

## General Terms and Conditions of Sale, Delivery and Payment

### 1. General, Scope of Application

- 1.1. Our deliveries and services to our customers ('Purchaser') are provided on the basis of the following general terms and conditions (GTCs). The GTCs also apply to all future deliveries and services by us to the Purchaser. They shall also apply if we do not make express reference to them in subsequent contracts, also in particular if we perform deliveries or services for the Purchaser without reservation in the knowledge of terms and conditions of the Purchaser that are contradictory to or that deviate from our general terms and conditions.
- 1.2. The GTCs only apply if the Purchaser is an entrepreneur (section 14 of German Civil Code [*Bürgerliches Gesetzbuch, BGB*]), a legal entity under public law or a separate fund under public law.
- 1.3. Our GTCs shall apply exclusively. We shall not acknowledge contradictory, supplementary or deviating terms and conditions of the Purchaser, not even through the performance of contract without reservation.
- 1.4. References to the application of legislative provisions shall only have clarificatory significance. Also without clarification of this kind, the legislative provisions still apply, insofar as not directly amended or expressly excluded in these GTCs.

### 2. Quotes and Conclusion of Contract, Content of Services

- 2.1. Our quotes to the Purchaser are subject to alteration and non-binding. A binding quote only exists once an order is placed by the Purchaser. Insofar as not otherwise stated in the order, we are entitled to accept this offer of contract within three working days of receipt. The acceptance of this offer takes place at our discretion either through the sending of a confirmation of order or the unconditional performance of the ordered deliveries or services.

### 3. Prices, Terms of Payment, Default in Payment

- 3.1. The prices agreed upon conclusion of the contract shall apply, in particular those stated on the order form and/or in the confirmation of order. If a price has not been expressly agreed, the prices applicable at the time of conclusion of contract pursuant to our price lists shall apply. All stated prices are net prices; they are subject to statutory sales tax (VAT) at the prevailing rate.
- 3.2. The Purchaser shall bear the cost of customs duties, charges, taxes and other public levies.
- 3.3. We reserve the right to adjust our prices within reason if there are changes to costs after the conclusion of contract as a result of collective wage agreements, price increases by our suppliers or fluctuations in exchange rates. Written notification of these price adjustments will be given at the latest four weeks before the new prices come into effect.
- 3.4. The purchase price shall be due and payable within 14 days of invoicing and delivery and/or acceptance of goods. However, in the case of ongoing business relationships we shall be entitled, upon the acceptance of a contract offer (see subsection **Fehler! Verweisquelle konnte nicht gefunden werden.**), to make a delivery fully or partially subject to advance payment.
- 3.5. Upon expiry of the aforementioned payment deadline, the Purchaser shall fall into default. While in default, the purchase price shall be subject to interest at the legally applicable interest rate. We reserve the right to enforce additional damages due to default. *Vis-à-vis* businessmen, our claim to the commercial maturity interest (section 353 of German Commercial Code [*Handelsgesetzbuch, HGB*]) shall not be affected.
- 3.6. The Purchaser shall only be entitled to offset claims or withhold payment in the event of the existence of undisputed or legally recognised claims or receivables.

#### **4. Periods for Delivery and Performance of Services, Default in Performance**

- 4.1. The delivery period shall be agreed individually and/or shall be stated by us upon acceptance of order. Insofar as this is not the case, the delivery period for goods held in stock within Germany in standard operation is approx. 3 working days of conclusion of contract.
- 4.2. If we are unable to adhere to binding delivery periods for reasons for which we are not responsible (non-availability of service), we shall inform the Purchaser of this immediately and simultaneously name a provisional new delivery date. If the service is also not available within this new delivery period, we shall be entitled to fully or partially withdraw from the contract; if payment has already been made by the Purchaser, we shall reimburse this immediately. A case of non-availability of service in this sense shall be in particular a delay to delivery to us by our suppliers, if we have concluded a congruent covering transaction, if neither we nor our supplier are culpable or if we are not obliged to effect procurement in the respective individual case.
- 4.3. In each case of default, our obligation to pay compensation for damages shall be restricted pursuant to the regulations of section 8.

#### **5. Transfer of Risk, Transport and Packaging Costs**

- 5.1. In principle we deliver pursuant to Incoterms 2010: EXW. Unless otherwise expressly agreed in writing between us and the Purchaser, deliveries shall take place from our works or warehouse and goods are to be collected from there by the Purchaser at own risk and cost. In this case the risk of accidental destruction or accidental deterioration of the contractual goods shall be transferred to the Purchaser at the time of receipt by the Purchaser of notification that the goods have been made promptly available for collection.
- 5.2. At the request and cost of the Purchaser, the goods shall be sent to another delivery destination (sales shipment). Unless otherwise agreed, we shall be entitled to determine the method of dispatch (in particular transport companies, dispatch route, packaging). In the case of sales shipment, the risk of accidental destruction or accidental deterioration of the goods and the risk of delay is transferred upon the handing over of goods to the carrier, freight forwarder or other person or authority selected for shipment.
- 5.3. In cases of sales shipment, the Purchaser shall bear the cost of transport from the warehouse and, if applicable, the cost of any transport insurance desired by the Purchaser. Insofar as we do not invoice the transport costs actually incurred in an individual case (on selection of the type of transport see section **Fehler! Verweisquelle konnte nicht gefunden werden.**), a lump-sum transport charge (excluding transport insurance) of up to max. 25% of the net value of the goods in EUR shall be deemed as having been agreed.
- 5.4. If formal acceptance has been agreed, this is decisive for the transfer of risk. Furthermore, the statutory provisions on contracts for work and services shall apply accordingly for any agreed acceptance.
- 5.5. If the Purchaser is in default of receipt of goods, this shall be equivalent to hand over and/or acceptance.
- 5.6. We shall be entitled to make partial deliveries and perform partial services within the agreed period(s) for deliveries and the performance of services, if this is reasonable for the Purchaser.
- 5.7. If the Purchaser is in default in calling upon, acceptance or collection of goods or if the Purchaser is responsible for delays to dispatch or delivery of goods, we shall be entitled to demand compensation for damages incurred as a result, including additional expenses (e.g. storage costs). For this we calculate a lump-sum indemnity for damages of 5% of the net value of goods in EUR per calendar day and per pallet space, starting with the delivery date or – if no delivery date has been set – at the time of notification of the readiness of the goods for dispatch. Proof of a higher amount of damages and our legal claims (in particular compensation for additional expenditure, reasonable indemnity, rescission) shall not be affected; the lump-sum amount is however to be offset against further monetary claims. The Purchaser shall be entitled to prove that we have not incurred any damages whatsoever or have incurred significantly less damages than the amount of the aforementioned lump-sum indemnity.

- 5.8. If the Purchaser wishes to have packaging that differs to the standard packaging, this shall be calculated at cost price.
- 5.9. If goods are dispatched on pallets, in pallet cages or with other loading assistance, the Purchaser shall be invoiced on the basis of the daily price for brand new loading assistance of the equivalent type/grade. In the event of carriage-paid return in an undamaged condition to our works within one month of delivery, this cost shall be reimbursed in the form of credit. If these items are returned in a damaged or unusable condition, we reserve the right to invoice the Purchaser for these on the basis of the daily price for brand new loading assistance of the equivalent type/grade.

## 6. Reservation of Ownership

- 6.1. Delivered goods shall remain in our ownership until full payment of the purchase price and all other present and future claims ("secured claims") due to us arising from the business relationship with the Purchaser. The inclusion of the claim to the purchase price against the Purchaser in an ongoing invoicing account and the recognition of a balance of account shall not affect this reservation of ownership.
- 6.2. The Purchaser shall treat the object of purchase with due care until full acquisition of ownership; in particular the Purchaser shall insure the object of purchase adequately, replacement value as new, at his own cost against loss, damage and destruction, e.g. against damage through fire, water and theft. The Purchaser hereby assigns his claims under the insurance contracts to us. We accept this assignment.
- 6.3. The Purchaser may not pledge as security or otherwise hypothecate the goods in our ownership. The Purchaser shall notify us in writing if an application is filed for the opening of insolvency proceedings or in the event of seizure (attachment) of goods belonging to us by third parties.
- 6.4. In the event of conduct by the Purchaser in breach of contract, in particular in the event of the non-payment of the due purchase price, we are entitled to rescind the contract, pursuant to the statutory provisions, and demand the return of the goods on grounds of reservation of ownership. If the Purchaser fails to pay the due purchase price, we may only enforce these rights if we have granted the Purchaser a reasonable period of grace for payment and if the Purchaser has still failed to make payment within this period of grace or if the granting of a period of grace of this nature is legally superfluous pursuant to the statutory provisions.
- 6.5. Until the time of revocation of this entitlement pursuant to subsection **Fehler! Verweisquelle konnte nicht gefunden werden.**, the Purchaser shall be entitled to sell on and/or process the goods under the reservation of ownership during the normal course of business. In this case the following supplementary conditions shall apply:
  - 6.5.1. The reservation of ownership extends to the product(s) resulting from the processing, mixing or combining of/with our goods to their full value, whereby we shall be deemed manufacturer. If third parties also have reservation of ownership as a result of processing, mixing or combining with their goods, we shall acquire co-ownership in the proportion of the invoice values of the processed, mixed or combined goods. Otherwise the same shall apply for the resulting product(s) as for the goods delivered under reservation of ownership.
  - 6.5.2. In order to secure our claims, the Purchaser shall also assign to us, up to the value of our goods, the claims against third parties arising from the combination of our goods with real estate.
  - 6.5.3. In order to secure our claims, the Purchaser shall also assign to us, in their entirety or up to the amount of our proportion of co-ownership pursuant to the above paragraph, the claims against third parties from the selling on of the goods or the product(s). We accept this assignment. The obligations of the Purchaser pursuant to subsection **Fehler! Verweisquelle konnte nicht gefunden werden.** shall also apply in respect of these assigned claims.
  - 6.5.4. In addition to us, the Purchaser shall remain authorised to enforce claims. We shall not enforce claims for as long as the Purchaser meets his payment obligations to us, for as long as there is no threat to his solvency and for as long as we do not need to enforce the reservation of ownership through the exercising of an entitlement pursuant to subsection **Fehler! Verweisquelle konnte**

**nicht gefunden werden..** However, if this were to be the case we can demand that the Purchaser informs us of the assigned claim and its debtor, provides us with all information required for the enforcement of the claim, issues to us the required documentation and notifies the debtor (third party) of the assignment of the claim. Furthermore, in this case we shall be entitled to revoke the authorisation for the Purchaser to sell on and process the goods that are subject to the reservation of ownership.

- 6.6. If the realisable value of the collateral exceeds our claims by more than 10%, we shall release collateral of our choice upon the request of the Purchaser.

## **7. Claims of the Purchaser for Defects**

- 7.1. Unless otherwise specified in the following, the statutory provisions shall apply to all rights of the Purchaser arising from material defects and defects of title (including incorrect deliveries and short deliveries, improper assembly and defective assembly instructions). In all cases the statutory special regulations for final delivery of goods to the consumer (recourse of the supplier pursuant to sections 478, 479 BGB) shall not be affected.

- 7.2. The basis of our liability for defects is primarily the agreement concerning the quality of the goods. If the quality of the goods has not been agreed, a decision is to be made on whether or not a defect exists on the basis of the statutory regulation (section 434 (1) sentences 2 and 3 BGB). However, we assume no liability whatsoever for the public statements of the manufacturer or other third parties (e.g. advertising messages).

The technical data and descriptions in our product information or advertising material and technical specifications do not constitute guarantees of quality or durability of the goods to be delivered by us. The pertinent identified uses for the goods pursuant to the European chemicals regulation REACH constitute neither an agreement of a corresponding contractual quality of the goods nor a presupposed use pursuant to the contract.

In the case of sales on the basis of model or sample, the model or sample describe the quality of the goods, however do not constitute a guarantee for the quality or durability of the goods to be delivered by us.

Technical advice on application is given by us on the basis of our best knowledge. All opinion and information on suitability and application of our goods does not release the Purchaser from his own checks and tests as to the suitability of the products for the intended purpose.

- 7.3. The claims of the Purchaser arising from defects are dependent on the fact that this party has met all obligations to inspect and provide notice of defect (section 377, 381 HGB). If a defect is apparent upon delivery, upon inspection or at a later point in time, notification is to be sent to us immediately in writing. In all cases manifest defects are to be notified to us in writing within 1 working day of the acceptance of goods and, in the case of defects that are not manifest upon inspection, within the same time period of the discovery of the defect. If the Purchaser fails to properly inspect the goods and/or send notification of the defect, our liability for the not or not promptly or not properly notified defect pursuant to the statutory provisions is excluded.
- 7.4. If the delivered item is defective, we can initially choose whether we subsequently fulfil the contract through remedy of the defect (subsequent improvement/cure) or through the delivery of a defect-free item (replacement delivery). Our right to refuse to subsequently fulfil the contract under the statutory prerequisites shall not be affected.
- 7.5. We shall be entitled to make the due subsequent fulfilment of contract dependent on the payment of the due purchase price by the Purchaser. However, the Purchaser is entitled to withhold a reasonable part of the purchase price measured in proportion to the defect.
- 7.6. The Purchaser shall provide us with the time and opportunity to perform the subsequent fulfilment of contract; in particular he must hand over the defective goods for inspection. In the event of replacement delivery, the Purchaser must return the defective goods to us pursuant to the statutory provisions. If we were not originally obliged to install the item, the subsequent fulfilment of contract does not include the deinstallation of the defective goods or the reinstallation.

- 7.7. If a defect actually exists, the expenditure for the inspection of goods and the subsequent fulfilment of contract, in particular transport costs, travel expenses, personnel cost and cost of materials, shall be borne by us. Otherwise we can demand that the Purchaser reimburses the costs arising as a result of the unjustified demand to remedy defects (in particular inspection costs and transport costs), unless the lack of a defect was not recognisable to the Purchaser. Over and above the costs listed above, we shall not be liable for the compensation of expenses for the removal of defective items and the installation or assembly of improved or newly delivered defect-free items. This shall not apply if we are culpable for the defectiveness of the item. We shall not be liable for the payment of increased transport costs, travel expenses, personnel cost and cost of materials resulting from the fact that the goods were transported to a location other than their contractually agreed destination.
- 7.8. If the attempted subsequent fulfilment of contract fails or if the time period set by the Purchaser for subsequent fulfilment of contract expires without success or is superfluous pursuant to the statutory provisions, the Purchaser can rescind the purchase agreement or demand the reduction of the purchase price. However, there is no right of rescission in cases of insignificant defects.
- 7.9. Claims of the Purchaser to compensation for defects and/or reimbursement of fruitless disbursements shall only exist, also for defects, pursuant to the restrictions of section **Fehler! Verweisquelle konnte nicht gefunden werden.** and are otherwise excluded.

## 8. Restriction of Liability

- 8.1. Our liability for compensation for damages, irrespective of legal grounds, in particular arising from impossibility, default, defective or incorrect deliveries, breach of contract, breach of duties during contractual negotiations and tort, insofar as in each case there is culpability, is restricted in accordance with the provisions of this section **Fehler! Verweisquelle konnte nicht gefunden werden.**
- 8.2. We shall not be liable in cases of the simple negligence of our executive bodies, legal representatives, employees or other vicarious agents, insofar as this does not concern a breach of material contractual duties. A duty is deemed material to the contract if it is of crucial significance for the attainment of the purpose of the contract, if the fulfilment of such duty is essential in order to enable the proper fulfilment of the contract (*sine qua non*) and if the party placing the order relies upon and is entitled to rely upon its fulfilment.
- 8.3. Insofar as we are liable for compensation for damages on the grounds laid down in section **Fehler! Verweisquelle konnte nicht gefunden werden.** for reasons of the breach of a duty that is material to the contract or due to a grossly negligent breach of duty, this liability shall be restricted to damages that could typically be foreseen taking into consideration the type of contract. Furthermore, compensation shall only be due for indirect damages and consequential damages that result from a defect in the delivered goods if and insofar as such damages are typically to be expected when using the delivered goods as intended.
- 8.4. The restrictions of section **Fehler! Verweisquelle konnte nicht gefunden werden.** shall not apply to our liability on grounds of wilful conduct, on grounds of the fraudulent concealment of a defect or the assumption of a guaranteed quality, on grounds of loss of life, physical injury or injury to health or on grounds of liability pursuant to the German Product Liability Act [*Produkthaftungsgesetz, ProdHaftG*].
- 8.5. We shall only be liable for damages or fruitless disbursements resulting from advice or information that is given and not separately remunerated in the event of wilful act or grossly negligent breach of duty, insofar as this breach of duty does not constitute a material defect in the goods delivered by us pursuant to section 434 BGB.
- 8.6. The above exclusions and restrictions of liability shall apply to the same extent to our executive bodies, legal representatives, employees and other vicarious agents.

## 9. Limitation of Claims

- 9.1. In derogation of section 438 (1) no. 3 BGB, the general limitation period for claims arising from material defects and defect of title shall be one year from date of delivery. Insofar as acceptance is agreed, the limitation period shall begin on the date of acceptance.
- 9.2. However, if the goods are in relation to a building or a thing that has been used for a building in accordance with the normal way it is used and has resulted in the defectiveness of the building (construction materials), the limitation period shall be five years from date of delivery pursuant to the statutory provisions (section 438 (1) no. 2 BGB). The other statutory special regulations for limitation periods (in particular section 438 (1) no. 1 and (3), sections 444, 479 BGB) shall also remain unaffected.
- 9.3. The above limitation periods for the law on sale of goods shall also apply to all contractual and non-contractual claims to compensation for damages of the Purchaser that arise as a result of defects to goods, unless the application of the regular statutory limitation periods (sections 195, 199 BGB) lead to shorter limitation periods in individual cases. Claims of the Purchaser to compensation for damages on grounds of wilful or grossly negligent conduct by us, as well as on grounds of loss of life, physical injury or injury to health or liability under the German Product Liability Act, shall however be limited exclusively pursuant to the statutory limitation periods.

## **10. Returns**

The return of defect-free goods delivered by us is excluded. If, in exceptional cases, we declare ourselves in agreement with the return of defect-free goods, credit shall be given only insofar as we can establish the unrestricted reusability of the goods. The actual cost, however at least 20% of the invoice sum or at least 30 euro, will be deducted for the cost of inspection, processing, reprocessing and repackaging. Credits granted in this way will not be paid out, but rather offset against future deliveries.

## **11. Prohibition on Assignment**

Without our express written consent, rights and/or claims against us, in particular on grounds of defects to goods delivered by us or on grounds of breaches of duty by us, may not be assigned to third parties or pledged to third parties, either in part or in full; section 354 a HGB shall not be affected by this.

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

- 12.1. Place of fulfilment and exclusive place of jurisdiction for all claims between us and businessmen or legal entities under public law of separate funds under public law is Mülheim an der Ruhr. However, we also have the right to bring legal proceedings against the Purchaser at the court with jurisdiction over him.
- 12.2. The law of the Federal Republic of Germany shall apply exclusively to the legal relationship between us and the Purchaser. The application of the provisions on the international sale of goods (CISG - Vienna UN Convention on the International Sale of Goods) and the provisions of German international private (conflict of laws) law are expressly excluded.

## **13. Closing Provisions**

- 13.1. In the event that one or several of the above provisions were to prove ineffective, partially ineffective or excluded by way of separate agreement, this shall not affect the effectiveness of the other provisions contained herein.
- 13.2. Individual agreements concluded with the Purchaser in specific cases (including ancillary agreements, supplements and amendments) shall in each case have priority over these GTCs. Subject to counter-evidence, a written contract and/or our written confirmation shall be decisive for the content of such agreements.

**13.3.** Legally significant declarations and notifications by the Purchaser in relation to the contract (e.g. setting of time periods and deadlines, notifications of defect, rescission or price reduction) must be submitted in writing, i.e. in written or text format (e.g. letter, email, fax). Statutory requirements with regard to format and other evidence, in particular in cases of doubt concerning the legitimation of a declaring party, shall not be affected.