

## **1. General, Scope of Application**

**1.1** Our terms of sale shall exclusively be valid; terms of sale of the customer conflicting or differing to our terms of sale will not be acknowledged by us, unless we explicitly would have accepted their validity in writing. Our terms of sale shall also be valid if we execute the delivery to the customer without any reservation knowing about contradictory or differing terms of the customer.

**1.2** All agreements being made between us and the customer for the purpose of the execution of this agreement shall be set down in writing in this agreement.

**1.3** Our terms of sale shall only be valid for entrepreneurs in the meaning of § 310 section 1 BGB (= Bürgerliches Gesetzbuch = Civil Code).

**1.4** Our terms of sale shall also be valid for all future transactions with the customer.

## **2. Offer – Offer Documents – Conclusion of the Agreement**

**2.1** Our offers shall be not binding and subject to confirmation: The same shall be valid for supplements, alterations or subsidiary agreements. Orders shall be binding and can be accepted by us within two weeks.

**2.2** Orders of the customer shall only be valid as accepted if we will have confirmed them in writing or if we will have executed the order. If we do not confirm particularly in writing an agreement made orally or by phone, the invoice made out by us shall be valid as confirmation.

**2.3** We reserve the rights of ownership and the copyrights for illustrations, drawings, calculations or any other documents. This shall also be valid for such written documents which are denominated as “confidential”. The customer shall require our written confirmation for the transfer to any third party. As far as we will not accept the offer of the customer within the period mentioned in item 2.1 p. 2 these documents shall immediately be returned.

**2.4** The contractual relationship respectively the fulfillment of contract shall be with the reservation that, should the occasion arise, required export authorizations will be granted respectively that no other obstacles stand in the way because of export or import regulations which have to be followed by us as the exporter or by any of our suppliers.

## **3. Prices – Terms of Payment**

**3.1** As far as nothing else results from the order confirmation so our prices shall be valid as “ex works” excluding packaging; the packaging will be invoiced separately.

**3.2** The statutory VAT is not included in our prices. The VAT will be shown separately to the statutory amount in the invoice on the day of invoicing.

**3.3** The deduction of a trade discount shall require a particular written agreement.

**3.4** The purchase price shall be due for payment without any deduction within 30 day from the date of invoice as far as nothing else results from the order confirmation. The legal regulations regarding the consequences of default of payment shall be valid. We reserve to claim a higher damage caused by default.

**3.5** We reserve adequate price changes because of changed costs for wages, material, and distribution for deliveries which will be executed 3 months or later after the conclusion of the agreement as far as no fixed price agreement has been made.

**3.6** Substantial changes of the financial circumstances of the customer shall entitle us to immediately set our claims due and to execute deliveries only against advanced payment. We furthermore shall be entitled to resign from the agreement totally or partially after the expiry of period of payment set out by us.

**3.7** The customer shall only be entitled to counterbalancing rights if its counterclaims have been legally binding ascertained or if they have been particularly accepted by us. Furthermore the customer shall only be entitled to the execution of a right of retention if its counterclaim is based on the same contractual relationship.

**3.8** All payment agreements shall be with the reservation of a cover note of our loan insurer.

**3.9** Invoices sent by e-mail shall be seen as binding.

## **4. Dispatch, Delivery, Acceptance**

**4.1** The goods always are transported uninsured and in any case on risk of the customer. This shall also be valid for freight prepaid delivery and independent of the means of transport. A transport insurance shall only be made up on the explicit request of the customer. Costs resulting from this shall be exclusively on expense of the customer.

**4.2** The choice of the place of dispatch and the way of transportation as well as of the means of transport shall be – in the absence of a differing written agreement – executed by us to the best of one’s judgment, without taking any liability for the cheapest and fastest transport.

**4.3** Should the customer provide the means of transport, it shall be responsible for the punctual provision. We shall be timely informed about possible delays on. The resulting costs shall be borne by the customer.

**4.4** We shall be entitled to an adequate partial delivery.

**4.5** Our obligation to supply always shall be with the reservation of a timely and orderly supply to us.

**4.6** Indicated delivery and unloading times are always not binding if nothing else has explicitly been agreed in writing. The beginning of the indicated delivery time shall require the clarification of all technical issues.

**4.7** Delivery obstacles caused by force majeure or because of unforeseen events for which we are not responsible, as, e. g. breakdowns, strikes, lockouts, official orders, belated discontinuance of export or import opportunities as well as our reservation in case of incoming deliveries shall release us for the period and the scope of the effects from the obligation to keep to the agreed delivery and unloading times. They shall entitle us also to resign from the agreement without giving the customer the right for compensation or any other claims.

**4.8** Should an agreed delivery or unloading time be exceeded without having an existing delivery obstacle according to item 4.7 so the buyer shall grant us an adequate grace period in writing. Should we also culpably miss to keep to this grace period, so the buyer shall be entitled to resign from the contract, but not for the assertion of claims for compensation because of nonperformance or default, unless we acted on purpose or with gross negligence. We shall be liable according to the legal provisions as far as the default in delivery is based on gross negligence or the culpable breach of a material contractual obligation in our responsibility; in these cases the liability for

compensation shall be limited to an overall default compensation payment to the amount of 0.5% of the predictably typically arising damage.

**4.9** Should the customer fall into arrears with the acceptance or should it culpably violate any other duties of cooperation so we shall be entitled to claim for a compensation of the damage caused for us insofar, including possible additional costs. Furthermore we shall be entitled to deliver the goods being ready for delivery to third parties and to deliver the ordered articles at a later point in time to the customer, latest, however by the expiry of the ongoing fiscal year or to cancel the order in case of a default in acceptance of more than four weeks. Further claims and rights shall be reserved.

**4.10** Should there be a delay of the delivery because of an according request of the customer and should we accept the individual case so the goods indicated ready for dispatch will be stored at expense of the customer. A lump sum of 1 % of the invoice amount will be invoiced per beginning month.

**4.11** As for the rest we shall be liable in case of default in delivery for each completed week of the default within the scope default compensation with a lump sum of 0.5% of the value of the consignment value, maximum, however, of 5% of the consignment value.

## **5. Passing of Risk - Documents**

**5.1** As far as there is no other information in the order confirmation a delivery "ex works" shall be agreed.

**5.2** Transport and any other packaging according to the packaging ordinance will not be taken back; pallets shall be excluded. The customer shall be obliged to care for a disposal of the packaging at its own expense.

## **6. Investigation and Complaint Obligation**

**6.1** The customer shall be obliged to investigate the goods at the agreed place of destination respectively in case of a collection by itself at the taking of the delivery

**6.1.1** according to quantity and packaging and to note on the delivery note or bill of lading respectively acknowledgement of receipt possible complaints hereto, and

**6.1.2** at least to randomly and representatively execute a quality control and to check the goods regarding outer quality.

**6.2** The customer shall follow the following formalities and time limits in complaining about possible defects:

**6.2.1** The complaint shall be executed by the end of the third workday (Monday to Friday) following the delivery of the goods at the agreed place of destination respectively of taking delivery. When complaining about a hidden defect the complaint shall be made by the end of the workday following the detection of the defect, latest, however, within two weeks after the delivery of the goods respectively of taking delivery.

**6.2.2** The complaint shall arrive at us within the above mentioned time limits in writing, by telex or by fax. A message by telephone shall not be sufficient. Notices of defect against traveling salesmen, brokers or agents shall not be taken into consideration.

**6.2.3** Quality and quantity of the claimed defect have to be clearly recognizable in the complaint.

**6.2.4** The customer shall be obliged to have the complained goods at the place of investigation ready for inspection by us, our supplier or by experts ordered by us.

**6.3** Complaints regarding number of pieces and packaging of the goods shall be excluded should the required note on the delivery note or bill of lading according respectively the acknowledgement of receipt according to item 6.1.1 be missing. Furthermore any complaint shall be excluded as soon as the customer will have mixed, continued to use, resold or will have started with the treating and processing of the goods.

**6.4** Goods which have not been complained about in the required form and time limits shall be seen as approved and accepted.

## **7. Liability for Defects**

**7.1** Claims for defects of the customer shall require that it has orderly executed its investigation and complaint obligations.

**7.2** As far as there should be a defect of the purchased goods so the customer shall be entitled to a supplementary performance of its choice in the way of a removal of defects or to the delivery of new goods free of defects. The customer shall always give us the opportunity to a supplementary performance within an adequate time limit, rights of recourse shall be unaffected without limitation by the aforementioned regulation.

**7.3** Should the supplementary performance fail, so the customer shall be entitled to claim for resignation or a reduction.

**7.4** Claims for defects shall not exist for an only insignificant deviation of the agreed quality, for an only insignificant reduction of the usability, for natural wear and tear, as for damages caused by incorrect or negligent treatment, excessive use and strain, improper operating material or because of particular external influences after passing of risk, being not a prerequisite according to the agreement. Should improper maintenance work or alterations be carried out by the customer or any third party so there also shall exist no claims for defects for the aforementioned and for the results arising from them.

**7.5** We shall be liable according to the legal provisions as far as the customer will claim for compensation basing on purpose or gross negligence. As far as we cannot be blamed for intentional breach of contract so the liability for damages shall be limited to the predictably typically arising damage.

**7.6** We shall be liable according to the legal provisions as far as we culpably violate any material contractual obligation; in this case, however, the liability for damages shall be limited to the predictably typically arising damage.

**7.7** The liability for a culpable violation of life, body or health shall be unaffected; this shall also be valid for the compulsory liability obligations according to the Product Liability Act.

**7.8** The period of warranty shall be 1 year starting with the passing of risk. The legal term of limitation shall be valid for claims for damages in case of purpose and gross negligence as well as for violation of life, body, and health which are based on an intentional or negligent breach of duty of the user.

**7.9** The term of limitation in case of a delivery recourse according to §§ 478, 478 BGB (= Civil Code) shall remain unaffected.

**7.10** Claims of the customer because of the expenses required for the purpose of supplementary performance, particularly transport, travel, labor, and material costs shall be excluded, as

far as the of the customer afterwards, unless the transport is according to the contractual use.

**7.11** Recourse claims of the customer against us shall only exist, if the customer has made no agreements going beyond the legally binding claims for defects with its customer. Furthermore section 6 shall accordingly be valid for the scope of the recourse claim of the customer against the supplier.

## **8. Reservation of Title**

**8.1** We reserve the proprietary rights for the purchased product until we will have received all payments from the business relation – also balance claims from the current account. We shall be entitled to take back the purchased product if there is a behavior contrary to the contract, particularly default in payment. The taking back of the purchased product, however, shall be no resignation from the agreement, unless we would have explicitly stated this in writing. The seizure of the purchased goods by us shall always be a resignation of the agreement. We shall be entitled to utilize the purchased product after the taking back, in doing so the revenue shall be credited on the liabilities of the customer minus adequate utilization costs.

**8.2** The customer shall be entitled to sell the goods delivered by us during the proper course of business. The entitlement given according to this shall be cancelled particularly in the cases mentioned in item 8.1 S. 2. Furthermore we shall be entitled to revoke the powers of alienation with a written statement, if the customer falls into arrears with its obligations against us, particularly with its payments, or if any other circumstances become known which let appear its creditworthiness doubtful.

**8.3** Accordingly the limitations mentioned above in item 8.2 shall be valid for the right of the customer to process the goods supplied by us. The customer does not acquire property for the entirely or partially manufactured goods by means of the processing; the processing shall be free of charge exclusively for us as a manufacturer in the meaning of § 950 BGB (= Civil Code). Should, however, our reservation of title be cancelled by means of any circumstances, so the customer and we already now agree that the ownership of the goods shall be assigned to us with the processing and that we shall accept the assignment of property and that the customer shall remain the depository of the goods free of charge.

**8.4** Should our reserved goods be processed with goods being still in third-party property or inseparably be mixed with them so we shall acquire co-ownership of the new goods or the mixed inventory. The scope of the co-ownership shall result from the proportion of the invoice value of the reserved goods supplied by us to the invoice value of the remaining goods.

**8.5** Goods in which we acquire property or co-property according to items 8.3 and 8.4 shall be treated as reserved goods in the meaning of the following provisions in the same way as the goods supplied by us with reservation of title according to item 8.1.

**8.6** The customer shall already now assign the claims from a resale of the reserved goods to us. Also the claim against the bank which has opened or confirmed a letter of credit in favor of the customer (= reseller) within the scope of the resale shall belong to the claims from a resale. Herewith we accept the assignment. Should the reserved goods be processing products or mixed inventory in  
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which besides the goods supplied by us only such objects are contained which either belonged to the customer or which had been supplied to it by any third party only with the so called simple reservation of title so the customer shall assign the entire claim from the resale of the goods to us. Otherwise, with the conjunction of a pre- assignment to us and to other suppliers so we shall be entitled to a fraction of the proceeds on disposal, to be precise according to the proportion of the invoice value of our goods to the other processed or mixed goods.

**8.7** The customer shall also assign the claims for the safeguarding of our claims against it which arise through the connection of the purchased product with a plot against any third party.

**8.8** The customer shall be entitled to collect the accounts receivable from the resale of the goods. This direct debit authorization shall be cancelled if there is no more proper course of business at the customer according to the provision in item 7.4. Furthermore we can revoke the direct debit authorization of the customer if the customer falls into arrears with the performance of its obligations against us especially with the payments or if any other circumstances become known which let its creditworthiness seem doubtful. Should the direct debit authorization be cancelled or should it be revoked by us so the customer shall inform immediately inform the debtors of the assigned claims on our request and shall give us the information and documents required for the collection.

**8.9** As far as our claims are covered entirely by means of the above explained assignments respectively reservations doubtlessly by more than 110% so the surplus of the accounts receivable respectively the reserved goods shall be released on request of the customer according to our selection.

**8.10** The customer shall be obliged to point out to our property / right and to immediately inform us in writing in any case of access of any third party to our reserved goods or the accounts receivable assigned to us.

**8.11** The customer shall be obliged to treat the purchased product carefully as long as it has not yet passed into its property. The customer shall particularly be obliged to sufficiently insure the goods against fire, water, and theft on its own expense at the original value. As far as maintenance and inspection work is required so the customer shall have to carry out them timely on its own expense.

## **9. Applicable Law**

The laws of the Federal Republic of Germany with the exclusion of the conflict of laws and the agreement of the United Nations of 11 April 1980 about contracts about the international sale of goods (CSIG) shall be applicable.

## **10. Place of Performance, Place of Jurisdiction**

**10.1** As far as nothing else has been agreed so our registered office shall be the place of performance.

**10.2** The courts of jurisdiction for our registered office shall be locally in charge for all disputes arising in connection with the contractual relationship. We can, however, also choose another place of jurisdiction.