

## **CONDITIONS OF SALES AND DELIVERY**

### **1. General points**

- 1.1 These Terms and Conditions of Sale and Delivery only apply in relation to businesspersons as understood by § 310 section 1 of the BGB [Bürgerliches Gesetzbuch, the German Civil Code], and in the case of ongoing business relations to all (including any future) deliveries and services of our company under the auspices of a purchase contract, contract for work and services or contract for labour and materials (hereinafter referred to as a 'delivery contract'). Terms and conditions of the ordering party are hereby expressly excluded. They shall not place us under any obligation even if we have not expressly declined to accept them following receipt of the order by us. Our terms and conditions of sale and delivery shall apply likewise if we carry out the delivery to the ordering party without reservation, while being aware of conflicting terms and conditions of the ordering party or of terms and conditions which deviate from our own terms and conditions.
- 1.2 The delivery contract only comes about when we send confirmation of the order (by letter, fax or e-mail) or when we dispatch the goods. Subject to reservations in respect of the priority of individual understandings as specified by § 305 of the BGB, subsequent modifications of the delivery contract require a written confirmation from us.
- 1.3 Technical drawings, illustrations, specifications of weight and other documents forming part of our offer are only binding when express reference is made to them in the contract. The same applies to public utterances, especially publicity statements or special labellings indicating specific properties inherent in the object of delivery. We reserve all property rights and copyright rights in respect of cost estimates, technical drawings, photos and other documents; these may not be made accessible to third parties without our express consent.
- 1.4 Interpretation of the delivery clause (e.g. EXW, FOB, DDU) shall be subject to the 'Incoterms' defined by the International Chamber of Commerce, in all cases in the most recent version.

### **2. Prices and terms and conditions of payment; right of retention**

- 2.1 The prices indicated are current prices; they are to be understood as net ex works and/or from the customs depot. VAT is shown separately. The prices invoiced will be the prices valid on the day of delivery. Advance payments shall not be regarded as partial fulfilment. Payments by bill of exchange, credit card and EC card will not be accepted. Cheques shall be valid as payment only from the time when they are cashed in. Payments from abroad should be effected on the basis of shared charges (SHA).

- 2.2 In so far as nothing shall have been expressly agreed to the contrary, payments are to be made net, at latest 30 days from the date of the invoice or equivalent demand for payment, irrespective of the receipt of the object of delivery.
- 2.3 The ordering party shall be regarded as being in arrears, if in case of a calendar date specified as the due date of payment he has not performed payment by the relevant date. In case of unauthorised discount deductions or exceeding of the discount date, subsequent demands for payment will be made. If a due date has not been determined, he shall be regarded as being in arrears on receipt of a reminder, or else (without any reminder being necessary) on the expiry of 30 days from the receipt of our invoice or equivalent demand for payment.
- 2.4 In case of delayed payment, the ordering party shall be obliged to pay interest in the amount of 9% over the base interest rate per annum from the due date onward; our right to claim indemnity for damages over and above this remains unaffected thereby.
- 2.5 The ordering party shall have no right of retention. The setting off of counterclaims shall be permissible only to the extent that these have been acknowledged by us as existing and due for payment or if they have been upheld at law.
- 2.6 In so far as import licences or other authorisations are required in the destination country, their number, date of authorisation and duration of validity are to be relinquished to us at the time of placement of the order.

### **3. Term of delivery; partial delivery**

- 3.1 The term of delivery shall commence with the day of confirmation of the order, however not before clarification of all technical and commercial details and the presentation of any authorisations that may be required. The term of delivery shall be considered to have been adhered to if the ordering party has been notified that the goods are ready for dispatch within the term of delivery. Any changes in the execution of the object of delivery requested by the ordering party within the term of delivery shall interrupt and extend the term of delivery correspondingly.
- 3.2 Partial deliveries are permissible.

- 3.3 The occurrence of unforeseen events shall entitle us to postpone the delivery for the duration of the untoward circumstances with an appropriate preparatory period. Unforeseen events shall be considered to include circumstances such as we are unable to avert by measures deemed acceptable in the light of the circumstances of the case, e.g. war, measures of currency and trading policy and other sovereign measures, internal unrest, natural catastrophes, fire, strikes, lockouts, non-delivery of raw materials through no fault of our own, traffic disruption and operating hindrances and other cases of force majeure whereby the fulfilment of the terms of the delivery contract is put at risk, made considerably more difficult or rendered impossible. In such cases we shall be entitled to withdraw from the contract without obligation of indemnification. The ordering party may ask us to declare whether we are withdrawing from the contract or intend to deliver within an appropriate term. If we fail to provide such a declaration, the ordering party shall be entitled to withdraw from the contract. The ordering party shall not be entitled to refuse partial deliveries and partial services.
- 3.4 If for other reasons a delay in delivery occurs, the ordering party must set us an appropriate subsequent term of delivery in writing. If within this subsequent term the object of delivery has not been brought to the point of dispatch by us, the ordering party shall be entitled on expiry of the term to withdraw from the contract for those parts which up to the expiry of the subsequent term have not been dispatched or indicated as being ready for dispatch. Only when the partial services already supplied are of no interest to the ordering party shall the ordering party be entitled to withdraw from the entire contract. If damage is incurred by the ordering party on account of a delay for which we may be held responsible, we will indemnify the damage shown to have occurred, only however in the amount of 0.5% per week of delayed delivery of the value of that part of the entire delivery which in consequence of the delay cannot be used in time or cannot be used in accordance with the conditions of the contract, no more however than a maximum of 5% of this value. Any further claims based on delayed delivery shall be determined exclusively by the rulings of article 7 below. The right of the ordering party to withdraw from the contract after the fruitless expiry of a subsequent term of delivery of appropriate extent that has been set for us shall remain unaffected.
- 3.5 If the ordering party does not take delivery of the object of delivery at the time agreed, he shall be obliged to pay the purchase price notwithstanding. In this case the warehousing of the object of delivery will be arranged by us, at the cost and at the risk of the ordering party.

#### **4. Dispatch, packaging and transfer of risk**

- 4.1 All our deliveries are made ex works. Freight and insurance costs and customs duties will be charged to the ordering party. Failing any agreement to the contrary, the goods will be dispatched unpackaged. Transport insurance policies will be taken out only on the express request of the ordering party, in the name and at the charge of the latter.

- 4.2 Dispatch of the object of delivery is at the charge and risk of the ordering party. With the transfer of the goods to a haulage contractor or freight forwarder, or at latest when the goods leave our warehouse or the supplying plant, the risk passes to the ordering party. This also applies in the case of free delivery to the destination. If the dispatch is delayed as a result of actions of the ordering party, the risk shall pass to the latter at the time when notification is given that the goods are ready for dispatch.
- 4.3 Goods that have been designated as ready for dispatch must be called for promptly. Otherwise we shall be entitled to send them at our own discretion or to store them at the cost and risk of the customer and to charge for this immediately.
- 4.4 On receiving the goods or on the goods being handed over at a place specified by himself, the purchaser / recipient of the goods takes on the obligations associated with inspection and authorisation under the auspices of import controls, sanction list controls and the control for any prohibitions and restrictions.

## **5. Reservation of property rights**

- 5.1 Until the satisfaction of all claims, whatever legal grounds they may have, the object of delivery remains our property, even if payments have already been made for specifically designated demands. In the case of ongoing payments, the reservation of property rights applies as security for the balance of our claims. If installation services are to be supplied, the property rights in respect of the object of delivery shall only pass to the ordering party after receipt of the installation payment and/or the part of the payment corresponding to the installation services. If a cheque / bill of exchange procedure between us and the ordering party is to be carried out, the reservation of property rights remains in force until such point as no further legal claims may be made on us based on the bill of exchange. The same applies to any other contingent liabilities which we may enter into in the interest of the ordering party.
- 5.2 For us as manufacturer, any processing or reworking of the goods subject to reservation in respect of property rights is to be understood in the light of § 950 of the BGB, without laying us under any obligation. In the case of processing of the goods together with other goods not belonging to us, we shall be entitled to an ownership share in the article produced, this in the ratio of the invoiced value of our goods subject to retention of title which are to be processed to the total of the invoiced values of all other goods used in the production.
- 5.3 If the goods supplied by us are mixed or compounded with other objects so that our property rights in respect of the goods subject to reservation expire (cf. §§ 947, 948 of the BGB), it is already as of now agreed that property rights in the mixed object remaining or in the unified article shall pass to us in the scope of the invoiced value of our goods subject to reservation, and that the customer shall keep these goods for us at no cost to ourselves.

- 5.4 The new articles arising from the processing or from the compounding or mingling shall be considered goods subject to retention of title as understood by these Terms and Conditions of Sale and Delivery.
- 5.5 The ordering party shall be entitled to process and to dispose of the goods subject to retention of title in the ordinary way of business except in cases where he is already in arrears with his payments to us, has discontinued his payments or court insolvency proceedings have been opened on his assets. It is considered as agreed that the claims of the ordering party resulting from the further disposal of the goods, along with all associated ancillary rights, are already as of now assigned to us, this in the full amount, or in the case of further disposal of the goods together with other goods not belonging to us only to the extent of our invoiced sum for the goods supplied by us, or in the case of further disposal following the compounding, mingling or processing of the goods only in the ratio of the value of our ownership share. The ordering party shall not be entitled to dispose in other ways of the goods subject to retention of title, in particular not to pledge or assign them as security to third parties, except in cases where we have given our written consent thereto.
- 5.6 The ordering party shall be obliged to notify us immediately if third parties assert rights of title in respect of the goods subject to reservation.
- 5.7 The ordering party shall be entitled to call in the claims assigned to us. We may revoke this authorisation if the ordering party is in arrears with his payments to us, or if any significant deterioration of his financial position as understood by section 5.5 above occurs.
- 5.8 In these cases we shall also be entitled to call for the return of the goods subject to reservation for purposes of security, without the customer have any right of retention against this claim and without this entailing a withdrawal from the delivery contract on our part.
- 5.9 If the value of the existing securities exceeds the value of the secured claims by a total of more than 20%, we shall be obliged accordingly, on request of the ordering party, to release securities of our own choice.
- 5.10 If the reservation of property rights should be invalid based on the law of the country into which the goods have been transferred, that security for our claims in respect of the purchase price shall be considered as having been agreed which in the country in question can be agreed with legal validity, and which approximates as closely as possible in economic terms to the above reservation of property rights. The ordering party shall be obliged to take all the necessary material or legal measures for the purpose on our behalf.

## **6. Liability for material and legal defects**

- 6.1 Liability is subject to the condition that the ordering party – in so far as he is a businessperson or juridical person under public law – shall fulfil his obligations in the proper manner in accordance with § 377 of the HGB [Handelsgesetzbuch – the German Commercial Code] and in so far as he investigates the object of delivery immediately following receipt with the due care to be expected of him in the given circumstances, and gives prompt notice of the defects discovered in writing or by fax. Unobvious defects must be pointed out immediately on being discovered.
- 6.2 We admit liability in accordance with statutory provisions without restriction in so far as the ordering party shall assert indemnification claims which are based on deliberate intent or gross negligence, including cases where deliberate intent or gross negligence may be laid to the charge of our representatives or vicarious agents.
- 6.3 We admit liability in accordance with statutory provisions without restriction for culpable injuries to life and limb or damage to health (this applies likewise to mandatory liability under the Produkthaftungsgesetz [Product Liability Act]).
- 6.4 We admit liability in accordance with statutory provisions to the extent that we are culpably in violation of ancillary contractual obligations; in this case the liability to indemnify shall be restricted to the foreseeable damages occurring in typical cases, and over and above this to the amount of the cover of the product liability insurance.
- 6.5 In so far as a defect for which we can be held responsible is present in the object of the contract, we may at our own discretion either rectify the defect or supply a contractual object free from defects (subsequent fulfilment).
- 6.6 If subsequent fulfilment is unsatisfactory or if the ordering party cannot reasonably be expected to accept it, if we should seriously and definitively decline to provide subsequent fulfilment or delay to provide it for an unacceptable length of time, or if there are other circumstances present which, subject to consideration of the interests of both sides, constitute grounds for immediate withdrawal from the contract or for indemnification claims, the ordering party shall be entitled at his own discretion either to reduce the contractually agreed price or to withdraw from the contract and/or call for indemnification. In the case of minor breaches of contract, in particular in the case of merely minor defects, the ordering party shall have no right to withdraw from the contract.
- 6.7 If after subsequent fulfilment has failed the ordering party opts for indemnification exclusively, the object of the contract shall remain with the ordering party, where this can reasonably be expected of him. The indemnification shall be restricted – with reservation in respect of sections 10.1 and 10.2 – to the difference between the purchase price (without VAT) and the value of the defective object of the contract remaining with the ordering party.

- 6.8 Our obligations under guarantee shall expire (a) if the object of delivery has been dismantled by third parties or modified through the incorporation of parts of extraneous origin, (b) if the ordering party fails to follow our directions on the handling of the object of delivery (operating instructions) or does not comply with them in the proper manner, (c) if it is found that the maximum permissible speeds or pressures have been exceeded and the damages are associated in a direct causal relation with such changes or faulty operation.
- 6.9 In so far as nothing in the above provisions stipulates to the contrary, all liability is hereby excluded.
- 6.10 The statutory term of limitation for claims relating to defects – with reservation in respect of sections 6.2 and 6.3 above – is 12 months from the delivery of the goods.
- 6.11 Sections 6.1 to 6.10 above do not affect the rights of the ordering party in cases where we have deliberately failed to inform him of a defect or have given a specific guarantee in respect of the object's properties.

## **7. Overall liability**

- 7.1 Any liability to indemnify more extensive than provided for by section 6 above – without reference to the legal nature of the claim asserted – is hereby excluded. This applies in particular to indemnification claims arising from culpability on conclusion of the contract, on account of other violations of contractual obligations or on account of tortious claims to indemnification for material damages in accordance with § 823 of the BGB.
- 7.2 The restriction in section 1 above shall apply likewise in so far as the ordering party, rather than calling for indemnification for damages, shall claim compensation for wasted expenses in place of performance.
- 7.3 In so far the liability to indemnify is excluded or subject to restriction in what concerns us, this shall also be taken to apply in respect of personal liability for damages on the part of our members of staff, workers, employees, representatives and vicarious agents.

## **8. Place of fulfilment, court of law and applicable law**

- 8.1 For deliveries ex works, the place of fulfilment for our delivery is the supplier's plant in Berching, Germany.
- 8.2 The responsible court of law for all legal disputes arising from or in connection with these terms and conditions of business, or in connection with individual contracts which come to be concluded on the basis of these terms and conditions of business, is that of the location of our head office in Berching, in so far as the ordering party is a businessperson or person under public law. In every case we shall also have the right to bring suit against the ordering party at the location of his head office.
- 8.3 All legal relations between us and the ordering party shall be subject to the law of the Federal Republic of Germany, as applicable between contracting parties based within Germany. The provisions of international private law and the UN Convention on the International Sale of Goods of 11.04.1980 (CISG) shall not apply.