

# GTCB - General Terms and Conditions of Business of Tischlerei Draude and Draude Design GmbH

## A. Area of application

The following General Terms and Conditions of Sale, Supply and Repair (hereinafter abbreviated to "GTCB") apply to all contracts between

1. **Tischlerei Draude GmbH**, represented by its General Manager Mr Jürgen Draude, Im Wehregrund 4, 34560 Fritzlar, phone 05622/3856, fax 05622/3927, email: info@draude.de

and/or

2. **Draude Design GmbH**, represented by its General Manager Mrs Susanne Draude, Im Wehregrund 4, 34560 Fritzlar, phone 05622/3856, fax 05622/3927, email: info@draude-design.de

(both hereinafter abbreviated to "**Draude**")

with their customers (consumers and/or entrepreneurs).

Customers' conditions which conflict with, diverge from or supplement these GTCB are not recognised.

A **consumer** is any natural person who enters into a legal transaction for purposes that predominantly are outside his trade, business or self-employment (§ 13 of the German Civil Code (*Bürgerliches Gesetzbuch*)).

An **entrepreneur** is a natural person or legal entity or a partnership with legal personality who or which, when entering into a legal transaction, acts in exercise of his or its trade, business or self-employment § 14 of the German Civil Code).

## B. The consumer's right of withdrawal

In certain cases defined by law consumers are entitled to a right of withdrawal. Draude provides information on such a situation separately. The current information on withdrawal can be found at [www.draude.de](http://www.draude.de) and [www.draude-design.de](http://www.draude-design.de).

## C. General Terms and Conditions of Sale and Supply

### 1. Contract conclusion

- 1.1 The customer's order sent to Draude constitutes only an offer to conclude a contract. The order acknowledgement is not an acceptance of the contract by Draude.
- 1.2 Offers sent to companies are, as a matter of principal, subject to final confirmation.
- 1.3 Acceptance by Draude is by means of a separate order confirmation or by the delivery of the goods.

### 2. Supply

- 2.1 Draude supplies from its warehouse to the address in Germany indicated by the customer. If the customer is an entrepreneur, risk passes on the hand-over of the goods to the transport company or, if the customer is to collect the goods, risk passes to the customer when the goods are ready for despatch.

### 3. Prices, terms of payment and retention of title

- 3.1 All prices are net and expressed in Euros; the applicable rate of Value Added Tax and the cost of packaging and delivery must be added.
- 3.2 Payment is due immediately and without deduction on receipt of the invoice in so far as not agreed otherwise or a different time of payment is stated on the invoice.
- 3.3 The goods which are delivered remain the property of Draude until payment has been received in full (hereinafter called "goods subject to retention of title").

If the customer is an entrepreneur the following applies in addition:

- The goods which have been delivered remain the property of Draude until all the claims and entitlement due to Draude on the part of the customer have been met even if payment has been made for the particular item of goods.
- The entrepreneur who is a customer is entitled to sell the goods subject to retention of title on to third parties in the normal course of his business if it is certain that payment will be made to Draude and that title does not pass to the third party until the third party has met his payment obligations.
- For his part, the entrepreneur who is a customer may sell the goods onwards subject to retention of title without title passing to the third party hereby.

- Without the consent of Draude the entrepreneur who is a customer may not hypothecate or pledge the goods subject to retention of title as security. Any processing or alteration of the goods subject to retention of title by the entrepreneur who is a customer is undertaken only in the name and interest of Draude. In the event of liens, distraint or other dispositions or interventions by third parties, the entrepreneur who is a customer must inform Draude without delay.
- The entrepreneur who is a customer hereby assigns his receivables from the onward sale of the goods subject to retention of title in their entirety including all ancillary rights in advance by way of security to the Draude company concluding the contract; the latter accepts the assignment. Until revoked and for so long as the entrepreneur who is a customer is not in default, the entrepreneur who is a customer is himself entitled to collect the receivables assigned to Draude; however he is not entitled to dispose of them in any other way, e.g. by assignment.
- If so required by Draude, the entrepreneur who is a customer must disclose the assignment of the receivable to the purchaser in question and hand over to Draude the documents necessary for Draude to assert his rights against the purchaser e.g. invoices, and provide the information needed. If so requested by the customer, Draude will release the securities due to Draude at the latter's option in so far as their value exceeds the receivables they are intended to secure by more than 20%.

#### **4. Warranty**

**4.1** The statutory warranty rights apply. The rights arising from any guarantee are neither excluded nor restricted by these GTCB.

**4.2** If the customer is an entrepreneur Draude will decide on the nature of the subsequent performance and § 377 of the German Commercial Code (*Handelsgesetzbuch*) also applies; in the event of a replacement delivery, the costs of dismantling the defective item and the installation of the defect-free replacement item are not included in the entitlement to subsequent performance.

**4.3** Claims for defects by a customer who is an entrepreneur become time barred in one year from the delivery.

#### **5. Liability**

Claims for compensation by the customer are excluded in so far as not provided otherwise hereinafter. This does not apply in so far as Draude is liable under mandatory requirements of law (e.g. the German Product Liability Act (*Produkthaftungsgesetz*) or in the event of intent, gross negligence, loss of life, bodily injury, the impairment of health or breach of material contractual obligations, i.e. obligations which Draude directly owes to the customer under the content and purpose of the contract or the performance of which make the proper execution of the contract possible and on compliance with which the customer normally relies and may normally rely. Entitlement to compensation for reason of ordinarily negligent breach of material contractual obligations is restricted to loss or damage which is foreseeable and typical under the contract.

### **D. General terms and conditions of repair and installation**

The provisions of Section C of these GTCB apply accordingly if no divergent agreement was concluded hereinafter. The conditions do not apply if repairs were carried out in the context of claims for defects by the customer.

#### **1. Costs**

**1.1** Binding quotations are only prepared if expressly requested by the customer.

**1.2** A quotation requested by the contractual partner is only binding if it was submitted in writing by Draude and is marked as binding. The work necessary for the preparation of the quotation will be invoiced to the customer in so far as the repair is not carried out or the work cannot be utilised during the repair

**1.3** If it should become evident during the repair that the expected cost of the repair will exceed the costs in the non-binding cost estimate and are out of proportion to the current value of the item due for repair, Draude will immediately so inform the contractual partner. The same applies to defects which Draude does not identify until the time of the repair and which were not included in the scope of the repair order.

**1.4** After a repair is abandoned for reasons not attributable to Draude, the item will only be restored to its original condition at the express request of the customer and after reimbursement of the costs caused by the abandonment and restoration.

**1.5** The prices for parts used, materials and the special services as well as travelling and transportation costs will be shown separately in the calculation of the repair. If the repair is carried out based on a binding quotation, a reference to the quotation suffices and only variations in the scope of work will be listed separately.

#### **2. Termination**

If the customer terminates the contract he must pay for the work undertaken and costs incurred up to that point in time, including expenditure for replacement parts ordered and those already purchased.

#### **3. Payments**

Payments are due immediately after acceptance and without deductions. Draude may request a reasonable prepayment when the order is placed.

#### **4. Obligations of cooperation**

- 4.1** The customer is obliged to ensure reasonable and safe working conditions at the site of the repair or installation.
- 4.2** The customer is obliged to provide the necessary energy including the necessary connections at his own expense. He must also provide all materials and consumables and take all additional actions needed for testing.
- 4.3** If the customer fails to meet his obligations, Draude is entitled but not obliged to do such work in lieu of the customer and at the customer's expense.
- 4.4** In all other respects the customer's statutory rights and obligations remain unaffected.

#### **5. Period allowed for the repair or installation**

- 5.1** The information provided by Draude on the time needed for repairs or installation is based on estimates and is not binding.
- 5.2** In cases of unforeseeable operational hindrances (e.g. strikes, problems in the procurement of replacement parts, delayed deliveries or performance of services by sub-contractors) as well as interference by public authorities, force majeure and industrial disputes, the binding deadlines are reasonably extended.

#### **6. Approval of the repair or installation, acceptance by the customer**

- 6.1** The customer is obliged to approve the work as soon as he is informed of its completion. Acceptance may not be refused for minor defects.
- 6.2** If the customer fails to accept the work promptly, approval is deemed to have been given twelve working days after notification of completion. If the customer has commenced use of the item(s) without accepting them, acceptance is deemed to have been given six working days after commencement of use. If the customer has reservations about defects, the customer must assert claims in these cases not later than the above-mentioned points in time.

#### **7. Extended lien**

As a result of his debts arising from the contract for work and services Draude is entitled to a lien on the customer's items for repair and installation which come into his possession by reason of the contract. The lien may also be asserted because of debts arising from earlier work, supplies of spare parts and other services in so far as they are related to the subject of the order. The lien only applies for other claims arising from the business relationship in so far as these claims are uncontested or have been judged to be final and absolute.

#### **8. Warranty**

The customer must inform Draude without delay about any defects in the repair or installation. If the customer has improperly carried out any maintenance or installation work himself or has caused such work to be carried out by a third party, Draude is released from any liability for this work. The same applies if parts requiring replacement have not been replaced at the customer's request.

### **E, Final provisions**

Draude is not prepared or obligated to participate in any dispute settlement proceedings before a consumer arbitration board.

If a dispute should arise between Draude and a customer who is a consumer which cannot be settled by negotiations with the customer who is a consumer, for example as part of our customer complaints system, customers who are consumers may, as a matter of principle, may contact the relevant General Consumer Arbitration Office of the Arbitration Centre (*Allgemeine Verbraucherschlichtungsstelle des Zentrums für Schlichtung e.V.*)

**Contact:**

Allgemeine Verbraucherschlichtungsstelle des Zentrums für Schlichtung e.V.  
Strassburger Strasse 8, 77694 Kehl am Rhein, mail@verbraucher-schlichter.de, phone 07851/7957940, fax 07851/7957941

### **F. Applicable law, contact**

German law applies but with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods.