

## **§ 1 Scope of Application**

1. All of the Supplier's deliveries, services and offers are made on the basis of these General Terms and Conditions of Sale and Delivery. These terms and conditions are incorporated into, and made a part of, any and all contracts which the Supplier concludes with its contracting partners (hereinafter referred to as "Customers") regarding the delivery of the goods and services it provides. They also apply to any and all future deliveries, services and offers made to the Customers, even if they have not been separately agreed to again.
2. The General Terms and Conditions of Sale and Delivery apply exclusively. Any different or conflicting terms and conditions of the Customer will become part of the contract only if and to the extent that the Supplier has expressly consented in writing to their application. The General Terms and Conditions of Sale and Delivery shall apply, even if the Supplier unconditionally carries out the delivery to the Customer with the knowledge that the Customer's terms and conditions are different from or conflict with its own General Terms and Conditions of Sale and Delivery.
3. The purchase agreement, which was concluded in writing and includes these General Terms and Conditions of Sale and Delivery, shall govern the legal relationships between the Supplier and the Customer exclusively. Any oral promises made by the Supplier before concluding the purchase agreement and any subsequent addenda, modifications and side agreements will not become binding until the Supplier has confirmed them in writing.

## **§ 2 Offer and Offer Documents**

1. All offers made by the Supplier are revocable and non-binding, unless they are expressly identified as binding or they contain a specific acceptance deadline.
2. The Supplier reserves all ownership rights and copyrights to any illustrations, sketches, calculations and other documents supplied to the Customer. Such documents may not be disclosed to third parties without the express written consent of the Supplier and must be returned, upon request, to the Supplier without undue delay.
3. Unless otherwise agreed, the delivery of samples is subject to a charge.
4. Field employees or commercial agents of the Supplier are authorized to represent the Supplier only if and to the extent that a written power of attorney has been issued.

## **§ 3 Prices and Terms of Payment**

1. The prices, which are stated in the Supplier's offer or order confirmation, shall apply to all supply contracts. All prices are stated in EUR for delivery "ex works" (Incoterms® 2010), and are subject to statutory value added tax. On any deliveries, which are made outside of Germany and are not subject to VAT, the Customer will be obligated to certify to the Supplier that it received the goods at the agreed place of delivery.

2. The Supplier reserves the right to reasonably adjust its prices in the event that there are unforeseeable changes in wages, the cost of materials and the exchange rate, provided that the period between the contract conclusion and the agreed delivery date is more than 4 months.
3. For any small jobs up to a net product value of EUR 500,- a processing surcharge of EUR 20,- will be billed.
4. If the Customer does not order the entire quantity of a packaging unit, then the Customer will be charged a package opening fee in the amount of EUR 3 for each opened packaging unit. The relevant packaging units are shown in the catalogues or in the other sales materials.
5. Unless otherwise agreed in writing, all invoices must be paid net within 14 days from the invoice date. In the event of a payment delay, the statutory provisions will apply.
6. If an overdue invoice amount is not paid despite two late payment notices, then all invoice amounts still outstanding will become due immediately.
7. Bills of exchange will be accepted only by agreement and, in that case, only as conditional payment and only if they can be discounted. Discounting charges will be levied upon the Customer from the day on which the invoice amount becomes due.
8. The Customer will be entitled to set-off rights only if its counterclaims have been finally adjudicated, are undisputed or have been recognized by the Supplier.
9. The Customer will be authorized to assert a right to withhold counter-performance only to the extent that its counterclaim is based on the same contractual relationship and, in addition, has been finally adjudicated, is undisputed or has been recognized by the Supplier.
10. If, after the contract is concluded, it becomes foreseeable that the Supplier's claim to a purchase price payment is at risk due to the Customer's incapability, then the Supplier will be entitled under the statutory provisions to refuse to tender its own performance and - if applicable, after setting a grace period with a deadline for performance - to rescind the contract (§ 321 BGB). For contracts regarding the delivery of goods, which the Supplier manufactures pursuant to the Customer's specific instructions, the Supplier may state its rescission immediately; the statutory provisions on the dispensability of setting the grace period remain unaffected thereby.

## **§ 4 Delivery, Delivery Period, Delay in Delivery**

1. All deliveries are made "ex works" (Incoterms® 2010).
2. The deadlines and scheduled dates for the delivery of goods and services tentatively promised by the Supplier shall always be understood merely as an approximation, unless a fixed deadline or a fixed scheduled date was promised or agreed.

3. On sales made ex works, the delivery deadlines will be deemed to have been satisfied, if the goods are made available to the Customer on the Supplier's grounds or at another named location within the delivery deadline period or by the scheduled delivery date. If a shipment is agreed, then the delivery deadlines and scheduled dates will refer to the point in time when the goods are physically handed over to the carrier, freight forwarder or other third party authorized to conduct the transport.
4. If the Supplier is in delay in delivering a good or service and the Customer incurs damages as a result of the delay, then the Customer will be entitled to demand an indemnity, which will be limited for each completed calendar week of the delay to no more than 0.5% of the value of the good or service that is in delay, but which indemnity shall not exceed in aggregate 5% of the value of the good or service in delay. The Customer will reserve the right to pursue other remedies available under the statutory provisions (rescission, compensatory damages in lieu of specific performance), unless § 9 provides otherwise.
5. The Supplier will not be liable for any delays in delivery, if such delays were caused by a force majeure or by other events, which were unforeseeable at the time that the contract was concluded (e.g., difficulties in obtaining materials and energy, strikes, lawful lockouts, difficulty in procuring the necessary regulatory permits, regulatory actions and the failure of sub-suppliers to deliver the goods and services either correctly or in a timely manner), and which were not attributable to the Supplier's sphere of responsibility. In the event there is a temporary hindrance, the deadlines for the delivery of goods and services will be postponed, or the scheduled delivery dates for the goods and services reset, to the extent that encompasses the period of the hindrance plus a reasonable start-up phase.
6. The Supplier will be entitled to deliver some of the goods or services (as partial deliveries) only if
  - the Customer is able to use the partial delivery in accordance with the purpose of the contractual provisions,
  - the delivery of the remaining ordered goods is ensured, and
  - the Customer does not incur any significant additional expenses as a result thereof.

## **§ 5 Packaging**

1. All deliveries must be made exclusively in the Supplier's standard packaging units. The Supplier reserves the right to the extent considered customary in trade to modify the ordered quantities in accordance with its packaging sizes, provided that such rearrangement would not be unreasonable for the Customer.
2. In the event a disposal discount, which is granted by the Supplier, is claimed, the Customer will be obligated to duly dispose of the packaging in accordance with the applicable rules and provisions.

## **§ 6 Transport, Delay in Acceptance**

1. The Supplier is entitled, but not obligated, to insure the deliveries in the name and for the account of the Customer.

2. In the event that damage occurs during transport, the Customer must without undue delay cause a fact-finding investigation to be done with the competent office and to inform the Supplier thereof.
3. If the Customer is in default in accepting the goods or services or if it culpably breaches other duties of cooperation, then the Supplier will be entitled to demand compensation for any damages caused to it as a result thereof (including any additional expenses). The right to enforce additional claims and rights is reserved.

## **§ 7 Liability for Defects in Quality**

1. The Customer's claims based on defects in quality require that the Customer duly discharge its duties of inspection and complaint submission as owed under § 377 of the German Commercial Code (HGB). Objections to any immediately identifiable defects (including an incomplete delivery) must be raised within three business days after the goods are received.
2. For purposes of determining whether the delivered goods are free and clear of any defects, the contractually defined specifications will be ascribed preference. The Customer will be held liable if the documents which it made available (including any sketches, studies and samples) are incorrect.
3. If the delivered goods exhibit defects in quality, then the Supplier will be entitled to initially cure the defect. As cure the Supplier may, at its choice, remedy the defect or deliver substitute goods free from defects. The Supplier will be obligated to bear any and all expenses required for the purpose of implementing the cure, including any costs related to transport, travel, labor and materials, to the extent that such costs are not increased by virtue of the fact that the purchased item was moved to a location other than the Customer's principal place of business.
4. The Customer will be entitled to declare the contract null and void or to demand a reduction of the purchase price if the statutory requirements for enforcing such remedies have been met.
5. If the defect is based on the Supplier's fault, then the Customer may demand compensatory damages under the conditions defined in § 9.

## **§ 8 Liability for Defects in Title**

1. The Supplier shall deliver goods that are free and clear of any third party rights, which exist under German law or the law of the country in which the Customer has its principal place of business, and of which at the time of the conclusion of the contract the Supplier knew or could not have been unaware.
2. If the Supplier breaches this duty, then the Supplier, at its option and at its own expense, shall modify or exchange the item of delivery such that third party rights are no longer infringed and the item of delivery continues to fulfill the contractually agreed functions or shall procure for the Customer the right of use by concluding a license agreement. If it fails to satisfy the foregoing

within a reasonable deadline period set by the Customer, then the Customer will be entitled to declare the contract null and void or demand a reduction of the purchase price.

3. Any claim for compensatory damages is subject to the limitations of § 9 of these General Terms and Conditions of Sale and Delivery.
4. In the event that third party rights are infringed, then the Supplier's duties as set forth in § 8 will apply conclusively, subject to the rules under § 9. They will arise only if
  - the Customer has informed the Supplier without undue delay about the third party rights being enforced;
  - the Supplier retains the right to manage all defense measures, including any out-of-court settlements;
  - the defects in title are not attributable to instructions given by the Customer, and
  - the rights infringement was not caused by the fact that the Customer had independently altered the item of delivery or had used it in a manner that contravened the contract.
5. If third party rights are infringed and the infringement is based on the fact that the Supplier manufactures goods pursuant to the Customer's instructions or on the fact that the Customer independently alters the delivered goods or uses them in a manner that contravenes the contract, then the Customer shall, upon first demand made, indemnify the Supplier with respect to any third party claims.

### § 9 Other Liability

1. The Supplier's liability for compensatory damages, irrespective of the legal grounds upon which such liability is based (including objective impossibility, performance default, defective delivery, other contractual breach or tortious conduct), will be governed by the following terms and conditions.
2. The Supplier shall be liable according to the statutory provisions
  - for losses caused by intentional acts or omissions and by gross negligence;
  - for death, physical injury and impairment of health;
  - based on the provisions of the Products Liability Act, and
  - for defects, which have been fraudulently concealed or the absence of which it had guaranteed.
3. In event of breach of essential contract obligations, Customer's claim for damages against the Supplier shall be limited to foreseeable damages typical for the contract unless the Supplier breached such obligations intentionally or in a grossly negligent manner.
4. The Supplier shall not be subject to more extensive liability.

### § 10 Limitation of Claims for Defects

The limitation period for any claims based on defects in quality or defects of title will be one year from the date that risk has passed. The statute of limitations periods will apply to compensatory damage claims under § 9 (2). They also apply in the event recourse is taken against the Supplier pursuant to § 478, 479 of the BGB

and will apply to defects in the delivered goods, which have been used for a building in accordance with the normal manner they are used and have resulted in the defectiveness of the building (§ 438 (1) no. 2 BGB).

### § 11 Retention of Title

1. The Supplier retains title to the delivered goods until all payments arising from the business relationship with the Customer have been received. In the event of conduct that breaches the contract (including a delay in payment), the Supplier will be entitled to demand the return of the reserved goods. Once the Supplier takes back the reserved goods, the contract will be deemed rescinded.
2. The Customer is entitled, however, to sell the delivered goods in the ordinary course of business, as long as it has seasonably performed its obligations under the business relationship with the Supplier. The Customer is not entitled, however, to pledge the reserved goods or assign them as security. The Customer here and now assigns to the Supplier any and all receivables, which it acquires against its own immediate purchasers or third parties from having resold the reserved goods. The Supplier hereby accepts the assignment. The Customer is authorized to collect these receivables even after the assignment. The Supplier's authority to collect the receivable itself remains unaffected thereby. The Supplier is obligated, however, not to collect the receivable as long as the Customer has discharged its payment duties from the incoming revenues, it has not defaulted in its payment, no petition to commence insolvency proceedings has been filed or the Customer has not discontinued making payments. If this is in fact the case, however, then the Supplier may demand that the Customer disclose to it the assigned receivables and the corresponding debtors, provide all required information for collection purposes, physically deliver all related documentation and inform the debtors about the assignment.
3. The processing or alteration of the reserved goods by the Customer will always be carried out for the Supplier. If the reserved goods are processed together with items of property which do not belong to the Supplier, then the Supplier shall acquire co-ownership in the new property based on the proportion of the reserved goods' value (invoiced final amount including VAT) to the other processed items as of the date of the processing.
4. If the reserved goods are inextricably combined or comingled with other items of property, which do not belong to the Supplier, then the Supplier shall acquire co-ownership in the new property based on the proportion of the reserved goods' value (invoiced final amount including VAT) to the other combined or co-mingled items as of the date of the combination or co-mingling. If the combination or co-mingling is carried out in such a manner that the Customer's property is viewed as the principal thing, then the parties will be deemed to have agreed that the Customer will transfer co-ownership on a pro rata basis to the Supplier. The Customer agrees to hold and keep in custody the solely owned or co-owned property, which is created thereby, on behalf of the Supplier.
5. For the property created during the course of the processing, combination or comingling, the same rule will otherwise apply to the property which is delivered under a retention of title provision.

6. The Customer shall inform the Supplier without undue delay of any third party execution actions taken against the reserved goods or against the claims assigned to the Supplier or against other items of security and shall deliver the documents required for an intervention. This also applies to any kind of impairment.
7. The Supplier agrees, at the Customer's request, to release security which it holds to the extent that the realizable value of the security exceeds the secured receivables by more than 20%. The Supplier will be responsible for selecting the security to be released.

## **§ 12 Provision of Sales Resources**

Any sales resources, equipment, display stands, advertising media or other demonstration materials (hereinafter collectively referred to as "Sales Resources"), which the Supplier provides to the Customer free of charge, will be done on strictly a loan-out basis. The Supplier shall remain the owner of the Sales Resources which it provides. The Customer may use the Sales Resources only for selling the products that are delivered by the Supplier. It is obligated to handle the Sales Resources with care and keep it in an orderly condition. Unless a different agreement is reached, the Supplier will be entitled to demand the return of the Sales Resources at any time.

## **§ 13 Judicial Forum and Choice of Law**

1. Jurisdiction and venue shall lie with the courts at the Supplier's principal place of business. The Supplier is also entitled, however, to bring legal action against the Customer at the court which is competent at the Customer's registered place of business.
2. The laws of the Federal Republic of Germany shall govern. The UN Sales Convention shall not apply.