



## Terms and Conditions of Sale (as of January 1<sup>st</sup>, 2011)

### 1. Application and Entering Into the Agreement

For the entire business relation between the Buyer and the Seller, these Terms and Conditions shall apply exclusively. Seller objects to any Terms and Conditions of Purchase and any other standard terms and conditions of Buyer. In accepting and executing an order, Seller neither accepts Buyer's standard terms and conditions nor waives terms and conditions as set out below, even where Seller fails to explicitly reject Buyer's terms and conditions or to insist on its own terms and conditions. Should any of these terms and conditions of sale be or become invalid, the validity of the contract remains unaffected and such provision is replaced by the statutory provision in this regard. Under no circumstances shall the invalid provision in these Terms and Conditions be replaced by terms and conditions of Buyer. The entering into the Agreement is documented by our order confirmation in writing only. The provisions of § 3.12 e Section 1 Sentence 1 No. 1-3 (German) Civil Code ("BGB") concerning obligations in the e-business are explicitly excluded between the Buyer and the Seller.

### 2. Prices and Prohibition of Set-off

All prices are agreed on an EXW-basis (INCOTERMS 2010) plus statutory V.A.T., except where explicitly otherwise agreed. Any increase of customs duties, taxes, fees or other expenses occurring after the conclusion of the sales contract shall be borne by Buyer. In particular, any increase of the statutory V.A.T. between the conclusion of the contract and actual delivery shall result in a corresponding increase of the gross purchase price. The same applies for any increase of the costs of transport regardless of the agreed INCOTERMS. Any set-off of the Buyer with counter-claims and any right of retention of the Buyer are explicitly excluded, unless the claims of the Buyer are either uncontested by the Seller or have been confirmed by a final, non-appealable judgement or other court decision. These rules relating to set-off and the right of retention also apply in case of quality claims by the buyer.

### 3. Delivery Periods

3.1 Delivery periods and delivery dates ("delivery time") pertain to, except where explicitly otherwise agreed, the time of the dispatch or of making available for collection and do not constitute a fixed date ("Fixgeschäft"). **All delivery times are subject to the full and timely delivery of Seller's suppliers.** If the delivery time is not complied with, Buyer is entitled to specify a reasonable further period and, after expiry of such additional period, to rescind the contract with regard to goods or quantities not delivered by then. All further claims of Buyer, in particular damages claims, are excluded pursuant to the provisions of  **Sect. 8 (Liability)**.

3.2 Force majeure and all events that Seller cannot influence, including acts of God, labor disputes including strikes and legal lockouts, scarcity of energy and raw materials, transport difficulties or delays or all other business interruptions that cannot be avoided, shall, for the duration of such event and to the extent of its effects, shall relieve Seller of its delivery obligations. If such event does not cease to have effects within a reasonable period of time, Seller is entitled to rescind the contract, in which case all damages claims are excluded. If Buyer proves that a delivery delayed or restricted by such event is no longer of interest to Buyer, Seller shall relieve Buyer from its obligation to take delivery if the detrimental effects of such relief for Seller do not exceed the loss of profit.

3.3 The stipulations in the foregoing Section 3.2 shall also apply to such events with regard to Seller's suppliers.

### 4. Overdue Payments and Advance Payments

If payment of one of Seller's invoices becomes overdue for more than 14 days or if Seller receives information or knowledge of facts that justify doubts as to Buyer's liquidity or creditworthiness, Seller shall be entitled, regardless of prior agreements as to payment dates or acceptance of bills of exchange, to demand immediate payment of all outstanding invoices resulting from the business relation. In these events Seller may also demand prepayments as a condition for further deliveries agreed and, should such advance prepayments not be effected within a reasonable period of time, rescind the agreements in this regard.

### 5. Transfer of Risks

All risks of loss or damage shall pass to Buyer when goods are handed over to the transport company or upon leaving Seller's warehouse. All

shipments are effected at Buyer's risk. This even applies if Seller has to bear the costs of such shipment and/or arranges for insurance on the basis of specific agreements in this regard. All INCOTERMS agreed provide for the distribution of costs only.

### 6. Retention of Title

6.1 Until full payment of the Purchase Price and full payment of all other payment obligations due to the Seller at the time of the conclusion of the contract the goods shall remain Seller's property ("goods subject to a retention of title"). Such goods subject to a retention of title shall also remain Seller's property until the time of payment of all future payment obligations of Buyer. Where payment of a purchase price is effected by bill of exchange, title of property shall not pass before full acceptance of such bill by the drawee. Buyer is entitled to use the goods subject to a retention of title in its production and to sell them as part of ordinary business procedures according to the following provisions.

6.2 Any processing of Seller's goods subject to a retention of title by the Buyer or a third party instructed by Buyer is effected for Seller as manufacturer pursuant to § 950 BGB and Seller shall be the owner of the processed goods. If such processing involves materials of others, Seller shall be joint owner of the resulting goods at each stage of the processing proportionately to the invoice value of Seller's goods subject to a retention of title to the total of the value of the materials of others. The same applies in case of joining and commingling pursuant to §§ 947, 948 BGB; the provisions of § 947 Section 2 BGB are excluded. Instead the above provisions on the processing of goods shall apply.

6.3 No goods subject to a retention of title may be pledged or transferred as security. All claims resulting from the sale of goods subject to a retention of title are hereby transferred from Buyer to Seller to the extent of the property rights of Seller, and such transfer is accepted by Seller. Buyer is entitled to collect the payment claims, but also only as long as Buyer fulfills all of its payment obligations to Seller as agreed. The transfer of such payment claims is excluded.

6.4 If payments of Buyer to Seller are overdue by more than one month or upon discontinuance of payments of Buyer, a protested cheque or bill of Buyer (in so far as Seller is in any way the beneficiary of such cheque or bill), an effected pledging of the goods subject to a retention of title, a petition in bankruptcy or judicial or extrajudicial composition proceedings toward bankruptcy, Buyer's rights to use goods subject to a retention of title in the production process, to commingle goods subject to a retention of title and to resell the goods subject to a retention of title and the right to collect payments on the payment obligation transferred are terminated. Buyer has to inform Seller on the occurrence of any of these events immediately.

6.5 Upon Seller's request Buyer has to provide to Seller all necessary information on the goods subject to a retention of title and on all payment obligations transferred and to inform Buyer's customers of such transfer. Buyer also has to inform Seller immediately of any third party actions with regard to such goods or payment obligations. Buyer undertakes to adequately insure the goods subject to a retention of title against all ordinary risks.

6.6 Should the value of security rights of Seller exceed the total amount of payment obligations of Buyer to Seller by more than 10 %, Seller shall, upon demand of Buyer, release securities, at Seller's choice, to the extent of such excess. In such assessment the value of securities is determined on the basis of a realization of such value by their sale. Buyer has to provide Seller, upon Seller's demand, with all information necessary for such assessment immediately.

### 7. Representations and Warranties / Non-conformity to Contract

7.1 Any recommendations made for use of Seller's materials are made to the best of Seller's knowledge and are based upon prior tests and experience of the Seller believed to be reliable; however, Seller does not guarantee the results to be obtained and all such recommendations are non-binding – also with regard to the protection of third party's rights –, do not constitute any representation and do not affect in any way Buyer's obligation to examine and/or test the Seller's our goods with regard to their suitability for his Buyer's purposes. No information given by the Seller is to be construed in any way as a guarantee regarding characteristics or duration of use, unless such information has been explicitly given as a guarantee.

7.2 Samples shall be regarded as types of the goods that only show the approximate properties. They do not constitute any warranty or representation as to the specification of the goods, unless the Buyer



## Terms and Conditions of Sale (as of January 1<sup>st</sup>, 2011)

- has expressly made the Seller aware of the importance of a specific property in his order.
- 7.3 Buyer undertakes to examine each delivery immediately and fully at its costs and to immediately notify Seller in writing of any defect, incorrect delivery, including such incorrect delivery that is obviously not open to approval, and insufficient quantities. If specifications or analysis data have been agreed Buyer further undertakes to examine the goods immediately and in any event before use in production or resale in order to determine whether the agreed specifications or data are complied with. It is Buyer's obligation to prove that such examination has been made in time and to the extent necessary. The notification must be made within a final period of seven days from receipt of delivery. Concealed defects are to be notified immediately upon discovery.
- 7.4 Warranty claims of Buyer are limited to a claim of having the defect remedied or to a claim of replacement, at Seller's choice. Where endeavors to remedy the defect or to replace the goods concerned are not, within a reasonable time, successful Buyer has a choice between a claim to rescind the contract ("Wandlung") or to reduce the purchase price ("Minderung") pursuant to the statutory provisions. Each of these claims is limited to the delivery concerned, unless such limitation due to the nature of the goods cannot be expected from Buyer considering its detriments. Where the quantities as agreed and specified have not been delivered, Buyer has, should remedial measures prove unsuccessful, only a claim to a reasonable purchase price reduction.
- 7.5 If the replacement goods shall be delivered to a different location as the location agreed in the original order any extra costs shall be borne by the Buyer.
- 7.6 The Buyer represents and guarantees that it is not a consumer and thus contracts with the Buyer are not governed by the provisions for the sale of consumer goods. Where the Buyer or any subsequent buyer in turn are liable to a buyer on the basis of the statutory provisions on sales to consumers, any recourse against the Seller is excluded. This is true, in particular, where such recourse is only possible due to the nature of the final sale as a sale of consumer goods. In particular, neither does the burden of proof shift nor is the point of time at which the risk is transferred to the consumer in any way legally pertinent for the rights and obligations between the Seller and the Buyer. Should nevertheless claims for recourse of the Buyer to the Seller arise, such claims shall be statute-barred within 1 year after the delivery of the goods by Seller. Any claims of recourse based on consumer claims shall be borne by the Buyer and the Buyer will hold seller free and harmless at the first request.
- 7.7 Any other claims, in particular claims to compensation as a consequence of defects or incorrect deliveries are limited pursuant to the provisions in Section 8 (Liability). This applies, in particular, for consequential damages. Even in cases of gross negligence Seller is not liable for damages that would not have occurred had Buyer tested the goods, before their use in production or their resale, as was necessary given the nature of the goods and the circumstances of their processing.
- 8. Liability**
- 8.1 The Seller is not liable for any kind of damage. In particular the Seller is not liable for damage resulting from the violation of contractual obligations. This also includes any liability by the Seller for recommendations, consulting and/or advice. The exclusion of liability applies, in particular, for any claims based on tort as far as they arise in addition to and on the same basis as contractual claims, for all claims based on culpa in contrahendo and for all claims for indirect damages and consequential damages.
- 8.2 The above exclusions of liability do not apply:
- in case of intent or gross negligence of one of Seller's directors/officers or employees;
  - in case of intent or gross negligence of any person representing Seller by law or of any person used by Seller in performing an obligation;
  - in case of damages resulting from the negligent violation of essential contractual obligations; essential contractual obligations are all those obligations the full and timely fulfilment of which are necessary for the duly fulfilment of the contract
  - in case of impossibility at the time of the entering into the agreement;
- in case life, body or health of a person have been injured.
- 8.3 In any event Seller's liability is limited in amount to those amounts covered by an existing personal liability and property damage insurance for Seller's business. Any deductible agreed in the insurance policy has to be paid by Seller to the Buyer if the requirements for collecting under the insurance policy are otherwise fulfilled. This liability restriction as to amount does not apply:
- in case of intent or gross negligence of one of Seller's directors/officers or employees;
  - in case of intent or gross negligence of any person representing Seller by law or of any person used by Seller in performing an obligation;
  - in case of damages resulting from the negligent violation of essential contractual obligations;
  - in case the insurance company is not under an obligation to cover due to reasons outside of Seller's responsibility;
  - in case life, body or health of a person have been injured
  - in case of strict liability according to the Product Liability Act (Produkthaftungsgesetz).
- 8.4 Damages claims based on the negligent violation of essential contractual obligations against the Seller are limited to the typical damages foreseeable by Seller at the time of the entering into the agreement. In this regard Seller's liability is excluded, in particular, for damages that are exclusively allocated to the risks borne by the Buyer.
- 8.5 Seller is not liable for any damages caused by Seller's employees. This does not apply:
- in case of damages caused by Seller's directors/officers or employees with organizational authority acting intentionally or grossly negligently;
  - in case of intentional or grossly negligent violation of monitoring or election duties of Seller's directors/officers or employees with organizational responsibility;
  - in case of intentional or grossly negligent violation of essential contractual obligations by Seller's employees;
  - in case of intentional or grossly negligent injury of life, body or health of a person by these employees
  - in case of strict liability according to the Product Liability Act (Produkthaftungsgesetz).
- 8.6 All damages claims are excluded (except in case of intent or gross negligence by Seller or persons representing Seller by law or persons used by Seller to perform obligations) unless they have been raised in court proceedings within a final period of 3 months after a refusal to acknowledge such claims including an explicit warning as to such 3-months deadline by Seller or Seller's insurance company/representative.
- 9. Time Bar**
- 9.1 Notwithstanding anything to the contrary stipulated in these Terms and Conditions of Sale all claims of the Buyer against Seller are, as a rule, time-barred within one year from the time of delivery of the goods. The above provisions do not apply to claims of the Buyer for return of property based on ownership or other proprietary rights, to claims that have been confirmed by a non-appealable binding court decree, to claims confirmed by either settlement or documents that are enforceable, or to claims that have been rendered enforceable by confirmation through insolvency proceedings. They further do not apply where Seller is liable to the Buyer due to intentional or grossly negligent injury of life, body or health of a person. They further do not apply where the law stipulates longer periods (§§ 438 Section 1 No. 2, 479 Section 1 and 634a Section 1 No. 2 BGB)
- 9.2 All other damages claims of Buyer against Seller are time-barred within a period of one year. The period for such time-bar starts at the end of the year in which the claim has arisen and the creditor has become aware (or should have become aware absent gross negligence) of the facts on which the claim is based and the identity of the person liable. This time-bar does not apply to damages claims resulting from the injury of life, body or health of a person, to claims based on the intentional or negligent violation of obligations by Seller or one of the



## **Terms and Conditions of Sale (as of January 1<sup>st</sup>, 2011)**

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persons representing Seller by law or persons used by Seller for the performance of obligations, or to other damages claims that are based on the intentional or grossly negligent violation of obligations by Seller or a person representing Seller by law or persons used by Seller for the performance of obligations. With regard to such claims, the statutory time-bar applies. The statutory time-bar also applies where it is shorter than the one provided for in sentence one of this paragraph.

- 9.3 Ongoing negotiations between Seller and Buyer regarding claims of the Buyer or facts on which such claims are based do not interrupt the running of the time-bar. Seller shall advise Buyer at the beginning of such negotiations that the time-bar is not interrupted. Where nevertheless negotiations effect such interruption, the claim concerned shall be time-barred after expiry of the duration of the original time-bar plus the duration of the interruption, but not earlier than within one month after the end of the interruption.
- 9.4 Down payments, payment of interest or any security provided by Seller with regard to a claim of the Buyer shall not be construed to be an acknowledgement of such claim. The above actions thus do not result in a new running of the time-bar. This is not true if the down payment, payment of interest or security provided by Seller are made explicitly as an acknowledgement.
- 9.5 If Seller provides a contractual acknowledgement or a security with regard to a claim for which the time-bar has already ended, Seller is entitled to a re-claim.

### **10. Data Protection**

All personal data acquired by the Seller from the Buyer shall only be used for the purposes of the purchase contract and shall be raised, processed and stored according to the provisions of the (German) Data Protection Act ("Bundesdatenschutzgesetz").

### **11. Place of Performance, Jurisdiction and Choice of Law**

- 11.1 Place of performance of delivery is the place of the plant or warehouse from which such delivery is effected.
- 11.2 Exclusive Jurisdiction lies with the courts of Hamburg or, at the our choice, at the place of jurisdiction for the Buyer based on its seat.
- 11.3 The contract shall be governed by the law of the Federal Republic of Germany with the exclusion of the UN Convention on the International Sale of Goods ("CISG").
- 11.4 The interpretation of delivery terms is governed by the definitions of the INCOTERMS as applicable at the pertinent time, notwithstanding the specific provisions for the transfer of risks in Sect. 5.