



GENERAL TERMS AND CONDITIONS OF DELIVERY AND PAYMENT

§1 Validity of the General Terms and Conditions

1.1

All of our deliveries, performances and offers shall be based exclusively upon these General Terms and Conditions of Delivery and Payment (hereinafter 'General Terms and Conditions'). These General Terms and Conditions shall be a constituent part of all agreements concluded with our contractual partners (hereinafter 'Purchaser').

1.2

The general terms and conditions of Purchaser shall be inapplicable even if we do not specifically object to their validity in a particular case. Further, the reference to correspondence that contains the general terms and conditions of Purchaser or of a third party or which makes reference to such shall in no way constitute any acceptance of the validity of such general terms and conditions. They shall not become a constituent part of any agreement even despite compelling activities on our part such as the rendering of a performance.

1.3

These General Terms and Conditions shall apply to all contracts pertaining to deliveries and performances rendered on our part as well as to any and all auxiliary performances.

§ 2 Quotation and Conclusion of Contracts

2.1

In as far as our quotations are expressly indicated as being 'without engagement', we shall be entitled to revoke such immediately even after acceptance by Purchaser.

2.2

Purchaser shall acquire no copyrights to either quotations or estimates we submit or which originate from third parties or to any drawings, calculations, descriptions, models, tools or any other auxiliary materials made available to Purchaser. This shall apply also to such material mentioned above that is expressly marked as 'confidential' or which by its very nature is of confidential character. Any forwarding of such materials mentioned shall require our approval in every case. Purchaser shall ensure such through corresponding agreements with employees or other persons acting knowingly and willingly on Purchaser's behalf. The materials mentioned shall be returned immediately at Purchaser's expense should a contract not materialise or no longer be required for the continued fulfilment of the contract.

§ 3 Prices

3.1

Unless indicated to the contrary in the order confirmation, our prices are quoted 'ex works' excluding packing and freight costs; these being invoiced separately.

3.2

The statutory rate of VAT is not included in our prices. This shall be invoiced under a separate item at the rate prescribed by legislation. In the case of foreign transactions, VAT shall be omitted from the invoice. However, Purchaser shall bear the charges and fees associated with the transfer into the recipient country – in particular customs duties – and additionally those statutory contributions and fees incurred in the recipient country itself.

3.3

Any discounts to be deducted shall be the subject of special agreements. Purchaser's general terms and conditions that envisage such discounts shall not apply.

3.4

Bills of exchange shall only be accepted after prior agreement and for the sake of fulfilment. Should payment be effected by bill of exchange, cheque or other type of payment instruments, Purchaser shall bear the costs of discounting and collection.

§ 4 Execution of Deliveries and Performances, Delivery and Performance Periods

4.1

Unless anything to the contrary has been agreed, Delivery shall be effected 'ex works'.

4.2

Commencement of the delivery or performance periods we indicate presupposes that all technical issues have been clarified.

4.3

Further, observation of our delivery and/or performance obligations presupposes punctual and proper fulfilment by purchaser. We shall be entitled to assert our plea for non-performance of the agreement to the full.

4.4

Should the party ordering be late in accepting delivery or infringe other duties to cooperate, we shall be entitled to demand compensation for any damage we may

have incurred as well as for any additional outlays. Any claims going beyond this shall not be affected.

4.5

When the prerequisites for § 4, Section 4 are given, the risk of a chance destruction of or an accidental deterioration in the subject matter to be delivered or performed shall transfer to Purchaser in that moment when same is late in accepting delivery.

4.6

In as far as it was agreed with Purchaser that our delivery or performance would not be effected at a specific point in time but within a certain period, we shall be entitled to effect delivery or to render our performance before expiry of the time period. Should a specific point in time have been agreed with Purchaser, we shall be entitled to effect delivery or to render our performance earlier provided we have advised within a reasonable period Purchaser accordingly of delivery or rendering of the performance. This shall not apply when we can recognise reasons why the delivery can only be effected at the agreed point in time.

4.7

Unless anything to the contrary has been agreed, Purchaser shall – in the case of contracts that entitle same to call up partial quantities from a blanket order for goods – be obliged to place orders in good time for approximately the same monthly quantities and types. Should Purchaser not call up orders in good time and/or not split orders accordingly, we shall be entitled – after futile expiry of a reasonable extension period – to split the order ourselves and to deliver the goods. Should Purchaser on several occasions not call up orders or not do so in good time and/or not split orders accordingly or not do so in good time, we shall be entitled – after issuing a prior caution – to withdraw from the entire contract. The claims to compensation we are entitled to from the legal point of view shall be unaffected by this.

4.8

In the case of call up orders as per § 4, Section 7 of these General Terms and Conditions, we shall be entitled to procure material for the entire order and to manufacture the complete order quantity unless any agreement to the contrary has been concluded. No technical modifications required by Purchaser can be accommodated after placement of the order.

4.9

Any short or excess shipment quantities customary in the trade shall be permissible.

§ 5 Delays in Delivery

5.1



Any disruptions to business caused by acts of God, strikes and lock-outs which we are not responsible for, or any lack of factory supplies and/or raw materials shall entitle us to withdraw from the non-fulfilled part of the contract when the circumstances do not only make the delivery or performance impossible for a temporary period and, additionally, when such could not be envisaged when the contract was concluded.

5.2

Should we become late with a delivery or performance or should a delivery or performance become impossible, claims for compensation on the part of Purchaser shall be limited in accordance with § 8 of these General Terms and Conditions.

§ 6 Place of Fulfilment, Despatch, Packing, Transfer of Risk

6.1

The place of fulfilment for any and all obligations arising out of the contractual relationship with Purchaser shall be Wuppertal.

6.2

Unless agreed to the contrary, the risk shall be transferred to Purchaser, at the latest, when the subject matter of the delivery is handed over to the forwarding agency, carrier or any other company commissioned with implementing despatch.

6.3

The shipment shall only be insured against theft, breakage, fire, transport and water hazards or other insurable risks at the express wish of Purchaser and at Purchaser's expense.

§ 7 Warranty

7.1

Articles supplied by us must be carefully examined immediately following delivery to Purchaser or third party specified by Purchaser. The articles are deemed to have been approved and/or accepted if any defect which would have been discovered during a careful examination has not been notified to us within three days, whereby the definitive date of any complaint is the date of despatch of that complaint. Should the defect not have been identifiable upon careful examination, then the obligation to lodge an immediate complaint shall apply from the time of discovery of the defect.

7.2

Insofar as there is a defect in supply or performance for which we are responsible, we undertake, at our sole discretion, either to correct the defect or provide a



replacement. In the case of defect correction, we undertake to pay all costs necessary for correcting the defect, in particular transportation costs, transport tolls and dues, labour and material costs subject to such costs not being increased through the purchased article being brought to a place other than the original place of despatch. This provision shall not apply if the bringing to another place is in accordance with the correct usage of the supplied article. Insofar as we choose to fulfil our obligations in the form of a replacement delivery, then the defective supplied article must be returned to us carriage paid, whereby the purchaser undertakes to select the cheapest mode of shipment.

7.3

The term of the warranty shall be one year and shall begin with the time of delivery to Purchaser or the third party specified by Purchaser.

7.4

The supply of second-hand articles shall be excluded from warranty.

§ 8 Claims for Compensation

8.1

We shall be liable – irrespective of the legal circumstances – only for intentional and grossly negligent behaviour on the part of our corporate or vicarious agents – without considering the degree of blame – for damage caused by injury to life, body or health.

8.2

Further, we shall also be liable for ordinary negligence on the part of our corporate or vicarious agents in the event of any delay in performance or the infringement of other cardinal obligations. In such cases our liability shall be limited to such damages as could have been realistically anticipated when concluding the contract.

8.3

All limitations of liability shall also apply to the case when the infringement of a contractual obligation represents, at the same time, an unlawful act.

§ 9 Reservation of Ownership

9.1

We shall reserve the right of ownership to the subject matter of the delivery until receipt of all payments associated with the delivery agreement. Should the ordering party's conduct be in violation of the contract, in particular in the case of a delay in payment, we shall be entitled – after futile expiry of a reasonable extension period – to withdraw from the contract and to recover the subject matter of the delivery.



9.2

Purchaser shall be obliged to look after the subject matter of the delivery and to treat it with care.

9.3

In the case of attachments or other interventions by third parties, Purchaser shall inform us immediately in writing to enable us to bring action as per § 771 of the German Code of Civil Procedure. In as far as the third party is not able to compensate us for the court costs and out of court settlement costs associated with action as per § 771 of the German Code of Civil Procedure, the ordering party shall be liable for the damage we incur.

9.4

Purchaser shall be entitled to resell the subject matter of the delivery in a normal business transaction. However, Purchaser shall assign as of now all claims it has against its purchasers or third parties from the resale and this to the amount of the final invoice sum (including VAT) of our demands irrespective of whether the subject matter of the delivery is resold with or without any additional processing. Purchaser shall remain authorised to collect this claim even after assignment. Our entitlement to collect this claim ourselves shall remain unaffected by this. However, we undertake not to collect this claim as long as Purchaser fulfils its obligations from the revenues achieved, does not get into arrears with payments and, in particular, no application to open insolvency proceedings has been filed and no payments have been suspended. However, should this be the case, we can insist that Purchaser notifies us of the assigned claim and its debtor, hands over all the associated documentation and informs the debtor (third party) of the assignment.

9.5

Any processing or reconstruction of the subject matter of the delivery by Purchaser shall always be implemented on our behalf. Should the subject matter of the delivery be processed/combined with other objects, not belonging to us, we shall obtain a part ownership in the new object to the extent of the ratio of the value of the subject matter of the delivery (final invoice amount including VAT) to the other processed/combined objects at that point in time when processed. Besides this, the same provisions shall apply to the object ensuing from processing operations as to goods delivered under reservation of ownership.

9.6

Should the subject matter of the delivery be mixed inseparably with other objects, not belonging to us, we shall obtain a part ownership in the new object to the extent of the ratio of the value of the subject matter of the delivery (final invoice amount including VAT) to the other mixed objects at that point in time when mixing occurs. Should such mixing take place in such a way that Purchaser's object can be regarded as the main object, it shall be deemed as agreed that Purchaser assigns to us a proportionate part ownership. Purchaser shall hold in safe custody the ensuing sole ownership or part ownership for us.

9.7

To secure our claims, Purchaser shall also assign the claims that ensue against a third party through the connection of the subject matter of the delivery with real estate.

9.8

We undertake at the request of Purchaser to release collateral we are entitled to in as far as the realisable value of our collateral exceeds the secured claim by more than 10 %. We shall decide upon which collateral to release.

§ 10 Terms of Payment

10.1

Our invoice amounts are to be paid within 30 days without any deductions unless agreed to the contrary. After expiry of this period, Purchaser shall be deemed as in arrears without any reminder on our part being necessary.

10.2

Purchaser shall only be entitled to set-off against such sums Purchaser is entitled to when such claims have been legally established or are undisputed. The same shall apply to any right of retention.

§ 11 Written Form and Final Provisions

11.1

Any provisions deviating from these General Terms and Conditions shall need to be in writing to be effective. This shall not apply to agreements made with our CEOs or agents with full commercial authority.

11.2

Venue for any and all disputes arising out of the business relationship between ourselves and Purchaser shall be Wuppertal. However, we shall also be entitled to proceed against Purchaser at Purchaser's general venue as well as at that location to which the subject matter of delivery was despatched at Purchaser's request.

11.3

All legal relationships associated with the entering into, implementation or termination of this agreement shall be governed by the material law of the Federal Republic of Germany, excluding UN Commercial Law. This shall also apply when they are based on delictual or any other statutory grounds.