

# ***General Terms and Conditions of Sale and Delivery***

## **1. General Provisions**

All deliveries and services are subject to the following terms and conditions. General terms and conditions of trade of the customer shall only be applicable to the extent they are expressly agreed to in writing. These Terms and Conditions shall apply to the entire business dealings with the customer even if they are not expressly mentioned in any future contracts. This shall also apply in case the customer refers to its own terms and conditions of business in any future orders, unless we have expressly agreed to them.

## **2. Offer and Order**

2.1 All offers are not binding, unless they are expressly and in writing referred to as binding.

2.2 In case of purchase according to samples or test products, we reserve minor deviations in quality, color and design as far as such deviations are due to manufacturing technology or to the further development of products. Unless expressly otherwise agreed, the data set out in the data sheets provided by us shall be applicable in any case of doubt.

## **3. Prices**

The prices indicated in our confirmation of the order shall be applicable. They are always understood plus VAT at the respective applicable legal rate. The prices are understood ex works or ex distribution center. Price changes shall be permissible if the period between conclusion of the contract and the agreed delivery date is longer than eight weeks and if the production costs have increased due to an increase in particular in wage costs and costs of materials. The price increase must be appropriate to the increase in costs that actually occurred. The customer shall be entitled to rescind the contract subject to prior notice if the price increase exceeds the rise in the general cost of living to a not inconsiderable extent.

## **4. Delivery**

4.1 Compliance with the agreed time of delivery requires the receipt in good time of all documents, necessary authorizations, releases and materials (raw materials, chemicals, etc.) to be delivered by the customer as well as adherence to the agreed terms of payment and other obligations on part of the customer. If these conditions are not fulfilled in good time, the periods shall be extended accordingly; this shall not apply if we are responsible for the delay.

4.1.1 Claims of the customer against us for default are excluded. This shall not apply if we are imperatively liable in cases of intent or gross negligence; this shall not be connected with a shift of the burden of proof to the disadvantage of the customer.

4.2 Any operational breakdowns and interruptions of transport, fires, floods, lack of manpower, raw materials or fuels, strikes, lockouts, interventions by authorities and other cases of force majeure that impede production or shipping completely or in part shall release us from the obligation to make the respective delivery for the duration, scope and consequence of the interruption.

4.3 The choice of way and type of shipping shall be left to us whenever we bear the freight costs.

4.4 Delivery periods are beginning with the date of our order confirmation, but in no event before clarification of all order details – the same applying to delivery dates. For goods, that we do not manufacture on our own the correct and timely delivery is reserved. In case the customer doesn't fulfill contractual obligations (e.g. opening a letter of credit, providing of certificates, prepayments,

etc.), we are entitled to adjust delivery periods and dates in accordance with the standards of our business process. For observance of the delivery times and -dates the date of dispatch from our warehouse / plant is essential.

4.5 Unless otherwise agreed in writing, we will usually deliver from Mondays to Fridays, excluding German national holidays. Other terms of delivery times are subject to additional charge and will be invoiced to customers account.

## **5. Packaging**

5.1 The kind of packaging shall be left to us or has been agreed in writing in advance.

5.2 Packaging is charged at cost price and is not taken back, unless this is required by law, or has been agreed otherwise. It is a part of the delivery in any case and therefore is to be paid upon maturity of the entire purchase price.

5.3 If the delivery of our products requires lending containers, such containers shall be returned free of charge.

5.4 If they are not returned within a period of six months, they shall be charged according to the terms usual in the trade.

## **6. Giving Information and Advice**

Information on possibilities of processing and application of our products, technical advice and any other details are given to the best of our knowledge, but without commitment and to the exclusion of any liability. Cases of gross negligence and intent shall remain unaffected.

## **7. Terms of Payment**

7.1 In case of exceeding, there shall be charged the legal default interest, reserving the assertion of further damages caused by default. Bills - conditional acceptance - shall only be accepted in performance subject to the possibility of discounting against reimbursement of the bank, discount and collection fees; the acceptance is not regarded as cash payment. Any right of retention of the buyer based on any counter claims not recognized by us under any other contractual relationship is excluded. The same applies to the setoff against any counter claims that are neither based on an undisputed claim nor on a claim that has become res judicata.

7.2 All deliveries are based on the buyer's creditworthiness. If, during the term of contract, we get any negative information on the buyer's creditworthiness and if that endangers our claim for payment or if the buyer fails to pay any amounts due as agreed, all of our outstanding accounts payable by the buyer shall immediately become due for payment. Moreover, we shall be entitled to demand advance payments or securities or withdraw from current contracts.

7.3 If not agreed otherwise, our invoices are payable without any deductions within 30 days after date of delivery.

## **8. Warranty of Quality and other Warranty**

8.1 The buyer must make any notification of defects in writing in such manner that it is received by us within 10 days from the receipt of the goods at the place of destination. Any complaints will only be considered if the goods are still in the condition as received; except for necessary measures of examination.

8.2 A return of the goods complained about shall only be permissible with our consent. The freight shall be paid by the buyer. It shall only be reimbursed in case of a justified notification of defect.

8.3 All of those parts or services that show a defect as to quality during the limitation period shall be, at our option, repaired, newly delivered or newly rendered free of charge.

8.4 We shall only be liable for any public statements, in particular in advertising, if we have caused them. In such cases, a duty to accept liability shall only exist in case the advertising has actually influenced the buyer's decision to buy.

8.5 Claims based on material defects are subject to a limitation period of 12 months.

8.6 We give warranties only in case of express and special agreements. A reference to DIN standards only serves to describe the goods and does not constitute a warranty.

## **9. Liability**

Any claims of the buyer for damages, on whatever legal ground, in particular for breach of duties under the relationship of obligation and for tortuous acts are excluded. This shall not apply in cases of imperative liability, for example under the product liability act, in cases of intent, gross negligence, for damage to life, body or health, or for the violation of material contractual duties. Damages for the violation of material contractual duties, however, are limited to contract related typical, foreseeable damages up to the amount of the purchase price as a maximum, except in case of intent or gross negligence or in case of liability for damage to life, body or health. We are not liable for loss of production, interruption of operations, loss of profit, damage to processed items as well as for such damage that was caused by a failure to observe the information on dangers given by us. Any further claims for damages, on whatever legal ground, are excluded, except in cases of imperative liability for intent, gross negligence, on grounds of product liability or for a lack of warranted characteristics.

## **10. Reservation of Title**

10.1 We retain title to the goods delivered until full settlement of all claims due to us against the buyer under the business relation. If the value of all security interests due to us exceeds the amount of all secured claims by more than 10 %, we will release a respective part of the security interests at the buyer's request.

10.2 In case of processing (combination, mixing) with other goods not belonging to us by the buyer, there shall apply the provisions of §§ 947, 948 BGB (German Civil Code) with the consequence that our co-ownership in the new item becomes reserved property within the meaning of this provisions. The buyer undertakes to participate in the fulfilment of any formal requirements that may be necessary in this connection.

10.3 In case of a resale of the reserved goods, the resulting claims of the buyer shall be assigned to us already now.

10.4 The buyer shall store the reserved goods for us and undertakes to insure it against damage by the elements (fire, water damage, etc.) and against theft.

10.5 The buyer hereby assigns to us, to the amount of our claim, its claims for compensation for damage of the above-mentioned kind against insurance companies or other claims for damages.

10.6 In case of default in payment, in particular in case of general suspension of payments, we shall moreover be entitled to demand the immediate separation of our reserved goods and their surrender to us. The taking back or the assertion of our reservation of title shall not require a

rescission on our part; these acts or an attachment of the reserved property by us do not constitute a rescission of the contract, unless expressly declared by the user.

## **11. Place of Performance and Place of Jurisdiction**

11.1 The place of performance for all obligations under the contractual relationship shall be the town of Töging am Inn (Bavaria).

11.2 The place of jurisdiction for all disputes in connection with this agreement shall be the seat of our company, Töging am Inn (Bavaria). Either party shall be moreover entitled to sue the respective other party at the competent place of jurisdiction of the latter.

## **12. Choice of Law**

All disputes shall be settled in accordance with these Terms and Conditions and all additional agreements on its performance, otherwise in accordance with the substantive law currently applicable in Germany, excluding the option to have resort to any other substantive laws. The application of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 is excluded.

## **13. Legal Effectiveness**

If any provision of these General Terms and Conditions of Sale and Delivery should be invalid, this shall not affect the legal validity of the remaining provisions.