

## 1. Scope of Application

- 1.1 The present Terms and Conditions of Delivery and Payment shall be an integral part of any and all offers and contracts with the purchaser. They shall only apply in the case of entrepreneurs within the meaning of Sections 14 and 310 of the German Civil Code [BGB].
- 1.2 The Terms and Conditions of Delivery and Payment shall also apply to future contracts with the purchaser insofar as they have been acknowledged by purchaser for a previous contract.
- 1.3 The purchaser's general standard terms and conditions shall be excluded. They shall apply only if and insofar as we expressly acknowledge them. They shall also not apply even if we have not contradicted the purchaser's reference to them.
- 1.4 The provision of deliveries and/or services shall not be regarded as approval of the purchaser's general standard terms and conditions.

## 2. Offers, Conclusion of Contract

- 2.1 Offers shall be binding if we have issued them in writing and they do not contain any declared reservations.
- 2.2 If a purchase order deviates from the information in the offer, then the deviation must be reconfirmed by us.
- 2.3 Contracts shall be concluded based on the contents of a purchase order if we confirm the latter with the identical contents or undertake delivery directly according to the purchase order.
- 2.4 References to the range of applications and possible uses of our products available to the general public do not exempt the purchaser from examination of their suitability for the specific purpose intended by the purchaser. They should not be used without specific advice in the case of doubt with regard to their suitability and application.

## 3. Prices, Delivery, Returnable Containers, Return of Packaging

- 3.1 Unless otherwise agreed prices shall be based on the price list that is valid upon conclusion of contract and shall be charged to the purchaser plus the respective legally defined value added tax.
- 3.2 Insofar as no other handling is agreed deliveries shall be "Ex Works (EXW) (named place) Incoterms® 2010."
- 3.3 We shall be entitled to make appropriate partial deliveries within a reasonable scope.
- 3.4 If partial deliveries have been agreed and/or the purchaser has the right to issue demand-driven call orders for ordered quantities in accordance with agreements reached with the purchaser, then the purchaser shall be obliged to accept the overall quantity agreed for the products, regardless of this handling option.
- 3.5 If in accordance with the agreement we make the products available to the purchaser in returnable containers, then the purchaser shall be obliged to return the containers to us at the purchaser's own risk and expense within ninety days after acceptance of the products. The purchaser shall be responsible for damage to or loss of the containers in the purchaser's area of risk.
- 3.6 We shall only take back one-way packaging if and insofar as we are obliged to do so due to contractual or statutory provisions.

## 4. Dates, Deadlines

- 4.1 Delivery dates, call dates and delivery periods shall be binding only if they have been specified through mutual consent between us and the purchaser.
- 4.2 Agreed dates and deadlines shall be appropriately extended at least by the duration of the impediment in cases of force

majeure or the occurrence of other unforeseeable events beyond our sphere of influence and for which we may not be held responsible. This shall apply in particular in the case of strike, lockout and war to the extent that such events have a verifiable substantial impact on deliverability. If such impediments continuously persist for longer than four weeks, then each of the contracting parties shall have the right to withdraw from the contract either in part or as a whole with respect to the unfulfilled part of the contract. Any other claims shall remain unaffected.

- 4.3 If we are in delay, then the purchaser shall be obliged to grant us the possibility of subsequent delivery within an appropriate period before undertaking other measures in accordance with the statutory rights to which the purchaser is entitled. The regulation with regard to liability in Clause 9 shall apply to damage incurred by the purchaser due to the delay.

## 5. Passing of the Risk

- 5.1 The risk shall pass to the purchaser when the products are kept ready for takeover at the designated place, regardless of whether partial deliveries take place or whether we have taken over arrangements for the shipment and/or the shipping charges.
- 5.2 If delivery is delayed due to circumstances for which the purchaser may be held responsible, then the risk shall pass to the purchaser with receipt of notification of readiness for collection / shipment.
- 5.3 If the purchaser claims differences in quantity or weight, then the values determined upon delivery to the carrier shall be determining.

## 6. Payment, Setoff

- 6.1 The invoice amount shall be paid without deduction within thirty days as of the date of the invoice. Payment shall be regarded as on time if we are able to dispose of the amount with value on the due date on the specified account.
- 6.2 In the event of delayed payment by the purchaser we shall have the right to charge a flat rate of interest on arrears in the amount of 9% above the respectively valid base interest rate. We reserve the right to assert claims for additional damage with a minimum flat rate of Euro 40.
- 6.3 Setoff by the purchaser shall be excluded unless the purchaser's claims are the subject of declaratory judgment, recognized or uncontested.
- 6.4 In the event that we become aware of circumstances that seriously cast doubt on the solvency of the purchaser or if insolvency proceedings are instituted against the purchaser's assets, then all of our claims against the purchaser shall become immediately due. We shall then also be entitled to only provide outstanding deliveries in return for prepayment or other security.
- 6.5 We reserve the right to accept bills of exchange and cheques in each individual case. They shall be accepted only on account of performance. Credit notes through bills of exchange and cheques shall be subject to receipt and with the value date on the day on which we are able to dispose of the equivalent amount. The purchaser shall be responsible for any expenses which we incur as a result.

## 7. Retention of Title

- 7.1 We reserve the right to retain title to the products delivered by us (products subject to retention of title) up to complete payment of the purchase price and payment of any other outstanding claims against the purchaser.
- 7.2 The purchaser shall be obliged to sufficiently secure products subject to retention of title against theft and

damage at the storage location for as long as title has not passed to the purchaser.

- 7.3 Working and processing of the products subject to retention of title shall take place on our behalf as manufacturers within the meaning of Section 950 of the German Civil Code [BGB] without obligation on our part. The processed product shall also be considered as a product subject to retention of title. In the case of processing, combination or commixture of the product subject to retention of title with other products by the purchaser, then we shall be entitled to co-ownership of the new item in proportion to the purchase price of the product subject to retention of title to the purchase price of the other products used. Insofar as the product subject to retention of title is commixed with items that are to be regarded as the principal item, then it shall be agreed that the purchaser assigns us proportionate co-ownership of such items and safeguards the co-ownership for us.
- 7.4 If our title expires with processing, combination and commixture, then the purchaser shall assign us the property rights to which the purchaser is entitled in the new item in the amount of the purchase price of the product subject to retention of title. The ensuing rights of co-ownership shall be considered as an item subject to retention of title. The purchaser shall store the new item for us with due care.
- 7.5 The purchaser shall be entitled to resell the item subject to retention of title in the normal course of business. The purchaser shall already now assign us any claims arising out of such resale up to the amount of our claims and we shall accept such assignment.
- 7.6 The assignment shall be valid regardless of whether the products are resold without or after processing by the purchaser. The purchaser shall continue to be entitled to collection of the claim even after assignment. Our right to collect the claim by ourselves shall remain unaffected. However, we shall refrain from doing so as long as the purchaser meets the purchaser's payment obligations toward us, is not in delay of payment, payment has not ceased and no request for institution of insolvency proceedings against the purchaser's assets has been submitted.
- 7.7 We shall be obliged to release the collateral to which we are entitled insofar as the value of our collateral exceeds the securable claims by more than 10%.
- 7.8 The purchaser shall immediately notify us in the event of a pledge or any other impairment of the item subject to retention of title through third parties. The purchaser shall immediately inform the enforcement body and the judgment creditor about the fact that the item subject to retention of title is our property/joint property and/or that the rights to such have been assigned.
- 8. Notice of Defects, Claims Based on Defects, Period of Limitation for Claims Based on Defects**
- 8.1 The purchaser shall be obliged to immediately examine the products in the normal course of business after delivery and to immediately report any defects discovered in writing while indicating the reasons for complaint. Complaints with regard to weight must take place in the same form within three days after delivery.
- 8.2 In the case of a justified notice of defects we shall provide subsequent performance in accordance with statutory provisions. Insofar as we fail to do so within a reasonable period of grace prescribed to us or if subsequent performance has failed, then the purchaser shall have the right to require reduction of the remuneration or to withdraw from the contract in the case of a breach of duty that is more

than insignificant. The purchaser shall not be entitled to withdrawal but only entitled to reduction of the remuneration if the products have already been processed and are capable of being used by the purchaser as contractually stipulated.

- 8.3 We shall not be liable for damage incurred by the purchaser due to the fact that the purchaser employs a product for purposes which cannot be anticipated or which are not agreed. We shall also not be liable if the purchaser fails to observe technical specifications or setup recommendations which we provide for the employment of our products and damage occurs as a result.
- 8.4 We shall assume no responsibility if formulations prescribed to us by the purchaser result in defects or an impairment or a change in the properties of manufactured products expected by the purchaser which we are unable to determine within the scope of the production process or based on any other knowledge.
- 8.5 The purchaser's claims to payment of damages due to defects shall be based on Clause 9.
- 8.6 The purchaser's statutory rights of recourse in accordance with Sections 478 and 479 of the German Civil Code [BGB] due to defects in the case of sales of consumer goods and their period of limitation shall remain unaffected.
- 8.7 The period of limitation for claims based on defects shall amount to 12 months as of delivery. The statutory period of limitation shall apply in accordance with Section 438 Paragraph 1 No. 2 of the German Civil Code [BGB] in the event that we deliver defective products to the purchaser that lead to the defectiveness of a building. The period of limitation provided for by law shall likewise apply to claims of the purchaser due to injury to life, limb or health, violation of the German Product Liability Act, intentional breach of duty on our part or fraudulent concealment of a defect.
- 9. Other Liability**
- Any claims for damages on the part of the purchaser or claims to reimbursement of expenses asserted against us for any legal reasons whatsoever shall be excluded unless mandatory liability or a claim for the following reasons is involved: We shall be liable in accordance with statutory provisions in cases of non-contractual liability in accordance with the German Product Liability Act, in the case of intent, gross negligence, disregard of warranted characteristics and in the case of personal injuries. In the case of violation of material contractual obligations the purchaser's claim for compensation shall be limited to typical, foreseeable damage. Statutory provisions shall apply insofar as we cause such in a deliberate or grossly negligent manner or personal injury occurs as a result.
- 10. Place of Performance, Place of Jurisdiction, Applicable Law**
- 10.1 The place of performance for deliveries and services and the place of performance for payments shall be our registered place of business in Pirmasens.
- 10.2 The place of jurisdiction shall be the competent court for our registered place of business. At our option we may also bring action against the purchaser at the purchaser's registered place of business.
- 10.3 The law prevailing in the Federal Republic of Germany shall apply. The United Nations Convention on Contracts for the International Sale of Goods (CISG) from April 11, 1980 shall be excluded.

(As of: September 1, 2014)