

## **§ 1 Scope of Application**

- 1.1 Our Conditions of Sale shall apply exclusively; we will not recognise conditions of the Buyer that conflict with or deviate from our Conditions of Sale, unless we have explicitly agreed in writing to them being applicable. Our Conditions of Sale shall also apply if we carry out a delivery to the Buyer without any reservation, even if we are aware of conditions of the Buyer which conflict with or which deviate from our Conditions of Sale.
- 1.2 Our Conditions of Sale shall apply solely to entrepreneurs as defined in § 310 German Civil Code (*BGB*).
- 1.3 Our Conditions of Sale shall, in the relevant applicable version, be valid as a framework agreement also for all future business of the same type with the Buyer, without us having to refer to them again in every individual case. We will inform the Buyer of any alterations upon conclusion of the respective contract at the latest.

## **§ 2 Quotations - Prices - Conditions of Payment**

- 2.1 Our quotations are subject to alteration and non-binding, as long as an explicit intention to create legal relations does not, by way of an exception, result from the quotation. Our prices are to be understood as excluding statutory value added tax and for delivery from the respective plant ("ex works", Incoterms 2010) Gottlieb-Daimler-Str. 34, 46282 Dorsten, Germany / Birkenallee 80, 16515 Oranienburg, Germany / Im Gewerbepark Unterallgäu 1, 87754 Kammlach, Germany. We are entitled to increase the agreed price if, between the placing of the order and the delivery, the costs of raw material, energy, wages and salaries, freight, customs duties, fees etc. have increased and the delivery becomes more expensive as a result. We will inform the Buyer of an increase in price in advance. The Buyer may object to the increase in price within a period of seven days following receipt of notification of the price increase. In the event that the Buyer objects, we may either withdraw from the contract or deliver the goods at the price originally agreed. We shall notify the Buyer of our decision without undue delay. If we withdraw from the contract, further claims on the part of the Buyer shall be excluded.
- 2.2 Unless otherwise stated in the order confirmation, the purchase price shall be due and payable without deduction immediately upon receipt of the invoice and delivery, or acceptance of the goods. We reserve the right, however, even within the scope of an ongoing business relationship, to carry out a delivery in whole or in part only upon advance payment at any time. We will make such reservation at the latest when confirming the order.
- 2.3 Payments shall be made by bank transfer. The day of payment shall be deemed the day on which we can dispose of the value of the money received. If the goods are collected, payment can also be made in cash. We will not recognise payment by cheque or bill of exchange as fulfilment of the payment obligation.
- 2.4 For payments using the SEPA direct debiting procedure, the Buyer must issue us with a SEPA company mandate. The direct debit will be collected 10 days after the invoice date. The term for pre-notification is reduced to 1 day. The Buyer shall ensure that there are sufficient funds in the account. Costs ensuing from the direct debit not being honoured or being reversed shall be borne by the Buyer, as long as the non-honouring or reversal was not caused by us.
- 2.5 We may agree with the Buyer that he will open a documentary letter of credit through his bank (or a[nother] bank acceptable to us). In this case, the Buyer open the letter of credit in accordance with the Allgemeinen Richtlinien und Gebräuchen für Dokumentenakkreditive [General Guidelines and Conventions for Documentary Letters of Credit], Revision 2007, ICC Publication No. 600 ("ERA").
- 2.6 The Buyer shall only have offsetting and retention rights if his counterclaims have been established as final and absolute by court judgment or if they are undisputed or insofar as

consideration resulting from the contractual relationship is concerned, in particular in the case of a counterclaim that is the result of a non-cash claim that entitles the Buyer to refusal of performance.

- 2.7 Subsequent modifications of, or additions to the order or significant order results will be set out in writing and confirmed by both parties. Expenses already made as well as deliveries and services already carried out shall be remunerated by the Buyer as agreed. Upon the Buyer's request, we will carry out subsequent modifications if this is possible without any additional costs or delays. If the modification results in expenses which go beyond the expenses originally agreed upon and the remuneration originally agreed upon, we will notify the Buyer of the change in costs, remuneration and time periods within 5 working days. If the buyer does not object to the change within another 5 working days, or if a consensual agreement is not made in advance, the modification requested by the Buyer and the changes in costs, remuneration and time periods will be deemed as agreed upon.

### **§ 3 Delivery**

- 3.1 Unless otherwise agreed with the Buyer, the costs for packing our products shall be borne by the Buyer. If requested by the Buyer, we will cover the delivery with a transportation insurance policy. Any costs resulting from this are to be borne by the Buyer.
- 3.2 Partial deliveries are permitted, if (a) the Buyer can use the partial delivery within the scope of the contractually intended purpose, (b) delivery of the remainder of the goods ordered is ensured and (c) no significant extra expense or additional costs result (unless we express our willingness to bear these).
- 3.3 Delivery items from correctly executed deliveries may only be returned by the Buyer if we approve the return. In this case, the Buyer must bear the costs of the return.
- 3.4 Force majeure, official requirements and other circumstances for which we are not responsible, in particular disruptions to transport and operations, industrial action, shortage of material, fire damage, war or states of emergency shall release us from our delivery and performance obligation for the duration of their impact. We have the right to withdraw from the contract if, for the reasons stated above, it is no longer reasonable to expect us to fulfil the requirements of the contract. An unreasonable situation does not exist if it can be foreseen that the impediment to performance caused by the reasons quoted above is only of a temporary nature. In these cases, any claims of the Buyer for damages against us shall be excluded.
- 3.5.1 We shall be liable in the case of impossibility of or delay to performance, where this is due to intent or gross negligence, including intent or gross negligence by our representatives or vicarious agents, in accordance with the statutory provisions. However, in cases of gross negligence, our liability is limited to the damage that is typical for the contract and is foreseeable.
- 3.5.2 In cases of slight negligence, our liability for damages and for the reimbursement of futile expenses resulting from the impossibility of performance is likewise limited to the damage that is typical for the contract and foreseeable. Further claims of the Buyer due to the impossibility of performance are excluded. The Buyer's right to withdraw from the contract remains unaffected.
- 3.5.3 Our liability owing to delayed performance shall, in cases of slight negligence, be limited to a total of 5% of the value of performance for damages alongside performance and for damages in lieu of performance. We reserve the right to prove that the Buyer did not suffer any loss at all or a loss that is significantly lower than the aforementioned lump sum. Further claims on the part of the Buyer due to delayed performance shall be excluded – even after the expiry of a deadline for performance which has been set for us. These provisions shall also apply to reimbursement of futile expenses.

- 3.5.4 The limitations of this § 3.5 shall not apply if we are liable due to injury to life, limb or health, the assumption of a guarantee, in accordance with § 478 German Civil Code (*BGB*) or owing to the violation of key contractual obligations. Key contractual obligations are those whose fulfilment forms the nature of the contract and on which the Buyer may rely. No change to the burden of proof to the detriment of the Buyer is associated with the foregoing provisions.

#### **§ 4 Reservation of Self-Supply**

We do not assume the procurement risk. If, despite us having concluded an appropriate procurement contract, we do not receive the delivery item or we do not receive it in complete form with regard to essential components of the delivery item, we have the right to withdraw from the contract with the Buyer. Our responsibility for intent and negligence remains unaffected. We shall inform the Buyer without undue delay about the non-availability of the delivery item, or about the fact that the delivery item is not available on time, and if we wish to withdraw from the contract, we shall exercise our right to withdraw without undue delay. In the event of withdrawal, we shall reimburse consideration already given by the Buyer without undue delay.

#### **§ 5 Default of Payment and Consequences of Default**

- 5.1 If the Buyer is in default of payment, he is obliged to pay default interest to us at the level envisaged by law. Claims for damages over and above this shall remain unaffected.
- 5.2 As long as the Buyer is in default of payment, we shall not be obliged to make further deliveries, regardless of which legal basis our delivery obligation is attributable to.
- 5.3 If there is a significant deterioration in the financial circumstances of the Buyer, in particular if an application is made to start insolvency proceedings, we may demand advance payment in cash or another form of security for deliveries still outstanding.
- 5.4 Should instalments and/or part payments have been agreed between the Buyer and us, the following shall also apply: if the Buyer falls behind by more than three days with the payment of an instalment and/or a part payment, partially or completely, then the balance still outstanding will become due immediately and in full.
- 5.5 If the Buyer is in default of acceptance on the due date, he must still pay the purchase price. In these cases we will place the delivery item in storage, beginning 3 days following the notification of readiness for shipping, at the risk and cost of the Buyer.
- 5.6 If a security has been provided by a bank or another third party for the payment of the purchase price and the delivery of the delivery item cannot be made owing to circumstances outside of our control, we are additionally entitled to demand the total remaining purchase price still outstanding from the bank or another third party in return for submitting proof that the delivery item has been placed in storage. Such storage shall be at the cost and risk of the Buyer. The date on which we place the delivery item in storage shall be regarded as the delivery date. All delivery documents and other documents which we need to pass on in order to receive the payment from a bank or from another third party must be passed to us without undue delay by the issuer of these documents.

#### **§ 6 Retention of Title**

- 6.1 We will retain the title to the delivery item until all of our claims against the Buyer resulting from the business relationship are fulfilled. In the event that the Buyer behaves in a way that is in breach of the contract, in particular if he is in default of payment, we are entitled to withdraw from the contract after the fruitless expiry of a reasonable period of grace. After such

withdrawal from the contract, we have the right to demand that the delivery item will be returned to us, to sell it elsewhere or to otherwise dispose of it.

- 6.2 In the event of seizures or other actions by third parties, the Buyer must inform us without undue delay and in writing so that we can take legal action in accordance with § 771 ZPO German Code of Civil Procedure (ZPO). If the lawsuit in accordance with § 771 ZPO is successful and if the legal enforcement against third parties to cover the judicial and extra-judicial costs of such a lawsuit was not successful, the Buyer shall be liable for the loss we have incurred.
- 6.3 The Buyer may use the delivery item and resell it within the ordinary course of business, as long as he is not in default of payment. He must not, however, pledge the goods or assign them by way of security. To secure our claims against the Buyer, the Buyer hereby already fully assigns to us the payment claims against his customers which result from the resale of the goods subject to the retention of title, as well as the claims of the Buyer with regard to the delivery item against his customers or third parties which result from another legal basis (in particular, claims in tort and claims to insurance benefits); and this includes all current account balance claims. We accept this assignment. The Buyer is authorised to collect for us, at his own expense and in his own name, the amount receivable of the claims assigned to us, as long as we do not revoke this authorisation. This shall not affect our right to collect these amounts receivables ourselves; we will, however, not collect the receivables and we will not revoke the authorisation to collect as long as the Buyer meets his payment obligations. If, however, the Buyer behaves in a way which breaches the contract – in particular if he is in default of payment of a payment claim – we can demand the Buyer to disclose to us the claims assigned and the respective debtors, to notify the respective debtors of the assignment and to give us all documents and to provide us with all information that we need to assert the claims.
- 6.4 The processing or remodelling of the delivery item by the Buyer is always performed for us. If the delivery item is processed with other objects that do not belong to us, then we shall acquire joint ownership of the new item in the proportion of the value of the delivery item (final invoice amount including VAT) to the other processed items at the time of processing. Otherwise, for the item that has been created through processing the same applies as for the delivery item subject to the retention of title.
- 6.5 If the delivery item is mixed inseparably with other objects which do not belong to us, we shall acquire joint ownership of the new item in the proportion of the value of the delivery item (final invoice amount including VAT) to the other mixed objects at the point of mixing. If the objects are mixed in such a way that the Buyer's item can be regarded as the main item, then it can be deemed to be agreed that the Buyer shall transfer joint ownership to us on a pro rata basis. The Buyer shall hold the sole ownership or joint ownership thus created in safe custody for us.
- 6.6 To secure our claims against the Buyer, the Buyer shall also assign claims against a third party to us which arise from linking the purchased item with a piece of land.
- 6.7 We undertake to release, at the request of the Buyer, the securities due to us insofar as the realisable value of our securities exceeds the claims to be secured by more than 10%. The selection of the securities to be released is subject to our discretion.

## **§ 7 Liability for Defects**

- 7.1 The Buyer's claims for defects presuppose that he has properly carried out his obligations of inspection and complaint in accordance with Articles 38, 39 of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 7.2 Weights, measurements, performance details, output figures and other information stated in sales brochures, advertisements and comparable documents are only to be regarded as a

guide. The same applies to samples which have been presented or provided. We do not assume any warranty for special items.

- 7.3 If the delivery item is defective and we are responsible for this, then we shall be entitled to choose between either supplementary performance in the form of removal of defects or the supply of a new item free of defects. In the event of removal of defects we undertake to bear the costs for all expenditures required for the purposes of removal of defects, in particular transport, travel, labour and material costs, insofar as these do not increase as a result of the fact that the delivery item has been transported to a place other than the place of performance.
- 7.4 If supplementary performance fails, which at the earliest can be assumed to be the case after the second attempt at improvement or supplementary performance, then the Buyer is entitled to choose either to withdraw from the contract or to request a reduction in price. Unless otherwise specified below (§§ 7.6 and 7.7), further claims on the part of the Buyer – irrespective of the legal grounds – are excluded. We shall therefore not be liable for damage that has not occurred to the delivery item itself; in particular, we shall not be liable for loss of production, interruption of operations, the costs of a potential product recall, loss of profits or other financial losses suffered by the Buyer.
- 7.5 We shall be liable in accordance with the statutory provisions if the Buyer asserts claims for damages which are based on intent or gross negligence, including intent or gross negligence on the part of our representatives or vicarious agents. As long as we are not accused of intentional breach or grossly negligent of contract, the liability for damages is, however, limited to the foreseeable, typically occurring damage.
- 7.6 We shall be liable in accordance with the statutory provisions insofar as we culpably violate a key contractual obligation. Key contractual obligations are those whose fulfilment forms the nature of the contract and on which the Buyer may rely. In case of slight negligence, however, the liability for damages shall be limited to the damage which is foreseeable at contract conclusion and typical for the contract.
- 7.7 Liability based on culpable injury to life, limb or health remains unaffected; this also applies to mandatory liability in accordance with the German Product Liability Act (*Produkthaftungsgesetz*).

## § 8 Exclusion of Further Liability

- 8.1 Any additional liability for damages other than that provided for in the preceding conditions is excluded, irrespective of the legal nature of the claim asserted. This applies in particular to claims for damages resulting from culpability at the time of conclusion of the contract (*“culpa in contrahendo”*), from other breaches of duty or due to claims in tort for compensation of material damage as per § 823 German Civil Code (*BGB*). In the case of a claim for damages pursuant to culpa in contrahendo, the exclusion of liability mentioned above is equal to a subsequent waiver of liability due to the claim which had already existed on conclusion of the contract. Moreover, we are not liable if claims are asserted against the Buyer on the basis of industrial property protection regulations. This limitation shall also apply if the Buyer claims reimbursement of futile expenses instead of compensation for damages in lieu of performance.
- 8.2 Insofar as liability for damages is excluded or limited vis-à-vis ourselves, this shall also apply in respect of the personal liability for damages of our staff and employees, employee representatives and vicarious agents.

## § 9 Limitation of Claims

Claims of the Buyer against us – irrespective of the legal basis – shall expire at the end of one year after they arise. This shall not apply in the cases provided for in §§ 438 sec. 1 no. 2 and 634a sec 1 no. 2 German Civil Code (*BGB*). Likewise, this shall not apply in the event of intent or fraudulent concealment of a defect or if we have provided a guarantee. Additionally, for damage claims, this limitation period shall not apply in cases of injury to life, limb or health or freedom, in the case of claims in accordance with the German Product Liability Act (*Produkthaftungsgesetz*) or in the case of a grossly negligent violation of obligations or the violation of key contractual obligations; key contractual obligations are those whose fulfilment forms the nature of the contract and on which the Buyer may rely. No change to the burden of proof to the detriment of the Buyer is associated with the foregoing provisions.

## § 10 Return of packaging

In accordance with Section 15 of the German Packaging Act (*VerpackG*), we take back transport packaging, sales packaging and other packaging not subject to system participation requirements after use. The return must be agreed with us in advance and made in a condition suitable for transport. All costs associated with return transport and disposal shall be borne by the Buyer. By way of exception, we will bear the costs if the return consists of a full truck load.

## § 11 Miscellaneous, Place of Jurisdiction, Applicable Law

- 11.1 The exclusive place of jurisdictions for both parties shall be 46282 Dorsten, Federal Republic of Germany. We have the right to take legal action at the court competent for the Buyer, as well, or at any other court which may be competent in accordance with national or international law.
- 11.2 The Buyer is not permitted to transfer any guarantee and warranty rights, licences or other rights granted to him within the context of the contractual relationship with us, unless we agreed to the transfer in writing.
- 11.3 The laws of the Federal Republic of Germany shall apply, including the UN Convention on Contracts for the International Sale of Goods, and to the exclusion of the reference norms of German Private International Law.