

# GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY

Our sales and deliveries are subject to the following terms and conditions. We explicitly disagree with any general terms and conditions from the purchaser which are contradictory to, amending, or deviating from our terms and conditions; they are not binding even if we do not explicitly declare our disagreement having received the terms and conditions from the purchaser. Any individual agreements with the purchaser remained unaffected thereof. The following terms and conditions also apply to all future sales and deliveries even if we do not mention again their application. We will inform the purchaser on any change of our terms and conditions.

## **1. Scope of Delivery**

- 1.1 All of our offers are not binding even if we have already provided the purchaser with documents (e.g. technical documents, drawings, product descriptions).
- 1.2 The purchase order from the purchaser is deemed to be a binding offer which we may accept by either sending a written order confirmation to the purchaser or by delivering the purchased goods.
- 1.3 The scope of delivery is subject either to mutual written agreement or our written order confirmation. Any other agreements, in particular, any oral ancillary agreements or statements from our staff or our representatives and agents must be confirmed by us in writing to bind us.
- 1.4 These terms and conditions also apply to all sales which are based on the use of commerce clauses, especially the use of INCOTERMS.
- 1.5 We reserve all rights to any technical documents, drawings and work products.

## **2. Place of Delivery and Prices**

- 2.1 Place of delivery is D - 85716 Unterschleißheim if not agreed otherwise. Upon the purchaser's special request and at his costs we also deliver the goods to an alternative place (Sales shipment- *Versendungskauf*).
- 2.2 The Prices are agreed as „ex factory“ or „ex stock“ to the extent the parties have not agreed otherwise (e.g. Sales shipment - *Versendungskauf*) and include usual product packaging. Other costs, such as special packaging, freights, customs, insurance premiums (e.g. transport insurance), acceptance fees, etc, as well as any VAT will be added.
- 2.3 If the costs for materials and wages should change due to reasons which are beyond our control, we have the right to change the agreed price - except for fix prices - accordingly.

## **3. Payment, Payment Delay, Purchaser's Right of Set-off and Retention**

- 3.1 Our deliveries are to be due and payable upon receipt of the invoice and the goods or, respectively, acceptance, however, 30 days thereafter at the latest, so that the purchaser will be in default after expiration of this period. If the agreement contains a delivery value amounting to EUR 10,000, we have the right to request a prepayment in a reasonable amount.
- 3.2 If the purchaser falls into default with his payments for a delivery, all other claims from us will become immediately due. Furthermore, we will be entitled to request advance payment or collaterals from the purchaser with respect to future deliveries.
- 3.3 The purchaser's set-off rights or retention rights shall be restricted to the extent as the underlying claims have been accepted by us in writing or are already legally binding. The rights of the purchaser arising from defects of the goods remain unaffected.

## **4. Delivery**

- 4.1 The delivery period which is provided in the order confirmation is based on our best estimates and without any binding quality if not expressly agreed as binding between the parties.
- 4.2 As far as we cannot keep an agreed delivery period due to reasons, which we are not responsible for, we will provide the purchaser with a new delivery period without undue delay. Should we also not be able to keep the new delivery period because of the same reasons, we have the right to withdraw from the contract. We will reimburse the purchaser with any advance payments.
- 4.3 The occurrence of delay is subject to the statutory provisions as well as to our liability in accordance with Section 10.
- 4.4 If an unexpected event occurs, we are entitled to postpone the delivery for the duration of the obstacle and a new reasonable start-up period. Such unexpected events are all incidents which we are not able to avert, e.g. riots, strikes, natural forces, fire, unavailability of materials with our fault, traffic and operation interruptions and any other cases of force majeure. In case serious circumstances appear, which question the performing of the contract, we have the right to withdraw from the contract without the obligation to pay compensation to the purchaser.

## **5. Transfer of Risk, Acceptance, Inspection**

- 5.1 The risk of destruction and worsening of the goods by incident is transferred to the purchaser, at the latest, once the goods are handed over to him, but, if the parties have agreed on a sales shipment - *Versendungskauf*, the risk is transferred to the purchaser once the goods are handed over to the transport person (e.g. shipping agency). If the parties have agreed on an acceptance, this action is decisive. The purchaser's delay of a acceptance is deemed to be an acceptance.
- 5.2 The parties have to agree on any acceptance, method and scope of inspection as well as the costs related to the supply with work products when entering into the contract. The statutory provisions shall apply to any agreed acceptance.
- 5.3 If the purchaser requests inspection and acceptance of the goods before their delivery, such actions are exclusively performed through us and at the expense of the purchaser.
- 5.4 If the purchaser does not perform acceptance, any agreed inspection or any other agreed action at all, or not in time, or is the delivery delayed due to other faults of the purchaser, we are entitled to claim compensation for any damages arising from such behavior including additional expenses (e.g. storages costs).

## **6. Dimensions, Weights, Number of Units**

- 6.1 Only the delivery weights and number of units as well as the dimensions, which were determined by us, are relevant for calculation. Determinations of weight must be challenged by referring to official weighing immediately upon delivery.
- 6.2 Deviations concerning dimensions, weight, number of units and quality are insofar permitted as they are still within customary tolerances, applicable DIN/EN provisions and product related requirements.

## **7. Packaging and Shipping**

- 7.1 The Packaging is selected by us with respect to the concrete goods and will be adapted from time to time to comply with national and international provisions. We do not take back the packaging which was invoiced at cost price - except for EURO-PALLETS and PALLET-CAGES.
- 7.2 Provided, that no delivery period is agreed, the purchaser has to take the delivery the goods once the readiness for delivery is announced.

7.3 The delivery is performed at the purchaser's costs and risk.

7.4 In absence of any special instruction, the means of transport and method of transport are in our sole discretion.

7.5 Only the purchaser shall be responsible for any insurance and its costs.

## **8. Notice of Defects and Warranty**

- 8.1 If defects should occur the rights of the purchaser shall be defined by the statutory provisions, but, however, based on the following rules. The Sections 478, 479 BGB (suppl. regress) remain unaffected.
- 8.2 Our warranty is based on the agreed quality and, in particular, we warrant that the delivered goods are manufactured in a proper way and with secured quality in accordance with the agreed technical delivery terms and any provided performance and product description.
- 8.3 The purchaser is required to comply with his inspection and notice of defect duties (Sections 377, 381 HGB) in order to raise warranty claims against us.
- 8.4 Notice of defects must be given 14 days after receipt of the goods, at the latest, in case of hidden defects such notice shall be provided without undue delay following detection and by way of, first, oral communication and then, second, in writing. Any delayed notice of defect will not be accepted by us. If any defects occur the purchaser has to stop any treatment of the contested goods.
- 8.5 The purchase shall give us the chance to determine the alleged defect on-site. The purchaser is not entitled to send the contested goods back to us without our prior approval.
- 8.6 If the notice of defect is justified and provided timely, we will take back the defect goods and replace them with new ones. However, by considering the interests of the purchaser, we are also entitled to compensate the reduced value of the defect goods or to repair them. If we replace the defect goods, the purchaser shall return them. The subsequent performance does neither include the removal of the defect goods nor the integration of the replacing product, to the extent as we were not obligated to integrate the defect goods. We only bear the costs and additional expenses only to the extent a defect has really occurred. We can claim repayment of any costs and expenses, provided, that comes out afterwards, that there has never been any defect.
- 8.7 If we do not comply with our warranty obligations, the purchaser has the right to withdraw from contract or to reduce the purchase price upon expiration of a reasonable period (given that such period is required by law), but only with respect to the defect goods.
- 8.8 Any purchaser's claims for compensation or for reimbursement of unsuccessful expenses, which result from defects, only exist in accordance with Clause 10 and are excluded beyond.
- 8.9 Purchaser's claims, which result from defects, including any contractual or non-contractual damage claims, are time-barred 12 months after transfer of risk, at the latest. Sections 438 para 1 no. 1 and no. 2; para 3 and 479 BGB remain unaffected.

## **9. Retention of Title**

- 9.1 Any delivered goods remain our property (reserved goods) until fulfillment of any current and future claims (secured claims) arising from the entire business relationship. The purchaser is entitled to sell the goods in good business practice to third parties or to manufacture the goods for them. However, the purchaser shall neither be entitled to pledge the goods nor to assign them by way of collateral. He shall inform us without undue delay on any third party's grasp to the reserved goods.
- 9.2 The retention of title comprises any products which were manufactured by treatment, mixing and connection of our goods. In such case we will have the co-property in the new products in accordance with the statutory provisions. Insofar, Clause 9.1 shall apply to those products accordingly.
- 9.3 Any purchaser's claims and rights against his own customers out of the subsequent sale or treatment of the reserved goods are hereby assigned by way of collateral. We hereby accept this assignment.
- 9.4 Beside us, the purchaser remains entitled to collect the claims against his customers. To the extent, the purchaser complies with his payment obligations and there is no insolvency applied for, we will not collect those claims. Otherwise, we may request the purchaser to provide us with any information and documents, which are necessary to collect the claims. In such case, the purchaser is also obligated to inform his customer on the assignment.
- 9.5 If the value of the collaterals which can be realized, exceeds our claims at more than 10%, we will release the collaterals (at our sole discretion).

## **10. Liability, Time Limitations**

- 10.1 Save as provided otherwise in these terms and conditions, we are liable in accordance with the statutory provisions in case of breach of contractual or non-contractual duties. We are liable for compensation - irrespective of the legal reason - only if we have breached the contractual or non-contractual duty by intention or by gross-negligent behavior. In case of simple negligence we will only be liable for any infringement of life, body or health as well as if essential duties are breached. These essential duties are such duties, which are required to perform the contract and on whose fulfillment the purchaser may rely on. With regard to these essential duties our liability is limited to the typical and foreseeable damage.
- 10.2 Any claims from the purchaser, which are based on fraudulently concealed defects or based on a guarantee given by us, as well as our liability under the German Law on Product Liability remain unaffected of the afore-mentioned restrictions.

## **11. Legal Venue, Applying Law**

- 11.1 Place of performance for any payments and place of jurisdiction is the seat of our company, provided that the purchaser is businessman, legal entity under public law under public law or a special public fund. We have the right to file a claim against the purchaser also at his general place of jurisdiction.
- 11.2 Only the laws of the Federal Republic of Germany, except for the provisions on the international conflict law (e.g. UN sales law) shall apply to all and any legal relationships between us and the purchaser.
- 11.3 We save personal related data of the purchaser only for the purpose of contract performance by using electronic data processing systems.

As of: August 2015