

## **Standard Terms and Conditions of Business**

### **I. Scope of application**

1. Solely our Terms and Conditions of Sale and Delivery apply to all our deliveries and services, including those from future business transactions. The Customer's supplementary or differing terms and conditions apply only if explicitly acknowledged in writing by us. The same applies to amending this written form clause.

### **II. Offers, conclusion of contract, the quality of our goods**

1. Our offers are basically without obligation. All contracts materialise when our written confirmation of order is received, by the latest when the goods are handed over or the service rendered. The determining criteria for the content of the contract are our offer, our confirmation of order and these Terms and Conditions of Sale and Delivery.
2. The agreed quality of our goods is solely the properties and characteristics stated on the product packaging and in our confirmation of order. Other or further properties and characteristics are deemed agreed quality only if they are explicitly confirmed by us in writing.
3. Statements on our part regarding the quality of the goods constitute a guarantee of quality only if we have designated it expressly in writing as a guarantee of quality.

### **III. Delivery, delivery time, force majeure**

1. Unless agreed otherwise deliveries are ex works (Incoterms 2010). If the goods are ready for dispatch and there is a delay in their being dispatched or delivery taken owing to reasons for which we are not responsible, the risk is transferred to the Customer when notice of the readiness for dispatch is received.
2. Delivery and performance dates are binding only if we have explicitly confirmed this. Delivery dates designate the departure from the factory; with franco domicile deliveries, the day the Customer receives the goods.
3. We are not liable for impossibility of delivery or delayed deliveries if they were caused by force majeure for which we are not responsible. Cases of force majeure are unforeseen circumstances and occurrences through no fault of our own that could not have been prevented with the diligence of a prudent businessman (e.g. industrial disputes, war, fire, transport problems, shortage of raw materials, official measures). We shall notify the Contractor promptly of the occurrence of such events.  
Should such events make it extremely difficult or impossible for us to deliver or render the service and the impediment is not just for a temporary period, we are entitled to rescind the contract. With impediments of a temporary nature the delivery or service time limits are extended or the delivery or performance dates deferred by the period of the impediment plus a fair and reasonable startup period. Should the Contractor not be reasonably expected to take delivery of the goods or service owing to the delay, he can rescind the contract by declaring this to us promptly in writing.
4. If we have entered into a corresponding hedging transaction with our suppliers, the delivery and performance dates quoted by us are subject to punctual, due and proper selfsupply. If we are not supplied, not properly or not punctually supplied, we and the Contractor are entitled to the rights stated in 3.
5. With deliveries on call, the goods must be accepted in as even quantities as possible distributed over the term, unless agreed otherwise. When the agreed call period is ended, we are entitled to deliver the entire quantity remaining immediately. If delivery is taken later we reserve the right to make a correction at the daily rate.
6. We are entitled to make part deliveries if the Customer can be reasonably expected to accept this.

### **IV. Prices and payments**

1. Unless expressly agreed otherwise the prices are ex works plus packing, freight, insurance and Value Added Tax; with export deliveries customs duty, fees and other public charges.
2. Unless agreed otherwise all invoices are due for payment immediately without deduction into an account indicated by us.
3. A payment is deemed not made until we can dispose of the amount definitively. Bills of exchange and cheques are accepted only subject to clearance. We do not accept any obligation whatsoever by accepting bills of exchange or cheques with regard to protest and punctual presentation. All expenses or other costs incurred in cashing bills of exchange or cheques shall be borne by the Customer.
4. Should there be a recognisable threat to our receivables by an inability of the Customer to fulfil his payment obligation, we are entitled to make all receivables not yet due from the entire business relations with the Customer due immediately, provided we have already made our deliveries and rendered our services. This also applies if we have already accepted bills of exchange or cheques. What constitutes a threat is if information from a bank or credit agency suggests the Customer is unworthy of credit. The same applies if the Customer is in default in payment with at least two invoices. In this case we are also entitled to set the Customer a fair and reasonable time limit in which he is required to choose between effecting counterperformance and lodging security concurrently with the performance of the deliveries and services still outstanding. If this time limit passes to no avail we can rescind the contract. Should the Customer suspend payments or become overindebted we can dispense with setting a period of grace.
5. In the event of a default in payment we are entitled, with the proviso of claiming greater damages caused by default, to demand interest amounting to 8 percentage points on top of the base rate.
6. The Customer is permitted setoff only with an uncontested claim or one established in law. If the setoff is not permissible, the Customer is not entitled to a right of retention either, albeit only with regard to claims from the same contract.

7. The assignment of claims against us requires our written consent.

#### **V. Warranty**

1. A written notice of patent defects and deviations in quantity must be given promptly, otherwise the defects are deemed approved. Written notice of latent defects must be given promptly after they are detected. The Purchaser is obliged to give us opportunity to satisfy ourselves of the defect without delay. In addition the Purchaser is obliged to properly store and handle the goods objected to. Goods can only be returned by agreement with us. At our request the goods objected to are to be returned to us freight paid. If the complaint about defects is justified, we shall refund the costs of the most favourable delivery route; this does not apply if the costs are higher because the goods are at a place other than the place of contractual use.
2. If the Customer's complaints about defects are justified and made on time we are entitled to choose between rectification and subsequent delivery against return of the goods. The Customer can assert his other statutory warranty rights only if he has set us a fair and reasonable time limit for subsequent performance to no avail, we refuse subsequent performance, it fails or the Customer cannot reasonably be expected to accept it. It is not necessary for a time limit to be set in the event of a reduction, rescission and claim for compensation of expenses if the Customer had to take back our goods from a consumer because they were defective or a consumer reduced the purchase price he paid the Customer.
3. With complaints about quality, exclusively the pertinent provisions of law applying in the Federal Republic of Germany are applicable. The goods shall be examined in accordance with the procedure stated in § 35 LMBG or the VDLUFA Book of Methods: we must be given the opportunity to investigate the complaint before goods complained about are reprocessed or resold.

#### **VI. Limitation of liability**

1. We are liable for injury to life, limb and health for which we are responsible and for loss or damage under the Product Liability Act.
2. We are liable only for loss or damage which upon the conclusion of the contract we foresaw as a possible consequence of a breach of contract or which we would have had to foresee by applying ordinary care. We are not liable in the case of ordinary negligence on the part of our executive bodies, legal representatives, employees or other agents unless it is a matter of cardinal contractual duties.
3. If our liability is excluded or limited in accordance with the preceding paragraphs, this shall also apply to the liability of our agents.
4. If we have granted the Customer certain rights under a guarantee of quality in the event of a defect, such rights shall not be affected by the above limitations of liability.

#### **VII. Reservation of proprietary rights**

1. The goods delivered remain our exclusive property until the purchase price and all receivables to which we are entitled now or shall be entitled from the Customer irrespective of the legal basis have been paid in full.
2. The Customer's processing or transformation of our goods shall invariably be on our behalf as manufacturer. If our goods are processed with other items not belonging to us, we acquire coownership of the new thing in proportion of the value of our goods to the value of the other processed item at the time of the processing. In all other aspects the same applies to the product created by processing as to our goods delivered under reservation.
3. If our goods are inseparably mixed or combined with other goods not belonging to us, we acquire coownership of the new thing in proportion of the value of our goods to the value of the other mixed or combined item at the time of the mixing or combining. If the Customer's other item is to be considered the principal thing, it is already agreed as of now that the Customer shall assign us proportionate coownership. The Customer shall safeguard our (co-)ownership for us free of charge.
4. The Customer is entitled to process and sell the reserved goods in the normal course of business provided he is not in default in his payment obligations towards us. It is not permitted for the goods to be pledged or assigned by way of security. The Customer assigns to us as of now by way of security receivables arising from the resale of the goods (including any claims to credit balance from the current account), insurance claims and claims against third parties because of damage, destruction, theft or loss of the goods. The same applies to other claims replacing the reserved goods or that otherwise arise with regard to the reserved goods. If we are entitled to coownership of the reserved goods, the assignment in advance is limited to the part of the claim corresponding to the proportion of our coownership (based on the value invoiced). In the event of the goods being resold, the Customer is required to reserve himself vis-à-vis his customers the ownership of the reserved goods until the purchase price has been paid in full. The Customer is then not entitled to resell the goods to third parties if the claim for the purchase price arising from the resale is subject to a prohibition of assignment.
5. We authorise the Customer revocably to collect for his own account in his own name the receivables assigned to us. This authorisation to collect can be revoked if the Customer fails to comply duly and properly with his obligations to pay us or our receivables appear threatened by an inability of the Customer to fulfil his payment obligation. The Customer is required to inform us when requested of the debtors of the receivables assigned.
6. In the event of third-party seizure of the reserved goods the Customer shall draw the third party's attention to our ownership and notify us promptly. The Customer shall bear the costs of our intervention.
7. The customer is entitled to demand the release of receivables from us if the realisable value of our securities should exceed by more than 10% our receivables being secured. We shall select any receivables to be released.

8. Should the Customer default on payment we are entitled to reclaim our reserved goods provisionally at the Customer's expense without setting any period of grace – by giving or sending them back to us – or if needs be to demand the assignment of the Customer's claims for restitution against third parties. Our taking back and pledging the reserved goods does not constitute a rescission of the contract. We are prepared to give back to the Customer at any time the goods we took back concurrently with the payment of the purchase price.
9. With deliveries abroad, should the reservation of proprietary rights agreed in VII. not be consistent with the foreign law, the provisions on the reservation of proprietary rights shall be reinterpreted in such a way that it is consistent with the foreign law and approximates the provisions of VII.

#### **VIII. Place of jurisdiction**

1. The sole place of jurisdiction for both Parties for all disputes arising directly or indirectly from the contractual relationship shall be Ratzeburg. We are, however, also entitled to take the Customer to court at his general place of jurisdiction.
2. Even with crossborder deliveries the sole place of jurisdiction for all disputes arising from the contractual relationship shall be Ratzeburg, the Federal Republic of Germany (Article 17 of the EEC Convention of 27.09.1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters)). We reserve the right to take matters before any other court with jurisdiction under said convention of 27.09.1968.

#### **IX. Final provisions**

1. The contract is subject solely to German law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
2. The sole place of performance for our deliveries and services is the respective production site of the goods ordered. The place of payment for the Customer is Ratzeburg.
3. Should a provision of these Terms and Conditions of Sale and Delivery or of other agreements be or become invalid, this shall not affect the validity of all other provisions or agreements.
4. These Standard Terms and Conditions of Business supersede all our previous Terms and Conditions of Sale and Delivery.

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