

## Terms and Conditions of Sale

### 1. - General - Scope of Validity

1.1.

Our Terms and Conditions shall apply exclusively, though only towards business customers within the meaning of § 310 Para. 1 BGB [German Civil Code]. Even if brought to our notice, we do not and shall not recognise any terms and conditions of the Customer that conflict with or deviate from our own terms and conditions unless we have expressly agreed in writing that they shall apply. Our terms and conditions of sale shall apply even if, despite our having knowledge of terms and conditions of the Customer that conflict with or deviate from our own, we perform delivery to the latter without reservation.

1.2.

Our terms and conditions of sale shall apply to all present and all future sale transactions with the Customer even if they should not be expressly agreed once more in future. We hereby reject counter-confirmations of the Customer which make reference to the Customer's own terms and conditions of business.

1.3.

Everything agreed between us and our Customer must be and is set forth in the present contract in writing.

### 2. - Offer - Conclusion of Contract - Self-supply

2.1.

Our offers are without engagement unless they are expressly declared to be firm or contain a specific time limit for acceptance. Where an order can be deemed an offer within the meaning of § 145 BGB, we have the right to accept it within a period of two weeks.

2.2.

Exclusively authoritative for the legal relationship between ourselves and the Customer is the contract of sale and purchase concluded in writing between us and these terms and conditions of sale. The said documents contain the entirety of the accords and understandings made between ourselves and the Customer. Undertakings given by us by word of mouth prior to conclusion of the contract shall be without legal force. Agreements made by word of mouth between the parties to this contract shall be superseded by the written contract unless it expressly emerges from them that they are to continue to have binding force. Additions and amendments to agreements already made, including these terms and conditions, shall only apply if agreed in writing. Except for our management officers and authorised commercial signatories, none of our employees is authorised to agree anything by word of mouth which deviates from the foregoing.

2.3.

Particulars given by us relating to the item of delivery such as weights, dimensions, consumption figures, power rating, tolerances and other technical data as well as our depictions of the item are approximate only except where serviceability for the contractually intended purpose requires strict conformity. The aforesaid particulars do not constitute warranted properties but merely descriptions or characterisations of our delivery. Deviations which are customary in the trade as well as those made in accordance with legal regulations or those which constitute technical improvements are permissible provided they are not detrimental to serviceability for the contractually intended purpose. We likewise reserve the right to make changes to the colour, shape and/or weight provided such changes would not be unreasonable for the Customer.

2.4.

We reserve title and copyright to all offers and cost quotations issued by us as well as to all drawings, illustrations, calculations, brochures, catalogues and other literature, documents and aids provided by us to the Customer. Except with our express consent, the Customer may not make the aforesaid physical objects themselves or the content thereof available or accessible to any third party nor make them known to any third party nor use them or reproduce them himself or have them used or reproduced by any third party. The Customer shall, on our request, return all such items to us and have any copies that have been made destroyed.

2.5.

If, for reasons for which we are not responsible and despite our having duly placed all necessary orders, we fail to receive goods or services to be supplied by our sub-suppliers or subcontracts or to receive them in the required manner or in good time or if events of a force majeure nature should occur, we will, except where the event is common knowledge, inform the Customer accordingly in good time in text form. In any such case, we shall have the right to defer performance of the delivery or service for the duration of the impediment or to wholly or partially rescind the contract in respect of the part that has not yet been performed provided we have fulfilled our duty to inform as aforesaid and provided we have not assumed the procurement or production risk. Strikes, lockouts, intervention by any public authority, shortage of energy or raw materials, transport bottlenecks arising through no fault of our own, business impediments arising through no fault of our own but as a result e.g. of fire, water or mechanical defect and all other impediments which, viewed objectively, have not been culpably caused by us shall also be deemed equivalent to force majeure.

2.6.

Samples will be furnished in return for payment. Samples merely serve the purpose of defining the nature and character of goods and do not constitute any guarantee.

### 3. - Payment - Terms of Payment - Offset etc.

3.1.

The offered price is binding. Our prices are quoted exclusive of value added tax. Value added tax will be charged additionally at the rate valid on the day of billing and will be shown as a separate item.

3.2.

Unless indicated otherwise, in particular in the order confirmation, our prices offered to business customers are quoted "ex works", packing excluded; packing will be charged as a separate invoice item; in the case of export deliveries, customs duty as well as fees and all other public levies as may be applicable will be additionally invoiced.

3.3.

In the case of any public levies and/or customs duties etc. relating to the goods or the shipment thereof being introduced or increased after conclusion of the contract, we shall have the right to claim the additional costs incurred by us from the Customer.

3.4.

We reserve the right to amend our prices accordingly if any cost decreases or increases should occur after conclusion of the contract, especially as a result of changes in material prices. If so requested by the Customer, we shall furnish evidence of such changes.

3.5.

The Customer has a fundamental duty to pay within 14 days from the date of invoice. In the case of receipt of payment by us within 8 days from receipt of the goods by the Customer, we grant 2% cash discount.

3.6.

The Customer is only entitled to make offset with his own counterclaims if the his counterclaims have been finally and absolutely established at law, are undisputed or have been recognised by us. Should we have delivered goods which are only partially non-compliant, the Customer shall have a duty to effect payment for the compliant part of the delivery unless a part-delivery is of no interest for the Customer.

3.7.

The Customer may only exercise a right to withhold payment on account of his own counterclaims arising under one and the same contract.

### 4. - Excess Quantity / Quantity Shortfall

4.1.

The attention of the Customer is drawn to the fact that, due to production reasons, 5% more or less than the contractually agreed quantity may be delivered. Such excess or shortfall shall not constitute any breach of contractual duties. Invoicing will be done on the basis of the actual quantity delivered, on which the consideration due from the Customer will also depend.

4.2.

In the case of deliveries by weight in which the weight is set in relation to square metres, deviations of up to +/- 8% are permissible. Such deviations shall not constitute any non-conformity

## **5. - Delivery Times - Delivery - Call Deliveries**

5.1.

Periods or dates quoted by us for the performance of deliveries or services are approximate only unless we have promised or agreed a firm period or date. Where it has been agreed that we shall effect delivery, delivery periods or dates refer to the time of handover of the shipment into the custody of the freight forwarder, carrier or other third party entrusted with transport.

5.2.

The start of a delivery time quoted by us is conditional on clarification of all technical questions. A further precondition is fulfilment of all contractual obligations and duties to assist of the Customer in good time and in a due and proper manner. Where samples have to be approved, a further precondition is that the Customer issues approval without delay after submission of the samples or informs us without delay of the reasons for withholding approval.

5.3.

Unless agreed otherwise, deliveries are effected ex works.

5.4.1.

Notwithstanding our rights arising from any delay on the part of the Customer, we may demand that the latter grant us a reasonable extension of periods or dates for the performance of deliveries or services by at least the length of the period in which the Customer has failed to meet his contractual obligations or to fulfil his other duties to assist towards us.

5.4.2.

We may not be held liable for impossibility to deliver or any delay in delivery caused by force majeure or other events which were not foreseeable at the time of conclusion of contract and are beyond our control (e.g. disruptions to business operations, difficulties in the procurement of materials or energy, transport delays, strikes, lawful lockouts, staff, energy or raw material shortages, difficulties in the procurement of any official permits as may be necessary, actions of a public authority). If and insofar as such events seriously impede or render delivery impossible and the impediment is not merely of a temporary nature, we shall have the right to repudiate the contract. In the case of impediments of only a temporary nature, the times or dates of delivery shall be extended by the duration of the impediment plus a reasonable additional restarting-up period. If in the case of deliveries without a firm period or date for delivery the delay would make acceptance of the delivery unreasonable for the Customer or if a firmly agreed period or date for delivery is exceeded by more than 4 weeks, the Customer may, by prompt declaration made to us in writing, repudiate the contract or the unfulfilled part of the contract. In this case, the Customer shall have no further rights, and in particular no right to claim compensation. Except where circumstances of the aforesaid kind are common knowledge, we shall inform the Customer of the occurrence of such circumstances as soon as possible.

5.5

We are entitled to perform part-deliveries and part-services provided that

- the part-delivery is utilisable by the Customer for the contractually agreed intended purpose
- and
- delivery of the ordered goods which are still outstanding is assured
- and
- part-delivery will not give rise to any substantial additional expenses or costs on the part of the Customer, unless we undertake to assume such costs.

5.6.

Unless agreed otherwise (e.g. delivery by a fixed date), we shall only be deemed to be in delay when the Customer has reminded us and allowed us a reasonable additional time for delivery of at least 2 weeks. The period shall begin on receipt by us of the notice allowing us the additional period of time.

5.7.

Should we be in delay with the performance of any delivery or service or should we be unable to perform delivery or service for any reason whatsoever, our liability to furnish compensation shall be limited in accordance with the provisions set forth in Section 9 (Compensation - Liability) below.

5.8.

If we have undertaken to deliver at call, deliveries must, unless agreed otherwise in writing, be called forward not later than 6 months after confirmation of the order. After expiration of the aforesaid period or such other period as may have been agreed, we shall have the right to deliver despite having received no call forward notice from the Customer and to assert our claims. In this case, the Customer has a duty to accept delivery and to effect payment. After receipt of a call forward notice we shall, unless agreed otherwise, deliver within 8 weeks.

## **6. - Passage of Risk - Dispatch - Place of Performance - Packing**

6.1.

The risk shall pass to the Customer on handover of the item of delivery into the custody of the freight forwarder, carrier or other third party entrusted with performing transport, with the time of loading being authoritative. This shall also apply when part-deliveries are made or where we have also undertaken to perform other services. Should dispatch or transfer be delayed due to circumstances caused by the Customer, the risk shall pass to the Customer starting from the day on which we are ready to deliver and have advised the Customer accordingly.

6.2.

Costs of storage arising after the passage of risk shall be borne by the Customer. In the case of storage on our premises, we shall charge a storage fee of 0.25% of the invoice value (net) of the stored items per week or part of a week. This shall be without prejudice to our right to claim for any additional storage costs incurred by us and for which evidence is provided.

6.3.

Unless specified otherwise, the place of performance for all obligations arising from the contract is our main place of business.

6.4.

Consignments will be insured by us against theft, breakage, transport, fire or water damage or other insurable risks only on the Customer's express request and at the Customer's expense.

6.5.

The mode of shipment and the nature of the packing will be decided upon by us at our best discretion.

## **7. - Warranty**

7.1.

The warranty period is 12 months from the passage of risk. In the event of sale of used goods, all warranty and all liability is excluded except in the case of claims for damage to life, limb or health or on grounds of wilful intent or gross negligence.

7.2.

Claims for non-compliance by the Customer shall be dependent on due fulfilment by the Customer of his duties to inspect and notify of defects as specified in § 377 HGB [German Commercial Code].

7.3.

If so requested by us, the item to which the claim refers must be returned to us carriage paid. In the case of justified claims, we shall refund the costs for the cheapest mode of transport; this shall not apply if the costs are increased due to the item of delivery having been taken to a place other than that which it was intended to be used.

7.4.

In the case of an item of delivery being physically defective, we shall have the right and the duty to effect remedy either by repair or replacement; the decision whether to repair or replace shall lie solely with us and must be taken by us within a reasonable time. In the event of failure to remedy, i.e. due to impossibility, unreasonableness, refusal or unreasonable delay in effecting remedy or replacement, the Customer may repudiate the contract or make reasonable deduction from the purchase price or claim compensation or refund of expenses. If we avail ourselves of our right to repair, repair shall be deemed to have failed after two unsuccessful attempts unless determined otherwise in light of the nature of the item or the defect or the other circumstances. This shall be without prejudice to the provisions of §§ 478, 479 BGB (Delivery Redress).

7.5.

Where a defect is due to our fault, the Customer may claim compensation in accordance with the provisions of Section 9 (Compensation - Liability) of these terms and conditions.

7.6.

Warranty will become extinct if the Customer should have modified the item of delivery or caused it to be modified without our consent and remedying

the fault is rendered impossible or made unreasonably more difficult as a result. In this case, the additional costs of remedy arising as a result of the modification shall be borne by the Customer.

7.7.

Where the Customer has the right either under the terms of this contract or on the strength of statutory regulations to repudiate the contract, he has a duty to declare within a period of 2 weeks from being requested to do so by us whether he wishes to repudiate the contract on account of the non-compliance or whether he insists on delivery.

## **8. - Title Rights - Reservation of Title**

8.1.

We reserve title to the goods until settlement in full of all our claims arising from the current business relationship. This reservation of title also extends to payment by the Customer of bills accepted by us on account of payment and shall not cease through cheques being credited to us. We also reserve title until receipt of payment arising from any current account held with us by the Customer. The reservation of title also extends to the acknowledged account balance.

8.2.

Processing or transformation of the item of delivery by the Customer shall always be deemed done on our behalf. Where the item of delivery is combined with other items not belonging to us, we shall have co-title to the new item so created in the same proportion as that between the value of the item of delivery (total invoice amount, VAT included) and that of the other items involved at the time of processing. In all other respects, the same shall apply in respect of the item created through processing as to the goods supplied subject to our reservation of title.

8.3.

Where the item of delivery is inseparably mixed with other items not belonging to us, we shall have co-title to the new item so created in the same proportion as that between the value of the item of delivery (total invoice amount, VAT included) and that of the other items involved at the time of mixing. Where mixing is done in such manner that the Customer's item must be regarded as the main item, it is deemed agreed that the Customer shall assign co-title to us in proportionate amount. The Customer shall thereby preserve the sole title or co-title so arising on our behalf.

8.4.

The Customer is entitled to resell the goods in the ordinary course of business. However, he hereby already assigns to us in the amount of the invoice amount (including VAT) all claims arising from resale to third parties, and we hereby accept the assignment. After assignment, the Customer is entitled to collect the claims for our account until further notice or until such time as he ceases payments or a petition is filed for the opening of insolvency proceedings.

In the event of any delay in payment on the part of the Customer or in the case of cessation of payments and/or trading or in the event of a petition for the opening of insolvency proceedings being filed, we may require that the Customer inform us of the assigned claims and of the parties by whom they are owed and furnish us with all particulars as well as all documents needed for collecting the claims and that he inform the owing parties (third parties) of the assignment. This shall be without prejudice to our right to disclose the assignment and collect the claims ourselves.

Claims which the Customer has assigned to us in the aforesaid context may not be assigned to third parties. The same also applies to hypothecations; assignment by way of security is barred.

8.5.

The Customer has a duty to treat items to which we have sole title or co-title with all due care.

8.6.

The Customer has a duty to inform us without delay of any interference with items to which we have sole or co-title, e.g. in the case of attachment. The same also applies in the event of damage to or destruction of the goods. The Customer must likewise inform us of any change in ownership of the goods or change in the Customer's registered domicile.

8.7.

Should the Customer breach any of the duties set forth in Sections 8.5 and 8.6 above, we shall have the right to demand return of the goods to us; this shall apply even if we do not repudiate the contract at the same time. Taking back of the goods by us shall not be construed as repudiation of the contract on our part unless we expressly declare it in writing as doing so. The foregoing sentences 1 and 2 shall also apply in the event of cessation of trading or payments and – subject to the rights of an administrator in insolvency – in the event of insolvency. Following return of the goods, we shall have the right to exploit the same, in which case the exploitation proceeds, after the deduction of reasonable costs of sale, will be credited towards the Customer's liabilities.

8.8.

We undertake, on the Customer's request, to release the security to which we are entitled in any amount by which the realisable value of the securities held by us exceeds the value of the secured claims by more than 10%; choice of the securities to be released shall lie with us.

## **9. - Compensation - Liability**

9.1.

Our liability for compensation on any legal grounds whatsoever but in particular for impossibility to deliver, delay, non-compliant or wrong delivery, breach of contract, breach of duties in the contract negotiations or tort, is, insofar as it is a question of fault in any of the aforesaid cases, limited in accordance with the provisions of this section.

9.2.

We may not be held liable

9.2.1.

in the case of ordinary negligence on the part of our governing bodies, legal representatives, employees or other vicarious agents,

9.2.2.

in the case of gross negligence on the part of an employee who is not a senior executive or of another vicarious agent, except in cases where material contractual duties are concerned. A material contractual duty lies in particular in the duty to provide timely, defect-free delivery as well as in the provision of advice and the exercise of duties of care intended to enable the Customer to use the item of delivery in the contractually envisaged manner or to ensure the safety of life and limb of the Customer's personnel or of third parties or to preserve the Customer's property from considerable harm.

Our liability for wilful or fraudulent behaviour or for damage to life, limb or health or in the case of express warranty shall be as provided for in statutory regulations. This shall be without prejudice to the provisions of §§ 478, 479 BGB (Delivery Redress).

9.3.1.

Insofar as we have liability for compensation under Section 9.2 above, the amount of our liability shall be limited to the loss or damage which was foreseeable and is typical for transactions of the kind concerned. Indirect or consequential loss or damage arising as a result of defects in the item of delivery are also only eligible for compensation to the extent to which such loss or damage must typically be reckoned with in the event of use of the item of delivery for the purpose and in the manner for which it was intended.

9.3.2.

Where we are liable on grounds of delay in delivery, our liability shall be limited to 3% of the delivery value for each full week of delay and to not more than 15% of the delivery value altogether.

## **10. - Proprietary Rights**

10.1.

Each of the parties hereto will inform the other without delay in writing if any claims should be made against it for infringement of industrial property rights or copyright.

10.2

Where we produce goods or provide services in accordance with the Customer's instructions or specifications, the Customer has a duty to indemnify us against all claims of third parties for infringement of proprietary rights.

## **11. - Final Provisions**

11.1.

The law of the Federal Republic of Germany shall apply. The UN Convention on Contracts for the International Sale of Goods (CISG - Vienna Convention 1980) shall not apply.

11.2.

The contract shall be governed by German procedural law; the contract language is German.

11.3.

The legal venue for all disputes arising from and in connection with the contract shall, at our choice, be either the courts of law having jurisdiction for our place of business or those having jurisdiction for the place of business of the Customer. Except where mandatory statutory provisions relating to exclusive legal venues require otherwise, the sole legal venue for legal action brought against us shall be the courts of law having jurisdiction for our place of business.

11.4.

Attention is drawn to the fact that in the handling of orders, personal data may be stored in accordance with § 28 BDSG [Federal Data Protection Act].