

# GENERAL TERMS OF SALE AND DELIVERY (04/2004 version)

## I • Conclusion of the Contract

- 1• All our contracts, deliveries and services shall be effected exclusively on the basis of the following general terms of business. Our terms of sale apply exclusively. We do not recognise terms of the purchaser which conflict with or deviate from our terms of sale, unless we have given our express written consent to their application. The buyer's terms are expressly objected to. They shall not be binding upon us, even if we do not expressly object to them again upon receipt at our company. Our terms of sale shall apply even if we carry out the delivery to the buyer unconditionally despite knowing the terms of the buyer which conflict with or deviate from our terms of sale.
- 2• Our quotations shall be subject to change without notice and be non-binding. Contracts and other agreements shall only become binding upon our written acknowledgement.
- 3• Verbal agreements and representations made at the time of the conclusion of the contract, particularly by sales employees or representatives who have not been authorised by us to make such statements, or who exceed their authority without our consent, shall only be effective with our written confirmation.

## II. Prices

Our prices are calculated ex works or ex base or ex warehouse, plus freight, packaging and assembly costs and value-added tax. Our prices shall be subject to change without notice. The quantity determined at the works or at the base or at our warehouse shall be authoritative for the calculation.

## III. Payment

- 1• Except for undisputed and legally recognised claims against us, any set-off or assertion of rights of retention or other rights to refuse to perform are excluded.
- 2• We shall, subject to express agreement and only on account of performance, accept cheques and bills of exchange which are discountable and upon which tax has been properly paid. Bills of exchange will be accepted only without warranty for correct presentation and protestation. In this respect, credits shall be effected with the value date being the date when the equivalent value, less expenses, is unconditionally at our disposal.
- 3• Regardless of the term of any cheques and/or bills of exchange which have been accepted or credited, all our receivables shall become immediately due, if the buyer culpably fails to comply with the payment terms, or if the buyer's financial circumstances materially deteriorate. We shall then also be entitled to carry out outstanding deliveries only against advance payment or to demand reasonable security according to the contract value and to the purpose of the security or to withdraw from the contract after setting a reasonable period of grace or to demand compensatory damages for non-performance. Additionally, we shall be entitled to prohibit reselling and processing of the goods delivered and demand their return or transfer of indirect possession of the delivered goods at the buyer's expense and to revoke the direct-debiting authorisation under no. VI. 6. The buyer authorises us here and now to enter its business establishment and take possession of the delivered goods in the aforesaid cases.

## IV. Qualities, Periods for Delivery and Dates of Delivery

- 1• Qualities, periods for delivery and dates of delivery shall only be deemed firmly agreed upon, if we make an express written representation concerning such particulars. In any event, delivery periods shall begin only with the date of our written confirmation of order, but not before all details of execution have been fully clarified and the purchaser has provided any and all essential certificates. Periods and dates of delivery refer to the time of dispatch ex works, ex base or ex warehouse. If the goods cannot be dispatched on time due to circumstances which are no fault of ours or of our supplier, the periods and dates of delivery shall be deemed complied with upon notification of readiness for dispatch. The periods for delivery shall - without prejudice to our rights based on default on the part of the buyer - be extended by the period by which the buyer is in default on its obligations arising from this contract or other contracts. This applies mutatis mutandis to dates for delivery.
- 2• Failure to meet certain periods or dates of delivery shall not release a buyer, who wishes to withdraw from the contract or who demands compensatory damages, from his obligation to set a reasonable grace period for rendering performance. This shall only be inapplicable, if we have made an express written representation concerning a period or date for delivery.
- 3• In the event of force majeure or upon the occurrence of other unforeseeable and extraordinary circumstances through no fault of our own, for example difficulties in procuring material, operational disruptions, strike, lockout, lack of means of transportation, official intervention, energy supply difficulties etc, the period for delivery shall, even if they occur at our supplier, be extended to a reasonable extent in cases where we are prevented from performing our obligation in due time. If delivery or performance becomes impossible or unreasonable due to the aforesaid circumstances, we shall be released from the obligation to deliver. In so far as the delay in delivery lasts longer than two months, the buyer shall be entitled to withdraw from the contract after setting a reasonable period for performance. If the delivery period is extended, or if we are released from the obligation to deliver, the buyer shall not be entitled to derive any damage claim from this. We may only plead the obstructive circumstances, if we notify the buyer without undue delay.
- 4• If an acceptance and/or inspection have been agreed upon, this may only take place at the supplier's works, the base or the warehouse immediately after notification of readiness for an acceptance inspection or viewing. The cost of any expert assessor called in shall be borne by the buyer. If the buyer omits to carry out an acceptance or inspection, or if the buyer unreasonably delays this or waives this, we shall be entitled to dispatch the material without an acceptance or inspection having taken place or store the material at the buyer's expense and risk. The goods shall be deemed delivered in conformity with the contract at such time as they are dispatched or placed in storage.

## V. Dispatch, Delivery, Passage of Risk

- 1• Unless otherwise agreed upon, the material shall be delivered unpackaged and unprotected against rust. If packaged delivery is customary in the trade, we shall deliver packaged. We shall take care of packaging, protection and/or transportation aids on the basis of our experience, at the buyer's expense and with the exclusion of liability on our part.
- 2• In the absence of a separate agreement, the method and means of shipment shall be left to our discretion. If we act as a forwarder, the German Freight Forwarders' General Terms and Conditions [Allgemeine Deutsche Spediteurbedingungen] shall apply. We shall be entitled, but not obliged, to insure deliveries in the name of and for the account of the buyer.
- 3• The risk (including the risk of seizure of the material) shall, in any event, e.g. also in the case of FOB and CIF transactions, pass to the buyer once the consignment is handed over to the person carrying out the transportation or leaves the seller's works for the purpose of shipment, regardless of whether or not shipment takes place from the place of performance and regardless of who bears the freight costs. If the goods are ready for dispatch and if shipment or the acceptance inspection is delayed for reasons not imputable to us, the risk shall pass to the buyer upon receipt of notification of readiness for dispatch.
- 4• We are entitled to deliver by instalments and, in so far as customary in this branch of industry, make over-deliveries and under-deliveries of the contractual quantity. Every delivery instalment shall be deemed to be an independent transaction.
- 5• In the case of a contract which provides continuous deliveries, delivery call-offs and type classifications shall be provided to us for approximately the same monthly quantities. If the contractual quantity is exceeded by the buyer's individual call-off orders, we shall be entitled, but not obliged, to deliver the surplus. We may charge for the surplus at the prices valid at the time of delivery.

## VI. Retention of Title

Until full payment of all receivables to which we are entitled against the buyer under the business relationship, regardless of the legal basis, the following shall apply:

- 1• Delivered goods of any kind whatsoever shall remain our property (goods subject to retention of title). The buyer shall treat the goods subject to retention of title with care and appropriately insure them at his expense.
- 2• We acquire title to movable items resulting from the re-working or processing (section 950 of the German Civil Code [BGB]) of goods which are subject to retention of title. Processing shall take place on behalf of us and for us as the manufacturer, free of charge and without any obligation upon us. If

the buyer processes, combines or mixes the goods subject to retention of title with goods of the buyer or of third parties, we shall be entitled to joint ownership in the new item in the ratio of the gross invoiced value of the goods subject to retention of title in relation to the invoiced value of the other goods used. The co-owned items resulting from the foregoing shall be deemed to be goods subject to retention of title within the meaning of no. 1.

- 3• The buyer assigns to us here and now in advance, to an extent equal to our co-ownership share in the goods subject to retention of title, all receivables and statutory claims arising from all ancillary rights and securities which accrue to the buyer from resale or use of the goods which are subject to retention of title. If goods subject to retention of title are sold or used together with other items for one total price, the assignment shall be limited to the invoiced value of the goods subject to retention of title (including value-added tax).
- 4• Insurance claims and damage claims which the buyer acquires on account of loss of or damage to goods subject to retention of title are hereby assigned to us in advance, likewise to an extent equal to our co-ownership share in the goods subject to retention of title. If the value of the securities exceeds our receivables by more than 20 % in total, we shall, at the written request of the buyer, be obliged to release security items of our choosing.
- 5• The buyer is prohibited from assigning for the purpose of securing a debit or encumbering, particularly pledging, goods which are subject to retention of title. The buyer is entitled to sell goods which are subject to retention of title only in the regular course of business and only on condition that the buyer agrees with its customers upon retention of title in accordance with these terms.
- 6• The buyer shall immediately notify us in writing, if our securities suffer loss or damage or are impaired by third-party measures (e.g. distress). In the event of distress, the buyer shall immediately give the attaching creditor written notification of our security rights. A duplicate of the bailiff's return, as well as all other documents essential for third-party proceedings against execution shall be sent to us. The cost of third-party proceedings against execution shall be borne by the buyer.
- 7• The buyer shall, upon request, give us all desired information concerning our securities and he shall provide us with declarations of assignment customary in banking for the receivables assigned.
- 8• The buyer shall be entitled to collect the receivable assigned.
- 9• The buyer's entitlement to sell, use, process and combine goods which are subject to retention of title, as well as to collect receivables assigned as security in the ordinary course of business shall cease to apply, if the buyer is in default on payment or fails to properly meet, despite a reminder, its obligations arising from the business relationship, particularly the duties provided for in no. VI. of these terms. Moreover, we shall be entitled to revoke the buyer's aforesaid entitlements, if serious doubts about its credit-worthiness arise or intensify.
- 10• Upon cessation of application of the buyer's entitlement, we shall - without prejudice to further rights - be entitled:
  - to repossess the goods. Following repossession, we shall declare to the buyer within a reasonable period whether or not we shall withdraw from the contract and demand compensatory damages.
  - to realise - at reasonable discretion - goods which are subject to retention of title, also by selling them on the open market following corresponding notice, also without prior appropriation or in the buyer's name,
  - to collect ourselves receivables assigned to us. The proceeds arising from realisation or collection of the security (including value-added tax) shall, after deduction of the costs and any value-added tax liabilities, be netted against the buyer's liabilities of our choosing. Any surplus proceeds shall remain with the buyer.

## VII • Defects, Delivery of Goods Not Conforming to the Contract

- 1• Agreements on qualities shall only be effective, if confirmed in writing by us.
- 2• The buyer shall examine the received goods for transportation damage and missing quantities immediately upon receipt. Complaints made in this respect shall be subject to confirmation from the transportation company. Moreover, the buyer shall examine the received goods for defects without undue delay upon their arrival. Such defects (including absence of agreed quantities), as well as deviations in quantity and incorrect delivery shall, in so far as they are recognisable, be notified to us in writing within one week of receipt of the goods, precisely stating the defects and the order number, dispatch number and production number of the delivery. Defects which are not recognisable upon proper examination must be reported to us in writing within one week of discovery. If the aforesaid periods for lodging a complaint are not heeded, the goods shall be deemed approved. There shall then be no possibility of asserting defect-related claims. By entering into negotiations on complaints, we shall not waive the plea that the defect-related complaint was inadequate and/or lodged too late.
- 3• In the event of a justified complaint, we shall, at our option, rectify defective goods or render supplementary performance in respect of the defective part of the delivery. The buyer shall grant us the time and opportunity necessary for eliminating defects or rendering supplementary performance. At our request, the buyer shall make available to us, for examining the complaint, the goods complained of. If this does not occur, the buyer's defect-related rights shall cease to apply.
- 4• If we fail to heed a reasonable period of grace which we have been set, without having eliminated the defect or having rendered supplementary performance, or if elimination of defects or supplementary performance is impossible or is refused by us, the buyer shall be entitled, at its option, to withdraw from the contract or demand abatement of the purchase price. If the buyer chooses rescission, he shall not be entitled to compensatory damages.
- 5• The limitation period for claims of the buyer based on a defect is one year, unless the defective goods constitute an item which is normally used for a building and has caused a building to become defective. The reduction of the limitation period shall not apply, if we are liable for the defect on account of intent.
- 6• Further claims of the buyer, particularly compensation for damages which have not arisen in respect of the goods themselves, are excluded.
- 7• The above limitation of liability shall not apply in so far as the cause of the loss or damage is based on intent or gross negligence on our part or on the part of our executive employees or our other agents in contract.
- 8• If we are not in a position to be able to remedy discovered defects in a reasonable manner by rectification or to carry out supplementary performance, or if it is not technically possible to remedy the defects, we shall be entitled - without prejudice to the buyer's rights - to withdraw from the contract.

## VIII • General Limitations of Liability

Our liability shall be governed exclusively by the agreements made in the above section. Damage claims of the buyer on account of breach of duty or tort are excluded, unless they are based on intent or gross negligence on our part or on the part of our agents in contract. This limitation of liability applies mutatis mutandis to the buyer.

## IX • Place of Performance, Place of Jurisdiction, Applicable Law

- 1• The place of performance for our services is the supplier's works in the case of delivery ex works, the base in the case of delivery ex base and the warehouse in the case of delivery ex warehouse.
- 2• In so far as the buyer is a merchant, Düsseldorf is agreed to be the place of jurisdiction for all claims. However, we shall be entitled to also bring legal action at the place of venue with jurisdiction over the buyer's registered office.
- 3• The laws of the Federal Republic of Germany apply. Application of the UN Sales Law Convention on Contracts for the International Sale of Goods (CISG) is excluded.

## X • Severability

If individual stipulations of these Terms of Sale and Delivery are or become wholly or partly ineffective, the rest of these terms shall remain fully in effect.