

## **GENERAL TERMS AND CONDITIONS OF SALE**

### **1. General**

- a) Our deliveries shall be exclusively subject to our Terms and Conditions of Sale; we reject any terms and conditions of the Purchaser to the contrary or deviating from our Terms and Conditions of Sale unless we have expressly consented to their validity in writing. Our Terms and Conditions of Sale shall apply even if we execute the delivery to the Purchaser without reservation with knowledge of terms and conditions of the Purchaser to the contrary or deviating from our Terms and Conditions of Sale.
- b) All agreements which are made between the Purchaser and us for the purpose of executing this contract shall be set down in writing in this contract.
- c) Our Terms and Conditions of Sale shall only be applicable vis-à-vis entrepreneurs as defined by § 14 of the German Civil Code (*BGB*), vis-à-vis public entities and public special funds.
- d) Our Terms and Conditions of Sale shall also apply to all future transactions with the Purchaser.
- e) The terms of the Incoterms as last amended shall apply supplementary to the Terms and Conditions of Sale; deviating terms and conditions in these Terms and Conditions of Sale shall take precedence over the Incoterms.
- f) If terms and conditions of the Seller's suppliers are attached to the Seller's confirmation of order, the Purchaser may assert rights arising out of the Seller's Terms and Conditions of Sale against the Seller only to the extent that these rights do not go beyond the rights arising out of the supplier's terms and conditions. However, the suppliers' terms and conditions shall not be valid beyond this limitation effect unless otherwise provided for below.
- g) Statutory rights constituted in the Seller's favour shall not be excluded by these Terms and Conditions of Sale. The Seller may rely, at its option, on the law or the Terms and Conditions of Sale.

### **2. Offers and contracts**

- a) The Seller's offers shall not be binding, unless otherwise expressly stipulated. Contracts shall be brought into being only as a result of the Purchaser's order and the Seller's written confirmation of order or the delivery of the goods by the Seller on its Terms and Conditions of Sale.
- b) Subsidiary agreements, quality descriptions, warranties and all other agreements as well as amendments of the contract and of these Terms and Conditions of Sale including this clause shall only be valid if expressly confirmed in writing by the Seller.

### **3. Scope of deliveries, partial deliveries**

- a) The scope of deliveries, the individual terms and conditions as well as the conditions and specifications of manufacturers or suppliers, insofar as these are attached, shall follow from the Seller's written confirmation of order.
- b) Any reference to standards, similar technical rules, other technical details, descriptions and illustrations of the delivery item in prospectuses, offers and contracts shall not constitute any agreement or guarantee as to characteristics. Certain characteristics of the delivery item shall in principle be deemed to be guaranteed by the Seller only if it has expressly confirmed this in writing. The Seller reserves the right to make any necessary technical modifications, unless they significantly impair the usability of the product supplied or are unacceptable to the Purchaser.
- c) The Seller shall retain title to and the copyright of cost estimates, drawings and other documents; these may be used by the Purchaser only if it places an order and may be made available to third parties only with the Seller's written consent.

d) Partial deliveries on a reasonable scale shall be admissible. Corresponding partial invoices shall be payable by the Purchaser. The Seller shall bear any increased transportation costs incurred as a result if they have been occasioned by it alone.

#### **4. Prices, packaging**

a) Prices shall be strictly net, "FOB named port of shipment/FCA named place", and shall include only the costs pursuant to the Incoterms as last amended. Packaging shall not be taken back.

b) The prices prevailing on the date of delivery shall be applicable. All prices shall be in euros plus any value-added tax to be borne by the Purchaser at the rate required by law on the date of invoice.

#### **5. Terms of payment**

a) Payments shall be made upon delivery, on the due date stated in the respective invoice at the latest, and without discount (such as cash discounts, taxes, duties or similar costs). The payment shall be deemed to be made when the amount owed is available on the Seller's account in Hamburg in full in disposable euros.

b) The Seller is not obliged to accept bills and cheques. In the event that bills and cheques are accepted, the payment shall not be deemed to be effected until the amount due has been irrevocably credited to the Seller's account. Charges and interest shall be for the Purchaser's account.

c) The Purchaser shall have a right of set-off only if its counterclaims have been recognized by declaratory judgment, are uncontested or are recognized by the Seller. Furthermore, the Purchaser shall be entitled to exercise a right of retention to the extent that its counterclaim is based on the same contractual relationship.

d) If the Purchaser defaults in payment, it shall pay interest to the amount of the interest rate charged by German credit institutions for open account credit, but at least at a rate of 8 % points (eight percentage points) above the base lending rate pursuant to § 247 BGB. The Seller reserves the right to prove and assert a higher amount of damage caused by default.

e) If the Purchaser's assets deteriorate substantially or other circumstances come to the Seller's knowledge which give cause for legitimate or significant doubts about the Purchaser's ability to pay or creditworthiness, the Seller shall be entitled to rescind the contract if the Purchaser does not pay the purchase price in advance or does not furnish first-class securities at its expense within one week of being requested to do so by the Seller. The costs of the rescission shall be borne by the Purchaser.

f) In the event of the Purchaser defaulting in payment, the Seller shall be entitled to withhold all performances owed the Purchaser if the arrears of payment are not just relatively small. As long as the Purchaser is in default the Seller shall not be in default with the performances withheld.

#### **6. Assignment**

The Seller shall be entitled without any qualification to assign its rights arising out of this contract, particularly the purchase-money claim and the securities furnished by the Purchaser therefor, to third parties in whole or in part.

#### **7. Terms for delivery and delays in delivery**

a) The period of delivery shall not commence until after receipt of all documents and authorizations (e.g. import and/or transfer permits) to be furnished by the Purchaser at its expense, down- and/or advance-payments, payment instruments and securities and after clarification of all commercial and technical questions as may still have been unsettled upon the conclusion of the contract.

A prerequisite of adherence to the delivery schedule is that the Purchaser has complied with the terms of the contract, in particular has performed its payment obligations. As proof of adherence to the delivery schedule shall be deemed the date of arrival or of receipt stated on the transport document or acknowledgement of receipt.

b) If events occur which the Seller could not foresee or events amounting to force majeure occur, the Seller shall be exempt, for the duration of such events, from its obligation to deliver and to perform and shall not be obliged to reimburse any expenses and/or to pay any compensation for damage. Events of force majeure shall include, without limitation, circumstances such as war, warlike state (even without a declaration of war and/or between third countries), riots, rebellion, civil disobedience, sabotage, boycotts, seizures, embargoes, quarantine, disruptions in operations and/or transportation, industrial action not due to the Seller's fault, orders made by governments, authorities or similar institutions, disasters, radiation.

Likewise, the Seller shall not be obliged to deliver and/or to pay any expenses and/or compensation for damage if documents and/or authorizations of the kind set forth under Section 7 a), which become necessary after commencement of the term for delivery, have not been furnished by the Purchaser, and in cases of deliveries and/or performances of the Seller's suppliers which are late, defective or insufficient in terms of quantity and for which the Seller is not responsible as well as in cases in which it would be unreasonable to require the Seller to procure the delivery item.

c) The parties are obliged to inform each other without undue delay of the occurrence, the probable duration and end of an event pursuant to Section 7 b). The time of delivery shall be prolonged in case of events pursuant to Section 7 b) by the duration of the interruption plus an appropriate mobilization period. This shall apply even if the Seller is already in default when the event occurs, but only insofar as the consequences of default are postponed accordingly. The occurrence of the event shall not cause any termination of the contract. The Seller shall be entitled to rescind the contract if an event pursuant to Section 7 b) causes or, with the utmost probability, will cause a delay of more than three months and it would be economically unreasonable to require the Seller to adhere to the contract. Payments made by the Purchaser shall be reimbursed without undue delay.

d) If the Seller's expenses for the delivery item increase as a result of a delay not caused by the Seller (particularly owing to price increases of suppliers, transport undertakings, insurance companies, credit institutions etc.), the Seller may demand an appropriate adjustment of the sales price without prejudice to any further claims.

e) If the delivery is delayed at the Purchaser's request or through its fault, the Seller may claim, without prejudice to further claims, the costs resulting from the storage, but at least a lump-sum amount of damage of 0.5 % (zeropointfive percent) of the contract price for each month of the delay begun, but up to a maximum of 5 % (five percent) of the contract price. In addition, the Purchaser shall pay the interest accruing after the due date as referred to in Section 5 d) as from the date on which the purchase price would have fallen due if the delivery had been effected on time. In these cases both parties are entitled to prove that a lower or higher amount of damage has occurred.

f) In all cases of delayed deliveries the Purchaser is obliged to ensure that letters of credit and other time-limited payment documents/financing agreements as well as permits to be obtained by it from the authorities of the importing country, particularly import licences, foreign currency allocations, transfer permits and other time-limited documents are prolonged accordingly at its expense. The Purchaser shall furnish the Seller with proof of the prolongation without being requested.

The Seller may not examine any request by the Purchaser for a postponement of the delivery date until after this proof has been furnished; the Seller is nevertheless not obliged to meet this request.

g) The Seller shall further be liable in accordance with the statutory provisions to the extent that the delay in delivery is based on an intentional or grossly negligent breach of contract for which it is responsible; any fault of its representatives or vicarious agents shall be attributable to the Seller. If the delay in delivery is not due to an intentional breach of contract for which it is responsible, the Seller's liability for damages shall be limited to the foreseeable, typically occurring damage if none of the exceptions set forth in sub-para. h) sentence 3 of this provision is applicable.

h) Otherwise, the Seller's liability on account of default in delivery for damages in addition to performance (damage caused by delay) is limited to 0,5 % of the delivery value per week ended, but maximum 5 % of the delivery value and for damages in lieu of performance to 25 % of the value of the performance. More extensive claims of the Purchaser are excluded, even after the expiration of a

deadline for performance set the Seller. Liability for culpable bodily injury or injury to life or health remains unaffected.

### **8. Rescission**

a) The Purchaser may rescind the contract within the framework of the statutory provisions only if the Seller is responsible for the breach of duty; in case of defects (Section 11), however, the statutory requirements shall apply.

b) In the event of breaches of duty the Purchaser shall declare within a reasonable period after being requested by the Seller whether, because of the breach of duty, it will rescind the contract or insists on the delivery.

### **9. Passing of risk and dispatch**

a) Irrespective of the delivery basis, the Purchaser shall bear the risk as from the date on which the delivery item is handed over to the first forwarder or carrier or is loaded on a vehicle of its own, but upon its leaving the respective works, warehouse or place of business at the latest.

Upon request, the Seller shall procure insurance in accordance with the Purchaser's instructions and be reimbursed for the respective premium.

b) If the delivery is delayed at the Purchaser's request or as a result of circumstances for which the Purchaser is responsible, the risk of accidental loss and/or of deterioration of the delivery item shall pass to the Purchaser on the date on which the notification of the readiness for dispatch is received by the Purchaser or on the date stated in an advance notice concerning the readiness for dispatch, but only if this date lies before the receipt of the notification of the readiness for dispatch. Section 9 a) sentence 2 shall apply correspondingly.

c) If the delivery item has only insignificant defects, the Purchaser shall take delivery thereof without prejudice to the rights under Section 11.

d) If the Purchaser defaults in taking delivery of the delivery item as a whole or of a part thereof, it shall make payment as if the entire delivery or partial delivery had been effected as originally stipulated. If this payment is not made on time, Section 5 d) shall apply.

Instead, the Seller shall be entitled, after expiration of a reasonable extension of time granted by it, to rescind the contract in whole or in part and to claim damages. In any event, a period of more than 10 (ten) days shall be deemed to be reasonable for the purposes of this provision.

### **10. Retention of title and other security rights**

a) The Seller shall retain title to all items delivered by it until all its claims arising out of the business relationship with the Purchaser including claims arising in future out of contracts concluded at a later date and including any recourse or indemnity claims arising out of bills and cheques have been settled in full. This shall also apply to any balance to the Seller's credit if individual or all claims have been posted by the Seller to a current account and the balance is struck.

If the Purchaser acts in breach of contract, in particular defaults in payment, the Seller shall be entitled after granting a reasonable extension of time to repossess the object of purchase; the statutory cases of dispensability of the extension of time remain unaffected. Repossession of the object of purchase by the Seller shall constitute a rescission of the contract. After repossessing the object of purchase, the Seller shall be entitled to realize the same; the realization proceeds shall be set off against the Purchaser's liabilities, less reasonable realization costs.

b) Prior to payment in full the delivery item may neither be sold nor pledged nor transferred for purposes of security. The Seller shall be informed without undue delay of any attachments and/or similar actions in respect of the delivery item by third parties. The Purchaser shall reimburse costs of intervention.

c) Any processing of the reserved goods shall be done for the Seller as manufacturer as defined by § 950 BGB, without, however, obligating the Seller. If goods of the Seller are processed with other items not delivered by it or mixed therewith to form an integral part, the Seller shall acquire joint title to the new object in the same proportion as the invoice value of its goods bears to the invoice values of the other processed or mixed items. If the Seller's goods are combined with other movable items to form a unified object which must be deemed to be the main object, the Purchaser herewith already assigns to the Seller the joint ownership thereof in the same proportion. The Purchaser shall hold the object owned or jointly owned by the Seller in safekeeping for the Seller free of charge. The ensuing ownership or joint ownership shall be deemed to be reserved property within the meaning of the provisions of Section 10. At the Seller's request, the Purchaser shall be obliged at all times to furnish the Seller with all the information required to pursue its rights of ownership or of co-ownership.

d) The Purchaser shall adequately insure the reserved goods against the risks during transportation and at the storage place, but at least against fire, water, storms, transport damage and theft, and prove that proper insurance has been effected without being requested. Claims against the insurer based on damage affecting the reserved goods are herewith already assigned to the Seller to the extent of the value of the reserved goods. The Purchaser shall impose this obligation on its customers.

e) To the extent that the realizable value of all security rights to which the Seller is entitled exceeds the amount of the secured claims by more than 10%, the Seller will release a corresponding portion of the security rights at Seller's own choice upon the Purchaser's request.

f) If the law of the country in which the delivery item is situated or for which the delivery item is intended permits the Seller to have other rights in the delivery item secured, the Seller may exercise all such rights. The Purchaser is obliged to consent to agreements and tolerate measures by which security rights of the aforesaid kind are constituted. The Purchaser is obliged to assist in measures which the Seller wishes to take to protect its right of ownership or another security right.

#### **11. Liability for defects**

a) The Purchaser shall have no claims based on defects if the delivery item deviates only insignificantly from the agreed quality or the serviceability is only impaired insignificantly.

b) The Purchaser shall give written notice of defects without undue delay pursuant to § 377 HGB, but within two weeks of receipt of the delivery item at the latest, and, in case of latent defects, without undue delay after discovery of the defect, specifying the defect. If the Purchaser fails to give notice of defects in due form and time, the delivery item shall be deemed to have been delivered in conformity with the contract.

The Seller shall be given an opportunity to carry out an inspection immediately, before any modifications or repairs are carried out in respect of any defect. At the Seller's request, the Purchaser shall furnish a written confirmation concerning the defect and its possible cause (certificate, survey). This shall be issued by a technical expert appointed by the consulate of the Federal Republic of Germany, the Chamber of Commerce or another neutral agency. The Seller may request further proof.

If the Purchaser does not fulfil these obligations or modifies or repairs the delivery item already complained of without the Seller's consent, it shall lose any claims to which it may be entitled.

c) If the object of purchase is defective, the Seller shall be entitled, at its option, to take remedial action in the form of a rectification of defects or to deliver a new object free from defects. If it remedies the defect, the Seller shall be obliged to bear all expenses required for the purpose of remedying the defect, particularly transportation, labour and material costs, with the exception of the additional costs incurred as a result of transporting the object of purchase to a place other than the place of performance.

d) If the remedial action is unsuccessful, the Purchaser shall be entitled, at its option, to rescind the contract or demand a reduction in the purchase price. However, in case of only minor breaches of contract, particularly minor defects, the Purchaser shall not be entitled to rescind the contract.

- e) The Seller shall be liable according to the statutory provisions if the Purchaser asserts damage claims based on intent or gross negligence, including intent or gross negligence of its representatives or vicarious agents. Unless an intentional breach of contract is imputable to the Seller, the liability for damages shall be limited to the foreseeable, typically occurring damage.
- f) The Seller shall be liable according to the statutory provisions if it has culpably infringed a material contractual duty; in this case, however, the liability for damages shall be limited to the foreseeable, typically occurring damage.
- g) Liability for culpable bodily injury or injury to life or health remains unaffected; this also applies to obligatory liability under the German Product Liability Act (*Produkthaftungsgesetz*).
- h) Unless otherwise provided for above, liability shall be excluded.
- i) The limitation period for warranty claims shall amount to 12 (twelve) months, calculated from the passing of risk.
- j) The limitation period in the event of recourse pursuant to §§ 478, 479 BGB remains unaffected; it shall amount to 5 (five) years, calculated from the delivery of the defective item.
- k) Where products are manufactured according to drawings, samples and other instructions of the Purchaser, the Seller shall not give any warranty or assume any liability for the fitness of the product for a particular function or for other defects, to the extent that these circumstances are based on instructions and specifications of the Purchaser.
- l) The Purchaser shall take all measures to enable the Seller and its agents to fulfil its statutory and contractual obligations, in particular to secure access to the delivery item and obtain all necessary authorizations and documents including entry visas for them.

## **12. Joint liability**

- a) Any liability for damages over and above that provided for in Section 11 is excluded, irrespective of the legal nature of the asserted claim. This shall particularly apply to damage claims based on culpa in contrahendo, other breaches of duty and claims in tort for payment of compensation for damage pursuant to § 823 BGB. However, liability for default is determined by Section 7 sub-paragraphs g) to h).
- b) To the extent that the Seller's liability for damages is excluded or limited, this shall also apply with regard to the personal liability for damages of its employees, co-workers, representatives and vicarious agents.

## **13. General provisions**

- a) All legal relationships between the Seller and the Purchaser shall be governed by the laws of the Federal Republic of Germany. The UN Convention on Contracts for the International Sale of Goods (CISG) and any other international conventions, even after being incorporated in German law, shall not be applicable.
- b) If the Purchaser is a merchant (*Kaufmann*) as defined by the German Commercial Code, the courts at the place of the Seller's business seat or the Purchaser's business seat, at the Seller's option, shall have jurisdiction over all disputes arising out of this contract in the event of an action being filed by the Seller, and exclusively the courts at the place of the Seller's business seat shall have jurisdiction in the event of an action being filed by the Purchaser. Statutory provisions concerning exclusive jurisdictions remain unaffected.
- c) If the Purchaser is served with a third party notice in a lawsuit between the Seller and one of its suppliers or – insofar as it is not possible to serve the Purchaser with a third party notice at the place of jurisdiction – is given an opportunity by the Seller to inform itself of the proceedings in detail and to assist the Seller, it shall accept the decision rendered in this lawsuit for or against itself as defined by § 68 of the German Code of Civil Procedure (*ZPO*).