

## Terms and Conditions of Supply and Payment

Last revised: January 2002

### 1. General points and scope of validity

- 1.1 Our Terms and Conditions of Supply and Payment shall apply exclusively. We do not acknowledge any terms and conditions of supply and payment used by the Customer that contradict or deviate from ours unless we have specifically agreed to their validity. Our Terms and Conditions of Supply and Payment shall apply even if we are aware of any terms and conditions of supply and payment used by the customer that contradict or deviate from ours and make the delivery to the Customer without reservation.
- 1.2 All agreements made between us and the customer for the purpose of executing this contract shall be stated in writing in this contract.
- 1.3 Our Terms and Conditions of Supply and Payment shall only apply to transactions with companies, legal entities under public law, and special assets within the meaning of Article 310 of the Code of Civil Law.

### 2. Offers and related documentation

- 2.1 Our offers are non-binding unless anything to the contrary is contained in our confirmation of order.
- 2.2 Our confirmation of order is produced automatically and is valid even without a signature.
- 2.3 We reserve rights of ownership and copyright over illustrations, drawings, cost/price calculations, and other documentation. This shall also apply to such written documentation as is designated "Confidential". The Customer shall not pass these on to any third party without having first obtained our express written consent.

### 3. Prices and terms of payment

- 3.1 Unless our confirmation of order contains anything to the contrary, our prices shall apply ex-works and shall not include packing, which shall be invoiced separately.
- 3.2 We reserve the right to adjust our prices by an appropriate amount if, after the contract has been entered into, cost reductions or cost increases occur particularly as a result of collective wage agreements or changes in the prices of materials. We shall present the Customer with substantiation of these changes on request.
- 3.3 Our prices do not include the statutory Value Added Tax. This shall be shown separately in the invoice at the statutory rate in force on the date of invoice.
- 3.4 Prompt-payment discount shall not be applied unless it has been specially agreed in writing.
- 3.5 Unless our confirmation of order contains anything to the contrary, the net purchase price shall be due for payment without deduction within 30 days of the invoice date. In the event of the Customer falling into arrears of payment, we shall be entitled to charge interest on the arrears at a rate 8 percentage points above the basic rate of interest (see Article 247 and Article 288 paragraph 2 of the Code of Civil Law). If we are able to demonstrate that we have suffered any greater loss through the arrears we shall be entitled to the appropriate compensation. The Customer shall be entitled, however, to demonstrate to us that we have incurred a far smaller loss or no loss at all as a result of the arrears of payment.
- 3.6 The Customer shall not be entitled to apply offset unless his claim has been confirmed by a Court or is undisputed, or if we have acknowledged it. The Customer shall likewise have no right of retention in respect of disputed counter-claims.

3.7 We only accept bills-of-exchange, cheques, and other payment instruction documents by prior agreement and by way of assisting execution of payment. The Customer shall bear any costs incurred in collection or as bank interest or charges. Discount charges shall be levied on bills-of-exchange at a rate 8 percentage points above the basic rate of interest (see Article 247 and Article 288 paragraph 2 of the Code of Civil Law).

3.8 If the Customer falls into arrears on his payment obligations towards us under this or any other contract, or if we become aware of any circumstances that could result in the risk of inadequate solvency on the Customer's part, we shall be entitled to declare all accounts receivable under this or any other contract immediately due for payment. In any such case we shall also be entitled, without prejudice to any other claims, to require payment in advance of delivery or collateral for the invoice amount.

#### **4. Delivery date, part deliveries, and differences in unit quantities**

4.1 The delivery period that we define shall not start until all technical questions have been clarified.

4.2 We shall not be under any obligation to meet our delivery date unless and until the Customer has met all his obligations properly and punctually. We reserve the right to the objection on the grounds of non-fulfilment of contract.

4.3 If the Customer falls into arrears in inspecting and accepting the goods, or if he violates any other obligation of co-operation, we shall be entitled to require compensation for any losses we have suffered up to that point in time, including additional costs. We reserve the right to raise claims over and above the foregoing.

4.4 If the circumstances defined in sub-clause 4.3 arise, the risk of accidental loss or deterioration of the contract goods shall be transferred to the Customer at the point in time at which he fell into arrears or debt.

4.5 We shall bear legal liability under statutory regulations if the underlying purchase contract is a "fixed-time transaction" under the definition of a *Fixgeschäft* given in Article 376 of the Code of Commercial Law (i.e. if time is of the essence). We shall also bear legal liability under statutory regulations if the Customer is entitled, as a result of a delay in delivery for which we are responsible, to claim that he has no further interest in the further discharge of the contract.

4.6 We shall also bear legal liability under statutory regulations if the delay in delivery has arisen from a violation of the contract for which we are responsible and which was committed with intent or in gross negligence. Any culpability on the part of our representatives or vicarious agents shall be ascribed to us. If the delay in delivery is not due to any violation of the contract for which we are responsible and which was committed with intent or in gross negligence, our liability for damages shall be limited to such losses as are foreseeable and typical of such circumstances.

4.7 We shall bear legal liability under statutory regulations if the delay in delivery for which we are responsible has been caused by the culpable violation of a major contractual obligation, but in any such case our liability for damages shall be limited to such losses as are foreseeable and typical of such circumstances.

4.8 If the delay in delivery is due to minor negligence and the violation of a minor contractual obligation, we shall not be liable for damages at all.

4.9 If the delay in delivery is due to a violation of an obligation for which we are not responsible and does not consist of a defect in the contractual goods, the Customer shall not be entitled to rescind the contract.

4.10 We shall be entitled to deliver part-consignments and to invoice them separately.

## 5. Transfer of risk, and packing

- 5.1 Delivery terms shall be ex-works unless anything to the contrary is stated in our confirmation of order.
- 5.2 Transit and other packaging shall not be taken back under the provisions of the Packaging Ordinance except for returnable packaging. The Customer shall be under an obligation to dispose of the packing material at his own expense.
- 5.3 If and to the extent that the customer so requests, we shall cover the delivery with a transit insurance policy. The Customer shall bear any costs thus incurred.

## 6. Customer's complaints, degree of culpability, and legal liability

- 6.1 The Customer shall have no right to raise complaints concerning defects or deficiencies in the goods supplied unless he has met his obligations under Article 377 of the Code of Commercial Law to examine them and raise the relevant complaints.
- 6.2 The information in the descriptions we issue of our goods and services in our catalogues and in any other advertising messages shall only represent the "condition" of the goods in the sense defined as *Beschaffenheit* in Article 434 paragraph 1 sentence 3 of the Code of Civil Law if they relate to our contract goods and their characteristics.
- 6.3 We shall bear the cost of work necessitated for the purpose of retroactively fulfilling the contract, meaning in particular the cost of transport, travel, labour, and materials, provided that these have not been increased through the contract goods having been brought to any place other than the place of execution.
- 6.4 If the attempt at retroactive fulfilment of the contract that the Customer has requested under Article 439 of the Code of Civil Law, without any obligations having been violated for reasons for which we are responsible or with intent or in gross negligence, come to nothing, the Customer shall be entitled at his own discretion to rescind the contract or claim a corresponding reduction in the purchase price.
- 6.5 We shall bear legal liability under statutory regulations if the Customer claims damages on the grounds of our or any of our representatives or vicarious agents having acted with intent or in gross negligence, or on the grounds of a guarantee or purchasing risk. We shall also bear legal liability under statutory regulations for damage to life and limb, bodily injury, or harm to health. We shall also bear legal liability under the statutory regulations of the Product Liability Act.
- 6.6 In any instance of only minor negligence in the violation of a major obligation, our liability for damages shall be limited to such losses as are foreseeable and typical of such circumstances.
- 6.7 Apart from the foregoing, we shall bear no legal liability whatever claims are made on whatever legal grounds.
- 6.8 If liability towards us for damages is restricted or ruled out, this shall also apply to the personal claims for damages by our staff, employees, co-workers, representatives, and vicarious agents.
- 6.9 The Customer's right to require retroactive fulfilment of the contract (i.e. rectification of defects or the supply of goods free of defects), reduction (in the purchase price), or cancellation of the contract on the grounds of defects in the contract goods shall fall under the statute of limitations after 12 months counting from the date of the transfer of risk or from the date of delivery of the contract goods at the latest. The Customer's claims for damages shall fall under the statute of limitations after 24 months. Apart from this the normal statute of limitations defined in Article 195 of the Code of Civil Law shall apply.

## 7. Securing of retention of title

- 7.1 We shall retain title over the contract goods until all payments have been received under the contract of supply with the Customer. If we have agreed with the Customer that payment of the purchase price shall be made on the basis of the cheque / bill-of-exchange process, this retention shall also cover the period of time until the Customer has honoured the bill-of-exchange that we have accepted and shall not be expunged by the amount being credited to us from the cheque we have received. In the event of the Customer violating the contract, meaning especially if he falls into arrears of payment, we shall be entitled to recover the goods. Our recovery of the goods shall not be construed as a cancellation of the contract unless we have expressly declared in writing that it is to be cancelled. Any attachment by us of the contract goods shall always be deemed to be a cancellation of the contract. If we take the contract goods back we shall be authorised to dispose of them elsewhere. The proceeds from any such disposal shall be accredited to the Customer's payment liability minus the appropriate disposal costs.
- 7.2 The Customer shall be under an obligation to handle the contract goods with care and under a particular obligation to insure them at his own expense against damage by fire, water, or theft at their full replacement value. If servicing or maintenance work is necessary, the Customer shall arrange for this to be done punctually and at his own expense.
- 7.3 In the event of an attachment order or any other intervention by a third party, the Customer shall inform us in writing and without delay so that we can arrange for the order to be rescinded under the provisions of Article 771 of the Civil Procedures Ordinance. If the third party is unable to reimburse us for the court and out-of-court costs of an action under the same Article 771, the Customer shall bear liability for any loss we may have incurred.
- 7.4 The Customer shall be entitled to resell the contract goods as part of his normal course of business but transfers to us here and now all claims to payment that may accrue to him against his customer or any third party from the resale, up to the amount of our invoice amount (including VAT), regardless of whether or not the contract goods have been further processed before being resold. Despite this transfer the Customer shall be authorised to collect payment. This shall be without impact on our right to collect payment. However, we undertake not to collect payment provided the Customer meets his payment obligations from the proceeds he receives, does not fall into arrears of payment, and in particular provided that no application is made for the opening of insolvency proceedings and that he does not cease to make payments. If this is the case, however, we shall have the right to require the Customer to inform us of his receivable accounts and his debtors, to provide all information necessary for collecting payment, to surrender all related documents, and to inform his debtors (third parties) of the transfer.
- 7.5 Any processing or conversion of the contract goods by the Customer shall always be deemed to have been carried out on our behalf. If the contract goods are processed together with other objects that do not belong to us, we shall be deemed to have acquired co-ownership over the new object in the same proportion as the value of the contract goods (based on the final invoice amount including VAT) to the value of the other objects at the time of processing. The object created by processing shall then be subject to the same restrictions as all other goods supplied under retention of title.
- 7.6 If the contract goods are combined inextricably with other objects that do not belong to us, we shall be deemed to have acquired co-ownership over the newly mixed object in the same proportion as the value of the contract goods (based on the final invoice amount including VAT) to the value of the other objects at the time of mixing. If the manner of the mixing is such that the Customer's product is regarded as the main object, it is hereby agreed that the Customer shall transfer co-ownership rights to us. The Customer shall thus retain on our behalf the sole ownership or co-ownership thus created.
- 7.7 The Customer shall also transfer his claim to payment to us as collateral for our claim against him that accrues against a third party through the combination of the contract goods with land and/or buildings.

7.8 We shall be under an obligation to release the collateral to which we are entitled, when and if the Customer so requests, once the obtainable value of our collateral exceeds the outstanding account by more than 10 percent. We shall be entirely free in our selection of the collateral that we release.

**8. Data processing**

We shall be authorised to use the data on the Customer that we receive in connection with the business relationship within the ambit of the Federal Data Protection Act for our business purposes.

**9. Applicable law**

The laws of the Federal Republic of Germany shall apply exclusively. The United Nations Convention on the International Sale of Goods (CISG) shall have no application.

**10. Place of execution and jurisdiction**

10.1 If the Customer is a registered trader, the place of jurisdiction shall be our place of business. However, we shall be entitled to sue the Customer before the court geographically competent for his place of business.

10.2 Unless our confirmation of order states anything to the contrary, our place of business shall be the place of execution.