



## **General Terms and Conditions of Delivery**

### **1. Scope, Effectiveness of Contract**

- a) For all supplies and services, the terms and conditions set forth below shall be applicable exclusively even if we should not expressly make reference to them for future business transactions and/or if Buyer should use different conditions. Such other conditions shall only be acknowledged inasmuch as they are expressly confirmed by us in writing.
- b) Any contracts shall not become effective unless confirmed by us in writing or by executing delivery of the goods.

### **2. Prices, Terms of Payment**

- a) The prices agreed overleaf shall be valid plus the statutory value added tax applicable in each case.
- b) Any increases in import duties, levies, freight rates, etc. that become effective after the date of purchase on the grounds of authority regulations or legal provisions shall be at Buyer's expense.
- c) Should we effect a general reduction or increase in our prices in the period between the conclusion of a contract and delivery of the goods, the new price shall be applicable. In the event of such a potential increase in prices, Buyer shall be entitled to rescind the contract within a period of two weeks from notification, unless the price increase is exclusively attributable to an increase in freight rates.
- d) Buyer shall not be entitled to retain or set off any payments on the grounds of any counter-claims including claims derived from warranties unless such counterclaims have been acknowledged or recognized by declaratory judgment.
- e) Should Buyer not pay as agreed, we shall have the right to charge interests from the due date, without prior reminder, at the rate charged by our bank for credit in current account, but not less than 8 percent points above the base interest rate.
- f) In the event of non-compliance with the terms of payment or the currence of circumstances that might lead to an impairment of the creditworthiness of Buyer, we may declare our receivables due for payment irrespective of the period of payment originally agreed.

### **3. Delivery and Delay**

- a) The terms of delivery quoted shall be regarded as approximate but will be complied with as far as possible.
- b) Should one of the following events occur, we shall be entitled to adjourn and/or cancel our delivery obligation affected by such an event, viz.:
- Strike, lock-out;
  - Other interruptions of operations of any nature or subsequently occurring difficulties with the procurement of any raw materials and/or utilities, with the shipment or transport of the goods, unless we, our boards or those vicarious agents who are in charge of special management tasks should have caused such circumstances willfully or by gross negligence;
  - Failure of correct or timely self-delivery;
  - or other circumstances which are beyond our control
- Should the situation of delivery constraint last for more than 6 months in such cases and should we not have made use of the right to rescind our delivery obligation, subject to a reasonable period of notice Buyer shall have the right, With the exclusion of any further claims on his part, to reject acceptance of the affected quantity ordered unless we have offered an appropriate substitute solution.
- c) Even when agreeing a firm delivery date or a firm time of delivery, we shall be granted a reasonable extension of the delivery time, should we be in delay. If such an extension elapses without results, Buyer may rescind the contract with respect to that quantity which was not advised as being ready for shipment on elapse of the extension.

### **4. Transfer of Risk and Shipment**

From the respective place of dispatch, the goods will be moved at Buyer's risk. We shall not be liable for weight losses in transit. All purchase orders shall be accompanied by the respective shipping instructions. The mode of dispatch and the forwarding route, however, shall in all cases be at our discretion – without guarantee for the fastest and cheapest transportation. Part shipments shall be allowable. Any additional costs for air, urgent and express delivery at Buyer's request shall be at Buyer's expense.

### **5. Dimensions, Weights and Quantities Delivered**

The dimensions, weights and quantities stated in the shipping/accompanying documents shall be Authoritative for invoicing. Any complaints about delivery dimensions, delivery weights and quantities delivered shall be raised in writing at the latest within 3 working days from receipt of the goods at the place of destination.

### **6. Reservation of Title**

- a) The goods shall remain our property until all present and future claims from business transactions with Buyer are settled.
- b) Buyer shall be obligated to store separately and identify the goods which are our property (reserved property).
- c) Processing or transforming of the reserved property by Buyer on our behalf shall not entail any obligations for us. If Buyer combines, mixes, unites or processed the reserved property with other goods or transforms it jointly with other goods, we shall be entitled to a co-ownership of the emerging new goods at the ratio of the invoice value of the reserved property to the other goods. The new goods shall be considered to be reserved property according to the interpretation of the conditions outlined here.
- d) The sale of the reserved property shall only be allowable through proper business transactions. Other disposals, in particular pledging and assignment as security of the reserved property shall not be allowed. Any claims and receivables to which Buyer may be entitled with respect to the reserved property on the basis of resale or other causes in law shall herewith be assigned to us in advance, in their full amount; in the case of co-ownership the assignment shall only cover that portion of such claims or receivables which corresponds to our co-ownership. We herewith accept the assignment. Any resale shall only be admissible subject to the condition precedent of such an assignment.

- e) Buyer shall only be authorized to collect the assigned receivables in a proper business transaction and only subject to revocation. On our demand, Buyer shall disclose the assignment to his debtors. Our company shall also be entitled to make this disclosure at any time.
- f) Buyer's authorization to dispose of the reserved property and to process, transform, combine, mix and unite it with other goods, as well as to collect the assigned receivables, shall cease in the event of non-compliance with the terms of payment, unauthorized disposals, protests in connection with bills or checks and when an insolvency proceeding is instituted against Buyer or we are informed of a material impairment of his financial status. In this case, we shall be entitled to immediately take possession of the reserved property even without rescinding the contract, to enter the plant of Buyer for this purpose, to demand appropriate information about the reserved property and any applicable receivables from its resale and to inspect Buyer's books inasmuch as this serves to secure our rights. A rescission of the contract is only connected with the take-over of the reserved property if we expressly declare so.
- g) Should the value of the securities granted to us exceed our receivables by more than 20% in total, we shall be obligated to release the excessive securities.

## **7. Material Defects**

- a) Buyer shall immediately, i.e. within 14 days of receipt of the goods at the place of destination, give written notice of any defects. Hidden defects shall be notified in writing immediately on discovery.
- b) If we are not given an opportunity to inspect the defect notified or if Buyer introduces changes to the goods declared defective without our prior consent, Buyer shall lose all his warranty claims.
- c) In the event of demonstrated defects, we shall at our discretion either repair the defects free of charge or supply replacement free of charge against return of the defective goods. Should we not or not to the contractual extent comply with these obligations within a reasonable period of time, Buyer may only fix in writing a reasonable period of time within which we have to comply with our obligations. Should this extension elapse without results, Buyer may demand a price reduction or rescind the contract.
- d) We shall not be liable for any defects which do not materially impair the value or merchantability of the goods.
- e) Claims for material defects shall become statute-barred within 12 months. This shall not apply to the extent to which the laws obligatorily prescribe longer periods, especially for goods which were used for a building in accordance with their customary destination and caused defects in it.
- f) A guarantee for the quality condition or durability of goods shall only be considered to have been granted if we have expressly stated the grant of such a guarantee in writing.

## **8. Other Claims, Liability**

- a) Unless the passages below provide for the contrary, all and any other and further claims of Buyer against us shall be excluded. This shall refer in particular to claims for damages on the grounds of breach of duties in connection with obligation and tortious act. We shall consequently not be held liable for damage not directly caused to the goods delivered. In particular we shall not be liable for loss of profit or any other financial loss on the part of Buyer.
- b) The above limitations of liability shall not apply in case of intent, gross negligence on the part of our legal representatives or executive staff nor in the event of negligent infringement of material contractual obligations. In the case of negligent infringement of material contractual obligations, we shall only be liable for the contract-typical, reasonably foreseeable damage, except for cases of intent or gross negligence on the part of our legal representatives or executive staff.
- c) The limitations of liability shall not apply either in those cases in which liability is imposed by the German Product Liability Law when any defects of the goods delivered may cause personal injury or material damage to privately used objects. Nor does it apply to harm to life, body or health and lack of warranted characteristics if and when the warranty had the specific purpose of protecting Buyer from damage not caused to the goods delivery proper.
- d) Inasmuch as our liability is excluded or limited, this shall also apply to the personal liability of our employees, co-workers, legal representatives and vicarious agents.

## **9. Infringement of Third-Party Rights**

Whenever goods are supplied based on plans, drawings, models, analytical specifications or other instructions of Buyer and this may infringe third-party rights, especially property rights, Buyer shall hold us harmless of such claims on our first demand.

## **10. Consultancy and Information**

Our recommendations for the use of our products as well as our technical advice for their application will be given on the basis of our experience and the indications made by Buyer. The examination and decision if the goods are suitable for the intended application, use or processing, shall solely be Buyer's duty and be within Buyer's sphere of responsibility. We neither guarantee for the results to be achieved nor do we undertake the warranty that third-party property rights are not infringed.

## **11. Title to Drawings and Plans**

We reserve our property right and copyright to our drawings, plans and suggestions. They may only be used in conjunction with the goods delivered by us and not be made accessible to third parties unless with our prior consent in writing.

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

- a) The place of performance for payment obligations of Buyer shall be Bad Lauterberg, and for our obligations, the place of delivery.
- b) It has been agreed that for any disputes resulting from and in connection with this contract, the courts of Herzberg shall have jurisdiction. This shall also apply to any actions from bill of exchange and check issues. However, we shall also be entitled to bring action before the courts at the registered domicile of Buyer.
- c) All legal relations between Buyer and us shall be exclusively governed by the laws of the Federal Republic of Germany. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG "Vienna Sales Convention") dated April 11, 1980 shall be excluded.