

## **General Sales and Delivery Conditions**

### **§ 1 General**

1.

The following conditions only shall apply to all proposals, consignments and services. This also applies even if we do not specifically refer to this clause when reaching business agreements. Other conditions requested by the customer and which have not been confirmed in writing shall be regarded as invalid even in those cases when they have not been specifically rejected.

2.

Our proposals are subject to alteration without notice.

3.

Official acceptance of order will be governed either by a written confirmation of order or the despatch of ordered goods. The contents of the confirmation of order are binding. Variations and additional agreements must be confirmed in writing. Verbal agreements do not become legally binding until they are confirmed in writing.

4.

Circumstances arising after signing of contract which lead to a considerable financial deterioration or endanger the fulfilment of a financial obligation towards us, permit us to demand pre-payment or appropriate security in the form of bank surety irrespective of the validity period of bills of exchange already issued. Until such payment or surety is received our obligations will not be honoured. The quoted delivery time will extend accordingly in such a case.

### **§ 2 Delivery**

1.

In as far as other agreements have not been reached, our prices refer to delivery ex works in accordance with the latest Incoterms. Packing costs are not included in the quoted or agreed prices. Packing materials will be chosen to the best of our ability and knowledge and charged at cost. On freight prepaid return consignments we are prepared to accept the return of packing material in good condition at 2/3 of the invoiced price.

2.

Should cost factors change considerably between placing of order and delivery date, particularly with regard to labour, material and freight costs, the price agreed upon may be changed in an appropriate fashion to cover these cost factors.

3.

The delivery time quoted for each individual order remains subject to change. Delivery times are to be regarded only as approximative. The delivery times agreed upon are only valid after clarification of all aspects of the order and fulfilment of all obligations by the purchaser in good time. Should the purchaser or a third party acting on his behalf agree to supply the basic materials or required components, all deadlines for fulfilment of our obligations will start as from the date these are received in our factory. This is also valid if the customer is responsible for supplying us with necessary information and documentation. If the customer does not fulfil his contractual obligations in good time – which also refers to participation and collateral agreement – we have the right to alter our delivery time in such a way to

suit the new circumstances – this will have no effect on any default claims against the customer. Delivery time is classed as adhered to if the consignment leaves our works on the prescribed day. If, through no fault of ours, the consignment may not be despatched on time, the delivery time is considered adhered to once we have reported that the consignment is ready for despatch. It is permissible to despatch part consignments.

4.

Those goods produced especially or individually for the customer may be supplied in amounts slightly over or below the figure stipulated by the client. We reserve the right to make production alterations within the normal tolerance factor. For orders on call we reserve the right to procure sufficient materials for the complete consignment and process the whole order immediately. Variations required by the buyer after this date cannot be taken into consideration once the order has been placed, unless a specific written agreement has been reached. This clause refers in particular to materials we buy in from third parties.

5.

Force majeure (Act of God) and other inconvenient factors upon which we have no or little reasonable influence and which obstruct our services, (e.g. plant breakdown, regulations laid down by authorities, delay in the delivery of important raw materials or auxiliary materials, difficulties with utility supply, strikes, delays caused by our suppliers and sub-contractors) will lead to an acceptable extension of deadlines for services we offer. We shall immediately inform the customer of the delays involved, the expected duration of delay and the probable effects to be expected. Our contractual or legal right of termination of contract and that of the customer will not be effected by the a foregoing.

### **§ 3 Risk Assignment**

1.

Once the consignment has been handed over to the forwarding agent, latest however when the consignment leaves our premises or warehouse, risk is assigned to the purchaser, even if we have agreed delivery FOB or similar. Unless specific forwarding instructions are given, this will be at our fair discretion. The purchaser is responsible for advising his despatch wishes at an early date and booking the required freight space. Should, through no fault of ours, the consignment be delayed or cancelled, risk assignment takes place as soon as we inform the customer that the consignment is ready for despatch. In this case, as in the case of excessive storage, we reserve the right to store the goods at the customer's expense, to undertake all steps to maintain the goods and issue a sales invoice. The same applies should the customer request that the consignment be held back or if ready consignments are not called up within four days. Furthermore we may, after a reasonable deadline has expired, dispose of the goods as we see fit and claim compensation from the client due to non fulfilment of contract.

2.

Materials to be supplied by the customer and return consignments of materials made by us to the customer will be for the customer's account and at his risk. In as far as we are required to arrange despatch of the goods, this means that we shall arrange insurance of the consignment for the customer's account – unless other arrangements have been agreed upon. Should the consignment not be accepted by the customer in good time and providing that the delay was not, in any way, caused by us, we have the right to store and insure the

consignment for the customer's account. This will have no effect upon our right to dispose of the goods as we see fit in accordance with §3, No. 1 of these conditions.

#### **§ 4 Guarantee and Liability**

1.

Compensation damage claims made by the customer – irrespective of the reason – are excluded if not caused intentionally, by gross negligence or violation of contractual obligations. In as far as we bear a liability for damage caused by negligence, the amount of compensation will be limited to the amount of the contractually typical and foreseeable damage. However, we only accept such liability for intentional damage or negligence by non-managerial employees or helpers in as far as this violates a major contractual obligation. Our liability is limited to contractually typical and foreseeable damage. The above mentioned limitations are neither valid for compensation claims made due to vital, promised features not being available on the goods nor do they effect our legal obligations, i.e. product liability law. The customer must ensure that, irrespective of whether he is to use the produced product himself or intends to sell this to another party, the safety regulations and clauses, particularly those passed on by our company or contained in correspondence or on labelling, are strictly adhered to. Should there be any want of clarity or respectively the impression be made that the instructions we have given with regard to safety are inapplicable or incomplete, the customer will inform us in writing and await our further instructions and information should it be obvious that there is imminent danger or the possibility of causing damage to the goods.

2.

As far as we supply technical information on a free of charge basis during the course of business, this shall exclude every form of liability.

3.

The regulations quoted in this section also refer to our employees and helpers.

4.

Upon receipt of the consignment the goods should be thoroughly checked for damage. The consignment is regarded as accepted if claims are not logged within 14 days from date of receipt or within seven days or latest six months for faults which were not immediately recognisable. This examination and fault reporting deadline is also valid if, in accordance with §3, No. 1, despatch is delayed at the customer's request; the date of reporting the consignment ready for despatch shall govern in these cases. The customer shall immediately give us the opportunity to examine the faults. If so requested, he will place the faulty goods or samples hereof at our disposal. Once an acceptance test has been carried out we are unable to accept a deficiency claim for faults which would easily have been visible during the test.

5.

An immediate founded deficiency claim will lead us to accept the return of the faulty goods and either supply a replacement or carry out repairs. Should we not fulfil these obligations – e.g. improvement not visible even after several repair attempts, unfounded refusal to accept liability or unacceptable delay – the customer has the right to apply the general legal warranty regulations. In the case of missing features we only accept liability in as far as the features are necessary to protect the customer against the damage which has been reported. Should faulty materials be used, we shall neither accept their return nor offer any form of compensation.

6.

Customer compensation claims are only valid as laid down in this paragraph (§4). We do not accept any responsibility for damage caused by materials or packing provided by the customer.

7.

The customer may not assign compensation claims or guarantee claims to third parties.

8.

In as far as the customer provides or respectively delivers materials for processing we only accept responsibility for damage caused by our company. In this case the compensation amount is limited to the amount of the labour costs charged for this particular job. Further liability, e.g. damage to material, will not be accepted. The provider of such materials is responsible for insuring these materials whilst they are on our premises. Charges for freight and loss of materials are for the account of the person placing the order. The weight of the materials delivered to our plant will be charged.

9.

The customer may not claim for faults on materials sold as de-classified goods.

## **§ 5 Payment**

1.

Should other written agreements not have been reached, our invoices are payable without deductions on the 15th of the month following delivery or after receipt of notice that the consignment is ready for despatch. Bills of exchange will only be accepted if agreed upon in advance and all costs will be borne by the customer. Payment obligation towards us is considered settled as soon as the appropriate amount has been received – be it in the form of a cheque or bill of exchange. Overseas payments must be made in such a way that fees and charges are not incurred. Should the customer not pay as scheduled we have the right to charge default interest from due date onwards at a rate of 3% over and above the Federal Bank rate. We also have the right to hold back our consignments – irrespective of the order in question. Furthermore we have the right to make a default damage claim. The customer is only permitted to withhold monies if the claims he has made are uncontested or legally approved. This refers to any claim made by the customer.

2.

Irrespective of other stipulations made by the customer, we have the right to offset payments against old debts. Should costs and interest be involved, we have the right to offset payments in the first instance against the costs, the interest and then the debt.

## **§ 6 Retention of Title**

1.

Until all payments have been made to settle any claims we may have against the customer, be it now or in the future, the following sureties will be granted to us. These can be released at our discretion as long as the value of the surety exceeds the value of the claim by at least 20%.

**a)**

Until all claims have been settled we shall retain title. The customer is required to store and insure the goods under retention in an orderly fashion. Should goods supplied to the customer and under retention be seized as security by a third party, our customer must inform us immediately and also inform the third party of our retention of title. All costs involved in this process will be borne by the customer. Seizures and assignments of these goods are not permissible. Should the customer default and it become obvious that our claim is endangered, we have the right to demand the return of the goods or respectively to gain access to the customer's premises in order to remove the goods. We may also prohibit the customer from further processing the goods which have been delivered. This is not applicable if the default in payment is not the fault of the customer. The removal of the goods does not imply termination of contract obligations. The customer may only process the goods we supply in an orderly businesslike manner and sell these for cash payment or, if an appropriate agreement is reached with regard to retention of title, as long as he has made all payments on time. This processing will be in accordance with § 950 BGB and does not involve any obligations for us. The processed goods are subject to reservation in accordance with § 6 No. 1 of these conditions. The customer does not have the right to dispose of the goods in any other way. The proceeds from a sale or other legal process (insurance, tortious act) regarding the goods under retention are assigned to us now to cover the invoice amount and will include all auxiliary rights (retention of title, cautionary ownership, bills of exchange, etc.). Should the customer not meet his payment commitments punctually we can demand disclosure of the assignment and that he hand over to us all documents necessary in order to pursue our claim.

**b)**

Should the customer process, connect or mix the goods under retention of title with other products, we have a right to part-ownership of the new goods in proportion to the outstanding invoice amount. Should our goods become extinct due to processing, connecting or mixing the customer will transfer – in as far as we have not already legally become part-owner of the goods – his ownership share or respectively his legal expectancy regarding ownership of the new products to us and will hold this in safe-keeping in an orderly businesslike fashion. Our ownership of these products is only intended as a security to cover the value of the products under retention of title.

**c)**

In as far as we are processing materials on our customer's behalf it will be understood that part-ownership in our favour will exist if the costs of the processing exercise are low when compared to the value of the product. In this case part-ownership will be in relation to the value of our processing services when compared to the value of the basic materials supplied by the customer.

**d)**

The customer may recall the claims assigned to us and dismiss subordinate rights. If payments are made by third parties by cheque or bill of exchange the ownership of this paperwork will be transferred to us as soon as they are in the customer's possession. This paperwork may be taken into safe-keeping by the customer on our behalf and free of charge. This power of safe-keeping may be recalled at any time at our discretion. We shall, however, only make use of this right of recall if those cases described in 1 a) and e) §6 come into effect. This power of safe-keeping shall immediately become ineffective if the customer does

not honour his payment obligations towards us or if he has applied for bankruptcy or insolvency proceedings to begin and this application has been rejected by the courts. In this case the outstanding debt is immediately payable even if bills of exchange with later due date are available. The customer may, under no circumstances, assign his claims; this also applies to factoring business to which the customer has no right even under the power of safe-keeping.

**e)**

Customer behaviour contrary to the contract terms – especially payment default – gives us the right to repossess the goods under retention of title or demand assignment of return claims the customer may have against third parties. Repossession or seizure of goods does not result in termination of contract.

2. More extensive rights must be agreed to in writing before they become legally binding.

## **§ 7 Various**

1.

Unless otherwise stipulated in these conditions or in a separate agreement any disputes arising concerning payment obligations and other matters will be settled before a competent Unna/Westphalia court of law.

2.

All legal transactions between the customer and our company will be governed strictly by German law only, conflict right and UN purchase right excepted.

3.

We would stress that we store and process data concerning our customers and business transactions in accordance with the federal Loan Safeguard Law.

4.

Any disputes resulting from this contract or arising in immediate connection with this contract will be settled before a competent Unna / Westphalia court of law. This also applies to disputes concerning bills of exchange or cheques offered in payment. We also have the right to initiate legal proceedings against the customer at his local court of jurisdiction.

5.

Should any single clause appearing in these conditions or in any other written agreement be invalid or impractical, this will have no effect on the remaining clauses or agreements. In such cases the contract partners will replace the text with appropriate wording within the meaning of the invalid or impractical clause.