

## **1. Scope of application, general provisions**

- 1.1 All present and future deliveries of goods and services (referred to hereinafter as “deliveries”) shall be effected solely on the basis of the following terms and conditions. These terms and conditions shall apply to business enterprises, legal entities under public law and special funds subject to public law (purchasers). By accepting these terms and conditions without protest, the purchaser consents to their exclusive application to the delivery in question and to all subsequent business transactions. All purchasing and ordering conditions imposed by the purchaser shall be regarded as null and void and shall not apply even in cases in which they merely supplement these terms and conditions unless we have expressly consented to application of said conditions in writing. Our terms and conditions shall also apply in cases in which we effect delivery without reservation in awareness of conditions imposed by the purchaser which conflict with or deviate from these terms and conditions.
- 1.2 We reserve the right to meet our contractual obligations through subsidiary or affiliated companies. The justifiable interests of the purchaser shall be given appropriate consideration in such cases.

## **2. Offers, samples, guarantees, contracts**

- 2.1 Our offers are non-binding prior to receipt of a written confirmation of order.
- 2.2 Properties and characteristics of samples and models shall be regarded as assured only if such assurance is expressly agreed upon.

- 2.3 Information regarding the quality and durability of goods shall be regarded as binding only if expressly designated as such. The same shall apply to the acceptance of a procurement risk.
- 2.4 A contract shall be binding upon us only upon issuance of a written confirmation of order. Oral agreements require written confirmation by us.

## **3. Prices, payment, delays in payment**

- 3.1 Quoted prices do not include V.A.T., external packing and shipping costs (ex works).
- 3.2 Our invoice are payable in full within 30 days of the date of invoice. Compliance with payment due dates requires receipt of payments on our accounts. Cheques shall be accepted subject to clearance only. Bank fees shall be paid by the purchaser.
- 3.3 In cases of delay in payment, interest will be charged at an annual rate equivalent to the base interest rate plus 8 percent (Art. 247 BGB [German Civil Code]). We reserve the right to claim compensation for additional damages resulting from delays in payment.
- 3.4 We shall be obliged to fulfill our contractual obligations only insofar as the purchaser meets his obligations to us, to include those specified in other contracts, especially with respect to payable invoices. .
- 3.5 The purchaser shall be entitled to withhold payment or offset payment obligations against purchaser claims only in cases in which such claims are undisputed or have been recognized by a court of law.
- 3.6 Upon fruitless expiration of a reasonable grace period, we shall be entitled to demand advance payment or provision

of security for all outstanding deliveries, if the purchaser has failed to meet contractual payment deadlines or if other circumstances, judged in keeping with standard banking principles, cast doubt upon the purchaser's ability to pay. Furthermore, we shall be entitled to demand immediate payment of or provision of security for accounts receivable, regardless of the term of a bill of exchange which may have been presented by the purchaser.

#### **4. Delivery, delivery times, packing, transfer of risk**

- 4.1 The nature and scope of a delivery are specified in our written confirmation of order. We shall be entitled to make partial deliveries provided this imposes no unreasonable burden on the purchaser.
- 4.2 In cases in which a contract provides for delivery of a total quantity in several increments, the purchaser shall be obliged to distribute individual deliveries evenly over the entire calendar year. Delivery of more than 10% of the total quantity to be delivered in a given year in a single calendar month requires prior written approval from us.
- 4.3 Delivery times shall be regarded as approximate unless expressly assured in writing. The delivery period begins on the date on which our written confirmation of order is dispatched, but not before all matters essential to fulfillment of the contract which relate to action to be taken by the purchaser have been resolved.

The delivery period shall not begin until we have received all information required for the delivery from the purchaser or his designated representative or until the purchaser

provides proof that he has opened a letter of credit in accordance with the terms of the contract, if appropriate, or has effected advance payment or provided appropriate security. .

- 4.4 The delivery deadline shall be regarded as met provided the delivery has left our plant by the specified date or we have notified the purchaser of readiness to deliver but the goods have not been dispatched through no fault of our own.
- 4.5 In all cases involving Acts of God, strikes, lockouts, material, raw material or energy shortages, insufficient transport capabilities or other similar circumstances or causes beyond our control, we shall be absolved of our obligation to fulfill the contract for as long as and to the extent that said obstacles persist. This shall also apply in cases in which our suppliers are affected by such circumstances. The circumstances cited above shall also be regarded as beyond our control when they arise during a pending delay. We shall notify the purchaser of the beginning and end of such obstacles to delivery at the earliest possible opportunity.
- 4.6 We select the type of packing used and the mode of transport. Unless otherwise specified, goods shall be delivered in unpacked condition without protection against external influences. The costs of packing according to contract specifications will be charged to the purchaser. In lieu of payment, we shall also be entitled to demand return of the packing material – and to bill for usage and deposits.
- 4.7 The price risk is transferred to the purchaser upon dispatch of the object of delivery, at the latest. In the event of a delay in delivery caused by circumstances for which the ordering party is responsible, the price risk is transferred to the

purchaser on the date on which the purchaser is notified of readiness for delivery. In such cases, we shall be entitled to store the goods at our own discretion and at the purchaser's risk and expense. Goods will be billed as having been delivered ex works. At the purchaser's request, we shall insure the consignment in question against theft, breakage and transport, fire and water damages.

## **5. Acceptance inspection**

- 5.1 Acceptance inspections specified by contract may be conducted at the delivering plant only and must be carried out immediately upon notification of readiness for inspection. Costs incurred in connection with an acceptance inspection must be borne by the purchaser.
- 5.2 In the event that an acceptance inspection is delayed or is not completed for reasons beyond our control, we shall be entitled to effect delivery without prior acceptance inspection or to store the goods at the purchaser's risk and expense.

## **6. Warranties, purchasers obligations with regard to complaints from his customers, reimbursement of expenses, liability**

- 6.1 The purchaser may file warranty claims only if he has fulfilled the applicable statutory inspection and notification requirements. In cases of obvious defects, deficiencies or missing components, complaints must be presented to us within two weeks of delivery of the goods to their specified destination and include a detailed description of deficiencies and the corresponding invoice number. If we so request, the purchaser shall be required to return

documentation, samples, packing lists and/or deficient goods to us. Failure to meet these obligations shall invalidate all claims by the purchaser based on complaints regarding deficiencies or incomplete deliveries of goods.

- 6.2 In the event that the goods in question exhibit defects or deficiencies, we shall be entitled to meet our obligation to remedy by correcting defects/deficiencies or replacing the defective goods with goods of acceptable quality and quantity. The purchaser shall be entitled to cancel the contract or demand an appropriate price reduction only in cases in which repeated attempts to remedy fail and the defects/deficiencies in question are significant. The provisions of Art 478 BGB remain unaffected. The purchaser shall be entitled to claim compensation for damages pursuant to Section 6.6.
- 6.3 The purchaser shall be obliged to inform us immediately regarding any and all complaints from his customers relating to goods or services delivered by us. Should the purchaser fail to comply with this requirement, he shall not be entitled to claim compensation for defects/deficiencies nor reimbursement of expenses pursuant to Art. 478 BGB. The purchaser shall be required to preserve suitable evidence and release it to us for inspection if so requested.
- 6.4 Claims made by the purchaser to customers or in advertising material which have not been authorized by us cannot be cited as grounds for complaints regarding deficiencies in our products or services.
- 6.5 In the event of recourse by the purchaser for expenses incurred as a result of a complaint by a customer of the purchaser (Art. 478 BGB, we shall reimburse for only expenses incurred in connection with a reasonable and appropriate form of remedy. We shall not compensate for

expenses incurred through subsequent transport of goods to a location other than that of the purchaser's facility unless such transport is effected to ensure the proper use of the goods.

Furthermore, rights of recourse on the part of the purchaser against us (Art. 467 BGB) shall be recognized only insofar as the purchaser has made no agreements with his customer which go beyond the rights to compensation provided for by law.

Claims for compensation for the acquisition of goods purchased by necessity from third parties or the engagement of third parties to remedy defects or deficiencies can be filed against us by the purchaser pursuant to Art. 478 BGB only if he has granted us an appropriate grace period in which to remedy the defects/deficiencies and said grace period has expired fruitlessly.

In the case of recourse pursuant to Art. 478 BGB, we shall bear the burden of proof that the defect/deficiency did not exist prior to the transfer of risk to the purchaser only for a period of six months after transfer of goods to the purchaser in cases in which more than 12 months have passed between said transfer of risk and resale of the goods by the purchaser.

6.6 We shall be liable without limitation in accordance with the Product Liability Act and the General Equality of Treatment Act (AGA) in cases involving an explicit guarantee or a procurement risk or gross negligence in the performance of contractual obligations. We shall also be liable within limitation in cases of deliberate acts or grossly negligent behavior on the part of our management personnel and deliberate or grossly negligent behavior on the part of

subordinate personnel engaged for the purpose of fulfilling contract obligations.

We shall also be liable without limitation in cases of deliberate or grossly negligent acts resulting in death, injury or the impairment of health. We shall be liable for property damages resulting from petty negligence only in cases involving significant violations of essential contractual obligations, i.e. obligations which are required to ensure fulfillment of the contract and upon the fulfillment of which the purchaser has justifiably relied. Said liability shall be limited to damages typical of the contract in question which were foreseeable at the time the contract was concluded.

6.7 Claims for compensation for damages of any kind resulting from improper treatment/handling, modification, installation and/or operation of delivered objects or from incorrect advice or instructions provided by the purchaser shall not be recognized unless we are obliged to assume responsibility for them.

6.8 If the purchaser is entitled to demand compensation for damages in lieu of performance or to cancel the contract, the purchaser shall be obliged to state upon request and within a reasonable period of time whether and when he intends to exercise these rights. Should the purchaser fail to make such a declaration with the specified period of time or insist upon performance, he shall be entitled to exercise the rights in question only after fruitless expiration of a further reasonable grace period.

6.9 Claims based upon defects/deficiencies shall expire 12 months after the date of transfer of risk. The same applies accordingly to legal deficiencies. Claims based on intentional violations of contract obligations, illegal acts, the absence of assured characteristics, the acceptance of

procurement risks and injury to persons are subject to the limitation periods prescribed by law. In cases in which the goods or services are intended for a building structure and have been identified as the cause of defects or deficiencies in said structure, the warranty period is set at 5 years. Arts. 438 Paragraph. 3, 479 and 634 a, Paragraph. 3 BGB remain unaffected.

- 6.10 No further liability for compensation for damages other than that described in the preceding paragraphs of this Article 6 - regardless of the legal nature of the claims in question – will be recognized.
- 6.11 The preceding limitations on liability also apply with respect to grounds and amounts to our legal representatives, employees and other persons engaged for the purpose of fulfilling the contract.

## **7. Reservation of proprietary rights**

- 7.1 We reserve proprietary rights to all delivered goods until such time as the purchase has fully met all present and future obligations arising from the business relationship with us. This also applies in cases in which payments are effected for specifically designated claims. Goods for which proprietary rights are reserved shall be regarded as security for outstanding balances on current account.
- 7.2 Processing of goods for which proprietary rights are reserved shall be carried out for us as manufacturers as defined in Art 950 BGB, without obligation to us. Processed goods shall be regarded as goods for which proprietary rights are reserved as described in these provisions. If goods for which proprietary rights are reserved are processed or mixed/connected inseparably with objects which do not belong to us, we shall acquire property rights

to the new objects in proportion to the invoice value of the goods for which proprietary rights are reserved at the time at which the goods are processed or mixed/connected. If the goods for which proprietary rights are reserved are connected or inseparably mixed with other objects to create a unified object and if this object is regarded as the primary product, the purchaser shall grant us proportionate proprietary rights to the extent that the primary product belongs to him. The purchaser thereby preserves the property acquired in this way on our behalf and at no charge to us

Our co-proprietary rights shall be regarded as goods for which proprietary rights are reserved in the spirit of these provisions.

- 7.3 The purchaser shall be entitled, until such time as said entitlement is rescinded, which may occur at any time and without explanation, to resell, process or modify goods for which proprietary rights are reserved within the context of normal business operations. Resale as defined herein also includes installation in the ground or in building systems or use for the purpose of fulfilling other contracts.

In the event that goods are resold, the purchaser hereby assigns all claims for payment of the purchase price by his customer arising from said resale to us. If the goods for which proprietary rights are reserved are sold together with other objects which do not belong to us, the assignment of claims shall be limited to the value of the goods for which proprietary rights are reserved as specified in our invoice. In cases involving the resale of objects for which we hold co-proprietary rights pursuant to Section 7.2, the assignment of claims shall be equivalent to the value of said co-proprietary rights. The assigned claims shall serve as security to the

same extent as goods for which proprietary rights are reserved.

If the assigned claim is incorporated into a current account, the purchaser hereby assigns an amount on account equivalent to the value of said claim to us.

The purchaser shall be entitled, until such time as said entitlement is rescinded, which may occur at any time and without explanation, to collect claims assigned to us. If so requested by us, he shall be obliged to notify his customer of the advance assignment of claims to us – if we have not already done so – and to provide us with information and documents required to pursue the claim in question.

- 7.4 Should the value of existing securities exceed that of our claims by more than 10%, we shall release securities of corresponding value upon request by the purchaser.
- 7.5 The purchaser shall not be entitled to effect other transactions involving the goods for which proprietary rights are reserved (liens, transfer of securities) or other assignments of the claims cited in Section 7.3. In the case of liens or seizure of goods for which proprietary rights are reserved, the purchaser shall be obliged to call attention to our proprietary rights and to inform us immediately.
- 7.6 The purchaser shall be obliged to acquire adequate insurance coverage for goods for which proprietary rights are reserved against all ordinary risks, including specifically fire, burglary and water risks, at his own expense. He shall also be obliged to ensure proper handling and storage of said goods.
- 7.7 Should the purchaser be in arrears with payments or our claims be endangered by insufficient creditworthiness on the part of the purchaser, we shall be entitled upon fruitless expiration of a grace period specified by us to demand

return of the goods for which proprietary rights are reserved. This right remains in force even if we do not cancel the contract.

## **8. Choice of law, place of fulfillment and court of jurisdiction**

- 8.1 Jurisdiction for all disputes arising from the contractual relationship is the court of Fürth / Bayern, to include proceedings relating to checks and bills of exchange. However, we are also entitled to file action against the purchaser at the purchaser's ordinary court of jurisdiction.
- 8.2 This contract is subject solely to the law of the Federal Republic of Germany regarding legal relations between domestic parties to contracts. The UN Convention on Contracts for the International Sale of Goods shall not apply.
- 8.3 The place of fulfillment is the location of the delivering plant, the place of payment for the purchaser is Fürth/Bavarian/ Germany