

### **I. Validity/Conclusion of the Agreement**

1. These General Terms and Conditions of Sale shall apply to all - including future - contracts with entrepreneurs, legal entities under public law and any assets under public law relating to supplies and other services including the supply of goods which cannot be replaced. In the case of direct deliveries, the conditions of the price list and the dispatch instructions of the factory supplying the goods shall apply in addition.

Purchaser's terms and conditions of purchase shall not be recognised, even if we do not explicitly object to them again after receipt.

2. Our offers are subject to change. Verbal agreements, promises, promises and warranties made by our employees in connection with the conclusion of the contract shall only become binding by our written confirmation. Written form shall also be maintained by the sending of faxes and e-mails.

3. In the event of doubt, the Incoterms, in their up-to-date version, shall be decisive for the interpretation of trade regulations..

### **II. Prices**

1. Unless otherwise agreed, the prices and conditions of our price list valid at the time of conclusion of the contract shall apply. The goods are calculated 'gross for net'.

2. In the case of direct deliveries, we shall be entitled to increase the agreed price if our supplier increases this price prior to the delivery of the goods. This shall only apply if there is a period of more than three months between the conclusion of the contract and delivery. The purchaser may rescind the contract in such cases. The declaration of termination must be submitted to us immediately upon receipt of our declaration of increase.

3. If, in the case of import cases, the price is increased on the basis of official measures, in particular when anti-dumping and/or settlement duties are introduced or renewed, we shall be entitled to adjust the agreed prices to the same extent.

### **III. Payment and settlement**

1. Unless otherwise agreed or indicated in our invoices, payment - without deduction, including and in particular discount for cash - must be made in such a way that the amount is available to us on the due date. The purchaser shall bear the costs of payment transactions.

2. The purchaser shall only be entitled to a right of retention and a right to compensation if his counterclaims are undisputed or legally established, if they are based on the same contractual relationship with the purchaser and/or if they would entitle the purchaser to refuse the performance in accordance with § 320 of the German Civil Code.

3. If the due date for payment is exceeded, at the latest from the date of default, we shall charge interest of 9% points over the base rate, unless a higher interest rate has been agreed. Except in the event of a further claim for damages in connection with the default.

4. If it becomes apparent after the conclusion of the contract that our payment requirement is at risk due to a lack of solvency on the part of the buyer, or if the buyer is in default with a considerable sum of money, or if other circumstances arise which indicate a substantial deterioration in the buyer's solvency after the conclusion of the contract (e.g. cancellation or reduction of the goods credit limit granted by us to insure the goods credit), we shall be entitled to the rights under § 321 of the German Civil Code. In such a case we shall also be entitled to demand payment of all receivables not time-barred from the current business relationship with the customer.

5. An agreed discount always relates only to the invoice value excluding freight costs and requires full compensation of all payable debts of the buyer at the time of deduction of discount. Unless otherwise agreed, instalments shall commence on the invoice date.

### **IV. Execution of deliveries, delivery times and deadlines**

1. Our delivery obligation is subject to correct and timely self-delivery (and, in the case of imported goods, subject to the receipt of inspection documents and import licences, to the extent that these documents are necessary for the import in question), unless the incorrect or delayed supply is attributable to us.

2. Data relating to delivery times are approximate data. Delivery periods begin with the date of our order confirmation and only apply under the condition of timely clarification of all details of the order and timely fulfilment of all obligations of the purchaser, such as e.g. provision of all official papers, provision of accredits and guarantees or making advance payments.

3. The time of dispatch from the factory or warehouse shall be decisive for compliance with delivery times and deadlines. In the event of notification of readiness for dispatch, they shall be deemed to have been fulfilled if the goods cannot be dispatched on time through no fault of our own.

4. In the event of delayed delivery, the purchaser may set us a reasonable time limit and withdraw from the contract to the extent that it has not been fulfilled. Damages in such cases refer to Section XI of these Terms and Conditions.

5. Delivery periods shall be extended to a reasonable extent in the event of measures taken in connection with industrial disputes, in particular strikes and lockouts and also the occurrence of unforeseeable obstacles beyond our control, insofar as these obstacles demonstrably have a significant impact on the manufacture or delivery of the goods to be delivered. This shall also apply if circumstances arise at the supplier's premises. We will inform the purchaser immediately of such circumstances. These regulations also apply to delivery periods. If the performance of the contract becomes unbearable for one of the parties, the latter may rescind the contract to that extent.

### **V. Retention of title**

1. All goods delivered shall remain our property (goods subject to retention of title) until all requirements, including and in particular the relevant claims, to which we are entitled within the framework of the business relationship have been fulfilled (retention of outstanding debt). This also applies to claims which arise and become due in the future, e.g. from changes of acceptors, and also if payments are made on separately identified claims. This reservation of outstanding debt lapses definitively with the settlement of all claims that are still outstanding at the time of payment and to which this reservation of outstanding debt applies.

2. Treatment and processing of the goods subject to retention of title shall take place for us as manufacturers in accordance with § 950 of the German Civil Code (BGB) without any obligation on our part. The processed goods shall be deemed to be goods subject to retention of title in accordance with No. 1. In the event of processing, connection and mixing of the goods subject to reservation of title by the Buyer with other goods, we shall be entitled to proportional co-ownership of the new goods in the ratio of the fair value of the goods subject to reservation of title to the fair value of the other goods used. In the event that our ownership ceases due to connection or mixing, the purchaser already now assigns to us the ownership rights to the newly created property or to the reserved goods in the proportion of the fair value of the reserved goods to the fair value of the other goods used. Our rights as co-owners shall be deemed to be goods subject to retention of title as referred to in No. 1.

3. The purchaser may only dispose of the goods subject to retention of title in the usual course of business under his normal business conditions and as long as he is not in default of payment, provided that the claims arising from the resale are transferred to us in accordance with nos. 4 to 6. He shall not be entitled to dispose of goods subject to retention of title in any other way.

4. Claims arising from the resale of the goods subject to retention of title or from any other legal basis shall be assigned

to us now together with all securities acquired by the purchaser for the claim. They serve as security to the same extent as the goods subject to retention of title. If the reserved goods are disposed of by the purchaser together with other goods not sold by us, the receivable from the resale will be transferred to us in the ratio of the fair value of the reserved goods to the fair value of the other sold goods.

5. The buyer is entitled to collect claims from the resale. This authorisation to collect receivables shall lapse in the event of our resignation, but at the latest in the event of default of payment, failure to honour a bill of exchange or a request to commence insolvency proceedings. We shall only exercise our right of cancellation if it becomes clear after the conclusion of the contract that our right to payment from this or other contracts with the purchaser is at risk due to the purchaser's lack of solvency. At our request, the purchaser shall be obliged to inform his customers immediately of the assignment to us and to provide us with the documents required for collection.

6. The purchaser must inform us immediately of any seizure or other adverse action by third parties. The purchaser shall bear all costs incurred for the lifting of the attachment or for the return of the goods subject to retention of title, insofar as these are not reimbursed by third parties.

7. If the purchaser is in default of payment or does not honour a bill of exchange when due, we shall be entitled to repossess the goods subject to retention of title and, if necessary, to enter the purchaser's business for this purpose and to dispose of the goods subject to retention of title after set-off against the purchase price. The same applies if it becomes clear after the conclusion of the contract that our right to payment from this or other contracts with the purchaser is at risk due to the purchaser's lack of solvency. Withdrawal does not constitute withdrawal from the contract. The provisions of the German insolvency law shall remain unaffected.

8. If the invoice value of the existing securities exceeds the total of the secured claims by more than 50 per cent, we shall be obliged to release any securities of our choice at the purchaser's request.

#### **VI. Weights**

1. The weights are determined by the weighing carried out by us or our supplier. The proof of weight is provided by presenting the weighing slip. As far as legally permissible, weights without weighing can be determined according to the standard. We are entitled to calculate the weight without weighing according to the standard (theoretically) plus 21/2 % (commercial weight).

2. The quantities, bundled quantities, etc. stated in the dispatch note are not binding for goods calculated according to weight. Insofar as separate weighing does not normally take place, the total weight of the consignment shall apply. Differences from the arithmetical individual weights shall be divided proportionally.

#### **VII. Inspections/declarations of performance and CE indications/approvals**

1. The co-issuance of test certificates ("testimonials") according to EN 10204 requires a written agreement. The same applies to statements on services and CE designations according to the German Construction Products Regulation. The written form is also maintained through the transmission of faxes and e-mails. We are entitled to provide copies of inspection certificates. In the absence of an explicit agreement, please refer to our price list or the price list of the respective supplier (supplying factory).

2. If an acceptance has been agreed, it can only take place in the delivering factory or our warehouse immediately after the notification of readiness for acceptance. The purchaser assures us that we can, in his name and on his account or that of his purchaser, take on the order of the purchasing company indicated by him. Unless otherwise agreed, this power of

attorney is deemed to have been granted with the appointment of the purchasing company in the order.

3. The personal and business costs of taking delivery shall be borne by the buyer. These will be invoiced directly to him by the purchasing company and must be paid to them.

4. If the taking delivery does not take place due to our fault, not on time or not completely, we are entitled to ship the goods without taking delivery or to store them at the expense and risk of the buyer and to charge him for this.

#### **IX. Shipment, transfer of risk, packaging, partial delivery**

1. We determine the method and means of transport at the time of shipment, as well as the forwarder and the freight forwarder.

2. Goods which are ready for dispatch in accordance with the contract must be requested immediately, otherwise we shall be entitled, following a reminder, to dispatch or store them at the expense and risk of the purchaser at our discretion and to invoice them immediately.

3. When the goods are handed over to a transport company or freight forwarder, at the latest however when they leave the warehouse or the supplying factory, the risk, including the risk of seizure of the goods, shall pass to the purchaser in all transactions, including freight-free and free home deliveries. In the event that the goods are collected themselves, the risk shall pass to the purchaser. Insurance is only provided on the instructions and at the expense of the purchaser. The obligation and the costs of unloading shall be borne by the buyer.

4. The goods are delivered unpackaged and not protected against rust. If customary in the trade, we deliver packaged. In our experience, we provide packaging, protective and/or transport equipment at the purchaser's expense. They shall be taken back by our warehouse within a reasonable period of time. We do not take over the purchaser's costs for transport or for our own disposal of the packaging.

5. We shall be entitled to make part-deliveries to an extent that can be reasonably expected. We are entitled to make more or less deliveries of the agreed quantity as is customary in the industry. Furthermore, we shall be entitled to over- or under-deliver the agreed quantities to be delivered in accordance with fairness. The indication of an "approximate" quantity shall entitle us to over- or under-deliver up to 10%.

#### **IX. Contracts on call, ongoing deliveries**

1. In the case of contracts with ongoing deliveries, we must be informed of calls and classifications of varieties for approximately the same quantities per month; otherwise we shall be entitled to determine the regulations ourselves on an equitable basis.

2. If the total quantity of individual orders exceeds the agreed quantity, we shall be entitled, but not obliged, to deliver higher quantities. We may charge the higher quantity at the prices applicable at the time of invoicing or delivery.

#### **X. Liability for defects**

1. The inner and outer properties of the goods, in particular their goodness, types and sizes, shall be determined in accordance with the agreed and, in the absence of a deviating contract, in accordance with the DIN and EN standards in force at the time the contract was concluded and, in the absence thereof, in accordance with practice and marketing standards. References to standards and similar regulations, inspection documents according to EN 10204 and other documents, as well as information on the goodness, types, sizes, weights and suitability of the goods do not constitute commitments or guarantees, nor do declarations of conformity and corresponding characteristics such as e.g. CE.

2. The inspection of the goods and the declaration of defects shall be subject to legal requirements, on the understanding that the obligation to inspect the goods after delivery shall also apply to any inspection documents in accordance with or as per EN 10204. Defects of the goods and inspection documents must

be reported to us in writing or in text form. If the goods are built in or attached to another item, the purchaser shall be obliged to check the material properties of the goods prior to installation and to report any defects to us immediately in writing or in text form.

3. In the event of a justified and timely complaint of defects, we may, at our discretion, either rectify the defect or deliver an item free of defects (subsequent performance). In the event of failure or refusal of subsequent performance, the buyer shall be entitled to legal rights.

4. Necessary expenses for the removal of defects and the installation or fitting of the updated or delivered goods without defects shall only be those which relate to the extension and installation of identical products and which have arisen on the basis of market conditions and are demonstrated by the purchaser by means of appropriate proof in text form. This shall also include non-waste costs which the purchaser has incurred in confidence to maintain performance.

5. We may refuse costs incurred in connection with subsequent performance if they are disproportionate. This is at most the case if they exceed a value of 150 % of the purchase price of the goods.

6. If the purchaser does not promptly give us the opportunity to convince us of the defect, in particular if he does not immediately make the rejected goods or samples thereof available upon request, all rights arising from the defect shall lapse.

7. In the case of goods sold as downgraded material, the purchaser shall not be entitled to assert any rights arising from defects with regard to the declared grounds for downgrading and goods which he is normally required to take into account. In the case of the sale of IIa material, our liability for defects is excluded.

8. Our additional liability shall be governed by Section XI of these terms and conditions. The purchaser's right of recourse in accordance with §§ 478, 479 of the German Civil Code shall remain unaffected.

#### **XI. General limitation of liability and statute of limitations**

1. Due to breach of contractual and extra-contractual obligations, in particular due to impossibility, negligence, fault in the preparation of the contract and wrongful acts, we shall only be liable - also for our managerial employees and other persons acting on our behalf - in cases of wilful intent and gross negligence, limited to the contractually foreseeable damage typical of the conclusion of the contract. In all other cases, our liability, including for damage resulting from defects or damage caused by defects, is excluded.

2. These limitations shall not apply in cases of culpable violation of important contractual obligations, insofar as the fulfilment of the purpose of the contract is at risk, in cases of mandatory liability under the Product Liability Act, in cases of damage to life, body and health and also not if and insofar as we have deliberately concealed defects or guaranteed their absence. The statutory regulations on the burden of proof remain unaffected by this.

3. Unless otherwise agreed, contractual claims which arise between the purchaser and us on the occasion of or in connection with the delivery of the goods shall become time-barred one year after delivery of the goods. This period shall also apply to such goods which are used for construction work in accordance with their normal use and which have caused them to be defective, unless this use has been agreed in writing. This shall not affect our liability for wilful and grossly negligent breach of duty, culpably caused damage to life, body and health as well as the statute of limitations for recourse according to §§ 478, 479 of the German Civil Code.

#### **XII. VAT-free intra-Community supplies**

1. In the case of VAT-free intra-Community supplies, the customer is required to provide us with evidence of a non-

taxable supply when and where the goods have arrived in the other EU Member State ("Gelangensbestätigung").

2. If a "Gelangensbestätigung" is not returned to us even after a reminder from the customer, we shall be entitled to subsequently demand the full amount of German VAT due from the customer.

#### **XIII. Place of delivery, competent court, applicable law**

1. The place of delivery for our deliveries is, in the case of delivery from the factory, the delivery factory, in the case of other deliveries, our warehouse. The place of jurisdiction shall, at our discretion, be the place of our principal place of business or the buyer's place of business.

2. All legal relationships between us and the Purchaser shall be governed by German unified law in addition to these Terms and Conditions, in particular that of the German Civil Code / Commercial Code (BGB/HGB). The provisions of the UN Convention on Contracts for the International Sale of Goods of 11 April 1980 shall not apply.