

Section 1 General provisions, scope

(1) These General Terms and Conditions of Delivery and Performance (hereinafter referred to as "General Terms and Conditions") shall apply to all business relationships with our customers (hereinafter referred to as "Customers"). These General Terms and Conditions shall only apply to Customers that are entrepreneurs for the purposes of section 14 of the German Civil Code, public law entities or special funds under public law.

(2) The General Terms and Conditions shall in particular apply to contracts on the sale and/or delivery of movable items (hereinafter referred to as "Goods"), irrespective of whether we produce such Goods ourselves in whole or in part or of whether we purchase them from sub-suppliers (sections 433 and 651 of the German Civil Code). These General Terms and Conditions, as amended from time to time, shall also apply to future contracts on the sale and/or delivery of movable items concluded with the same Customer as a framework agreement, even if we do not make reference thereto in the individual case. In such case, we shall inform our Customer of any changes to these General Terms and Conditions without delay.

(3) These General Terms and Conditions shall apply exclusively. Any deviating, conflicting or amending terms and conditions of the Customer shall not become part of the contract unless we expressly gave our consent to their applicability. Such requirement of consent shall apply in any case, even if we execute a delivery to the Customer fully aware of such Customer's general terms and conditions.

(4) Any individual agreements made with the Customer (including collateral agreements, amendments and changes) shall in any case have priority over these General Terms and Conditions. The contents of such agreements must be made by written contract and/or confirmed by us in writing.

(5) Any statements and information of legal relevance to be provided to us by the Customer after conclusion of contract (e.g. stipulation of periods, notifications of defect, rescission of contract or price reduction) must be in writing in order to be effective.

(6) References to the applicability of statutory regulations shall be for clarification purposes only. This means the statutory regulations shall apply irrespective of whether reference is made thereto, unless they are directly changed or expressly excluded in these General Terms and Conditions.

Section 2 Offers and conclusion of contracts

(1) Our offers are subject to confirmation and without engagement, even if we provided the Customer with catalogues, technical documentation (e.g. drawings, plans, calculations, references to DIN standards), other product descriptions or documents, in electronic and other form, to which we reserve title and copyrights.

(2) The order of the Goods by the Customer shall be deemed to be a binding contractual offer. Unless otherwise stipulated in the order, we shall be entitled to accept such offer within 14 days upon receipt.

(3) We shall be entitled to express such acceptance in writing (e.g. by sending an order confirmation) or by delivering the Goods to the Customer.

Section 3 Term of delivery and delay in delivery

(1) The term of delivery is agreed upon with the Customer in the individual case and/or stipulated by us upon acceptance of the order.

(2) Should we be unable to comply with binding terms of delivery for reasons not applicable to our sphere of responsibility (e.g. unavailability of the goods or services), we shall inform the Customer thereof and of the planned new term of delivery immediately. If the goods and services are still un-

available within such new term of delivery, we shall be entitled to rescind the contract in whole or in part. In such case, we shall reimburse the Customer for any counter-performance the Customer made before such rescission of contract. For the purposes of this section, goods and services shall be deemed to be unavailable if our sub-suppliers fail to supply us on time if we concluded a congruent hedging transaction and no fault is attributable to our sphere of responsibility or to that of the sub-supplier.

(3) The occurrence of a delay in delivery shall be subject to the statutory regulations.

(4) The Customer's rights in accordance with section 8 of these General Terms and Conditions and our statutory rights, in particular in case of an exclusion of the obligation to perform (e.g. due to the impossibility or unreasonableness of performance and/or subsequent performance) shall remain unaffected.

Section 4 Delivery, passing of risk, acceptance, delay in acceptance

(1) Delivery shall be made ex our warehouse in Bremen, which shall also be the place of performance. Upon request and at the expense of the Customer, the Goods may be sent to a place of destination other than the place of performance. Unless otherwise agreed upon, we shall be entitled to stipulate the method of shipment (in particular the transport company, the transport route and the packaging).

(2) The risk of accidental perishing and of accidental deterioration of the Goods shall pass to the Customer upon transfer at the latest. However, the risk of accidental perishing and accidental deterioration of the Goods as well as the risk of delay shall be transferred to the customer upon transfer of the Goods, in case of sale by delivery to a place other than the place of performance upon delivery of the Goods to the forwarder, carrier or other person or institution appointed to effect delivery. To the extent acceptance of the Goods was agreed upon, such acceptance shall be decisive for the determination of the transfer of risk. An agreed upon acceptance of the Goods shall also be subject to the statutory regulations of the law on contracts for work and services. Any delay in acceptance by the Customer shall be deemed to be a delivery and/or acceptance.

(3) If the Customer is in delay in acceptance or fails to comply with its obligation to cooperate or if delivery is delayed for other reasons attributable to the Customer's sphere of responsibility, we shall be entitled to demand compensation for any damage resulting therefrom, including additional expenses (e.g. storage costs). For this purpose, we shall demand a lump sum compensation amounting to EUR 200.00 per calendar day, starting as of the commencement of the term of delivery or, if there is no term of delivery, as of the time of the notification that the goods are ready for dispatch.

Our right to prove that the damage we actually suffered was higher than that and our statutory rights (including but not limited to compensation for additional expenses, reasonable compensation, termination) shall remain unaffected. However, the lump sum compensation must be set off against any additional monetary claims. The Customer shall be entitled to prove that no damage incurred at all or that the damage incurred is substantially lower than the above-stipulated lump sum.

Section 5 Prices and terms of payment

(1) Unless otherwise agreed upon in any individual case, the prices applicable at the time the contract is concluded shall apply ex warehouse and plus statutory VAT.

(2) In case of sale by delivery to a place other than the place of performance (section 4, para. 1), the Customer shall bear the transport costs ex warehouse and the costs for any transport insurance if such insurance is requested by the Customer. Unless we invoice the actual transport costs in-

curred in any individual case, a transport lump sum (excl. transport insurance) amounting to EUR 100.00 shall be deemed agreed upon. Any customs duties, fees, taxes and other public charges shall be borne by the Customer. We will not take back transport and other packaging in accordance with the Packaging Ordinance, such items shall become the Customer's property, with the exception of pallets.

(3) The price shall become due and payable within 14 days from the date of invoice and delivery and/or of acceptance of the Goods. However, for contracts with a delivery value exceeding EUR 500.00, we shall be entitled to demand an advance payment of 30 % of the purchase price. Such advance payment shall become due and payable within 14 days from the date of invoice.

(4) Upon expiry of the above-stipulated term of payment, the Customer shall be deemed to be in delay. During the delay period, interest amounting to the applicable statutory default interest rate shall incur on the purchase price. We reserve the right to assert any additional damage caused by the delay. Our right to assert commercial due date interest (section 353 of the German Commercial Code) against merchants shall remain unaffected.

(5) The Customer shall only be entitled to rights of set-off or rights of retention to the extent the Customer's claims are undisputed or established by declaratory judgement. With regard to defects, the Customer's rights including but not limited to the rights in accordance with section 7, para. 6, clause 2 of these General Terms and Conditions shall remain unaffected.

(6) Should it become evident after the conclusion of the contract that our right to receive the purchase price is endangered by the Customer's insufficient financial capacity (e.g. by an application for the opening of insolvency proceedings), we are entitled to refuse performance and - after having set a deadline - to rescind the contract, in each case in accordance with statutory regulations (section 321 of the German Civil Code). We shall be entitled to rescind contracts on the production of unsellable items (production to Customer's specifications) with immediate effect. The statutory regulations on cases in which setting a deadline is not necessary shall remain unaffected.

Section 6 Proprietary rights / retention of title

(1) We reserve title, copyright and/or other industrial property rights to all samples, documents, plans, construction drawings etc. provided to the Customer. Such items must not be used for any other purpose, in particular not copied or disclosed to third parties without our prior written consent and must be returned to us immediately upon request.

(2) We reserve title to the sold Goods until full payment of all our receivables from the purchase contract and the current business relationship (secured receivables).

(3) The Goods subject to retention of title must neither be pledged nor transferred by way of security to third parties until full payment of the secured receivables. The Customer shall be obliged to inform us immediately in writing of any third-party attachment of the Goods that are our property.

(4) In case of any breach of contract by the Customer, including but not limited to failure to pay the purchase price when due, we shall be entitled to rescind the contract in accordance with statutory regulations and/or to request return of the Goods based on the retention of title. The request for return of the Goods shall not be deemed to be a declaration of rescission of contract, as we are entitled to just request return of the Goods and to reserve the right to rescind the contract. Should the Customer fail to pay the purchase price when due, we shall only be entitled to assert such rights after having set a reasonable deadline for payment and such deadline expired fruitlessly or setting a deadline is not necessary.

(5) The Customer shall be entitled to resell and/or further process the Goods subject to retention of title in the ordinary course of business. In such case, the following supplementary provisions shall apply:

(a) The retention of title shall apply to the full value of the products created by processing, blending or combining our Goods and we shall be deemed to be the manufacturer thereof. If our Goods are processed, blended or combined with third-party goods and such third party's title remains in force, we shall acquire co-ownership on a pro-rata basis with regard to the invoice values of such processed, blended or combined Goods. In addition, the newly created product shall be subject to the same conditions that are applicable to the Goods delivered subject to retention of title.

(b) Effective immediately, the Customer shall assign to us as a whole and/or in the amount of our co-share in accordance with the above paragraph, any accounts receivable from third parties resulting from the resale of the Goods or such newly created product. We hereby accept such assignment. The Customer's obligations stipulated in para. 3 shall apply mutatis mutandis to the assigned accounts receivable.

(c) Both we and the Customer shall be entitled to collect such receivables. For as long as the Customer fulfils its payment obligations to us, is not in arrears, does not file an application for the opening of insolvency proceedings and there is no other defect in the Customer's performance, we undertake not to collect such receivables. In case one or more of these events occur, we shall be entitled to demand that the Customer discloses the assigned receivables and the related debtors to us and provides any information necessary for collection, the related documents and that it informs the debtors (third parties) of such assignment.

(d) If the realisable value of the securities exceeds our receivables by more than 10 % we shall release such securities as we deem fit upon the Customer's request.

Section 7 Customer's claims based on defects

(1) The Customer's rights with regard to defects in quality and defects of title (including wrong delivery, short delivery, improper installation or defective installation manual) shall be subject to the statutory provisions unless otherwise stipulated hereinafter. The statutory special regulation for the end delivery of the Goods to a consumer shall remain unaffected in any case (supplier's recourse in accordance with sections 478 and 479 of the German Civil Code).

(2) Our liability for defects is mainly based on the agreement made on the quality of the Goods. The agreement made on the quality of the Goods shall be all descriptions of the deliveries and services we owe and that are the subject matter of the contract concluded with the Customer, irrespective of whether such description was made by the Customer, the manufacturer or by us.

(3) To the extent there was no agreement on the quality of the Goods, the question of whether there is a defect must be assessed based on the statutory regulations (section 434, para. 1, clauses 2 and 3 of the German Civil Code). However, we shall not assume any liability for public statements by the manufacturer or other third parties (such as marketing statements).

(4) The Customer shall only be entitled to assert claims based on defects if the Customer duly fulfilled its statutory obligations to investigate and to make a complaint in respect of a defect immediately on receipt of goods according to sections 377 and 381 of the Commercial Code. The Customer shall be obliged to notify us of any defects detected upon inspection or at a later time, immediately and in writing. A notification shall be deemed to have been made "immediately" if made within two weeks. Such period shall be deemed observed if such notification is sent off within such period. Irrespective of its obligation to inspect the Goods and to notify us of any defects detected, the Customer shall be obliged to notify us of any

obvious defects (including but not limited to wrong delivery or short delivery) within two weeks. Such period shall be deemed observed if such notification is sent off within such period. Should the Customer fail to effect the due inspection and/or notification of defects, our liability for such non-notified defect shall be excluded.

(5) In case the delivered item is defective, we shall be entitled to decide whether we wish to effect subsequent performance by repairing such defect (rectification of defect) or by delivering a non-defective item (replacement delivery). Our right to refuse subsequent performance in accordance with statutory requirements shall remain unaffected.

(6) We shall be entitled to subject subsequent performance to the condition that the Customer pays the purchase price when due. However, the Customer shall be entitled to retain a reasonable part of the purchase price that is adequate for the defect.

(7) The Customer shall be obliged to grant us the required time and opportunity to provide subsequent performance, including but not limited to provision with the Goods complained about for inspection purposes. Should we effect a replacement delivery, the Customer shall be obliged to return to us the defective item in accordance with statutory regulations. If we were originally not obliged to install the item, subsequent performance neither comprises the de-installation of the defective item nor the installation of the new item.

(8) Any expenses required for inspection and subsequent performance, including but not limited to transport, travel, work and material expenses (but excluding costs for de-installation and installation) shall be borne by us if there is actually a defect. However, should the Customer's request for rectification a defect prove to be unjustified, we shall be entitled to request compensation of such costs from the Customer.

(9) In urgent cases, e.g. if the operational safety is endangered or if disproportionate damage must be prevented, the Customer shall be entitled to rectify the defect itself and to demand compensation for reasonably required expenses from us. The Customer shall be obliged to inform us immediately of any such repair, if possible in advance. The Customer shall not be entitled to perform such repair work if we would be entitled to refuse such subsequent performance in accordance with statutory regulations.

(10) If we failed to perform subsequent performance or if a reasonable period of time set by the Customer expired fruitlessly or if the Customer is not obliged to set a period of time in accordance with statutory regulations, the Customer shall be entitled to rescind the contract or to reduce the purchase price. However, there is no right of rescission in case of minor defects.

(11) The Customer's claims for damages and/or compensation for futile expenses, if any, shall be subject to section 8 exclusively. All other claims for damages and/or compensation for futile expenses, if any, shall be excluded.

Section 8 Other liability

(1) Unless otherwise stipulated in these General Terms and Conditions, including the provisions stipulated below, our liability for any violation of contractual and other obligations shall be subject to the relevant statutory regulations.

(2) Our liability for damages, irrespective of the legal reason, shall be limited to wilful intent and gross negligence. Our liability for slight negligence shall be limited to the following cases:

- a) any damage resulting from any injury to life, limb or health;
- b) any damage resulting from any violation of a material contractual obligation (obligation the fulfilment of which is a prerequisite for the execution of the contract and on the fulfilment of which the contractual parties rely on and may rely

on); however, in this case our liability is limited to the compensation of the foreseeable and typical damage;

(3) The limitations of liability stipulated in para. 2 shall not apply to the extent we fraudulently concealed a defect or we provided a guarantee for the quality of the Goods. The same shall apply to any claims of the Customer in accordance with the Product Liability Act. Our liability for the compensation of consequential damage and loss of profit shall be excluded if we acted with gross or slight negligence, however, not if we acted with wilful intent.

(4) The Customer shall only be entitled to rescind or terminate the contract due to a violation of obligations that is not a defect, if such violation of obligations is attributable to our sphere of responsibility. The Customer shall not be entitled to terminate the contract without cause (in particular in accordance with sections 651 and 649 of the German Civil Code). In addition, the statutory requirements and legal consequences shall apply.

Section 9 Statute of limitations

(1) In deviation from section 438, para. 1, no. 3 of the German Civil Code, the general limitation period for claims based on defects in quality or defects of title shall be one year after delivery. Should an acceptance be agreed upon, the limitation period shall commence upon acceptance.

(2) Should the Goods be a building or an item that is used for a building in accordance with its usual purpose of use and caused the defect of the building (building material), the limitation period shall be 5 years after delivery in accordance with statutory regulations (section 438, para. 1, no. 2 of the German Civil Code). The special regulations on third-party claims in rem for return of property (section 438, para. 1, no. 1 of the German Civil Code), on the Customer's fraudulent intent (section 438, para. 3 of the German Civil Code) and on claims with regard to supplier's recourse for the end delivery of the Goods to a consumer (section 479 of the German Civil Code) shall remain unaffected.

(3) The above limitation periods applicable to the sale of goods shall also apply to the Customer's contractual and non-contractual claims for damages based on a defect of the Goods unless the application of the regular statutory limitation periods in accordance with sections 195 and 199 of the German Civil Code provides for a shorter limitation period in any individual case. The limitation periods stipulated by the Product Liability Act shall remain unaffected in any case. In addition, the Customer's claims for damages in accordance with section 8 shall exclusively be subject to the statutory limitation periods.

Section 10 Choice of law and jurisdiction

(1) These General Terms and Conditions and all legal relationships between us and the Customer shall be subject to the laws of the Federal Republic of Germany. The international uniform law, in particular the UN Sales Convention shall be excluded. The requirements and effects of the retention of title in accordance with section 6 shall be subject to the law applicable at the place where the relevant item is situated, to the extent the choice of law in favour of German law is inadmissible or ineffective.

(2) If the Customer is a merchant for the purposes of the Commercial Code, a public law entity or a special fund under public law, the exclusive national and international place of jurisdiction for any disputes directly or indirectly arising out of the contractual relationship shall be our place of business in Bremen, Federal Republic of Germany. However, we shall be entitled to file a law suit at the Customer's general place of jurisdiction, as well.