

## General terms and conditions of sale and delivery

### **§1 General**

The following general terms and conditions of sale and delivery apply to all contracts with companies and corporate body under public law. They apply to all purchase contracts. Any inconsistent and divergent general terms and conditions of the buyer or any other restrictions on the part of the buyer are not accepted, unless the seller has given his explicit written approval to them in a particular case.

### **§2 Offers, orders**

- 2.1 Offers of the seller referring to price, quantity, delivery date and subject to availability are without engagement.
- 2.2 If the buyer's order is to be qualified as an offer as defined in § 145 BGB (German Civil Code), then the seller may accept the offer within two weeks. All orders will become binding through written confirmation or through the seller's performance. Supplements, modifications or collateral agreements of any nature require a written confirmation by the seller in order to become effective.

### **§3 Calculation of charges**

- 3.1 The prices charged by the seller are those applying on the date of delivery. All prices are to be understood in euro (EUR) net. Prices shall apply EX Works exclusive of packaging, other incidental costs and plus the respectively valid statutory VAT applicable on the day of conclusion of the contract or the day the order is placed.
- 3.2 In the event of a general price increase between the conclusion of the contract and the delivery on the part of the seller, the buyer is entitled to withdraw from the contract within a time limit of two weeks after the disclosure of price increase, unless the price increase is exclusively based on an increase of freight rates. The right to withdraw from a contract does not apply to long-term supply contracts (continuous obligation contracts).
- 3.3 If the payment in a currency other than euro (foreign currency) has been agreed, the seller reserves the right to reduce or increase his purchase price claim in the foreign currency in the invoice in such manner that the amount of invoice corresponds to the euro equivalent as calculated on the day of conclusion of the contract on the basis of the debt expressed in the foreign currency.
- 3.4 The weighing relevant for the calculation is done by the dispatch office of the seller's factory, unless the buyer demands official railway weighing at the station of departure at his own cost.

### **§4 Payment**

- 4.1 All deliveries shall be effective against invoice. The payment of each invoice is due for payment without deductions within seven calendar days from the invoice date. Compliance with these and all other individually payment periods agreed upon shall be determined by the day the amount due is credited to the seller's account. If the buyer fails to receive the goods on the agreed upon collection date, the payment of the purchase price becomes due before expiry of the same day.
- 4.2 The presentation of bills of exchange requires the seller's consent; bills of exchange shall be accepted on account of payment. The maximum term of a bill of exchange is 90 days from the date of invoice. Discount expenses, bill of exchanges, bill taxes and similar expenses incurred as of thirty days after the due date of the invoice shall be for the buyer's account.
- 4.3 Payments are only deemed as effected when the respective amount is finally available on one of the seller's accounts.
- 4.4 The seller reserves the right to use payments for the settlement of the invoices which have been outstanding longest plus any interest on arrears and costs accrued thereon, in the following order: costs, interest, principal claim.
- 4.5 The withholding of payments on the part of the buyer is excluded. The buyer may only offset against claims that are undisputed or which have been determined as legally valid.
- 4.6 In the event that the buyer is in default of a payment obligation, the seller shall be entitled to withhold further deliveries. Further, the seller is entitled to claim interests in the amount of the rate charged by his relationship bank for open overdrafts, as well as to claim any further dunning costs, at least, however, he shall be entitled to charge default interest at the statutory rate. The assertion of further damages shall remain reserved.
- 4.7 In the event of default in payment or credit unworthiness of the buyer, all claims of the seller shall be due immediately. The seller is then entitled to revoke payment dates and to claim advance payment or other adequate collateral for forthcoming deliveries. The seller is in particular to be considered as unworthy of credit if an application for the opening of insolvency proceedings had been filed, or if the buyer had been removed from the group of insured clients by the seller's credit insurance.
- 4.8 In the event that an arrangement of payment in instalments had been agreed upon, outstanding accounts will be due for immediate payment if the buyer is in arrears with the payment of one instalment.
- 4.9 The seller is authorised to claim advance payment. Objections to invoices shall be submitted by the buyer in writing within eight business days of invoice receipt.

### **§5 Delivery**

- 5.1 The seller always endeavours to deliver as quickly as possible. Fixed delivery times do not exist.
- 5.2 If, in deviation of this, a fixed delivery time has been agreed on and should the seller default with the supply, the buyer shall grant the seller a reasonable respite.
- 5.3 The fulfilment of contract is subject to the complete and timely self-supply of the seller.
- 5.4 The day of delivery is deemed to be the day on which the goods leave the seller's plant or warehouse or, if the day cannot be ascertained, the day on which they are put at the buyer's disposal.
- 5.5 The provision of the seller's packaging including the provision of tank wagons and storage tanks are subject to special conditions.

- 5.6 In case of contracts with partial deliveries (call-off contracts), the buyer's primary contractual obligation is his call-off obligation. No later than two weeks after the expiry of the last deadline for the respective call-off order, the buyer is in default of acceptance and in default of payment without this requiring a special reminder. After expiration of at least three call-off deadlines, the seller is entitled to wholly withdraw from the contract and to claim damages instead of insisting on the fulfilment of the entire contract.
- 5.7 The seller shall in any case, even without an express agreement, be entitled to execute partial deliveries. Short deliveries and excess deliveries of up to 10% of the quantity initially agreed upon in the contract are acceptable and shall be regarded as contract fulfilment.
- 5.8 In the event of performance obstacles beyond the seller's control (particularly in cases of faulty performance caused by suppliers or if his suppliers are in arrears with deliveries), the delivery deadline shall be extended by the duration of these performance interruptions.
- 5.9 If collection of the goods by the buyer is agreed upon, the buyer shall accept the goods within four weeks since the date of the order confirmation, unless the parties agreed otherwise in writing. The buyer is obliged to inform the seller of day and time of the collection as well as of vehicle registration plates of the deployed transport vehicles, at the latest 24 hours prior to the planned collection of the goods. The collection date must be confirmed in writing in a timely manner by the seller. In the event that the buyer's transport vehicle appears three hours before or three hours after the agreed collection date, the buyer shall be charged a cost lump sum of 200.00 euros gross for the additional expenditures incurred. The buyer may supply proof of lower expenditure, the seller may furnish proof of higher expenditure.
- 5.10 If delays in delivery, collection or provision of goods is caused by the seller or a third party, and resulting from circumstances for which the buyer is responsible, the buyer is obliged to refund the storage costs incurred with the expiry of the first day of delay since the day on which the goods were ready for dispatch. Further claims resulting from default of acceptance or from other circumstances for which the buyer may be held responsible, remain unaffected.

## **§6 Force majeure and contract obstacles**

Force majeure of any kind, unforeseeable operational, traffic or shipping disturbances, war, acts of terror, fire damages, floods, unforeseeable workforce, energy, raw material or auxiliary material shortages, strikes, lockouts, governmental decrees or any other obstacles not attributable to the contractual party, which reduce, delay or prevent performance, shipment, acceptance or consumption or make the obligation to perform unreasonable, release the party affected from the obligation of performance or acceptance to the extent of the incident and for its duration. If due to the disturbance, shipment and/or acceptance exceed more than eight weeks; both parties are entitled to withdraw from the contract. In case of partial or complete cessation of supply sources, the seller is not obliged to purchase the shortfall from third party suppliers. In such cases, the seller has the right to distribute the available quantity of goods among his customers while taking into account his own requirements.

## **§7 Shipment**

- 7.1 The seller reserves the right to choose the way of shipping and dispatch type. Additional costs caused by special shipping requests of the buyer are at buyer's expense. The same applies to increases of shipment rates occurring after contract conclusion, possible extra costs for rerouting, warehousing, etc., unless fright free delivery has been agreed on.
- 7.2 The risk of destruction, loss or damage of the goods shall be passed to the buyer at the time of handover of the goods to the transport company or person. This also applies if the seller is covering shipping costs. In the event that the buyer is collecting the goods, the aforementioned risk shall be passed to the buyer at the time the goods are placed at disposal for shipment or with the expiry of the agreed collection date.
- 7.3 Goods that have not been accepted or collected in a timely manner, shall be stored at the buyer's expense and risk.

## **§8 Retention of title**

- 8.1 Delivered goods shall fully remain under seller's property until all receivables connected with the relevant legal relationship, on whatever legal grounds, have been fully paid including secondary claims, claims for damages, honouring checks and bills of exchange. Exclusion of the property remains also after individual receivables of the seller are included into the running account and the balance is determined and acknowledged.
- 8.2 In case of buyer's default in fulfilment of obligations towards the seller, the seller is entitled, without setting a period of grace and without declaration of withdrawal from the contract, to demand the surrender of reserved goods. Repossession of the reserved goods only means withdrawal from the contract if the seller has expressly declared this in writing. In the event that the seller withdraws from the contract, he can demand an appropriate compensation for having permitted the use of the merchandise for a certain period of time.
- 8.3 In case of processing of the reserved goods, the buyer acts on behalf of the seller, however without gaining any claims against the seller for the processing. The seller's retention of title also extends to products resulting from processing. If the reserved goods are processed together with other goods being the property of third parties, or if the reserved goods are mixed or combined with goods being the property of third parties, the seller acquires co-ownership of the resulting objects in proportion of the invoice value of the reserved goods to the other processed or mixed goods. If the mixing or composition is of principal substance of the buyer, the buyer surrenders his property rights of the new resulting item to the seller.
- 8.4 The buyer is bound to provide adequate storage of the reserved goods for the seller, maintain and repair them at his expense and to insure the same at his expense against loss and damage to the extent which may reasonably be expected of a prudent businessman. The buyer hereby surrenders in advance his claims from insurance contracts to the seller.
- 8.5 As long as the buyer properly fulfils his obligations towards the seller, the buyer is entitled to dispose of the reserved goods in the orderly course of business; this entitlement does however not apply if and in so far as a prohibition of assignment is agreed between the buyer and his customers concerning the selling price claim. The buyer is not authorized to dispose of the goods subject to reservation, in particular of pledge, assignment by way of chattel mortgage or otherwise encumber the reserved goods. In case of resale, the passage of the title is dependent on full payment of the purchased goods by buyer's customers.
- 8.6 By accepting these conditions, the buyer assigns in advance to the seller any claims that may arise from resale of the goods of which the seller retains title, together with any incidental rights and security interests including bills of exchange and checks, so as to provide the seller with security for all claims he has on the buyer as result of the business connection. If goods to which the seller retains title are sold together with other goods at a single price, the assignment shall be limited to the portion of the invoice value

which covers the goods to which the seller retains title. If the buyer sells goods subject to retention of title of which the seller has co-ownership according to clause 8.3, the assignment shall be limited to the portion of the invoice value which corresponds to the seller's co-ownership. If the buyer uses goods subject to retention of title for processing a third party's product on a contract basis, he assigns in advance his contractual claim on the third party to the seller in order to provide the seller with security for his claim. As long as the buyer fulfils his respective obligations to the seller in time, the buyer may collect claims from a resale or from contract processing. The buyer has no right to pledge or to undertake any assignments.

- 8.7 If the seller believes his claims to be at risk, the buyer shall, at the seller's request, inform his customers of the assignment of his claims to the seller and supply the seller with all necessary information and documents. The buyer must inform the seller immediately of any possible accessing of the goods to which the seller retains title by third parties and assigned claims.
- 8.8 If the value of the security provided to the seller exceeds the value of the claims to be safeguarded by more than 20 %, the seller shall, at the buyer's request, release security of his own choice accordingly.

## **§9 Damages**

- 9.1 Claims of the buyer for damages- including of a non-contractual nature- against the seller, his employees and other vicarious agents are excluded in cases of slightly negligent violation of obligations by the seller, his employees and other vicarious agents, unless the violation concerns an obligation of fundamental importance for achievement of the purpose of the contract. Significant obligations are such obligations that shall be understood as those obligations whose fulfilment is crucial for the proper performance of the contract and on which the client regularly relies and may rely.
- 9.2 The seller shall only be liable for indirect damage or damage that could not be foreseen at the time of conclusion of the contract if such damage is due to a gross fault on the part of the seller, his managerial employees or other vicarious agents.
- 9.3 The above limitations do not apply to damages resulting from death, injury or damage to health. However, this shall not affect the applicability of compelling statutory liability regulations such as liability for the assumption of a guarantee or product liability law.

## **§10 Notification of defects**

- 10.1 Noticeable defects, particularly wrong or defective deliveries that differ from the authorised short delivery or excess delivery shall be specified and reported to the seller in writing within seven business days after handover to the transport company or person and before treatment or processing of the goods. The buyer bears the burden of proof if defects exist at the time the risk is passed. A corresponding notification of defects shall only be recognized if filed in writing together with supporting evidence, samples, packaging slips, as well as stating the invoice number, the invoice date and the markings on the packaging.
- 10.2 In case of hidden defects, the written notice must be made immediately upon discovery. The buyer shall carry the burden of proof that a hidden defect exists.
- 10.3 Rejected goods may only be returned with the explicit consent of the seller.

## **§11 Buyer's rights in the event of defects**

- 11.1 Defect claims of the buyer are restricted to the right of rectification of defects. If the seller fails to fulfil rectification of defects, the buyer is entitled to reduce the purchase price or to opt for withdrawal from the contract. Any claims for damages pursuant to section 9 remain hereof unaffected. Claims by the buyer for the purpose of subsequently fulfilling necessary expenses, especially transportation, routing, labour and material costs are excluded to the extent that such expenses increase because the delivered item has subsequently been relocated to another place than the buyer's headquarters or the commercial establishment, unless the delivery complies with the intended use of the product. The cost of upgrading a defective good or reassembly of goods free of defects are non-refundable.
- 11.2 If the guarantee involves recourse of the buyer following a successful claim against the latter under the terms and conditions of sale of consumer goods, the recourse claims based on the regulations concerning the sale of consumer goods shall remain unaffected. Section 9 shall apply to any claim for damages.
- 11.3 The buyer must inform the seller without delay of any case of recourse within the supply chain. The buyer has statutory rights of recourse against the seller only in so far as the buyer has not reached any agreements with his customer which go beyond the statutory claims for defects.
- 11.4 Any guarantee agreement must be made in writing. A statement of guarantee shall only be effective if it describes the content of the guarantee, as well as the duration and physical scope of guarantee protection in sufficient detail.
- 11.5 The seller accepts no warranty that the goods delivered by him are free from third party industrial property rights.
- 11.6 The seller accepts no liability for damages caused by inappropriate or improper use, incorrect or negligent treatment (e.g. outdoor storage) or excessive operational demands (e.g. processing at excessively high temperatures) of the contractual goods.

## **§12 Periods of limitation**

Warranty claims shall expire with effect from one year from the beginning of the statutory period of limitation, unless the goods are items which in accordance with their normal use, have been used for a building structure and have caused the defectiveness of this structure. In this case warranty claims shall expire with effect from two years from the beginning of the statutory period of limitation. Compelling regulations governing the statutory period of limitation and the question of liability such as liability for the assumption of a guarantee, liability for wilful intent and gross negligence, for death, physical injury or damage to health, for the violation of essential contractual obligations, liability in accordance with the product liability law and the regulations relating to the sale of consumer goods shall remain unaffected.

## **§13 Properties of goods, technical support, use and processing**

- 13.1 The properties of goods shall as a general rule only include the properties as stated in the product description, specifications and labelling of the seller. Public statements, claims or advertising shall not be classed as information on the properties of the item for sale.
- 13.2 Technical advice provided by the seller verbally, in writing or by way of trials is given in good faith but without warranty, and this shall also apply where propriety rights of third parties are involved. The seller's technical advice shall not release the buyer from the obligation to test the products supplied by the seller as to their suitability for the intended processes and uses. The application, use and processing of the products are beyond the seller's control and therefore entirely the buyer's responsibility.

**§14 Trademarks**

- 14.1 It is not allowed to offer or supply third parties with substitute products in place of seller's products and simultaneously refer to these products, or to combine product names of seller, whether protected or not, with the word "substitute" or to contrast those with the name of substitute products in price lists or similar business documents.
- 14.2 It is further not permitted when using seller's products for manufacturing purpose or further processing, to use seller's product designations, in particular seller's trademarks on such goods or their packaging or in printed format and advertising material without seller's prior written consent, in particular as a specification of a part. The supply of products under a trademark shall not be deemed agreement to use of this trademark for the products manufactured therefrom.

**§15 Applicable law, interpretation of trade terms, etc.**

- 15.1 German law applies. Application of the Uniform Law on the International Sale of Goods and the Uniform Law on the Formation of Contracts for the International Sale of Goods-both dated July 17, 1973- and of the United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980 shall be excluded.
- 15.2 Customary trade terms shall be interpreted in accordance with the Incoterms effective at the time.
- 15.3 Even if it has been agreed that the seller pays the customs and import duties in the country of destination, any increase in such duties which become effective between the date of the order acknowledgement and delivery of the goods shall be borne by the buyer. All other charges, taxes, and costs related to the purchase contract shall also be borne by the buyer.

**§16 Place of performance and jurisdiction; validity clause**

- 16.1 Place of performance for delivery shall be the respective dispatch department. Place of payment shall be Merseburg.
- 16.2 Place of jurisdiction for both shall be Halle/Saale. The seller is also entitled to assert his claims at the general place of jurisdiction of the buyer.
- 16.3 Should any clause in these general terms and conditions of sale and delivery be or become fully or partly invalid, this shall not affect the validity of the remaining clauses or remaining parts of the clause concerned. The parties shall replace any invalid arrangement by an effective one which conforms as far as possible to the economic purpose of the invalid clause.

Merseburg, January 2015