

## **Standard Terms and Conditions**

### **I. Validity of terms and conditions**

1. Any of our deliveries shall be exclusively subject to the following terms and conditions. These conditions shall govern any future individual contract and no repeated communication of the terms shall be necessary for future deliveries. Any standard terms of purchase or other general terms of contract furnished by the customer are expressly objected to. Such terms shall not be binding and no further objection on our part shall be necessary upon entering into the contract.
2. Any variation of these terms and conditions shall not be binding except as agreed in writing by us signed by one of our administrators (Geschäftsführer) or one of our legal representatives (Prokurist) within his power to represent our company.

### **II. Offers and conclusion of contract**

1. Our offers are not binding and are subject to change. Acceptance as well as any order must be made in writing or by telex to be legally effective.
2. Our prices are exclusive of VAT, if applicable. Prices include customary packaging and are deemed to be quoted ex works. All other costs and charges arising from transport, including but not limited to market dues shall be borne by the customer.
3. Any contract entered into shall be subject to the condition that we ourselves are supplied correctly and on time by our suppliers. However, the foregoing shall only apply where we are responsible for any non-delivery and particularly if we have not entered into a corresponding hedging transaction with our supplier. The customer will be notified forthwith of any non-availability of the goods in question. Any consideration will be refunded promptly. Any further demand of indemnity is waived.

### **III. Delivery Period and Time of Delivery**

1. If unpredictable circumstances and events beyond our control hinder us in fulfilling our obligations under the contract, we are allowed either to delay delivery of the goods for the occurrence of such hindrance plus a reasonable period of grace or to rescind the contract in respect of the part not yet fulfilled; the right to rescind the contract does not apply if the events referred to only cause marginal disruptions to our output capacity. Strikes and lock outs are deemed equal to those events referred to above, if they are causing relevant interruptions in carrying out deliveries, regardless whether such

actions occur on our or on any of our supplier's premises; this is however not applicable if we ourselves are responsible for the hindrance.

2. In the case of late delivery the customer can only claim compensation according to part VI paragraph 6 of these terms and conditions. Claims are limited to 0.5% of the invoiced amount for each week in which we are in default of delivery and the maximum amount shall not exceed 5% of the invoice value of the delayed goods; this limitation of liability is not applicable if the default in delivery results from our deliberate actions or gross negligence.
3. In the event that agreed delivery dates are not kept, the customer shall have the right to determine a reasonable time-limit for the delivery to be carried out; upon expiration of such time-limit the customer shall be entitled to rescind the contract. The customer shall not be entitled to claim compensation for damages in lieu of performance. This limitation shall not apply insofar as statutory law provides for a mandatory liability for typical and foreseeable damages resulting from deliberate or gross negligent acts or omissions or where we, as a result of negligent behaviour, are in breach of fundamental contractual duties for any typical or foreseeable damages resulting from it.

### **IV. Part Deliveries**

Part Deliveries are permissible, as long as they are in accordance with normal business practice or if they have their cause in the quantity and/or the characteristics of the delivery item .

### **V. Delivery and Transfer of Risk**

1. Place of performance for all delivery obligations shall be our branch.
2. Any delivery is subject to the condition that the risk of damage or loss of the goods shall be borne by the customer. Unless agreed otherwise, the risk shall pass to the customer at the latest upon handing over, from our side or from third persons on our behalf, the goods to the forwarding agent, the shipper or other persons instructed with their collection. Passing of the risk shall also take place if delivery is carried out by us or if we assume further duties to be carried out at the place of delivery or the costs for transportation. On request and at the customer's cost we are obligated to arrange for desired insurance cover.
3. If the goods are collected by the customer or through a haulage company appointed by the customer the risk shall pass to the customer with the beginning of loading; in such cases is the customer's responsibility to ensure that the loading, stowing and unloading of the goods is carried out safely and in accordance with the provisions of any relevant legislation. If we assist with the loading or unloading of the goods, such assistance is exclusively on the customer's request and risk. The customer hereby indemnifies us from

any claims for damages for unsafe loading, stowing and transportation and non-compliance with the relevant legislation during that process. The customer also indemnifies us from all disadvantages and/or charges through non-compliance with the Transport of Goods Act (*Güterkraftverkehrsgesetz*) or other similar laws by the appointed haulage company.

4. Complaints in regard to goods damaged during transport must be made directly to the haulage company with a copy to us within the relevant period.
5. If dispatch of the goods is delayed due to circumstances within the customer's control, the risk shall pass to the customer upon receipt of a notice announcing readiness for shipment.

## VI. Warranty/Liability

1. We warrant that our products conform to the specifications in our leaflets (product data sheet). These indications are deemed to be considered agreed standard of goods in sense of § 434 (1), 1° sentence BGB (German Civil Code) and Art 35 CISG; technical modifications as well as modifications in shape, colour and/or weight within normal limits are free. Specifications and characteristics different from what specified in our leaflets (product data sheet) are deemed an agreed characteristic feature only if and insofar this has been specifically agreed with the customer in writing signed by one of our administrators (*Geschäftsführer*) or one of our legal representatives (*Prokurist*) within his power to represent our company. Any information and consultations – to include those by means of and in connection with our specification leaflets – are based upon our experience and are made to the best of our knowledge; however, those representations are deemed to be not binding and cannot be considered a legal basis for whatever kind of claim of indemnity against us if not otherwise agreed in writing.
2. Upon delivery all goods must be checked forthwith. Notification of any defects must be made without delay and in writing, but in any event not later than by the close of business of the seventh working day following the delivery of the goods. If the customer does not submit a notification of defect the goods are deemed accepted, unless the fault was not detectable by inspection upon delivery. If such hidden defect manifests itself at a later date, a notification of defect must be made forthwith, failing which the goods are deemed accepted in respect of such defect.
3. In case of notification of defects the customer is obliged to hand over a sample of the goods that we delivered and that are considered defect. The sample should allow an independent expert to verify whether the goods comply or not with the agreed and binding characteristics of quality and whether the sample confirms with the sample stored by us. If changes of the composition of the

goods or differences between the complained goods and our stock sample were based on improper storage, treatment or use of the goods delivered, no warranty is given. The burden of proof is borne by the customer.

4. If a notification of defect is justified we will, at our sole discretion, effect re-delivery of the goods in question. The cost of such re-delivery shall be borne by the customer if incurred due to the fact that the goods are stored at a different place other than the customer's place of business, unless such storage is in accordance with the ordinary use of the goods and foreseeable for us. If re-delivery of the goods cannot be effected or if such re-delivery is deemed unreasonable for the customer or denied by us, the customer shall, in the case of a material breach of contract, be entitled to rescind the contract or, in all other cases, demand a reduction of the purchase price. Compensation for damages or other claims can only be asserted according to part VI. paragraph 6 of these terms and conditions.
5. Defect claims and all other contractual claims resulting from any breach of obligations on our side become statute-barred after one year from the date of delivery except if the delivered goods have been used in a for us foreseeable way for a building in accordance with their destined use and have caused a defect on the building in which case the statutory warranty period in regard to endangering life, body and health and gross misconduct is applicable. In that case the prescription terms foreseen by law are applicable.
6. The liability for any claim not explicitly referred to in these terms and conditions and specifically any claim for compensation and reimbursement for expenses resulting from any form of insufficient performance of the contract or tort is excluded. Such exclusion of liability does not apply to claims for wilful conduct (*Vorsatz*) or gross negligence or to claims relating to any loss of life or injury to body or health. We are also liable for claims relating to negligence (*einfache Fahrlässigkeit*) provided that we have accepted the procurement risk under the relevant contract or given a guarantee or if the claim relates to such duties which are essential in order to achieve the object of the contract and where the customer can rely upon strict compliance (*"Kardinalpflichten"*). In any event, our liability is limited to typical and predictable contractual damages with the exception of claims for intentional and gross negligent behaviour as well as claims relating to any loss of life or injury to body or health.

## VII. Retention of Title

1. Any goods delivered shall remain our sole and exclusive property until full payment of all outstanding amounts resulting from the business relationship with the customer has been received. If the customer makes payment by means of "Check-Bill (of Exchange)" ("*Scheck-Wechsel-Geschäft*"), the retention of title shall continue in effect even after a discharge of the customer's cheque until such time that the bill (of exchange) has been returned or declared invalid or until any recourse to the endorser is foreclosed.
2. The customer shall be entitled to resell the goods for which title has been retained (hereinafter referred to as the "privileged goods") only in the ordinary course of business. The customer is not allowed to pledge or assign the privileged goods or to dispose of them in any way which might violate or dishonour our ownership in the property. The customer herewith assigns to us any and all future receivables he will obtain vis-à-vis third parties from the sale of the privileged goods and we accept such assignment. The customer shall have the revocable right to collect, in his own name, the receivables assigned, but he shall account to us for it and hold the receivables as our fiduciary agent only. The authority to sell the privileged goods and to collect and hold the receivables is revocable if and when the customer is late with the payment of any monies due to us.
3. If the privileged goods are reshaped or processed, it happens on our behalf and we shall be deemed to be the producer. Irrespective of the foregoing, this shall not constitute any obligations on our part. If our (co-) ownership is discharged by means of combining or blending the privileged goods with others, then it is agreed that we, together with the customer, shall become (co-)owner of the goods produced at a proportionate level (based on the invoice value).
4. The customer is obligated to keep the retained goods properly stored for as long as title is retained by us.
5. In the case of the customer breaching the contract particularly if monies are overdue we are entitled to rescind the contract and, notwithstanding our other rights, demand the return of the goods.
6. If we are to deliver our goods to other jurisdictions where the above retention of title provisions do not provide the same level of security as in the Federal Republic of Germany then the customer shall explore the legal situation and to employ all means to provide us with equivalent security forthwith. If according to applicable local laws an effective protection or enforcement of our ownership would need a registration, filing or publication of our rights, then the customer shall co-operate with us in every respect and arrange for such filing, publication or registration in our favour.
7. Upon the customer's demand we are obligated to release any part of the collateral referred to above if the realisation value of such collateral held in our

favour exceeds the value of the total amount of the secured claims by more than 20%.

8. Upon our written demand the customer is obligated to obtain and maintain an insurance policy adequately protecting the privileged goods against all risks typically covered by property insurance.

## VIII. Payment

1. In the absence of any other agreement, our invoices become due for payment within 30 days after of the date of our invoice. From the due date onwards the customer owes interest charged pursuant to § 288 para. 2 of the German Civil Code (*BGB*).
2. The customer is deemed to be in default of payment upon receipt of a reminder note after the due date and in any event 15 days after the due date and receipt of our invoice or an equivalent payment request.
3. If the customer does not comply with his payment obligations and specifically if a customer's cheque is dishonoured or any outstanding payments are stopped, we are entitled to demand payment of the full amount outstanding, even if any check or any bill (*Wechsel*) has been accepted in lieu of payment.
4. The customer is entitled to offset our claims with his counter claims only if his claims are undisputed or if such claims are found valid by the courts in a final order. Further, the customer shall be entitled to enforce his right of retention against us only if the counter claim supporting the right to withhold performance is undisputed or has been found valid by the courts in a final court order.

## IX. Final Provisions

5. These terms and the entirety of our business relationship with the customer shall be governed by the laws of the Federal Republic of Germany.
6. Insofar as the customer is a merchant or a public corporation or if the customer's residuary jurisdiction is not within the Federal Republic of Germany, then 88471 Laupheim shall be deemed the exclusive place of jurisdiction for all and any direct or indirect disputes arising out of or in connection with the contract. We shall nevertheless be entitled to invoke our rights against the customer before the court having the general jurisdiction.
7. Should any provision within these terms and conditions be or become invalid, the validity of the remaining provisions or agreements shall not be affected as a result thereof.