

# General Terms and Conditions of Delivery and Sale

## I. Scope of application

1. The present General Terms and Conditions of Delivery and Sale shall apply to all business transactions between us and the purchaser even if they are not referred to in subsequent contracts.
2. Any terms and conditions of the purchaser which are in any way inconsistent with, contradictory to or in addition to these General Terms and Conditions of Delivery and Sale shall not become part of this contract unless expressly agreed to by us. The present General Terms and Conditions of Delivery and Sale shall be applicable even if we deliver the contractual goods to the purchaser without any reservations knowing that his terms and conditions are inconsistent with or contradictory to the present General Terms and Conditions of Delivery and Sale.
3. Any provisions made in addition to or contradictory to these General Terms and Conditions of Delivery and Sale which are agreed upon by us and the purchaser for the purpose of the execution of a contract have to be included in this contract in writing. This shall also apply to the revocation of the written form requirement.
4. Any legal rights in addition to those set forth in the present General Terms and Conditions of Delivery and Sale that we may have according to legal regulations shall remain unaffected.

## II. Conclusion of contract and contract amendment

1. Our offers shall be unbinding and subject to change without notice.
2. Orders shall only become binding after they have been confirmed by us in writing. Order confirmations which have been issued by automatic systems and do not bear any signatures or author's names shall be deemed to be written confirmations. A failure on our part to answer any offers, orders, requests or other statements of the purchaser shall not be construed as agreement. If our order confirmation contains any obvious mistakes, typing errors or miscalculations, this order confirmation shall not be binding upon us.
3. Any modifications of or additions to the provisions agreed upon including but not limited to these General Terms and Conditions of Delivery and Sale must be confirmed by us in writing in order to be valid.
4. Any written or oral advice given by us or our employees shall be non-binding.

## III. Delivery time

1. All delivery times and all delivery dates must be agreed upon in writing.
2. The delivery time starts on the date when our order confirmation was dispatched but not before the purchaser has provided all necessary documents, permits and releases and before the agreed advance payment has arrived.
3. The delivery time shall be considered as adhered to if the goods have left the factory or if we have notified the customer of their readiness to be shipped before the expiration of the delivery time. Delivery of the goods shall be subject to proper and timely delivery to us.
4. Delivery times shall be extended by any period during which the purchaser does not fulfill his obligations towards us, notwithstanding our rights in connection with a default of the purchaser. The same applies to delivery dates.
5. If the acceptance of partial deliveries within a certain period of time was agreed, an approximately equal distribution of the partial deliveries shall be deemed to be agreed.
6. If acceptance has not been notified or the release order not been issued at the latest 3 months after expiry of the agreed delivery time or in case no final time limit has been agreed to and acceptance has not been notified or the release order has not been issued at the latest before the end of one year, we shall be entitled to deliver the goods and invoice them or rescind from the contract after an appropriate extension period has passed without result. This shall not apply if the delay was caused by us. Our right to damages remains unaffected by this.
7. If any doubts regarding the purchaser's solvency arise, particularly if the purchaser suspends his payments or if an application for the opening of insolvency proceedings on his assets is filed, we reserve the right to require the provision of appropriate securities before fulfilling our obligations. For initial orders we reserve the right to request payment in advance or cash on delivery.

## IV. Scope of delivery

1. Our written order confirmation shall be binding for the scope of delivery. The goods shall be subject to modifications insofar as such modifications are not substantial and can be reasonably imposed on the customer.
2. We reserve the right to deliver short or excess deliveries of up to 10% of the scope of delivery. The actually delivered quantity will be charged.
3. Partial deliveries are admissible.
4. The delivery quantities shall be calculated according to the weights determined by us unless otherwise agreed upon.

## V. Assumption of risk

1. Unless otherwise stipulated in our order confirmation the risk shall pass to the purchaser as soon as the goods are handed over to the person performing the transport (start of the loading process). This shall also apply if the order is divided into partial performances or if we have assumed additional performances such as transport costs.
2. If the dispatch is delayed for reasons caused by the purchaser, the risk shall pass to the purchaser after the purchaser has been notified of the goods' readiness for dispatch. Storage costs incurred after the passage of risk shall be borne by the purchaser.
3. Without prejudice to his warranty claims, the purchaser shall be obliged to take delivery of incoming goods even if they present minor defects.
4. Unless otherwise stipulated in our order confirmation, the goods shall only be insured against transport damages, delivery delays and other risks if expressly requested by the purchaser and at his cost.

## VI. Dispatch and packaging

1. Unless otherwise agreed upon, delivery shall be ex works.
2. Unless otherwise agreed upon, the type of dispatch and packaging shall be chosen at our discretion.
3. Packagings which are not charged separately will not be taken back. If packagings are charged separately, half of the charged amount will be credited if the packaging has been returned carriage free within 3 months after the date of invoice in a clean and useable condition. Packaging units with several items cannot be returned in any case.
4. Returnable packaging has to be returned to us carriage free and free of charge within 3 months after the date of invoice in a clean and flawless condition. If this period is exceeded, the returnable packaging shall be charged to the purchaser at the replacement price. If the returnable packaging has already been dispatched to us at the time of the invoice, the invoice for such packaging shall become invalid.

## VII. Prices

1. Our prices are based on the corresponding production costs. We reserve the right to adapt the price regardless of the offer and offer confirmation if any production-relevant price increases occur until the day of the delivery, particularly increased raw product prices.
2. Unless otherwise agreed upon, our prices shall be in Euro and "ex works" but exclusive of packaging. Statutory turnover tax is not included in the price and will be stated separately on the invoice at the rate which is applicable at the date of invoice.
3. Unless otherwise agreed upon, the invoice amounts have to be paid within 30 days (receipt of payment) after date of invoice without any deductions. We only accept discounted bills if expressly agreed between the parties and only on account of payment. Bills of exchange and checks shall only be regarded as payment after they have been cashed. Discount and collection charges will be at the customer's cost.
4. Credit notes of the purchaser shall only be deemed as invoice if expressly agreed between both parties. In this case the invoice amounts have to be paid within 30 days (receipt of payment) after delivery of the goods without any deductions, unless otherwise agreed upon.
5. If the customer falls into arrears, we are entitled to charge interests to the amount of 8% above the applicable base rate on the overdue amount without sending a separate reminder and without prejudice to additional rights.
6. The purchaser shall only be entitled to set-off if his counterclaims have been judged as final or are undisputed.
7. Each payment is set off against previous due invoice accounts. If costs and interests have already been incurred we are entitled to set off the payment against the costs first, then against the interest and finally against the main accounts receivable.

## VIII. Retention of title

1. Title to all goods delivered by us ("goods subject to reservation of title") shall remain vested in us until the purchaser has paid all present and future liabilities arising in connection with his business transactions with us. The purchaser shall be obliged to treat the goods that are subject to reservation of title with care over the entire period of the retention of title. In particular, he shall be obliged to sufficiently insure at his own expense and to their full replacement value the goods delivered against all fire damage, water damage and damage caused by theft. The purchaser already now assigns to us any compensation claims arising from this insurance. We hereby accept the assignment of claims. In case such an assignment is not admissible, the purchaser hereby irrevocably instructs his

insurance company to make any payments payable exclusively to us. Additional claims on our part remain unaffected. The purchaser shall be obliged to produce proof of the insurance policy if requested by us.

2. The purchaser shall only be entitled to resell the goods that are subject to reservation of title within the scope of proper business operation. The customer shall not be entitled to pledge the goods that are subject to reservation of title or transfer them as security or make any other provisions which might endanger our property. If the purchaser extends the term of payment for his customers, he may only resell the goods that are subject to reservation of title if the title to the sold goods remains vested in him under the same conditions under which the title remained vested in us upon delivery of the goods that are subject to reservation of title.
3. The purchaser hereby assigns to us all purchase price claims against his customer resulting from the resale, regardless of whether the goods subject to retention of title are resold without being processed or after processing. They shall serve as security to the same extent as the goods subject to retention of title. In case an assignment is not admissible, the purchaser hereby irrevocably instructs the garnishee to make any payments payable exclusively to us. The purchaser shall be revocably entitled to collect the claims assigned to us on our account and in his own name and on a trust basis. He shall be obliged to immediately transfer any collected amounts to us. We shall be entitled to revoke the purchaser's authorization to collect these claims and to resell the goods at any time if the purchaser fails to meet his payment obligations towards us, falls into arrears, if he stops his payments or if an application for insolvency proceedings on the purchaser's assets is filed.
4. If the purchaser resells the goods subject to retention of title together with other goods which were not supplied by us for a total price, the claim from the sale of the goods is only assigned to the amount of the value of the sold goods that are subject to retention of title.
5. The processing or transformation of the goods subject to retention of title shall always be performed for us. The purchaser's contingent right with respect to the goods subject to retention of title remains valid for the processed or transformed items. If the goods are processed, combined or mixed with other items not owned by us, we shall acquire the joint property of the new items in proportion to the value of the supplied goods in relation to the other processed items at the time of processing. The purchaser stores the new items for us. For the items resulting from the processing or transformation the same conditions shall apply as for the goods subject to retention of title.
6. If the realizable value of the securities which were provided for us, exceeds the secured liabilities by a total of more than 20%, we shall be obliged to release any securities we may choose to reduce this excess amount if requested by the purchaser. These values have to be calculated based on the invoice value of the goods subject to retention of title and the nominal value of the liabilities.
7. If the retention of title clause according to section VIII is not valid under the law of the country in which the goods subject to retention of title are located, a safety whose purpose matches the purpose of this clause as closely as possible and which is legally admissible in this country shall be deemed as agreed. Insofar as this requires additional measures, the purchaser will take all necessary steps in order to grant us such a security interest without delay.
8. The purchaser shall be obliged to immediately notify us of any seizure or other measures affecting our rights.

### **IX. Warranty claims**

1. In order to be able to assert warranty claims the purchaser must have inspected the goods which were delivered by us immediately after receipt and he must have sent written notice of any defects immediately and at the latest two weeks after receipt of the goods. Non-apparent defects must be notified to us immediately after they have been discovered. The purchaser has to describe the defects in writing when notifying us.
2. Notices of defects without exact mention of the batch number and identifying information of the concerning item of a batch shall be invalid.
3. Illustrations, drawings, weight, measure, color and performance data and other descriptions of the goods made in the documents pertaining to the offer shall only be approximate. They shall not constitute an agreement or warranty of such characteristics of the goods. Samples only warrant professionally produced products similar to the sample and do not constitute an agreement or warranty of the fitness for a specific purpose.
4. In case of defects we shall be entitled to choose one of the following forms of subsequent performance: either remedy the defect or deliver a defect-free item.
5. If we are not willing or not able to effect subsequent performance, the purchaser shall be entitled to rescind from the contract or reduce the purchase price, whichever option he prefers. The same applies if the subsequent performance fails, cannot reasonably be imposed on the purchaser or if the subsequent performance is delayed beyond a reasonable time for reasons caused by us.
6. The purchaser's right to rescission shall be excluded if he is not able to reconstitute the provided goods provided that this is not due to the fact that a restitution is not possible on account of the nature of the received goods, that it is not caused by us or that the defect only became apparent after the goods were processed or transformed. The right to rescission shall also be excluded if we are not responsible for the defect, if we have to pay compensation for value instead of restituting the goods or if we have delivered custom-made goods.
7. The term of limitation for warranty claims of the purchaser shall be one year provided that the goods have not been used in a building in accordance with their usual manner of use and caused the building to be defective. It shall also apply to claims resulting from unlawful acts which are due to a defect of the goods. The term of limitation shall start when the goods are delivered. Our unlimited liability for damages arising from the violation of a warranty or injuries to life, limb or health, for acts of criminal intent or gross negligence and for product defects shall remain unaffected. A statement by us regarding a warranty claim asserted by the purchaser shall not be deemed to be an entry into negotiations about the claim or the circumstances justifying the claim if we fully reject the warranty claim.

### **X. Liability**

1. We shall be fully liable for damages arising from the violation of a warranty or injuries to life, limb and health. Furthermore, we shall be liable for acts of criminal intent and gross negligence. We shall only be liable for slight negligence if essential obligations resulting from the nature of the contract which are of particular importance for fulfilling the contractual purpose have been infringed. If any such obligations are infringed or if the performance of the contract is delayed or impossible, our liability shall be limited to such damages whose occurrence has to be typically expected in the scope of the contract provided that the breach of the contract was not intentional. An obligatory statutory liability for product defects remains unaffected.
2. Claims by the purchaser for reimbursement of expenses instead of claims for damages instead of the goods shall be excluded insofar as they would not have been asserted by a reasonable third person.

### **XI. Acts of God**

1. If we are prevented from fulfilling our contractual duties, in particular from delivering the goods, due to acts of God, we shall be free from the obligation to fulfill our contractual duties for the duration of the act of God and a reasonable start-up time without having to pay damages to the purchaser. This also applies if the fulfillment of our duties is made unreasonably difficult or temporarily impossible due to unexpected events or circumstances beyond our control including but not limited to labor disputes, official measures, energy deficits, delivery problems of one of our suppliers or major shutdowns.
2. We shall be entitled to rescind from the contract if such an event continues to exist for more than 4 months and the performance of the contract is no longer of interest to us due to the event. Upon request of the purchaser we will state after expiry of the period whether we intend to use our right of rescission or whether we will deliver the goods within a reasonable period of time.

### **XII. Product liability**

1. The purchaser shall not modify the goods with regard to their safety-relevant features, in particular he shall not modify or remove existing warnings about the dangers of improper use of the goods. If he violates this obligation the purchaser shall hold us internally harmless from product liability claims of third parties insofar as the buyer was responsible for the defect which caused the liability.
2. If we have to issue a product recall or product warning on account of a product defect the purchaser shall support us and take all reasonable measures requested by us. The purchaser shall be obliged to bear the costs of the product recall or product warning to the extent that he is responsible for the product defect and the incurred damage according to the principles of product liability. Additional claims which might be asserted by us shall remain unaffected.
3. The purchaser shall notify us immediately about any risks in connection with the use of the goods and possible product defects as soon as he gains knowledge of these risks or defects.

### **XIII. Final provisions**

1. The place of performance for the fulfillment of all obligations of us and the purchaser shall be the place of our company headquarters, unless otherwise agreed upon. Any disputes arising from the business relationship between us and the purchaser including any proceedings regarding actions on bills of exchange and checks shall be brought before the competent court at the place of our headquarters. We shall also be entitled to bring actions before the competent court at the purchaser's headquarters and any other admissible venue.
2. The relations between us and the purchaser shall be exclusively governed by the law of the Federal Republic of Germany with the exclusion of the convention on the international sale of goods (CISG).
3. In the event that any stipulation of these General Terms and Conditions of Delivery and Sale should be or become void or invalid, this shall not affect the remaining provisions. The invalid provision shall be deemed to be replaced by a valid provision that ensures that the purpose and meaning of the invalid or void-stipulation is largely attained.