

## **General Terms and Conditions of Sale**

### **Section 1 Scope, form**

(1) The present General Terms and Conditions of Sale (conditions of sale) apply to all our business relationships with our customers ("Buyers"). These conditions of sale apply only if the Buyer is an entrepreneur (Section 14 of the German Civil Code (BGB)), a public law entity or a special fund under public law.

(2) These conditions of sale shall particularly apply to any contracts on the sale and/or the delivery of movable items ("goods") regardless of whether we have produced the goods ourselves or purchased them from suppliers (Sections 433, 651 BGB). Unless otherwise agreed, these conditions of sale in the version valid at the time of our Buyer's order or, in any case, in the version last notified to it in writing shall apply as framework agreement for any similar future contracts without us having to refer to them again in each individual case.

(3) Our conditions of purchase shall apply exclusively. Any deviating, opposing or supplementary general terms and conditions of the Buyer shall only become part of the contract if we have expressly agreed their validity. This consent requirement shall apply in every case, for example, even if we carry out deliveries to the Buyer without reservation while being aware of the Buyer's general terms and conditions.

(4) Separate, individual agreements concluded with the Buyer (including any collateral agreements, supplements and changes) shall take precedence over these conditions of sale. However, these individual agreements require written form and/or our written confirmation to be effective.

(5) Any legally relevant representations and notices from the Buyer in reference to the contract (e.g. deadlines, withdrawal or reduction) must be submitted in writing, meaning in written or text form (e.g. letter, email, fax). Legal formalities and further evidence, especially in case of doubts about the legitimacy of the declarant, remain unaffected.

(6) References to statutory provisions are for clarification purposes only. Even without such clarification, the statutory provisions generally apply unless they are expressly changed or excluded in these conditions of sale.

### **Section 2 Conclusion of the contract**

(1) Our offers are subject to alteration and non-binding. This shall also apply if we have provided the Buyer with catalogues, technical documentation (e.g. drawings, plans, evaluations, calculations, references to DIN standards), other product descriptions or documents – also in electronic form – to which we reserve the right of ownership and copyrights.

(2) The order of the goods by the Buyer is considered a binding contractual offer. Unless otherwise specified in the order, we shall be entitled to accept this contractual offer within 2 weeks of its receipt by us.

(3) Acceptance can be declared either in writing (e.g. by order confirmation) or by delivery of the goods to the Buyer.

### **Section 3 Delivery period and delays in delivery**

(1) The delivery period is agreed individually or indicated by us upon acceptance of the order.

(2) If we are unable to comply with binding delivery periods for reasons beyond our control (non-availability of performance), we shall inform the Buyer thereof without delay and at the same time notify the estimated new delivery period. If the performance is also not available within the new delivery period, we shall be entitled to withdraw from the contract in whole or in part; we shall reimburse the Buyer without delay for any consideration already rendered. A case of non-availability of performance within this sense is, in particular, late supply by our sub-supplier if we have concluded a congruent cover transaction, if neither we nor our sub-suppliers were at fault or if we are not obliged to procurement in the individual case.

(3) The occurrence of our delay in delivery is determined in accordance with the statutory provisions. In any case, however, a reminder from the Buyer is required. If we are in default of delivery, the Buyer can demand lump-sum compensation for damage caused by this default. The lump-sum compensation shall amount to 0.5% of the net price (delivery value) for each completed calendar week of delay, but not more than a total of 5% of the delivery value of the delayed goods. We reserve the right to prove that no or only considerably lower damage has been sustained by the Buyer.

(4) The rights of the Buyer in accordance with Section 8 of these conditions of sale and our statutory rights, in particular in the event of an exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of performance and/or supplementary performance), shall remain unaffected.

#### **Section 4 Delivery, transfer of risk, acceptance, default in acceptance**

(1) Delivery shall be made "ex works", where the place of performance for the delivery and any supplementary performance also is. At the request and expense of the Buyer, the goods will be shipped to another place of destination (sales shipment). Unless otherwise agreed, we shall be entitled to determine the type of shipment ourselves (particularly transport companies, transport route, packaging).

(2) The risk of accidental loss or accidental deterioration of the goods passes to the Buyer upon delivery at the place of performance at the latest. However, in the case of a sales shipment, the risk of accidental loss or accidental deterioration of the goods and the risk of delay shall pass to the forwarding agent or the person or establishment appointed to carry out the shipment upon delivery of the goods to the carrier. If acceptance is agreed, this is decisive for the passage of risk. Apart from that, the statutory provisions of the law applicable to works and services shall also apply accordingly to an agreed acceptance. The same applies to the handover or acceptance if the Buyer is in default with the acceptance.

(3) If the buyer is in default of acceptance, if he fails to cooperate or if our delivery is delayed for other reasons for which the Buyer is responsible, we shall be entitled to demand compensation for the resulting damage, including additional expenses (e.g. storage costs).

#### **Section 5 Prices and payment conditions**

(1) Unless otherwise agreed in individual cases, our current prices at the time of conclusion of the contract shall apply "ex works" plus the statutory value added tax.

(2) In the event of a sales shipment (Section 4 Para. 1), the Buyer shall bear the costs for transportation from the warehouse and, where required, the costs for transport insurance requested by the Buyer. If we do not invoice the transport costs actually incurred in individual cases, a flat-rate for transport costs (excluding transport insurance) amounting to EUR... shall be deemed to have been agreed. Possible customs duties, fees, taxes and other public charges shall be borne by the Buyer.

(3) The purchase price is due and payable within 30 days of issuing the invoice and delivery or acceptance of the goods. However, we shall be entitled to make a delivery in whole or in part

only against prepayment at any time even within the framework of an ongoing business relationship. We shall declare an appropriate proviso with the order confirmation at the latest.

(4) Half of the costs of a money transfer to a non-German bank must be borne by the Buyer. If no deviating currency conditions are specified in the order, the invoice amount must be paid in euro.

(4) The Buyer shall be in default upon expiry of the aforementioned payment period. Interest must be paid on the purchase price during the default at the currently valid statutory default interest rate. We reserve the right to assert further damages for default. Our claim for the commercial maturity interest (Section 353 German Commercial Code (HGB)) against merchants remains unaffected.

(5) The Buyer shall only be entitled to offset rights and rights of retention to the extent that its claim is legally established or undisputed. In the event of defects in the delivery, the Buyer's counter rights, in particular in accordance with Section 7 Para. 6 Sentence 2 of these conditions of sale, remain unaffected.

(6) If it becomes apparent after conclusion of the contract that our claim to the purchase price is endangered due to the Buyer's inability to pay (e.g. due to an application to open insolvency proceedings), we shall be entitled to refuse performance in accordance with the statutory provisions and, if applicable after setting a deadline, to withdraw from the contract (Section 321 BGB). The statutory provisions on the dispensability of setting a deadline remain unaffected.

## **Section 6 Retention of title**

(1) We shall retain title to the goods sold until full payment of all our present and future claims arising from the purchase contract and an ongoing business relationship (secured claims) has been made.

(2) The goods subject to retention of title may neither be pledged to third parties nor assigned as security before complete payment of the secured claims. The Buyer must inform us immediately in writing if an application for opening insolvency proceedings is filed or if third parties access the goods belonging to us (e.g. seizures).

(3) In the event that the Buyer acts in way contrary to the contract, in particular in the event of non-payment of the due purchase price, we shall be entitled to withdraw from the contract in accordance with the statutory provisions and/or to demand return of the goods on the basis of the retention of title. The demand for the return of the goods does not concurrently include the declaration of withdrawal; rather, we are entitled to only demand the return of the goods and to reserve the right to withdrawal. If the buyer does not pay the due purchase price, we shall only be entitled to assert these rights if we have previously set the Buyer an appropriate deadline for payment without success or if such a deadline is unnecessary according to the statutory provisions.

(4) The Buyer is authorised, until further notice pursuant to (c) below, to resell and/or process the goods subject to retention of title in the ordinary course of business. In this case, the following provisions shall also apply.

(a) The retention of title covers the full value of the products created by processing, mixing or combining our goods, whereby we are regarded as the manufacturer. If, in the event of processing, mixing or combining with goods of third parties, the ownership rights of these third parties continue to exist, we shall acquire co-ownership in the ratio of the invoice values of the processed, mixed or combined goods. Incidentally, the same shall apply to the resulting product as is applicable to the goods delivered under retention of title.

(b) The claims against third parties arising from the resale of the goods or the product are hereby assigned to us by the Buyer as security in their entirety or in the amount of our possible co-ownership share in accordance with the preceding paragraph. We accept the assignment. The obligations of the Buyer mentioned in Para. 2 shall also apply in view of the assigned claims.

(c) The Buyer is authorised to collect any claims in addition to ourselves. We undertake not to collect the claim as long as the Buyer fulfils its payment obligations to us, there is no defect in its ability to pay and we do not assert the retention of title by exercising a right in accordance with Para. 3. However, if this is the case we may demand that the Buyer informs us of the assigned claims and their debtors, provides us with all information necessary for collection, hands over the associated documents and informs the debtors (third parties) of the assignment. In this case, we are also entitled to revoke the Buyer's authority to resell and process the goods subject to retention of title.

(d) If the feasible value of the securities exceeds our claims by more than 10%, we shall release securities at our discretion at the Buyer's request.

## **Section 7 Buyer's claims for defects**

(1) Unless otherwise specified below, the statutory provisions shall apply to the Buyer's rights in the event of material and legal defects (including wrong and short delivery as well as improper assembly or faulty assembly instructions). In all cases, the special statutory provisions remain unaffected for the final delivery of the goods to a consumer (supplier recourse according to Sections 478, 479 BGB).

(2) The basis of our liability for defects is, above all, the agreement made concerning the quality of the goods. All product descriptions serve as an agreement about the quality structure of the goods that are the object of the individual contracts or that have been made available to the public (notably in catalogues or on our website homepage).

(3) If the quality has not been agreed upon, it must be assessed according to the legal provision as to whether a defect exists or not (Section 434 Para. 1 Sentences 2 and 3 BGB). However, we assume no liability for public statements from the manufacturer or other third parties (e.g. advertising statements).

(4) The Buyer's claims for defects imply that it has complied with its statutory duties of inspection and notification of defects (Sections 377, 381 HGB). If a defect becomes apparent during delivery, inspection or at any time thereafter, we must be notified immediately in writing. In any case, obvious defects must be reported in writing within three working days of delivery and defects that are not visible during the inspection must be reported within the same period of time after discovery. If the buyer fails to properly inspect the goods and/or notify us of defects, our liability for defects that have not been reported or not reported in due time or not properly is excluded in accordance with the statutory provisions.

(5) If the delivery item is defective, we can initially choose whether we provide a supplementary performance by eliminating the defects (repair) or by delivering a fault-free item (replacement delivery). Our right to refuse supplementary performance pursuant to statutory requirements remains unaffected.

(6) We shall be entitled to make the supplementary performance owed dependent on the Buyer paying the purchase price due. However, the Buyer is entitled to retain a reasonable part of the purchase price in relation to the defect.

(7) The Buyer shall give us the time and opportunity to perform the supplementary performance owed, in particular to hand over the rejected goods for inspection purposes. In the event of a replacement delivery, the Buyer shall return the defective item to us in accordance with the

statutory provisions. The supplementary performance shall neither include the removal of the defective item nor its reinstallation if we were not originally obliged to do so.

(8) We shall bear the expenses necessary for the purpose of inspection and supplementary performance, in particular transport, travel, labour and material costs (not: dismantling and installation costs) if there is actually a defect. Otherwise, we shall be entitled to demand reimbursement from the Buyer for the costs incurred by us as a result of the unwarranted request to rectify the defect (in particular inspection and transport costs), unless the Buyer was unable to recognise that no defect existed.

(9) In urgent cases, e.g. given a threat to operational safety or for the purpose of avoiding disproportionate damage, the Buyer shall be entitled to remedy the defect itself and to demand reimbursement by us of the costs objectively necessary for this. We must be informed immediately, if possible beforehand, of this kind of self-rectification. The right to self-rectification does not exist if we had been entitled to refuse supplementary performance in accordance with the statutory provisions.

(10) The Buyer may withdraw from the purchase contract or reduce the purchase price if the supplementary performance has failed or if a reasonable period of grace to be set by the Buyer for the supplementary performance has expired without success or is unnecessary according to legal provisions. However, there is no right of withdrawal in the case of an insignificant defect.

(11) The Buyer's claims for compensation for damages or reimbursement of wasted expenses shall only exist in accordance with Section 8, even in the case of defects, and shall be excluded in all other respects.

## **Section 8 Other liability**

(1) Unless otherwise specified in these conditions of sale, including the following provisions, we shall be liable for a violation of contractual and non-contractual obligations in accordance with the statutory provisions.

(2) We shall be liable for damages, for whatever legal reason, within the limits of fault-based liability for intent and gross negligence. In the event of slight negligence, we shall be liable, subject to a lower degree of liability, in accordance with the statutory provisions (e.g. for care and diligence in its own affairs) only

a) for damage resulting from injury of life, limb or health,

b) for damage resulting from the more than insignificant violation of a material contractual obligation (obligation whose fulfilment makes proper execution of the contract possible in the first place and on which the contracting partner regularly relies and may rely); in this case, however, our liability is limited to compensation for the foreseeable, typically occurring damage.

(3) The limitations of liability provided for in Para. 2 shall also apply to breach of duty by or to the favour of persons for whose fault we are responsible in accordance with statutory provisions. They shall not apply if we maliciously conceal a defect or have assumed a guarantee for the quality of the goods and for any claims of the Buyer under the Product Liability Act.

(4) The Buyer may only cancel or terminate the contract due to breach of duty which does not involve a defect if we are responsible for the breach of duty. A free right of termination of the Buyer (in particular according to Sections 651, 649 BGB) is excluded. In all other respects, the statutory requirements and legal consequences shall apply.

## **Section 9 Limitation periods**

(1) Notwithstanding the provisions in Section 438, Para. 1, No. 3, BGB, the standard limitation period for claims for material and legal defects is 3 years from the delivery. Excluded from this are claims for damage resulting from injury of life, limb or health and claims for damages due to grossly negligent or intentional damage caused by the seller. The legal statutes of limitation apply. If acceptance is agreed, the limitation period shall begin with acceptance.

(2) However, if the goods relate to a building or an item that has been used for a building in accordance with its normal method of use and has caused this building to be defective (building materials), the period of limitation shall be five years from delivery in accordance with statutory provision (Section 438 Para. 1 No. 2 BGB). Other special statutory provisions regarding the limitation period (in particular Section 438 Para. 1, No. 1 Para. 3, Sections 444, 479 BGB) shall also remain unaffected.

(3) The aforementioned limitation periods of the German Sales Law shall also apply to contractual and non-contractual claims for damages by the Buyer that are based on a defect of the goods, unless the application of the regular statutory limitation period (Sections 195, 199 BGB) would lead to a shorter limitation period in individual cases. Claims for damages by the Buyer in accordance with Section 8 Para. 2 Sentence 1 and Sentence 2 (a) as well as in accordance with the Product Liability Act shall, however, become statute-barred exclusively after the statutory periods of limitation.

## **Section 10 Governing law and place of jurisdiction**

(1) These conditions of sale and the legal relationship between us and the Buyer are subject to the laws of the Federal Republic of Germany under exclusion of international uniform law, notably the UN Convention on Contracts for the International Sale of Goods.

(2) In the event the Buyer is a businessperson within the meaning of the German Commercial Code (HGB), a public law entity or a special fund under public law, the exclusive and international place of jurisdiction for all disputes arising directly or indirectly out of or in connection with the contract shall be our place of business in Ellerstadt. The same applies if the seller is an entrepreneur within the meaning of Section 14 BGB. In all cases, however, we shall also be entitled to file legal action at the place of performance of the delivery obligation in accordance with these conditions of sale or an overriding individual agreement or at the general place of jurisdiction of the Buyer. Overriding statutory provisions, in particular with regard to exclusive responsibilities, shall remain unaffected.