

## General Terms of Delivery, Vers. 5/2011

### § 1

#### General / Area of validity

- (1) Our terms of sale shall apply exclusively; we shall not accept contradictory terms of sale or deviating conditions on the part of the customer unless expressly agreed to by us in writing. Our terms of sale

(2)

This version is invalid - therefore only the German text is applicable!  
An English translation can be sent on request.

(1)

(2)

### § 3

#### Prices / Payment conditions

- (1) To the extent that no other agreements arise from confirmation of the order, our prices shall be deemed to be "ex factory", excluding packaging, which shall be invoiced separately.
- (2) Statutory sales tax (VAT) shall not be included in our prices; this shall be indicated separately in the legally applicable amount on the date of invoicing.
- (3) Deduction of a discount shall require special written agreement.
- (4) To the extent that no other agreements arise from the contract itself or from confirmation of the order, the net purchase price (without deductions) shall be due immediately from invoice date. Statutory regulations shall apply regarding the consequences of arrears in payment.
- (5) The customer shall only be entitled to the right of set-off where his counterclaims have been determined in a legally binding fashion, are undisputed or have been acknowledged by us. Furthermore, he shall be entitled to exercise his right of retention to the extent that his counterclaim is based on the same contractual relationship.

### § 4

#### Delivery period

- (1) Start of the delivery period indicated by us shall assume prior clarification of all technical issues.
- (2) Compliance with our delivery obligations shall also assume timeous and proper fulfilment of all contractual obligations on the part of the customer. This shall in particular include cooperation and declarations required, including where this has not been documented in writing in individual cases, but rather is required according to the circumstances. We shall reserve the right to enter a plea for non-fulfilment of the contract.
- (3) Where the customer is in default of acceptance or where he culpably breaches any cooperation obligations, we shall be entitled to demand compensation for any damages suffered in this regard including any additional costs incurred. We shall reserve the right to assert further claims.
- (4) To the extent that the prerequisites in para. (3) exist, the risk of accidental loss or accidental deterioration of the object of purchase shall transfer to the customer at the point in time at which he delays acceptance or defaults on payment.

- (5) We shall be liable according to statutory provisions to the extent that the underlying purchase agreement is a transaction at a fixed point in time within the meaning of § 286 para. 2 no. 4 BGB or § 376 HGB (*Handelsgesetzbuch* - Code of Commercial Law). We shall also be liable according to statutory provisions to the extent that the customer is entitled to claim that his interest in continued fulfilment of the contract has ceased to exist due to delayed delivery for which we are responsible.
- (6) We shall furthermore be liable according to statutory provisions to the extent that the delay in delivery is due to wilful or grossly negligent breach of obligation on our part; culpability on the part of our representatives or vicarious agents shall be our responsibility. To the extent that the delay in delivery is not due to wilful breach of obligation on our part, our liability shall be limited to foreseeable, typically occurring damages.
- (7) We shall also be liable according to statutory provisions to the extent that the delay in delivery on our part is not due to culpable breach of a significant contractual obligation; however, in this case liability for compensation of damages shall be limited to foreseeable, typically occurring damages.
- (8) Otherwise, in cases of delayed delivery we shall at all times be limited to an amount of 2% of the net delivery value for every completed week of delay, however to a maximum of 13% of the net delivery value within the framework of lump-sum compensation for default.
- (9) Additional statutory claims and rights of the customer shall remain reserved.

## **§ 5**

### **Transfer of risk / Packaging costs**

- (1) To the extent that no other agreements have been reached based on the confirmation of order, delivery shall be deemed to have been agreed as "ex factory".
- (2) Special agreements shall apply in terms of return of packaging.
- (3) To the extent that we have been commissioned by the customer, we shall arrange transport insurance cover for the delivery; the costs incurred in this regard shall be for the account of the customer.

## **§ 6**

### **Liability for defects**

- (1) Claims for defect on the part of the customer shall assume that same has duly complied with his obligation to examine the goods and to give notice of defect according to § 377 HGB.
- (2) To the extent that the object of purchase is defective, the customer shall have the right to supplementary performance in the form of removal of the defect. In terms of supplementary performance we shall be entitled to provide delivery of a new object of purchase that is free from defects. In the event of removal of the defect, we shall be responsible for all expenses incurred in this regard, especially in terms of travel, labour and material costs, to the extent that these do not increase due to the fact that the object of purchase has been moved to a location other than the place of fulfilment.
- (3) Where supplementary performance fails, the customer shall be entitled at his discretion to request withdrawal from the contract or a decrease in the purchase price.
- (4) We shall be liable according to statutory provisions to the extent that the customer asserts claims for compensation of damages that are based on malice or gross negligence, including malice or gross negligence on the part of our representatives or vicarious agents. Insofar as we are not charged with wilful breach of contract, liability for compensation of damages shall be limited to foreseeable, typically occurring damages.
- (5) We shall be liable according to statutory provisions to the extent that we are in culpable breach of a significant contractual obligation; however, in this case liability for compensation of damages shall be limited to foreseeable, typically occurring damages.
- (6) Liability arising from culpable injury to life, limb or health shall remain unaffected; this shall also apply to compulsory liability in accordance with the Product Liability Law.
- (7) Unless stipulated otherwise above, liability shall be excluded.
- (8) The limitation period for claims for defect shall be 12 months, calculated from the point in time of transfer of risk.

## § 7

### Joint and several liability

- (1) Any additional liability for compensation of damages to that stipulated in § 6 – irrespective of the legal nature of the claim raised – shall be excluded. This shall in particular apply to claims for compensation of damages arising from culpability on conclusion of the contract, from other breaches of obligations or from claims in delict for compensation of material damages pursuant to § 823 BGB.
- (2) Limitation according to para. (1) shall also apply where instead of a claim for damages the customer demands compensation for useless expenses rather than the performance of services.
- (3) To the extent that liability for compensation of damages is excluded or limited in respect of ourselves, this shall also apply as regards personal liability for compensation of damages on the part of our staff, employees, colleagues, representatives and vicarious agents.

## § 8

### Retention of title

- (1) We shall retain proprietary rights to the object of purchase until receipt of full payment in respect of the delivery contract. In the event of breach of contract by the customer, in particular arrears in payment, we shall be entitled to retract the object of purchase. Retracting the object of purchase shall equate to withdrawal from the contract. After retracting the object of purchase we shall be entitled to dispose of same, whereby the proceeds of a sale shall be offset against the accounts payable by the customer – after deduction of reasonable realisation costs.
- (2) The customer shall be obliged to careful handling of the object of purchase; in particular, he shall commit to concluding sufficient insurance for covering the replacement value of the object of purchase in the event of fire, water damage and theft, at his own cost and in good time. To the extent that maintenance and inspection activities are required, the customer shall perform same at his own cost and in due time.
- (3) In case of garnishments and other third-party encroachments, the customer shall immediately inform us in writing, so as to allow us to take legal action pursuant to § 771 ZPO (*Zivilprozessordnung* - Code of Civil Procedure). To the extent that the third party is not in a position to compensate us for legal and extra-judicial costs of a case pursuant to § 771 ZPO, the customer shall be responsible for any loss incurred by us.
- (4) The customer shall be entitled to sell on the object of purchase in the regular course of business; however he shall hereby assign to us all claims in the amount of the final invoiced amount (including VAT) of our claim that are due to him from selling on the object of purchase to his customers or third parties, irrespective of whether the object of purchase was sold on without or after processing. The customer shall remain entitled to this claim even after said assignment. Our right to collect the claim ourselves shall remain unaffected by this. We shall however commit not to collect the claim as long as the customer fulfils his payment obligations from the proceeds received, does not fall into arrears and in particular an insolvency procedure is not instituted against him or he does not default on payments. However, where this is the case, we shall be entitled to demand that the customer discloses the assigned claims and the associated debtors to us, provides us all details for purposes of collection, makes available all relevant documentation and informs the debtors (third parties) of the assignment.
- (5) Processing or reworking of the object of purchase by the customer shall in all cases be carried out on our behalf. Where the object of purchase is processed using other objects that are not our property, we shall obtain co-ownership in the new item in the proportion of the value of the object of purchase (final invoiced amount, including VAT) to the other processed items at the time of processing. The same conditions shall otherwise apply to the item created by means of processing as apply to the object of purchase delivered under reserve.
- (6) Where the object of purchase is combined with objects that are not our property in such a manner that they are inseparable, we shall obtain co-ownership in the new item in the proportion of the value of the object of purchase (final invoiced amount, including VAT) to the other objects used in combination at the time of combination. Where said combination occurs in such a manner that the object of the customer is seen to be the main object, it is hereby agreed that the customer shall transfer proportionate co-ownership to us. The customer shall retain for us the sole ownership or co-ownership that has arisen in this manner.
- (7) The customer shall also assign to us claims for securing our claims against him that arise against a third party from the connection of the object of purchase with a property, ship or ship construction.
- (8) We shall be obliged to release the securities due to us at the request of the customer to the extent that the realisable value of our securities exceeds the claims to be secured by more than 10%; the selection



of securities to be released shall be at our discretion.

## **§ 9**

### **Export and foreign trade control**

- (1) The customer is aware that foreign trade transactions / deliveries to areas outside the Federal Republic of Germany may be subject to foreign trade law and may require approval by the Federal Office of Economics and Export Control (BAFA). A procedure of this nature is generally dependent on the items to be delivered and the country in which the recipient is located. The customer is aware that the regulations of the foreign trade law may change at short notice, either in terms of the requirement for a control and/or approval procedure or in terms of the conditions and content associated with same. We shall under no circumstances be responsible for the requirement of control of this nature or for approval where applicable or for the result of same.
- (2) Where it becomes apparent after conclusion of the contract with the customer that control in respect of foreign trade law (verification and authorisation by regulatory authorities where necessary) is required, we shall be entitled to withdraw from the contract by issuing a written declaration to the customer.
- (3) In the event of foreign trade control, the contractual periods of delivery shall be extended by the period required for control, that is, by the time from application as per requirement to final official decision.

## **§ 10**

### **Place of jurisdiction / Place of fulfilment**

- (1) To the extent that the customer is a merchant, our registered office shall be the place of jurisdiction; we shall however be entitled to bring an action against the customer at his local court as well.
- (2) The law of the Federal Republic of Germany shall apply, both substantively and procedurally; the CISG (United Nations Convention on Contracts for the International Sale of Goods) shall not be effective, even where incorporated into the law of the Federal Republic of Germany.
- (3) Deliveries shall in principle be ex factory unless otherwise expressly agreed as delivery from a warehouse in a different location. The purchaser shall bear the risk for the price and goods ex factory where an agreement deviating from delivery ex factory has been reached. For the rest, our registered office shall be the place of fulfilment unless otherwise documented in the contract itself or in the confirmation of order.

In the event of doubt or disputes, the German version of these conditions shall be exclusively legally binding.