

## **General Terms and Conditions of Sale and Delivery of SodaTASTE®**

### **§ 1 Scope, Form**

- (1) The present General Terms and Conditions of Sale ("**GTC**") apply to all our business relationships with our customers ("**Buyer**"). The GTC only apply if the Buyer is an entrepreneur (§ 14 BGB), a legal entity under public law or a special fund under public law.
- (2) The GTC particularly apply 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). The goods we deliver and sell are mainly sparkling devices and SodaTASTE®, i.e. flavoured and CO<sub>2</sub>-cylinder filled carbon dioxide, which is delivered either in newly manufactured CO<sub>2</sub> cylinders ("**Spare Cylinder**") or in used CO<sub>2</sub> cylinders ("**Exchange Cylinder**").
- (3) Unless otherwise agreed, the GTC apply as a framework agreement in the version valid at the time of the Buyer's order or at least in the version last communicated to him in text form for similar future contracts, without our having to refer to them again in each individual case.
- (4) Our GTC apply exclusively. We hereby expressly object to any deviating, contrary or supplementary general terms and conditions of the Buyer, regardless of the manner or form in which these conditions are presented in connection with the conclusion and fulfilment of the contract; such terms and conditions of the Buyer only become part of the contract if we have expressly agreed to their validity in writing. This requirement of consent applies in any case, for example even if the Buyer refers to his general terms and conditions in the context of the order and we do not expressly object to this or if we unconditionally execute the delivery to the Buyer in knowledge of opposing or deviating conditions of the Buyer from our GTC.
- (5) Individual agreements (e.g. framework delivery contracts, quality assurance agreements) and details in our order confirmation take precedence over the GTC. In case of doubt, trade clauses are to be interpreted according to the Incoterms® issued by the International Chamber of Commerce in Paris (ICC) in the version

valid at the time the contract is concluded.

- (6) Legally relevant declarations and notifications of the Buyer regarding the contract (e.g. setting of deadlines, notification of defects, withdrawal or reduction) must be made in writing. In terms of these GTC, written form includes written and text form (e.g. letter, e-mail, fax). Legal form requirements and further proof, especially in case of doubts about the legitimacy of the declaring party, remain unaffected.
- (7) References to the applicability of statutory provisions are only for clarification purposes. Even without such clarification, the statutory provisions apply unless they are directly amended or expressly excluded in these GTC.
- (8) Our GTC apply in their most recent version valid at the time of the Buyer's order also for all similar future transactions, without this having to be explicitly mentioned or agreed upon at their conclusion.

## **§ 2**

### **Conclusion of Contract, Technical Changes**

- (1) Our offers are non-binding and subject to change, unless they are expressly designated as binding in writing. Sentence 1 also applies if we have provided the Buyer with catalogues, technical documentation, other product descriptions or documents - even in electronic form. The delivery contract and any amendments, collateral agreements and other agreements only become effective upon our written confirmation, unless a stricter form is mandatorily provided by law or in case of immediate order execution by delivery of the goods to the Buyer; in the latter case, the delivery note or invoice replaces the written declaration. Oral declarations also only become effective upon our written confirmation. Offers or confirmations made by fax or electronic data transmission are equivalent to written form. Any information and details contained in the offer documents, especially regarding the scope, type and quality of our deliveries and services, are only binding if confirmed by us in writing.
- (2) Product descriptions, drawings, illustrations, etc. are performance descriptions but not guarantees. A guarantee requires our written declaration.
- (3) The Buyer's order of the goods is considered a binding contract offer. Unless otherwise stated in the order, we are entitled to accept this contract offer within 2 weeks of its receipt.

- (4) We reserve the right to make technical changes, design changes and other changes to technical data and performance features, provided they serve technical progress.

### **§ 3**

#### **Copyright and Other Rights**

- (1) We reserve ownership and/or copyright to all offers and cost estimates submitted by us, as well as to drawings, illustrations, calculations, brochures, catalogues, models, and other documents and aids provided to the Buyer.
- (2) The Buyer may not use, reproduce, hand over or make accessible to third parties or otherwise distribute these items within the meaning of paragraph 1 for purposes other than those contractually agreed, and must return them to us at any time upon our request.
- (3) The Buyer is not entitled to reproduce our products himself or through third parties under his direction or with his assistance. Likewise, the application of any signs that could be interpreted as signs of origin or could give the impression that they are products of the Buyer or a third party is inadmissible. Any violations entitle us to claim damages. We are entitled to indicate our company on our products in an appropriate manner. The Buyer may only refuse his consent if he has an overriding interest.

### **§ 4**

#### **Delivery Periods, Delay in Delivery, Force Majeure**

- (1) The estimated delivery period is individually agreed upon or indicated in our order confirmation. The periods and dates for deliveries and services indicated by us are always only approximate unless a fixed period or fixed date has been expressly promised or agreed upon. If shipment has been agreed, the specified estimated delivery periods and delivery dates, unless otherwise expressly stated by us, refer to the time of handover to the carrier, freight forwarder or other third party commissioned with the transport.
- (2) Compliance with delivery periods requires the timely and proper fulfilment of the Buyer's obligations, the timely provision of any necessary documents by the Buyer as well as the payment of any agreed advance payment. The periods are

extended by the period during which the Buyer is in arrears with his contractual obligations, possibly by a multiple of this period if due to the resulting other machine occupancy an immediate lifting of the interruption caused by the Buyer is not possible.

The defense of unfulfilled contract remains reserved.

- (3) If we are unable to meet binding delivery deadlines for reasons for which we are not responsible (unavailability of the service), the Buyer will be informed immediately and at the same time the expected new delivery period will be communicated. Unavailability of the service exists, for example, in the case of (i) non-timely self-delivery by our suppliers, unless the incorrect or delayed self-delivery is our fault, or (ii) other disruptions in the supply chain due to force majeure. Force majeure refers to unforeseeable and extraordinary circumstances and events beyond our control (in particular, e.g., war, riots, natural disasters, strikes and lockouts outside the own company of the respective party, embargoes, pandemics and epidemics such as the Corona pandemic, officially ordered plant closures, transport delays, difficulties in material or energy procurement, shortage of labour, energy or raw materials, etc.). All events of force majeure release us from the fulfilment of the affected contractual obligations for the duration and to the extent of the impact of the force majeure, even if we are in default. If an event of force majeure occurs, the Buyer must be informed immediately in text form.
- (4) If events of force majeure significantly change the economic significance or the content of the delivery or have a significant impact on our operation beyond a mere extension of delivery periods, the contract will be reasonably adjusted in good faith. If this is not economically justifiable, we are entitled to withdraw from the contract. If we make use of this right of withdrawal, we will inform the Buyer immediately, even if an extension of the delivery time was initially agreed due to paragraph 3.
- (5) The occurrence of delivery delay is determined by the statutory provisions. In any case, however, a reminder by the Buyer is required. If we are in delay of delivery, the Buyer may, if he proves that he has actually suffered damage, claim a lump-sum compensation for the delay. The lump-sum compensation amounts to 0.3% of the net price (delivery value) for each completed calendar week of delay, but not more than 5% of the delivery value of the delayed goods in total. We reserve the right to prove that the Buyer has not suffered any damage or only a significantly lower damage than the above-mentioned lump sum. For further liability for damages, § 10 applies.

- (6) If the Buyer cannot reasonably be expected to accept the delivery or performance due to the delay, he may withdraw from the contract by written declaration to us in accordance with this paragraph 6. However, the Buyer is obliged, if we request it, to declare within a reasonable period set by us whether he will withdraw from the contract due to the delay in delivery or insists on delivery. The right of withdrawal expires if the withdrawal is not declared before the expiration of the period set by us (§ 350 BGB analog). The goods already produced by us at the time of any withdrawal declaration must in any case be accepted and paid for.
- (7) The Buyer's rights according to § 10 of these GTC and our statutory rights, in particular in the case of an exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of performance and/or subsequent performance), remain unaffected.

## **§ 5**

### **Delivery, Transfer of Risk, Default of Acceptance**

- (1) We are always entitled to deliver up to 5% more or less than agreed.
- (2) Unless otherwise agreed, we determine the type and manner of packaging at our reasonable discretion. Pallets, containers and other reusable packaging (collectively "Reusable Packaging") used by us for transport to the Buyer remain our property. The return of the reusable packaging to our plant is generally a debt to be performed at the Buyer's expense. The Buyer is free to fulfil this obligation by returning reusable packaging of the same type and quality. By arrangement with us, the return of reusable packaging can be organized upon delivery of the ordered goods (e.g. by handing over to the carrier or other transport person). There is no right to return disposable packaging.
- (3) Delivery is made ex warehouse, which is also the place of performance for delivery and any subsequent performance. At the request and expense of the Buyer, the goods will be shipped to another destination (sale by dispatch). Unless otherwise agreed, we are entitled to determine the type of shipment (in particular transport company, shipping route) ourselves. At the request of the Buyer, the delivery will be insured by us against the usual transport risks; the costs will be borne by the Buyer.
- (4) The risk of accidental loss and accidental deterioration of the goods passes to the Buyer at the latest upon handover. In the case of sale by dispatch, however, the

risk of accidental loss and accidental deterioration of the goods as well as the risk of delay passes already upon delivery of the goods to the carrier, the freight forwarder or the person or institution otherwise designated to carry out the shipment (whereby the start of the loading process is decisive). The risk of accidental loss or accidental deterioration of the goods also passes to the Buyer as soon as he is in default of acceptance or otherwise culpably violates his cooperation obligations.

- (5) If the dispatch of the goods is delayed at the request or due to reasons for which the Buyer is responsible, the risk passes to the Buyer at the time of notification of readiness for dispatch.
- (6) In the event of default of acceptance or if the dispatch of the goods is delayed by more than two weeks at the request of the Buyer
- (i) after the agreed delivery date, or
  - (ii) if no specific delivery date has been agreed, after notification of readiness for dispatch, or
  - (iii) in the event of other culpable violation of cooperation obligations by the Buyer, we are entitled to charge the Buyer a flat-rate local storage fee in the sense of § 354 HGB in the amount of 0.5% of the net price of the delivery for each commenced calendar week, but not more than a total of 5%. We reserve the right to prove higher damages and our statutory claims (in particular reimbursement of additional expenses, reasonable compensation, termination) remain unaffected. The Buyer is entitled to prove that we have not suffered any damage or only a significantly lower damage than the above-mentioned lump sum.
- (7) We are entitled to partial deliveries or partial services and to issue corresponding partial invoices only if these are of interest to the Buyer according to the purpose of the contract and do not cause the Buyer significant additional effort.

## **§ 6**

### **Prices, Terms of Payment**

- (1) Price lists and other general price information are subject to change. Subject to any price changes in accordance with paragraph 3, our prices valid at the time of

conclusion of the contract apply, unless we have made another fixed price offer in writing or something else has been expressly agreed. The prices stated only apply to the respective individual order. Confirmed fixed prices only apply when the confirmed quantity is purchased.

- (2) When ordering SodaTASTE<sup>®</sup> CO<sub>2</sub> cylinders, the Buyer will be charged the new prices for filled CO<sub>2</sub> cylinders, unless the Buyer returns empty CO<sub>2</sub> cylinders to us in accordance with § 7; in the case of the return of empty CO<sub>2</sub> cylinders in accordance with the conditions of § 7, the Buyer will subsequently be charged only a refill price. The settlement of refill prices is carried out by credit note.
- (3) Our prices are ex works plus the respective statutory VAT and exclusive of the costs for packaging, loading, transport and insurance, unless expressly agreed otherwise.
- (4) If more than 4 months elapse between the conclusion of the contract and the agreed delivery date and no fixed price agreement has been made, reasonable price adjustments due to significant changes in wages, energy, material and distribution costs remain reserved.
- (5) All payments of the Buyer must be made to the accounts specified in our invoices. Payments by the Buyer are due without any deduction 30 calendar days from the date of invoice, unless expressly agreed otherwise. For payments within 14 calendar days – under the condition of receipt of payment within this period – we grant a 2% discount, if this was previously explicitly agreed. The aforementioned discount may only be claimed if all payment obligations from previous invoices have been fully met. Invoice amounts under 500.00 euros are payable immediately net without any deduction.
- (6) After the due date, default interest of 9% points above the respective base interest rate p.a. will be charged without the need for a reminder. We reserve the right to claim further damages for delay.
- (7) We are entitled to carry out or provide outstanding deliveries or services only against advance payment or provision of security if, after conclusion of the individual contract, circumstances become known to us that are likely to significantly reduce the creditworthiness of the Buyer and which endanger the payment of our outstanding claims by the Buyer from the respective contractual relationship (including from other individual orders for which the same framework contract applies), in particular if a trade credit insurance policy concluded by us is exhausted (insofar as deliveries of goods are only made within the existing credit limit).

## **§ 7**

### **Return of CO2 Cylinders and Price Calculation**

- (1) The Buyer is entitled to return empty CO2 cylinders from SodaTASTE<sup>®</sup> (New Cylinders or Exchange Cylinders) to us, in particular for the purpose of refilling (so-called Refill), in accordance with the following provisions.
- (2) Unless otherwise agreed, we will grant the Buyer a credit note for the actually returned exchangeable CO2 cylinders within one (1) calendar month (from the 1st to the last of each month) after the return of SodaTASTE<sup>®</sup> CO2 cylinders and/or other standard cylinders (i.e. those that are technically equivalent in design to SodaTASTE<sup>®</sup> cylinders), but not for SodaStream Quick Connect (CQC) cylinders, in accordance with our price list, i.e. in the amount of the difference between the selling price of new Classic/Aroma cylinders and the refill prices for Classic/Aroma cylinders. Only those CO2 cylinders are exchangeable that do not have any externally visible damage to the cylinder housing (no dents, bulges, other damage) or to the valve. The credit note is issued retrospectively within 30 calendar days after the end of the respective calendar month.
- (3) The return quantity for CO2 cylinders and thus the issuance of credit notes is limited to the previous order quantity minus the previously returned CO2 cylinders, i.e. to the quantity of cylinders ordered by the Buyer that are still in circulation.
- (4) In the event of (subsequent) orders of (refilled) CO2 cylinders by the Buyer, we and the Buyer are each entitled to offset the amounts according to the credit notes issued.
- (5) For CO2 cylinders not returned after the end of the contract term, we will subsequently charge a purchase price for the CO2 cylinders not returned by the Buyer in accordance with the calculation method in paragraph 2.
- (6) Unless otherwise agreed, the return of empty CO2 cylinders is at the Buyer's own expense and risk. A deviating agreement may, however, stipulate that the Buyer hands over empty CO2 cylinders to the carrier, freight forwarder or other transport person for return to us upon delivery of the ordered goods (e.g. also together with our reusable packaging or reusable packaging of the same type and quality according to § 5 paragraph 2).



## **§ 8**

### **Warranty Rights, Defect Claims**

- (1) The Buyer's warranty rights in case of material and legal defects (including incorrect and short delivery or defective instructions) are governed by the statutory provisions, unless otherwise specified below. Warranty rights in this sense means the claims/rights arising from § 437 BGB (subsequent performance, reduction/withdrawal, reimbursement of expenses and damages).
- (2) The Buyer's claims for reimbursement of expenses according to § 445a paragraph 1 BGB are excluded, unless the last contract in the supply chain is a consumer goods purchase (§§ 478, 474 BGB). The statutory special provisions on withdrawal, reimbursement of expenses and damages in case of final delivery of newly manufactured goods to a consumer (supplier recourse according to §§ 478, 445a paragraph 2, 445b or §§ 445c, 327 paragraph 5, 327u BGB) remain unaffected, unless an equivalent compensation has been agreed, e.g. within the framework of a quality assurance agreement. The rights from any additional guarantee provided by us remain unaffected.
- (3) We are not liable for public statements of the manufacturer (in case of third-party manufacturers) or other third parties.
- (4) We are not liable for defects known to the Buyer at the time of conclusion of the contract or grossly negligently unknown (§ 442 BGB). Furthermore, the Buyer's defect claims require that he has complied with his statutory inspection and notification obligations (§§ 377, 381 HGB). If a defect becomes apparent upon delivery, inspection or at any later time, we must be notified immediately in text form. A defect notification not in text form is ineffective and not suitable for meeting the deadline. In any case, obvious (i.e. manifestly apparent) defects must be reported within 3 working days (Saturday is considered a working day) from delivery and hidden defects within the same period from discovery in text form, whereby timely dispatch of the notification is sufficient to meet the deadline. In case of sale by dispatch, delivery in the aforementioned sense is deemed to have taken place at the latest when the goods are delivered by the carrier or freight forwarder to the Buyer or the third party specified by the Buyer as authorized to receive the goods.

If the Buyer fails to conduct proper inspection and/or defect notification, our liability for the defect not notified or not notified in time or not properly is excluded in accordance with the statutory provisions. Costs for the inspection and examination of the goods are considered as costs of acceptance of the item according to § 448 paragraph 1 BGB and must therefore be borne by the Buyer.

- (5) If the delivered item is defective, we can choose whether to provide subsequent performance by remedying the defect (rectification) or by delivering a defect-free item (replacement delivery). If the type of subsequent performance chosen by us is unreasonable for the Buyer in an individual case, he may refuse it. Our right to refuse subsequent performance under the statutory conditions remains unaffected.
- (6) We are entitled to make the owed subsequent performance dependent on the Buyer's payment of the purchase price. However, the Buyer is entitled to withhold a portion of the purchase price that is reasonable in relation to the defect. § 13 on the exclusion of the right of retention otherwise remains unaffected.
- (7) Defect claims do not exist in the case of natural wear and tear or damage that occurs after the transfer of risk due to incorrect or negligent handling, excessive use or due to special external influences that are not assumed under the contract. If improper modifications or repair work are carried out by the Buyer or third parties, there are no defect claims for these and the resulting consequences either, nor for operating errors by the Buyer or the third party.
- (8) The Buyer must give us the necessary time and opportunity for the owed subsequent performance, in particular to hand over the complained goods for inspection purposes. In the case of replacement delivery, the Buyer must return the defective item to us upon request according to the statutory provisions; however, the Buyer does not have a return claim. The necessary expenses for the purpose of inspection and subsequent performance, in particular transport, travel, labour and material costs as well as any removal and installation costs, will be borne or reimbursed by us according to the statutory regulation and these GTC, if a defect actually exists. Otherwise, we can demand reimbursement of the costs incurred due to the unjustified defect removal request from the Buyer if the Buyer knew or negligently did not know that there was actually no defect.
- (9) The claim for reimbursement of transport, travel, labour and material costs within the framework of subsequent performance, including any removal and installation costs, is excluded if the expenses increase because the delivery item has been moved to a location other than the Buyer's place of business, unless the transfer corresponds to its intended use.
- (10) If a reasonable period set by the Buyer for subsequent performance has expired unsuccessfully or is dispensable according to the statutory provisions, the Buyer can withdraw from the contract or reduce the purchase price/remuneration according to the statutory provisions. In the case of an insignificant defect, however, there is no right of withdrawal.

- (11) The Buyer's claims for damages or reimbursement of futile expenses exist even in case of defects only according to § 10 and are otherwise excluded.
- (12) The Buyer's recourse claims against us according to § 445a paragraph 2 BGB exist only to the extent that the Buyer has not made any agreements with his customer beyond the mandatory statutory defect claims. For the scope of the Buyer's recourse claim against us, paragraphs 8 and 9 apply accordingly.

## **§ 9**

### **Legal Defects, Infringements of Property Rights**

- (1) If a third party asserts justified claims against the Buyer due to the infringement of property rights by deliveries provided by us and used in accordance with the contract, we are liable to the customer within the periods specified in § 11 as follows:
- a. At our discretion and expense, we will either obtain a right of use for the relevant deliveries, modify them so that the property right is not infringed, or exchange them. If this is not possible for us on reasonable terms, the Buyer has the statutory rights of withdrawal or reduction.
  - b. Our obligation to pay damages is governed by § 10.
  - c. The aforementioned obligations exist for us only if the Buyer notifies us of the claims asserted by the third party without delay in writing, does not acknowledge an infringement and leaves all defensive measures and settlement negotiations to us. If the Buyer ceases to use the delivery for damage mitigation or other important reasons, he is obliged to inform the third party that the cessation of use does not imply an acknowledgment of a property right infringement.
- (2) The Buyer's claims are excluded if he is responsible for the infringement of property rights.
- (3) In the case of other legal defects, the provisions of § 8 apply accordingly.

## § 10

### Liability; Right of Withdrawal and Termination in Case of Non-Defect Related Breaches of Duty

- (1) Our liability for damages, regardless of the legal basis, in particular due to impossibility, delay in performance, default, defective or incorrect delivery, breach of contract, breach of duties during contract negotiations and tort, is limited to the extent that it depends on fault, in accordance with this § 10.
- (2) We are not liable in cases of simple negligence.
- (3) The Buyer's claim for damages in the event of impossibility of delivery is limited to 10% of the value of the part of the delivery that has become impossible. A claim for damages due to delay in performance and/or default is excluded to the extent that the limits of § 4 paragraph 5 are exceeded.
- (4) The exclusions and limitations of liability of this § 10 apply to the same extent in favour of the organs, legal representatives, employees and other vicarious agents (hereinafter collectively "**vicarious agents**") of us.
- (5) If we provide technical information or act in an advisory capacity and this information or advice does not belong to the contractually agreed scope of performance owed by us, this is done free of charge and to the exclusion of any liability.
- (6) The aforementioned limitations of liability of this § 10 according to paragraphs 1 - 5 do not apply to our liability and the liability of our vicarious agents
  - a. due to intentional or grossly negligent breaches of duty,
  - b. due to injury to life, body or health,
  - c. under the Product Liability Act,
  - d. for guaranteed characteristics or if and to the extent that we have given an additional guarantee (in this respect the details of the liability result from the guaranteed conditions),
  - e. due to breach of essential contractual obligations.

In the event of a breach of essential contractual obligations, our liability is, however, limited to damages that we foresaw as a possible consequence of a contractual

breach at the time of conclusion of the contract or that we should have foreseen with the exercise of ordinary care. Essential contractual obligations are obligations whose fulfilment makes the proper execution of the contract possible and on whose compliance the Buyer regularly relies, in particular the obligation to timely delivery of the goods and their freedom from legal defects as well as such material defects that impair their functionality or usability more than insignificantly.

Indirect damages and consequential damages that are the result of defects in the goods are also only compensable if such damages are typically to be expected when the goods are used as intended. The provisions of the preceding sentences 2 and 4 do not apply in the case of intentional or grossly negligent conduct by us and our vicarious agents.

- (7) Due to a breach of duty that does not constitute a defect, the Buyer can only withdraw or terminate if we are responsible for the breach of duty or if a case of § 4 paragraph 6 applies.

## **§ 11 Limitation Period**

- (1) Contrary to § 438 paragraph 1 No. 3 BGB, the general limitation period for claims arising from defects of material and legal nature is one year from delivery. If we provide the customer with a guarantee, the details are set out in the guaranteed conditions, particularly regarding the scope, guarantee and limitation period.
- (2) The above limitation periods under sales law also apply to contractual and non-contractual claims for damages by the Buyer that are based on a defect in the goods, unless the application of the regular statutory limitation period (§§ 195, 199 BGB) would lead to a shorter limitation period in individual cases. The Buyer's claims for damages arising from injury to life, body or health or from intentional or grossly negligent breaches of duty by us or our vicarious agents, from the breach of essential contractual obligations and under the Product Liability Act as well as claims according to § 445b BGB are subject exclusively to the statutory limitation periods.

## § 12

### Retention of Title; Retained Ownership of Cylinders

- (1) Until full payment of all our present and future claims arising from the purchase/delivery contract and an ongoing business relationship (secured claims) with the Buyer, the goods remain our property. In the event of a breach of contract by the Buyer, in particular non-payment of the due purchase price, we are entitled to withdraw from the contract in accordance with the statutory provisions and/or to demand the return of the goods based on the retention of title. The demand for return does not at the same time include the declaration of withdrawal; we are rather entitled to demand only the return of the goods and to reserve the right of withdrawal. If the Buyer does not pay the due purchase price, we may only assert these rights if we have previously set the customer a reasonable deadline for payment without success or if such a deadline setting is dispensable according to the statutory provisions.
- (2) The Buyer must treat the goods subject to retention of title ("**Reserved Goods**") with care.
- (3) The Reserved Goods may not be pledged or transferred by way of security to third parties before full payment of the secured claims. The Buyer must notify us immediately in writing if an application for the opening of insolvency proceedings is filed or if third parties (e.g. seizures) access the Reserved Goods.
- (4) The Buyer is authorized to resell the Reserved Goods in the ordinary course of business until revoked in accordance with below b. In this case, the following additional provisions apply.
  - a. The Buyer's claims against third parties arising from the resale of the goods or the product as well as those claims of the Buyer regarding the Reserved Goods that arise from any other legal ground against his customers or third parties (in particular claims from tort and claims for insurance benefits), including all balance claims from current account, are already assigned to us by the Buyer for security. We accept the assignment. The Buyer's obligations mentioned in paragraph 3 also apply in view of the assigned claims.
  - b. The Buyer remains authorized to collect the claim alongside us. We undertake not to collect the claim as long as the Buyer meets his payment obligations to us, no deficiency in his performance capacity exists and we do not assert the retention of title by exercising a right according to

paragraph 1. However, if this is the case, we may demand that the Buyer discloses the assigned claims and their debtors to us, provides all information necessary for collection, hands over the corresponding documents and notifies the debtors (third parties) of the assignment. In this case, we are also entitled to revoke the Buyer's authority to resell and process the Reserved Goods.

- c. At the Buyer's request, we are obliged to release the securities to which we are entitled to the extent that their realizable value exceeds the value of our outstanding claims against the Buyer by more than 10%. We are entitled to select the securities to be released.

- (5) The cylinders as such (exchange and new cylinders) remain our property; they are only made available to the Buyer for the intended use. The Buyer does not acquire ownership thereof even upon full payment of the purchase price. The Buyer's obligation to return cylinders for the issuance of credit notes remains unaffected. Cylinders not returned will be charged in accordance with § 7.

### **§ 13**

#### **Set-Off, Retention, Acceptance**

- (1) Unless otherwise regulated in these GTC, the set-off with counterclaims of the Buyer or the retention of payments due to such claims is only permissible to the extent that the counterclaims are undisputed or have been legally established or arise from the same contractual relationship under which the relevant delivery/performance takes place. In case of defects in the delivery, the customer's counterclaims remain unaffected according to § 8 paragraph 6. The Buyer's right to offset according to § 7 paragraph 4 regarding the return of empty CO2 cylinders remains unaffected.
- (2) The Buyer is not entitled to refuse acceptance of the goods due to insignificant defects without prejudice to his rights and obligations according to § 8 paragraph 4.
- (3) As long as our due claims are not settled, we are not obliged to make any further deliveries from any ongoing contract. In such a case, after a deadline has been set by us to the customer, during the suspension of our delivery obligation, a delay in acceptance by the Buyer has no legally binding effect. Further legal and compensation claims remain reserved.

**§ 14**  
**Applicable Law, Jurisdiction**

- (1) These GTC and the contractual relationship between us and the Buyer are governed by the law of the Federal Republic of Germany (excluding the UN Convention on Contracts for the International Sale of Goods).
- (2) The place of performance for all rights and obligations arising from this transaction is Tambach-Dietharz.
- (3) The exclusive place of jurisdiction for all disputes arising from the business relationship between us and the Buyer is Meiningen.
- (4) If any provision of these GTC is or becomes invalid in whole or in part or if a regulatory gap in these GTC becomes apparent, the validity of the remaining provisions shall remain unaffected. In place of the invalid provision or to fill the regulatory gap, the valid and practicable rule (including, if applicable, a waiver of a claim by a contracting party) shall apply that comes closest to the economic objective of the invalid or ineffective provision. If the invalidity of a provision is the result of a measure of performance or time (period or deadline) specified therein, such provision shall apply with a measure that comes closest to the original measure. § 139 BGB does not apply.

Tambach-Dietharz, valid from June 1, 2023