

## **General Sale and Supply Terms and Conditions**

All our sales, as well as other supplies and services including advice and recommendations offered in the context of commerce with traders, are subject solely to the following General Sale and Supply Terms, unless otherwise agreed on a case-by-case basis; this also applies to the agreement of commercial clauses, with specific regard to Incoterms. We shall only be bound by any deviating terms or counter-confirmations issued by the Purchaser if, and to the extent that, we have explicitly consented thereto. Our silence in respect of such deviating terms shall not, in particular, be construed as acceptance or consent. We herewith explicitly repudiate such deviating terms or counter-confirmations issued by the Purchaser.

### **I. Quotation, contract conclusion**

Our quotations are without obligation; they merely constitute an invitation to the Purchaser to make us an offer in turn. A purchase order shall only be deemed to have been accepted once we have confirmed the order in writing, or have delivered the goods. In the event of immediate delivery by us, our delivery note may replace the order confirmation.

### **II. Scope of delivery**

- 1.) The scope of delivery shall be determined by our written order confirmation. Side agreements and amendments shall require our written confirmation.
- 2.) Any reference to standards, similar technical rules, other technical details, descriptions and illustrations of the delivery object in quotations or brochures shall merely be deemed to constitute specifications rather than a guarantee of quality. On principle, we shall only be deemed to have guaranteed specific quality attributes of the goods if we confirmed this explicitly in writing.
- 3.) With regard to the delivery quantity, deviations of up to 5% shall be admissible. Over-deliveries must be remunerated by the Purchaser. In the case of delivery in accordance with specially prepared samples or drawings, deviations of up to 5% shall be admissible and must be remunerated by the Purchaser.

### **III. Prices and payment terms**

- 1.) Unless otherwise specifically agreed, prices are deemed to be ex-works in accordance with the price list applicable when the order confirmation was issued, net of the sales tax applicable on the invoicing date and net of the relevant applicable and levied inflation and alloy premia. Packing costs will be invoiced separately.
- 2.) Invoices shall be payable and due within 30 days of invoice date, without deductions. The date on which we receive the monies due shall determine the timeliness of the payment.
- 3.) Any rights of retention – including those deriving from § 369 of the German Commercial code – and offsetting rights on the part of the Purchaser shall be ruled out, unless the Purchaser's claims are undisputed or have been recognised by declaratory judgement or Purchaser's counter-claims result out of the same

contractual relationship. Once the invoice falls due for payment, interest shall be levied at 5%; once default has occurred, delayed payment interest shall be levied at 9 percentage points above the base interest rate. The date on which we receive the monies, or on which our account is credited, shall be deemed to be the date of payment. We reserve the right to assert further damages in the event of payment arrears.

- 4.) If payment terms are not observed, or if circumstances become known which, based on the commercial assessment which we are duty-bound to perform, give rise to justified doubts regarding the Purchaser's creditworthiness - including circumstances which were present at the time of contract conclusion, but of which we were not aware and could not be expected to be aware – all claims deriving from the business relationship shall fall due immediately, regardless of the term of any discounted and credited drafts. Without prejudice to any further statutory rights, we will in such cases be entitled to demand advance payment or the provision of acceptable securities in respect of any deliveries which remain outstanding, and – if such securities are not provided within an appropriate grace period - we shall be entitled to either repudiate the contract or demand damage compensation for non-performance following unsuccessful expiry of the grace period.
- 5.) The prices are based on the wage and material costs applicable at the time of order confirmation. If, in the case of a delivery period exceeding three months, changes should occur before the delivery date, we reserve the right to adjust prices accordingly.
- 6.) If, following contract conclusion, freight costs, insurance costs or public levies and encumbrances (e.g. duty, import and export fees) are either introduced from scratch or increased, we shall be entitled to add such additional charges to the agreed price; this shall apply even in the case of carriage-paid or duty-paid deliveries.

#### IV. Delivery period

- 1.) The delivery period shall start when the order confirmation is dispatched, but not before receipt of the documentation to be procured by the Purchaser.
- 2.) The delivery period shall be deemed to have been observed if the delivery object leaves the works before the period expires, or if shipping readiness has been notified.
- 3.) Deliveries before expiry of the delivery period are permitted. The delivery date shall be deemed to be the date on which shipping readiness is notified; otherwise, it shall be deemed to be the date on which the goods are dispatched. We are permitted to make partial deliveries where this does not impose an unreasonable burden on the Purchaser.
- 4.) If, for reasons for which we are not responsible, we do not receive supplies or services from our sub-suppliers, or do not receive them correctly or in time, or if events constituting force majeure should occur, we shall be entitled to postpone delivery for the duration of the hindrance, or to wholly or partially repudiate that part of the contract which has not yet been performed. Strikes, lock-out, official interventions, energy or raw material shortages, transport bottlenecks, operational hindrances for which we are not responsible (e.g. as a result of fire, water or mechanical damage) and all other

hindrances which, when considered objectively, arose through no fault of our own, shall be viewed as tantamount to force majeure. The above provisions shall also apply if the circumstances specified therein occur once we are already in default.

- 5.) Should we be in default, the Purchaser may only repudiate the contract after setting an appropriate grace period, and after the unsuccessful expiry of that period. Damages may only be asserted as provided for in Article VIII.
- 6.) If shipping is delayed as a result of circumstances for which the Purchaser is responsible, he will - starting one month after notification of shipping readiness – be charged for the costs incurred as a result of warehousing the goods in our works; this charge will, at a minimum, comprise 0.5% of the invoice amount for the deliveries in question in respect of each month. However, after having set an appropriate grace period, and that period having expired

unsuccessfully, we shall be entitled to dispose otherwise of the delivery object, and to supply the Purchaser within an appropriately extended period.

- 7.) We shall not be deemed to be in default as long as the Purchaser has defaulted on meeting his obligations towards us; this also applies to obligations deriving from other contracts.

## V. Transfer of risk

- 1.) When shipping, the risk will be transferred to the Purchaser, at the latest, when the delivery items are dispatched; this will even apply if partial deliveries are being made, or if we have assumed responsibility for additional performance, such as transport and assembly. If so required by the Purchaser, we will – at the Purchaser's expense – insure the consignment against theft, breakage, transport, fire or water damage as well as other insurable risks.
- 2.) If shipping is delayed as a result of circumstances for which the Purchaser is responsible, the risk will be transferred to the Purchaser on the date on which the Purchaser was notified of shipping readiness; however, we are obliged - at the Purchaser's request and expense - to arrange for any insurance requested by the Purchaser.
- 3.) The Purchaser must immediately call down goods which have been notified as shipping-ready and are due for delivery.

## VI. Reservation of title

- 1.) We reserve title to all goods delivered by us until all our claims deriving from the business relationship with the Purchaser, including claims accruing in the future from contracts concluded subsequently, and including any rights of recourse or exemption deriving from bank drafts or cheques, have been met. This also applies in the case of a balance in our favour if some or all our demands have been included in an ongoing invoice (current account) and the balance has been struck.
- 2.) The Purchaser must sufficiently insure the reserved goods, in particular against fire and theft. The Purchaser herewith assigns to us any insurance claims resulting from damage events in respect of any of the reserved goods up to the value of the reserved goods.
- 3.) Any processing and finishing of the reserved goods takes place on our behalf as the manufacturer as specified by § 950 of the German Civil Code, but does not impose any obligation on us. If our goods are processed or irrevocably commingled with goods to which we do not have title, we shall acquire joint title to the new item in the proportion of the invoice value of our goods to the invoice values of the other processed or commingled items. If our goods are joined with other moveable items to form a uniform item, which must be viewed as the primary item, the Purchaser herewith transfers co-ownership of the item to us in the same proportion. The Purchaser will, free of charge, store the item to which we have sole or joint title on our behalf. The joint ownership rights thus accruing will be treated as reserved goods. The Purchaser is obliged, at our request, to provide us at any time with the information required to vindicate our ownership or joint ownership rights.
- 4.) The Purchaser is entitled to resell the delivered goods in the course of normal business. Other types of disposal - in particular pledges or the granting of pledged property - are prohibited. If, when sold to a third-party purchaser, payment is not made immediately in respect of the reserved goods, the Purchaser is obliged, in turn, to only resell the goods subject to reservation of title. The right to resell the goods, and to further process or finish the reserved goods, will lapse immediately if the Purchaser ceases his payments or is in payment arrears towards us.
- 5.) The Purchaser herewith assigns to us all claims, including sales tax, securities and ancillary rights, which accrue to him from, or in connection with, the resale of reserved goods vis-à-vis

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the final customer or third parties. This shall also apply in case of a sale of the company (e.g. asset deal). The Purchaser may not conclude any agreement with his customers which in any way precludes or impairs our rights, or which nullify the advance assignment of the claim. In the event of the reserved goods being sold together with other items – also in case of a sale of the Company (e.g. asset deal) -, the claim against the third-party customer shall be deemed to have been assigned up to the level of the delivery price agreed between us and the Purchaser, unless the amounts relating to the individual goods are apparent from the invoice. In the event of co-ownership shares being sold in the form of reserved goods – also in case of a sale of the Company (e.g. asset deal) -, the claim deriving from the resale shall be deemed to be assigned to us up to the level of our co-ownership share.

- 6.) The Purchaser remains entitled to collect the claims assigned to us until we revoke that entitlement, which we may do at any time. Our power to collect the claim ourselves if so required remains unaffected hereby. At our request, the Purchaser shall be obliged to provide us with the information and documentation required to collect the assigned claims and, unless we do so ourselves, shall be obliged to inform his customer immediately of the assignment to us.
- 7.) If the Purchaser includes claims deriving from the resale of reserved goods in a current account relationship existing with his own customers, he herewith assigns any

accepted or closing balance in his favour to us, up to the amount corresponding to the total figure of the claims included in the current account deriving from the resale of our reserved goods.

- 8.) If the Purchaser has already assigned claims deriving from the resale of goods delivered by us, or due for delivery by us, to third parties, in particular on the basis of real or unreal factoring, or made other agreements on the basis of which our current or future security rights pursuant to Article VI could be affected, he must notify us accordingly without delay. In the event of unreal factoring, we shall be entitled to repudiate the contract and demand the surrender of any goods already delivered. The same shall apply in the case of real factoring if, following the contract with the factor, the Purchaser is not able to dispose freely of the purchase price in order to meet the claim.
- 9.) In the event of a breach of contract by the Purchaser, and especially in the case of payment arrears, we shall be entitled to take back all reserved goods; in that event, the Purchaser shall be obliged to surrender the goods unconditionally. In order to determine the stock of goods delivered by us held by the Purchaser, we are entitled to enter the Purchaser's business premises at any time during normal business hours. The taking back of reserved goods shall only constitute repudiation of the contract if we declare such repudiation explicitly in writing, or if such repudiation is required by mandatory statutory provisions. The Purchaser must notify us immediately in writing of any recourse by third parties to the reserved goods or the assigned claims.
- 10.) If the value of the securities existing pursuant to the above provisions exceeds the value of the claims by more than 20% in total, we shall be obliged, to that extent, to surrender securities of our choice, if so requested by the Purchaser.
- 11.) We retain ownership of and copyright to all cost estimates, designs, drawings and other documents. The Purchaser may not render these accessible to third parties, and must return them immediately if so requested.

## VII. Obligation to examine the goods and issue notice of defect, liability for defects

- 1.) The Purchaser, or the recipient nominated by the Purchaser, must check the goods immediately following receipt. Following discovery of the defects, processing and finishing of the defective

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item must cease immediately. Written notice of defect must be issued immediately, but at the latest 7 days after receipt of the goods, in the case of apparent defects, including the absence of warranted quality attributes; written notice of concealed defects must be issued immediately or, at the latest, within 7 days of detection. If the Purchaser neglects to examine the goods, or neglects to issue notice of defect by the time, and in the form, prescribed, the Purchaser shall not be entitled to assert any defect claims. The timeliness of the notice shall be determined by the date on which we receive it.

- 2.) If an acceptance of the goods or an initial sampling inspection has been agreed on, complaints of faults are excluded which the Purchaser could have noticed during a careful acceptance or initial sampling inspection.
- 3.) In the event of well-founded notices of defect, we shall be obliged to render supplementary performance, in respect of which we may opt either to deliver a faultless replacement item, or to carry out supplementary improvement; in this regard, we will acquire title to the parts forming the subject of the complaint. We shall be entitled to refuse supplementary performance pursuant to statutory provisions.
- 4.) If we do not meet this obligation to render supplementary performance, the Purchaser may opt either to withdraw from the contract or to reduce the price after having set us an appropriate grace period, unless such a grace period can be dispensed with in accordance with the law. In the event of withdrawal, the Purchaser shall be responsible for deterioration, loss and foregone usage, and in this regard his liability shall extend not only to the usual prudence, but to all circumstances for which he is answerable.
- 5.) The Purchaser shall only be entitled to assert further claims for damages or reimbursement of costs due to, or in connection with, defects or damage consequential on the defect, regardless of the legal basis, subject to the provisions in Article VIII. Even in that case, however, we shall only be liable for typical and foreseeable damage.
- 6.) Our warranty obligation will lapse if there are no defects in respect of the goods delivered by us, i.e., in particular, if defects are due to improper use, incorrect or negligent handling, natural wear and tear, or manipulation of the delivery object by the Purchaser or a third party.
- 7.) Warranty claims against us will become time-barred, at the latest, 12 months following delivery or official acceptance of the goods, except for the cases laid down in Article VIII. 7.).
- 8.) If the final customer of the goods is a consumer, the limitation of actions in respect of any right of recourse against us by the Purchaser shall be subject to the statutory provisions.

## VIII. Damage compensation claims

- 1.) In respect of all claims made against us for damage or costs compensation due to a breach of duty for which we are responsible, regardless of the legal basis, we will – in the event of slight negligence - only be liable for a breach of cardinal duties which endanger the purpose of the contract. Otherwise, any liability on our part for slight negligence is precluded.
- 2.) In the event of liability pursuant to Article VIII. 1.), and liability through no fault of our own, we shall only be liable for the typical and foreseeable damage. The Purchaser may not assert foregone usage.
- 3.) In respect of damages caused by delay, in the event of slight negligence we will only be liable for up to 5% of the net order value.

- 4.) The Purchaser bears sole responsibility for deciding on the deployment of the goods delivered by us or other services. Unless we have confirmed specific quality characteristics and suitability of the products for a contractually specified usage

purpose in writing, a technical application consultation is indispensable in all circumstances. We will also only be liable pursuant to Article VIII. 1) for advice given or withheld where such advice does not relate to the characteristic qualities and usability of the product delivered.

- 5.) The preclusion of liability pursuant to Article VIII. 1.) – 4.) applies to the same extent in favour of our organs, legal representatives, senior and other employees, and other vicarious agents.
- 6.) All claims for damages or cost reimbursement against us will become time-barred 12 months after delivery or official acceptance of the goods or, in the event of tortious liability, 12 months after cognisance - or grossly negligent ignorance - of the circumstances underlying the claim, or of the identity of the person obliged to render compensation. This does not apply in the case of intention or in the cases specified in Article VIII. 7.).
- 7.) The provisions of Article VII. 7.) and VIII. 1.) – 6.) do not apply in the case of strict liability in tort, if liability exists for injury to life, limb or health, if qualities have been guaranteed or if a defect has been maliciously concealed.

## **IX. Recall, product safety**

- 1.) If a contract party has reason to believe that a recall of the final product may be necessary due to a product supplied by us, that contract party must immediately notify the other contract party of his reasons for so believing, and must provide the other contract party with what he regards as supporting documentation. The other contract party must immediately state his view of these reasons and of a possible recall. If the contract parties are unable to agree through correspondence on the need for a recall, the scope of such a recall or how the costs of a recall will be shared, one contract party may set a date for an immediate mutual meeting, in which persons authorised by each side to make decisions must participate. If one contract party does not proceed in accordance with this procedural plan, he cannot subsequently plead vis-à-vis the other party that the recall was or was not necessary, unless the other contract party misjudged the need for a recall, or lack thereof, due to gross negligence or intention.
- 2.) We will – especially if the Purchaser is subject to measures taken by the market supervisory authorities as a result of product safety legislation - provide the Purchaser with all requisite information, and offer him all the assistance required in order to avert corresponding measures being taken by the authorities. Any costs or expenditure incurred by us will not be reimbursed.

## **X Place of performance, assignment, written form**

- 1.) The place of performance is Hattingen.
- 2.) The Purchaser may not assign his contractual rights to third parties without our prior written consent.
- 3.) Amendments and codicils to these terms must be in writing. This also applies to agreements regarding a waiver of this written form agreement.

## **XI. Applicable law, legal venue**

- 1.) The contractual relationship is governed by German law.



- 2.) If the Purchaser's registered office is not in Germany, the UN Convention Governing the International Sale of Goods (CISG) shall apply, subject to the following special provisions: any amendment to or termination of the contract must be in writing. This also applies to agreements regarding a waiver of this written form agreement. In the event of goods which are in violation of the contract being delivered, the Purchaser shall only be entitled to terminate the contract, or be entitled to a substitute delivery, if damage compensation claims against us are precluded, or if it would be unreasonable to expect the Purchaser to use the goods which are in violation of the contract, and to assert a claim for the residual damage. In such cases we shall, in the first instance, be entitled to rectify the defect. If the defect rectification is abortive, and/or if it results in an intolerable delay, the Purchaser may opt either to terminate the contract or to demand a substitute delivery. The Purchaser shall also be thus entitled if the defect rectification would result in intolerable inconvenience, or if there is uncertainty regarding the reimbursement of any expenditure incurred by the Purchaser.
- 3.) The legal venue for both parties is Hattingen; this also applies to legal actions relating to bank drafts and cheques. We are, however, entitled to file suit against the Purchaser in his own jurisdiction.

## **XII. Partial invalidity**

Should some of the above provisions be or become invalid, the validity of the remaining provisions will not be affected thereby. An invalid provision will be replaced by a valid provision which most closely approximates to the invalid provision in respect of outcome.

## **XIII. Prevailing German version**

These General Sale and Supply Terms and Conditions shall be interpreted according to German interpretation of law. If the English legal meaning deviates from the German legal meaning, the German legal meaning shall have precedence.

Hattingen, May 2018