

General Terms and Conditions of Sale

§1 General – Scope of Applicability

- (1) Any supplies which we make shall be subject solely to these General Terms and Conditions of Sale unless other conditions have been expressly approved by us in writing. Our General Terms and Conditions of Sale apply even if we, in the knowledge that the conditions of the purchaser either contradict or derogate from our General Terms and Conditions of Sale, execute the order without reservation.
- (2) Our conditions of sale only apply to persons who on conclusion of the contract were exercising their commercial or independent professional activity (entrepreneurs) and to legal persons under public law or to special assets governed by public law; the statutory provisions apply to business with persons who are not entrepreneurs.

§2 Offer / offer documents

- (1) Unless otherwise expressly agreed, a supply contract comes into existence when we issue written order confirmation.
- (2) We shall retain title and copyright in illustrations, drawings, calculations and other documents. This shall apply also especially to written documents designated as "confidential". The customer shall not pass such documents to third parties without our express written consent.

§3 Prices – terms of payment

- (1) Unless the order confirmation states otherwise our price shall be "ex works" excluding packaging and insurance.
- (2) Our prices do not include statutory value-added tax. The statutory VAT shall be indicated separately on the invoice at the rate applicable on the date of invoice.
- (3) Discounts may only be deducted subject to special written agreement.
- (4) Unless otherwise agreed, the selling price shall be paid without deductions as shown on the order confirmation.
- (5) The purchaser may not exercise any right of set-off unless his counterclaims have been affirmed in a court judgement, are undisputed or have been acknowledged by us. Further, the Purchaser may only exercise a right of retention to the extent that its counterclaim arises from the same contractual relationship.

§4 Delivery period

- (1) Agreed delivery periods and dates can only be met if all documents to be provided by the purchaser are supplied in good time and if, in particular, we have been supplied in good time by our own suppliers. If we are unable to meet the agreed deadlines and dates for reasons for which we are not responsible and despite having taken all commercial duties of care because our own suppliers have not supplied promptly we shall not accept liability on the grounds of delay in delivery. In such an event we shall assign to the purchaser any claims for compensation which we may have against the suppliers.
- (2) If there is a delay in delivery the amount of any claim which the purchaser may have to reimbursement of the default damage and to compensation in lieu of performance shall be restricted to typically foreseeable damage except in cases of intent or gross negligence on the part of ourselves, our legal representatives or vicarious agents.
- (3) If the purchaser faces contractual penalties (contractual penalties, idling charges, etc.) from a third party it may – irrespective of the other criteria – only assert claims against us if this has been expressly agreed upon between the purchaser and ourselves or if we were informed of the contractual penalty agreed upon between the purchaser and a third party before the contract was concluded.

§5 Passage of risk - acceptance

- (1) Unless the order confirmation states otherwise supply shall be "ex works", i.e. the risk of loss or damage to the merchandise shall pass to the purchaser as soon as the merchandise is placed at its disposal in the condition specified in the contract or as soon as the purchaser has been notified that the merchandise is ready for despatch.
- (2) If acceptance is required, passage of risk shall be on acceptance. Acceptance shall be carried out on the acceptance date without undue delay or, alternatively, when we have given notification that the merchandise is ready for acceptance. The purchaser may not refuse acceptance on the grounds of an immaterial defect.
- (3) If despatch or acceptance are impossible or delayed owing to circumstances which are not within our sphere of responsibility, risk shall pass to the purchaser on the date on which notice is issued that the merchandise is ready for despatch or acceptance. If so requested by the purchaser we will take out insurance at the purchaser's cost.
- (4) Part-shipments may be made.
- (5) We will not take back transport or other packaging other than pallets. The purchaser shall dispose of the packaging at its own cost.
- (6) If the purchaser so requests, we will take out insurance against transport damage; the costs incurred herefor shall be borne by the purchaser.

§6 Claims for defects

- (1) The purchaser shall only be entitled to redress for defects if it has duly complied with its duties to inspect the goods and report defects under § 377 of the Commercial Code (*Handelsgesetzbuch*).
- (2) We shall not accept liability, in particular, in the following cases: incorrect or improper use, faulty assembly, etc. or commissioning by the purchaser or third parties, natural wear and tear, faulty or negligent treatment, improper maintenance, unsuitable operating materials, defective construction work, unsuitable construction land, chemical, electro-chemical or electrical influences – to the extent that we are not responsible for these. We shall not accept liability for the consequences if the purchaser or a third party carries out repairs improperly. The same applies to changes made to the merchandise without our consent.
- (3) If the purchaser demands subsequent performance on the grounds of a defect we may choose whether to remedy the defect ourselves or to supply defect-free goods in replacement. Title in the goods to be replaced shall be restored to us – concurrently in return for replacement supply. If repair or replacement are not possible, are refused or do not take place or fail for other reasons within our sphere of responsibility before expiry of a deadline set by the purchaser, the purchaser may at its own discretion withdraw from the contract or demand a reduction in the purchase price.
- (4) Claims of the purchaser for compensation over and above this, in particular for

compensation in lieu of performance and for replacement of other direct or indirect damage – including concomitant or consequential damage, irrespective of legal ground – are excluded. This does not apply if

- (a) we fail to disclose a legal or material defect with malicious intent or if we have assumed a guarantee that the merchandise does not contain any such legal or material defect of if we have assumed a guarantee for the quality of the goods;
 - (b) the damage is based on intent or gross negligence on our part or on the part of one of our legal representatives or vicarious agents or negligent infringement of material contractual duties by ourselves or these persons, or
 - (c) negligent infringement of duty on our part, on the part of our legal representatives or vicarious agents has led to personal injury or damage to health.
- (5) However, in the event of a material breach of duty on the grounds of negligence our duty to replace shall be restricted to the value of foreseeable damage typical of this type of contract.
 - (6) The provisions of (4) shall apply accordingly to direct claims of the purchaser vis-à-vis our legal representatives or vicarious agents.
 - (7) If the purchaser faces contractual penalties (contractual penalties, liquidated damages, etc.) from a third party it may – irrespective of the other criteria – only assert claims against us if this has been expressly agreed upon between the purchaser and ourselves or if we were informed of the contractual penalty agreed upon between the purchaser and a third party before the contract was concluded.
 - (8) Any claims of the purchaser – whatever the legal reasons – shall become statute-barred after 12 months (subject to the provisions in (9) and (10)).
 - (9) Compensation claims pursuant to (4) (a) to (c) shall be subject to the statutory periods.
 - (10) This shall have no effect on the limitation period in the event of recourse pursuant to §§ 478, 479 of the German Civil Code.

§7 Reservation of title

- (1) We shall retain title in the merchandise until all payments arising from the supply contract have been received. If the purchaser acts in breach of contract, in particular, if it is in default with payment, we are entitled to take back the goods. Taking back the merchandise shall not constitute withdrawal from the contract unless we make an express written statement to this effect. Attachment of the merchandise shall be deemed to be withdrawal from the contract. Once we have retaken possession of the merchandise we are free to realise it; the proceeds from such realisation shall be offset against the purchaser's obligations less reasonable realisation costs.
 - (2) The purchaser shall treat the merchandise with care; in particular it shall insure it sufficiently against fire, water and theft at reinstatement value at its own cost. If maintenance and inspection work are necessary the purchaser must carry these out in good time at its own cost.
 - (3) The purchaser is entitled to re-sell the merchandise in the ordinary course of business; however, it shall here and now assign to us all claims in the amount of the final invoice amounts (including VAT) of our claim against his customers or third parties which it acquires from the resale irrespective of whether the merchandise was or was not processed before resale. The purchaser shall still be entitled to collect this receivable after assignment. This shall not prejudice our right to collect such claims ourselves. However, we undertake not to collect the claim as long as the purchaser meets its payment obligations from the proceeds received, does not fall into default with payment and in particular as long as no application for the institution of composition or insolvency proceedings have been filed and payments have not been stopped. However, if this is the case we may demand that the purchaser notifies us of the claims assigned and their debtors, that it provides us with all data required to collect the claims, the associated documents and notifies the debtors (third parties) of the assignments.
 - (4) Any processing of or alteration to the merchandise carried out by the purchaser shall always be carried out for us. If the merchandise is processed using items which do not belong to us we shall acquire co-ownership in the new item in the ratio of the value of the merchandise (final invoice amount including VAT) to the other processed goods at the time of the processing. The same shall apply to the item which is created through processing as to merchandise supplied subject to reserve.
 - (5) If the merchandise is combined irreversibly with items which do not belong to us we shall acquire co-ownership in the new item in the ratio of the value of the merchandise (final invoice amount including VAT) to the other processed goods at the time of the processing. If the mixing process takes place in such a way that the purchaser's item must be regarded as the principal item the parties shall be deemed to have agreed that the purchaser shall transfer co-title to us *pro rata*. The purchaser shall hold the sole property or co-property which has been thus created in custody on our behalf.
 - (6) As collateral for our claims against the purchaser the purchaser shall also assign to us all claims which arise vis-à-vis third parties as a result of combining the merchandise with real property.
 - (7) We undertake to release the collateral to which we are entitled at the request of the purchaser to the extent that the realisable value of our collateral exceeds the claims to be secured by more than 10 %; we shall select the securities to be released.
- ### §8 Applicable law/place of performance/place of jurisdiction
- (1) If the purchaser is not a businessman, the place of jurisdiction shall be our domicile; however, we are entitled to sue the purchaser at the court competent for its place of residence.
 - (2) The law of the Federal Republic of Germany shall apply excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).
 - (3) Unless otherwise stated in the order confirmation the place of performance shall be our domicile.