

## **General terms of delivery and payment (Terms and conditions of sale)**

### **§ 1**

#### **General – purview of terms and conditions**

(1) We operate as in the field of resale and as intermediaries (middlemen). These general terms of delivery and payment (terms and conditions of sale) apply to companies (§ 14 BGB\*) and legal entities under public law and/or separate public legal assets (clients). They also apply to future contractual settlements with customers with whom we conduct business on a regular basis (regular deliveries).

(2) Our terms and conditions of sale are exclusive. Clients' terms which contradict or deviate from our terms and conditions of sale will not be recognised, unless we have specifically agreed to them in writing. Our terms and conditions of sale apply even if we supply a client without reservation, in the knowledge that the customers' terms contradict or deviate from our terms and conditions of sale.

(3) Agreements which are made between us and the client in order to facilitate a settlement (contract) shall be confirmed in writing. Communication via facsimile or e-mail is also deemed as being in writing.

(4) Verbal agreements, assurances, promises and guarantees given by our staff or other people in connection with the conclusion or the alteration of the contract shall only become binding after we confirm them in writing. Communication via facsimile or e-mail is also deemed as being in writing.

### **§ 2**

#### **Offers – documents pertaining to offers**

(1) If the order is deemed as being an offer in accordance with § 145 BGB\*, we can accept the order, in an individual case, within a reasonable amount of time, which shall be at least two weeks.

(2) We shall retain copyrights and ownership rights to diagrams, drafts, calculations and other documents. This also applies to written documents that have been labelled 'confidential'. The client must obtain our permission in writing if he wishes to hand them over to a third party.

(3) Our offers are revocable until the client has accepted them.

### **§ 3**

#### **Prices – terms of payment**

(1) Our prices are 'ex works' (Incoterms 2000) unless otherwise agreed or stipulated in our confirmation of order.

(2) Our prices do not include VAT. It will be raised, as defined by law, on the date on which the invoice is written.

(3) Discount can only be deducted if stated in writing.

(4) Our prices are 30 days net, unless otherwise agreed or stated in our confirmation of order. Payment must be made in such a manner that the amount is at our disposal on the settlement date. Any costs and expenses arising from such transactions shall be borne by the client. Judicial rules shall apply if there are delays in payment.

(5) The client shall be granted set-off rights only if his counterclaims have been legally ascertained, are without doubt or have been recognised by us. The client is authorised to exercise his rights to retention (§§ 273, 320 BGB\*) insomuch as his counterclaims pertain to the same contractual situation, have been legally ascertained, are without doubt or have been recognised by us.

## **§ 4 Delivery – delivery time**

(1) Our delivery obligations are under the proviso that we receive our goods punctually and as stipulated. With regard to import business, they are under the additional proviso that the necessary import and export documents (eg documents for restricted goods, import and export licences) are received on time. The above-mentioned reservations do not apply if we are responsible for delays in delivery, incorrect deliveries and late delivery of the necessary documents.

(2) The observation of our delivery obligations assumes the client's punctual fulfilment of his duties in accordance with the contract. We reserve the right to raise legal objection to contractual non-fulfilment (§ 320 BGB\*) as well exercising our rights to retention, if necessary. With regard to clients whom we do business with on a regular basis (regular deliveries), we can refuse to deliver goods if our counterclaims to payment are not satisfied. This also applies to our demands for payment for deliveries which have already been effected (ie if the client is in arrears with payments due for regular deliveries). If, after the contract has been concluded, it becomes apparent that the client is in danger of not being able to satisfy our counterclaims to payment or meet our demands for payment, deliveries, too, can be refused.

(3) Deliveries are agreed on an individual basis. In order to meet deadlines regarding times of delivery, the following requirements have to be fulfilled: the conditions pertaining to the contract must be completely clear. Any authorisation required must be available on demand; the client must be able to present all of the documents necessary, including letters of credit, payment guarantees, collateral and securities or payments in advance, according to what has been agreed upon.

(4) If a client is supplied on a regular basis, we would request him to furnish us with his monthly requirements in advance. The quantities should be roughly the same and the dates of delivery should also be supplied. If the client fails to supply the quantities and delivery dates or is late in doing so, we are entitled to allocate quantities and dates of delivery at our discretion.

(5) If the client defaults on acceptance or is culpably in breach of his duty to cooperate (principal or secondary contractual obligations), we are entitled to compensation for any damages or additional expenses incurred. We reserve the right to claims resulting from the above.

(6) Should the events as described in paragraph (5) happen, and should the accidental loss or deterioration of the goods in question occur, then the risk will pass to the client at that point in time in which he defaults on acceptance or debt.

(7) Force majeure entitles us to postpone delivery for the duration of the delay and a reasonable amount of time for preparatory purposes. This also applies if such events happen during a delay which has already occurred. In the face of force majeure all circumstances which complicate delivery or indeed make it impossible, and for which we are not to blame, are on a par. These include measures of political or economic nature, those relating to currency or other sovereign matters, strikes, lockouts, obstructions on the routes of transport, import and customs clearance. It makes no difference whether these circumstance occur on our premises, the premises of one of our suppliers or the place from which the goods are delivered. If one of the parties to the contract is unable to reasonably meet his obligations as a result of the above-mentioned circumstances, in particular if the fulfilment of the contract in essential parts will be delayed by more than 12 months, then he can request the rescission of the contract. If, in the course of such a delay, our purchasing costs and/or our transport and/or clearance costs (cost prices) change by more than 20 % since the point of time at which the contract was concluded, we are entitled to make reasonable price adjustments at our discretion.

## **§ 5**

### **Passing of risks – packaging charges – quantities/minor deviations**

- (1) We deliver ‘ex works’ (Incoterms 2000), unless otherwise agreed or stipulated in our confirmation of order.
- (2) In general, the goods will be delivered without packaging and antitrust protection. If packaging is appropriate and in accordance with standard commercial practice, then the goods will be packed accordingly. Packaging, which is over and above the purposes required for transport, or special protection, eg for longer-term safekeeping or storage, have to be specifically agreed upon. The client shall bear the costs for such packaging and protective measures, unless specifically otherwise agreed.
- (3) Special arrangements apply to the taking back of packaging. We are neither responsible for the costs incurred sending back the packaging to us nor for the disposal of packaging materials.
- (4) If the clients so wishes, we will cover the delivery with transport insurance; the costs of such a policy shall be borne by the client, unless specifically otherwise agreed.
- (5) We are explicitly entitled to effect partial deliveries of a reasonable amount, especially to clients who receive regular deliveries. Minor deviations in the contractually agreed quantities, provided they are within the bounds of usual industrial standards, are permitted. If an item is denoted as ‘circa’, we are entitled to deliver up to 10 per cent more or less.
- (6) Unless otherwise agreed or stipulated in our confirmation of order, the risk, including the possible risk of loss, passes to the client when the goods are handed over to the haulage contractor or carrier, but at the latest, when the goods leave the place of delivery. If a place of delivery is not named in the confirmation of order, it will be our warehouse. The risk passes to the client as stated, even if a carriage-paid delivery (eg ‘carriage-free-delivery’ or ‘carriage and duty prepaid’) to the contractually determined place of destination has been agreed.

## **§ 6**

### **Description of the object of purchase – liability for defects - compensation**

- (1) It is the client’s responsibility to describe the details and specifications of the object of purchase (such as certain grades, qualities, deviations from any standards) completely, clearly and properly. The client shall bear the responsibility for incomplete or unclear particulars.
- (2) We shall only be liable for a certain grade, quality or a particular application or suitability if this has been explicitly agreed. Guarantees regarding composition, durability or anything else have to be explicitly agreed upon in writing. The content of a stipulated specification or an explicitly stated application does not, for instance, constitute a guarantee unless it has been expressly agreed upon in writing. We may agree to provide mill test certificates, declarations of conformity, test reports or similar documents (accompanying documents), but without an explicit agreement in writing, they do not constitute a guarantee or liability.
- (3) Clients’ warranty claims will only be considered on the assumption that they have fulfilled their duty of examination and requirement to give notice of defects properly and without delay. Documents which have been sent or handed over to the client, or the resale of the goods in question by the client, do not affect his duty of examination and requirement to give notice of defects. Warranty claims are out of the question if the customer fails to promptly examine the goods, where possible, after the normal course of business. If larger quantities have been delivered, the client is expected to conduct appropriate spot checks. If the client discovers a fault, he is required to inform us without delay (notice of defects). Latent faults should be reported within a fortnight of discovery at the latest and all other faults two weeks after delivery of the goods. The notice of defects should include the nature of the fault or deviation, the delivery (date of delivery, if possible) and a description of the item in question, so that we can identify the goods being claimed for and the delivery concerned. If a fault is first identified after the client’s customer has received the goods, despite the client’s prompt examination of the goods after the normal course of business, then the date of delivery to the client’s customer as well as the nature of the fault established must also be submitted. If requested, the goods being claimed for or a sample thereof must be sent to us at our expense. We reserve the right to charge the client for

transport and handling expenses as well as the cost of examining the goods (expert opinion fees, laboratory fees), should the claim be unjustified.

(4) In the case of a breach of fundamental contractual obligations we are liable for slight and gross negligence and intent. In the case of a breach of minor contractual obligations we are only liable for intent and gross negligence. In this context we are liable for our representatives' and vicarious agents' negligence as well as for our personal negligence. With the exception of wilful neglect of duty, our liability is limited to foreseeable typical damages. In the case of damages caused by delay (damages caused by default), this is extended to the value of the goods (net sales price) in question.

(5) Liability for culpable injury of life, body or health remains unaffected. This also applies to the obligatory liability according to the Product Liability Act.

(6) Providing nothing different has been regulated in the above mentioned, liability is out of the question.

(7) The period of limitation for warranty claims (including latent faults) is one year, counting from the delivery of the goods.

## **§ 7 General liability**

(1) Any additional liability for damages to that laid out in § 6 is – irrespective of the legal nature of the claim being made – out of the question. This applies particularly to claims for damages due to negligence at the conclusion of the contract, to other breaches of contractual obligations or tortious claims to compensation for material damages according to § 823 BGB\*.

(2) The limitations mentioned in paragraph (1) also apply if the client demands futile expenses instead of the appropriate compensation in a claim for damages.

(3) If the liability for damages against us is out of the question or limited, this also applies to the personal liability of our staff, employees, colleagues, representatives and vicarious agents.

## **§ 8 Retention of title assurance**

(1) We reserve the proprietary rights to the object of sale until all payments in accordance with the contract of delivery have been made. If the client breaches the contract, especially regarding default of payment, we are entitled to repossess the object of sale. After taking back the object of sale, we are entitled to utilise it. The proceeds from the utilisation – less our utilisation expenses – will be deducted from the client's liabilities.

(2) The client is obliged to handle the object of purchase with care. He is particularly obliged to insure the object of sale at his own expense against damages resulting from fire, water and theft, so that its original value is covered. If maintenance work and servicing is required, the client has to ensure that it is carried out in good time and at his own expense.

(3) The client is obliged to inform us without delay in the event of seizure or other intervention by a third party, so that we can file for action in accordance with § 771 ZPO\*\*. If the third party is not able to reimburse our judicial and out of court expense for filing an action in accordance with § 771 ZPO, the client will be liable for the expenses incurred by us.

(4) The client is entitled to resell the object of purchase in the proper course of business. At this point he assigns the claim to the gross value of the invoice (including VAT) pertaining to the object of purchase to us, irrespective of whether his customer or the third party receives the product in a processed form or its original state. If the client and his customer have a mutual or a current account into which the claim arising from the proceeds of the object of purchase is transferred, then the above-mentioned assignment of claim will continue in the client's favour (up to the total amount transferred to the current account arising from the proceedings of the resale): he will be entitled to the claim within his own claim on the balance of the mutual account.

(5) The client remains authorised to assert his right for payment for resale or on the balance of the current account even after he has assigned the claim. This does not affect our entitlement to assert this right ourselves. We shall commit ourselves not to exercise this right as long as the client fulfils his financial commitments on the proceeds he receives and does not default on payment. In particular, he must not have filed a petition for the opening of composition or insolvency proceedings or suspension of payments. Should this, however, be the case, we can demand that he make the assigned claims and its debtors known to us, that he furnish us with all the details necessary for collection, that he hand us all the documents pertaining to the matter and that he inform the debtors (third parties) of the signing over.

(6) The client always alters and processes the object of sale on our behalf. If the object of sale is amalgamated with other objects that do not belong to us, we become part-owners of the new object, the ratio being the value of the object of purchase (final amount on the invoice including VAT) proportional to the other amalgamated objects at the time of amalgamation. The same rules apply to the new object created through processing as to the object of purchase delivered with reservations.

(7) If the object of sale is irreversibly amalgamated with other objects that do not belong to us, we become part-owners of the new object, the ratio being the value of the object of purchase (final amount on the invoice including VAT) proportional to the other amalgamated objects at the time of amalgamation. If the amalgamation process results in the client's object becoming the main object, it is taken for granted that the client transfers proportional part-ownership to us. The client is empowered with the safekeeping of the sole proprietorship or part-ownership thus created on our behalf.

(8) In order to assure our claim against the client, he will assign his claims against a third party, that arise through the fusion of the object of sale with real estate, to us.

(9) We shall commit ourselves to release the sureties to which we are entitled, if the client so wishes, insomuch as the realisable value of our sureties exceeds the value of the assured claims by more than 10%; the choice of the sureties to be released lies at our discretion.

(10) If the object of purchase is transferred abroad before full payment has been effected, the customer is obliged to inform us without delay, notifying us of the country of destination. At our request he is obliged to assist us in the order and, if need be, in the registration of comparable foreign charging liens (eg right of lien/chattel mortgages, transfer of the claims arising from the resale of the goods sold on condition). We are entitled to publicise our right to retention assurance, including the assignment of a claim against a third party, and to file for prosecution.

## **§ 9**

### **Export into member states of the EU**

(1) If the client requires cross-border deliveries within the EU, he is required to tell us his sales tax identification number under which he declares his earned income tax in the EU. Failing to comply will result us having to raise sales tax on top of the prices agreed, as this is a legal requirement. The legal conditions for tax exemptions on delivery remain unaffected.

## **§ 10**

### **Place of jurisdiction – place of performance**

(1) The place of jurisdiction for both parties to the contract is Krefeld (Germany). However, we are entitled to prosecute the client at his general place of jurisdiction.

(2) German law applies to all aspects of deliveries to the client – and, as far as is legally possible, including conceivable noncontractual obligations. The application of the UN sales law is out of the question.

(3) The place of performance is Krefeld (Germany).

\* BGB (Bürgerliches Gesetzbuch) = the German civil code

\*\* ZPO