

General Terms and Conditions – June 2023

§ 1 Scope, form

(1) These General Terms and Conditions (GTC) shall apply to all of our business relations with our customers (“Purchasers”). The GTC shall only apply if the Purchaser is an entrepreneur (§ 14 German Civil code, BGB), a legal person under public law, or a special fund under public law.

(2) The GTC shall apply to all deliveries and services of PHIO scientific GmbH. The GTC shall apply in particular to contracts for the sale and/or delivery of movable goods (“Goods”), irrespective of whether we manufacture the Goods ourselves or purchase them from suppliers (§§ 433, 650 BGB). Furthermore, the GTC shall also apply to the sale of other services if the applicability of the GTC is given by the nature or form of the delivery and performance of the service. Unless otherwise agreed, the GTC in the version valid at the time of the Purchaser’s order or in any case in the version last communicated to the Purchaser in text form shall also apply as a framework agreement for similar future contracts without us having to refer to them again in each individual case.

(3) Our GTC shall apply exclusively. Any deviating, conflicting or supplementary GTC of the Purchaser shall only become an integral part of the contract only if and insofar as we have expressly consented to their applicability. This requirement of consent shall apply in every case, for example, even if, knowing the Purchaser’s GTC, we carry out the delivery to the Purchaser without reservation

(4) Individual agreements made with the Purchaser in individual cases (including subsidiary agreements, supplements, and amendments) shall in every case take precedence over these GTC. A written contract or our written confirmation, subject to counterevidence, shall be required for the content of such agreements.

(5) Legally relevant declarations and notifications of the Purchaser concerning the contract (e.g. setting of deadlines, a notice of defects, withdrawal or reduction) shall be in writing, i.e. in written or text form (e.g. letter, email, fax). Legal formal requirements and further evidence, in particular in case of doubts about the legitimacy of the person making the declaration, shall remain unaffected.

(6) References to the applicability of statutory provisions are only for the purposes of clarification. Therefore, even without such clarification, the statutory provisions shall apply unless they are directly amended or expressly excluded in these GTC.

§ 2 Conclusion of contract

(1) Our offers are non-binding and subject to change. This shall also apply if we provide 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 the right of ownership and copyrights.

(2) The order of the Goods by the Purchaser shall be considered a binding contractual offer. Unless otherwise stipulated in the order, we shall be entitled to accept this offer of a contract within days/weeks of its receipt.

(3) Acceptance can be made either in written form (e.g. by order confirmation) or by delivery of the Goods to the Purchaser.

§ 3 Delivery period and delay in delivery

(1) The delivery period shall be agreed upon individually or stated by us upon acceptance of the order. If this is not the case, the delivery period shall be approximately twelve weeks from the conclusion of the contract.

(2) If we are unable to meet binding delivery deadlines for reasons beyond our control for which we are not responsible (non-availability of the service), we shall inform the Purchaser thereof without undue delay and at the same time inform the Purchaser of the expected new delivery date. If the service is not available in the delivery period, we shall be entitled to withdraw from the contract in whole or in part and we shall immediately reimburse any counterperformance that has already been provided by the Purchaser without delay. As a case of non-availability of the service in this sense counts, in particular, the failure of timely self-delivery by our supplier, if we have concluded a congruent hedging transaction, neither we nor our supplier is at fault, or if we are not obligated to procure the Goods in this individual case.

(3) The occurrence of our delay in delivery shall be determined according to the statutory provisions. In any case, however, a reminder by the Purchaser is required. If we are in default on delivery, the Purchaser may demand lump-sum compensation for the damage caused by the delay. The lump-sum compensation shall amount to 0.5% of the net price (delivery value) for each full calendar week of delay but in total not more than 5% of the delivery value of the Goods to be delivered. We reserve the right to prove that the Purchaser has suffered no damage at all or only significantly less damage than the aforementioned lump sum.

(4) The rights of the Purchaser according to § 8 of these GTC and our statutory 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 in Acceptance

(1) Delivery shall be made ex warehouse, which is also the place of performance for the delivery and any subsequent performance. At the request and expense of the Purchaser, the Goods shall be delivered to another destination (sale by delivery to a place other than the place of performance). Unless otherwise agreed, we are entitled to choose the type of shipment (in particular the transport company, shipping route, and packaging) ourselves.

(2) The risk of accidental loss and accidental deterioration of the Goods shall be transferred to the Purchaser at the latest upon handover. However, for sales by delivery to a place other than the place of performance, the risk of deterioration of the Goods as well as the risk of delay shall be transferred to the forwarder, the carrier, or any other person or entity designated to carry out the shipment.

If acceptance has been agreed upon, this shall be decisive for the transfer of risk. The statutory provisions of the law governing contracts for work and services shall apply mutatis mutandis. The handover or acceptance is the same if the Purchaser is in default of acceptance.

(3) If the Purchaser is in default of acceptance, fails to perform an act of cooperation or if our delivery is delayed for other reasons for which the Purchaser is responsible, we shall be entitled to compensation including additional expenses (e.g. storage costs). For this purpose, we shall charge a lump-sum compensation in the amount of 40 EUR per calendar day, starting with the delivery deadline or – in the absence of a delivery deadline – with the notification that the Goods are ready for dispatch. The proof of greater damage and our legal claims (in particular compensation for additional expenses, reasonable compensation, termination) shall remain unaffected; however, the lump sum shall be set off against monetary claims. The Purchaser shall be entitled to prove that we have incurred no damage at all or only significantly less damage than the aforementioned lump sum.

(4) Goods or partial services that have already been made available to the Purchaser by testing shall be deemed delivered and accepted by the Purchaser upon acceptance of the offer.

§ 5 Prices and terms of payment

(1) Unless otherwise agreed in individual cases, our current prices at the time of the conclusion of the contract shall apply, ex warehouse, plus statutory value-added tax.

(2) In the case of a sale by delivery to a place other than the place of performance (§ 4 para. 1), the Purchaser shall bear the transport costs ex warehouse and the costs of any transport insurance requested by the Purchaser. If we do not invoice the transport costs incurred in the individual case, a transport cost flat rate (excluding transport insurance) in the amount of 30 EUR shall be deemed to have been agreed. Any customs duties, fees, taxes, and other public charges shall be borne by the Purchaser.

(3) The purchase price shall be due and payable within 14 days from the date of invoice and delivery or acceptance of the Goods. We are, however, entitled at any time, even within the framework of an ongoing business relationship, to carry out a delivery in whole or in part only against advance payment. We shall declare a corresponding reservation with the order confirmation at the latest.

(4) Upon the expiry of the aforementioned payment deadline, the Purchaser shall be in default. The purchase price shall bear interest during the period of default at the applicable statutory default interest rate. We reserve the right to assert further damage caused by default. Concerning merchants, our commercial due date interest rate (§ 353 German Commercial Code, HGB) shall remain unaffected.

(5) The Purchaser shall be entitled to offset rights or retention rights only insofar as the Purchaser's claim has been legally established or is undisputed. In the event of defects in the delivery, the Purchaser's counter rights shall remain unaffected, in particular, according to § 7 para. 6 sentence 2 of these GTC.

(6) If, after the conclusion of the contract, it becomes apparent (e.g. by filing for insolvency proceedings) that our claim to the purchase price is jeopardised by the Purchaser's inability to pay, we shall be entitled to refuse performance according to the statutory provisions and - if necessary after setting a time limit - to withdraw from the contract (§ 321 BGB). In the case of contracts for the manufacture of unjustifiable items (custom-made products), we shall be entitled to declare a withdrawal immediately; the statutory provisions regarding the dispensability of setting a deadline shall remain unaffected.

§ 6 Retention of title

(1) Until full payment of all our current and future claims from the purchase contract and an ongoing business relationship (secured claims) we retain ownership of the items sold.

(2) The Goods subject to retention of title must not be pawned nor transferred as collateral to third parties before the purchase price is fully paid. The Purchaser is obliged to notify us in writing if any insolvency proceedings are initiated or if third parties claim actions regarding our Goods (e.g. seizures).

(3) In the event of a breach of contract by the Purchaser, in particular failure to pay the purchase price due, we are entitled to withdraw from the contract and/or request the return of the Goods based on the retention of title.

The request for a return does not simultaneously include a declaration of withdrawal; on the contrary, we only are entitled to request the return of the Goods and to reserve the right to withdraw from the contract. If the Purchaser does not pay the purchase price due, we may only assert these rights if have previously unsuccessfully set a reasonable payment deadline for the Purchaser or if setting such a deadline is not required under the statutory provisions.

(4) The Purchaser is authorised, until revoked according to (c) below, to resell and or process the Goods subject to retention of title in the ordinary course of business . In this case the additional provisions apply.

(a) The retention of title extends to the products in their full value created by processing, mixing, or combining our Goods, wherein we are considered the manufacturer. If in the event of processing, mixing or combining Goods of third parties the third parties' ownership rights still exist, we shall acquire co-ownership in proportion to the invoice values of the processed, mixed, or combined Goods. Incidentally, the same applies to products resulting from Goods delivered subject to retention of title.

(b) The Purchaser hereby already assigns to us as collateral any claims against third parties arising from the resale of the Goods or products in total or in the amount of our possible co-ownership share according to the previous paragraph. We accept the assignment. The Purchaser's obligations mentioned in paragraph 2 also apply to the assigned claims.

(c) The Purchaser remains authorised to collect the claim alongside us. We are obligated to not collect the claims ourselves provided that the Purchaser meets their payment obligations, there is no limited capability of the Purchaser to perform, and we do not enforce the retention of title according to paragraph 3. Moreover, in the case above we are entitled to demand that the Purchaser provides full transparency regarding all assigned claims and their debtors and provides all information required for the collection, hands over the relevant documents, and notifies the debtors (third parties) about this assignment. In addition, we are entitled in this case to revoke the Purchaser's rights to process or sell Goods subject to retention of title.

(d) If the realisable value of the collateral exceeds our claims by more than 10%, we will grant access to collateral of our choice at the Purchaser's request.

§ 7 Claims for defects by the Purchaser

(1) For the rights of the Purchaser in the event of material defects and defects of title (including incorrect and incomplete delivery as well as improper assembly or defective assembly instructions) the statutory provisions apply, insofar as it is not otherwise determined in the following. In all cases, the statutory special provisions shall remain unaffected for the final delivery of unprocessed Goods to a consumer, even if the consumer further processed them (supplier recourse according to §§ 478 BGB). Claims arising from supplier recourse are excluded if the defective Goods have been processed by the Purchaser or another company e.g. by incorporation into another product.

(2) The basis of our liability for defects is above all the agreement reached on the quality of the Goods. The agreement on the quality of the Goods shall be deemed to be all descriptions and manufacturer's specifications which are the subject of the individual contract or which are or were publicly announced by us (in particular in catalogues or on our Internet homepage) at the time of the conclusion of the contract. Details that do not change the nature and designs of Goods can deviate from product descriptions and product illustrations if the ordered Goods are marked as pre-order or with an expected delivery time of more than three months. Such deviations do not represent a defect and do not justify any claims by the Purchaser.

(3) Insofar as the quality has not been agreed upon, it is to be judged according to the statutory provisions whether a defect is present or not (§ 434 para. 1 sentence 2 and 3 BGB). We shall not assume any liability for public statements of the manufacturer or other third parties (e.g. advertising statements) which the Purchaser has not pointed out to us as being fundamental to their purchase decision.

(4) The Purchaser's claims for defects shall be subject to the Purchaser having fulfilled their statutory duties of inspection and notification of defects (§§ 377, 381 HGB). In the case of building materials and other Goods intended for installation or other further processing, an inspection must be carried out immediately before processing in every case. If a defect becomes apparent during delivery, inspection or at any later point in time, we must be notified immediately in writing. In every case, we must be notified of obvious defects within seven working days from delivery, and in the event of defects that not recognisable during the inspection we must be notified within the same period starting from the time of discovery. If the Purchaser fails to carry out the proper inspection, our liability is excluded for the defect not reported in time or not properly notified according to the statutory provisions.

5) If the delivered item is defective, we may first choose whether we will remedy the defect by rectification or by delivering a defect-free item by replacement delivery. Our right to refuse subsequent performance under the statutory conditions shall remain unaffected.

(6) We shall be entitled to make the supplementary performance dependent on the Purchaser paying the due purchase price. However, the Purchaser shall be entitled to retain a part of the purchase price in proportionate to the defect.

(7) The Purchaser shall give us the time and opportunity for the subsequent performance, in particular, to hand over the Goods claimed to be defective to us for inspection purposes. In the event of a replacement delivery, the defective item shall be returned to us according to the statutory provisions. The supplementary performance does not include the removal of the defective item from a product combination nor the renewed installation if we were not originally obliged to install or combine the item.

(8) The expenses necessary for the purpose of inspection and supplementary performance, in particular related to transport, travel, labour, and material costs as well as, if applicable, removal and installation costs, shall be borne or reimbursed by us in accordance with the statutory provisions if there is actually a defect. Otherwise, we shall be entitled to claim the costs from the Purchaser (in particular inspection and transport costs) arising from the unjustified request, unless the lack of defectiveness was not recognisable for the Purchaser.

(9) In urgent cases, e.g. in the event of a risk to operational safety or to avert disproportionate damage, the Purchaser shall be entitled to remedy the defect themselves and to demand reimbursement from us of the costs objectively necessary for this purpose. We must be notified of any such self-remedy immediately, if possible in advance. The right of self-remedy does not exist if we would have been entitled to refuse a corresponding subsequent performance in accordance with the statutory provisions.

(10) If the supplementary performance has failed or if a reasonable period for the subsequent performance has expired unsuccessfully or is dispensable in accordance with 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 shall be no right of withdrawal.

(11) The Purchaser shall only be entitled to claim damages or compensation for futile expenses in accordance with § 8 and shall otherwise be excluded.

§ 8 Other liability

(1) Insofar as nothing to the contrary arises from these GTC including the following provisions below, we shall be liable for a breach of contractual and non-contractual obligations in accordance with the statutory provisions.

(2) We shall be liable for damages – irrespective of the legal grounds – within the scope of liability for intent and gross negligence. In the case of ordinary negligence, we shall be liable, subject to statutory limitations on liability (e.g. due diligence in own affairs, minor breach of duty), only

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

b) for damages resulting from the breach of an essential contractual obligation (obligations enabling the proper execution of the contract in the first place and on which the contracting party regularly relies and may rely); in this case, however, our liability shall be limited to compensation for foreseeable, typically occurring damage.

(3) The limitations of liability resulting from para. 2 shall also apply in the case of breaches of duty by or for the benefit of persons for whose fault we are responsible according to statutory provisions. They shall not apply insofar as we have fraudulently concealed a defect or have assumed a guarantee for the quality of the Goods and for claims of the Purchaser according to the Product Liability Act.

(4) In the case of a breach of duty that does not consist of a defect, the Purchaser may only withdraw from or terminate the contract if we are responsible for the breach of duty. A free right of termination of the Purchaser (in particular pursuant to §§ 650, 648 BGB) is excluded. In all other respects, the statutory conditions and legal consequences shall apply.

(5) All products and application data of PHIO scientific GmbH are for research purposes only and not for purposes of medical care or diagnostics.

§ 9 Limitation

(1) Notwithstanding § 438 para. 1 no. 3 BGB, the general limitation period for claims arising from material defects and defects of title shall be one year from delivery. Insofar as acceptance has been agreed upon, the limitation period shall commence upon acceptance.

(2) If, however, the Goods are a building or an object which, in accordance with its customary use for a building and has caused the defectiveness thereof (building material), the period of limitation shall be five (5) years from delivery in accordance with the statutory regulation (§ 438 para. 1 no. 2 BGB). This shall also not affect further statutory special provisions on the limitation period (in particular § 438 para. 1 no. 1, para. 3, §§ 444, 445b BGB).

(3) The above limitation periods under the Sales of Goods Law shall also apply to contractual and non-contractual claims for damages by 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. Claims for damages by the Purchaser according to § 8 para. 2 sentence 1 and sentence 2(a) as well as according to the Product Liability Act shall, however, become limited exclusively in accordance with the statutory limitation periods.

§ 10 Choice of law and place of Jurisdiction

(1) These GTC and the contractual relationship between us and the Purchaser shall be governed by the laws 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.

(2) If the Purchaser is a merchant within the meaning of the German Commercial Code (HGB), a legal entity under Public law or a special fund under public law, the exclusive – and international – place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be in Munich. The same shall apply if the Purchaser is an entrepreneur according to the meaning of § 14 of the German Civil Code (BGB). However, we shall also be entitled in all cases to take legal action at the place of performance of the delivery obligation in accordance with this GTC or a prior individual agreement or at the general place of jurisdiction of the Purchaser. Overriding statutory provisions, in particular regarding exclusive responsibilities, shall remain unaffected.

§ 11 Miscellaneous

The legal ineffectiveness of a clause of these GTC does not affect the legal effectiveness of the remaining clauses and the underlying contract. The contracting parties undertake to replace an ineffective provision with an effective provision. The German version shall prevail over the English translation in the event of, unintended, differences caused by translation.