

## General Terms of Sales and Services

### 1. Scope

- 1.1 These general terms of sales and services apply only to business people in terms of § 14 of the German Civil Code, but not to consumers.
- 1.2 We provide all deliveries and services exclusively under the applicability of these general terms. We do not accept conflicting or differing terms of the customer unless we have given express approval to their applicability.
- 1.3 Our general terms of sales and services shall also apply to future business transactions, even if we should not make reference to them in the individual case.

### 2. Offer and Conclusion of Agreement

- 2.1 Our offers are subject to change and not binding, unless we have expressly described them as binding offers.
- 2.2 As a rule, the documents on which the offer or the acknowledgement of order is based, such as figures, drawings, weights and measures shall be considered only approximate values, unless we have expressly described them as binding. We reserve all rights to these documents. The customer shall not make them accessible to third parties and shall not use them beyond the purpose of the agreement.
- 2.3 Our written acknowledgement of order is operative for the order. If the customer should have objections against the contents of the acknowledgement of order, he shall immediately contradict it.

### 3. Delivery and Passing of Risk

- 3.1 The delivery period is governed by the agreements made as defined in the acknowledgement of order. Adherence to such period requires that all commercial and technical issues have been settled and that the customer has met all obligations imposed on him. If these requirements have not been complied with, the delivery period will be adequately extended. This shall not apply if we are responsible for the delay.

- 3.2 If the delivery period is not adhered to due to force majeure, labor struggles or other events beyond our responsibility, the delivery period shall be adequately extended. This shall also apply in the case that self-supply should not be carried out in due time by our supplier, if we have concluded a congruent covering transaction.
- 3.3 The delivery period is deemed to be adhered to if the delivery item has left our premises by the expiry date of such period or advice of readiness for delivery has been given.
- 3.4. Dispatch and transport of the goods is carried out on the customer's costs and risk. Risk shall pass to the customer at the moment at which the goods leave our premises. If a pre-acceptance is required, the risk shall pass to the customer upon such pre-acceptance. The date of pre-acceptance shall also be decisive if the customer unjustifiably refuses pre-acceptance.
- 3.5 We have the right to carry out part deliveries as long as the remaining parts are delivered within the agreed delivery period and if such part delivery is not unacceptable for the customer.
- 3.6 If we should be in delay of delivery, we shall be liable for the damage incurred by the customer due to such delay in case of our gross negligence. In case of slight negligence, our liability for damage due to delay shall be excluded.

#### **4. Prices / Set-Off and Retention**

- 4.1 The prices quoted in the acknowledgement of order shall be operative. Our prices are ex works and do not include freight, postage, insurance, customs fees, other expenses and value-added tax as provided by law.
- 4.2 Set-off by customer is only allowed to an undisputed or legally ascertained counterclaim. Enforcement of a right of retention by customer shall only be allowed if such right is based on the same contractual relationship.

#### **5. Material Defects**

- 5.1 The customer has the obligation to immediately inspect the goods and to immediately raise to us any complaint for recognizable defects. Complaints for hidden defects shall be raised in writing immediately after their detection. If not, the delivery shall be deemed to be accepted.

- 5.2 If a defect within our responsibility should exist, we shall have the right of supplementary performance by, upon our sole discretion, either repairing the defect or delivering an item free of defects. If we should refuse supplementary performance, if it should have failed or be unacceptable for the customer, the customer shall have the right to enforce further statutory rights.
- 5.3 The customer shall give us the time and occasion required to carry out all subsequent improvements and replacements. If not, we shall be released from the liability for the resulting consequences. Only in urgent cases of danger to the operational safety or for the purpose of defense against disproportionately high damage, the customer shall have the right to remedy the damage himself or to have such damage remedied by third parties and to demand compensation for the required expenses from us. If only an insignificant defect exists, the customer shall not have the right of withdrawal.
- 5.4 Claims of damages by the customer due to defects are especially excluded in the following cases: Inappropriate or improper operation or use, faulty assembling or commissioning by the customer or third parties; erroneous or negligent handling, maintenance not carried out according to rules, inappropriate tools and materials, faulty mounting work, inappropriate fields of application; chemical, electro-chemical or electrical influences. In such cases, liability from our side may be taken in consideration only if the customer provides evidence that the defects neither totally nor partly have been caused by the aforesaid factors.

## **6. Compensation for Damages**

- 6.1 Regardless of the legal cause, we assume liability for damages in cases of willful action and gross negligence. In case of simple negligence, we assume liability only
- for damage from injury to life, body or health;
  - for damage from the violation of material obligations under the agreement (obligations without whose fulfillment the orderly execution of the agreement would not be possible, and in whose compliance the customer regularly trusts and has reason to trust); in this case, however, our liability shall be limited to the compensation for the foreseeable, typically occurring damage.
- 6.2 These liability restrictions shall not apply, if we have fraudulently concealed a defect, have assumed a warranty for the condition of the goods, and in case of liability due to the product liability law.
- 6.3 A default of our legal representatives and agents shall be assigned to us.

6.4 The aforesaid rules shall not affect the legal provisions on burden of proof.

## **7. Prescription**

7.1 Unless otherwise provided hereinafter, the general prescription period for the customer's claims from defects of quality and title shall be one year after delivery. This prescription period shall also apply to the contractual and extra-contractual claims for compensation of damages based on a defect of the goods.

7.2 The prescription periods provided by law shall apply

- to claims of damages from injury to life, body or health;
- for a liability based on the product liability law;
- if we have fraudulently concealed a defect;
- if we have assumed a warranty;
- if a structure is concerned, or an item, which has been used for a building according to its customary application and which has caused its defectiveness;
- to claims within supplier's recourse in case of final delivery to a consumer (§ 479 of the German Civil Code).

## **8. Reservation of Title**

8.1 We reserve title to all goods supplied by us until the full payment of all receivables from previous agreements.

8.2 If a customer is in default of payment or if it becomes noticeable that our claims of payment are jeopardized by the customer's lacking ability to pay, we shall have the right to claim return of the goods on the basis of reservation of title.

8.3 In case of garnishment or other interferences of third parties, the customer shall inform us immediately. The customer shall bear all costs required for the repeal of access and for the restocking of the delivery item, unless it can be collected from the third party.

8.4 Subject to the permissible right of revocation for important reason, the customer has the right of disposing of the delivery item in the orderly course of business. In particular, transfer by way of security and pledging is impermissible. The customer is not allowed to transfer to the purchaser the goods under reservation of title if the customer is in default regarding his obligations to us.

In the case of resale, the customer already now assigns all claims from resale, especially claims of payment, but also any other claims in connection with the resale, at the amount of our final amount of invoice (value-added tax included).

Until a permissible revocation for an important reason, the customer shall have the right to collect the assigned receivables on a trust basis. The resale of the receivables in the course of real factoring requires our previous approval. If there is an important reason, we have the right to give notice to third parties about the assignment of receivables also in the name of the customer. Upon notice of assignment to the garnishee, the customer's right of collection expires. In the case of revocation of the right of collection, we may demand that the customer notifies us about the assigned receivables and their debtors, gives all information required for collection, delivers the pertaining documents and informs the debtors about the assignment.

An important reason in terms of these provisions particularly exists in case of default in payment, suspension of payment, the opening of insolvency proceedings or justified indications for excess indebtedness or impending insolvency of the customer.

- 8.5 Treatment and processing of the delivery item by the customer is always carried out on our behalf. We shall be considered the manufacturer in terms of § 950 of the German Civil Code without further obligation. If the delivery item is processed with other items not belonging to our property, we acquire co-ownership of the new item at the ratio of the invoice amount to the purchase price of the remaining processed goods. In any other respect, the same provisions apply to both the item produced by processing and to the delivery item.
- 8.6 In the case that the delivery item is joined, mixed or blended with movable objects of the customer in such a way that the item of the customer must be considered the main item, the customer hereby confers to us already now the co-ownership to the total item at the ratio of the value of the delivery item to the value of the other joined, mixed or blended items. The customer shall keep the property on our behalf free of charge. If the delivery item is joined, mixed or blended with movable objects of a third party in such a way that the item of the third party must be considered the main item, the customer already now confers to us the claim of remuneration against the third party to which he is entitled at the amount that equals the part of the final amount of invoice to be allotted to the delivery item.

The new item produced by joining or mixing, or the rights of (co-)ownership of the new item to which we have title or which are to be assigned to us, as well as the claims of remuneration assigned to us as provided in the foregoing paragraph serve the securing of our claims in the same way as the delivery item itself.

- 8.7 If the reservation of title or the assignment of receivables should be ineffective or unenforceable due to mandatory foreign legal provisions, the security corresponding the reservation of title or the assignment of receivables in this field shall be deemed agreed upon. If this should require cooperation by the customer, he shall take all actions required for establishing and maintaining the security.

## **9. Industrial Property Rights/Secrecy**

- 9.1 If we supply on the basis of the customers drawings, models and samples and by using parts provided by the customer, the customer shall be liable that neither domestic nor foreign industrial property rights of third parties are violated. The customer shall release us from claims of third parties and to compensate the damage incurred. If a third party prohibits us to manufacture or deliver by pleading an industrial property right belonging to him, we shall have the right to suspend work until the clarification of the legal situation by the customer and the third party without verification of the legal situation. If we cannot be reasonably expected to continue the order due to the delay, we shall have the right of rescission.
- 9.2 If the customer, during the execution of the order, should come in contact with company secrets and/or know-how belonging to us, he shall keep such things secret and shall take precautions that our interested protected by law are not violated, and that findings protected by law are used only in connection with the order or the later use of the item produced according to the order itself.

## **10. Place of Performance, Place of Jurisdiction, Applicable Law**

- 10.1 Unless otherwise agreed upon, place of performance for delivery, payment and all other obligations from the agreement shall be Ölbronn-Dürrn (Germany).
- 10.2 Place of jurisdiction for all lawsuits arising from the agreement as well as about its origination and its effectiveness for both parties shall be our company's main place of business, if the customer is a merchant or a body corporate organized under public law. Upon our discretion, we may also bring suit at the customer's main place of business.
- 10.3 The agreement is governed by German law. The United Nations Convention on Contracts for the International Sale of Goods shall not be applicable.