

# General terms and conditions of sale, delivery and payment

## 1. General

(1) The terms and conditions set out below shall form part of the agreement concluded with us.

(2) Our General Terms and Conditions of Sale shall apply in accordance with the most recent version and to all subsequent transactions without any need of express reference thereto or agreement thereon at the conclusion of such transaction.

(3) We hereby object to any counter confirmation, counter offer or other reference by the Buyer to their general terms and conditions; any dissenting terms and conditions of the Buyer shall only apply if we have confirmed the same in writing.

(4) The Buyer may not assign any claims arising from transactions with us without our written approval.

## 2. Offers, Orders

(1) Our offers shall not be legally binding; in particular with reference to quantities, price and delivery time.

(2) Orders placed by the Buyer shall not be regarded as accepted before these have been confirmed by us in writing. If we should fail to confirm an agreement in writing which we have entered into verbally or in a telephone conversation, then our invoice shall be regarded as confirmation.

## 3. Price/Price adjustment and Payment conditions

(1) Our prices shall exclude any statutory VAT which shall be payable at the date of delivery.

(2) If, as a result of a change of law between the agreement date and the delivery date, additional or increased charges – in particular duties, levies, shall be payable, then we shall have the right to increase the purchase price accordingly. The same shall apply to an increase of demurrage and freight cost.

(3) Our purchase price claims are net cash amounts and payable free of any deduction upon receipt of the invoice, and in the stated currency, unless other payment terms shall have been agreed.

(4) The Buyer is in arrears 10 calendar days after date of invoice, or from agreed payment schedule dates. We charge interest on arrears at the rate of 8% above the respective base rate of interest of the European Central Bank, unless higher rates of interest are agreed. We reserve the right to claim further damages from arrears.

(5) If insolvency proceedings have been filed or opened against the Buyer, we shall have the right to declare all our claims arising from the business relationship as immediately payable. The same shall apply if the Buyer shall be in payment default towards us or other incidents shall surface which give rise to doubts about the Buyer's creditworthiness. Moreover, we may in such event demand prepayments or a security deposit or rescind the agreement.

(6) The Buyer shall have no right to offsets, retention or reduction unless the underlying counter-claims have been conclusively determined by a court or expressly acknowledged by us.

(7) In the event that the Buyer requests termination of the work prior to completion of a technical performance evaluation, we reserve the right to complete such analyses and records as are necessary to place our files in order and, where considered by us necessary to protect our professional reputation, to complete a report on the work performed to-date.

(8) Product returns are subject to a re-stocking fee of 25%. Returned product must be returned in the condition originally received. Shipping costs for the return are entirely the responsibility of the Buyer. In order to re-stock product a return authorization from us is required in advance.

(9) Buyer receives the relevant Materials Safety Data Sheet (MSDS) and shall ensure that all our products will be handled accordingly.

## 4. Shipping

(1) The goods shall be transported uninsured and in any event at the risk of the Buyer. This shall also apply in cases of any delivery free of charge and regardless of which means of transport shall be used. Any transport insurance shall be provided only upon express demand of the Buyer. Any costs arising therefrom shall be at the expense of the Buyer only.

(2) The selection of the place of dispatch and the transport route and the means of transport shall, in the absence of any written arrangement dictating otherwise, be subject to our reasonable discretion and be without liability for the cheapest and fastest transport.

(3) We shall have the right to reasonable delivery in installments.

(4) Our delivery obligation shall at all times be subject to timely and orderly receipt of the goods from our own suppliers.

(5) Unless otherwise expressly agreed in writing, any indicated time of delivery or unloading shall be non-binding.

(6) Any inability to supply as a result of *force majeure* or other unforeseen incidents outside our responsibility including, without limitation, strike, lock out, acts of public authorities, subsequent cease of export or import opportunities and our reservation of timely supply from our own supplies in accordance with subsection (4) above shall, for their duration and in accordance with their impact, relieve us from the obligation to comply with any agreed time for delivery and unloading.

(7) If any agreed time of delivery or unloading shall be exceeded and there shall be no incident referred to in subsection (6) above, then the Buyer must specify to us a reasonable cure period of minimum two weeks. If we shall fail to meet such deadline also, then the Buyer shall have the right to rescind the agreement but shall have no right to seek compensation for breach of contract or default unless in cases of wilful misconduct or gross negligence on our part.

## 5. Notice of defects, warranty and limitation of liability

(1) The Buyer must examine the goods delivered – if necessary by test processing – to determine whether they are free of defects.

(2) Any possible complaints regarding the quality or the quantity of the goods must be raised by specifying details of the order and the invoice numbers. The Buyer must, within 5 business days of the delivery, notify all visible physical defects in writing, but in any case prior to any onward disposal, consumption, processing, blending or mixing of them. The Buyer must notify concealed physical defects immediately after its discovery in writing, at the latest 4 weeks after the delivery. The Buyer must make available to us the objected goods for inspection; such inspection may be done by us, our suppliers or any expert we may have designated

(3) If the Buyer does not comply with the above-mentioned obligations, the goods shall be regarded as approved.

(4) Upon justified objections raised in accordance with the procedures and deadlines hereunder, the Buyer may request replacement of the defective goods (to the extent reasonable and commercially viable for us) or reduction of the price or cancellation of the order with respect to the defective goods.

(5) We shall only be held liable in case of intent or gross negligence limited to the typical and foreseeable damage. These restrictions do not apply in case of culpable breach of main contractual obligation (*Kardinalpflicht*), whose proper performance is essential to the achievement of the purpose of the contract. We are not liable for any indirect or consequential loss or damage. Our liability for culpably caused death or personal injury and our liability under the applicable Product Liability Act will be in accordance with applicable law and not be restricted. As far as our liability is excluded this also applies for our staff, sub-contractors or various agents.

(6) If not otherwise agreed warranty claims and contractual claims arising on the occasion of, or in connection with the delivery of goods, shall be time-barred after one (1) year following the delivery of goods. This does not apply insofar as we are liable for intent, gross negligence, culpable injury to health, body and life and under the Product Liability Act.

## 6. Retention of ownership, sureties

(1) We shall retain full title of the goods that have been delivered until all our claims arising from the business relationship have been satisfied by the Buyer, including any account balance.

(2) The Buyer shall have the right to dispose of the goods delivered by us within its ordinary course of business. We may withdraw the sales authority of the Buyer if it shall be in breach of any obligation owed to us in particular if it shall be in payment default or we shall become aware of other incidents that give rise to doubts about its creditworthiness.

(3) The Buyer's right to process the goods delivered shall also be subject to the limitations set out in subsection (2) above. The Buyer shall not acquire title to the fully or partly processed goods; the processing shall be free of charge for our benefit as Manufacturer in the sense of § 950 of the German Civil Code. If we should, for whatever reason, lose our rights under the retention of title, then it is hereby agreed between us and the Buyer that we shall acquire title upon processing of the goods and the Buyer shall remain custodian of the goods which shall be free of charge.

(4) If the goods in which we have retained title shall be inseparably assembled or mixed with goods that are third party property, then we shall acquire joint ownership (co-title) in the new goods or the mixed stock. The proportion of co-title shall follow from the proportion of the invoice value of the goods delivered by us under retention of title and the invoice value of the new goods.

(5) Goods in which we shall acquire sole or co-title in accordance with subsection (3) and (4) shall be regarded as goods delivered under retention of title for the purposes of the following paragraphs.

(6) The Buyer hereby assigns to us all claims arising from the resale of the goods delivered under retention of title, we hereby accept such assignment. In the case of the resale of goods in which we have co-title the proportion to the invoice value of our goods and the other processed or mixed goods is assigned to us.

(7) Insofar as our claims are undoubtedly secured through the assignment and retention by more than 125%, any surplus of sureties shall, upon demand of the Buyer, be released in accordance with our choice.

(8) The Buyer shall be authorised to collect any receivables arising from the resale of goods. We may withdraw the Buyer's authority to collect, if it shall be in breach of any obligation owed to us in particular if it shall be in payment default or we shall become aware of other incidents that give

rise to doubts about its creditworthiness. If the above authority shall cease to exist or be withdrawn by us, then the Buyer shall upon our demand immediately specify to us its debtors in the claims assigned and provide us with all information and documentation necessary for collection.

(9) In the event of any third party action against our goods delivered under retention of title or any receivables assigned to us, the Buyer shall notify such party of our property right and immediately inform us about such action. The Buyer shall bear the costs of any intervention.

(10) If the Buyer shall be in breach of contract, in particular in payment default, then it shall, upon our demand, immediately return to us all goods delivered under retention of title. Any return of the goods delivered under retention of title shall not be regarded as a rescission of the agreement.

(11) We may require the Buyer, to inform us about the claims arising from the resale that have been assigned to us in accordance with § 6 (6) above including its debtors. Following such information, we shall have the right to disclose the assignment as we consider appropriate.

## 7. Final Provisions

(1) Essen, Germany is the place of jurisdiction; we may also select a different place of jurisdiction.

(2) German law shall apply, but excluding the rules of the Conflict of Laws and the application of the UN Convention on Contracts for the International Sale of Goods ("CISG").

(3) If any provision of this Agreement should be totally or partially invalid or become invalid or unenforceable, the validity of the other provisions shall not be affected. The parties are obliged to replace any invalid or unenforceable provision by a valid and enforceable provision which comes as close as possible to the meaning intended by the parties through the invalid or unenforceable provision. This shall apply mutatis mutandis in case of any gap in this Agreement.

(4) Data of the buyer that we obtain in the context of our business relationships are stored by us in accordance with the German Data Protection Act.