

**General Terms and Conditions of Sale, Delivery and Payment**

**I. Offer, Conditions of Delivery, Incoterms**

1. Offers, deliveries and other performances are made exclusively on the basis of the following conditions. These conditions are recognised through the placement of an order or acceptance of the delivery. They also apply to all future transactions, even where they are not agreed once more. For the content of international trade clauses, the Incoterms in their version valid at the point in time of the conclusion of the respective contract shall apply.
2. Our General Terms and Conditions of Business apply exclusively; contradictory or deviating conditions of the Purchaser shall not apply unless we have expressly consented in writing to their applicability.
3. The Vendor reserves all rights of ownership and copyright in the documents, illustrations and drawings pertaining to the offer. They may not be made available to third parties, and are to be returned to the Vendor forthwith in the event of the order not being placed. Documents of the Purchaser may be made available to third parties if the Vendor places sub-contracts with third parties.

**II. Performance, Part deliveries**

1. Contracts between the Purchaser and ourselves as Vendor come into being only upon our written confirmation of order. Authoritative for the content of the contract is our written confirmation of order. In relation to the safety conditions, the provisions in the country of the Vendor shall apply unless the Purchaser has produced evidence of deviating safety provisions applicable in its country. Additional safety conditions are agreed only against payment of a surcharge.
2. Should the price and the quality of an item not be specified, the price and product range lists of the Vendor shall apply in accordance with the purpose of use of the item known to the Vendor.
3. Part deliveries shall be permissible.

**III. Prices, Conditions of Payment, Letters of Credit**

1. In the absence of special agreement, the prices shall apply net ex works without installation or assembly and without packaging. The costs of returning the packaging material are not contained in the prices.
2. Should the factors which are decisive for the prices change in a period of more than 4 months between confirmation of the order and readiness for despatch, the Vendor shall be entitled to adjust the price.
3. Unless otherwise agreed, all payments shall be made in the currency valid at the location of the registered office of the Vendor without any deduction free payment point of the Vendor within 30 days, calculated from the date of invoice.
4. Should the Purchaser be in default with the agreed payments for more than 6 weeks, the remaining payments shall immediately become due and payable, and the Vendor may cancel the contract. In so far as the Vendor can claim damages from the Purchaser, it may, without proof of the amount of damage, demand 15 % of the purchase price by way of compensation. The Vendor reserves the right to claim a provable higher amount of damage suffered. Default interest shall be payable at a rate of 8 % above the base interest rate.

5. A significant deterioration in the financial situation of the Purchaser which, applying normal bank criteria, considerably reduces the creditworthiness of the Purchaser shall entitle the Vendor, without prejudice to other rights, to fulfil the orders not yet performed only against simultaneous payment. In the same circumstances, claims to payment of the Vendor against the Purchaser shall immediately become due for payment.
6. Bills of exchange and cheques are only accepted following special agreement and only on account of payment and subject to payment of all collection and discount charges. Payments shall be deemed to have been effected only when the amount is finally available for disposition on an account of the Vendor.
7. In the case of payments by letter of credit, the "Uniform Guidelines and Practice for Documentary Letters of Credit", issued by the International Chamber of Commerce Paris, in the version valid for the time being, are to be observed.
8. Payments shall be used to settle the respectively oldest items of account plus the accrued default interest and costs, namely in the sequence: costs, interest, main claim.

#### **IV. Delivery of the goods (Place of delivery, Delivery period, Default)**

1. The delivery period shall commence with the despatch of the confirmation of order, but not before the furnishing of the documents, approvals and releases to be procured by the Purchaser, and not before receipt of any agreed payment on account.
2. The delivery period shall be deemed to have been met if, by its expiration, the object of delivery has left the works or the readiness for despatch has been notified.
3. Delivery periods and delivery dates shall be extended by a reasonable period in the case of force majeure, industrial dispute measures, measures on the part of authorities either in inland or abroad not resulting from the fault of the Vendor, power failure not resulting from the fault of the Vendor or unforeseeable, serious interruptions and restrictions in operations at the Vendor not resulting from its fault, including such as are a result of an impairment in the agreed supply of raw materials or other cases of force majeure, to the extent that such impediments provably have considerable influence on the production or delivery of the object of delivery. This shall also apply if the circumstances arise at the works of sub-contractors. The Purchaser shall in the case of any delay in delivery be entitled, following the expiration of a reasonable extension of time to be set by it in writing, which must be of at least two weeks, to refuse acceptance of the delayed deliveries. Beyond this, the Purchaser shall have no claims against the Vendor in the said cases.
4. In the event of default in delivery or the impossibility of delivery, any claims to damages to which the Purchaser may be entitled shall be limited to such extent that damages may only be claimed on account of the foreseeable loss. The foregoing limitation of liability shall not apply in so far as the reason for the default in performance or the impossibility of performance is a result of the deliberate misconduct or gross negligence of a legal representative or a vicarious agent of the Vendor.
5. Should the despatch be delayed at the wish of the Purchaser, it shall, beginning one month following notification of the readiness for despatch, be charged with the costs arising through the storage, but in the case of storage in the works of the Vendor with at least ½ % of the invoice amount for each month.  
The Vendor shall, however, be entitled, after setting a reasonable deadline and fruitless expiration of the same, otherwise to dispose over the object of delivery and to make delivery to the Purchaser after a reasonable extension of time.

#### **V. Passing of risk**

In all deliveries, the risk of the accidental loss or incidental deterioration of objects of delivery shall pass to the Purchaser at the point in time at which the goods are transferred by the Vendor to the first carrier, even where part deliveries are made or the

Vendor has also assumed other performances e.g. the transport costs or the delivery and installation.

In the case of the transport being carried out by employees of the Vendor or a carrier belonging to it, the risk shall pass at the commencement of the transport operation.

At the request of the Purchaser, the consignment shall be insured by the Vendor at the cost of the Purchaser against theft, breakage, transport, fire and water damage and also against other insurable risks.

Should the despatch be delayed by reason of circumstances for which the Vendor is not responsible, the risk shall pass to the Purchaser from the date of the readiness for despatch; however, the Vendor shall be obliged at the request and cost of the Purchaser to effect such insurance as the latter demands.

## **VI. Reservation of title**

1. The Vendor reserves ownership in each individual item sent to the Purchaser until the Purchaser has paid all outstanding claims of the Vendor, regardless of whether the claims exist in relation to the goods or from any other grounds; the Purchaser shall, however, be entitled to process and/or to sell the goods within the scope of the normal course of business. Prior to the passing of title in the individual items, the Purchaser shall keep the same in safe custody as bailee for the Vendor and store the goods in such a way that they are recognisable as the property of the Vendor.

2. In the case of processing of the goods delivered or their combination with material of third parties, the Vendor shall acquire co-ownership in the new item produced in the ratio of the value of the goods subject to the reservation of title to the value of the new item created through the processing. For the valuation, the point in time of the processing shall be decisive for both the value of the goods subject to the reservation of title and also for the value of the processing. The Purchaser shall, in carrying out the processing, act for the Vendor without acquiring any claims against it on account of the processing. The Purchaser shall be obliged to keep the goods the subject of the reservation of title carefully for the Vendor in safe custody.

In the case of re-sale of the new product by the Purchaser, the claim to the purchase price to which the Purchaser is entitled from the re-sale shall replace the product as security proportionately in accordance with Clause VI, para. 2, 1<sup>st</sup> and 2<sup>nd</sup> sentences. The Purchaser assigns this proportional claim to the purchase price already now to the Vendor, who hereby accepts this assignment.

Should the goods purchased be resold by the Purchaser without any processing, the Purchaser already now assigns to the Vendor the claims to which it is entitled from such re-sales, together with all ancillary rights, up to the amount of the claim of the Vendor. The Vendor already now hereby accepts this assignment.

Should the Purchaser be in default of payment, or should it fail to comply with its obligations under the reservation of title, the Vendor may set a reasonable extension of time for performance or subsequent performance. Following the unsuccessful expiration of this extension of time, the Vendor shall be entitled to cancel the contract and to repossess the goods delivered. In such case, the Purchaser shall send an exact list of the goods subject to the reservation of title still in its possession, separate the goods and hand the same over to the Vendor. Following a warning together with a reasonable period of time, the goods may be sold for the best possible price on the open market, setting off the price charged to the Purchaser. In addition, the Purchaser in such case shall at the demand of the Vendor notify in writing the debtors of the claims assigned to the Vendor of the assignment, shall provide the Vendor with the necessary information in order for it to enforce its rights, submit and send it documents and also hand over bills of exchange.

Should the security exceed the claims of the Vendor by more than 20 %, the Vendor shall be obliged at the demand of the Purchaser to release the excess above and beyond such amount of the security to which it is entitled.

The Purchaser shall immediately notify the Vendor in writing if execution is levied over goods subject to the reservation of title or over goods in which the Vendor has rights of co-ownership or over claims transferred to the Vendor by assignment in advance. The Purchaser shall immediately notify both the organ levying the execution and the execution creditor that the goods are still subject to the reservation of title or the co-ownership of the Vendor or that the claim has been assigned to the Vendor.

3. Should the legal effectiveness of the reservation of title depend upon special registration or further conditions, the Purchaser shall be obliged to create such conditions or to inform the Vendor accordingly and to provide it with support.
4. Should the reservation of title not be admissible in the country of receipt, the Purchaser shall be obliged to provide security of equivalent worth.

## **VII. Warranty**

1. The Vendor shall only be liable for defects in the object of delivery to such extent as they arise in the course of proper use and under the operational conditions stipulated by the Vendor for the object and are due to faulty design or faulty construction. Defects and damage which result from improper use and treatment, unauthorised modification, subsequent measures and such like by the Customer or a third party and from normal wear and tear are excluded from the liability.
2. Furthermore, the liability of the Vendor is excluded for defects which result from the use of tools which the Purchaser has provided or stipulated, unless the Vendor was aware of the unsuitability of the tools or it was not aware of the same due to its deliberate misconduct or gross negligence.
3. In the case of production in accordance with drawings of the Purchaser, the Vendor shall only be liable to construct in accordance with the drawings. Where the Vendor is charged with the solution of design tasks, liability claims for defects in this connection may only be asserted if its products do not comply with the generally accepted standards of technology.
4. Written and illustrated advice given by the Vendor in relation to application is without obligation and without liability on its part, and does not release the Customer from carrying out its own tests of the products as to their suitability for the intended purposes.
5. The acceptance by the Purchaser or its agent precludes a warranty for recognisable defects in so far as the rights on account of the defects are not expressly reserved. Complaints in regard to quality or quantity are to be notified to the Vendor in writing without delay, but no later than 8 days following receipt of the goods, quoting the invoice and despatch number and also the product designation and product number; hidden defects shall be notified to the Vendor no later than 7 days following their discovery, but in no case later than 24 months following despatch or notification that they have been placed ready for despatch.
6. In the case of defective deliveries, the Vendor shall be liable to make subsequent performance, whereby the Vendor, having regard to the interests of the Purchaser, shall decide whether the subsequent performance be fulfilled through remedial measures or replacement delivery. The Purchaser shall be obliged to accept the subsequent performance. Should the subsequent performance fail, or where it cannot reasonably be expected of a party, the Purchaser shall, at its option, be entitled to cancel the contract or to demand a reasonable reduction in the purchase price. The subsequent performance shall be deemed to have failed following the second unsuccessful attempt at subsequent performance. In particular, the Vendor cannot reasonably be expected to provide subsequent performance where the subsequent performance is only possible with disproportionate costs.  
Warranty claims are excluded if the Purchaser has re-sold or further processed the goods after having discovered the defect or ought to have discovered the defect

unless it produces evidence that the sale or processing was necessary in order to prevent further damage.

7. All contractual claims against the Vendor shall lapse by limitation one year following delivery of the goods unless otherwise agreed to the contrary. The limitation period of one year shall not apply to damage arising from injury to life, body or health which results from a deliberate or grossly negligent breach of duty of a legal representative or vicarious agent. In the case of just an ordinary negligent breach of duty on the part of the Vendor or on the part of its organs or vicarious agents, its liability shall be limited to the foreseeable damage which might typically occur.
8. We assume no obligation to reimburse costs for parts provided by the Customer which within the scope of our production become waste material through coating, combination, mixing and such like.

### **VIII. Industrial property rights**

1. In respect of the objects of delivery manufactured in its works, the Vendor shall only be liable for the infringement of patents and other industrial property rights which are issued in the Federal Republic of Germany, and only in such manner that it supports the Purchaser in extra-judicial and judicial disputes with the owner of the patent, reimburses the Purchaser the costs of patent proceedings awarded against it which have become legally binding and non-appealable and indemnifies it against the damages awarded in favour of the owner of the patent through legally binding and non-appealable judgment.
2. In relation to such parts of the object of delivery which are not manufactured by the Vendor in its own works, the liability shall be limited to the assignment of the claims which the Vendor has against its sub-contractors.
3. The observance and compliance with the relevant foreign trade provisions and other laws of its own country and those of the country to which delivery is to be made falls within the sphere of responsibility of the Purchaser. The Purchaser shall draw the attention of the Vendor to particularities which arise from such provisions. Should, under the terms of the contractual agreements, the country of purchase or destination for the goods not be the Schweizerische Eidgenossenschaft – Confoederatio Helvetica, the Purchaser shall be obliged to familiarise itself with the industrial property rights existing in the respective country and to ensure that such are not infringed in the respective country. Should claims be made against the Vendor by third parties on account of the infringement of such foreign industrial property rights, the Purchaser shall be obliged to indemnify the Vendor against the costs of the legal pursuit of such rights and also all claims for payment imposed upon the Vendor in this connection, in particular claims for damages.

### **IX. Tools and attachments**

In respect of tools and attachments which are necessary for the performance of the contract and are manufactured by the Vendor, the latter will charge the costs of such tools. In the absence of special agreement, these shall be due and payable without any deduction as to half at the time of placing the order, and as to half no later than 30 days following the submission of type samples.

The cost of changes to the tools at the subsequent request of the Purchaser which necessitate a delay in the submission of the type samples shall be borne by the Purchaser and shall entitle the Vendor to demand the immediate reimbursement of the costs for tools incurred up until then.

The tools shall be used exclusively for orders of the Purchaser. They remain the property of the Vendor, because the cost of the tools charged to the Purchaser cover only 2/3 of the costs of the Vendor.

Should no order be placed by the Purchaser within 60 days following submission of the type samples, the Vendor shall be entitled to demand that share of the costs of the tools not charged to the Purchaser.

The tools and attachments shall be kept safely by the Vendor for follow-up orders, and insured by it against damage from water and fire. Should the Purchaser wish to have further-reaching insurance cover, it shall procure the same itself. The obligation of the Vendor to keep tools and attachments shall lapse if the Purchaser fails to place any further orders within 2 years following the last delivery from such tool.

The Vendor shall be obliged at its cost to keep the tools and attachments safely in a serviceable condition, and in particular to handle the same properly and professionally and to ensure that they are maintained and preserved, and also without delay at its own cost to perform properly and professionally any repair works which are necessary as a result of its own fault. The Purchaser shall as a basic principle assume the costs for repairs which are necessary as a result of normal wear and tear, and the costs for the replacement of a tool (e.g. new tool) where it has as a whole become unserviceable through normal wear and tear. In the absence of special agreement, the production quantities normal in the trade shall apply for the measure of normal use.

## **X. 1. Court venue**

For all disputes arising from the contractual relationship, legal proceedings shall, where the Customer is a businessman, a legal entity under public law or special assets constituted under public law provisions, be instituted at the court which is competent at the location of the main office of the Supplier. The Supplier shall also be entitled to sue at the main office of the Customer.

## **X. 2. Applicable law**

The law of the Schweizerische Eidgenossenschaft – Confoederatio Helvetica - shall apply to these General Terms and Conditions of Sale, Delivery and Payment and to the entire legal relationships between the Vendor and the Purchaser. The application of the Uniform UN Law on the International Sale of Goods (CISG/UNCITRAL) is excluded.