

## GENERAL TERMS AND CONDITIONS

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Terms and Conditions of Sale and Delivery (last revised: January 2010)

### Scope

1. These terms and conditions of sale apply exclusively to entrepreneurs, legal entities under public and private law and public-law special funds. Our goods and services are delivered exclusively under the terms and conditions detailed herein. Any customer's general terms and conditions are invalid unless they have been expressly recognised by us.

### General provisions

2. Any verbal arrangements concluded between the parties shall be confirmed from case to case, without undue delay and in writing.
3. A purchase order does not become binding until we have issued an order confirmation.
4. Any details and illustrations contained in brochures and catalogues are approximations which are customary in the industry, unless expressly specified by us as binding.

### Prices

5. Our prices are in EUROs, exclusive of VAT, packaging, shipping, postage and insurance.

### Long-term and call-off contracts, price adjustments

6. Contracts without time limits may be cancelled at three months' notice.
7. If a major change in the cost of wages, material or energy occurs under a long-term contract (i.e. a permanent contract or a contract with a term of more than 12 months), then either party may require a suitable price adjustment that takes those factors into consideration.
8. In the event of a call-off contract any binding quantities must be communicated to us in the form of a call-off at least 1 month prior to the delivery date, unless otherwise agreed.

### Terms of payment

9. All invoices shall be due for payment within 30 days of the invoice date. Any cash discount periods are subject to separate agreement.
10. If it has been indisputably established that goods delivered by us are partially defective, then our customer must nevertheless make payment for the non-defective parts, unless partial delivery is of no interest to the customer. Otherwise, the customer is only entitled to a right of offset if its counterclaims have been established by a court of law or if they are undisputed.
11. If a payment deadline is missed, we are entitled to charge interest on arrears at the rate we ourselves are charged by the bank for overdrafts and at least 8 percentage points above the prevailing base lending rate of the European Central Bank.
12. In the event of arrears we may, upon written notification to the customer, discontinue our commitments until the receipt of payment.
13. Bank drafts and cheques are only accepted by us upon arrangement and subject to being bankable and being honoured by the relevant bank. Discount charges are charged by us from the due date of the invoiced amount onwards. We provide no guarantee for the correct presentation of a bank draft or cheque or for the presentation of a protest.
14. If it becomes apparent after the entry into the contract that our payment claim is jeopardised by the customer's inability to pay, then we may refuse delivery and give the customer a reasonable deadline for contemporaneous payment upon delivery or for the provision of a security. If the customer refuses to pay or fails to pay within the specified deadline, we are entitled to either cancel the contract or receive compensation.

## Delivery

15. Unless otherwise agreed, all our deliveries shall be “ex works.” Our provision of shipping notification or notification of readiness for collection shall be the date that decides whether or not the specified date or period of delivery has been complied with.
16. The delivery period shall start on the date we send our order acknowledgement and shall be reasonably extended if conditions are applicable as specified in clause 48.
17. Partial deliveries are permitted provided they are within reasonable proportions. In such a case you will be billed separately.
18. Production-related excess or short deliveries are permitted if they are within a tolerance limit of 10 per cent of the total order volume. The total price shall be adjusted to suit the size of the delivery.

## Shipping and transfer of risk

19. Once the customer has been notified that goods are ready for shipment, they must be taken over by the customer without undue delay. Otherwise we may ship such goods at our own discretion or store them at the customer’s expense and risk.
20. Unless separately agreed from case to case, the means of transport and the transport route shall be chosen by ourselves.
21. However, the risk is transferred to the customer upon transfer to the railway service, the forwarding agent or the freight carrier or at the beginning of storage and no later than the point of time when the goods leave our facilities or warehouse; this provision also applies if delivery is undertaken by ourselves.

## Delay in delivery

22. If we can foresee that it will not be possible to deliver the goods within the delivery period, we shall notify the customer immediately in writing, specifying the reasons for the delay and also, if possible, the expected date of delivery.
23. If delivery is delayed by one of the circumstances listed in clause 48 or by a customer’s act or omission, then an extension of the delivery period shall be granted, as appropriate under the circumstances.
24. The customer shall only be entitled to cancel the contract if non-observance of the delivery date is within our responsibility and if we have not complied with a reasonable extension, set by the customer.

## Reservation of title

25. We shall reserve the title to the delivered goods until the fulfilment of all claims arising from our business relationship with the customer.
26. The customer is entitled to sell these goods in the ordinary course of business, provided that the customer meets its duties, arising from the business relationship with us. However, the customer may not pledge such reserved goods or assign them by way of security. If reserved goods are sold on credit, the customer shall protect our rights on the resale of those goods.
27. If the customer fails to meet an obligation and particularly in the event of payment arrears, we shall set the customer a reasonable extension and, once this extension has passed unsuccessfully, we shall be entitled to cancel the contract and to receive back the goods; this provision shall not affect any statutory provisions concerning the dispensability of a deadline. The customer is under an obligation to issue the goods. We shall be entitled to cancel the contract if application has been made to open insolvency proceedings against the customer’s assets.
28. The customer shall, by way of anticipation, assign to us as a security all claims and rights arising from the sale of the goods or from any rental of goods for which the customer may have received permission in respect of goods on which we have ownership rights. We hereby accept the assignment.
29. Any handling or processing of reserved goods is conducted by the customer on our behalf. If the reserved goods are processed or inseparably combined with other items that do not belong to us, we become co-owners of the new object at the ratio of the invoice value of the reserved goods in relation to the other processed or combined items at the time when processing or combination took place. If our goods are processed or inseparably combined with other movable items into one single object and if the other item must be regarded as the main item and if it belongs to the customer, then the customer shall transfer to us the appropriate share of co-ownership. The customer then has custody of the object on our behalf while the object is owned or co-owned by us. Otherwise, an object that has come into existence through processing, combination or mixing shall be subject to the same provisions as reserved goods.
30. The customer shall notify us immediately if claims or other securities assigned to us have been seized by a third party through compulsory enforcement in respect of the reserved goods, in which case the customer shall submit to us any documents required for intervention. This also applies to impairments of any other kind.
31. Should this be requested by the customer, we shall only release the securities to which we are entitled under the aforementioned provisions if the value which can be realised through the reserved goods exceeds the secured claims by more than 20 per cent.

## Material defects

32. The condition of the goods depends exclusively on the agreed technical delivery specifications. If we are required to deliver the goods according to the customer's drawings, specifications, samples, etc., then the risk of suitability for the intended purpose shall be borne by the customer. Whether the goods are contractually compliant shall depend on their state at the transfer of risk, specified in clause 21.
33. We shall not be liable for material defects resulting from unsuitable or improper use, faulty installation or commissioning by the customer or a third party, ordinary wear and tear or faulty or negligent treatment; neither shall we be liable for the consequences of improper changes or repairs, conducted by the customer or a third party without our consent. The same applies to defects which only have a negligibly detrimental impact on the value or suitability of the goods.
34. Claims for material defects shall lapse after 12 months. This does not apply if the law stipulates mandatory longer periods, especially for defects in a building and for goods that have been used for a building in the normal manner and which have given rise to its defect.
35. Any obvious defects shall be notified by the customer immediately upon receiving the goods at their destination, and any hidden defects shall be notified immediately upon discovering the fault.
36. If acceptance or initial sample inspection was agreed with the customer, then the customer cannot claim the existence of a defect which it could have established if it had conducted its acceptance or initial sample inspection with sufficient thoroughness.
37. In such cases we ourselves must be given an opportunity to establish the defect which has been notified to us. If the customer modifies goods after notification of a defect and without our consent, any claims for material defects shall lapse.
38. If a defect is justified and has been notified to us within the deadline, we shall, at our discretion either remedy the relevant item or deliver a faultless replacement. If defective goods have been delivered, the customer shall, as quickly as possible, enable us to remove the defective items from the consignment delivered to the customer.
39. If we fail to meet these commitments or if we do not meet them as specified in the contract, within a reasonable period of time, then the customer may set us a final deadline in writing within which we must meet our commitments. Once this deadline has passed unsuccessfully, the customer shall be entitled to claim a price reduction, cancel the contract or take the required remedial action itself or have it conducted by a third party, in either case at our expense and risk. If such remedial action has been conducted successfully by the customer or a third party, then all the customer's claims shall be considered as fulfilled through the reimbursement of the necessary costs incurred by the customer. No costs shall be reimbursed if there has been an increase in expenses due to the fact that, after our delivery, the goods were taken to a different place, unless such relocation was required for the proper use of the goods.

## Other claims and liability

40. Unless indicated otherwise below, the customer shall not be entitled to any other or further-reaching claims towards us. This applies, in particular, to damage claims for delay, for impossibility of performance, for culpable breach of secondary contractual duties, for culpa in contrahendo or for unlawful acts. We therefore bear no liability for damage that has not occurred on the delivered goods themselves. In particular, we are not liable for the customer's lost profits or any other pecuniary losses.
41. The aforementioned limitations of liability do not apply to intent, gross negligence by our legal representatives or executive employees or culpable violations of essential contractual duties. In the event of a culpable violation of contractual duties our liability shall be limited to whatever damage is typical under this kind of contract and is reasonably foreseeable, except in cases of negligence or gross negligence by our legal representatives or executive employees.
42. Neither does the limitation of liability apply in cases where we are liable under the German Product Liability Act (Produkthaftungsgesetz) for defects on the delivered goods causing injury to persons or property damage to privately used items. The limitation of liability is equally inapplicable in the event of an injury to life, limb or health or the lack of assured characteristics if and to the extent that such an assurance had the express purpose of protecting the customer against damage not occurring on the delivered goods themselves.
43. If our liability has been limited or excluded in a given instance, this limitation or exclusion shall also apply to the personal liability of our employees, staff, personnel, legal representatives and vicarious agents.
44. This provision shall not affect any legal provisions concerning the burden of proof.

## Confidentiality

45. Both contractual parties undertake not to use any documents (including samples, models and data) or knowledge gained through this business relationship for purposes other than those jointly pursued; the parties shall apply the same care in maintaining confidentiality towards third parties as they would in respect of their own documents and knowledge; this applies to all instances in which a document or knowledge has been specified by the other party as confidential or where the other party has an obvious interest in such confidentiality. This commitment shall commence as soon as a given document or knowledge has been received for the first time and shall terminate 36 months after the end of the business relationship.
46. This commitment shall not apply to documents and knowledge which were in the public domain or which were already known to the relevant party at the time of receipt, yet without being under a confidentiality commitment at the time; neither shall the commitment apply to documents or knowledge subsequently passed on by a third party entitled to do so; the confidentiality commitment shall also be inapplicable in cases where the other party's documents or knowledge have been developed by the receiving party without the use of documents or knowledge that are subject to confidentiality.

## Drawings and specifications

47. If one party provides the other with drawings or technical documents concerning the goods that are to be delivered or their production, then such drawings or technical documents shall remain the property of the supplying party.

## Force majeure

48. Force majeure, industrial disputes, unrest, official measures, missing deliveries from our suppliers and any other unforeseeable, unavoidable and serious occurrences shall release the parties from their contractual duties for the duration of the disruption and to the extent of its impact. This also applies if such occurrences happen at a time when the relevant party is in arrears. Where reasonable, the parties shall give each other the required information without undue delay and adjust their commitments to the new conditions in good faith.

## Place of jurisdiction, place of performance and applicable law

49. Unless otherwise specified in the order confirmation, the place of performance shall be our business location.
50. If the customer is a business person, a legal entity under public law or a public-law special fund, the place of jurisdiction for all legal disputes, including legal action concerning bank drafts and cheques, shall be our business location. However, we are also entitled to take legal action at the location of the customer's head office.
51. This contractual relationship is exclusively subject to the law of the Federal Republic of Germany.
52. The parties hereunto do not acknowledge application of the United Nations Convention of April 11, 1980 on Contracts for the International Sale of Goods (CISG, Vienna Convention).