

## Terms and Conditions of Sale and Delivery

As at: 01/04/2013

### 1 General information

1.1 The conditions set out below apply to all our business relationships with our customers (hereinafter: the "Orderer(s)"). General Terms and Conditions of Business shall only apply if the Orderer is an entrepreneur (Section 14 of the German Civil Code (BGB)), a legal entity under public law or a special fund under public law.

1.2 General Terms and Conditions of Business shall apply, in particular, to contracts for the sale and/or delivery of movable assets (hereinafter also: "Goods"), irrespective of whether we manufacture the Goods ourselves or purchase them from suppliers (Sections 433, 651 of the German Civil Code). General Terms and Conditions of Business shall also apply as amended as the framework agreement for future contracts for the sale and/or supply of Goods with the same Orderer without the need for us to make express reference to them on each occasion.

1.3 Our General Terms and Conditions of Business shall apply exclusively. Any general terms and conditions of business of the Orderer that deviate from, contradict or are supplementary to our General Terms and Conditions of Business shall only form part of the contract if and to the extent that we have expressly agreed to their validity. This requirement for agreement shall apply in all cases, for example if we fulfil a delivery without reservation when we are aware of the Orderer's own general terms and conditions of business.

1.4 Specific agreements made in individual cases with the Orderer (including side agreements, supplementary agreements, and amendments) shall always take precedence over these General Terms and Conditions of Business. A written contract or our written confirmation shall be decisive as far as the subject matter of such agreements.

1.5 Declarations relevant from a legal perspective and announcements that are to be submitted to us by the Orderer after conclusion of contract (e.g. the setting of deadlines, notifications of defect, declaration of withdrawal or reduction) shall be made in writing in order to be effective.

1.6 Information about the validity of statutory provisions is provided for clarification only. Even without such clarification, statutory provisions shall apply provided that these have not been directly amended or expressly excluded by these General Terms and Conditions of Business.

1.7 Should individual provisions be legally invalid, this shall not affect the validity of the remaining provisions. To replace the invalid provisions, regulations shall be deemed to be agreed that approximate the intended commercial outcome as closely as possible.

### 2 Conclusion of contract

2.1 Our offers are subject to change and non-binding in all respects. This shall also apply where we have provided the Orderer with catalogues, technical documentation (e.g. drawings, plans, calculations, references to DIN standards), other product descriptions or documents – including in electronic form – to which we reserve the right of ownership and copyright.

2.2 Illustrations in the catalogue and offer documents shall be non-binding to the extent that we reserve the right to make changes to the design, dimensions and weight.

2.3 Placement of an order by the Orderer of the Goods shall be deemed to constitute a binding contractual offer. Unless otherwise stated in the order, we shall be entitled to accept this contractual offer within 14 days of receiving it.

2.4 Acceptance of the order may be provided either in writing (e.g. via an order confirmation) or by supplying the Goods to the Orderer. Any additions, amendments or side agreements made verbally or by telephone are to be confirmed in writing.

2.5 We shall not be bound by confirmations that do not originate from our company itself, but from agents or representatives.

### 3 Delivery

3.1 Delivery shall be ex warehouse, which shall also be the place of performance. At the Orderer's request and expense, the Goods may be sent to a different destination (sale by dispatch). Unless otherwise agreed, we shall be entitled to determine the method of dispatch (in particular the shipping company, route and packaging) ourselves.

3.2 The risk of accidental loss and accidental deterioration of the Goods shall be transferred when the goods are handed over to the Orderer at the latest. In the case of sale by dispatch, however, the risk of accidental loss and accidental

deterioration of the Goods, together with the risk of delay, shall be transferred at the time at which the Goods are released to the carrier, haulier or other individual or entity appointed to manage the shipping. Where acceptance has been agreed, this shall be decisive as far as the transfer of risk is concerned. As for the rest, the statutory provisions governing contracts for work and labour shall also apply accordingly to an agreed acceptance. In the event that the Orderer delays acceptance of the Goods, the transfer or acceptance shall be deemed to have taken place.

3.3 We shall only insure the consignment against theft, breakage, transport, fire or water damage or other insurable risks at the express request and at the expense of the Orderer.

3.4 The Orderer is to have any transport damage to the Goods confirmed by the carrier on the delivery note immediately upon receipt of the Goods. Claims for compensation for transport damage are not directed to us but rather filed immediately to the carrier; said claims are to be received no later than 6 days after delivery.

3.5 We shall only supply replacement goods following damage in transit in return for payment of the appropriate cost.

3.6 In the event that the Orderer defaults in acceptance or fails to cooperate or if our delivery is delayed for other reasons for which the Orderer is responsible, we shall be entitled to demand compensation for the damage arising as a result, including any additional costs (e.g. storage costs).

### 4 Delivery times and delays to delivery

4.1 The dates and periods for delivery proposed by us shall be considered approximate at all times unless a fixed period or deadline has been expressly promised or agreed.

4.2 In the event that we are unable to abide by binding delivery dates for reasons beyond our control (unavailability of service), we shall notify the Orderer of this immediately while informing it of the anticipated new delivery date. In the event that the service is still unavailable within the new delivery period, we shall be entitled to withdraw from the contract, either in part or in full; any consideration already paid by the Orderer shall be refunded immediately. The term "unavailability of service" shall refer, in particular, to late deliveries to us by our suppliers, provided we have concluded a congruent hedging transaction. This shall not affect our statutory rights to withdraw or terminate or the statutory provisions on execution of a contract to which an obligation to provide performance no longer applies (e.g. because performance and/or supplementary performance is impossible or unreasonable). The rights of the Orderer to withdraw or terminate set out in Section 6 of these General Terms and Conditions of Business shall also remain unaffected.

4.3 We shall not be liable if delivery is impossible or in the event of delays in delivery that are due to force majeure or to other events that were unforeseeable at the time of conclusion of the contract (e.g. operational disruptions of any kind, problems with obtaining materials or energy, shipping delays, strikes, lawful lockouts, shortages of workforce, energy or materials, difficulties in obtaining necessary official permits, official interventions or unfulfilled, incorrectly fulfilled or delayed deliveries by our suppliers) and for which we are not responsible. Insofar as such events make delivery or performance substantially more difficult or impossible and the hindrance is not merely of a temporary nature, we shall be entitled to withdraw from the contract. Where the hindrance is of a temporary nature, we shall extend the delivery or performance periods or postpone the delivery or performance deadlines by the duration of the hindrance plus a reasonable restarting period. In the event that it is unreasonable for the Orderer to accept the delivery or performance as a result of the delay, said Orderer may withdraw from the contract by submitting a written declaration to us immediately.

4.4 Delivery shall be subject to our receiving deliveries correctly and punctually from our suppliers.

4.5 Where delivery has been agreed, the delivery periods and deadlines shall begin at the time of handover to the haulier, carrier or another third party commissioned with the shipping.

4.6 The order period shall begin at the time the order confirmation is sent off, but not before all details of the order have been fully clarified, any necessary documentation, permits or approvals have been provided by the Orderer and any agreed deposit has been received or credit has been opened.

4.7 Partial deliveries shall only be permissible if

- the partial delivery can be used by the Orderer within the framework of the contractual provisions if

- delivery of the remaining Goods ordered is ensured and

- no significant additional outlay or additional costs are incurred by the Orderer as a result (except where we state our willingness to assume said costs).

4.8 Delayed delivery shall not apply on our part as long as the Orderer is in default on any performance owed to us.

4.9 In the event that we default on a delivery or performance or if a delivery or performance becomes impossible for us, irrespective of the reason, our liability shall be limited to compensation for damages as governed by Section 7 of these General Terms and Conditions of Business.

4.10 In the event that shipment is delayed at the Orderer's request, the costs incurred for storage on our premises or those of our suppliers shall be charged to the Orderer, starting one month after notification of readiness for dispatch, at a rate of no less than 0.5% of the invoice total for each month. Furthermore, we shall be entitled, once an appropriate period of time has been set and has passed without avail, to dispose of the delivery item(s) by other means and to supply the Orderer with a delivery time extended accordingly.

### 5. Warranty/purchaser's claims for defects

5.1 The rights of the purchaser in cases of defects of quality or title (including incorrect or short deliveries, improper installation or defective installation instructions) shall be governed by the statutory provisions unless provisions to the contrary are made below. In all cases, the special statutory provisions shall remain unaffected upon final delivery of the Goods to a consumer (recourse against supplier as per Sections 478, 479 of the German Civil Code).

5.2 The basis of our liability for defects shall be primarily the agreement made concerning the condition of the Goods. The term "agreement concerning the condition of the Goods" shall also refer to the product descriptions designated as such (including those of the manufacturer) that are handed over to the purchaser prior to ordering or are included in the contract in the same way as these General Terms and Conditions of Business.

5.3 Where the condition has not been agreed, assessment of whether a defect is in place shall be made on the basis of statutory provisions (Section 434 (1) sentences 2 and 3 of the German Civil Code). However, we shall not assume any liability for public statements made by the manufacturer or other third parties (e.g. advertising messages).

5.4 Claims for defects asserted by the purchaser shall only be accepted if it has performed its statutory obligations regarding inspection and notification of defects (Sections 377, 381 of the German Commercial Code (HGB)). Should a defect become apparent on inspection or thereafter, we shall be notified immediately in writing. The notification shall be deemed immediate if it is made within two weeks; it shall be treated as having been received on time provided that the notification has been sent off within this period. Independently of this inspection obligation and obligation to provide notification of defects, the purchaser shall report any obvious defects (including incorrect or short deliveries) within two weeks of delivery in writing; here, too, notification shall be treated as punctual if it has been sent off within this period. Should the purchaser fail to carry out inspection in a due and proper manner and/or provide notification of defects, our liability for the unreported defect shall be excluded.

5.5 In the event that the delivered item is defective, the purchaser may initially request either that the defect be remedied (subsequent improvement) or that a defect-free item be supplied (replacement delivery), at its discretion. In the event that the purchaser does not state which of these rights it has chosen, we may set a reasonable grace period in which it is to make this decision. Should the purchaser fail to make its decision within this period, the right to the decision shall be transferred to us upon expiry of the grace period.

5.6 We shall have the right to make supplementary performance to which we are obliged contingent on the purchaser paying the purchase price due. The purchaser shall, however, be entitled to withhold a part of the purchase price proportionate to the extent of the defect.

5.7 The purchaser is to give us the time and opportunity necessary to render supplementary performance to which we are obliged, in particular for handing over the rejected Goods to other parties for inspection purposes. Should the purchaser opt for a replacement delivery, it is to return the

defective Goods to us in accordance with the statutory provisions. Supplementary performance shall include neither the dismantling of the faulty item nor refitting after repair, unless we were originally obliged to perform the fitting.

5.8 We shall bear the expenses necessary for inspection and supplementary performance, in particular transport, travel, labour and materials costs (but not dismantling or installation costs), as long as there is a defect in place. Should, however, the purchaser's demand for the defect to be remedied prove to be unjustified, we may demand that the purchaser reimburse us for the costs incurred.

5.9 In urgent cases, e.g. where there is a threat to operational security or in order to prevent disproportionate damage, the purchaser shall have the right to remedy the defect itself and to request that we reimburse it for the outlay that would have been objectively required to do so. The purchaser is to notify us of any such voluntary undertaking immediately, and where possible in advance. Said right to self-remedy the defect shall not apply if we would be entitled to deny the corresponding supplementary performance in accordance with statutory provisions.

5.10 Should supplementary performance fail or a grace period to be set by the purchaser for supplementary performance lapse without avail or be superfluous under statutory provisions, the purchaser may withdraw from the purchase contract or reduce the purchase price. In case of an immaterial defect, however, no right of withdrawal shall apply.

5.11 Claims asserted by the purchaser for damages or the refund of futile expenses shall be governed by Section 7 (Liability) only and are otherwise excluded.

#### **6 Orderer's rights to withdraw from the contract**

6.1 The Orderer shall be entitled to withdraw from the contract if the entire performance becomes ultimately impossible for us or our suppliers prior to the transfer of risk.

6.2 Should a delay in performance occur within the meaning of Section 3 of the Terms and Conditions of Delivery and should the Orderer grant an appropriate grace period with the express declaration that it shall decline acceptance of performance following expiry of this period, the Orderer shall be entitled to withdraw if the grace period is not observed.

6.3 Should performance become impossible during a period of delayed acceptance on the part of the Orderer or through the Orderer's fault, the latter shall remain obliged to pay its consideration.

#### **7 Liability**

7.1 Except where otherwise stated in these General Terms and Conditions of Business, including the provisions that follow, we shall accept liability in the event of a breach of contractual and non-contractual obligations in accordance with the relevant statutory provisions.

7.2 We shall be liable for compensation for damages in cases of wilful intent or gross negligence, irrespective of the legal grounds. We shall only be liable in cases of simple negligence when:

a) there is damage to life, limb or health

b) damages arise from breach of a material contractual obligation (i.e. an obligation, the fulfilment of which is essential for the due and proper performance of the agreement and on which the contractual partner regularly relies and can expect to rely); in this case, however, our liability shall be limited to compensation for foreseeable damage typically expected to occur.

7.3 The limitations of liability arising from Section 7.2 shall not apply insofar as we have maliciously concealed a defect or have given a guarantee for the condition of the Goods. The same shall apply to claims of the Orderer under the German Product Liability Act (*Produkthaftungsgesetz*).

7.4 In the case of breaches of obligations that are not attributable to defects, the Orderer may only withdraw or terminate if we are responsible for the breach of obligation. Any free right to termination on the part of the Orderer (especially as per Sections 651, 649 of the German Civil Code) is excluded. Otherwise, the statutory requirements and legal consequences shall apply.

7.5 The aforementioned liability exclusions and limitations shall apply to the same extent in respect of our agencies, legal representatives, salaried employees and other vicarious agents.

7.6 Insofar as we provide technical information or act as consultants and this information or consultancy does not form part of the contractually agreed scope of services owed by us, this shall be at no cost and to the exclusion of any

liability.

#### **8 Supplier's right to withdraw**

8.1 In the event of unavoidable and unforeseen occurrences as described in Section 3 that significantly alter the commercial significance or the substance of the performance or that have an adverse impact on our operations, we shall be entitled to withdraw from the contract. In the event of such a withdrawal, the Orderer shall have no entitlement to compensation.

#### **9 Prices and payment terms**

9.1 Unless otherwise agreed, our prices are understood to be ex store or ex supplier, excluding packaging, which is charged at cost price and is non-returnable. The prices are subject to VAT at the applicable statutory rate. All calculations are in euro (€).

9.2 Unless otherwise agreed, payment shall be made in cash without deduction, free to the supplier's payment office.

9.3 In cases of sale by dispatch (Section 3.1) the Orderer shall bear the costs of shipping from the warehouse and the costs of any transport insurance requested by the Orderer. Where we do not charge the actual shipping costs incurred in individual cases, a flat-rate shipping charge (excluding transport insurance) of EUR 9.90 shall be deemed to be agreed. Any customs duties, fees, taxes or other public payments shall be borne by the Orderer. We do not take back shipping packaging or any other packaging as defined by the German Packaging Ordinance (*Verpackungsverordnung*); this shall become the property of the purchaser. Pallets are excluded.

9.4 Any assertion of a right of retention due to claims arising from a different contractual relationship or any offsetting against receivables other than undisputed receivables or receivables determined without further legal recourse shall not be permissible.

9.5 We shall be entitled to perform or provide further deliveries or services in return for an advance payment under collateral security only in the event that, following conclusion of the contract, circumstances become apparent to us that are likely to significantly lower the credit standing of the Orderer and as a result of which the payment of our outstanding receivables by the Orderer within the respective contractual relationship (including other individual orders covered by the same framework agreement or similar) is jeopardised.

9.6 Until payment is received in full for all invoice amounts due, including late payment interest, we shall not be obliged to make any further deliveries under any current contract.

#### **10 Retention of title**

10.1 The items supplied by us shall remain our property until all our current claims against the Orderer, together with future claims insofar as they relate to the items supplied, have been fulfilled

10.2 The Orderer shall have the right to resell the delivered objects that remain our property (Reserved Goods) in the normal course of business. In doing so, however, it immediately assigns all receivables arising from this resale to us, irrespective of whether the Reserved Goods are resold before processing or after or whether or not they are associated with any real estate or movable assets. If the Reserved Goods are resold after processing or together with other goods that do not belong to us, or if they are associated with real estate or movable assets, the receivable held by the Orderer against its buyer shall be deemed to have been assigned in the amount equivalent to the delivery price agreed between the Orderer and us for the Reserved Goods.

10.3 The Orderer shall remain authorised to collect the receivable, even after the assignment. Our authorisation to collect the receivable ourselves shall remain unaffected; however, we undertake not to do this as long as the Orderer continues to meet his payment obligations in an orderly manner. Should the Orderer avail itself of the authority to collect, we shall be entitled to the proceeds collected in the amount equivalent to the delivery price agreed between the Orderer and us for the Reserved Goods.

10.4 Any processing or transformation of the Reserved Goods shall take place for us, as the manufacturer, pursuant to Section 950 of the German Civil Code without placing us under any obligation. Should the Reserved Goods be processed together with other objects, we shall acquire co-ownership of the new product in the ratio of the market value of our goods to that of the other processed goods at the time of processing. The Orderer shall then store the new goods for us free of charge with the customary due diligence.

10.5 We undertake to release the securities due to us if

requested, insofar as their viable value exceeds the value of the receivables to be secured by more than 20%.

10.6 Should we accept bills of exchange as payment method, our right of retention shall remain in force until it is established that no further claims arising from this bill of exchange may be asserted against us.

#### **11 Applicable law, place of performance and place of jurisdiction**

11.1 All legal relationships between us and the Orderer are governed by the law of the Federal Republic of Germany to the exclusion of all international and supranational (contractual) legal systems, in particular the UN Convention on the International Sale of Goods. The prerequisites for and consequences of retention of title as set out in Section 10 are, however, subject to the law in force at the storage location of the Reserved Goods, provided under this the choice of jurisdiction in favour of German law is not permitted or is ineffective.

11.2 The place of performance for all rights and obligations arising from this contractual relationship shall be Ratingen.

11.3 The place of jurisdiction shall be our registered office in Ratingen, which shall also apply to actions based on documentary evidence or in respect of cheques or bills of exchange. We shall, however, also be entitled to bring legal action at the Orderer's place of business.