

# General Terms and Conditions of Business

(Version 10/2002)

## I. General – scope of application

1. Our terms and conditions of sale shall apply exclusively; contradictory terms of Orderer or such deviating from our terms and conditions of sale shall only be acknowledged by us if we expressly approve of their validity in writing. Our terms and conditions of sale shall also apply if we have knowledge of contradictory terms of Orderer or such deviating from our terms and conditions of sale and nevertheless implement delivery to Orderer without reservations.
2. All agreements made between ourselves and Orderer for the purpose of performance of the present contract shall be recorded in the present contract in writing.
3. Our terms and conditions of sale shall only apply for companies within the meaning of § 310 sub-section 1 German Civil Code.

## II. Quotation and conclusion of contract

1. Orders shall be deemed accepted if they are either confirmed by us in writing or implemented without delay after receipt of the order or at the time agreed. In this case, the invoice shall be deemed an order confirmation.
2. Our written order confirmation shall be decisive for the scope of the delivery. Subsidiary verbal agreements, amendments or assurances shall require our written confirmation.
3. We reserve all property, copy and protection rights to illustrations, diagrams, other documents as well as samples and prototypes. The assignment of these rights shall require a written contract.
4. We give application consultancy to the best of our knowledge on the basis of our research work and experience. All statements and information about suitability and application of our goods shall however be non-committal and shall not release Buyer from its own examinations and experiments. Orderer shall be exclusively responsible for complying with statutory and official requirements in the application of our goods.

## III. Prices and payment terms and conditions

1. If nothing to the contrary can be seen from the order confirmation, our prices shall apply ex works. Statutory Value Added Tax shall not be included in our prices.
2. We shall be entitled to provide excess or short deliveries to the amount of 10% of the agreed scope of order per delivery, with the overall price then being adapted on the basis of the agreed unit price.
3. If nothing to the contrary can be seen from the order confirmation, the purchase price shall be due for payment net (without deduction) within 30 days of the date of the invoice. Statutory rules shall apply with regard to the consequences of arrears in payment. If Orderer falls into arrears with payment, we shall be entitled to demand default interest to the amount of 8 percentage points above the basic rate of interest p.a., §§ 288 sub-section 2, 247 German Civil Code.
4. Our claims shall become due for payment immediately if the payment terms agreed in the individual case are not complied with or circumstances become known which, in our due commercial discretion, are suited to reducing the creditworthiness of Orderer. In such cases, we shall also be entitled only to carry out outstanding deliveries against pre-payment and to withdraw from the contract following a suitable subsequent period.
5. We shall not be obliged to accept bills of exchange or cheques. Any possible such acceptance shall only be done on account of performance, § 364 sub-section 2 German Civil Code.
6. Rights of offsetting shall only accrue to Orderer if its counterclaims are legally effective, undisputed or have been acknowledged by us. No right of retention shall accrue to Orderer on account of disputed counterclaims.

## IV. Delivery period

1. Deadlines for deliveries and performances shall only be binding if they have been expressly confirmed by us in writing.
2. The start of the delivery period stated by us shall presuppose clarification of all technical questions. Compliance with our obligation to supply shall further presuppose punctual and proper fulfilment of Orderer's obligations. The right to the plea of non-performance of the contract shall remain reserved. The delivery period shall be complied with if the goods have left the factory or readiness for dispatch has been notified by its expiry. The delivery period shall be extended suitably in the event of measures in the course of industrial disputes, in particular strikes and lockouts, and in the occurrence of unforeseen incidents for which we are not answerable. This shall also apply if the circumstances occur with our sub-suppliers.
3. If Orderer is in arrears with acceptance or culpably breaches obligations to cooperation, we shall be entitled to claim reimbursement of the damage incurred by us, including all and any additional expenditure. The right to further claims shall be reserved.
4. Insofar as the prerequisites of sub-section (3) are fulfilled, the risk of chance destruction or chance deterioration of the object of purchase shall pass to Orderer at the time at which the latter has fallen into acceptance or debtor's arrears.
5. We shall be liable according to statutory provisions to the extent that the underlying purchase contract is a firm deal within the meaning of § 286 sub-section 2 no. 4 German Civil Code or of § 376 German Commercial Code. We shall also be liable according to statutory provisions insofar as Orderer is entitled to claim that its interest in the further performance of the contract has been forfeited as a result of an arrears in delivery for which we are answerable.
6. We shall further be liable according to statutory provisions to the extent that the arrears in delivery are based on a breach of contract by malice aforethought or gross negligence for which we are answerable; culpability of our representatives or vicarious agents shall be ascribed to us. Insofar as the arrears in delivery are not based on a deliberate breach of contract for which we are answerable, our damage liability shall be limited to the foreseeable typical damage.

7. We shall also be liable according to statutory provisions insofar as the arrears in delivery for which we are answerable shall be based on an essential breach of contract; in such a case, damage liability shall however be limited to the foreseeable typical damage.
8. Further statutory claims and rights of Orderer shall remain reserved.

## V. Passage of risk and dispatch

1. If nothing to the contrary can be seen from the order confirmation, delivery "ex works" shall be agreed. Risk shall pass to Orderer no later than dispatch of the goods, even if part performances are rendered or we have also taken on other performances, e.g. costs of dispatch or delivery.
2. Transport and all other packaging in accordance with the Packaging Ordinance shall not be taken back. Orderer shall attend to disposal at its own expense.

## VI. Liability for defects

1. Orderer's claims for defects shall presuppose that it has properly complied with its obligations to examine and notify defects pursuant to § 377 German Commercial Code.
2. To the extent that a defect in the object of purchase for which we are answerable exists, Orderer shall be entitled to subsequent performance in the form of rectification of the defect or a new object free of errors, at its option. In the event of rectification of the defect, we shall be obliged to bear all the expenditure necessary for the purpose thereof, in particular costs of transport, travel, work and material, insofar as they are not increased by the fact that the object of purchase has been taken to a place other than the place of performance.
3. If subsequent performance fails, Orderer shall be entitled to demand reduction of purchase price or withdrawal from the contract at its option.
4. We shall be liable according to statutory provisions insofar as Orderer makes claims for damages based on malice aforethought or gross negligence, including malice aforethought or gross negligence of our representatives or vicarious agents. To the extent that we cannot be blamed for deliberate breach of the contract, the damage liability shall be limited to the foreseeable typical damage.
5. We shall be liable according to statutory provisions insofar as we culpably breach an essential contractual obligation; in this case, the damage liability shall be limited to the foreseeable typical damage.
6. Liability on account of culpable injury of life, limb or health shall remain unaffected; this shall also apply for mandatory liability according to the Product Liability Act.
7. Liability shall be ruled out to the extent that nothing deviating from this has been regulated above.
8. The period of limitation for defect claims shall be 12 months starting from passage of risk.
9. The period of limitation in the event of recourse on delivery according to §§ 478, 479 German Civil Code shall be two years starting from the delivery of the defective object.

## VII. Aggregate liability

1. Notwithstanding the legal nature of the claim being made, further liability for damage than provided for in Section VI shall be ruled out. This shall in particular apply to claims for damages from culpa in contrahendo, on account of other breaches of contract or on account of claims from tort for damage to property pursuant to § 823 German Civil Code.
2. Insofar as damage liability towards us is ruled out or limited, this shall also apply with regard to the personal damage liability of our employees, workers, fellow-workers, representatives and vicarious agents.

## VIII. Securing retention of title

1. We reserve the right to ownership of the object of purchase until receipt of all payments from the business relationship with Orderer. In the event of breach of conduct by Orderer, in particular in arrears of payment, we shall be entitled to take the object of purchase back. Taking back the object of purchase by us shall only represent a withdrawal from the contract if we have expressly declared the same in writing. Attachment of the object of purchase by us shall always represent withdrawal. After taking back the object of purchase, we shall be entitled to utilise it, the yield from the utilisation being offset against Orderer's liabilities – less suitable costs of utilisation.
2. In the event of attachment or other interventions by third parties, Orderer shall notify us in writing without delay so that we can initiate proceedings pursuant to § 771 Code of Civil Proceedings. Insofar as the third party is not in a position to reimburse us for the judicial and extra-judicial costs of proceedings pursuant to § 771 Code of Civil Proceedings, Orderer shall be liable for the losses suffered by us.
3. Orderer shall be entitled to resell the object of purchase in the normal course of business; however, it here and now assigns all claims to the amount of the final amount of the invoice (including VAT) of our claim accruing to it against its clients or third parties from the resale to us, regardless of whether the object of purchase has been resold without or following processing.

## IX. Venue – place of performance

1. Insofar as Orderer is a merchant, our registered office shall be the venue; we shall however be entitled to sue Orderer at the Court responsible for its place of residence.
2. The agreement shall be governed by the law of the Federal Republic of Germany; validity of UN purchase law shall be ruled out.
3. If nothing to the contrary can be seen from the order confirmation, our registered office shall be the place of performance.