

## **General Conditions of Performance and Delivery**

### **1. Scope of Application**

All our sales and other supplies and services to merchants shall exclusively be governed by the following General Conditions of Performance and Delivery unless otherwise agreed upon in each individual case. Any deviating conditions or confirmations of the Customer shall be applicable only if, and to the extent that, we have given our express written consent. In particular, our silence to such deviating conditions of the Customer shall not be construed as acknowledgement or consent. Such deviating conditions or confirmations of the Customer are hereby expressly objected to.

### **2. Offers and Acceptances, Scope of Supply**

**2.1** Our offers are subject to change without notice. The Customer shall be bound by his order for 2 weeks. An order shall be deemed to be accepted only if we have acknowledged the order in writing or if the goods have been delivered by us. In case of immediate delivery by us, the written acknowledgement of the order may, however, be replaced by our invoice.

**2.2** Any side agreements, express warranties and all other arrangements shall be effective only if expressly confirmed by us in writing.

**2.3** The scope of supply shall be subject to our written confirmation. Any reference to standards, similar technical rules, other technical specifications, descriptions and illustrations of the delivery item in offers and sales literature shall be considered a description only and not an express warranty of certain characteristics of the delivery item. Certain properties of goods shall, in principle, only be deemed expressly warranted by us if expressly confirmed in writing.

**2.4** Call orders as well as their changes and additions request the written form. Electronic data transfer (e.g. e-mail, fax etc.) is acceptable.

**2.5** Orders have to be placed in written form. Alternative it shall be enough if the Customer send back the signed confirmation. Orders by phone can not be executed as long the confirmation in written is missing.

**2.6** We reserve the right to modify in technical respects the goods to be supplied if, and to the extent that, such technical modifications do not have any negative impact, and that the Customer can be reasonably expected to accept them.

### **3. Prices**

**3.1** All prices are exclusive of any applicable Value Added Tax, which shall be borne by the Customer, and costs of freight for orders lower than minimum order quantity.

**3.2** The costs of freight have to be asked for individual cases.

**3.3** In case any freight, insurance costs or public charges and duties (e.g. customs duties, import and export fees) are introduced or increased, we shall be entitled, even in case of delivery with carriage and customs duties paid, to increase the purchase price agreed upon by such additional charges.

**3.4** Any increase of the costs for the purchase of material, wages and indirect labour costs as well as energy costs may be considered in our prices provided a period of at least 1 month is between formation of the contract and the delivery date.

### **4. Weights and Measures**

**4.1** Any deviations in weights and measures within the limits of customary tolerances and relevant DIN standards shall be permitted.

In addition, we reserve the right to modify weights and measures in the course of technical developments, standardization works and production possibilities if and to the extent that the intended use according to the order is not impaired thereby.

**4.2** The delivery weights and number of units determined by us shall be prevailing for invoicing purposes.



## **5. Time of Delivery**

**5.1** Delivery dates and periods shall be agreed upon expressly and in writing in order to be binding. In case of any delivery dates and periods which are subject to change or only approximate indications (e.g. app., about, etc.), we shall use our best efforts to comply with them.

**5.2** The delivery periods shall begin either when our order confirmation is received by the Customer or after all details of the order and its execution have been agreed upon and all prerequisites to be fulfilled by the Customer have been complied with, whichever is later; the same shall apply to any delivery dates.

**5.3** It shall be allowed to effect deliveries prior to expiration of the delivery period. The delivery date shall be the day of our notice that we are ready to dispatch the goods, otherwise the day of the dispatch itself. We are entitled to make partial deliveries.

**5.4** If we are in default with delivery, the Customer shall be entitled to set a reasonable respite period and to withdraw from the contract, either in whole or in part, after such respite period has expired without delivery having been made. Any claims for damages because of default or non-performance - irrespective of the reason thereof - may be asserted in accordance with the provisions set out in Sec. 12 only.

**5.5** We shall not be in default as long as the Customer is in default with the performance of any of his obligations towards us, including obligations arising out of any other contracts.

## **6. Reservation of Self-Supply, Force Majeure and Other Obstacles, Import and Export Licences**

**6.1** In case of non-delivery, incorrect or delayed delivery or non-performance, incorrect or delayed performance of any services by our suppliers for reasons beyond our responsibility or in any event of force majeure, we shall be entitled to delay the delivery for the period of such obstruction or withdraw from the contract, either in whole or in part, with respect to the part yet outstanding. Force majeure shall also be strikes, lock-outs, administrative orders and actions, shortage of energy and raw material, shortage of transport capacity, business obstacles beyond our responsibility, e.g. by fire, flood, destruction of machinery, and any other obstacles that, from an objective point of view, have not been caused by our fault. The above provisions shall also apply if any circumstances should arise which have been mentioned therein and led to a default on our part. The costs caused by the delay shall be borne by the Customer.

**6.2** If a binding delivery date or period has been agreed upon and because of an event as described in sec. 6.1 above such delivery date or period is exceeded, the Customer may require us to declare within a period of two weeks whether we want to withdraw from the contract or effect delivery within a reasonable respite period. If we do not make a declaration, the Customer shall be entitled to withdraw from the part of the contract yet outstanding.

## **7. Dispatch, Passing of Risk**

**7.1** Unless otherwise agreed upon in writing, the goods are dispatched by us uninsured at Customer's risk and expense. We reserve the right to choose the route and means of transportation.

**7.2** Risk shall pass to the Customer upon surrender of the goods to be supplied to the Customer, the forwarding agent, the carrier or any other enterprise charged with the execution of the dispatch, but not later than upon leaving our plant, the warehouse or the branch office. This shall also apply if we have undertaken to effect the delivery ourselves. Any damages occurred during transportation shall immediately be taken down on the delivery note and confirmed by the carrier or quoted by the railway company or post office in case of transportation by rail or mail in order to assert claims for damages. Any transportation insurance policies are taken out by us only upon the Customer's special request and at his expense.

**7.3** Any goods reported ready and due for dispatch have to be called by the Customer without undue delay. If goods ready for dispatch are not called and accepted without undue delay, we shall be entitled at our discretion either to dispatch the goods or stock them at Customer's risk and expense.

**7.4** It is generally excluded to return any ordered goods with have been duly delivered.

## **8. Notifications of Defects**

The Customer or the consignee designated by the Customer shall inspect the goods immediately upon receipt. Open defects - including the absence of any properties expressly warranted - shall be immediately notified in writing, but not later than within a period of 14 days upon receipt of the goods; any hidden defects shall be immediately notified upon their detection but not later than within a period of 14 days upon detection. If the Customer refrains from making such notification in due form and time, the goods shall be deemed to have been approved of. The date of our receipt of the notification shall be decisive for the observance of the prescribed period.

## **9. Warranty**

**9.1** All warranties, conditions and other terms implied by statute or common law

**9.2** If complaints of defects are justified, we shall at our option either deliver components necessary to remedy the defects or repair the defective goods, both at no cost to the Customer.

**9.3** Any other claims for damages of the Customer because of, or in connection with, defects or consequential damages based on defects, irrespective of their legal basis, shall exist in accordance with the provisions laid down in sec. 12.

## **10. Terms of Payment**

**10.1** Goods supplied shall be payable in shown currency not later than upon the due date of the invoice, postage and any other charges paid, or in the absence of fixed due date, within 30 days following the invoice date without any deductions. On all invoices due interest at the rate based on value legal regulations will be charged per day. The date of payment shall be the date when the money is received by us or credited to our account. The right to assert any further claims for damages in case of default in payment shall remain unaffected.

**10.3** If any of the terms of payment have not been observed or if we learn of circumstances which in our reasonable business judgment give rise to justified doubts regarding the Customer's creditworthiness, including any facts already existing upon formation of the contract but not known to us at that time, we shall be entitled in such cases, notwithstanding any further legal claims, to require prepayment or a reasonable security before making any further supplies or deliveries then still outstanding. After having set a reasonable respite period for providing any such securities, we may withdraw from the contract or claim for damages because of non-performance. In addition, we shall be entitled to prohibit any resale or processing of any goods in our property or joint property and demand their return to us or the granting of any joint ownership at Customer's expense. Such a demand shall not be deemed a rescission of the contract if and to the extent legally permitted.

**10.4** The Customer may exercise a right of retention or set-off only with respect to such counter-claims which have not been disputed or finally adjudged. We shall be entitled to declare a set-off even if the mutual claims to be set off arose in different currencies. In such case the medium exchange rate as officially fixed on the Currency Exchange in Frankfurt on the day of set-off shall be deemed applicable for conversion.

## **11. Retention of Title**

**11.1** We shall retain title to all goods supplied by us until all our claims out of the business relationship with the Customer have been duly settled, including all future claims out of subsequent contracts and all claims for recourse or for indemnification in connection with bills of exchange and cheques. This shall equally apply where any or all of our claims have been included in a current account and the balance has been drawn and is in our favour.

**11.2** The Customer shall insure the goods under retention of title sufficiently, in particular against fire and theft. Any claims against the insurance company regarding the goods under retention of title shall hereby already be assigned to us in the amount of the value of the goods under retention of title.

**11.3** Any treatment and processing of goods under retention of title shall be effected for us as the producer pursuant to Sec. 950 of the German Civil Code (BGB) without any obligation on our part, however. If our



goods are processed or commingled with other objects not being in our property so that they become an integral part of a whole, we shall acquire co-ownership to the new object in proportion of the invoice value of our goods to the invoice values of the other objects processed or commingled. If our goods are commingled with other movable objects so that they become an integral part of a whole which has to be considered the main object, the Customer shall hereby already assign to us the co-ownership in the same proportion. The Customer shall keep the new object in our possession or co-possession free of any charge. The rights of co-ownership arising there from shall be deemed as goods under retention of title. Upon our request, the Customer shall be obliged, however, to give us the information required to safeguard our rights of ownership or co-ownership.

**11.4** The Customer shall be entitled to resell the supplied goods in the ordinary course of business. Any other dispositions, in particular pledging or granting of equitable lien, shall not be allowed to him. If the goods under retention of title are not immediately paid by the third buyer in case of any resale, the Customer in turn shall be obliged to resell the goods only under retention of title. The right to resale or to treatment and processing of the goods under retention of title shall not exist if the Customer discontinues payment or is in default with any payment towards us.

**11.5** The Customer hereby assigns to us all claims against the final consumer or against any third parties, including any securities and ancillary rights, arising out of, or in connection with, any resale of the goods under retention of title. He shall not be entitled to enter into any agreement with his customers which might exclude or impair our rights in any manner whatsoever or eliminate the anticipatory assignment of the claim. In case of the sale of goods under retention of title with other objects, the claim against the third buyer is deemed assigned to us in the amount of the delivery price agreed between us and the Customer unless the amounts for the individual goods can be inferred from the invoice. In case of the sale of co-ownership shares as goods under retention of title, the claim out of the resale is deemed assigned in the amount of our co-ownership share.

**11.6** The Customer shall remain entitled to collect the claim assigned to us until our revocation which shall be allowed at any time. Upon our request, he shall furnish any information and documents required for the collection of claims assigned, and immediately notify his customers of the assignment, if we do not effect the notification ourselves.

**11.7** In the event that the claims arising out of the resale of the goods under retention of title are included by the Customer in a current account relationship with his customers, he hereby already now assigns to us any acknowledged or final balance to his favour in the amount equalling the aggregate sum of the claims from the resale of our goods under retention of title included in the current account relationship.

**11.8** If the Customer has already assigned any claims out of the resale of the goods supplied or to be supplied by us to any third parties, in particular due to factoring with or without recourse, or if he has entered into any other agreements under which our present or future security rights pursuant to Sec. 11 might be impaired, he shall immediately notify us thereof. In case of factoring with recourse, we shall be entitled to withdraw from the contract and to demand the return of the goods already supplied; the same shall apply in case of factoring without recourse if the Customer cannot freely dispose of the purchase price of the claim under the contract with the factor.

**11.9** In case of breach of contract by the Customer, in particular in case of default with any payment, we may take back all goods under retention of title; in this case, the Customer shall be obliged to return such goods without any further action required by us. We shall be granted access to the business premises of the Customer at any time during normal business hours in order to determine the inventory of the goods supplied by us. The taking back of any goods under retention of title shall be considered a withdrawal from the contract only if we expressly declare so in writing or if mandatory statutory provisions so stipulate. The Customer shall immediately inform us in writing of any actions by third parties against the goods under retention of title or against the claims assigned to us.



**11.10** Should the value of the securities established in our favour by virtue of the foregoing provisions exceed our aggregate secured claims by more than 20 %, we shall upon Customer's request release securities at our own choice to the extent of such excess.

## **12. Exclusion and Limitation of Liability**

**12.1** Our obligation to payment of damages, whatever legal reason for, shall be limited to the value of the goods directly having caused those damages. This does not apply where, due to compulsory statutory legislation, we are liable for wilfulness or gross negligent respectively have expressly guaranteed any properties of the goods in writing and where, due to compulsory statutory provisions of the German product liability act we are liable. This likewise does not apply to the liability for damages from the injury of the life, the body or the health which are based on a careless duty injury. Requirements of the buyer because of the expenditures, in particular transport -, way -, wages and material costs necessary to remedy the damage, are impossible, as far as the expenditures increase, because the subject of the supply was later spent to another place than the place of delivery agreed upon with conclusion of a contract.

**12.2** In the event of liability under Sec. 12.1 hereof and strict liability, in particular in case of initial impossibility and legal defects, we shall be liable for the typical and foreseeable damage only.

**12.3** The buyer shall decide on the use of the goods supplied or other services rendered by us in his own responsibility. Unless we have confirmed in writing specific properties and suitability of the products for a purpose stipulated by contract, any advice concerning the technical application shall not be binding in any case. We shall also be liable pursuant to Sec. 12.1 for any advice given or not given which does not refer to the properties and applicability of the product supplied.

**12.4** The exclusion of liability under Secs. 12.1 to 12.3 shall also apply to the same extent with respect to our management, legal representatives, executives and non-executives, employees and other agents.

**12.5** The above provisions laid down in Secs. 12.1 to 12.4 shall not be applicable if we are held liable under the Act On The Liability For Defective Products - Product Liability Act.

## **13. Place of Performance, Venue, Applicable Law**

**13.1** Place of performance for all contractual obligations shall be the domicile of our company. The competent courts at the domicile of our company shall have exclusive jurisdiction for all disputes including all proceedings concerning bills of exchange and cheques. We shall, however, also be entitled to sue the Customer at his general venue.

**13.2** In case of dispute, the German version of these General Conditions of Sale and Delivery shall prevail.

**13.3** All legal relations between the Customer and us shall be exclusively governed by the laws of the Federal Republic of Germany.

## **14. Severability**

Should individual provisions of this contract be or become invalid, the remaining provisions shall continue to be in full force and effect. The invalid provision shall automatically be replaced by such other provision coming as close as possible - to the legally permissible extent - to the economic meaning and purpose of the invalid provision.

Düsseldorf, in September 2012