

## **I. Scope**

The present terms of delivery and sale shall only and exclusively apply for companies. They shall also apply for any and all future delivery transactions and services such as assembly and repair orders as well as for similar legal transactions unless modified or excluded with our written consent. They are deemed accepted by placing an order or accepting the delivery/service. Any terms on the part of the customer contrary to the present ones shall not be binding for us unless confirmed by us in writing for the respective contract. This shall also apply in such cases where we execute a delivery or a service with the knowledge of any conflicting terms.

## **II. Conclusion of Contract, Scope of Services**

1. Our offers are without engagement. Any verbal side agreements, reservations, modifications of or amendments to the contract as well as any warranties shall only be binding with our written confirmation.
2. Insofar as an order is to be deemed an offer, we may accept such order within two weeks.
3. The information contained in catalogues, circulars, illustrations and price lists are non-binding unless explicitly referred to as binding in the order confirmation.
4. Our order confirmation shall exclusively be decisive for the scope of the contractual performance.
5. For custom-made goods, maximum deviations from the ordered quantity of +/- 10% shall be permitted.

## **III. Provided Documents**

1. We reserve property and copyrights to any and all documents handed over in connection with placing the order. Such documents shall neither be copied nor made available to third parties without our prior written consent.
2. Where we produce or deliver in accordance with the customers specifications, the customer shall guarantee that no trade mark rights of third parties are infringed thereby. It shall exempt us from any third-party claims and reimburse for any damage incurred. Where a third party prohibits the production of delivery by invoking a property right it holds, we shall be entitled to cease works without examining the legal situation.

## **IV. Prices**

1. Any and all prices are quoted ex works plus freight, customs duties, incidental import charges, packing and statutory value-added tax.
2. Unless otherwise agreed in writing, our prices are based on the respective prime costs. For any and all orders placed on the basis of our catalogues and price lists, the prices valid at the time of the respective delivery shall apply, unless otherwise agreed in writing.

3. Reasonable price changes for deliveries due to a change in the personnel, material or distribution costs shall be reserved, even in case of a carriage-paid and/or duty-unpaid delivery.
4. The packaging material shall be charged at cost. Delivery shall be effected at the customer's cost and risk.
5. For small quantities we shall invoice an extra charge in the amount of € 1.000,00 for each order item.

### **V. Terms of Payment**

1. Unless otherwise agreed in writing, payment shall be effected within 30 days from date of invoice.
2. Bills of exchange and cheques are accepted only in lieu of payment. Bills of exchange only upon previous agreement and without assuming liability for the correct presentation and protest. Amounts owed shall only be deemed to have been received when they have been irrevocably credited to our account with our bank. Any and all expenses arising for bills of exchange and cheques as well as any other costs shall exclusively be borne by the Client.
3. Where the period allowed for payment is exceeded, we shall be entitled to charge default interest equal to 8 % above the respective prime rate of the German Central Bank. The assertion of any further damage incurred by such default shall be reserved.
4. In the event of default of payment or in the occurrence of circumstances that might lead to an impairment of the creditworthiness of our Client, we shall declare our receivables due for payment irrespective of the term of any incoming and credited bills of exchange. In such case, we shall be entitled to require advance payment or security within a reasonable time and to refuse performance until our requirement has been met. In case of the Client's refusal or in case of an unsuccessful expiration of the period allowed, we shall be entitled to withdraw from the contract or to claim damages in lieu of performance.

The Client shall only be entitled to offset the invoice where its counterclaim has been legally established, is uncontested or has been accepted by us. A right of retention may only be asserted where such right is based on the claims resulting from the same contractual relationship.

### **VI. Terms of Delivery, Dates of Delivery**

1. Any delivery dates stated shall only be deemed approximate. They meet our expectations subject to the timely fulfilment of any and all obligations to be met by the Client as well as subject to the punctual receipt of any and all deliveries required.
2. The delivery periods shall commence with the date of our order confirmation, however not before full clarification of any and all details of the order, opening the letter of credit or procurement of any official certifications which may have to be issued by national or foreign authorities. The observation of the terms of

delivery and of the dates of delivery refers to the time of dispatch from the factory. They are deemed observed with the notification of readiness for shipment where the goods cannot be shipped in time through no fault of ours.

3. Where we are in default, the Client shall be entitled to rescind the contract after the elapse of a reasonable period of grace set by it insofar as the goods have not been notified as being ready for shipment by the elapse of the period. Any further claims due to exceeding the periods of delivery agreed shall be excluded except in cases of wilfulness or gross negligence on our part.
4. In the event of force majeure and other unpredictable, extraordinary circumstances beyond our control – e.g. in case of difficulties in material sourcing, sabotage, strike, lock-out, late delivery of supplies to us from our suppliers, lack of transport means, intervention through authorities, difficulties in energy supply – even where such difficulties occur with the pre-suppliers, the period of delivery shall be reasonably extended where we are prevented from the timely fulfilment of our obligations. Where the delivery or service becomes impossible or unreasonable, we shall be released from our obligation to deliver. Where the delay in delivery exceeds two months, the Client shall be entitled to rescind the contract. Where the time of delivery is extended or where we are released from our obligations, the Client shall not be entitled to derive any claims for damages therefrom. We may only plead to the aforementioned circumstances where we have notified the Client thereof without delay.

### **VII. Transfer of Risk, Delay in Acceptance, Partial Delivery**

1. The risk shall pass to the Client as soon as the goods have left the factory. For deliveries „carriage paid, franco, cif, fob“ the risk shall even pass to the Client where the dispatch is delayed notwithstanding readiness for dispatch for reasons beyond the Client's control.
2. In the event of delay in acceptance, we shall be entitled to charge the consignment in full and send it to the Client at its cost and risk and/or to store it in its or in an external warehouse. Furthermore, we reserve a right of rescission from the contract for such case. This shall not affect any further claims for damages on our part.
3. We are entitled to perform partial deliveries after giving the Client the opportunity to submit its comments. The additional costs arising for us shall not be borne by the Client in cases where we have to account for such costs.

### **VIII. Acceptance and Inspection**

Any acceptance shall be agreed in writing and shall exclusively be effected in the factory immediately upon notification of readiness for dispatch. The Client shall bear the cost of acceptance.

### **IX. Guarantee and Complaint**

1. Warranty rights of the Client are contingent on the proper fulfilment of its obligations to inspect and complain as owed under § 377 HGB (*German Commercial Code*). Where the goods give rise to complaints notwithstanding the greatest of care being taken, obvious defects shall be notified without delay, in any case no later than 14 after receipt of the goods, and hidden defects immediately upon being discovered, in accordance with § 377 HGB (*German Commercial Code*); otherwise the goods shall be deemed accepted.
2. Claims for defects shall lapse after 2 months following the written refusal of the complaint, however not later than 12 months after the goods have been delivered to the Client. Where used goods are purchased, claims for defects shall be completely excluded. The aforementioned provisions shall not apply where law mandatorily provides for longer periods of limitation. Any return of the goods supplied shall be subject to our prior consent.
3. Where notwithstanding all care being taken, the delivered goods reveal a defect that already existed at the time when the risk passed, we shall, at our discretion and subject to receiving notification of the defect within the period required either repair the goods or deliver substitute goods. We shall always be given the opportunity to supplementary performance within a reasonable period.
4. Where supplementary performance fails, the Client may, irrespective of any claims for damages – rescind the contract or diminish the remuneration. The Client shall not be entitled to claim compensation for expenditure made in vain.
5. Claims on the grounds of defects shall be excluded in the case of an only insignificant deviation from the quality agreed upon, or in the case of only insignificant impairment of the useability, or natural wear or tear, or for damage arising after the passage of risk caused by erroneous or careless handling, excessive stress, improper operating substance, or which arise due to exceptional external influences not presupposed according to the contract. Where the Client or third parties improperly carry out any maintenance works or alterations, no claims on the ground of defects shall arise for such works or the consequences resulting therefrom.
6. Claims asserted by the Client for the expenditure required for supplementary performance including but not limited to transport, way, labour and material cost shall be excluded insofar as the expenses increase as the goods delivered by us were subsequently transported to a location other than the Client's subsidiary unless such transport is consistent with the authorised use of the goods.
7. Claims to recourse against us shall only exist where the Client has not made any agreements with its purchaser which go beyond the statutory claims for defects. Where a defect is fraudulently concealed or a warranty is given with respect to the quality of the goods at the time the risk passes within the meaning of § 444 BGB (*German Civil Code*), the Client's rights shall be governed exclusively by the statutory provisions.

### **X. Other Claims for Damages, Limitation of Liability**

1. Any other and further claims shall be excluded. This shall in particular apply to any claims for damages due to the infringement of contractual obligations and arising out of a tort. Hence, we shall not assume any liability for damages not caused to the goods delivered. In particular, we assume no liability for any foregone profit or any other financial loss incurred by the Client.
2. The abovementioned limitation of liability shall not apply in cases of intention, gross negligence on the part of our legal representatives or executives as well as in cases of culpable infringement of substantial contractual obligations. In the event of culpable infringement of substantial contractual obligations, we shall assume liability – except in cases of wilfulness or gross negligence on the part of our legal representatives or executives – only for such damage which is contractually typical and could reasonably have been foreseen.
3. The limitation of liability shall not apply in such cases in which, according to the product liability law, liability is assumed for any defects at the goods supplied for personal or material damage at privately used objects. It does not either apply to the lack of warranted qualities insofar as such warranty was intended to secure the Client against any damage not arising at the goods supplied.
4. Where our liability is excluded or limited, this shall also apply to the personal liability to be assumed by our employees, staff members, co-workers, legal representatives and auxiliary agents.

### **XI. Reservation of Title**

1. The goods delivered shall remain our property until settlement in full of any and all present and future claims. The reserved ownership shall be security for our current account claims. Only the receipt of the equivalent value by us shall be deemed payment, hence, in case of presentation of bills of exchange or cheques it shall be the encashment thereof.
2. Any machining and processing of the goods reserved shall be effected in our order and free of charge as well as without obligation on our part so that we are deemed manufacturers according to § 950 BGB (*German Civil Code*), hence we keep property at any time and level of processing. Where the goods reserved are processed, combined, mixed or blended with other goods that are not our property, we shall be entitled to co-ownership of the new object at the ratio of the invoiced value to the remaining goods at the time of processing, combining, mixing or blending. Where the Client acquires sole title to the new objects, the contracting parties agree that the Client grants us co-ownership of the new object at the ratio of the invoiced value of the processed and/or combined, mixed or blended goods reserved and stores such objects for us free of charge.
3. The Client shall be entitled to resell the reserved goods in the normal course of business. However, it shall not be entitled to pledge or assign such goods as a security. The Client shall be obliged to secure our rights relating to the reserved goods if such goods are resold on a credit basis. The Client shall

already assign to us any claims it may have resulting from such resale of the goods reserved to secure any and all claims deriving from such business relationship. Notwithstanding our collection right, the Client shall be entitled to collection as long as it complies with its obligations towards us and does not fall into forfeiture of assets. Upon our request, the Client shall be obliged to inform us of the details about the claims assigned that we require for collection and to inform the third party of such assignment.

4. Where the goods reserved are resold together with other goods, irrespective of whether such goods are resold without or after processing, combining, mixing or blending, the assignment in advance as agreed above shall only apply in the amount of the invoiced value of the reserved goods resold together with the other goods. The Client shall forthwith notify us of any enforcement proceedings of third parties against the goods reserved or against any claims which have been assigned in advance by handing over the documents required for a third-party motion according to § 771 ZPO (*German Code of Civil Procedure*).
5. Where the value of the existing securities exceeds the secured claims by more than 20 % in total, we shall be obliged to release securities at our choice upon the customers request.

### **XII. Place of Jurisdiction and Applicable Law**

1. The exclusive place of jurisdiction for any and all litigations including any legal proceedings relating to cheques, bills of exchange or documents shall be the court which is competent for the head office of our company for traders, legal persons of public law and the public and legal special fund.
2. This contract shall be governed by the German law valid at our head office. The laws on the international purchase of movables shall not apply.

### **XIII. Severability Clause**

Where individual provisions become invalid in part or in full, the remaining provisions shall remain valid. The invalid provisions shall be replaced by such valid provisions which are closest to the economic purpose of the contract whilst taking reasonable account of the interests of both parties.