

## **Standard Conditions of Sale**

### **1**

#### **General**

- (1) All offers are made based on the following conditions of delivery. These form the basis of all offers and agreements and for the duration of the entire business relationship shall be deemed acknowledged once an order is placed or a delivery is accepted. Conditions contrary hereto that have not been expressly acknowledged in writing shall not be binding upon the Seller, even if they have not been expressly objected to.
- (2) Verbal agreements outside this contract have not been made.
- (3) Pursuant to Section 13 BGB [German Civil Code] an "entrepreneurs " within the meaning of the following provisions is understood to be every natural person who enters into a legal transaction for a purpose that cannot be ascribed to his or her commercial or self-employed occupation.
- (4) Pursuant to Section 14 BGB [German Civil Code] a "contractor" is a natural person or legal entity or an incorporated partnership who enters into a legal transaction in pursuit of its commercial or self-employed occupation.
- (5) The following General Terms of Sale shall apply vis-à-vis consumers and entrepreneurs pursuant to Section 14 of the German Civil Code [BGB = Bürgerliches Gesetzbuch] unless otherwise stated.

### **2**

#### **Offers and Offer Documents**

- (1) The Seller's offer shall be subject to change without notice, unless otherwise stated in the acknowledgement of the order.
- (2) Documents belonging to offers such as illustrations, drawings, indications of weight or dimensions and/or other technical data as well as DIN, VDE or other internal or external standards referred to shall merely identify the subject matter of the contract and not constitute a warranty of qualities.
- (3) The content and extent of the contract shall be determined by the Seller's written acknowledgement of the order. Additional agreements, amendments, supplements etc. shall be subject to the Seller's written acknowledgement.
- (4) The Seller shall reserve ownership rights and copyrights in illustrations, drawings, cost estimates and other documents. This also applies to written documents referred to as "confidential". The Purchaser shall require the Seller's express written consent prior to passing these on to a third party.

### **3**

#### **Prices - Payment Terms**

- (1) Unless otherwise stated in the acknowledgement of the order, prices shall apply ex works excluding packaging. The packaging used by the Seller serves solely as transport packaging. Transport packaging shall be invoiced separately.
- (2) The Seller reserves the right to alter its prices accordingly, if after the conclusion of the contract cost reductions or cost increases occur, particularly on account of collective agreements entered into or changes in the price of materials. The Seller shall prove this to the Purchaser on request.
- (3) Statutory value-added tax shall not be included in prices. It shall be indicated separately on the invoice at the statutory rate on the day of invoicing.
- (4) The purchase price and prices for additional services shall be due and payable at the time the purchase item is handed over and the invoice is handed out or sent. If the Purchaser defaults on payment, the Seller shall be entitled to demand interest on arrears at the rate of 8 percentage points above the base interest rate if the purchaser is an entrepreneurs. Vis-à-vis a consumer the statutory rules apply. All rights shall be reserved for the assertion of any other damage. The Purchaser may provide evidence of a lower damage.

- (5) The deduction of a cash discount shall be subject to a separate written agreement.
- (6) The Purchaser may only offset against the Seller's claims, if the Purchaser's counterclaim is undisputed or a legally enforceable instrument is on hand. The Purchaser may only claim a right of retention, in so far as this is based on claims arising from the purchase contract.

#### **4**

##### **Delivery Period**

- (1) The delivery period quoted by the Seller shall commence on the condition that all technical issues relevant to the order have been settled.
- (2) Furthermore adherence to the Seller's delivery periods shall be subject to timely and proper performance of the Purchaser's obligations. The right to plea non-performance of contract shall remain reserved.
- (3) Delivery dates and delivery periods that are able to be agreed upon on a binding or non-binding basis shall be quoted in writing. Delivery periods shall commence at the time the contract is concluded.
- (4) If due to circumstances attributable to it or a person employed by it to perform an obligation the Seller is prevented from delivering the purchase item by the agreed date or within the agreed period (default in delivery), the Seller shall be liable in accordance with legal regulations. If the Seller or a person employed by it to perform an obligation is not to blame for the default in delivery, the Seller shall only be liable for foreseeable damage that typically occurs. If default in delivery is merely based on a breach of an immaterial contractual duty, the Purchaser may claim flat-rate compensation for damage caused by default at the rate of not more than 15 % of the value of the delivery.
- (5) Force majeure and events that temporarily prevent the Seller through no fault of its own from delivering the purchase item by the agreed date or within the agreed period shall entitle the Seller to defer the delivery or performance by the duration of the hindrance plus a reasonable start-up period. If corresponding disruptions lead to a postponement of performance in excess of four months, the Purchaser may cancel the contract. Other rights of cancellation shall remain unaffected.
- (6) The Purchaser shall be obliged to accept the purchase item. If the Purchaser defaults on acceptance, the Seller shall be entitled to demand compensation for damage incurred by it in this connection.
- (7) The right to modify the design or form, deviate from a shade of colour or alter the scope of delivery on the part of the manufacturer shall remain reserved during the delivery period, unless it would be unreasonable to expect the Purchaser to accept the alterations or deviations in due consideration of the Seller's interests. In so far as the Seller or the manufacturer uses references or numbers to designate the order or the ordered delivery item, rights in respect of defining the purchase item or the scope of delivery may not be derived from this alone.

#### **5**

##### **Passage of Risk**

- (1) Unless otherwise stated in the acknowledgement of the order, delivery "ex works" shall be agreed.
- (2) The risk of accidental loss and accidental deterioration of the purchase item shall be passed to the Purchaser upon the hand-over thereof.
- (3) If the Purchaser is not a consumer, risk shall be passed to the Purchaser (in the event that the delivery item is forwarded) once the item is handed over to the person carrying out the transportation or once the item has left the Seller's warehouse for the purpose of forwarding.

## 6

### **Liability for Defects**

- (1) In the case of newly manufactured items the statutory period of limitation shall be 1 year, unless the Purchaser is a consumer. Otherwise the statutory period of limitation shall be 2 years. In the case of used goods the statutory period of limitation shall be 1 year, if the Purchaser is a consumer. If the Purchaser is not a consumer, used items shall be sold excluding every liability for defects. The statutory period of limitation shall commence at the time the goods are delivered.
- (2) The Purchaser's claims to the remedying of defects shall be primarily limited to a claim to subsequent performance, i.e. a claim to have defects remedied or a replacement delivered. If the Purchaser is not a consumer, the Seller shall have the right to choose to either remedy defects or deliver a replacement. In the event that the Seller fails to remedy defects or deliver a replacement, the Purchaser may demand a reduction in the purchase price or cancel the contract. The remedying of defects shall be deemed failed, if and in so far as a period that the Seller has been set for subsequent performance passes without effect. The preconditions for exercising the right of cancellation shall be determined by Section 323 BGB [German Civil Code].
- (3) The Seller shall be liable in accordance with legal regulations, in so far as the Purchaser asserts damage claims based on malice, intent or gross negligence including malice, intent or gross negligence on the part of its representatives or persons employed by it to perform an obligation. In so far as the Seller is not to blame for an intentional breach of contract, liability shall be limited to foreseeable damage typically occurring. In so far as a damage claim is based on a culpable failure to remedy defects, the sum thereof in respect of the cost of fitting and dismantling shall be limited to corresponding rates of the DAT/Schwacke list. In all other respects liability for damages shall be excluded. In this connection the Seller shall in particular not be liable for damage not occurred on the deliver item, unless this concerns damage to a person's life, body and/or health.
- (4) In the event that defects are to be remedied, the Seller shall be obliged to bear all expenses necessary for the purpose of remedying defects, in particular the cost of transportation, travelling, labour and materials. In relation to non-consumers this shall only apply, in so far as expenses are not increased as a result of the purchase item having been transported to a place other than the place of performance.
- (5) The Purchaser shall lodge claims to the remedying of defects with the Seller.
- (6) In the case of a defect based on faulty assembly instructions, the Seller shall only be liable for defects, if the item sold was otherwise expertly assembled and/or fitted. The Purchaser shall be required to set forth and prove that this was carried out by an expert.
- (7) If products are manufactured according to design documents received from the Purchaser, the Seller shall only be liable for manufacturing. If a third party holds the Seller liable for defects under the law concerning liability and the cause thereof does not lie within the Seller's sphere of manufacturing, but within the area for which the Purchaser is responsible, the Purchaser shall be obliged to indemnify the Seller against such claims.

## 7

### **Liability due to other causes in law**

- (1) Any liability for damages not addressed in section 6 shall be excluded, regardless of the legal reason of the claim. This shall apply in particular to the liability pursuant to culpa in contrahendo, breaches of contractual duties and tort liability pursuant section 823 of the German Civil Code.
- (2) The exclusion or restriction of our liability shall also apply to the liability of our employees, labourers, associates, representatives and agents.

- (3) The statutory rules of the Product Liability Act [Produkthaftungsgesetz] remain unaffected.

## 8

### **Recourse to the Entrepreneurs Upon Selling to Commercial Resellers**

- (1) If the Purchaser resells the sold item to a consumer in the course of its commercial business and was required to take back this item or reduce its purchase price as a consequence of a defect therein, the Purchaser may assert its claims to liability for defects against the Seller without setting a time limit.
- (2) Additionally the Purchaser may demand the reimbursement of expenses that it was required to bear in relation to the consumer, if the defect claimed by the consumer already existed at the time risk was passed to the Purchaser. Expenses include in particular the cost of transportation, travelling, labour and materials.
- (3) The Purchaser shall not be entitled to damages as part of this recourse to the entrepreneurs.
- (4) The obligation of the Purchaser to notify any defect pursuant to Section 277 of the German Commercial Code [HGB = Handelsgesetzbuch] shall not be affected by this.

## 9

### **Reservation of Ownership**

- (1) The purchase item shall remain the Seller's property up until claims to which the Seller is entitled under the purchase contract have been settled. If the Purchaser is a businessman within the meaning of the HGB [German Commercial Code], the Seller shall reserve ownership rights in all delivery items up until all payments arising from the business relationship have been received.
- (2) The Purchaser shall be obliged to handle the purchase item with care. In particular the Purchaser shall be obliged to adequately insure the purchase item at its own expense against the risk of fire, water damage and theft at the replacement value. In so far as maintenance and inspection work is necessary, the Purchaser must carry this out in due time at its own expense.
- (3) In the event that the item sold is taken in execution or otherwise seized by a third party, the Purchaser shall give the Seller written notification thereof without delay, so that the Seller can file suit pursuant to Section 771 ZPO [Code of Civil Procedure]. If the third party is unable to reimburse the Seller for court costs and out-of-court costs in connection with a lawsuit pursuant to Section 771 ZPO [Code of Civil Procedure], the Purchaser shall be liable for the loss incurred by the Seller.
- (4) The Purchaser shall be entitled to resell delivery items in the normal course of business. However the Purchaser shall already now assign to the Seller up to the sum of the final invoiced amount of the purchase money claim payable by the Purchaser (including turnover tax) all accounts receivable that accrue to it against its customers or third parties as a result of reselling, irrespective of whether the delivery items were resold without being processed or after having been processed. The Purchaser shall also remain authorised to collect these accounts receivable after the assignment of claims. This shall not affect the Seller's authority to collect accounts receivable itself. The Seller undertakes not to collect accounts receivable itself, as long as the Purchaser meets its obligations to pay in conformity with the contract and a petition to commence insolvency proceedings has not been filed. If one of the last-mentioned circumstances has occurred, the Purchaser shall at the request of the Seller give the Seller all information necessary for collecting the assigned account receivable and hand out accompanying documents as well as notify relevant debtors (third parties) of the assignment of claims.
- (5) In the event that the realizable value of the Seller's collateral security exceeds by more than 20 % the accounts receivable to be secured, the Seller shall be

obliged to release to this extent at the Purchaser's request the collateral security to which it is entitled. The Seller shall be responsible for selecting the collateral security to be released.

- (6) In the event that the purchase item is processed or transformed, this shall always be undertaken for the Seller. If the purchase item is processed with other items not belonging to the Seller, the Seller shall acquire co-ownership rights in the new item in the ratio of the value of the purchase item (final invoiced amount including VAT) to the value of the processed items at the time of processing. Incidentally the same conditions applicable to the purchase item delivered under reservation of ownership shall apply to the item created by processing.
- (7) If the purchase item is inseparably mixed with other items not belonging to the Seller, the Seller shall acquire co-ownership rights in the new item in the ratio of the value of the purchase item (final invoiced amount including VAT) to the value of the other mixed items at the time of mixing. If mixing is undertaken in such manner that the Purchaser's item is to be regarded as the principal item, it shall be deemed agreed that the Purchaser shall transfer co-ownership rights to the Seller on a proportionate basis. The Purchaser shall keep the sole property or joint property created in such manner in safe custody for the Seller.
- (8) To secure the Seller's claims against the Purchaser, the Purchaser shall also assign to the Seller accounts receivable that accrue against a third party as a result of connecting the purchase item to real property.

## 10

### **Altered circumstances with the Purchaser**

- (1) If the financial situation of Purchaser worsens considerably (e.g. uncovered check or bill of exchange or filing for insolvency or composition proceedings), if the Purchaser disposes of goods we supplied under reservation of ownership in excess of the normal course of business, or if the Purchaser dissolves his company, then the Seller shall have the right to declare all his claims arising from the business relationship as immediately payable, to repurchase bills of exchange at the Purchaser's costs, and to continue supply only against advance payment or provision of security.
- (2) In the event of discontinuation of payment or excessive indebtedness of the Purchaser or upon filing of insolvency or composition proceedings, Seller shall be entitled at his option to assert the above rights or to withdraw from the contract according to the statutory provisions.

## 11

### **Assignment of Claims**

The assignment of claims that the Purchaser is entitled to against the Seller out of the business relationship is excluded.

## 12

### **Data security**

Seller shall be entitled to electronically store and process all data on the Purchaser, which refer to the business relationship, for the purpose of performance of contract under consideration of the provisions of the German Data Security Act [Bundesdatenschutzgesetz].

## 13

### **Place of Jurisdiction and Performance**

- (1) In so far as the Purchaser is a businessman within the meaning of the HGB [German Commercial Code], a legal entity under public law or a special asset under public law, the place of jurisdiction shall be the place where the Seller's



registered office is located. However the Seller shall also be entitled to take legal action against the Purchaser at the court having jurisdiction over the Purchaser's domicile.

- (2) Unless otherwise stated in the acknowledgement of the order, the Seller's place of jurisdiction shall be the place of performance.

#### 14

##### **Applicable Law - Various**

- (1) The contractual relationship shall be governed by German law. The UN Convention on Contracts for the International Sale of Goods is inapplicable.
- (2) If any of these terms should be invalid, the validity of the other terms of the contract shall remain unaffected. Invalid terms shall be replaced by the statutory provisions.