



## Terms & Conditions

### 1. Validity / Contents of Agreement

- (1) Unless otherwise agreed in writing in an individual case, these Standard Terms and Conditions for Deliveries and Payments shall apply to all- including future – contractual relationships, miscellaneous services, consultations proposals and other ancillary services, to include works and works supply agreements; and, irrespective of whether ordered by the buyer telephonically, by fax or in writing, as well as whether or not the delivery order is approved by us, they shall become an integral part of the agreement.
- (2) Any conditions or contract-modifying provisions of the buyer are rejected. They will be valid against us only if we consent to such modifications in writing. The buyer shall acknowledge and accept our Standard Terms and Conditions for Deliveries and Payments, at the latest, upon the unequivocal acceptance of our goods.
- (3) This shall also apply if the order results from an offer made by us which is generally understood to be non-binding. Oral agreements and representations of our employees will not become binding until confirmed by us in writing.
- (4) Agreements to be concluded with us must be in writing to be valid. Thus, even agreements which deviate from our terms and conditions depend upon being in written form to be valid. Unless authorized by statute or legal procedure our sales personnel are not authorized to conclude agreements.
- (5) If ambiguous terms used in commercial clauses must be interpreted, INCOTERMS 2000 shall govern.
- (6) All data such as sizes, weights, depictions, descriptions, drawings and sketches as well as prospectuses, written advertisements, directories, price lists and other printed materials, etc. and the technical data contained therein are provided as only- but the best possible approximations. If we do not expressly characterize them as binding, however, they are not binding upon us. Any mistakes caused by errors may be corrected by us without imposing liability upon us for any damages arising from such errors. The provisions of para. 1.6. apply for factory and/or productions site data. We reserve the right to make modifications provided that they do not alter the function and usability of our products. Except in the latter case, no right to protest or rescind shall accrue from such modifications.
- (7) We expressly refer to the fact that, for products which are subject to the Foreign Commercial Trade Act (Außenhandelswirtschaftsgesetz), the Buyer or his customer must obtain the required export/import permits and submit them to us. If the Buyer or his customer fails to do so, we shall not be liable. The products we have sold shall be used or processed exclusively in the Buyer's places of business. The resale of products delivered to persons other than enterprises affiliated with the buyer is permissible only if we have given advance written consent.

- (8) For supply contracts, „Buyer“ within the meaning of these terms and conditions also means „Orderer“.

## **2. Prices**

- (1) The prices we have confirmed in writing are valid. All prices are to be understood as net (ex-works/factory) or, in the case of delivery from a warehouse, plus the then applicable rate of value added tax (VAT) and any accrued costs and/or fees/charges for freight, taxes or costs associated with transport, including fees for letters of credit and/or other documentation which are required to fulfill the terms of the agreement as well as packing costs. Except for disposable packaging materials, packaging shall be returned to us or the factory without freight charges. We are entitled to increase the agreed prices if, between the date the order is confirmed and the delivery is initiated, changes in the raw material and/or commercial situation have ensued, which would make the manufacture and/or purchase of the pertinent product materially more expensive than at the time the price was agreed upon. Included in this regard, for example are exchange rate fluctuations, currency regulations, customs changes and increases in material and manufacturing costs. In determining cost-increasing charges (or the like) the charges published by the delivering factory on the date of delivery shall apply. In these cases, the Buyer, within two weeks after being informed of the price increase, may cancel/rescind those of his orders which were affected. The right of rescission shall not apply to deliveries under long-term delivery agreements (long-term obligation relationships). In the event of wage increases we reserve the right to recalculate the prices if more than four months elapses between the time of the order and the time of delivery. If prices are not published, the market price on the date of delivery shall be deemed to be the agreed price. The count number, measurement, weight, cubic meters or other invoicing measure that is customary in the industry as determined at the factory/warehouse will be controlling.
- (2) Unless we agree otherwise, the price will be set in EURO and must be paid to us in this currency.

## **3. Terms and Conditions of Payment / Letters of Credit**

- (1) Our invoices are to be paid without any deduction in full within 30 days following delivery. Payments should only be made by bank transfer. Checks will not be deemed to have satisfied the obligation to pay but will be recognized as being for the purpose of payment. Discountable bills of exchange will also only be accepted subject to payment and subject to exclusion of our liability for timeliness and propriety of form upon presentment and/or protest. Neither the above nor the acceptance of bills of exchange in general constitute a deferral of payment. In case of default, and without special notice, we are entitled to charge interest at the rate of 4% above the Bundesbank's relevant discount rate unless the Buyer can substantiate a lower amount of damages.
- (2) If the Buyer defaults on payment or a bill of exchange is not honored when due or some other circumstance arises which materially worsens the Buyer's credit worthiness following the conclusion of the agreement and which would jeopardize our claim to payment, all our demands for payment shall become immediately due and payable irrespective of the due date of any bill of exchange received and credited and irrespective of any agreed payment dates. In such case we are also entitled to demand security with respect to all outstanding deliveries and services arising from the business relationship and, if the Buyer fails to provide adequate security, to deliver only against payment in advance. Statutory provisions governing defaults in payment shall remain unaffected. The Buyer is entitled to the right to withhold payment and/or right of set-off only to extent his counterclaim is uncontested or has been determined with legal finality.

#### **4. Execution of Deliveries, Delivery Schedules and Deadlines**

- (1) Our obligation to deliver is subject to our reservation of the right to be correctly and timely supplied ourselves unless the incorrect or late supply is due to our fault. Excepted here from is compulsory responsibility within the meaning of "slight negligence". The Buyer understands that our products are manufactured abroad. We are entitled to make partial deliveries at any time.
- (2) Delivery times are approximate. Delivery schedules begin on the date we confirm the order and are valid only on the condition of being made aware in a timely fashion of all the details of the order and on condition that the Buyer fulfills in a timely way all his obligations such as, for example, providing all official certifications, opening of letters of credit, giving of guarantees or making down payments.
- (3) For shipments of the goods abroad by the Buyer, by his agent or by a third party, the Buyer must provide us with proof of export as required for taxes. Otherwise, the Buyer shall pay us an amount equal to the relevant amount of VAT that would ordinarily be due on domestic delivery in the invoiced amount.
- (4) Whether a delivery schedule or deadline has been met shall be determined by the date of dispatch from the factory or warehouse. If for reasons not our fault, the goods cannot be timely shipped, the governing time for meeting the deadline shall be the time the goods are reported ready for shipment.
- (5) In the event of force majeure, we are entitled to postpone delivery for the duration of the hindrance and a reasonable restart time thereafter. This shall also apply if such events occur during an existing delay. Force majeure includes: currency, trade and other political measures, strikes, lock-outs, operational disruptions for which we are not at fault (fire, machinery break down, lack of raw materials and/or fuel), hindrances in the transport path, import customs clearance, as well as all other similar circumstances of whatever kind and nature for which we are not at fault which make delivery substantially more difficult or impossible. In this regard it is immaterial whether these circumstances occur at our place of business, the factory, or at one of our suppliers (Vorlieferant). If the delay resulting from the aforementioned events, and particularly if the delay in executing important parts of the agreement extends beyond 6 months, makes carrying out the agreement unreasonably burdensome on one of the parties, then such party may demand the cancellation of the agreement.
- (6) We shall not be deemed to be in default for so long as the Buyer is in default of his obligations. Conforming goods that have been reported ready for shipment must be promptly called for otherwise, after giving a warning notice of the costs and dangers to the Buyer, we are entitled to dispatch them or, at our discretion, to store them- in the open, if necessary- and invoice them as delivered. Call orders will be carried out within 365 days after order confirmation. After the deadline we are entitled to proceed in accordance with section 8 of these Terms and Conditions. In lieu of the foregoing possibilities, after the expiration of a 14-day deadline we have set, which includes the threat of refusal, we may withdraw from the agreement or seek compensatory damages for breach of contract.

#### **5. Reservation of Title**

- (1) Until all payments, ancillary demands and claims for compensatory damages, in particular any client account claims, arising from the business relation to which we are entitled, are satisfied we reserve title in the goods which we have delivered (Reserved Goods). This applies also for future and conditional claims to payments such as, for example, from accepted bills of exchange and

even if payments are to be made on specially designated claims. We will not accept any clearing notices.

- (2) The reserved goods remain our property at every stage of production, even if they are processed into a new thing. Processing work done on Reserved Goods shall be done by us as manufacturers within the meaning of § 950 of the German Civil Code ("BGB"), without obligation to us. The processed Reserved Goods are deemed Reserved Goods within the meaning of para. 1. Processing, combining and intermingling Reserved Goods with other goods by the Buyer shall give us co-ownership in the new thing proportional to the invoice value of the Reserved Goods to invoice value of the other goods used. If our title is extinguished by combination or intermingling, then the Buyer by these presents hereby transfers title to the new composite or thing to us to the extent of the invoice value of the Reserved Goods and shall safeguard it for us at no charge. Our co-ownership rights are deemed Reserved Goods within the meaning of para. 1.
- (3) So long as he is not in default, the Buyer may sell the Reserved Goods only in the course of normal business transactions upon ordinary business terms and conditions, provided that the receivable from such resale is assigned to us in accordance with V.4-6. The buyer is entitled to make all other dispositions of the Reserved Goods only with our advance written consent and only upon the condition that he is not in default of his obligation to us. In addition, in the event of Buyer's default we may forbid the resale and processing of the delivered goods or demand their return or transfer of their temporary possession at Buyers expense and revoke the direct debit authorization granted pursuant to 5.5 of these Terms and Conditions.
- (4) The receivables arising from resale of the Reserved Goods is by these presents hereby assigned to us. We accept the assignment. To the same extent as the Reserved Goods, they shall serve as security for our claims against the Buyer. If the Buyer sells Reserved Goods together with goods which we have not sold, then the receivable from the resale shall be assigned to us in the same proportion as the invoice value of the Reserved Goods bears to the invoice value of the other goods sold. In the event goods are sold in which we have a shared title in accordance with V.2., we shall be assigned an interest corresponding to our share of ownership. If the Reserved Goods are used by the Buyer to fulfill a works or works supply contract, the receivable from the works or works supply contract corresponding to the pro rata value of our delivery shall be assigned to us in advance. We hereby accept the assignment.
- (5) The Buyer is authorized, to foreclose on receivables arising from the resale. This foreclosure authority shall lapse in the event we revoke it but at the latest upon the Buyer's default in payment, dishonor of a bill of exchange or upon Buyer's application to initiate bankruptcy, composition or global execution proceedings. We will only exercise our revocation right if we are aware of circumstances that would materially worsen the Buyer's credit worthiness and jeopardize our right to payment. Upon demand, the Buyer shall inform his customer of the assignment to us. Should he fail in his obligation, we will give notice of our extended reservation of title to the third-party debtor and foreclose on the receivable ourselves. In such a case, the Buyer shall promptly provide us with the necessary documentation (copies of invoices, etc.) and inform us as to the outstanding amount of the receivable. An assignment of receivables from resale is impermissible unless it is an assignment pursuant to a genuine factoring arrangement of which we have notice and in which the factoring proceeds exceed the value of our secured receivable. Our receivable claim shall be immediately due and payable upon receipt of the credit of the factoring proceeds. By these presents, the Buyer hereby authorizes us to enter upon his business premises, other storage sites and allows us to inspect all documents which might be relevant to the identification of the materials we have delivered, label the pertinent materials, record them and take custody of the delivered goods in furtherance of our basic, expanded and extended reservation of title. We

are entitled to repossess the Reserved Goods. The repossession is not a rescission of the contract and shall be at Buyer's risk and expense. We may satisfy ourselves from the free sale of the repossessed Reserved Goods. The maximum of any credit given for the repossessed material will be the resale price. If we have borne the transportation costs, then the credit will be reduced by the actual freight charges. We are likewise entitled to deduct a processing fee of 15% of the order amount unless we can substantiate higher costs.

- (6) The pledging or transfer of ownership for security purposes in the Reserved Goods is not permitted. The Buyer shall immediately inform us of third-party liens or security interests in favor of third parties and shall include the identity of the lienor or creditor. The Buyer shall bear all costs nor reimbursed by third parties which must be incurred to release the attachment on or re-transport the Reserved Goods.
- (7) If the invoice value of the existing security interests exceeds that of the secured receivables to include ancillary charges (interest, costs, etc.) by a total of more than 20% then the Buyer may demand the release of security interests of our free choosing.
- (8) The Buyer shall carefully safeguard the Reserved Goods for us at no charge, maintain and repair them at his own expense as well as insure them against the usual hazards such as for example, fire, theft and flood, to the extent normally expected of a reasonably prudent businessman. The Buyer by these presents hereby assigns to us in advance the rights to any compensation for the type of damage described above that he may have against an insurer or other substituted obligor. We accept the assignment.
- (9) Until our complete release from possible obligations that we have incurred in the interest of the Buyer, all receivables as well as rights from reservations of title in all the special forms provided for in these terms and conditions shall remain in existence.

## **6. Goods, Size, Weights / Tolerance and other Deviations**

- (1) The weighting used by us or by our supplier shall dictate the weight. Proof of the weight will be made by presenting the weighing slip. The number of units (or similar increment of measurement) set forth in the shipment notice will not be binding with respect to goods which are calculated on a weight basis. Unless individual weighting is ordinarily undertaken, the shipment's total weight shall govern. Any differences to the calculated individual weights will be allocated proportionately.

## **7. Delivery Inspection**

- (1) If the parties have agreed to an inspection upon delivery, then any such inspection must, immediately after notice regarding the willingness to take delivery has been given, be conducted at the Buyer's risk in the factory from where the delivery is to be made ("Supplying Factory") or from our warehouse. The Buyer shall stipulate the content and scope of the delivery inspection and is solely responsible for such action. The Buyer shall bear the personnel costs related to the delivery. It will be invoiced for the technical costs related to the delivery pursuant to our applicable price list or those of the Supplying Factory. If the goods conform to the specifications prescribed in the contract, then the goods will be deemed to have been legally accepted from us, irrespective of any trade custom or any other conflicting technical rules. Thereafter, no notice of defect may be made. If, through no fault or our own, delivery is not taken, either in whole, in part, or in a timely manner, then we may ship the goods without delivery acceptance or place the goods in storage at the Buyer's expense and risk. Any quantity on a delivery which deviates less than 10% from the stipulated quantity will be deemed customary and agreed.

## **8. Shipment / Passing of Risk (Packaging, on-going delivery)**

- (1) We will designate the route or the prescribed route and means of shipment, as well as the freight forwarder and carrier. Any costs/expenses for freight are deemed to be made on the Buyer's behalf. Insurance against damages will be entered into only at the Buyer's express consent.
- (2) If the shipment via the prescribed route or to the prescribed site becomes impossible through no fault of our own, then we may, after conferring on the matter, deliver by another route or to another site. The Buyer shall bear any additional costs arising here from.
- (3) When the goods are handed over to the freight forwarder or carrier but, in any case, no later than upon dispatch of the goods ex works or ex warehouse, the risk of accidental loss (including a seizure) shall pass to the Buyer, even in CIF and FOB transactions. We will obtain insurance coverage only at the direction and expense of the Buyer.

## **9. Notice of Defects Warranties and Liability**

Our warranties on product defects and any warranted qualities shall be limited to those set forth in the following provisions:

- (1) We must receive written notice of any defects in the goods immediately, but in any case, within seven days following physical delivery of the goods. Any defects which cannot be discovered within this period-even after the most careful inspection-shall be notified in writing immediately after the discovery, but in any case, within the warranty period. Upon such discovery, any and all processing or work shall be halted.
- (2) After the Buyer has taken delivery of the goods in the manner contractually prescribed, the right to serve notice of any defects which could have been discovered during the contractually stipulated delivery process will be excluded.
- (3) If a notice of defects is legitimate and timely made, then we shall retrieve the objectionable goods and deliver to you substitute goods which are free of defects. We also retain the right to cure. If the cure or substitute delivery fails, the Buyer may, subject to statutory requirements, only demand a reduction in the purchase price or that the contract be rescinded and restitution carried out. The Buyer may not demand such rescission and restitution where a work of construction is the subject matter of the warranty or the defect materially reduces the value or usefulness of work produced by us.
- (4) If the Buyer does not immediately provide us with an opportunity to evaluate the defect or does not immediately furnish us with the objectionable goods or samples, then all warranties shall cease to exist.
- (5) The Buyer will not have no warranty claims for defects or errors which are indicated or which he/she would ordinarily expect with respect to the goods sold as declassified material (eg. so-called 2a goods)
- (6) We shall provide the same warranties on the substitute goods and improvement (cure) as we do on the original goods and services.
- (7) Unless stated otherwise below in (8) and (9), any additional claims by the Buyer based on whatever legal reason, including impossibility, delay, fault during contract formation and/or - are hereby waived. Liability on any damages that do not arise directly from the subject matter of the delivery are disclaimed. Above all, we shall not be liable for any lost profits or other property damages incurred by the Buyer.

- (8) The foregoing disclaimer will not apply if the damage or injury is caused by our willful or grossly negligent acts. It will also not apply if, as a result of absence of a warranty quality, the Buyer enforces damage claims based on non-performance.
- (9) If we breach a material contractual duty or a „cardinal duty, then liability shall be limited to typical contractual damages. Otherwise, liability shall be excluded in accordance with No 7. The exclusion or limitation on our liability will also apply with respect to the liability of our executives and vicarious agents.
- (10) Our liability arising from a breach of promised or warranted qualities will be based on 10.

#### **10. Damages and Statute of Limitations**

- (1) Any liability for damages going beyond that stated in 9. (7)-(9) above is excluded, irrespective of the legal nature of the claim being enforced.
- (2) The provision under 10. (1) does not apply to claims brought under §§ 1 and 4 of the Product Liability Act. In the event that the limits on liability provided for in 9. (7) do not apply with respect to manufacturer liability claims filed pursuant to §823 of the Civil Code, our liability is limited to the claims paid out under the insurance coverage. If such coverage does not apply, either in whole or in part, then we shall be liable up to the amount of coverage amount.

#### **11. Technical Advice, Use and Processing**

- (1) The Seller's verbal or written advice (also in the form of trial runs) regarding application technology shall be made to the best of its knowledge and constitute non-binding recommendations also with respect to any third party protective rights, and shall not excuse the Buyer from conducting its own examination of the delivered products to determine whether such products will be suitable for their processes and purposes. The application, use and processing of the goods will be done outside the Seller's supervisory control and will therefore lie within the Buyer's exclusive domain of responsibility.

#### **12. Trademarks /Company Name**

- (1) No substitute goods may be offered or sold as substitutes for the Seller's products which refer to Seller's products, and the Seller's product designations, whether protected or not, may not, in price lists and similar business papers, be used in combination with the word "Ersatz" or juxtaposed with the designations of substitute goods.
- (2) It is moreover impermissible when using the Seller's products for manufacturing purposes or for further processing to use the Seller's product designations, particularly its trademarks on – particularly as an integral part of – such goods or their packaging or in the accompanying printed materials – and advertising material without the Seller's prior consent. The delivery of products under a trademark shall not be deemed consent to the use of such trademark on the products manufactured there from.
- (3) The Buyer is not authorized to act as the Seller's representative or seller. The Buyer may not, acting as described in para 2 above, represent himself as the Seller's dealer or sales representative.

#### **13. Place of Performance, Forum and Governing Law**

- (1) The place of performance with respect to our deliveries is the Supplying Factory if the delivery is ex works, and our warehouse for all other types of deliveries. Otherwise, the place of performance is the relevant place of shipment. The place of performance with respect to payments is Neu-Isenburg.

- (2) For both parties, the exclusive venue and jurisdiction is the court exercising jurisdiction in the place of our firm's registered office. The same shall apply to proceedings governing bills of exchange and checks. At our option we may seek the intervention of courts having jurisdiction over the place of the Buyer's registered office or that of its lead affiliates.
- (3) Should any provisions of these Standard Terms and Conditions for Deliveries and Payments be invalid, in whole or in part, then the validity of the remaining provisions or parts thereof will not be affected thereby. The Parties shall replace any such provision with a valid provision that most closely approximates the commercial purpose of the invalid provisions.