

## **General Terms and Conditions of Delivery**

### **Version 7/2009**

#### **I. General**

1. The present General Terms and Conditions of Delivery shall apply exclusively for all contracts, deliveries and other services concluded with us. They shall also apply to all future business. Customer's conditions shall only apply if we expressly confirm them in writing.
2. Our General Terms and Conditions of Delivery shall only be applicable in business dealings with enterprises in the sense of § 14 German Civil Code. Contracts between Customer and us shall originate with our written order confirmation or our immediate delivery of goods, as the case may be. Amendments or supplements to the agreement made shall require our written confirmation in order to be effective. This shall also apply to side-agreements and guarantees by our sales employees.
3. Protective devices shall only be supplied to the extent that this has been expressly agreed.

#### **II. Conclusion of contract and delivery**

1. Our quotations shall be subject to change without notice. Likewise, technical descriptions and other information in quotations, brochures and other information shall be non-binding to start with.
2. We reserve title and copyrights to illustrations, diagrams, calculations and other documents. They may not be made accessible to third parties.
3. Delivery periods shall only commence after complete clarification of all details of processing. Compliance with all and any delivery periods agreed shall presuppose performance of the contractual duties.
4. Insofar as we culpably fail to comply with delivery periods, Customer shall be obliged to set us a suitable period of grace of no less than 14 days in writing. After the expiry of said period of grace, Customer can withdraw from the contract.
5. The scope of our delivery duty shall exclusively result from the present contract. Construction, shape and colour changes to be put down to an improvement of engineering or requirements made by legislation shall be reserved to the extent that the changes are not considerable or otherwise cannot be reasonably expected of Customer.
6. We shall be entitled to make part deliveries to a reasonable extent.
7. We make reference to the fact that both the text of the contract as well as the General Terms and Conditions of Delivery can be seen by the customer in an electronic form at the time of the conclusion of the contract. Both the text of the contract as well as the General Terms and Conditions of Delivery can be stored by the Customer in a reproducible form. The text of the contract shall be stored by us until conclusion of the contract. Thereafter, there shall be no storage of the text of the contract by us, with the result that it shall no longer be accessible to the customer.
8. § 312e sub-section 1 sentence 1 no. 1 to 3 and sentence 2 German Civil Code shall not be applicable.

#### **III. Prices**

1. To the extent not agreed to the contrary, prices shall apply ex warehouse Illerrieden exclusive of packaging, freight costs and other subsidiary costs, which shall be charged by us as incurred.
2. Packaging shall not be taken back.
3. Statutory value added tax shall be added separately to the total price.
4. The minimum invoice amount shall be € 150.- net exclusive of value added tax; this shall not apply to our e-shop.

#### **IV. Mode of payment**

1. To the extent not agreed to the contrary in writing, the following shall apply:  
The purchase price shall be due for payment up to 30 days net following receipt of the invoice.
2. Discountable bills shall only be accepted on account of payment on the basis of specific, written agreement, discount charges and other expenditure shall be reimbursed immediately.
3. If Customer falls into arrears with performance of its payment duties, if bills are protested, if attachments take place with it or if an essential deterioration comes about in its economic situation, we shall only be obliged to further delivery against advance payment. If Customer is not in the position to make advance payment, we can withdraw from the contract following setting of a period and threat of rejection. Further, we shall be entitled to remove all active acceptances, bills and cheques from circulation immediately; the costs incurred hereby shall be charged to Customer.
4. In arrears in payment, we shall be entitled to demand interest to the amount of 8% above the rate of interest of the European Central Bank.
5. If Customer unjustifiably withdraws from the contract, it shall be obliged to pay 30% of the gross sale price as liquidated damages. The customer shall be allowed to prove that damage has not been incurred or was distinctly lower than the aforementioned lump-sum. We reserve the right to claim higher damage against corresponding proof. Customer shall only have a right to offset if its counterclaims are legally effective, undisputed or have been acknowledged by us. In addition, it shall only be entitled to exercise a right of retention to the extent that its counterclaim is based on the same contractual relationship.

#### **V. Passage of risk and packaging costs**

1. In sale to destination according to the buyer's instructions, risk of chance destruction and of chance deterioration of the commodities and risk of delay shall pass to the customer as early as dispatch of the consignment. If no written instruction to the contrary from the buyer exists, we shall select the form of dispatch at our free discretion. Freight and loading costs shall be charged to the customer directly by the carrier and not paid in advance by us. Possible transport damage shall be notified to the freight forwarder by Customer before acceptance of the goods or, following acceptance, be notified in accordance with the statutory requirements and periods.
2. Packaging shall not be taken back. Customer shall attend to disposal of the packaging itself. An exception shall be pallets.

#### **VI. Retention of title**

1. All goods delivered shall remain our property until settlement of all our claims from the business relationship, also future ones. Placement of individual claims into current account or balancing and their recognition shall not cancel the retention of title.
2. If the objects delivered are processed by Customer to form a new mobile object, processing shall be done on our behalf without us being obligated thereby. The new object shall become our property. In the event of processing together with commodities not belonging to Customer, we shall acquire co-ownership of the new object according to the ratio of the value of the conditional commodities to the other commodities at the time of the processing.
3. Customer shall be obliged to keep the conditional commodities purchased from us separate from outside commodities in its possession. If conditional commodities are blended/mixed with outside commodities in breach of this provision, if the conditional commodities can no longer be separated from the outside commodities, we shall become co-owners according to the statutory provisions. If Customer acquires sole or co-ownership as a result of the blending, it here and now assigns co-ownership to use according to the ratio of the value of the conditional commodities to the outside commodities at the time of the blending/mixing. The value of our commodities shall be determined according to our list price, taking a suitable rebate for second-hand commodities into due account. In such cases, Customer shall keep the commodities in our ownership or co-ownership, which shall likewise be deemed conditional commodities, free of charge.

4. If conditional commodities are sold by Customer alone or together with other commodities, Customer here and now assigns the claims originating from the resale to the amount of the value of the conditional commodities to us with all subsidiary rights and rankings before the remainder. If the resold conditional commodities are in co-ownership of Customer, the assignment of the claims shall extend to the amount corresponding to the pro rata value of Customer to the co-ownership. The value of the commodities shall be determined according to our list price, taking a suitable rebate for second-hand commodities into due account.
5. Subject to revocation, we authorise Customer to collect the claims assigned pursuant to Section VI. of the present General Terms and Conditions of Delivery. We shall make no use of our own power of collection as long as Customer complies with its payment duties, also towards third parties. By our request, Customer shall name the debtors of the assigned claims and also notify the latter of the assignment. We shall be authorised to notify the debtors of the assignment ourselves.
6. Customer shall notify us of measures of compulsory enforcement by third parties against the conditional commodities or the assigned claims without delay, providing the documents necessary for the objection.
7. In stoppage of payment, application for or opening of insolvency proceedings (all and any rights of the executor according to the Insolvency Ordinance remaining unaffected) or extra-judicial composition proceedings, the right to resale, to use or to installation of the conditional commodities and the authorisation to collection of the assigned claims shall expire.
8. The authorisation to collection shall also expire in the event of cheque or bill protests. In such cases, we shall be entitled to collect our conditional commodities. If Customer has blended/mixed conditional commodities with outside commodities, we shall be entitled to separate our conditional commodities by agreement with Customer on the basis of the invoice documents.
9. If Customer does not assist in said separation, we shall be entitled to carry it out ourselves alone with the assistance of an expert.
10. If the collateral accruing to us on the basis of advance assignment exceeds the value of our secured claims by more than 20%, we shall be obligated to re-transfer or release to this extent according to our choice. The value of our secured claims shall be based on the price which we have charged to our customer.
11. If Customer includes a claim assigned to us from a resale of commodities in a current account relationship in existence with its customer, the current account claim shall be assigned to the complete amount. Following balancing, it shall be replaced by the recognised balance deemed assigned up to the amount which the original claim made up.

## **VII. Complaints on account of incomplete or incorrect delivery**

Complaints on account of incomplete or incorrect delivery shall be notified to us in written form without delay, albeit no later than within seven days of receipt of the delivery by Customer. Notifications received at a later stage shall not be considered.

### **VIII. Warranty**

We shall warrant for defects in title and quality of the delivery as follows subject to Section IX and ruling out further-reaching claims:

1. All parts proving to be defective as a result of a circumstance before the passage of risk shall be reworked or replaced free of defects at our choice free of charge. Establishment of such defects shall be notified to us in writing without delay. Replaced parts shall become our property.
2. For the reworking and replacement deliveries appearing necessary to us, Customer shall grant us the necessary time and opportunity; otherwise, we shall be released from liability for the consequences resulting therefrom. Of the direct costs incurred by the after-working or replacement delivery, we shall bear the costs of the replacement item including the dispatch to the extent that the complaint proves to be justified.
3. Within the framework of the statutory directives, Customer shall have a right to withdrawal from the contract if we allow a suitable period set for us for the reworking or replacement delivery on account of a defect in quality to expire fruitlessly, taking the statutory exceptions into due account.
4. In lieu of withdrawal, the customer shall have the right to demand a corresponding reduction of the purchase price (abatement).
5. Further claims shall be determined according to Section IX of the present General Terms and Conditions of Delivery.
6. No warranty shall be assumed in particular in the following cases: Unsuitable or improper use, defective assembly or commissioning by Customer or third parties, natural wear and tear, defective or negligent treatment, improper maintenance, unsuitable operating equipment, defective construction work, unsuitable foundations, chemical, electrochemical or electrical influences to the extent that we are not answerable.
7. If Customer or a third party reworks improperly, our liability for the consequences resulting therefrom shall be forfeited. The same shall apply to changes to the product carried out without our prior approval.

### **IX. Liability**

1. To the extent that nothing to the contrary results from the present General Terms and Conditions of Sale and Delivery including the following provisions, we shall be liable according to the relevant statutory provisions in the event of a breach of contractual or extra-contractual duties.
2. We shall be liable for damages - regardless of the legal reason - for malice aforethought and gross negligence.  
  
For simple negligence, we shall only be liable  
- for damage from an injury to life, limb or health,  
- for damage from a breach of a cardinal contractual duty (duty, fulfilment of which makes proper performance of the contract possible and in compliance with which the contracting party regularly trusts and may trust; however, in such a case, our liability shall be limited to reimbursement of the foreseeable damage typically occurring.
3. The limitations of liability resulting from sub-section 2 shall not apply to the extent that we have deceitfully concealed a defect or assumed a guarantee for the property of the commodity. The same shall apply to the buyer's claims according to the Product Liability Act.
4. The buyer can only withdraw from or terminate the contract on account of a breach of contract not comprising a defect if we are answerable for the breach of the duty. A free right of termination of the buyer (in particular pursuant to §§ 651, 649 German Civil Code) is ruled out. Apart from this, the statutory prerequisites and legal consequences shall apply.

## **X. Barring by limitation**

1. As a deviation from §438 sub-section. 1 no. 3 German Civil Code, the general period of barring by limitation for claims from defects in title and quality shall be one year from delivery. To the extent that an inspection has been agreed, barring shall commence upon acceptance.
2. However, if the commodity is a building or an object used for a building as a result of its customary mode of use and has caused its defectiveness (building material), the period for barring by limitation according to the statutory regulation shall be five years from delivery (§ 438 sub-section 1 no. 2 German Civil Code). Statutory special regulations for in rem claims to return of third parties (§ 438 sub-section 1 no. 1 German Civil Code), wilful deceit of the vendor (§ 438 sub-section 3 German Civil Code) and for claims of recourse against the supplier in final supply to a consumer (§ 479 German Civil Code) shall also be unaffected.
3. The aforementioned periods of barring of purchase law shall also apply to contractual and extra-contractual claims to damages of the buyer based on a defect in the commodities unless application of regular statutory barring by limitation (§§ 195, 199, German Civil Code) would lead to a shorter barring in the individual case. The periods of barring of the Product Liability Act shall remain unaffected in any case, Apart from this the statutory periods of barring shall exclusively apply to claims to damages of the Buyer pursuant to Section IX. of the present Terms and Conditions of Sale and Delivery.

## **XI. Collection**

Our representatives shall not be entitled to accept payments.

## **XII. Final provisions**

1. In the determination of the claims to reimbursement to be fulfilled by us, our economic situation, nature, scope and duration of the business relationship, all and any contributions to cause and culpability of Customer according to the provisions of § 254 German Civil Code and a particularly unfavourable installation situation of the part delivered shall be taken into account in our favour to a suitable extent. In particular, the reimbursements, costs and expenditure to be borne by us shall be in a suitable ratio to the value of the part supplied.
2. Place of performance for the performances to be rendered by both parties shall be 89186 Illerrieden.
3. Our headquarters shall be the place of jurisdiction for all contractual and extra-contractual disputes, to the extent that the customer is a merchant. We shall however be entitled to sue the customer at the court at its headquarters.
4. All the legal relationships between ourselves and Customer shall be governed by the law of the Federal Republic of Germany, ruling out the UN Purchase Law Convention of April 11, 1980.
5. The contract language is German.
6. If individual provisions of the present contract are or become invalid, the validity of the remainder of the contract shall not be affected. In such a case, the invalid provision shall be interpreted or supplemented in such a way that the commercial purpose envisaged with the invalid provision is achieved.

### **Duties to information pursuant to § 312 e German Civil Code in combination with § 3 German Civil Code Information Ordinance Access and storage possibilities**

- (1) We make reference to the fact that both the text of the contract as well as the General Terms and Conditions of Delivery can be seen by the customer in an electronic form at the time of the conclusion of the contract.
- (2) Both the text of the contract as well as the General Terms and Conditions of Delivery can be stored by the Customer in a reproducible form.
- (3) The text of the contract shall be stored by us until conclusion of the contract. Thereafter, there shall be no storage of the text of the contract by us, with the result that it shall no longer be accessible to the customer.