

### § 1 General Provisions

- (1) All our deliveries, services and quotations are made exclusively on the basis of these Terms, even if same are not expressly mentioned during negotiations. Our General Terms of Business apply to all contracts with businesses and with legal entities and special trusts under public law, and they shall apply to all future business relationships, even if they are not expressly agreed anew. Our General Terms of Business shall be deemed accepted on acceptance of the goods at the latest.
- (2) Customer's terms conflicting with or diverging from our own shall only apply if we have expressly agreed in writing to their application.

### § 2 Quotations, Documents

- (1) Our sales staff are not authorised to reach oral ancillary agreements or to make commitments going beyond the content of the written contract.
- (2) Delivery periods given are approximate and non-binding, unless an express written assurance to the contrary is given.
- (3) Construction drawings and similar business documents shall remain our property, and must be treated strictly confidentially at all times. Without our permission, they may not be made accessible to third parties. If these duties are breached, then Customer shall be fully liable in accordance with statutory provisions.

### § 3 Prices

- (1) Our prices are ex works, excluding lading, and excluding packaging which is charged separately. Statutory value added tax as applicable on the date of invoice shall be added to the prices. Costs for any agreed transport or similar insurance shall be borne by Customer, unless otherwise agreed. In the event of part deliveries, each delivery may be invoiced separately.
- (2) If the price calculation basis changes (e.g. increases in prices for basic materials, wage increases) in respect of a delivery date which is four months after the contract has been signed, we reserve the right to adjust the prices accordingly after informing Customer to this effect.
- (3) If no prices have been agreed on conclusion of the contract, our prices in force on the day of delivery shall apply.

### § 4 Terms of Payment

- (1) Unless the confirmation of order (or alternatively the invoice) states otherwise, the price shall fall due for payment net cash (without deduction) within 8 days of the date of invoice.
- (2) If Customer defaults in payment, then we shall be entitled to charge default interest at a rate of 8 percent above the base rate, whereby we may at any time prove and invoice higher interest costs. In the event of default in payment, we are also entitled to revoke any rebates, discounts and other privileges granted.
- (3) Non-compliance with the terms of payment, default, or circumstances likely to impair Customer's credit standing, shall result in all our demands falling due for immediate payment.
- (4) Customer shall only be entitled to right of setoff provided its counter-claims have been established *res judicata*, or are uncontested, or have been acknowledged by us.
- (5) Customer is entitled to exercise right of retention insofar as its counter-claim is based on the same contractual relationship.
- (6) We are under no obligation to take bills of exchange and cheques, credit entries in respect of which shall always be subject to the bills of exchange or cheques being honoured (by way of payment, not by way of performance). Credit entries shall be made with effect as from the day on which we are able to dispose over the equivalent value of the payment instrument. Bills of exchange shall be counted on deduction of the discount, stamp duty, bank charges and any collecting fees charged to us when they are submitted.
- (7) We reserve the right to assert further contractual or statutory claims in the event of default.

### § 5 Delivery Period, Obstacles to Delivery

- (1) The delivery period shall commence on the confirmation of order being sent, not however before the records, permits and releases to be obtained by Customer have been submitted, and not before the agreed down payment has been received and all technical issues have been clarified.
- (2) The delivery period shall be deemed met if the object of delivery has left the factory or if notice that it is ready for dispatch has been issued before the end of such period.
- (3) In the event of any unforeseen obstacles occurring which are beyond our control and which we are unable to avert, despite exercising all due care such as may be expected considering all the circumstances in each particular case – irrespective of whether they occur at our business or that of one of our sub-suppliers – such as *force majeure* (e.g. war, fire, natural disasters), delays in supplies of essential raw materials, etc. – we shall be entitled to rescind the delivery contract in whole or in part, or to extend the delivery period by the duration of the obstacle. We shall be entitled to the same rights in the event of strikes or lockouts affecting our business or that of one of our sub-suppliers. We shall notify our customer without delay about any such circumstances.
- (4) In the event of default in delivery, Customer may rescind the contract after a reasonable period of grace has expired to no avail; in the event of impossibility of performance on our part, Customer shall likewise be entitled to this same right without having to grant a period of grace. Default in delivery shall be deemed equal to impossibility of performance if the delivery is not made within a period of one month. Claims to compensation (including that for any consequential damage) are excluded, notwithstanding Paragraphs (5) and (6), which do not intend to reverse the burden of proof; the same applies to compensation for expenses.
- (5) We shall be liable in accordance with statutory regulations if default in delivery is due to a wilful or grossly negligent breach of duty attributable to us; fault on the part of those assisting us in performing our obligations shall be attributed to us. The same applies in the event of any injury to life or limb or any health hazard or if the delivery period has been guaranteed. If we violate a cardinal duty culpably but not wilfully, then liability shall be limited to the foreseeable damage typical for the type of contract; in all other events it is excluded pursuant to Paragraph (4) above. The foregoing shall apply *mutatis mutandis* to the refunding of costs.
- (6) If a transaction on a fixed date has been agreed, then we shall be liable in accordance with statutory provisions; the same applies if Customer can claim that its interest in performance of the contract has lapsed due to the default for which we are responsible.
- (7) If dispatch is delayed at Customer's request, then it shall be charged the costs incurred by storage, commencing one month after notice that the goods are ready for dispatch has been issued.

## § 6 Passing of Risk

- (1) If it has been agreed that the goods shall be fetched, then risk shall pass to Customer when the goods are separated out and made ready for collection as agreed. If it has been agreed that the goods shall be dispatched, the same shall apply when they are handed over to the carrier. If it has been agreed that Customer has to perform at our address, risk shall pass when the goods leave our factory premises; the same shall apply in the event of creditor delaying in accepting performance.
- (2) If they only have minor defects, Customer must accept the objects delivered, irrespective of its rights under §§ 8 and 9 below. Part deliveries are permitted, provided Customer may reasonably be expected to accept them

## § 7 Retention of Title

- (1) We reserve title to all the goods delivered, until Customer has paid all the receivables that are owing or are incurred at a future time on the basis of the business relationship. Our retention of title shall also cover all spare or replacement parts, such as e.g. engines, control devices, etc., even if they are installed, because this does not make them essential components as defined in German Civil Code s. 93. In bill of exchange and cheque proceedings, our retention of title shall persist beyond payment by cheque, until we are released from our liability to the bill.
- (2) If Customer breaches the contract, in particular in the event of default in payment, we shall be entitled to take back the goods. Merely taking back the goods shall only be deemed rescission of the contract if a reasonable deadline which we have set expires to no avail and we have expressly declared rescission of the contract. Any costs incurred on us by taking back the goods (in particular transport costs) shall be borne by Customer.  
In addition, we are entitled to prohibit Customer from reselling, processing, combining or mixing the goods supplied subject to retention of title, and to cancel its authority to collect receivables (§7 (5)). Customer may only demand that goods taken back without express rescission of the contract be delivered once the purchase price and all costs have been paid in full.
- (3) Customer is under obligation to treat the goods carefully (including any checks and servicing required).
- (4) Customer may not pledge the object of the delivery and the demands based thereon, nor may it transfer it by way of security or otherwise assign it. In the case of pledges and other third-party interference, Customer must notify us in writing without delay so that we can bring action pursuant to German Code of Civil Procedure s. 771. Even if we win litigation conducted in accordance with German Code of Civil Procedure s. 771, Customer shall pay all our residual costs for such legal action.
- (5) During the ordinary course of business, Customer is entitled to resell, process or mix the object purchased, whereby it here and now assigns to us all and any claims ensuing from the resale, processing, or mixing or arising for other legal cause (in particular insurances or tort) up to the total invoiced amount agreed with us (including value added tax). If the goods delivered are resold along with other objects not belonging to Customer, Customer shall assign to us the receivables thus created up to the amount of the gross price agreed with us.  
Customer shall remain entitled to collect such receivables even after such assignment, whereby our authority to collect the receivables ourselves shall remain unaffected. However, we undertake not to collect the claim as long as Customer performs its payment obligations out of any proceeds taken, does not default in payment and does not cease making payments, and as long as no petition is filed for the institution of insolvency proceedings. If any of these events occur, then Customer shall notify us on request about the receivables assigned and the debtors, provide all the information required in order to collect the amounts, hand over the relevant documents, and notify the debtor (third party) about the assignment.
- (6) Our retention of title shall also cover the products created when our goods are processed or re-formed up to their full value, whereby any such processing or re-forming shall be done on our behalf such that we are deemed the manufacturer. If a third party's right of retention persists when the goods are processed or re-formed with such third party's goods, then Customer shall grant us co-ownership in proportion to the objective value of such goods, whereby it is agreed here and now that Customer shall store the goods for us carefully in any such case.  
In the event of our goods subject to retention of title being combined or inseparably mixed with other movable objects to make a uniform item, and if such uniform item may then be regarded as the main object, then Customer shall assign to us proportionate co-ownership, insofar as the uniform item belongs to it; Customer shall store the newly created co-owned property on our behalf. For any objects thus created, the same shall apply as applies to the goods delivered subject to retention of title.
- (7) By way of security for our demands, Customer also assigns to us all its receivables created vis-à-vis third parties if the objects delivered are affixed to real property.
- (8) The security to which we are entitled shall not be included if the estimated value of the collateral exceeds the nominal value of the receivables being collateralised. The decision as to which security is released shall be taken at our discretion.

## § 8 Liability for Material & Legal Defects

Provided the obligations to inspect the goods and lodge complaints pursuant to German Commercial Code s. 377 have been duly performed by Customer, we shall be liable for defects in deliveries as follows:

- (1) If there is a defect in the purchased item, then we shall be entitled to remedy the defect or supply an item in perfect condition, at our option (post-performance). This shall require that a major defect is involved. If rendering either or both kinds of post-performance is impossible or unreasonable, then we shall be entitled to refuse them. We may refuse post-performance as long as Customer fails to perform its payment obligations towards us up to an amount equivalent to the non-defective part of our performance.
- (2) If the post-performance given in Paragraph (1) above is impossible or fails, then Customer may choose to either reduce the purchase price, or to rescind the contract in accordance with statutory provisions; this shall apply in particular if post-performance is culpably delayed or refused, and similarly if post-performance fails a second time.  
Irrespective of Paragraph (4) below, Customer's further claims for whatsoever legal cause (in particular claims based on *culpa in contrahendo*, violation of cardinal and secondary duties, compensation for expenses apart from that laid down in German Civil Code s. 439 (II), tort, and other tortious acts) are excluded. This applies in particular to claims for damage to objects other than the item purchased, and to claims to compensation for lost profits, and it also covers claims not resulting from the purchased item's defectiveness.
- (3) The above provisions shall also apply to delivery of a different object or of a smaller quantity.
- (4) We shall be liable in accordance with statutory regulations if we or those assisting us in performing our obligations or our statutory representatives breach our duties with intent or due to gross negligence. The statutory regulations shall also apply if we culpably violate a cardinal duty; if we are not guilty of intent, then our liability apart from this shall be limited to the foreseeable damage typical for the type of contract.

We shall also be liable in accordance with statutory regulations if we are charged with liability for injury of life or limb or for a health hazard, similarly if we are liable under Product Liability Law. The same applies if we assume any guarantee or warrant any characteristic, in the event of our becoming liable for any defect covered by such guarantee or warranty.

The foregoing also applies to the compensation of expenses *mutatis mutandis*. No reversal of the burden of proof is intended.

- (5) No guarantee is assumed for damage caused for any of the following reasons: unsuitable or improper usage, wrong assembly by Customer or third parties, natural wear and tear, wrong or negligent handling, unsuitable production equipment and facilities, defective construction work, unsuitable building ground, replacement materials, chemical, electro-chemical or electric influences (insofar as we are not responsible), improper changes or maintenance work done by Customer or a third party without our prior approval.
- (6) Claims based on defects shall become statute-barred one year after the item purchased has been delivered, provided we are not guilty of intent, or injuring life or limb, or causing a health hazard. If an item is used for a building structure in accordance with its normal usage, and if the item causes a defect in said building structure, then the prescriptive period shall be 5 years. Claims to reduce the price, or exercising the right to rescind the contract, shall be excluded once the claim to post-performance has become statute-barred. However, in the event of clause 3 applying, Customer may refuse to pay the purchase price up to the legitimate amount if the contract is rescinded or the price is reduced; if rescission is excluded and payment has subsequently been refused, we shall be entitled to cancel the contract.  
The prescriptive periods laid down by law in the event of contractor's recourse based on German Civil Code ss. 478 f. shall remain unaffected.
- (7) Warranties and guarantees shall only be deemed effectively given provided they are expressly granted in writing.

#### **§ 9 Contracts for Work Done & Materials Supplied**

- (1) We grant a guarantee pursuant to § 8 (1) – (5) above for defects in performance under a contract for work and services. Customer is entitled to its statutory right to take steps pursuant to German Civil Code s. 637; this right is excluded if we may also refuse post-performance.
- (2) Claims to post-performance, compensation for damages, and reimbursement of costs shall become statute-barred one year after acceptance of delivery. This shall not apply to building structures and works depending on the rendering of planning or supervisory services; in any such case, the prescriptive period shall be 5 years. The rights to take action, reduce the price or rescind the contract are excluded once the entitlement to post-performance has become statute-barred and we may plead this. However, in cases covered by Clause 3, Customer may refuse to pay the purchase price insofar as it would be entitled to do so on rescinding the contract or reducing the price; if rescission is excluded and payment is subsequently refused, then we shall be entitled to cancel the contract.
- (3) § 8 above shall apply to contracts on work and services covering movable objects.
- (4) Cost estimates must be paid for.

#### **§ 10 Liability for Secondary Obligations**

If, due to our fault, the object delivered cannot be used by Customer in accordance with the contract, because carrying out suggestions and advice given before or after conclusion of the contract (in particular instructions on operating and servicing the object delivered) or performing other secondary contractual obligations has been omitted or poorly done, then the provisions laid down under § 8 and § 11 shall apply accordingly, excluding any further claims on Customer's part.

#### **§ 11 Rescission by Customer, Other Liability on Our Part**

- (1) The following provisions apply to violations of duty apart from liability for defects in the goods, and are not intended to exclude or restrict the statutory right of rescission. Similarly, any statutory or contractual rights or claims to which we are entitled should be neither excluded nor restricted.
- (2) Customer's further claims for whatsoever legal cause (in particular claims based on *culpa in contrahendo*, violations of main and secondary contractual obligations, compensation of expenses, tort, and other tortious acts) are excluded; this applies in particular to claims based on damage outside the purchased object, and to claims to damages for lost profits; it also includes all claims not resulting from the purchased object being defective.

We are liable in accordance with statutory regulations insofar as we or those assisting us in performing our obligations or our statutory representatives violate our obligations with intent or due to gross negligence; the statutory regulations shall also apply if we culpably breach a cardinal duty; insofar as we are not guilty of intent, our remaining liability shall be limited to the foreseeable damage typical for the type of contract.

We shall also be liable in accordance with statutory regulations if we are accused of liability for injury to life or limb or for a health hazard. The same applies if we assume any guarantee or warrant any characteristics, if we are liable for any defect covered by such guarantee or warranty.

The foregoing also applies *mutatis mutandis* to the compensation of expenses. No reversal of the burden of proof is intended.

#### **§ 12 Place of Performance, Venue, Governing Law, Distribution of Burden of Proof**

- (1) Place of performance shall be the place of dispatch (factory or warehouse).
- (2) Venue shall be at the place where we have our registered headquarters, if Customer is a registered merchant, or a legal entity of special trust under public law. The same also applies if Customer has no general venue [in Germany]. We are entitled to sue Customer at any other admissible place of jurisdiction.
- (3) With regard to all the rights and claims under the agreement, the non-harmonised laws of the Federal Republic of Germany (Civil Code, Commercial Code) shall apply. CISG is expressly excluded.
- (4) None of the clauses agreed under these entire Terms shall alter the distribution of the burden of proof as laid down by law and in court rulings.

#### **§ 13 Other Provisions**

- (1) Amendments to the contract only take effect by agreement with us.
- (2) If any of the provisions in these terms are invalid or null and void either in whole or in part, this shall not affect the remaining provisions. The contracting parties undertake to agree to an arrangement approximating the intents and purposes of the invalid or void provision in business terms.