

## SALES AND DELIVERY CONDITIONS

### 1. General Conditions

1.1. These General Terms and Conditions only apply to commercial customers ("Unternehmer") within the meaning of Section 310 of the German Civil Code (BGB) (hereinafter referred to as "Clients"). These General Terms and Conditions will supersede any previous general terms and conditions issued by us. They shall apply to all present and future business transactions.

1.2. Even if we have been given notice of any inconsistent, contradictory or additional terms and conditions of the Client, those terms and conditions shall only apply if they have been expressly approved by us in advance.

### 2. Offer and Formation of the Contract

2.1. Our offers are non-binding. All contracts shall be formed upon receipt of our written order confirmation, or at latest upon transfer of the Goods. Any changes (prior to or at the time of the formation of the contract) to the order confirmation and to our General Terms and Conditions shall always require our express written approval.

2.2. The formation of the contract is subject to the correct and timely supply by our suppliers. This term shall only apply if the delay or failure to supply was not due to our default, which includes, but is not limited to, circumstances where our supplier is unable to fulfill the delivery of the Goods to us pursuant to a sub-agreement with our suppliers in respect of the Goods. The Client shall be immediately informed about the non-availability of the Goods and Services and the price shall be reimbursed by us immediately.

2.3. We reserve the right to make reasonable technical changes to the Goods including changes to their form, colour, and / or weight.

2.4. If, following the formation of any contract between the Client and us it becomes clear that there is a danger of non payment by the Client due to the default of the Client which shall include, but not be limited to extension of any credit limit granted by us to the Client or overdue invoices, we shall be entitled to suspend any deliveries under the Contract until the Client has made full payment or has provided appropriate security for payment. We shall further be entitled to terminate the contract after we have unsuccessfully granted the client a further reasonable period of time to effect the said payment or provide the security for payment.

### 3. Prices, Payments, Default and Deterioration of Assets

3.1. The price of the Goods shall be our quoted price plus the legal turnover tax valid at the time of delivery. All prices are given by us on an ex works (respectively ex store) basis. The Client shall be liable to pay our additional charges for any urgent or express delivery requested by the Client.

3.2. Our invoices are due for payment within 30 days of the date of our invoice without deduction or, if no previous invoices are overdue, the Client shall be entitled to a prompt payment discount of 2 % of the gross invoice amount if payment is made within 14 days of the date of our invoice. Our invoices are payable in EUROS to our payment office, if the respective invoice does not state otherwise.

3.3. A payment shall only be deemed to be effected at the moment when we can draw clear funds.

3.4. Should one of the cases mentioned in Section 2.4 occur on the Client's side, the total remaining debt shall become immediately due and owing and we shall be entitled to claim the total debt or to demand other securities.

3.5. If the Client fails to make payment on the due date, the Client shall pay default interest on the amount unpaid at the rate of 8 % per annum above the Basic Interest Rate.

### 4. Set-off and Right of Retention

The Client shall only be entitled to set-off or a retention with respect

to claims that are undisputed or have been determined by legal judgment. The Client's right of retention shall only apply in respect of the contract to which the claim relates.

### 5. Retention of Title and Security Assignment

5.1. The property in the Goods shall not pass to the Client until we have received payment in full of the price of the Goods agreed to be sold by us to the Client

5.2. Should a valid retention of title claim pursuant to the national law of the country of domicile of the Client require a special form, a registration or similar conditions, the Client shall be obliged to do everything necessary to validly effect the retention of title according to the relevant national law, at the Client's expense. Should we decide to initiate such proceedings on our own account, the Client shall be obliged to use its best endeavours to provide all necessary support to us.

5.3. The processing or alteration of Goods (for which we reserve the title) shall be performed valid to us being the manufacturer, but shall not create any obligation on us towards third parties. Any property which we have in the Goods which is lost in the processing or alteration process shall be substituted by the joint ownership of the Client on the finished goods. The Client agrees to transfer to us in advance a proportion of its joint ownership in the finished goods in an amount equivalent to the invoice value. The Client shall store the property in which we share (co)ownership free of charge.

5.4. The Client shall be obliged to protect the property in which we share (co-)ownership with the care of a proper merchant from deterioration, decrease or loss, also towards his customers. The Client shall effect maintenance or inspection works as and when necessary and at his own expense.

5.5. The Client shall be entitled to sell and to process the retained property only within the ordinary course of business. Pledging or mortgaging shall not be allowed. As security and to the fullest extent possible, the Client hereby assigns all claims and rights arising out of the resale or out of any other cause with respect to the property retained by us, including all supplementary rights. We hereby accept the assignment. After the assignment, the Client shall remain entitled to obtain payment due in respect of this resale. This entitlement may be withdrawn if the Client fails to honour his payment obligations, is in default of payment or is subject to insolvency proceedings.

5.6. Should any third parties attempt to obtain the retained property, the Client shall inform them of our property rights and immediately notify us. Costs and damages shall be borne by the Client.

5.7. In case of default of payment by the Client, we shall be entitled to terminate the contract and to take repossession of the Goods for which the title has been retained at the expense of the Client including all claims or rights in respect thereof of the Client towards third parties.

5.8. Our right to claim damages remains unaffected. This shall also apply in the event of any other breach of contract by the Client.

5.9. Any security which we hold which exceeds by 10 per cent or more the value of the sums due to us by the Client shall upon request by the Client be released subject to our discretion as to which securities we shall release.

### 6. Delivery Time and Delivery

6.1. The times and dates quoted by us for delivery are not binding, unless previously agreed to the contrary by us in writing. We ship ex store or ex works.

6.2. The risk of accidental loss or accidental deterioration of the Goods shall pass to the Client at the time when the Goods have left our premises or that of our -supplier, and in the case of a dispatch purchase at the time of delivery of the goods to the forwarding agent,

freight carrier or any other person or organization chosen to effect the delivery. Should the goods be ready for shipment and the shipment or transfer is delayed for reasons that are beyond our responsibility, the risk shall pass at the time we notify the Client that the Goods are ready for shipment.

6.3. Unless agreed to the contrary, the means of delivery, the means of transportation and the means of protection are at our discretion. The cost of delivering the Goods shall be for the account of the Client. Transport insurance will only be arranged by prior express demand by the Client. Any damages or losses during delivery are to be notified immediately upon receipt of the Goods and are to be certified by the freight carrier on the waybill.

6.4. Partial delivery of a reasonable amount of Goods shall be accepted by the Client who shall not be entitled to object or reject the Goods or any of them by reason of the shortfall.

6.5. Should any delivery due from us be delayed by unpredictable circumstances beyond our control (e.g. industrial disputes, business disruptions, transport disruptions, lack of raw materials – including those of our pre-suppliers - as well as delays in supply by our suppliers), we shall be entitled to postpone the delivery during the subsistence of the unpredictable circumstance. In case of delays by our suppliers, we reserve the right to terminate the contract with the Client. Should the delivery time originally agreed upon be exceeded by more than two weeks, the Client shall be entitled to withdraw from the Contract. Damage claims are excluded.

6.6. Should we not meet delivery dates that have been agreed upon in writing, the Client may terminate the contract only after it has granted us a reasonable period of time of at least 14 days to correct the default unless such period is exceptionally not required. Should the Client not state in the written notice to us in respect of the granting of an initial reasonable period whether he wishes to continue to insist on the delivery of the Goods or whether he plans to make use of his rights to withdraw from the Contract or should we not receive such a declaration within a further period of 7 days, we are entitled to withdraw from the Contract. The right of the Client to claim damages is subject to the conditions set out under Section 8.

## **7. Warranty Rights**

7.1. The notification of warranty claims is subject to the inspection and approval requirements of Sections 377, 378 of the German Commercial Code (HGB) have been honoured. The Client is responsible for examining the goods ordered to determine whether the Goods are suitable for the particular purpose. The non-suitable Goods shall only be deemed faulty, if we confirmed the suitability for the particular purpose to the Client in writing.

7.2. There shall be no liability in respect of any defect arising from fair wear and tear in the Goods.

7.3. The Client shall notify us about obvious defects within two weeks after receipt of the Goods, otherwise the assertion of warranty claims shall be excluded. The posting of such notice within the 2 weeks of the Client's receipt of the Goods shall be deemed sufficient service of notice. The burden of proof shall be on the Client to prove any claim, including but not limited to the defect itself, the time of identification of the defect and the timeliness of the notice of defect.

7.4. As to defects in the Goods, we grant either rectification of the defect or replacement of the Goods at our option. Should we not be prepared or unable to arrange rectification or replacement, the Client shall be entitled, at his option, to request reduction of the price or to withdraw from the Contract; the latter, however, and the claim for damages instead of performance shall not be applicable for a minor breach of contract. The right of the Client to claim damages is subject to the conditions set out in Section 8.

7.5. In the event that we decide to rectify a defect, we shall be obliged to bear all expenses necessary for the rectification of the defect, such as costs for transport, travel, work and materials, if and to the extent they do not have their reason in the fact that the purchased Goods have been delivered to a location different from the performance location.

7.6. Claims due to defects shall be time-barred after the expiry of 12 months after delivery of the goods to the Client. This shall not apply if the Client has failed to notify us of the defect in time (see above Section 7.3) or if the breach of contract is based on intentional or negligent behavior by us. Sections 444 and 479 of the German Civil Code (BGB) remain unaffected.

7.7. We do not provide to the Client a legal guarantee. Manufacturer's Guarantees remain unaffected.7.8. Should we be in breach arising from non-performance related obligations according to Section 241 par. 2 BGB, the Client shall be entitled to withdraw from the Contract and to claim damages instead of performance, if, in addition to the legal requirements, he has sent to us a warning letter before-hand and the breach of the obligation has not been remedied consequentially.

## **8. Damages, Limitation of Liability**

8.1. Damage claims are excluded. We shall not be liable for damages which arise on the Goods themselves or for any consequential loss or damage of any kind, including but not limited to loss of profit or other pecuniary losses. The aforementioned exclusion of liability does not apply to the extent we or our auxiliary persons act intentionally or grossly negligent.

8.2. Should we be liable because of negligent behaviour for a substantial breach of a term of this agreement, our entire financial liability shall be for any reasonably foreseeable loss for a comparable transaction as was at the conclusion of the contract or at the latest at the date of the breach.

8.3. Damage claims in respect of death and personal injury as well as claims arising from the German Product Liability Act (Produkthaftungsgesetz) remain unaffected. This shall also apply should we be held to have acted in bad faith pursuant to Section 444 BGB.

## **9. Applicable Law, Partial Invalidity**

9.1. The laws of the Federal Republic of Germany shall govern these General Terms and Conditions. The application of the UN Convention on the International Sale of Goods (CISG) shall be excluded

9.2. Should a provision of these General Terms and Conditions or of any other agreements be or become invalid, the validity of all other provisions or agreements remains unaffected.

## **10. Place of Performance and Legal Venue**

10.1. The parties irrevocably agree that, subject as provided below, the Courts of Bremen shall have exclusive jurisdiction over any claim or matter arising under or in connection with these General Terms and Conditions. Nothing in this clause shall limit our right to take proceedings against the Client in the courts of the Client's country of domicile. If the order confirmation does not state otherwise, place of performance is the country of domicile of our branch office that delivers the relevant Goods.

10.2. As to international deliveries, exclusive jurisdiction for all disputes arising out of this contract shall also be the Courts of Bremen. Within the geographical scope of the EG Directive on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (Verordnung über die gerichtliche Zuständigkeit und die Anerkennung und Vollstreckung von Entscheidungen in Zivil- und Handelssachen, EuGVVO), Art. 23 of that Directive shall apply. We reserve our right to take proceedings against the Client in any other court that has competent jurisdiction according to that Directive.

## **11. Federal Data Protection Act**

We shall be entitled to store all data received in connection with the Contract for our own purposes, pursuant to the German Federal Data Protection Act (Bundesdatenschutzgesetz).