

## 1. Scope

- 1.1 Our terms of delivery and payment, as well as our terms of contract production, as amended, shall apply to all current and future orders that the domestic or foreign ordering party places with us or with companies affiliated to us as defined by §§ 14 ff. Company Law, unless we have expressly and in writing acknowledged deviations from such terms and conditions. Collateral agreements and subsequent amendments shall only be binding on us if they have been confirmed in writing. This shall also apply to a rescission of the clause stipulating the written form. Acceptance of our deliveries and services shall be held to be recognition of our terms of delivery and payment.
- 1.2 Any purchase terms of the ordering party shall be binding on us only after we have expressly acknowledged them in writing. The same shall apply to any other General Terms and Conditions of the ordering party.
- 1.3 Agreements made by the ordering party with travelling salesmen, agents and authorized representatives shall only be binding on us upon our written confirmation. Only upon submission of an authority to collect, shall our agents, authorized representatives and travelling salesmen be entitled to accept cash and cheques.
- 1.4 Our terms of delivery and payment shall only apply vis-à-vis enterprises as defined by § 14 BGB (German Civil Code), if the contract is part of the operation of the enterprise, as well as vis-à-vis legal persons under public law and special funds under public law.

## 2. Offer and Conclusion of a Contract

- 2.1 Our offers shall be non-binding. A supply contract or other contract shall only be brought about after we have confirmed the customer order or any other order in writing or after we have effected delivery of the goods.
- 2.2 We shall reserve the right to change the manufacturing process and the product composition to the extent that such action does not lead to a detrimental change in type and quality of the product.
- 2.3 Unless expressly agreed otherwise, details in the form of texts or images published by us in catalogues, brochures and other publications (e.g., descriptions, illustrations or drawings) identify in a final manner the characteristics of the goods delivered by us and their possible use. The information given in this respect constitutes approximate values usual in the industry unless it has expressly been described as binding in the order confirmation. Other manufacturer's information shall not be binding.
- 2.4 Within the customary limits, excess and short deliveries shall be considered agreed.

## 3. Prices

- 3.1 Unless a fixed price has expressly been agreed on, the prices applicable on the day of delivery shall be decisive for invoicing.
- 3.2 Unless expressly otherwise specified, all prices shall be net prices excluding turnover tax, the applicable amount of which the ordering party has to pay additionally, and the prices shall apply ex works at our manufacturing location, however, excluding packaging, which, including any product-specific special packaging, shall be at the expense of the customer. Unless otherwise specified, the prices are quoted in the European currency (euro).
- 3.3 The prices shall be based on the materials and labour costs applicable at the time of the order confirmation or of the delivery of the goods. We expressly reserve the right to effect changes.
- 3.4 Any discounts granted shall be cancelled in the event of a delay in payment by the ordering party, institution of insolvency proceedings against the assets of the ordering party or rejection of such opening for lack of assets.

## 4. Delivery

- 4.1 The delivery periods (dates) shall result from the agreements reached by the parties. The delivery periods shall commence as per the date of our order confirmation, however, not before all technical and commercial details have been clarified unambiguously, and all obligations incumbent on the ordering party have been met, as, e.g., production of all required certifications and permits issued by the authorities or payment of a deposit. The delivery time shall be considered observed when, until expiry of the delivery period, the item has left our plant or warehouse or when the ordering party has been notified of readiness for dispatch, when the goods cannot be shipped in time without any fault on our part. In the event that acceptance of the item is required – with the exception of a justified rejection – the date of acceptance shall be decisive, alternatively the notification of the readiness for acceptance. Compliance with the delivery periods shall apply with the reservation that we ourselves obtain our supplies correctly and in good time. We shall notify the ordering party as soon as possible of imminent delays.
- 4.2 Should shipment or acceptance be delayed for reasons for which the ordering party can be held responsible, we shall charge the ordering party for the costs resulting from the delay, starting one month after communication of the readiness for dispatch or acceptance.
- 4.3 For periods and delivery dates which have not expressly been described as "fixed" in the order confirmation, the ordering party may grant us, after we have exceeded such periods or dates, a reasonable period of grace for delivery/performance. Only after expiry of such period of grace can we be in default.
- 4.4 Periods and deadlines shall be extended, without prejudice to our rights arising from delays in payment by the ordering party, by the period during which the ordering party does not meet its obligations to us.
- 4.5 Unforeseeable, exceptional events for which we cannot be held responsible, e.g., industrial disputes, operational breakdowns, measures taken by the authorities, interference with transportation or other events of Force Majeure, regardless of whether these events occur at our place or at one of our supplier's place, shall discharge us from our obligations arising from the respective contract; if the obstacles are of a temporary nature, however, we shall only be discharged for the duration of the hindrance plus a reasonable starting period. We will notify the ordering party as early as possible of commencement and termination of such events. If, as a result of such events, delivery later becomes impossible or unreasonable for one of the parties, both parties shall be obliged to start negotiations about an adaptation of the contract and, upon a breakdown of such negotiations, they shall be entitled to rescind the contract after having set of two-week period of grace.
- 4.6 We shall not be liable for damage caused by delay resulting from a slightly negligent breach of duty unless such breach of duty results in injury to life, limb or health. The above regulation shall not shift the burden of proof to the prejudice of the ordering party.
- 4.7 We shall be entitled to execute partial deliveries insofar as they are acceptable to the ordering party. Partial deliveries may be invoiced separately.

## 5. Information and Consultancy

Information and consultancy with regard to our products shall be given based on our experience to date. The values provided in this respect are average values that have been determined. Such information or consultancy does not replace the need to perform suitability tests of the goods delivered and to adhere to processing prescriptions. Oral information shall not be binding. Item 10 of these terms and conditions shall apply to a possible liability.

## 6. Dispatch and Passing of Risk

- 6.1 Unless otherwise agreed on, delivery shall be effected ex works Hattingen notwithstanding item 3.2. In the event that another Incoterms clause has been agreed on, such clause shall apply in the version applicable at the point in time when the contract was concluded.
- 6.2 Should the goods, at the ordering party's request, be sent to another place than the place of performance, the ordering party shall bear all costs arising therefrom. After a due assessment of the circumstances, we shall be entitled to decide freely about the transport route and the carrier. The ordering party shall report to us in writing any transport damage immediately after receipt of the goods, stating the type and extent of such damage. An insurance of the goods against transport damage, transport loss or breakage shall be taken out only at the ordering party's express request at the expense and on the account of the ordering party.
- 6.3 For deliveries ex work, dispatch and transport shall always be effected at the risk of the ordering party. This shall also apply if delivery is effected ex works warehouse of a third party (transfer order) or for the return of goods or empties (returnable transport packaging). Even in the event of partial deliveries or in the event that we have additionally taken over other services, e.g., transport charges or delivery and installation, the risk shall pass to the ordering party at the moment the consignment has been handed over to the person performing the transport or it has left our warehouse for the purpose of shipment or, for delivery ex works, has left our works. Insofar as an acceptance has to be effected, it shall be decisive for the passing of the risk. Such acceptance has to be effected immediately on the agreed date of acceptance; alternatively it has to be effected immediately after the notification of the readiness for acceptance. Unless otherwise agreed, acceptance shall be effected in our works. The ordering party shall not be entitled to refuse acceptance because of an immaterial defect. Should acceptance not be effected for reasons for which the ordering party can be held responsible, the work shall be deemed accepted as of the date of acceptance, or one week after the notification of the readiness for acceptance.
- 6.4 Should the dispatch of the consignment be delayed for reasons for which we cannot be held responsible, or should the ordering party itself be responsible for the transport of the goods, the risk shall be passed upon notification of the ordering party of the readiness for dispatch. Storage costs incurred after the risk has been passed shall be borne by the ordering party. Should

goods be stored in our works or warehouse, the storage costs shall amount to 0.5 % of the invoiced amount per month. We reserve the right to provide proof of higher storage costs. After expiry of a reasonable period without result, we shall be entitled to otherwise dispose of the consignment and to supply the ordering party within a reasonably extended period.

6.5 In the event of delivery free house/warehouse, even for partial deliveries, the risk shall pass on to the ordering party as soon as the goods have arrived at its business/warehouse and are ready for unloading. Unloading has to be performed immediately and properly by workers and unloading equipment to be made available in sufficient quantity by the ordering party. Waiting times shall be charged by us at amounts customary in the trade. Should the journey to the place of destination fail for reasons for which we cannot be held responsible, the risk shall pass on to the ordering party upon failure of making the journey. This shall also apply in the event of unjustified refusal of acceptance by the ordering party. Item 6.4 shall apply mutatis mutandis.

## 7. Payment

7.1 Payments have to be effected in euro (€) and have to be made free of postage and free of expense. They may only be made to the paying agents specified by us. Bills of exchange and cheques shall be considered as payment only after redemption/cashing and will be accepted without obligation for timely representation and protesting.

7.2 Unless expressly otherwise agreed, payments have to be made without deductions within 30 days as of the date of the invoice. When terms of payment are exceeded, we shall be entitled to demand interest amounting to 8 percentage points above the basis interest rate (§ 247 BGB [German Civil Code]) p.a.

7.3 Any offsetting by the ordering party against counterclaims shall only be permitted if these counterclaims are uncontested or have become res judicata. The maximum amount that the ordering party may claim as a result of defects shall be three times the amount of the expense for subsequent performance. If the ordering party exercises its right of retention, the ordering party shall be obliged, at our discretion, to provide security amounting to the unpaid partial amount either by bank guarantee or by depositing such amount with a notary of its choice.

7.4 If payment is not made in due time we shall be entitled to:

7.4.1 immediately assert all claims against the ordering party, which claims arise from the respective or other transactions, even those which have not yet become due;

7.4.2 withhold supplies or other services arising from the respective or other orders until all our claims still outstanding from the respective or other orders have been satisfied in full by the ordering party;

7.4.3 demand appropriate security;

7.4.4 reclaim the goods supplied by us which are still subject to the reservation of title. If, due to lapse of time, the goods are no longer utilizable or no longer utilizable without restrictions, we shall be entitled to demand value equalization.

7.5 If, after entering into the contract, we obtain knowledge of facts evidencing an essential worsening of the ordering party's financial condition, which facts, based on due commercial assessment of the circumstances, may endanger the claim for consideration (which includes, in particular, a petition to open insolvency proceedings), we shall up to the time of its performance be entitled to demand provision of suitable security within a reasonable period or performance upon consideration. If the ordering party does not comply with such justified request in due time, we may rescind the contract or claim damages. In this situation, we shall be entitled to call for immediate payment of all amounts, which also includes any amounts for which deferment has been granted.

## 8. Reservation of Title and Industrial Property Rights

8.1 All goods delivered shall remain our property until the remuneration owed for it, including all ancillary claims, has been paid in full. When bills of exchange or cheques are accepted, payment shall only be considered effected after their final redemption/cashing. The ancillary claims include in particular costs for packing, freight, insurance, bank charges, reminder charges, lawyer's charges, court fees and other costs.

8.2 For a current account, the reservation of title serves as security for our balance claim. Goods already paid for shall remain our property as long as we have any claims against the ordering party.

8.3 The ordering party shall take the conditional goods into customary custody on our behalf. The ordering party shall be obliged to store separately and mark the goods that are our property. We shall be entitled to check at short notice whether the goods are stored separately and marked. If a petition for institution of insolvency proceedings against the assets of the ordering party has been made, we shall be entitled to immediately mark the conditional goods as our property and/or to repossess them. The ordering party shall be liable for the loss of our goods. The ordering party shall be obliged to insure the goods at its cost for our benefit against all risks, in particular against fire, water and theft. The insurance claims are hereby assigned in advance to us. We are to be notified immediately of any damage which has occurred. If the ordering party fails to furnish proof of having contracted an insurance, we ourselves shall be entitled to insure at the expense of the ordering party the delivery item against the above-mentioned risks.

8.4 Handling and processing of the conditional goods shall be performed on behalf of us as manufacturer as defined by § 950 BGB (German Civil Code), without binding us. The processed goods shall be considered to be conditional goods as defined by item 8.1. If conditional goods are processed together with, connected to and mixed with other goods by the customer, we shall be entitled to co-ownership of the new item in proportion of the invoice value of the conditional goods to the invoice value of the other goods used. If our ownership expires as a result of the goods having been connected or mixed, the customer shall assign as early as now to us the title to the new stock or item in the scope of the invoice value of the conditional goods and shall store them for us free of charge. The co-ownership rights incurred hereby shall be considered to be conditional goods as defined by art. 8.1.

8.5 Only in the due course of business and as long as the ordering party is not in default, shall the ordering party be entitled to resell, process or connect with other items or otherwise install the conditional goods (hereinafter also referred to in brief as "resale"). Any other disposal of the conditional goods shall not be permitted. We are to be notified immediately in the event of a third-party attachment or other access to the conditional goods. All intervention costs, e.g., costs of an action in opposition to execution of a judgment, brought by a third party who claims title to the attached property in accordance with § 771 ZPO (Code of Civil Procedure) shall be borne by the ordering party in so far as such costs cannot be collected at first request from the third party (opponent in the action) and the intervention has been justified. If the ordering party grants its buyer a delay in payment, the ordering party must reserve title to the conditional goods vis-à-vis such buyer on the same conditions, on which we reserved title to the delivery of the conditional goods; the ordering party, however, shall not be obliged to reserve title with regard to claims vis-à-vis its buyer that will only arise in the future. Otherwise the ordering party shall not be entitled to resell the goods.

8.6 The ordering party's claims from reselling the conditional goods are herewith assigned as early as now to us. They shall serve as security to the same extent as the conditional goods. The ordering party shall only be entitled and authorized to resell the goods if it is ensured that the ordering party's claims arising from this pass to us.

8.7 If the ordering party sells at a total price the conditional goods together with other goods that were not delivered by us, the assignment of the claim arising from the sale shall amount to the invoice value of our conditional goods sold in each case.

8.8 If the assigned claim is included in a current account, the ordering party assigns herewith to us as early as now that part of the balance (including the final balance arising from the current account) corresponding in its amount to this claim.

8.9 Until revoked by us, the ordering party shall be entitled to collect the claims assigned to us. We shall be entitled to revocation if the ordering party does not duly meet its payment obligations arising from the business connection with us, or if we obtain knowledge of circumstances evidencing a significant worsening of the ordering party's creditworthiness. If the conditions for exercise of the right to revocation have been met, at our request the ordering party has to immediately communicate the assigned claims and their debtor, provide all information required for collecting the claims, submit the pertinent documents to us and notify the debtor of the assignment. We ourselves shall also be entitled to notify the debtor of the assignment.

8.10 If the nominal value (invoice amount for the goods or nominal amount of the claims) of the security existing for our benefit exceeds the secured claims by all together more than 20%, at the ordering party's request we shall be obliged to release securities at our discretion.

8.11 In the event that we assert reservation of title, this shall only be considered as a withdrawal from the contract if we expressly say so in writing. The right of the ordering party to own the conditional goods shall expire if the ordering party does not meet its obligations arising from this or from another contract.

8.12 We shall reserve industrial property rights to and copyright of illustrations, drawings, samples, cost estimates, operating instructions, manuals and similar information of a physical or non-physical type – also in electronic form. Without our consent they may not be copied or made available to third parties, and, at our request or if the order is not placed, they shall be returned to us without delay.

8.13 In the event that our delivery item contains software, we shall retain all rights to the software, in particular copyright or other industrial property rights. We shall only grant a simple right of utilization applying to the purpose of use. The actions specified in § 69 c of the Copyright Act, in particular copying, processing or distribution are subject to our written consent.

8.14 In the event that third party industrial property rights are infringed in the manufacture of the products based on specimens or other information supplied by the ordering party, the ordering party shall indemnify us against any and all claims.

8.15 In the event that we are not awarded the order, we shall be entitled to request an adequate remuneration for the product samples manufactured by us.

## 9. Moulds, Models, Special Tools and Devices

Should the manufacture of the contractual item require the construction or procurement of moulds, models, special tools and devices, hereinafter referred to as "production items", the following shall apply:

- 9.1 Unless otherwise agreed on, the production items have to be paid separately and in addition to the price agreed on with regard to the contractual items.
- 9.2 The remuneration to be paid for the production items shall become due immediately upon confirmation of the order. We shall be entitled to suspend manufacture of the production items until receipt of the remuneration due for them.
- 9.3 Unless otherwise agreed on, we shall remain owners of the production items. Notwithstanding the provisions in item 9.4 we commit ourselves to use the production items only for orders placed by the ordering party, provided that the ordering party meets its obligations to pay and to effect acceptance.
- 9.4 We may freely dispose of the production items if the ordering party releases the production items. The same shall apply two years after the last delivery of parts for which the production items have been used, provided we have announced disposal or destruction of the production items to the ordering party, and the ordering party does not oppose such move in writing within two months. In any case we shall be entitled to dispose of the production items if three years have passed since the last delivery of parts for which the production items were used.

#### 10. Duties of the Ordering Party when Processing Orders

- 10.1 The ordering party shall make available free our works the parts earmarked for processing or the materials to be provided by it. It shall send us an advice of dispatch quoting our order number. The ordering party shall specify to us the exact material designation including information about the strength and, insofar as it is needed for processing, the chemical analysis. When they are delivered to us, the provided materials shall have the requested dimensions, shall be running true, be properly cleaned and aligned with normal machining allowances. We shall be given the machining allowances for parts premachined by the ordering party. In addition, it is required that the type and behaviour of the parts shall not cause difficulties impairing the processing, as, e.g., cavities, distortion or crack formation on heat treatment, release of stresses, non-weldable material or – for ECM processing – non-conducting inclusions and surfaces.
- 10.2 If the foregoing conditions have not been met, we shall be entitled to charge the ordering party for additional work and replacement. Should the ordering party default in acceptance by failing to commit the contributory act described above, we shall furthermore be entitled to claim reasonable damages or, after having set a reasonable period for subsequently committing the contributory act, to cancel the contract, in which case the ordering party shall pay a part of the remuneration corresponding to the work performed and shall reimburse expenses which are not included in the remuneration.
- 10.3 Unless otherwise agreed on, waste material arising during processing shall become our property. The equivalent of this and any disposal costs shall be taken into account for pricing.

#### 11. Warranty

- 11.1 We shall not accept liability for improper or unsuitable use of the products.
- 11.2 The ordering party shall be obliged to carefully examine whether the goods delivered are complete and in due condition immediately upon receipt, even if we had sent samples or specimens previously. The delivery shall be deemed approved if a notice of defects is not received in writing, per fax or e-mail within 5 working days starting from receipt of the goods at the place of destination, or if it was not possible to recognize the defect during a proper examination, within 5 working days starting from its discovery. This shall also apply to excess deliveries. If the ordering party does not complain about an excess delivery within 5 working days starting from receipt of the goods at the place of destination, the excess delivery shall be deemed approved. Our field staff is not entitled to accept notices of defects in quality or quantity.
- 11.3 In the event of a justified notice of defects the ordering party shall first only have a claim to subsequent performance, which claim, at our discretion, can be met through delivery (against return of the rejected goods) or through remedy of the defect. In the event that subsequent performance failed or is unreasonable for the ordering party (§ 440 BGB [German Civil Code]) or unnecessary because
- we finally refuse subsequent performance;
  - we fail to effect subsequent performance by a deadline laid down in the contract or within a certain period, and in the contract the ordering party had made continuation of its interest in the performance conditional upon timely performance, or
  - special circumstances prevail justifying an immediate withdrawal on weighing mutual interests (§ 323 par. 2 BGB [German Civil Code]),

the ordering party, at its discretion, shall immediately be entitled to reduce the purchase price or withdraw from the contract and, instead of performance, claim damages or reimbursement of expenses incurred in vain in accordance with item 12.

- 11.4 We shall bear the expenses required for the purpose of subsequent performance, in particular transport, travelling, labour and material costs. This shall not apply if the expenses increase because after delivery the product was taken to another place than the domicile or place of business of the ordering party, unless such transport is in line with the contractual use of the item.
- 11.5 Should the ordering party accept defective goods even though it recognizes the defect, it shall only be entitled to claims and rights in the event of defects if the ordering party reserves such rights based on the defect on acceptance.
- 11.6 Any assignment to third parties of the ordering party's claims based on defects shall be excluded.

#### 12. Liability for Damages

- 12.1 We shall be liable in accordance with the statutory provisions for damages resulting from culpable injury to life, limb or health.
- 12.2 In other respects, our liability due to breach of duty and our non-contractual liability shall be limited to intent and gross negligence. Any liability for gross negligence of our employees, members of staff and simple vicarious agent shall be excluded herewith.
- 12.3 The limitation on liability or the exclusion of liability in accordance with item 12.2 sentence 1 shall not apply in the event of breach of such contractual duties which make the due performance of the contract possible in the first place and adherence to which the ordering party may rely on (so-called cardinal duties or duties essential to the contract).
- 12.4 Liability shall be limited to the damage typical for this type of contract, the occurrence of which damage we had to expect when the contract was concluded based on the circumstances known to us at that point in time.
- 12.5 Any further liability shall be excluded regardless of its cause in law. In particular, we shall not be liable for lack of economic success, lost profit, indirect damage, consequential harm caused by a defect and damage as a result of third-party claims.
- 12.6 The above-mentioned limitations on liability shall apply likewise to claims for reimbursement of expenses incurred in vain (§ 284 BGB [German Civil Code]).
- 12.7 The above regulations shall not shift the burden of proof to the prejudice of the ordering party.
- 12.8 This shall be without prejudice to claims for damages in accordance with the Product Liability Act.
- 12.9 Within the scope of processing orders in accordance with item 10, our liability for damage typical for this type of contract shall be limited to 3.5 times the order value, unless we incur unlimited liability in line with the foregoing provisions.

#### 13. Limitation of Action

All claims of the ordering party – regardless for whatever causes in law – shall become statute-barred after 12 months. The statutory limitation periods shall apply to claims for damages in accordance with item 12. They shall also apply to defects of a structure or to delivery items which were used for a structure in line with their customary use, and which caused the defectiveness of such structure.

#### 14. General Provisions

- 14.1 Place of performance for all mutual obligations shall be our principal place of business.
- 14.2 If the ordering party is a merchant or an entity under public law as defined by § 29 a) par. 2 ZPO (Code of Civil Procedure) exclusive venue for all disputes shall be our place of business as specified in the Commercial Register. However, we shall also be entitled to bring an action against the ordering party at its legal venue.
- 14.3 We shall be entitled to process data of the ordering party that refer to the business relationship with the ordering party in the manner defined by the Federal Data Protection Act.
- 14.4 The relationship between us and the ordering party shall be subject to German law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the rules laid down by private international law.
- 14.5 Should one of the provisions be ineffective or unenforceable or lose its effectiveness as a result of circumstances occurring at a later date, this shall not affect the effectiveness of the remaining provisions. An ineffective or unenforceable provision has to be considered as replaced by such effective provision which is as close as possible to the economic purpose pursued by the parties. The same shall apply to gaps in the contract.