

## **Section 1 Scope of Application, Form**

(1) These General Terms and Conditions of Sale (GTCS) apply to all business relationships of Diato GmbH + Co. KG, Brunnenwiesenstr. 9, 73760 Ostfildern; (hereinafter “Diato”) with our customers (“Buyer”). The GTCS only apply if the Buyer is an entrepreneur (Sec. 14 BGB (Bürgerliches Gesetzbuch [German Civil Code])), a legal entity under public law or a special fund under public law.

(2) In particular, The GTCS apply to contracts for the sale and/or delivery of movable goods (“Goods”), regardless of whether we manufacture the Goods ourselves or purchases them from suppliers (Sec. 433, Sec. 650 BGB). Unless otherwise agreed, the GTCS in the version valid at the time of the Buyer’s order or, in any case, in the latest version communicated to the Buyer in text form shall also apply as a framework agreement for similar future contracts, without the need for us to refer to them again in each individual case.

(3) These GTCS apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the seller shall only become part of the contract if and to the extent that we have expressly agreed to their validity in writing. This requirement of consent shall apply in every case – for example, even if the Buyer refers to its own terms and conditions during the order process and we do not expressly object.

(4) Individual agreements (e.g., framework supply agreements, quality assurance agreements) and information in the order confirmation take precedence over the GTCS. In case of doubt, trade terms are to be interpreted pursuant to the Incoterms® issued by the International Chamber of Commerce in Paris (ICC) in the version valid at the time of the conclusion of the contract.

(5) Legally relevant declarations and notifications by the Seller in relation to the contract (e.g., setting of deadlines, reminders, withdrawal) must be submitted in writing. **For the purposes of these GTCS, the written form includes written and text form (e.g. letter, e-mail, fax).** Statutory formal requirements and further proof, especially when there is doubt about the authority of the declaring party, remain unaffected by this.

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

## **Section 2 Conclusion of Contract**

(1) Our offers are non-binding and without obligation. This also applies if we have provided the Buyer with catalogues, technical documentation (e.g., drawings, plans, calculations, costings, references to DIN standards), other product descriptions or documents – including in electronic form – to which we reserve ownership and copyright.

(2) The ordering of the Goods by the Buyer is considered a binding offer of contract. Unless otherwise specified in the order, we are entitled to accept this offer of contract within 28 days after its receipt by us.

(3) Acceptance may be declared either in writing (e.g., by order confirmation) or by delivering the Goods to the Buyer.

## **Section 3 Delivery Deadline and Delay in Delivery**

(1) The delivery deadline is agreed on an individual basis or specified by us upon acceptance of the order.

(2) If we are unable to meet binding delivery deadlines for reasons beyond our control (non-availability of the service), we will promptly inform the Buyer while at the same time communicating the expected new delivery deadline. If the service is not possible within the new delivery deadline either, we shall be entitled

to withdraw from the contract in whole or in part; any payment already provided by the Buyer will be promptly refunded. For example, there is non-availability of the service in the case of delayed supply to us by our supplier, provided we have concluded a congruent cover transaction, due to other disruptions in the supply chain such as force majeure or if we have no procurement obligation in the specific case.

(3) The occurrence of any delivery delay on our part shall be determined according to the statutory provisions. In any case, however, a reminder from the Buyer is required. If we are guilty of delay in delivery, the Buyer may demand lump-sum compensation for the damage caused by the delay. The lump sum for damages shall amount to 0.5% of the net price (delivery value) for each completed calendar week of the delay but not more than 5% of the total delivery value of the Goods delivered late. We reserve the right to prove that the Buyer did not suffer any or suffered substantially less damages than the aforementioned lump sum.

(4) The Buyer's rights pursuant to Section 8 of these GTCS and our statutory rights, especially in the case of an exclusion of the service obligation (e.g., due to service and/or supplementary performance being impossible or unreasonable), shall remain unaffected.

#### **Section 4 Delivery, Transfer of Risk, Acceptance, Delay in Acceptance**

(1) Delivery shall be made ex warehouse, which is also the place of performance for the delivery and any supplementary performance. At the Buyer's request and expense, the Goods will be shipped to another destination (sales shipment). Unless otherwise agreed, we are entitled to determine the type of shipment (in particular the transport company, shipping route, packaging) ourselves.

(2) The risk of accidental loss and accidental deterioration of the Goods shall pass to the Buyer at the latest upon handover. In the case of a sales shipment, however, the risk of accidental loss and accidental deterioration of the Goods and the risk of delay shall pass to the Buyer upon delivery of the Goods to the carrier, freight forwarder or other person or institution designated to carry out the shipment. If acceptance procedures are agreed, they shall be decisive for the passing of risk. In all other respects, the statutory provisions of the German contract law for work and labour shall apply accordingly to agreed acceptance procedures. Delay in acceptance by the Buyer shall be equivalent to delivery or acceptance.

(3) If the Buyer delays acceptance or fails to cooperate or if our delivery is delayed for other reasons attributable to the Buyer, we shall be entitled to claim compensation for the resulting damages, including additional expenses (e.g., storage costs). To this end, we will charge a lump-sum compensation amounting to 0.25% of the net price (order value) per calendar day, starting from the delivery deadline or – in the absence of a delivery deadline – with the notification of readiness for dispatch of the Goods, but not exceeding 7.5% of the delivery value in total.

The right to provide evidence 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 credited against any further monetary claims. The Buyer shall be entitled to prove that either no damage at all or only significantly lower damage than the above lump sum has been incurred.

(4) If delivery is to be made for multiple delivery items, partial deliveries as well as respective dispatch and invoicing are permissible, provided that this does not result in any disadvantages for the Buyer.

(5) Neither in the case of a delivery according to Section 4 (1) sentence 1 nor in the case of a sales shipment according to Section 4 (1) sentence 2 is installation or commissioning owed. The scope of delivery for spare parts does not include installation.

#### **Section 5 Prices and Terms of Payment**

(1) Unless otherwise agreed in specific cases, our prices current at the time the contract is concluded shall apply; these are "FCA Free Carrier", packaged up to the loading dock, plus statutory value-added tax.

(2) In the case of a sales shipment (see Section 4 (1) sentence 2), the Buyer shall bear the transport costs from the warehouse and the costs of any transport insurance requested by the Buyer. Unless we invoice the Buyer for the actual transport costs incurred in the specific case, a flat-rate transport charge (excluding transport insurance) of up to EUR 50 shall be deemed agreed. Any customs duties, fees, taxes, and other public charges shall be borne by the Buyer.

(3) The purchase price is due and payable within 14 days of invoicing and delivery or acceptance of the Goods. However, even within an ongoing business relationship, we are entitled at any time to only carry out any delivery, in whole or in part, against advance payment. We will declare such a reservation at the latest upon order confirmation.

(4) Upon expiry of the aforementioned payment time limit, the Buyer shall be in default. Interest must be paid on the purchase price during the period of default at the respectively applicable rate of default interest. We reserve the right to assert further damage caused by default. With respect to merchants, our claim to the commercial due date interest rate (Sec. 353 HGB (Handelsgesetzbuch [German Commercial Code])) shall remain unaffected.

(5) The Buyer shall only be entitled to rights of set-off or retention insofar as its claim is legally established or undisputed. In the event of defects in the delivery, the Buyer's counterclaims, in particular pursuant to Section 7 (6) sentence 2 of these GTCS, shall remain unaffected.

(6) If, after conclusion of the contract, it becomes apparent (e.g., due to an application for the opening of insolvency proceedings) that our claim to the purchase price is in jeopardy due to the Buyer's inability to pay, we are entitled under statutory provisions to refuse performance of the service and – if applicable, after setting a deadline – to withdraw from the contract (Sec. 321 BGB). In the case of contracts for the manufacture of unjustifiable items (custom-made products), we are entitled to declare rescission immediately; the statutory provisions on the dispensability of setting a time limit shall remain unaffected.

## **Section 6 Retention of Title**

(1) We retain title to the goods sold until full payment of all our present and future claims arising from the purchase contract and an ongoing business relationship (secured claims).

(2) Goods subject to retention of title can neither be pledged to third parties nor be assigned as collateral before full payment of the secured claims. The Buyer must notify us immediately in writing if an application is made to open insolvency proceedings or if third parties (e.g., through seizures) gain access to goods belonging to us.

(3) If the Buyer acts contrary to contract, in particular in the case of non-payment of the purchase price due, we have the right to cancel the contract according to legal regulations and/or to demand restitution of the Goods based on the retention of title. The demand for restitution of the Goods shall not automatically constitute a withdrawal; in fact, we shall have the right to merely demand the restitution of the Goods and to reserve the right of withdrawal. If the Buyer does not pay the purchase price due, we may only assert these rights if we have previously and unsuccessfully set a reasonable deadline for the Buyer to pay or if such a deadline is legally dispensable.

(4) Until revoked pursuant to (c) below, the Buyer is authorized to resell and/or process the goods subject to retention of title in the ordinary course of business. In this case, the following additional provisions shall apply.

(a) The retention of title extends to the products resulting from the processing, intermixture or combination of our goods at their full value, whereby we are deemed the manufacturer. If processing, intermixture or combination with third-party goods results in said third party still having rights to ownership, we shall acquire co-ownership of the processed, intermixed or combined Goods in proportion to the calculated

value. In all other respects, the same provisions shall apply to the resulting product as to the Goods delivered subject to retention of title.

(b) The Buyer hereby assigns us the claims against third parties resulting from the resale of the Goods or the product in full or in the amount of our possible share of co-ownership as collateral pursuant to the preceding section. We hereby accept the assignment. The Buyer's obligations stated in Section 2 also apply in consideration of the assigned claims.

(c) In addition to us, the Buyer remains authorized to collect the claim. We hereby commit to refraining from collecting the claim as long as the Buyer meets its payment obligations towards us, there is no deficiency in its ability to pay and we do not terminate the retention of title by exercising a right pursuant to (3). If this is the case, however, we shall be entitled to demand that the Buyer disclose the assigned claims and the corresponding debtors to us, provide all the information required for collection, surrender the associated documents and notify the debtors (third parties) of the assignment. In this case, we shall also be entitled to revoke the Buyer's authorization to continue selling and processing the Goods subject to retention of title.

(d) If the realisable value of the collaterals exceeds our claims by more than 10%, we will, at the Buyer's request, release collaterals at our own discretion.

### **Section 7 Buyer's Claims for Defects**

(1) The statutory provisions shall apply to the Buyer's rights in the event of material defects and defects of title (including incorrect and short deliveries along with improper assembly/installation or defective instructions) unless otherwise stipulated below. In all cases, the statutory provisions governing consumer goods purchases (Sec. 474 et seqq. BGB) and the Buyer's rights under separately granted guarantees, especially those given by the manufacturer, shall remain unaffected.

(2) The basis of our liability for defects is primarily the agreement reached regarding the quality and intended use of the Goods (including accessories and instructions). All product descriptions and manufacturer's statements that are the subject of the individual contract shall be deemed an agreement on quality in this sense. If the quality has not been specifically agreed, it must be determined according to statutory provisions whether a defect exists or not (Sec. 434 (3) BGB). Public statements made by the manufacturer or on its behalf, particularly in advertising or on the label of the Goods, shall take precedence over statements made by other third parties.

(3) In the case of Goods with digital elements or other digital content, we shall only owe the provision and, if applicable, updating of the digital content insofar as this expressly arises from an agreement on quality pursuant to (2). We accept no liability for public statements made by the manufacturer or other third parties in this respect.

(4) As a rule, we bear no liability for defects of which the Customer is aware at the time the contract is concluded or is not aware due to gross negligence (Sec. 442 BGB). Furthermore, the Buyer's claims for defects presuppose that it has fulfilled its statutory inspection and notification obligations (Sec. 377, Sec. 381 HGB). For building materials and other Goods intended for installation or further processing, an inspection must in any case be carried out immediately prior to processing. If a defect becomes apparent upon delivery, during inspection or at any later point in time, we must be promptly notified of this in writing. In any case, obvious defects must be reported in writing within 5 working days from the delivery and defects not recognisable during inspection within the same period from when they are discovered. If the Buyer fails to properly inspect and/or give notice of defects, our liability for the defect not reported, not reported in time or not reported properly is excluded according to statutory provisions. In the case of Goods intended for assembly, fitting or installation, this also applies if the defect only becomes apparent after the corresponding processing as a result of a breach of these obligations; in such cases, the Buyer shall in particular not be entitled to claim reimbursement of corresponding costs ("removal and installation costs").

(5) If the delivered item is defective, we may initially choose whether to provide supplementary performance by remedying the defect (rectification) or by delivering a defect-free item (replacement). If the type of supplementary performance chosen by us is unreasonable for the Buyer in the specific case, the Buyer may refuse it. Our right to refuse supplementary performance under the statutory conditions shall remain unaffected.

(6) We shall be entitled to base the supplementary performance owed on the Buyer paying the purchase price due. However, the Buyer shall be entitled to retain a portion of the purchase price commensurate to the defect.

(7) The Buyer must give us the time and opportunity required for the supplementary performance owed, in particular to surrender the rejected Goods for inspection purposes. In the case of replacement, the Buyer must return the defective item at our request according to the statutory provisions; the Buyer shall not have a right of return, however. Supplementary performance does not include the dismantling, removal or deinstallation of the defective item or the assembly, fitting or installation of a defect-free item if we were not originally obliged to perform these services; claims by the Buyer for reimbursement of corresponding costs (“dismantling and installation costs”) shall remain unaffected by this.

(8) The expenses necessary for inspection and supplementary performance – in particular transport, travel, labour and material costs along with, where applicable, removal and installation costs – shall be borne or reimbursed by us in accordance with the statutory provisions and these GTCS if a defect actually exists. Otherwise, we may demand reimbursement from the Buyer for costs arising from an unjustified request for remedying a defect if the Buyer knew or could have recognised that no defect actually existed.

(9) In urgent cases, such as where operational safety is at risk or in order to prevent disproportionate damage, the Buyer has the right to remedy the defect itself and to demand reimbursement from us for the objectively necessary expenses incurred. We must be promptly notified of such self-remedy, preferably in advance. The right of self-remedy does not exist if we are entitled to refuse the corresponding supplementary performance according to statutory provisions.

(10) If subsequent performance has failed or if a reasonable period to be set by the Buyer for the subsequent performance has expired to no avail or is dispensable according to the statutory provisions, the Buyer shall be entitled to withdraw from the contract or reduce the price. However, there shall be no right of withdrawal in the case of minor defects.

(11) Claims of the Buyer for the reimbursement of expenses pursuant to Sec. 445a (1) BGB are excluded unless the last contract in the supply chain is a consumer goods purchase (Sec. 478, Sec. 474 BGB) or a consumer contract for the provision of digital products (Sec. 445c, sentence 2, Sec. 327 (5), Sec. 327u BGB). With regard to defects in the Goods as well, claims of the Buyer for damages or reimbursement of fruitless expenditures (Sec. 284 BGB) shall only be valid according to Sections 8 and 9 below.

## **Section 8 Other Liability**

(1) Unless otherwise provided for in these GTCS, including the following provisions, we shall be liable for breaches of contractual and non-contractual obligations according to the statutory provisions.

(2) Regardless of the legal grounds, we shall be liable for damages within the scope of liability for fault in cases of intent and gross negligence. In the case of simple negligence and subject to statutory limitations of liability (e.g., diligence in own affairs, insignificant breach of duty), we shall only be liable

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

b) for damages resulting from the breach of an essential contractual obligation (an obligation whose fulfilment is essential for the proper execution of the contract and on whose compliance the contractual partner regularly relies and may rely); in this case, however, our liability shall be limited to compensation for foreseeable, typically occurring damages.

(3) The liability limitations arising from (2) also apply in favor of third parties as well as in the event of breaches of duty by persons (including for their benefit) whose fault we are responsible for according to statutory provisions. They shall not apply if a defect has been fraudulently concealed or a guarantee for the quality of the goods has been assumed – or for claims of the buyer under the Product Liability Act.

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

### **Section 9 Limitation Period**

(1) Deviating from Section 438 (1) No. 3 BGB, the general limitation period for claims arising from material defects and defects of title is one year from delivery. If an acceptance procedure has been agreed, the limitation period starts with acceptance.

(2) If the Goods are a structure or an item which, in accordance with its customary use, has been used for a structure and has caused its defectiveness (building material), the limitation period pursuant to the statutory provisions is 5 years from delivery (Sec. 438 (1) No. 2 BGB). Further statutory special provisions regarding limitation periods (in particular Sec. 438 (1) No. 1, (3), Sec. 444, Sec. 445b BGB) shall remain unaffected.

(3) The above limitation periods for sales law also apply to contractual and non-contractual claims for damages asserted by the Buyer based on a defect of the Goods unless the application of the regular statutory limitation (Sec. 195, Sec. 199 BGB) would result in a shorter limitation period in the specific case. Claims for damages asserted by the Buyer pursuant to Section 8 (2) sentences 1 and 2 (a) and under the Product Liability Act shall be exclusively subject to the statutory limitation periods.

### **Section 10 Cancellation**

The Buyer is not entitled to a contractual right of withdrawal after conclusion of the contract. If the Buyer nevertheless withdraws from an order without authorization (cancellation), Diato may demand lump-sum compensation for the resulting damage in the amount of 15% of the sales value. The Buyer remains entitled to prove that no damage or significantly less damage has occurred. Diato expressly reserves the right to prove greater damage.

### **Section 11 Choice of Law and Jurisdiction**

(1) For these GTCS and the contractual relationship between us and the Buyer, the law of the Federal Republic of Germany shall apply – excluding international uniform law, in particular the United Nations Convention on Contracts for the International Sale of Goods.

(2) If the Buyer is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive – including international – place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be our place of business. The same applies if the Buyer is an entrepreneur within the meaning of Sec. 14 BGB. However, we are also entitled to take action at the place of performance of the delivery commitment in accordance with these GTCS or a predominant individual agreement or at the contractual partner's place of general jurisdiction. Any statutory provisions taking precedence, in particular regarding exclusive jurisdictions, shall remain unaffected.

(3) The language of the contract is German.