

## General Conditions of Sale and Delivery

### Section 1 Scope

1. The content of the supply agreement, including concerning supplementary agreements and subsequent amendments, is based solely on the general conditions of sale and delivery of the seller. These conditions form an integral part of all agreements that the seller concludes with its contracting party (also referred to below as "purchaser") for the goods and services offered by the seller. They apply also to all future goods, services or offers made to the purchaser, even if not agreed again separately. Any deviations from these conditions of sale are subject to the seller's express written acknowledgement.

2. Terms of business of the purchaser or third parties shall not apply, even if the seller does not challenge the validity thereof on a case-by-case basis. Even if the seller refers to written communication containing or referring to terms of business of the purchaser or a third party, this does not constitute consent to the validity of the terms of business.

### Section 2 Offer and conclusion of the contract

1. The supply agreement is concluded only when the contract is confirmed by the seller or when the order is executed. All offers of the seller are without obligation and subject to change without notice, unless marked as binding or contain a specific term of acceptance. The seller can accept orders or contracts within fourteen days of receipt.

2. None of the data on the dimension sheets, drawings, illustrations, dimension and weight tables, as well as other product data of the seller, constitutes a guarantee of quality or service life pursuant to Section 443 BGB (German Civil Code). The purchaser cannot derive any warranty or other rights herefrom, insofar as the discrepancies are negligible or, despite every care having been taken, are unavoidable, unless one of the aforementioned data has been expressly assured.

The offer documents of the seller - including technical drawings, calculations etc. - may be used and reproduced by the purchaser only in conjunction with the supply negotiations and/or the supply agreement. These documents must not be made accessible to third parties. The seller reserves the rights to recovery, in the event of no supply agreement being concluded.

3. The seller reserves the right to ownership of or copyright to all offers and quotations it submits, and also to all drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and aids provided to the purchaser. The purchaser must not make accessible to third parties, announce, use or reproduce, or have reproduced by third parties, such items, either *per se* or in terms of their content. The purchaser must, at the request of the seller, return such items in their entirety and destroy any copies, as and when the purchaser no longer needs such items during the normal course of business, or if negotiations fail to result in an agreement.

### Section 3 Prices and payments

1. Unless otherwise agreed, the prices of the seller are cash prices, ex-works, including loading in the factory. Essentially, the prices agreed on conclusion of the contract shall apply. If the lead time is longer than six months, the seller shall be entitled to use the material and wage costs applicable on the billing date as the basis. For exports, the purchaser shall pay the customs duties, fees and other official charges.

2. Unless otherwise agreed in writing, invoice amounts shall be paid within thirty days net. The date on which the payment is received by the seller is deemed to be the payment date. Cheques are deemed payment only once honoured. If the purchaser fails to pay in due time, the amounts outstanding on the due date shall attract interest at 5% p.a.; the right to claim higher interest amounts and further loss in case of default remains unaffected.

3. The seller shall be entitled to deliver or render outstanding goods or services only against prior payment or security, if the seller becomes aware, after the contract is concluded, of circumstances that could significantly reduce the purchaser's creditworthiness, or which jeopardise the amounts owed by the purchaser to the seller under the contractual relationship concerned (including under individual contracts covered by the same framework agreement).

4. The purchaser shall be permitted to offset amounts due to the seller only by undisputed or legally determined counter-claims.

5. The purchaser can assert a right of retention only if undisputed or legally determined.

### Section 4 Delivery and delivery time

1. Deliveries are ex-works.

2. Delivery times do not start prior to receipt of the technical documents and official permits to be obtained by the purchaser or before any agreed prior payment is made. Such times shall be extended, in case of war, uprising, industrial disputes, strikes, lock-outs, general raw material or energy shortage, traffic disruptions or unavoidable operational breakdowns, orders from higher

authorities, and also in all other cases of force majeure, by the period of the hindrance.

If the aforementioned hindrance makes the contract as a whole financially unviable on an ongoing basis for the foreseeable future, the seller shall be entitled to withdraw from the contract either in whole or in part, without the purchaser having any right to claim damages.

3. The seller shall be entitled to make partial deliveries if

- the purchaser can use the partial delivery for the purpose intended under the contract,
- the delivery of the remainder of the ordered goods is guaranteed and
- the purchaser does not incur any significant additional expenditure or additional costs (unless the seller agrees to pay such costs).

4. If the seller falls behind with goods or services, or if it is unable to provide such goods or services, regardless of the reason, the seller's liability is limited to damages pursuant to Section 8 of these general conditions of delivery.

### Section 5 Place of fulfilment, shipping, packing, transfer of risk, acceptance

1. The risk passes to the purchaser as soon as the goods have been handed to the transport company, or have left the seller's factory or the warehouse. This also applies if the seller bears the transport costs. The purchaser must lodge complaints for transport damage against the transport company immediately and within the specific periods granted for this purpose.

2. Goods are packed only if this is essential for any requisite transport of the products from the seller to the purchaser in order to avoid damage during normal handling. Packaging is charged at cost and, in the interest of economy, can be accepted back only in exceptional cases. If acceptance back appears expedient, the invoice is annotated accordingly.

3. The shipping and packing methods are at the discretion of the seller.

4. The purchaser is responsible for storage costs after the transfer of risk. If the goods are stored by the seller, the storage costs shall amount to [0.25]% of the invoice amount for the delivered items to be stored per full week. The right to assert and furnish proof of higher or lower storage costs is reserved.

5. The seller shall insure the shipment, only at the purchaser's express request and at its expense, against theft, breakage, transport, fire and water damage or other insurable risks.

6. If the purchaser refuses to accept, without legal grounds, the agreed delivery item following a prior offer by the seller, the purchaser shall pay lump sum damages amounting to 25% of the agreed fee.

### Section 6 Reservation of title

All goods are shipped under reservation of title subject to the following provisos:

1. The seller retains the right to ownership to the delivered goods for as long as amounts remain due to the seller under the current or a future business relationship with the purchaser.

2. If the purchaser processes the goods of the seller, the seller is deemed to be the manufacturer and shall acquire ownership to the goods ensuing as a result. If such processing occurs together with other materials, the seller shall acquire co-ownership in the ratio of the invoice value of its goods to the remaining materials.

In the goods are joined to or combined with external items pursuant to Sections 946, 947 BGB, the seller shall acquire co-ownership to the new item in the ratio of the value of its goods to the other joined or combined items at the time of such joining or combination. If, in case of the goods of the seller being joined or combined with an item of the purchaser, the latter is deemed to be the main item, it is hereby agreed that the purchaser shall transfer to the seller co-ownership in the ratio of the invoice value of its goods to the invoice value or - in the absence of such - to the market value of the main items. In such cases, the purchaser shall be considered the custodian. The new items take the place of the reserved goods.

If the transfer of co-ownership is not possible for legal or substantive reasons, the purchaser hereby assigns to the seller any rights ensuing from Section 951 BGB. The rights of third parties, who have such rights to other components of the new item, shall remain unaffected.

3. The purchaser may sell reserved goods only during the course of normal business activity, and may neither pledge nor assign such goods by way of security. The purchaser must avert all impairments to the rights of the seller by third parties to the best of its ability, and must notify the purchaser of such impairments without delay.

4. The purchaser hereby assigns to the seller, by way of security, any claims of the purchaser from any onward sale of the reserved goods - irrespective of the

state thereof - together with all ancillary rights. The purchaser is entitled and obliged - unless it has agreed with its purchaser an effective non-assignment clause pursuant to Section 399 BGB, or a current account agreement pursuant to Section 355 HGB (German Commercial Code) - to collect the amount assigned to the seller from third-party purchasers and to transfer to the seller the liability amount thereof without delay. The purchaser is entitled to sell the goods of the seller on to its customer, likewise under reservation of title.

In case of a payment default or application for insolvency proceedings, or if a cheque or bill of exchange of the purchaser issued to the seller is not honoured, we shall be entitled to notify the assignment to the purchaser's customer and collect the amount due. For this purpose, the purchaser must provide the requisite details and hand over the corresponding documents without delay.

5. If third parties make use of reserved goods, in particular by way of pledging, the purchaser will advise them immediately that such goods are the property of the seller, and inform the seller of the situation so that it can enforce its ownership rights. If the third party is unable to reimburse the seller with the judicial or non-judicial costs incurred as a result, the purchaser shall be liable to the seller in this respect.

6. If the nominal value of the securities exceeds the value of the seller's claims by more than 20%, the seller shall, at the purchaser's request, release securities to the amount of the surplus as deemed fit by the seller.

#### **Section 7 Warranty, material defects**

1. The warranty period and statutory period of limitation for all items supplied by the seller is 1 year from the transfer of risk to the purchaser, unless the claims concerned are covered by Section 438, para. 1, no. 2 or Section 634a, para. 1 no. 2 BGB. Claims ensuing from unlawful acts remain unaffected; the three-year period of limitation applies here.

2. The items supplied must be inspected carefully immediately after delivery to the purchaser or to the third party it has assigned. With regard to obvious defects, or other defects that would have been evident had a careful inspection been carried out immediately, such items shall be deemed approved by the purchaser unless the seller receives a written notice of defects within seven working days of delivery. With regard to other defects, the items supplied are deemed approved by the purchaser unless the seller receives a notice of defects within seven working days of the date on which the defects became apparent; if the defect became apparent to the purchaser during normal use at an earlier point in time, such earlier point in time will, however, be authoritative for the start of the notice period. At the seller's request, a reported item must be returned to the seller carriage paid. In case of justified complaints, the seller shall reimburse the costs of the most effective shipping method; this does not apply if the costs increase due to the item being delivered to a place different to that of intended use.

3. In the case of material defects in the delivered items, the seller is both obliged and entitled to a repair or replacement consignment, as it so decides following an appropriate period. In case of failure, i.e. impossibility, unacceptability, refusal or inappropriate delay in the repair or replacement consignment, the purchaser shall be entitled to withdraw from the contract or reduce the purchase price accordingly.

#### **Section 8 Liability for damages on account of delay**

1. The seller's liability for damages, irrespective of the legal grounds, specifically for impossibility, delay, substandard or incorrect consignment, contractual infringement, breach of duties during contractual negotiations and unlawful acts, is limited, insofar as culpability is involved, to the provision of this section 8.

2. The seller is not liable for simple negligence on the part of its official bodies, legal representatives, employees or other vicarious agents, unless key contractual obligations have been infringed. The obligation to supply the delivery item in due time, the freedom of such item from defects that significantly impair its functionality or usability, as well as advisory, protective and custodial obligations that will enable the purchaser to use the delivery item as intended, or to protect the life and limb of the purchaser's personnel or to protect the property of such personnel from considerable damage are considered key contractual obligations.

3. Insofar as the seller is liable for damages pursuant to Section 8 (2), such liability is limited to damage that the seller foresaw on conclusion of the contract as a potential consequence of a contractual breach, or which the seller should have foreseen had it applied the principles of due diligence. Indirect damage and consequential damage resulting from defects in the delivery item are also eligible for compensation only if such damage is typically expected if the delivery item is used as intended.

4. The warranty liability does not apply if the damage is caused by normal wear and tear. This applies in particular for seals, sliding blocks, nozzle platelets, brush bristles, mover spindles etc., as well as parts from rubber, plastic and similar materials subject to premature wear.

5. In the case of liability for simple negligence, the seller's obligation to compensate property damage and consequential financial loss is limited to the foreseeable, typical damage foreseeable on conclusion of the contract, even if this relates to a breach of essential contractual obligations.

6. If the seller provides technical information or advice without charge, and such information or advice is beyond the contractually agreed performance scope, this is to the exclusion of any liability.

7. The limitations of this Section 8 do not apply to the seller's liability for grossly negligent or intentional behaviour, for guaranteed quality characteristics, for injury to life, body or health, or in accordance with the Product Liability Act.

#### **Section 9 Trade mark rights**

1. In accordance with this Section 9, the seller warrants that the delivery item is free of industrial property rights and third-party copyrights. Each contracting party shall notify the other contracting party in writing immediately on receipt of claims on account of such rights having been infringed.

2. If the delivery item has infringed an industrial property right or a third-party copyright, the seller shall, at its own expense, modify or replace the delivery item as it deems fit, such that no further third party rights are infringed, but that the delivery item continues to fulfil the contractually agreed functions, or the purchaser acquires the right to use by way of a licence agreement. If the purchaser fails to obtain such right to use within an appropriate period, it shall be entitled to withdraw from the agreement or to reduce the purchase price accordingly. Any damage claims asserted by the purchaser are subject to the limitations of Section 8 of these general conditions of delivery.

3. In the case of infringement by third-party products supplied by the seller, the purchaser shall, as it deems fit, assert its claims against the manufacturer and upstream supplier for the purchaser's account, or assign such claims to the purchaser. According to this Section 7, claims against the purchaser exist in such cases only if the legal enforcement of the aforementioned claims against the manufacturer and upstream supplier were unsuccessful or futile, due to insolvency for example.

#### **Section 10 Final provisions**

1. If the purchaser is a merchant, a public legal entity or a separate asset under public law, or if the purchaser has no general place of jurisdiction in the Federal Republic of Germany, the jurisdiction for any disputes ensuing from the business relationship between the seller and the purchaser shall be Worms or the purchaser's headquarters, as deemed fit by the purchaser. For complaints against the seller, however, the sole place of jurisdiction in this case is Worms. Mandatory legal provisions for exclusive jurisdictions are not affected by this regulation.

2. The relationships between the seller and the purchaser are governed solely by German substantive law. The United Nations Convention on International Sale of Goods of 11 April 1980 (CISG) shall not apply.

3. Any loopholes contained in the agreement or these general conditions of delivery shall be filled by those legally effective provisions that would have been agreed by the contracting parties according to the economic purpose of the contract and the purpose of these general conditions of delivery, had they recognised the loopholes.

Note:

The purchaser notes that the seller shall store data ensuing from the contractual relationship pursuant to Section 28 Federal Data Protection Act for data processing purposes, and reserves the data to transmit such data to third parties (e.g. insurance companies) to the extent required to fulfil the terms of the agreement.

In the event of disagreement between this version and the original, German version, the German version will be valid.