

## Allgemeine Geschäftsbedingungen

### General Terms and Conditions of Trade

#### Scope

1. The Conditions of Sale defined in the following shall apply for all contracts concluded between the Purchaser and us for the delivery of goods. They shall also apply for all future business relations, even in such cases in which they have not been expressly agreed anew. Deviating conditions of the Purchaser that we do not expressly recognize shall remain noncommittal for us, even in cases in which we do not expressly reject them. The following Conditions of Sale shall also apply in cases in which we unreservedly execute the Purchaser's order in knowledge of contradictory conditions or of conditions of the Purchaser that deviate from our conditions.

The INCOTERMS shall also apply supplementary to these Conditions of Delivery and Payment.

2. In the contracts, all agreements made between the Purchaser and us for the execution of the purchase contracts shall be laid down in writing.

#### Offer and conclusion of contracts

1. We shall accept an order placed by the Purchaser that can be qualified as a tender for the conclusion of a purchase contract by sending confirmation of the order within four weeks or else by dispatching the ordered products within the same period.

2. Our offers shall be subject to confirmation and noncommittal, unless we have expressly described them as committal.

3. We reserve our property, copyright, and all other patent-protection rights to all diagrams, calculations, drawings, and other documents. The Purchaser may pass these on to third parties only with our express consent, irrespective of whether we have marked them as confidential or not.

#### Terms of payment

1. Our prices are ex-works and do not include packaging unless specified otherwise in the order confirmation. Our prices are subject to statutory VAT. The prices currently applicable at the time of delivery shall apply for all surcharges that are calculated separately in supplement to the main order.

2. Deduction of discount shall be permitted only subject to separate written agreement between us and the Purchaser. The purchase price is due for payment net (without deduction) immediately on receipt of the invoice by the Purchaser, unless a different term of payment is provided for by the order confirmation. Payment shall be deemed complete when the amount is at our disposal. In the case of payment by cheque, payment shall be deemed complete when the cheque has been finally cleared.

3. In the event of default on payment by the Purchaser, the legal regulations shall apply.

4. The Purchaser shall be entitled to offset payments – even in the event of notification of defects or of counterclaims – only in cases in which the counterclaims are legally effective, have been recognized by us, or are indisputable. The Purchaser shall be entitled to assert his right of retention only when his counterclaim is based on the same contractual relationship.

#### Term of delivery and performance

1. Delivery dates or deadlines that have not been expressly declared committal shall without exception be noncommittal. Our stated delivery term shall start only upon complete clarification of all details of the order, including shipment to the customer and with the availability of all necessary documents of official approval. The Purchaser shall be obliged to fulfil all duties of cooperation imposed on him regarding the proper and prompt procurement of such documents of approval.

2. In the case that the underlying Purchase Contract concerns a fixed-date transaction as per the terms of § 286 para 2 subpara 4 BGB (German Civil Code) or of § 376 HGB (German Commercial Code), we shall be liable for default/delay according to the statutory regulations. This shall also apply in the case that the Purchaser is entitled to claim the cessation of his interest in the continuation of the performance of the Contract as a result of default on delivery for which we are responsible. In this case liability shall be limited to the foreseeable, claims that typically occur when the delivery default is not due to an intentional violation of the Contract for which we are responsible and for which our representatives or vicarious agents can be deemed accountable.

We shall be equally liable to the Purchaser for delivery default as per the statutory regulations in the case that this is due to an intentional or negligent violation of the Contract for which we are responsible and for which our representatives or vicarious agents can be deemed accountable. Our liability shall

be limited to the foreseeable claims that typically occur when the delivery default is not due to an intentional violation of the Contract for which we are responsible.

3. For the case that a delivery default for which we are responsible is due to a culpable violation of a material contractual obligation that can be deemed due to the fault of our representatives or vicarious agents, we shall be liable as per the statutory regulations under the condition that in such a case the liability for compensation is limited to the foreseeable, typically occurring damage.

4. All further liability for delivery default for which we are responsible is excluded. The Purchaser's further statutory claims and rights to which he is entitled in addition to the claim for damages due to delivery default for which we are responsible shall remain unaffected.

5. We shall be entitled to make partial deliveries and render partial services to the extent that this is not deemed unreasonable for the Customer.

6. In the event that the Purchaser defaults on acceptance, we shall be entitled to demand compensation for the resultant damage and for any extra expenses that arise. This shall also apply in the case that the Purchaser culpably violates any of his duties of cooperation. The risk of accidental deterioration and accidental loss shall pass to the Purchaser at the latest with the default of acceptance or payment.

### **Passage of risk – shipment/packaging**

1. Goods shall be loaded and shipped uninsured ex works at the Purchaser's own risk. We shall endeavour to take the Purchaser's special requests and interests regarding the type and mode of shipment into due consideration; any additional expenses – also regarding pre-agreed freight and carriage paid – that are incurred shall be charged to the Purchaser.

2. We do not take back packaging materials used for transport or other purposes. The Purchaser shall be responsible for the disposal of packaging materials at his own expense.

3. In the event of a delay of the shipment at the request of or due to the fault of the Purchaser, we shall put the goods into interim storage at the expense and risk of the Purchaser. In this case the notification to the Purchaser that the goods are ready for dispatch shall equate to dispatch.

4. At the Purchaser's request and expense, we shall insure the shipment by taking out a corresponding transport-insurance policy.

### **Warranty/liability**

1. Claims for defects may be asserted by the Purchaser only when he has properly fulfilled his duties regarding the inspection of the goods and the notification of complaints required as per § 377 HGB.

2. In the event of a product defect for which we are responsible, then – under the exclusion of the rights of the Purchaser to withdraw from the Contract or to demand a reduction of the purchase price (rebate) – we shall be obliged to remedy the defect by way of providing subsequent fulfilment, unless we are entitled to refuse to provide such subsequent fulfilment in accordance with statutory regulations. The Purchaser shall grant us an appropriate period of time for us to provide subsequent fulfilment. At our discretion, such subsequent fulfilment may take the form of remedying the defect (rework) or delivery of a new product. In the case of remedying the defect we shall bear the costs involved to the extent that these do not increase as a result of the item of this Contract being in a place other than the place of fulfilment.

In the event that the subsequent fulfilment is unsuccessful, the Purchaser shall be entitled as his own discretion to demand a reduction in the purchase price (rebate) or else to declare his withdrawal from the Contract. A rework shall be deemed unsuccessful following the failure of a second attempt unless – given the nature of the object of the Contract – further rework attempts are deemed appropriate and can be reasonably expected of the Purchaser. The Purchaser shall be entitled to assert claims for damages resulting from the defect under the following conditions only when subsequent fulfilment has failed. This shall have no effect on the Purchaser's right to assert further claims for damages under the following conditions.

3. The Purchaser's warranty rights shall expire one year after the delivery of the goods to the Purchaser, under the condition that we have not fraudulently concealed the defect in question; the statutory regulations shall apply in this case. This shall have no effect on our duties as per Section VI item 4 and Section VI item 5.

4. In accordance with the statutory regulations we shall be obliged to take back the new goods or, respectively, to grant a reduction (rebate) in the purchase price without having to observe the otherwise required period of notice when the customer of the Purchaser as the user of the sold, new movable item (sale of a consumable item) demands that the Purchaser take back the product or, respectively, grant a reduction (rebate) in the purchase price due a defect of the item, or that the Purchaser is confronted with such a demand to take back the item/grant a rebate. We shall furthermore be obliged to reimburse the Purchaser's expenditures, in particular his expenses for transport, travel, work, and materials that the latter has borne in his relationship with the end-user in connection with the subsequent fulfilment regarding a product defect existing at the time of passage of the risk from us to the Purchaser. The right shall not apply in the case that the Purchaser has properly fulfilled his duties regarding the inspection of the goods and the notification of complaints required as per § 377 HGB.

5. We shall be discharged from our obligation as per Section VI item 4 in the case that the defect is one based on promotional claims or other contractual agreements that did not originate from us, or that the Purchaser has given the end-user a special warranty. We shall also be discharged from our obligation in the case that the Purchaser was not himself under any obligation towards the end-user under the statutory regulations regarding the exercise of such warranty rights, or that that he failed to give notice of defects in respect of a claim made on him. This shall also apply in the case that the Purchaser gave the end-user a warranty that extended beyond that required by law.

6. We shall be liable without reservation, pursuant to the relevant statutory regulations, for physical injury or injury to life or health arising from negligent or wilful breach of duty on the part of ourselves, our legal representatives, or our vicarious agents, as well as for losses or damages for which we are liable under the Product Liability Act. We shall be liable pursuant to the relevant legal provisions for losses or damages that are not included in Sentence 1 arising from wilful or grossly negligent violations of the Contract or fraudulent intent on the part of ourselves, our legal representatives, or our vicarious agents. In this case, however, liability for compensation shall be restricted to foreseeable, typical losses or damages provided that we, our legal representatives, or our vicarious agents have not acted with malicious intent. In the event that we have guaranteed a particular characteristic or service life for goods or a part or parts thereof, we shall also be liable within the terms of this warranty. However, we shall only be liable for losses or damages arising from the lack of a particular characteristic or service life that is not apparent in the goods themselves if the risk of such losses or damages is

clearly covered by the guarantee of characteristics and service life.

7. We shall also be liable for losses or damages caused by simple negligence to the extent that the negligence pertains to the violation of those contractual duties the observance of which is of particular importance for the intent of the Contract to be achieved (cardinal duties). We shall, however, only be liable to the extent that the losses or damages are typical and foreseeable under the Contract.

8. No further liability shall be entertained, irrespective of the legal status of the claim being asserted; this applies in particular to claims in tort or claims for the reimbursement of fruitless expenses in lieu of performance; this shall have no effect on our liability as per Section IV item 2 thru Section IV item 4 of this Contract. Wherever our liability is excluded or restricted, this shall also apply to the personal liability of our employees, staff members, associates, representatives, and vicarious agents.

9. Warranty claims on the part of the Purchaser for reasons of defect shall expire one year after delivery of the goods. This shall not apply in the case of physical injury or injury to life or health for which we, our legal representatives, or our vicarious agents are accountable, or if we or our legal representatives have acted wilfully or with gross negligence, or if our simple vicarious agents have acted with malicious intent.

### **Retention of title**

1. We shall retain the proprietary rights to the delivered goods (goods subject to retention of title) until all current and future claims from the business transaction with the Purchaser have been met, including all balance claims on current account. In the event that the Purchaser violates the Contract, for instance by defaulting on payment, we shall be entitled, after first setting a reasonable deadline, to demand the return of the goods subject to the retention of title. In the event that we attach the goods subject to the retention of title, this shall count as withdrawal from the Contract. We shall be entitled to utilize such goods after they have been returned. After deducting a reasonable amount for related expenses, the proceeds from utilization shall be set off against the Purchaser's liabilities.

2. The Purchaser must handle the goods subject to the retention of title with care, and insure them adequately at his own expense to their replacement value as new against fire, water, and theft. Any necessary maintenance or inspection work must be carried out immediately by the Purchaser at his own expense.

3. The Purchaser shall be entitled to resell and/or use the delivered goods in the regular course of business under the condition that he is not in default of payment. Pledging or collateral assignments shall be inadmissible. The Purchaser shall, however, assign to us with immediate effect all claims against his customers arising from resale or from any other legal reason (insurance, liability in tort) regarding the goods subject to retention of title (including all balance claims on current account) as security; we herewith accept this assignment. We revocably empower the Purchaser to collect the claims assigned to us on his account and on his own behalf. The power of collection can be revoked at any time in the event that the Purchaser defaults on his proper payment obligations. The Purchaser shall also not be authorized to assign this claim for the purpose of collecting claims by way of factoring, unless reasons are provided at the same time as to why factoring is deemed necessary, and to assign to us directly the consideration in the amount of the claims for as long as we still have claims against the Purchaser.

4. The processing or modification of the goods subject to retention of title by the Purchaser shall in all cases be made on our behalf. In the case that the goods subject to retention of title are processed with other items of which we do not have ownership, we shall acquire joint title to the new item in proportion to the value of the goods subject to retention of title (final amount of invoice including VAT) compared with that of the other processed items at the time of processing. The same provisions shall apply to the item resulting from the processing as those applying to the goods delivered subject to retention of title. In the event of the inseparable combination of the goods subject to retention of title with other items of which we do have ownership, we shall acquire joint title to the new item in proportion to the value of the goods subject to retention of title (final amount of invoice including VAT) compared with that of the other processed items at the time of processing. In the case that as a result of the combination process the Purchaser's item can be deemed the main item, the Purchaser and we agree that the Purchaser shall assign joint title to us in the corresponding proportion; we herewith accept this assignment. The Purchaser shall safeguard our resultant sole or joint title to the item on our behalf.

5. In the event of actions taken by third parties concerning our goods subject to retention of title, in particular attachments, the Purchaser shall notify the third party in question of our title of ownership and inform us immediately so that we may assert our proprietary rights. In the case that the third party is unable to reimburse the legal and/or out-of-court costs arising from such an action, the Purchaser shall be liable.

6. We undertake to release the securities of which we have possession to the extent that the realizable value of these securities exceeds the claims to be protected by more than 10%; the choice of the securities to be released in this case shall be at our discretion.

### **Place of Performance, Legal Venue, Applicable Law**

1. Our company domicile shall be the place of performance and legal venue for all deliveries and payments (including legal actions in connection with cheques and bills of exchange) as well as for all disputes between us and the Purchaser arising from the contracts concluded between us and the Purchaser. We shall, however, be entitled to bring legal action against the Purchaser at his place of residence and/or business.

2. The relations between the Parties to this Contract shall be governed exclusively by the laws of the Federal Republic of Germany, to the exclusion of the 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.