

## **General Terms and Conditions of Business**

### **I. General**

The following terms and conditions apply to all contracts, unless modified or excluded with the express consent of Seller. Buyer's terms and conditions will not become incorporated into any contract even if Seller fully and unconditionally performs its duties under the contract without reiterating an objection to such terms and conditions. The present or subsequent invalidity of any of the following terms or conditions shall not adversely affect the validity of the remaining terms and conditions. The following terms and conditions notwithstanding, the statutory provisions govern exclusively with respect to the sale of non-durable goods (§ 474 BGB ["Bürgerliches Gesetzbuch" = German Civil Code]).

### **II. Offers and Scope of Delivery**

1. Offers made by the Seller are subject to change without notice. Unless expressly designated as binding, informational materials related to offers (illustrations, drawings, and weight and dimension specifications) constitute only approximations. Services and operational costs are provided as averages. Seller reserves proprietary rights and intellectual property rights with respect to cost estimates, drawings, and other data; such material must not be made accessible to third persons.

2. Buyer is bound by its order for no longer than four weeks. The contract of purchase is in effect when Seller has either verified acceptance of the order in writing within this four week period or has made delivery.

3. Seller reserves the right to modify the construction or form of the item of delivery, provided that such modification does not substantially alter the item of delivery, and the Buyer can reasonably be expected to find the alterations acceptable.

4. The information contained in the descriptions given to the Buyer that pertains to scope of delivery, appearance, performance characteristics, dimensions, weights, fuel or operating material usage, and operating costs is incorporated into the contract in accordance with the above provisions, but does not create an agreement with respect to condition, state, or quality. Agreements with respect to condition, state, quality, or availability of an item of purchase do not represent a guaranty unless they have been expressly designated to be such.

### **III. Price and payment**

1. Prices are quoted ex Seller's warehouse, unless otherwise expressly agreed, or if shipped from the point of manufacture then ex factory, excluding packaging. Sales taxes will be added to the listed prices. If delivery is to be made more than four months after conclusion of the purchase contract, then, provided that Seller's supplier has raised prices or costs of labor or freight costs have unexpectedly increased, Seller shall have a right to demand that negotiations be conducted to re-determine prices.

2. In the absence of express agreement to the contrary, payment shall be made without any deduction within 14 days after delivery or availability, and receipt of invoice. Discounts shall apply only if Buyer is not in arrears on any payment for earlier deliveries.

3. Seller does not accept checks or bills of exchange without prior agreement to that effect. Check and bills of exchange will be credited less fees at the value existing on the day that Seller has access to the funds.

4. Unless undisputed by Seller or finally and legally determined by a court of law, setoff with counterclaims on the part of Buyer is not permitted. Buyer may exercise a right of retention only to the extent that retention is based upon claims deriving from the same contract. If notification of defect has been made, then Buyer may withhold payment only in such amount as is reasonably commensurate with the defects that have emerged.

5. If installment payments have been agreed, and Buyer is in complete or partial default on two installments, the entire remaining balance shall be due and payable without further notice.

#### IV. Terms of delivery and late delivery

1. Terms and times of delivery shall not be binding unless and until Seller has expressly declared them to be binding. In the case of non-binding terms and times of delivery, performance made within three weeks after expiration of the term or time for delivery shall be deemed to be timely. The term of delivery begins when the contract goes into effect, but not before (1) Buyer has provided the necessary documentation, permits, or releases, and (2) any previously agreed advance payment has been received. Partial delivery is permissible, provided that it is feasible for the Buyer.

2. The term of delivery will be automatically and correspondingly extended in the event of legal labor disputes, in particular strikes and shutouts, as well as the occurrence of unforeseeable delays that lie beyond the control of Seller or Seller's subcontractors, provided that such delays can be shown to have an effect upon the delivery of the merchandise involved. The same applies whenever delivery to Seller is either not made or not timely made. In such case Seller shall have the right to rescission and shall not be liable for any damages suffered by Buyer; this does not apply, however, when Seller bears the responsibility for non-delivery or when non-delivery is attributable to a selection failure or a failure to appropriately supervise.

#### V. Transfer of risk and Shipping

1. In the absence of an express agreement to the contrary, routing and means of shipping shall be determined by Seller. Buyer shall bear the risk of shipping. The goods may be insured at the option and cost of Buyer.

2. If at the request of Buyer sale is by delivery to a place other than the place of performance (sales shipment) the risk is transferred to Buyer at the time that the goods are turned over to a shipper or freight carrier, but no later than when the goods leave the warehouse, or if direct

shipment is being made, when the goods leave the factory. This also applies when partial shipments are made or when Buyer has accepted yet other deliveries.

3. If shipment is delayed due to circumstances attributable to Buyer, the risk is transferred to Buyer beginning with the day on which the goods were ready to be shipped. However, Seller, upon demand and at the expense of Buyer, has a duty to procure whatever insurance that Buyer demands.

#### VI. Reservation of property rights

1. Seller shall retain property rights until payment of all claims arising from the business transaction with Seller has been made.

2. Buyer has a duty to protect the item(s) of sales from the actions of third persons, as well as to secure fire insurance with a third party payability clause for such item(s) without delay, and to produce evidence thereof upon request. Otherwise, Seller shall have the right to procure such insurance at Buyer's expense. Buyer shall agree to assign to Seller any claims for fire damage that might arise.

3. Unless Buyer has the consent of Seller, Buyer must neither pledge the item(s) of sale nor assign such item(s) as collateral. Buyer shall immediately notify Seller in writing if the item(s) of sale become attached or seized, or become the subject of other actions by third persons. Buyer shall indemnify Seller for the costs of intervention, unless the third person is in a position to do so.

4. Buyer shall have the right to resell the goods in the course of regular business. Buyer herewith assigns to Seller all accounts receivable, including sales taxes, which Buyer may accrue against purchasers or third persons with respect to the resale, and this provision shall apply regardless of whether the item(s) of sale were or were not subjected to further processing or finishing before resale. Buyer shall continue to have authority to collect on these accounts receivable even after said assignment is made. Such authority shall not affect Seller's authority to collect on the accounts receivable, but Seller agrees not to collect on the accounts receivable, provided Buyer is regularly meeting his payment commitments. Otherwise Seller shall have the right to demand that Buyer inform Seller concerning the assigned accounts receivable, provide the names of the liable parties along with all information necessary to collect, turn over all pertinent documentation, and inform the debtors of the assignment. If the value of the insurance exceeds Seller's claims against Buyer by more than 20 %, then upon demand of Buyer, Seller shall release at Seller's option securities in a commensurate amount.

5. If Buyer breaches the contract, particularly with respect to late payment, Seller shall have the right to recover the goods following a demand for payment, and Buyer shall have a duty to hand back the goods. Neither the recovery of goods nor the attachment or seizure thereof shall constitute a rescission of the contract, unless Seller expressly declares a rescission in writing.

6. All costs of recovery and resale of the item(s) of purchase shall be borne by Buyer. If no evidence as to costs of resale is shown, such costs shall be set at 10% of the proceeds of resale including sales taxes. The costs shall be set higher or lower, if Seller shows proof of higher costs or Buyer shows proof of lower costs respectively. The proceeds shall be credited to Buyer after deduction of costs and other claims made by Seller that are related to the contract.

## VII. Liability

1. Immediately upon their arrival, Buyer shall inspect the item(s) of sale for defects, quality, and quantity. Buyer shall send a written objection without delay (within no more than 14 days) to Seller, if obvious defects or deviations with respect to quality or quantity, or in the case of business persons, recognizable defects or deviations are found. If notification of claims or complaints of defects are not timely made, Seller shall be deemed to have sufficiently performed. The provisions of § 377 HGB [“Handelsgesetzbuch” = Commercial Code) shall remain unaffected. If notification is timely made, Buyer’s claims must conform to the following provisions.

2. The right to make construction or design changes that affect neither the functional efficiency nor the value of the item of sale is reserved. Buyer shall have no rights of redress based upon a negligible defect in the item delivered.

3. However, Buyer may demand that a defect be remedied. Seller shall have the right to replace the defective item in lieu of remedying the defect. Buyer has the right, however, to rescind the contract at Buyer’s option or to demand a reduction in price, if correction of the defect fails, is impossible, is not achieved by Seller within a reasonable amount of time, is refused by Seller, or is culpably delayed by Seller. If Seller is not responsible for the breach of duty, Buyer has no legal right to rescission based upon failure to perform or performance not in accordance with the contract. This does not apply if Buyer has, on the basis of express agreements, acquired a right to a fault-free rescission, and when a defect in the item of sale is found to exist.

4. Liability for defects is precluded, if the item of sale has been altered by installation of other than original parts and there is a causal connection between the damage and the alteration. Defect liability does not extend to defects that arose as a result of Buyer’s failure to meet its requirement to give notice of a defect. If Buyer assembles the item of sale, then Buyer shall have no claims based upon defect unless the assembly was performed professionally and in accordance with the directions for assembly. Seller shall also bear no liability for normal wear or defects that are attributable to negligence or improper handling. Liability is also precluded if Buyer does not follow Seller’s instructions for handling the item of sale (operating instructions). In addition, liability for defects in used items of sale is precluded.

5. Unauthorized repairs performed by Buyer will not be reimbursed. Buyer must have repairs performed in Seller's repair facility or in a repair facility authorized by Seller. Travel costs and expenses related thereto will not be reimbursed. Seller shall reimburse Buyer for other than original parts installed in an emergency, but only at Seller's net price for the replacement part. Seller shall bear no liability with respect to either these other than original parts or the costs of repair.

6. Seller shall be liable for damages pursuant to statutory provisions to the extent that Seller culpably breaches a substantial contractual duty or an intrinsic duty. Otherwise, liability for damages is precluded. Claims for damages due to injury to health, physical injury, or loss of life shall not be affected by this provision. Also claims based upon provisions of the "Produkthaftungsgesetz" [Law on Product Liability] are not affected. Also in cases of intentional infliction of damage or gross negligence – no matter the cause in law – Seller shall have unlimited liability in accordance with statutory provisions. The above cited limits of exclusion also apply to other claims, in particular, to claims in tort or a claim for reimbursement of futile expenditures in lieu of performance. Seller's liability is in every case limited to typically resulting, foreseeable damages.

7. Claims of defect become barred after one year. The period of limitation shall not be affected by the correction of defects, i.e., the period does not begin anew at the time a defect is corrected. The period of limitation begins when the item is delivered.

In other respects the period of statutory limitation is set forth in statutory provisions. In variance from §199 par. 3 sub-par 1 BGB, claims for damages are barred 5 years after they arise without regard to knowledge or grossly negligent lack of knowledge. This does not apply to claims that are based upon Seller's intentional or grossly negligent breach of duty. Liability for culpable injury to health, physical injury, or loss of life is not affected, as is also the case with the strict liability imposed by the Law on Product Liability.

#### VIII. Place of performance, legal venue, applicable law

1. Provided that Buyer is a businessman, a legal person under public law, or a special estate under public law, the place of performance and exclusive judicial venue with respect to delivery and payment as well as to all disputes arising between the parties is Seller's principal place of business.

2. The relationships between the contracting parties shall be governed exclusively by the laws of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods.