller will supply the purchased item in compliance with its standard product description (catalogue,

etc.), if one exists and, if not, in average quality but with consideration of letters (b) and (c). The Seller will then not be liable for any properties of the purchased item in excess of said description or quality. In particular, the Buyer cannot base any such liability on the part of the Seller on other descriptions of the purchased item contained in public statements or in the advertising of the Seller or its sub-supplier / manufacturer, unless the Seller has expressly confirmed this additional property in an individual agreement. All guarantees require express written confirmation by the Seller's management.

6.2. Provided that the Buyer has complied with its obligations to inspect the goods and forward notification of defects as per Section 377 HGB in conjunction with Section 6.3 of the present GTC, the Seller will initially fulfil the warranty for defects in the goods by reworking them or supplying a substitute, at its own discretion. The Seller reserves the right to make two attempts at subsequent performance. The Seller has the right to refuse the chosen type of subsequent performance if it necessarily involves unreasonably high costs and the alternative type of subsequent performance does not constitute any significant disadvantages for the Buyer. If subsequent performance proves unsuccessful, the Buyer can, at its discretion, require reduction of remuneration or rescission of the contract. The right of the Buyer to claim damages as permitted by law as well as rescinding the contract is not prejudiced, with the exception of the limitations on damages claims by the Buyer under Section 7.

6.3 Notification of defects by the Buyer as provided in Section 377 HGB will only be effective if forwarded in writing. The other statutory requirements of Section 377 HGB are not prejudiced. Irrespective thereof, warranty claims by the Buyer are ruled out if the Buyer does not give written notification of obvious defects within 1 week, calculated from the time of delivery of the goods until dispatch of such notification.

6.4 In all cases, a non-defective item will only be supplied as part of subsequent performance in return for hand-over of the defective item.

6.5 The limitation period for warranty claims by the Buyer is one year. Instead of this 1-year period, the statutory warranty periods apply in the following cases:

- a) in the event of liability due to intent,
- b) in the event of malicious concealment of a defect,
- c) for claims against the Seller due to the defectiveness of an item if it was used in its customary way for a building and caused the latter to be defective,
- d) for claims due to losses resulting from injury to life, body or health which are based on a negligent breach of obligation by the Seller or an intentional or negligent breach of obligation by a legal representative or vicarious agent of the Seller,

e) for claims due to other losses which are based on a grossly negligent breach of obligation by the Seller or an intentional or grossly negligent breach of obligation by a legal representative or vicarious agent of the Seller and

f) in the event of recourse by the Buyer on the basis of the regulations on sale of consumer goods.

6.6 The Buyer will forfeit its warranty claims if it carries out installation or processing or resale of the goods despite knowledge of a defect.

## **7. Liability, period of limitation**

In cases of contractual or non-contractual liability, the Seller will only pay damages or reimburse futile expenses in accordance with the following rulings:

7.1 The Seller will be liable for full damages in the event of intent and gross negligence.

7.2 If a property is lacking for which the Seller has given the Buyer a guarantee or undertaking, the Seller will only be liable to the amount of the foreseeable and typical loss which was scheduled to be prevented by the guarantee or undertaking, insofar as the lack of the property which was guaranteed or for which an undertaking was given was not based, for its part, on intent or gross negligence.

7.3 In the event of an ordinary degree of negligence in the breach of contractual performance of major obligations (“cardinal obligations”), the Seller’s liability is limited to compensation for typical foreseeable losses; the Seller shall not be liable in the event of an ordinary degree of negligence in the breach of other than cardinal obligations.

7.4 The above limitations of liability do not apply to the Buyer’s claims under the Product Liability Act and to losses attributable to the Seller resulting from injury to life, body or health.

7.5 Other statutory exclusions of damages (e.g. Section 281 para. 1 sentence 3 BGB) are not prejudiced.

7.6 A period of limitation of one year applies to all claims of the Buyer against the Seller for damages or reimbursement of futile expenses under contractual or non-contractual liability, with the exception of cases of personal injury, intent and gross negligence or liability under the Product Liability Act.

## **8. Force majeure**

If events and circumstances occur which are outside the sphere of influence of the Seller - even with cautious commercial planning and precaution - (such as natural disasters, war, labour disputes, lack of raw materials and energy, traffic and operational disruptions, damage

from fire and explosions, government orders) and they reduce the availability of the goods from the supply source from which the Seller obtains them, so that the Seller cannot meet its contractual obligation (with proportionate consideration of other internal or external supply obligations), the Seller (i) is released from its contractual obligations for the length of the disruption and to the extent of its impact and (ii) has no obligation to procure the goods from third parties. Sentence 1 shall also apply if such events and circumstances make performance of the relevant transaction uneconomical on a sustained basis for the Seller or if they apply to the Seller's sub-supplier. If these events last for more than 3 months, the Seller has the right to rescind the contract.

## **9. Confidentiality, data protection**

9.1 The parties undertake to treat as confidential for an unlimited period of time all the information and operational secrets of the other contracting partner of which they may learn in the course of performance of the contract and only to use the same for the purpose of performance of the contract.

9.2 Both parties to the contract will comply with the regulations of data protection. The handling of the business relationship is supported by a data processing system in the Seller's facility, so the Buyer's data is recorded and stored in an automatic file. The Buyer is hereby notified of such storage of data.

## **10. Place of fulfilment and legal venue, choice of law, escape clause, written requirement**

10.1 The place of fulfilment for the Buyer's payment is the Seller's seat of business.

10.2 (a) The legal venue for all claims resulting from and in connection with the relevant purchase contract or relating to the making of the same, its effectiveness and performance is Bocholt / Germany or – at the discretion of the Seller – the Buyer's general legal venue.

(b) If the Buyer's seat of business is outside the EU, all disputes resulting from and in connection with the relevant purchase contract or relating to the making of the same, its effectiveness and performance will be finally decided in accordance with the arbitration code of the German Institution for Arbitration (DIS), with exclusion of any recourse to due legal process. Decisions will be taken by a single arbitrator who will be appointed in compliance with Section 14 DIS Arbitration Code and must be qualified to act as a judge in Germany. The location of the arbitration court shall be the location of the Seller's seat of business. The language of arbitration is German. Evidence will be taken with appropriate application of the terms applicable to the taking of evidence in the German Civil Procedure Code.

10.3 German law shall apply, with the exception of UN law on the sale of goods and the reference rulings in German international private law.



10.4 If any terms in these GTC are invalid or incomplete, either in whole or in part, the validity of the other terms or the other parts of such terms will not be prejudiced.

10.5 The German version of these GTC shall prevail. Any version in a different language serves solely for the purpose of better comprehension.