

# Sales and Supply Conditions

1. The following Supply Conditions apply to all contracts, deliveries and other performances, including advisory services, unless they have been amended or excluded with our expressed consent.

Any General Terms and Conditions of Business of the customer/purchaser are not binding even if we have not again expressly rejected them.

2. The prices applicable on the delivery date shall be determinant.

3. Deliveries within Germany of less than 400.00 euros net goods value are made ex works. In the case of deliveries within Germany of more than 400.00 euros net goods value, we bear the normal freight/postage costs.

4. We supply in accordance with Incoterms<sup>®</sup> 2010 (ICC).

5. Delivery in cartons is made free of packaging costs. Pallet packaging is provided against charging for cost price.

## 6. Quotation and conclusion of contract

All our quotations are given without commitment. Contracts and other agreements shall become binding only by way of our written confirmation or delivery.

If our sales staff or agents make oral agreements or provide assurances which go beyond the scope of our quotation, these shall always require our written confirmation in order to be valid. Unless otherwise agreed, documents forming part of the quotation, such as illustrations, drawings, particulars of weights and dimensions, are only approximate.

## 7. Delivery conditions and defective performances

If specific lead-times or delivery dates are not fulfilled, the customer wishing to withdraw from the contract or claim compensation or nonfulfillment shall not be released from the need to allow a suitable grace period for the performance and to issue a statement that he will refuse the performance after the expiry of the period.

This shall not apply if we have expressly stated in writing that a lead-time or delivery date is binding.

Reasonable partial consignments are permissible.

Lead-times – even those established after a delay – shall be suitably extended in the event of *force majeure* and also unforeseen impediments occurring after the conclusion of the contract and for which we are not responsible, in so far as such impediments seriously affected delivery of the purchased item.

We shall not be held responsible for delay in delivering and failure (impossibility) to deliver as long as the person we employ fulfill our obligations and our own suppliers attribute no fault to us.

We shall not be held liable for delayed deliveries or failures (impossibility) to deliver for which our suppliers are to blame. The customer's right to withdraw, after a grace period allowed to us has expired without result, remains unimpaired.

## 8. Shipment and transfer of risk

Unless otherwise agreed, the route and mode of shipment are left at our discretion.

At customer's request the goods shall be insured. The risk shall be transferred to the customer upon despatch.

If shipment is delayed at the customer's request or for a reason attributable to it, the goods shall be stored at the customer's expense and risk. In such case, the notice that the goods are ready for despatch shall rank as despatch.

9. The goods are shipped ex-works at the recipient's risk. Any complaints concerning transport damage must be made upon receipt.

## 10. Prices and payment

Unless otherwise agreed, payment shall be remitted within 30 days from invoice date so that the sum agreed as settlement of the invoice is at our disposal not later than the due date.

Only if an according agreement exists, a discount able, properly taxed bill of change shall be accepted for mode of payment.

Cheques and drafts are credited under the premise of being honored, costs being deducted, and payment shall be considered duly received on the day the amount is actually at our disposal.

11. In the event of late payment, interest on defaulted payment is charged at 4% above the Main refinancing operations Minimum bid rate of the ECB, without a special reminder being required.

## 12. Retention of title

We retain the title of the goods until full payment of the purchase price. In the case of goods sold by the customer as part of its business activities, we retain the title until all claims upon the customer deriving from the business relationship have been settled. This shall apply even if some or all of the claims have been entered in a current account and the balance has been drawn up and acknowledged. If substantial contractual obligations are infringed and especially in the event of delayed payment, we may take back the goods after issuing a reminder and the customer shall be obliged to deliver them up.

Unless the German Hire Purchase Law applies, our taking-back or imposition of attachment shall imply withdrawal from the contract only if we have expressly stated this in writing.

In the event of attachment or other impairments if rights by third parties, the customer shall inform us in writing, sending a record of attachment and an affirmed and signed statement identifying the attached items.

The customer may resell the goods in the normal course of business and he assigns to us hereby the claim deriving from the resale together with all ancillary claims which he acquires upon his customer or third parties as a consequence of the resale. The customer is authorised to collect the debt, even after the assignment. Our right to collect the debt ourselves remains unimpaired thereby but we undertake not to collect the debts as long as the customer duly fulfills his payment obligations. We may require the customer to inform us of the assigned claims and of the parties owing them, to provide all information required

to collect them, to deliver up the pertinent documents and advise the debtors of the assignment.

We undertake to release the security held by us in as much as the value thereof exceeds the secured claims by more than 20%, in so far as they may not yet have been settled.

## 13. Liability for Defects and Warranty Claims

Minor defects shall neither constitute a right on the Customer's part to refuse acceptance nor justify any warranty claims.

We accept liability for defects subject to the following conditions:

- (1) The delivery items in question found to be defective within the warranty period, provided that such defects can be established to have existed at the time of passage of risk, shall either be repaired or a substitute delivery shall be made free of charge respectively at our discretion.
- (2) All warranty claims shall become statute-barred after 12 months. This shall not apply where the German laws pursuant to § 438 Para. 1 No. 2 (structures and objects for structures), § 479 Para. 1 (right of recourse) and § 634a Para. 1 No. 2 (building defects) of the German Civil Code (BGB) dictate longer periods of limitation, nor in the case of any loss of life, bodily injury or health impairment, in the case of any wilful or grossly negligent breach of duty on the part of the Supplier and in the event of fraudulent concealment of a defect. This shall not affect the statutory provisions concerning the suspension of expiration of prescription, suspension of the running or the rerunning of the statute of limitation.
- (3) Following the timely service of a notice of defects, we shall be granted the opportunity for subsequent performance within a reasonable period of time. Should such subsequent performance prove to be a failure, the Customer may – irrespective of his right to claim for damages pursuant to Para. 15) – rescind the Contract or effect a price reduction.
- (4) We shall not accept warranty claims in the case of merely minor deviations from any warranted quality, in the case of any insignificant reduction in serviceability, in the case of natural wear and tear or any damage caused after the passage of risk to the Customer by incorrect or negligent handling, excessive use, unsuitable operating fuels or materials, or due to defective building works, unsuitable building sites or caused by external influences which were not taken into account in the Contract, nor damage due to non-reproducible software faults. In the event that the Customer or any third party make any unauthorised changes or carry out any unauthorised repairs, we shall not accept liability for any such changes or repairs nor for any consequential faults.
- (5) The Customer shall only have a right of recourse against us pursuant to § 478 of the German Civil Code (contractor's right of recourse) in so far as the Customer has made no agreements with his customers extending beyond the limits of the statutory warranty claims.
- (6) In all other respects, Para. 15) hereunder shall apply to the Customer's right to claim for damages. All other claims by the Customer against us and our vicarious agents or claims other than those covered by this section shall be excluded.

14. We reserve the right to deviate from the illustrations in the catalogue in order to enhance our products.

## 15. Impossibility, Adaptation of Contract

- (1) To the extent that a delivery is deemed impossible, the Customer shall have the right to claim for damages, unless such impossibility is beyond our control. However, any claim for damages by the Customer shall be limited to 10% of the value of such part of the delivery item which could not be put into expedient operation as a result of the impossibility. This limitation shall not apply in case of any mandatory liability as in the case of wilful intent and gross negligence or in the case of any loss of life, bodily injury or health impairment. This is not associated with any changes to the burden of proof to the detriment of the Customer and shall not affect the Customer's right to rescission.
- (2) In the event of any unforeseeable events, such as mobilisation, war, riot or any other similar events, such as strike action and lock-out, should substantially change the economic value or the contents of the delivery item or should such events have a considerable impact on our business operations, the Contract shall be appropriately adapted, bearing in mind the requirements of good faith. If this is not practicable for economic reasons, we shall have the right to withdraw from the Contract.

## 16. Other Claims for Damages

- (1) All other claims for damages or compensation claims on the part of the Customer (hereinafter: claims for damages), irrespective of the legal grounds on which they may be based, in particular, claims based on any breach of duty arising out of the relationship under the law of obligations and any tortious acts, shall be excluded.
- (2) This shall not apply in the case of any mandatory liability, for example under the Product Liability Act, in the event of wilful intent or gross negligence, in the case of any loss of life, bodily injury or health impairment or in the case any breach of any essential contractual duties. Any claim for damages based on a breach of an essential contractual duty, however, shall be limited to foreseeable damage or losses as are typical for contracts such as the one between the Contracting Parties, except in the event of wilful intent or gross negligence or in the case of mandatory liability following a loss of life, bodily injury or health impairment. This is not associated with any changes to the burden of proof to the detriment of the Customer.
- (3) To the extent that the Customer is entitled to claim for damages pursuant to this section 15), all such claims shall become statute-barred upon expiration of the statute of limitation applicable to warranty claims pursuant to Para. 14) above.
- (4) Damage claims under the Product Liability Act shall be subject to the statutory limitation rules.

## 17. Place of Performance, Jurisdiction, Applicable Law

The place of performance and exclusive place of jurisdiction for all deliveries and payments (incl. legal action based on dishonoured cheques or bills of exchange), as well as all disputes arising between the Parties shall be Dornstetten, Germany, in so far as the Customer is a registered trader, a legal entity under public-law or a state-operated special fund. All contractual relations between the Contracting Parties shall be governed solely by the laws of the Federal Republic of Germany, excluding the Hague Convention relating to the Uniform Law on the International Sale of Goods.