

## Terms of Sale and Delivery (Status 12 April 2007)

### **1. General**

1.1 Our terms of sale are valid exclusively; we do not recognise the terms of our customers which are contrary to or deviate from our terms, unless we explicitly agree to them in writing. Our terms of sale also apply even if we unconditionally carry out the delivery to the customer while knowing the terms of our customers which are contrary to or deviate from our terms.

1.2 Our terms of sale also apply to all future business transactions with the customer.

1.3 All agreements, which are made between us and the customer for the purpose of performing this contract, have been established in writing in this contract.

### **2. Offers, Documents, Prices**

2.1 We can accept an order from the customer within 2 weeks, which is to be designated as an offer at the conclusion of a sales contract, by sending a confirmation of the order or by sending the ordered products within the same period of time.

2.2 All offers are subject to change and are non-binding, unless we explicitly designate them as binding.

2.3 We reserve the unrestricted exploitation rights in terms of ownership and copyright as well as other protective rights for the offers, cost estimates, drawings, electronic data carriers, and other documents. These documents may only be made accessible to third parties with our prior written consent. If the order is not placed, these documents are to be returned to us immediately upon request.

2.4 If nothing else has been agreed upon, our prices apply "Ex Works" excluding packaging; this will be billed separately.

2.5 The legal value-added tax (VAT) will not be included in our prices. It will be shown separately in the invoice for the legal amount on the date of the invoice.

### **3. Terms of Payment**

3.1 If the contract does not state anything to the contrary, the net sales price (without deduction) is due for payment within 30 days from the date of the invoice. If payment is made within 10 days from the date of the invoice, we grant a 2% discount, whereby receipt of payment is decisive for us in determining the period of time.

3.2 If the customer is in default of payment, the legal provisions will apply.

3.3 Bills of exchange will only be accepted after prior agreement. Bills of exchange and checks will only be accepted on account of performance. The acceptance of bills of exchange is subject to discounting the bill of exchange; discounting charges shall be paid by the customer.

3.4 A set-off is only permissible with counter-claims which are recognised, undisputed or have become res judicata. A right of retention is out of the question if the counter-claim is not based on the same contractual agreement.

### **4. Delivery, Default in Taking Delivery, Passing of the Risk**

4.1 Partial deliveries are permissible if they can be reasonably expected of the customer.

4.2 The choice of routing and mode of dispatch is carried out by us by appropriately taking the interests of the customer into consideration.

4.3 The goods to be sent will be packaged by us to the extent necessary. This service will fundamentally not be taken back if legally permissible.

4.4 Binding delivery times and dates must be explicitly agreed upon in writing. Information with "approximately," "around" etc. does not designate a binding period of time, but rather only indicates the prospective delivery date. The beginning of the delivery time or date presupposes the clarification of all technical questions and the orderly and prompt receipt of all documents, releases, and plans to be sent by the customer as well as adhering to the agreed upon terms of payment and other obligations by the customer. If these conditions are not fulfilled on time, the time periods will be extended appropriately; this does not apply if we are responsible for the delay. With unforeseeable hindrance to performance which cannot be avoided by us through reasonable caution or reasonable expenses, the agreed upon binding delivery date will also be appropriately extended; should the hindering circumstances last longer than 4 weeks, each of the contract parties is entitled to withdraw from the contract.

4.5 If we do not adhere to a binding delivery time, the customer must be guaranteed an appropriate period of time for subsequent delivery. If we

do not deliver by the end of the of the appropriate period of time for subsequent delivery, the customer can withdraw from the contract if we are responsible for the delay. A change of the burden of proof to the disadvantage of the customer is not included in this provision. Partial deliveries which have already been sent are excluded from withdrawal from the contract unless they remain unusable for the customer.

4.6 If the underlying contract involves a transaction for delivery by a fixed date in the sense of Section 286 Subsection 2 Number 4 of the German Civil Code (BGB) or Section 376 of the German Commercial Code(HGB), we are liable in accordance with the legal provisions. The same applies if the customer is entitled to discontinue interest in fulfilling the contract due to a delay in delivery which is our fault. In this case, our liability is limited to the typical foreseeable damages which occur if the delay in delivery is not based on an intentional breach of contract which one of us is responsible for, whereby the fault of our representatives or vicarious agents is to be attributed to us. We are also liable to the customer for delay in delivery in accordance with the legal provisions if it is based on an intentional or grossly negligent breach of the contract which one of us is responsible for, whereby the fault of our representatives or vicarious agents is to be attributed to us. Our liability is limited to typical foreseeable damages which occur if the delay in delivery is not based on an intentional breach of contract which one of us is responsible for.

4.7 If the delay in delivery, for which one of us is responsible, is based on the culpable breach of an essential contractual obligation, whereby the fault of our representatives or vicarious agents is to be attributed to us, we are liable in accordance with the legal provisions subject to the condition that the liability for damages in this case is limited to the typical foreseeable damages which occur.

4.8 Otherwise, if we are responsible for a delay in delivery, the customer can claim a lump-sum compensation in the amount of 3 % of the declared value of the goods for each completed week; however, not for more than 15 % of the declared value of the goods.

4.9 Further liability is out of the question for delay in delivery for which one of us is responsible. Additionally, legal claims and rights of the customer, which the customer is entitled to besides the damage claim because of a delay in delivery for which one of us is responsible, remain unaffected.

4.10 If the customer is in default of taking the delivery or if the customer breaches other obligations to cooperate, we are entitled to demand that the loss arising including any additional expenditures be compensated. In this case, the danger of the accidental perishing or the accidental deterioration of the goods is also passed on to the customer at that point in time in which the customer is in default of taking the delivery.

4.11 If the order confirmation does not state anything to the contrary, the delivery is agreed on "Ex Works." If desired by the customer, we will cover the delivery with transport insurance; the customer will pay any accruing costs in this respect.

### **5. Warranty**

5.1 The warranty rights of the customer presuppose that the customer has properly fulfilled his required obligations to examine and immediately make a complaint upon receipt of the goods in accordance with the German Commercial Code(HGB).

5.2 In the case of a legitimate notice of defects, we are obliged to carry out supplemental performance, to the exclusion of the rights of the customer to withdraw from the contract or to reduce the sales price (reduction), unless we are entitled to refuse supplemental performance based on legal provisions. The customer is to grant us an appropriate period of time for supplemental performance. The supplemental performance can be carried out by eliminating the defect (subsequent improvement) or delivering new goods depending on the choice of the customer. Warranty claims in addition to the supplemental performance are out of the question; however, the customer explicitly retains the right to reduce the price or to withdraw from the contract depending on his choice in the case of failure of the supplemental performance or if the supplemental performance requires disproportionate expenses. The subsequent improvement is considered failed with the second futile attempt if additional attempts at subsequent improvement are not appropriate because of the subject matter of the contract and are not reasonable for the customer.

5.3 Insignificant differences in colour and design are not considered defects. We are entitled to make technical and constructive changes if

they do not detract from the merchantability of the delivered article and are reasonable for the customer.

5.4 Warranty claims by the customer fall under the statute of limitations after 12 months following the delivery. This does not apply in cases of culpable injury to life, body and health by us, our legal representatives, or our vicarious agents, or if our legal representatives or vicarious agents have intentionally acted with gross negligence or failed to disclose defects with malice. Our obligations in Section 5 Numbers 5.6 and 5.7 hereby remain unaffected.

5.5 Claims by the customer due to necessary expenditures for the purpose of supplemental performance, in particular costs for transport, travel, work and materials are out of the question if the expenditures are increased because the object of the delivery was later brought to another place other than the place of business of the customer, unless bringing the article corresponds to the customer's use according to the provisions of the contract.

5.6 In accordance with the legal provisions, we are required to take back the new goods or reduce the sales price (reduction), also without the otherwise required period of time, if the buyer of the customer, as the user of the newly purchased moveable property (consumer goods purchase), demands from the customer that the goods be taken back or the price reduced (reduction) because of defect of these goods or the customer is confronted with a similar recourse claim resulting from this. In addition, we are required to reimburse the customer for expenses, in particular costs for transport, travel, work and materials which the customer has to pay in terms of the ultimate customer as part of the supplemental performance based on the present defect in passing the risk from us to the customer. The claim is out of the question if the customer has not properly fulfilled his obligations to examine and immediately make a complaint upon receipt of the goods in accordance with Section 377 of the German Commercial Code(HGB).

5.7 The obligation in accordance with Section 5 Number 5.6 is out of the question if it involves a defect due to advertising statements or other contractual agreements which do not originate from us, or the customer provided the ultimate customer with a special guaranty. The obligation is also out of the question if the customer himself was liable to the ultimate customer not based on the legal provisions of carrying out the warranty rights or if the customer did not act against the notification of the defect concerning a claim made against him. This also applies if the customer accepted warranties in terms of the ultimate customer which exceed the legal limit.

5.8 Number 6 applies to damage claims. Damage claims due to defects can first be made by the customer if the supplemental performance has failed. Additional claims or claims by the customer other than the ones established in this section due to material defects are out of the question. The provisions of the Product Liability Law remain unaffected.

#### **6. Other Damage Claims**

6.1 Independent of the following restrictions on liability in accordance with the legal provisions, we are liable for injury to life, body and health which is caused by a negligent or intentional violation of duty by us, our legal representatives, or our vicarious agents, as well as damage which is covered by liability according to the Product Liability Law. For damages which are not covered in Sentence 1 and are caused by a negligent or intentional violation of duty as well as malice by us, our legal representatives, or our vicarious agents, we are liable in accordance with the legal provisions. In this case, the damage liability is limited to the typical foreseeable damage if we, our legal representatives, or our vicarious agents have not acted intentionally. To the extent in which we have provided a guaranty of quality and/or durability in terms of the goods or a part of the goods, we are also liable within this guaranty. For damages which are caused by a lack of the guaranteed quality or durability, but not directly affecting to the goods, we are liable only then when the risk of such damages is clearly covered by the quality and durability guaranty.

6.2 We are also liable for damages which we cause through simple negligent breach of such contractual obligations, whose fulfilment first enables the proper performance of the contract and whose compliance the buyer normally trusts and is allowed to trust. However, we are only liable if the damage is typically connected with the contract and is foreseeable.

6.3 Additional liability is out of the question regardless of the legal nature of the asserted claim; this applies especially to claims in tort or

claims for the reimbursement of futile expenditures instead of performance; unaffected by this is our liability in accordance with Number 4.6 to Number 4.9 of this contract. If our liability is out of the question or limited, this also applies to the personal liability of our salaried employees, workers, colleagues, representatives and vicarious agents.

6.4 Damage claims by customers due to defects fall under the statute of limitations one year after delivery of the goods.

This does not apply in cases of culpable injury to life, body and health by us, our legal representatives, or our vicarious agents, or if we, our legal representatives, or vicarious agents have intentionally acted with gross negligence.

#### **7. Reservation of Title**

7.1 The delivered goods remain our property until payment of all the debt claims arising from the business relations with the customer are made. In the event of conduct by the customer contrary to the contract, in particular delay in payment, we are entitled to perform further services only in exchange for a security or advance payment. We can withdraw from the contract and take back the goods – in as far as there is no deadline – if an appropriate period of time for the performance has lapsed. In taking back the goods or seizing the sold goods, we withdraw from the contract.

7.2 If the customer sells the delivered goods to another party, the debt claims by the customer resulting from this for the amount of the invoice (including VAT) are now transferred to us, and, in fact, independent of whether the goods were sold to another party before or after processing. If the customer is in default of payment, the customer is required, at our request, to reveal the buyer and to make available a list of the transferred debt claims.

7.3 The processing or transformation of the reserved goods by the customer will always be carried out for us. If the customer processes, connects or combines the reserved goods with other goods, which do not belong to us, we are entitled to co-ownership of the new goods in proportion to the value of the reserved goods (final amount of the invoice including VAT) with the remaining goods at the point in time of the processing, connecting and combining. If our goods are destroyed by connecting them with basic parts, then the customer transfers to us the debt claims due to him from the third party from this processing with the ancillary rights for the final amount of the invoice.

7.4 If the realizable value of the security arising for us exceeds our outstanding debt claims by more than 10 %, we will release securities in this respect according to our choice.

7.5 The customer must inform us immediately of seizure or other interference with our securities by third parties.

#### **8. Lump-Sum for Damages**

8.1 If the contract is not performed for reasons for which the customer is responsible, we can demand 25 % of the agreed price as damages without individual proof instead of performance under the legal terms; the customer is allowed to produce supporting documents that show the damages did not take place at all or are considerably lower than the lump-sum amount.

8.2 We are entitled to correctly calculate the damages arising for us instead of the lump-sum amount for damages.

#### **9. Final Provisions**

9.1 German substantive law applies to the legal relationship in connection with this contract excluding the agreement by the United Nations concerning contracts involving the international sale of goods (CISG).

9.2 If the customer is a businessman, the sole jurisdiction for all disputes directly or indirectly resulting from this contractual relationship is the court having jurisdiction in D-88486 Kirchberg/Iller. This also applies if the customer moves his domicile or normal place of residence abroad after concluding the contract or if the customer's domicile or normal place of residence are not known at the time of filing the complaint. We are also entitled to initiate legal action at the headquarters of the customer.

9.3 If the confirmation of the order does not state anything to the contrary, the headquarters of our company is the place of performance.