

## **General Terms and Conditions of Sale**

### **Art. 1**

#### **Scope of application**

1. For all deliveries and services of our company, including those arising from future business transactions, exclusively our following terms and conditions in their respective current version shall apply.
2. Our General Terms and Conditions of Sale shall apply exclusively. Conflicting or deviating terms and conditions of the Buyer shall not be recognised. Such terms and conditions shall only become effective if we expressly agree to them in writing.
3. Our General Terms and Conditions of Sale shall apply only to entrepreneurs within the meaning of Section 14 of the German Civil Code (BGB).

### **Art. 2**

#### **Conclusion of contract**

1. Our offers are non-binding with regard to delivery, delivery time and price, unless they are expressly designated as binding or contain a period for acceptance.
2. Orders placed by the Buyer may be accepted by us within 14 days of receipt. Acceptance shall be effected by written order confirmation or by delivery of the goods.

### **Art. 3**

#### **Delivery**

1. Deliveries shall be made on the basis of EXW (Incoterms 2000), place of dispatch at the Buyer's risk, unless expressly agreed otherwise.
2. Delivery dates shall be binding only if they are confirmed by us in writing. If dispatch has been agreed, delivery periods and delivery dates shall refer to the time of handover to the forwarder, carrier or other third party commissioned with the transport.

3. The initial weight determined at our works shall be decisive. It shall be determined under supervision. Usual weight losses occurring during transport shall be borne by the Buyer. Any exceeding weight differences must be reported in writing immediately upon receipt of the goods and must be recorded and acknowledged on the consignment note or delivery note at the time of delivery.
4. Commercially customary changes to the delivery items are reserved, provided they do not unreasonably impair the Buyer and do not affect the usability of the goods.
5. Partial deliveries are permissible to a reasonable extent, taking our interests into account, in particular if
  - o the partial delivery is usable by the Buyer within the contractual intended purpose,
  - o delivery of the remaining ordered goods is ensured, and
  - o no significant additional effort or costs are incurred by the Buyer as a result.
6. If we fall into default with a delivery or performance, or if a delivery or performance becomes impossible for us for any reason, our liability for damages shall be limited in accordance with Art. 9 of these General Terms and Conditions of Sale.

#### **Art. 4**

#### **Force majeure**

1. “Force majeure” means the occurrence of an event or circumstance (“force majeure event”) that prevents a party from performing one or more of its contractual obligations under the respective contract, provided that the affected party (“affected party”) proves that:
  - a. the impediment is beyond its reasonable control,
  - b. it could not reasonably have been foreseen at the time of conclusion of the contract, and
  - c. the effects of the impediment could not reasonably have been avoided or overcome by the affected party.
2. If a contracting party fails to perform one or more of its contractual obligations due to the default of a third party whom it has engaged to perform the whole or part of the contract, that contracting party may rely on force majeure only to the extent that the requirements for assuming the existence of force majeure as defined in paragraph 1 apply not only to the contracting party but also to the third party.

3. Until proven otherwise, the following events affecting a party shall be presumed to meet the requirements for force majeure under paragraph 1(a) and (b). In such cases, the affected party need only demonstrate that paragraph 1(c) has been fulfilled:
  - a. war (declared or undeclared), hostilities, attack, acts of foreign enemies, large-scale military mobilisation;
  - b. civil war, unrest, rebellion and revolution, military or other seizure of power, uprising, terrorist acts, sabotage or piracy;
  - c. currency and trade restrictions, embargo, sanctions;
  - d. lawful or unlawful official acts, compliance with laws or governmental orders, expropriation, seizure of works, requisition, nationalisation;
  - e. pestilence, epidemics, pandemics insofar as a hazard level of at least “moderate” is declared by the Robert Koch Institute, natural disasters or extreme natural events;
  - f. explosion, fire, destruction of equipment, failure of means of transport, telecommunications, information systems or energy supply (in particular electricity and gas);
  - g. general labour disturbances such as boycott, strike and lock-out, go-slow, occupation of factories and buildings.
4. The affected party shall notify the other party without undue delay of the event.
5. A party that successfully invokes this clause shall be released from the obligation to perform its contractual obligations and from any liability for damages or any other contractual remedy for breach of contract; however, only if it notifies the other party without undue delay. If notification is not given without undue delay, the release shall take effect only from the time the notification reaches the other party. The other party may suspend the performance of its obligations from the time of such notification if force majeure is actually to be assumed.
6. If the effect of the asserted impediment or event is temporary, the consequences set out in paragraph 5 shall apply only for as long as the asserted impediment prevents the affected party from performing its contractual obligations. The affected party must notify the other party as soon as the impediment no longer prevents performance of its contractual obligations.
7. The affected party shall take all reasonable measures to mitigate the effects of the event relied upon.

8. If the duration of the asserted impediment results in the contracting parties being substantially deprived of what they were entitled to expect under the contract, the respective party shall have the right to terminate the affected contract by notifying the other party within a reasonable period. Unless otherwise agreed, the parties expressly agree that either party may terminate the contract if the duration of the impediment exceeds 120 days.
9. If paragraph 8 applies and a contracting party has obtained a benefit from the other contracting party through an act prior to termination, it shall pay the other party an amount equal to the value of that benefit.

#### **Art. 5**

##### **Quantity, quality, labelling**

1. We shall at all times be entitled to deliver up to 10 % more or less than agreed. Delivery of a quantity up to 10 % less than agreed shall not constitute a material defect.
2. The quality of the goods shall be determined by commercial custom unless otherwise agreed in individual cases and confirmed by us in writing. Our product description shall generally be deemed to constitute the agreed quality of the goods. Public statements, endorsements or advertising by third parties shall not constitute a description of the quality of the purchased item in addition to the product description.

#### **Art. 6**

##### **Prices, terms of payment**

1. Our prices apply to the agreed scope of performance and delivery. Additional or special services shall be charged separately. Prices are quoted in EURO on the basis of delivery EXW (Incoterms 2000) place of dispatch, plus packaging, plus the applicable statutory value-added tax, and for export deliveries plus customs duties as well as fees and other public charges.
2. Unless otherwise agreed, the purchase price shall be due and payable net (without deduction) immediately upon invoicing. In the event of default, we shall be entitled to charge default interest at a rate of 8 percentage points above the respective base rate.

3. The Buyer shall only be entitled to set-off against counterclaims if such counterclaim is legally established, undisputed or recognised by us. The Buyer may exercise a right of retention only insofar as it is based on an undisputed, recognised or legally established counterclaim arising from the same contractual relationship.
4. The retention of collection and/or del credere commissions shall only be permitted after prior conclusion of a written collection and/or del credere agreement between us and the Buyer.
5. In the case of payment via third parties, in particular within the framework of settlement and/or del credere agreements, the purchase price obligation shall only be deemed fulfilled when we have received payment.
6. We shall be entitled to perform outstanding deliveries or services only against advance payment or security if, after conclusion of the contract, circumstances become known to us which are likely to materially impair the Buyer's creditworthiness and thereby jeopardise payment of our outstanding claims arising from the respective contractual relationship — including from other individual orders under the same framework agreement.

We maintain trade credit insurance for receivables from our customers. Circumstances that are considered likely to materially impair the Buyer's creditworthiness include in particular:

- termination of insurance cover by the insurer,
- restriction of insurance cover, in particular due to termination of the business relationship for creditworthiness reasons, subsequently agreed extensions of bills of exchange, non-honouring of cheques or bills and returned direct debits for lack of funds, commencement of court order for payment proceedings or the filing of a lawsuit, and the engagement of a debt collection agency or an attorney for the collection of the claim,
- occurrence of the insured event due to the Buyer's insolvency.

## **Art. 7**

### **Retention of title**

1. We shall retain title to the delivered goods until full payment of all claims, including future claims arising within the business relationship, including all ancillary claims. In the event of breach of contract by the Buyer, in particular in the event of default in payment, we shall be entitled, after setting a reasonable period, to repossess the purchased item.

After repossession of the purchased item we shall be entitled to realise it; the proceeds of realisation shall be credited against the Buyer's liabilities — less reasonable realisation costs.

2. The Buyer shall not be entitled to pledge, assign by way of security or transfer the goods or the claims replacing them.
3. In the event of seizures or other interventions by third parties, the Buyer shall notify us in writing without undue delay so that we may bring an action pursuant to Section 771 of the German Code of Civil Procedure (ZPO). If the third party is unable to reimburse us for the judicial and extrajudicial costs of an action pursuant to Section 771 ZPO, the Buyer shall be liable for the loss we have incurred.
4. The Buyer shall be entitled to resell, process or mix the purchased item in the ordinary course of business; however, the Buyer hereby assigns to us all claims in the amount of the final invoice amount (including VAT) arising from the resale against its customers or third parties, irrespective of whether the purchased item is resold without or after processing (in the case of a current account relationship pursuant to Section 355 HGB, the claim assigned in advance shall also cover the acknowledged balance or the balance arising from the underlying transactions in the event of the customer's insolvency). The Buyer shall remain authorised to collect this claim even after assignment. Our entitlement to collect the claim ourselves shall remain unaffected. However, we undertake not to collect the claim as long as the Buyer meets its payment obligations from the proceeds received, does not default and, in particular, no application for the opening of insolvency proceedings has been filed and no suspension of payments exists. If this is the case, we may demand that the Buyer disclose the assigned claims and their debtors, provide all information necessary for collection, hand over the associated documents and notify the debtors (third parties) of the assignment.

The same shall apply to other claims that replace the reserved goods within the meaning of these provisions or otherwise arise in connection with the reserved goods, such as insurance claims or claims in tort in the event of loss or destruction.

5. Processing or transformation of the purchased item by the Buyer shall always be carried out on our behalf. If the purchased item is processed with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the value of the purchased item (final invoice amount, including VAT) to the other processed items at the time of processing. The provisions applicable to the reserved goods shall apply mutatis mutandis to the item resulting from processing.
6. If the purchased item is inseparably mixed with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the value of the purchased item (final invoice amount, including VAT) to the other mixed items at the time of mixing.

If mixing is carried out in such a way that the Buyer's item is to be regarded as the main item, it is agreed that the Buyer shall transfer proportional co-ownership to us. The Buyer shall hold the resulting sole or co-ownership for us.

7. We undertake to release securities to which we are entitled at the Buyer's request to the extent that the realisable value of our securities exceeds the claim to be secured by more than 10 %; the selection of the securities to be released shall be at our discretion.

## **Art. 8**

### **Obligation to inspect and to give notice of defects**

1. The Buyer is obliged to inspect the goods immediately upon delivery at the agreed place of destination or, in the case of collection, upon taking receipt, at its own expense:
  - a. to check quantity, weight and packaging and to record any complaints in this respect on the delivery note or consignment note or on the receipt/withdrawal note of the cold store, and
  - b. to carry out a representative quality check at least by sampling, to open the packaging (boxes, sacks, cans, films etc.) to a reasonable extent and to inspect the goods themselves for external condition, smell and taste, whereby frozen goods must be thawed at least by sampling.
2. In the event of complaints about defects, the Buyer must observe the following forms and deadlines:
  - a. Complaints must be made by the end of the business day following delivery of the goods at the agreed place of destination or upon collection. In the case of a hidden defect which remained undiscovered despite proper initial inspection pursuant to paragraph 1(b), the complaint must be made by the end of the business day following discovery, but at the latest within two weeks after delivery or collection;
  - b. The complaint must be received by us in writing, by telegram, telex or fax within the aforementioned periods. A telephonic complaint is not sufficient. Complaints to commercial agents, brokers or representatives are ineffective;
  - c. The complaint must clearly state the nature and extent of the alleged defect;
  - d. The Buyer is obliged to keep the complained goods available at the place of inspection for inspection by us, our supplier or experts appointed by us. In the case of complained frozen goods, the Buyer is obliged to store them in compliance with the applicable statutory provisions. We are entitled to require proof of an uninterrupted cold chain.

3. Complaints regarding quantity, weight and packaging of the goods shall be excluded if the required note on the delivery note or consignment note or receipt is missing pursuant to paragraph 1(a). Furthermore, any complaint is excluded as soon as the Buyer has mixed, forwarded, resold or commenced processing of the delivered goods.
4. Goods not complained about in the correct form and within the time limits shall be deemed approved and accepted.

## **Art. 9**

### **Warranty**

1. Claims for defects in the delivered items shall only accrue to the Buyer and are not assignable.
2. If a defect in the delivered goods exists, the Buyer shall be entitled to subsequent performance. We may, at our option, fulfil the Buyer's claim for subsequent performance by remedying the defect or by delivering a defect-free item. The costs of subsequent performance shall be borne by us unless they increase due to the goods having been moved to a place other than the place of performance.
3. If subsequent performance fails or does not take place within a reasonable period set by the Buyer, the Buyer shall be entitled, at its option, to declare withdrawal or reduction.
4. To the extent that we are responsible for the defect, the Buyer shall be entitled to claim damages in accordance with Art. 9 of these General Terms and Conditions of Sale.
5. The limitation period for the aforementioned claims for defects shall be 12 months after the transfer of risk. Liability for intent remains subject to the statutory limitation period.

## **Art. 10**

### **Liability**

1. We shall be liable in accordance with statutory provisions if the Buyer asserts claims for damages which are based on intent or gross negligence, including intent or gross negligence of our representatives or vicarious agents. If there is no intentional breach of contract, liability for damages shall be limited to the foreseeable, typically occurring damage.

2. We shall be liable in accordance with statutory provisions if we culpably breach an essential contractual obligation; even in this case liability for damages shall be limited to the foreseeable, typically occurring damage.
3. Liability for culpable injury to life, physical integrity or health shall remain unaffected; the same applies to strict liability under the Product Liability Act.
4. Unless otherwise provided above, liability is excluded.
5. Where our liability for damages is excluded or limited, the same applies to the personal liability for damages of our employees, workers, staff, representatives and vicarious agents.
6. To limit our producer liability, the Buyer is obliged to inform us immediately of all information received that may indicate the existence of product defects (in particular customer complaints) and to support us immediately and comprehensively in recall actions.
7. In the event of export of our goods by the Buyer or its customers to territories outside the Federal Republic of Germany, we accept no liability if property rights of third parties are infringed by our products. The Buyer shall be obliged to compensate us for any damage caused to us by the export of goods that were not expressly delivered by us for export.

## **Art. 11**

### **Returnable packaging**

1. Load-carrying aids shall be exchanged by the Buyer upon delivery in the same type, quantity and quality.
2. We maintain an account for load-carrying aids in which all exchange movements are recorded. Balances are regularly reconciled.
3. Reconciled balances shall be settled by the Buyer within 14 days upon request by returning load-carrying aids of the same type and quality. The return shall be at the Buyer's expense.
4. Load-carrying aids that do not correspond in type, quantity or quality shall not constitute an adequate exchange item. We reserve all statutory and contractual claims arising from such insufficient performance. These claims in our favour shall only become time-barred two years after the transfer of risk.

5. The parties agree that load-carrying aids not returned by the Buyer shall be sold to the Buyer at the agreed conditions and that delivery of the load-carrying aids has already taken place. The Buyer shall receive a separate invoice for the sale. If a balance in favour of the Buyer arises after invoicing, we shall be entitled at any time to offset the balance by issuing a credit note against the sales invoice.

## **Art. 12**

### **Data storage**

The Buyer agrees and is hereby informed that all data concerning it arising from the business relationship, including personal data within the meaning of the Federal Data Protection Act, will be stored as part of our electronic data processing.

## **Art. 13**

### **Quality assurance system**

We are affiliated with various quality assurance systems. The Buyer is prohibited from advertising goods supplied by us as quality-assured unless the Buyer itself is affiliated with the same quality assurance system.

## **Art. 14**

### **Place of performance, jurisdiction, applicable law, contract language, severability**

1. The place of performance for all services under this contract is the respective place of dispatch.
2. The place of jurisdiction is 33378 Rheda-Wiedenbrück, Federal Republic of Germany. We shall also be entitled to sue the Buyer at other permissible places of jurisdiction.
3. The law of the Federal Republic of Germany shall apply; the application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.

4. The governing language of the contract is German. If versions of the contract or contract-relevant documents exist in languages other than German, the German text alone shall be binding. In the event of discrepancies between the German and the foreign-language version, only the German version shall prevail.
5. Should one or more provisions of these General Terms and Conditions of Sale be or become invalid, the validity of the remaining provisions shall remain unaffected.