

# General Terms and Conditions of Sale

## 1 General Points and Area of Application

- 1.1 The following General Terms and Conditions of Sale (General Terms and Conditions **[GT&C]**) shall apply solely for companies, legal entities under public law and special funds under public law according to § 310 part 1 of BFB (German Civil Code). The General Terms and Conditions apply to all contractual agreements under which Seller shall perform commercial deliveries of goods or services. Deviating terms and conditions explicitly require written approval.
- 1.2 Purchaser's General Terms and Conditions of the Purchaser may not apply even if Buyer does not express explicit objection.
- 1.3 The Conditions of Sale shall also apply for all future commercial relations and legal transactions of similar nature between the Parties without the necessity for either of the Parties to refer to these General Terms and Conditions repeatedly. This also applies if the Buyer only acknowledges Seller's GT&C after the first Agreement between the parties has been concluded.
- 1.4 Any rights and duties resulting from the contractual relationship, especially in regards to claims against the Seller, may not be transferred to a third party.
- 1.5 For any deliveries and services carried out outside the Federal Republic of Germany, the following provisions shall additionally apply: **1.6, 3.2, 12.3, 13.**
- 1.6 The INCOTERMS 2010 are applicable as far as they are not inconsistent with these conditions or written agreements.

## 2 Conditional Offers

- 2.1 Seller's offers are subject to change. Buyer's purchasing orders by the only become binding after Seller's written confirmation (invoice or waybill). Samples of our products are to be considered, unless otherwise agreed in writing, as an approximate indication of the typical characteristics of the goods concerned. Any changes of purchasing orders by Buyer after Seller's written confirmation entitle Seller to charge a handling fee.
- 2.2 Information and advice is provided at Seller's best knowledge, excluding Seller from any liability.
- 2.3 Suitability test for Buyer's specific application of the delivered goods as well as the compliance with processing instructions shall not become redundant by such information or advice provided by Seller (ref. 2.2).
- 2.4 Seller reserves the right of ownership and copyright to all plans, records, diagrams, estimates and/or other documents attached to quotations; such documents shall not be disclosed to any third party without Seller's written approval.

## 3 Place of Performance

- 3.1 The place of performance for deliveries or services – notwithstanding Seller's securing titles and rights according to sec. 9 and independent from contractual pricing – shall be both the place of destination and Buyer's invoice address.
- 3.2 Performance in compliance with INCOTERMS 2010 shall have no impact on the provisions according to the regulation in item 3.1.

## 4 Delivery of Goods

- 4.1 Seller reserves the right to select the place of delivery. Deliveries are executed in accordance with Seller's our delivery capabilities.
- 4.2 The delivery dates advised are not binding, unless they have been explicitly denoted to be binding by Seller.
- 4.3 If, in deviation to 4.2, a fixed delivery date is agreed, the Buyer has the obligation to grant Seller a reasonable time window to supply the goods.
- 4.4 The day of delivery is deemed to be the day on which the goods leave Seller's premises, and, if this day cannot be determined, the day on which they are made available to the Buyer. Partial deliveries are allowed to a reasonable extent.
- 4.5 Force majeure events, strikes, closeouts, sovereign provisions, disruptions to operations or distribution or supply in Seller's or the Buyer's business which lie beyond the parties' responsibility and which have a considerable impact on the fulfilment of Seller's contractual obligations shall entitle Seller to extend the performance or delivery periods by a fair and reasonable period or to rescind the Contract in whole or in part with respect to any obligations of the Seller which have not been performed before the event.
- 4.6 Seller shall notify the contractual partner of the start and end of such events (ref. 4.5) as soon as possible. The Buyer is entitled to demand a declaration whether Seller wishes to withdraw from the contract or deliver within an appropriate period.

## 5 Dispatch and Transfer of Risk

- 5.1 All consignments, tank cars, IBCs and other containers and packages shall be transported from the point of dispatch by the Seller at the risk of the Buyer even in the event that carriage and other transportation expenses are paid or borne by Seller and in particular when the Buyer collects the goods. If contractual provisions deviate from INCOTERMS 2010, the latter shall prevail.

- 5.2 Seller shall select the mode of transportation of transport and the carrier, however, without guaranteeing cheapest possible shipment, full use of carriers loading capacity and desired size of car and container. Buyer's wishes shall be taken into consideration if possible and buyer's expense, in particular in regards to transportation insurance.
- 5.3 Acceptance of goods by the railway, shipping company or by any other carrier shall exclude any liability of the Seller for inappropriate packaging or loading, as well as any loss of weight or damage which may have occurred during shipment.
- 5.4 Increases in transfer price, any additional costs arising from detour, storing etc., which were introduced after the contract has been signed, shall be carried by the Buyer unless otherwise agreed.

## **6 Packaging, Means of Transport and Facilities Aimed to Protect the Load and Palettes**

- 6.1 Buyer's transportation vehicles and containers must arrive at the designated Seller's premises and with prior notification, clean, in operational condition, timely and free of charge. Seller has no obligation to perform inspection, cleaning or repair but is entitled to provide such services at the expense of the contractual partner in order to enable the respective shipment.
- 6.2 Containers or any other accessories provided by Seller on loan or on hire must be returned to the original place of delivery free of charge, fully emptied, clean, damage-free, and depicting with the original codes and inventory numbers. Possible cleaning costs incurred by the Seller shall be carried by the Buyer. Seller's loan or hire containers may not be used by Buyer for other than the designated purpose within Buyer's enterprise, lent or leased to third party. The Buyer is irrevocably liable for damages irrespective of fault, including the force majeure events, for all damages and loss of such items. Should damage occur, Seller is entitled to claim compensation for repair costs or, in case the damaged good are lost an/or not returned, compensation of the replacement value.
- 6.3 In case the items have been rented from Seller, the Buyer shall continue regular lease payments.

## **7 Warranty and Liability**

- 7.1 In order to secure warranty rights, the Buyer must duly fulfil the legally binding examination and procedural obligations. The Seller must be notified about any complaints concerning quality or quantity within 8 days of receipt of goods; whereas the date of order, invoice and dispatch number must be clearly indicated. Notifications of a defect can only be raised if Seller's goods are unchanged and remain in the original containers. Justified complaints raised will result in return and exchange of goods or a reduction of the purchase price.
- 7.2 Claims due to defects elapse after a twelve-month period upon the successful delivery and acceptance of goods to the Buyer. The above provisions shall not apply, in so far longer periods are foreseen by the law. Buyer's consent must be obtained prior to any return of goods.
- 7.3 Should the delivered goods reveal a defect that existed, despite all precautions, before delivery, Seller shall have the right to and will make improvements to or will replace the defective goods within reasonable deadlines.
- 7.4 Should Seller fail to make improvements or resupply, the Buyer – irrespective of any claims – may withdraw from the contract or reduce the payment under the following conditions:
  - 7.4.1 The defective material exhibits a significant deviation from the agreed specification and the unsuitability for use is not a result of natural wear and tear which may have occurred after the transfer of risk, caused by inappropriate or negligent handling, excessive workload, unsuitable equipment or extraordinary, unforeseen external influences.
  - 7.4.2 In case any improper modifications are made by Buyer, no claims for defects or the results thereof are accepted by Seller.
  - 7.4.3 Claims of either Party for costs for any resulting expenses, in particular for transportation, travel, work and materials shall be deducted from additional Seller's expenses that are related to replacement goods being shipped to a location, different from the original destination, unless such transfer is required for such object's intended use.
  - 7.4.4 Seller carries full liability in terms of the statutory provisions for the loss of life, physical injury and damage to health resulting from a grossly negligent or a malicious breach of duties by Seller, Seller's legal representative or agent. Seller accepts legal liability in accordance with statutory provisions for damages which are not mentioned in section 1 and which may arise from malicious or grossly negligent breach of duty, or fraudulent intent of Seller, Seller's legal representative or agent. In this case, however, Seller's liability for damages shall be limited to foreseeable typically occurring damages, as long as Seller, Seller's legal representatives or authorized agents have not acted intentionally.
  - 7.4.5 Seller is liable for damages which are caused by a simple negligence, provided such negligence concerns the damage of such contract obligations whose compliance is crucial for enabling the proper fulfilment of the contract. Nevertheless, Seller is only liable insofar as the damage is typically associated with the contract and can be anticipated. Any further liability for the damages resulting from simple negligence is not accepted by Seller, insofar as any provisions of the product liability law are not infringed upon.

## **8 Prices**

- 8.1 Unless agreed otherwise, all purchase prices shall be for delivery ex works.
- 8.2 For the accurate calculation of prices, dispatch weight and quantity of goods is determined at Seller's facility.
- 8.3 Changes to ex works list prices, freight rates, taxes, custom fees, duties or any other costs which have an impact of Seller's cost calculation and originate between the submission of an offer and the delivery entitle Seller to a reasonable price adjustment.

8.4 Seller's prices, lease and other fees do not contain value added tax, which shall be computed and listed separately.

## **9 Reservation of Proprietary Rights**

9.1 The delivered goods shall remain Seller's property until all duties of the Buyer relating to the Agreement have been fulfilled. Seller's property rights also apply to all future deliveries, even if Seller does not repeatedly and expressly refer to this fact. In the case of checks, credit notes or similar payment vehicles, the proprietary right shall be transferred to the Purchaser only after the balance has been completely settled and the payment deemed concluded as designated by the Seller.

9.2 Proprietary rights shall be maintained even if the goods are resold, altered, processed, reconstructed, multiplied or blended. They shall extend onto the new goods in the proportion of the value of our goods to the value of the processed item, which shall emerge due to processing, combining, mixing or blending. In this case Seller shall claim co-ownership at the ratio of the value of Seller's materials to the value of the principal goods.

9.3 Should Seller's right of ownership elapse due to processing, further treatment, reconstruction, multiplication or blending, the Buyer shall transfer to Seller partial proprietary rights for the new goods and shall hold them in custody on Seller's behalf free of charge.

9.4 In case of a resale of goods or as a result of processing or blending, the Buyer assigns partial warranty claims against the re-purchaser in advance; the same applies to any rights of reclamation and preferential payment in case of insolvency proceedings of a re-purchaser, until the outstanding balance has been settled. Seller hereby accepts this assignment.

9.5 Seller is entitled to have and collect the assigned claims. Upon request, the Buyer undertakes to provide any information, make statements and take actions necessary for the collection of debts.

9.6 The Buyer may not assign our reserved goods or pledge them as security. Buyer shall immediately inform Seller of any planned cases of pledges and seizure to the goods subject to retention by a third party, as well as reasonably insure the goods against fire and burglary and provide proof thereof upon request. As long as the Buyer fulfils his obligations towards us, Buyer may resell the goods in orderly business and keep the claims arising from such resale, insofar as Buyer shall receive direct compensation.

9.7 Such right of disposal can be cancelled by Seller at any time; it automatically expires when Buyer discontinues payments, initiates legal or out-of-court conciliation procedures or if the insolvency proceedings or bankruptcy proceedings have been initiated for Buyer's property.

## **10 Payment**

10.1 Holding back of payments due to or as an offset during legally unrecognised counterclaims by Buyer is prohibited.

10.2 Without prejudice to any other claims, in case of accounts unsettled by the Buyer, Buyer shall be additionally charged interest of 8% above the respective base rate p.a. If Seller is able to provide proof of a higher damage arising from the default, Seller is entitled to enforce additional claims beyond the above mentioned interest penalties. Payments shall be deemed settled as soon as Seller is in full possession of the agreed amount.

10.3 The presentation of bills of exchange or similar payment vehicles require Seller's prior approval.

10.4 Further banking taxes and fees, as well as the usual expenses and a standard practice bank surcharges shall be carried by the Buyer from the moment Seller's claim becomes due.

10.5 In case Buyer's due payment is delayed, Seller may rescind the Agreement, claim prepayment, security payment or immediate payment of outstanding amounts, even if not due.

## **11 Payment Due**

11.1 Payment shall be made, unless agreed otherwise, with no discounts, no later than on the 15th day of the month following the date of dispatch.

11.2 After this date the payment shall be considered overdue even without an explicit reminder sent by Seller. In case of delays in payment, Seller is entitled to claim the default costs from the Buyer.

11.3 Furthermore, Seller is entitled to discontinue any further deliveries.

## **12 Governing Law, Jurisdiction and Arbitration**

12.1 By Seller's choice, either Seller's official residence, the official place of Buyer's business or any other location deemed suitable by the Seller as the place of jurisdiction.

12.2 This Agreement is exclusively subject to the German law.

12.3 Seller maintains the right to claim the application of foreign law relevant to the Seller as well as to appeal to the court which has jurisdiction over the Buyer.

12.4 Applicability of the Uniform Law covering the International Sale of Movable Property dated July 17th, 1973, as well as the UN Sales Convention of April 11, 1980 is herewith explicitly excluded.

12.5 Customary trade terms are to be interpreted according to the respective applicable INCOTERMS.

## **13 Effectiveness Clause**

Should any sole provisions become partially or completely ineffective, further remaining provisions may thereby not be affected. An ineffective provision must be replaced by the Parties by such a provision that most closely approximates the economic intent of the invalid provision.