

## General Terms of Payment and Delivery

### I. Area of validity

1. The Terms of Sale below apply to sundry contracts for the supply of goods concluded between the customer and us. They are only valid for companies (§ 14 BGB - German Civil Code). They also apply to sundry future commercial dealings, also where they are not expressly agreed upon. Deviating terms of the purchaser that we do not expressly acknowledge are non-binding upon us, also where these are not expressly contradicted by us. The Terms of Sale below shall also apply where we implicitly process the order of the purchaser despite our knowledge of contradictory or deviating terms of the purchaser.

2. In the contracts, sundry agreements made between the purchaser and us regarding the implementation of the sales contracts are recorded in written form.

### II. Offer and conclusion of contract

1. An order on the part of the purchaser, which is qualified as an invitation to conclude a sales contract, may be accepted within two weeks, either by sending an order confirmation or by sending the ordered products within the same time period.

2. Our offers are subject to confirmation and are non-binding, unless we expressly designate these as binding.

3. We reserve our rights to ownership, copyright and other industrial property rights to sundry illustrations, calculations, diagrams and other documents. The purchaser may only pass these to third parties with our written authorisation, regardless of whether these are marked as confidential or not.

### III. Terms of payment

1. Our prices are ex works without packaging, unless otherwise specified in the order confirmation. Our prices do not include the statutory rate of value added tax. This will be stated separately in the invoice at the statutory rate valid on the day of invoicing.

2. A cash discount deduction is only permissible where a separate written agreement exists between us and the purchaser. The purchase price is due net (without deduction) immediately following receipt of invoice by the purchaser, unless the order confirmation states another date of payment. A payment shall only be deemed to have been effected when we have the amount at our disposal. In the case of cheque payments payment shall only be deemed to be effected when the cheque is honoured.

3. The statutory regulations shall apply where the purchaser is in default with payment.

4. The purchaser is only entitled to off-set, including where notice of defects or counterclaims are made, where the counterclaims are legally binding, have been acknowledged by us or are undisputed. The purchaser is only entitled to exercise a right of retention where his counterclaim is based upon the same contractual relationship.

#### **IV. Time of delivery and performance**

1. Delivery dates or deadlines that are not expressly agreed upon as binding are exclusively non-binding statements and are always subject to the caveat of timely and correct self supply. The delivery time stated by us shall only begin when technical matters have been clarified. Similarly, the purchaser shall fulfil sundry obligations for which he is responsible in an orderly and timely manner.

2. In the event of the sales contract constituting a transaction for delivery at a fixed date as per § 286 para. 2 no. 4 BGB - German Civil Code - or § 376 HGB - German Commercial Code -, then we shall be liable in accordance with the statutory regulations. The same applies where the purchaser, as a result of a delay in delivery on our part, is entitled to discontinue his interest in the further performance of the contract. In this case, our liability is limited to foreseeable, typically occurring loss, where the delay in delivery is not caused by an intentional breach of the contract on our part, whereby we shall also be apportioned liability for the culpability of our representatives or vicarious agents.

Similarly, we shall be liable to the purchaser in the event of delay in delivery according to the statutory regulations where this is due to an intentional or grossly negligent breach of the contract on our part, whereby we shall also be apportioned liability for the culpability of our representatives or vicarious agents. Our liability is limited to foreseeable, typically occurring loss, where the delay in delivery is not caused by an intentional breach of the contract on our part.

3. In the event of a delay in delivery on our part due to the culpable breach of a significant contractual obligation, whereby we shall also be apportioned liability for the culpability of our representatives or vicarious agents, we shall be liable in accordance with the statutory regulations, with the provision that in this case the liability for compensation is limited to foreseeable, typically occurring loss.

4. In other respects, in the event of a delay in delivery on our part the purchaser may claim a lump-sum compensation to the amount of 3 % of the delivery value for each complete week of delay, however, not more than 15 % of the delivery value.

5. Further liability for delay in delivery on our part is excluded. The additional statutory rights and claims of the purchaser to which the purchaser is entitled in addition to the compensatory claim for a delay in delivery on our part are unaffected by this.



6. We are entitled to effect partial deliveries and partial performance at all times, where this can be reasonably expected of the purchaser.

7. Should there be a delay in acceptance on the part of the purchaser, then we shall be entitled to request compensation of the loss incurred and sundry additional expenditure. Subject to the provision of proof of a higher loss, in this case the purchaser shall owe compensation to the amount of 20 % of the purchase price, unless the purchaser provides evidence of a lower loss. The same shall apply where the purchaser is in breach of his duty to co-operate. With the onset of the delay in acceptance or debtor's delay the risk of incidental deterioration and accidental loss shall pass to the purchaser.

#### **V. Passing of risk - shipment/packaging**

1. Loading and shipment are performed in an uninsured state at the risk of the purchaser. We shall make an effort to take the wishes and interests of the purchaser into consideration with regard to form and route of shipment; additional costs incurred in this - also where freight free delivery has been agreed - shall be born by the purchaser.

2. We do not take back transport and other packaging required by the Packaging Ordinance, with the exception of pallets. The purchaser shall ensure the disposal of the packaging at his own cost.

3. If the shipment is delayed at the request of the purchaser, or due to fault on his part, then we shall store the goods at the cost and risk of the purchaser. In this case the indication of readiness for despatch shall be equivalent to despatch.

4. At the request and cost of the purchaser we will also insure the shipment with a transport insurance policy.

#### **VI. Guarantee/liability**

1. Claims for defects on the part of the purchaser shall only exist where the purchaser has performed his duty of inspection, notification and rejection as per § 377 HGB - German Commercial Code - in an orderly manner.

2. Where a defect in the goods exists for which we are responsible, we are obliged to effect subsequent performance, under exclusion of the right of the purchaser to withdraw from the contract or to reduce the purchase price (reduction), unless statutory regulations entitle us to refuse to effect subsequent performance. The purchaser shall grant us an appropriate deadline for subsequent performance. The purchaser may decide whether the subsequent performance should consist of remedy of defects (rectification) or the supply of new goods. In the case of remedy of defects we shall bear the cost of the expenses incurred, so long as these are not increased due to the subject of the contract being in a location different to that of the place of performance.

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If subsequent performance proves to be abortive, the purchaser may choose to request a reduction in the purchase price (reduction) or declare his withdrawal from the contract. The rectification shall be deemed to be abortive on the second failed attempt, unless, due to the subject of the contract, further rectification attempts are deemed appropriate and reasonable to the purchaser.

Compensatory claims to the following conditions due to defect may only be pursued by the purchaser where the rectification is abortive. The right of the purchaser to pursue further compensatory claims to the following conditions is not affected by this.

3. The guarantee claims of the purchaser shall lapse one year after delivery of the goods to the purchaser, unless we have concealed this defect with malice aforethought; in this case the statutory regulations shall apply. Our obligations under Section VI fig. 4 and Section VI fig. 5 are unaffected by this.
4. We have unlimited liability according to statutory regulations for injury to life, limb and health, arising from a negligent or intentional breach of our liability, or that of our representatives or our vicarious agents, together with loss covered by the liability of the Product Liability Act. For loss that is not covered by Clause 1 and that is due to intentional or grossly negligent breach of contract or malice aforethought on our part, or that of our representatives or our vicarious agents, we are liable according to statutory regulations. In this case, however, liability for compensation is limited to foreseeable, typically occurring loss, so long as we, our representatives or our vicarious agents, have not acted with intent. To the extent that we have also granted a guarantee of quality and/or durability with regard to the goods or to parts thereof, then we shall also be liable within the scope of that guarantee. In the case of loss arising from the lack of the guaranteed quality or durability, but which does not occur directly to the goods, we shall only be deemed to be liable where the risk of such a loss is clearly covered by the quality and durability guarantee.
5. We are also liable for loss caused by simple negligence, to the extent that the negligence concerns the breach of such contractual obligations whose observance is of special significance for the achievement of the purpose of the contract (cardinal obligations). However, we shall only be held liable where the loss is typically associated with the contract and foreseeable.
6. Further liability, with respect to the legal character of the claim enforced, is excluded, this applies in particular to delicti claims or claims for the compensation of futile disbursements instead of performance; this does not affect our liability as per Section IV fig. 2 to Section IV fig. 5 of this contract. To the extent that our liability is limited or excluded, this shall also apply to the personal liability of our staff, employees, associates, representatives and vicarious agents.

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7. Compensatory claims of the purchaser due to defect shall lapse one year after delivery of the goods. This shall not apply in the event of injury to life, limb and health due to our liability, or that of our representatives or our vicarious agents, or where we or our representatives have acted with intent or gross negligence, or where our vicarious agents have acted with intent.

## **VII. Retention of title**

Until the fulfilment of sundry claims, including sundry current account balance claims that we have against the purchaser now or in future, the goods supplied (reserved goods) shall remain in our ownership. In the event of behaviour of the purchaser contrary to the contract, e.g. payment default, we retain the right, following an appropriate respite, to take back the reserved goods. Taking back the reserved goods shall indicate a withdrawal from the contract. Pledging the reserved goods shall constitute a withdrawal from the contract. We are entitled to utilise the reserved goods following their return. After the deduction of an appropriate amount for the costs of utilisation, the utilisation revenue shall be off-set against the amount owed to us by the purchaser.

## **VIII. Place of performance, jurisdiction, applicable law**

1. Place of performance and jurisdiction for deliveries and payments (including actions on cheques and bills of exchange) together with sundry disputes arising from the sales contracts concluded between us and the purchaser is our headquarters. However, we are also entitled to take legal action against the purchaser at his place of residence or business location.

2. The relations between the contracting parties shall be solely in accordance with the applicable law of the Federal Republic of Germany. Application of the standard law on the international sale of movable objects, together with the law pertaining to the conclusion of international contracts of sale for movable objects is excluded.

Idar-Oberstein, 01 January 2006

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