

## **1. Scope of application**

- 1.1 These General Terms and Conditions of Sale shall be exclusively applicable to entrepreneurs in terms of sec. 14 *BGB* [*Bürgerliches Gesetzbuch* – German Civil Code], but not to consumers.
- 1.2 We make deliveries and provide our services only subject to these General Terms and Conditions of Sale. Unless we, expressly and in writing, agreed to them being applicable, we do not accept any contrary or deviating general terms and conditions of the Customer.
- 1.3. Our General Terms and Conditions of Sale shall also be applicable to future transactions, even if we do not refer to them again in each individual case.

## **2. Offer and conclusion of contract**

- 2.1 Our commercial offers shall be both non-binding and subject to change, unless we expressly identified them as being binding commercial offers.
- 2.2 Orders shall depend on our written order confirmation. In the case where the Customer objects to the order confirmation contents, they must object to this without undue delay. If they fail to do so, the contract is concluded pursuant to the order confirmation.

## **3. Delivery**

- 3.1 Excess or short deliveries to the extent of up to 10 per cent shall be admissible for deliveries based on weights and/or quantities, unless we agreed otherwise in writing and unless this is unacceptable for the Customer. With quantities weighing not more than 200 kg, larger deviations shall be admissible depending on supplies, unless we agreed otherwise in writing and unless this is unacceptable for the Customer.

- 3.2 We shall not be responsible for delivery and/or performance delays due to force majeure and other events which we were unable to foresee and which are beyond our control, but which make it considerably more difficult or impossible for us to deliver and/or perform, even if we agreed upon dates and deadlines as being binding. These events give us the right to postpone delivery and/or performance by the period of prevention, plus a reasonable start-up period. Should we be prevented from delivering/performing for more than three months, the Customer shall have a right to withdraw from the contract after granting a reasonable grace period; in this case, the Customer shall have no claims for damages whatsoever.
- 3.3 Should we be in default of delivery, we shall be liable for any damage caused to the Customer due to such delay in cases of gross negligence. In cases of slight negligence, our liability for damage clearly resulting from cases of delay shall be limited to compensation for each completed week of delay to the amount of 0.5%, but to not more than 5%, of the price payable for the part of the delivery which the Customer was unable to use according to the intended purpose due to such delay.
- 3.4 We shall have a right to make partial deliveries, unless this is unacceptable for the Customer.

#### **4. Shipping and transfer of risk**

- 4.1 If the Contractual Parties agree upon deliveries “ex works”, the goods shall be shipped at the Customer’s expense and risk. In the case of “carriage-free” deliveries, the risk shall be transferred upon goods arrival at the Customer’s.
- 4.2 If we indicated to the Customer that the goods are ready for shipping or collection, the risk shall be transferred to the Customer if they fail to call off or pick up the goods and after we granted them a reasonable grace period with no success.

#### **5. Price, payments, offsetting and retention of title**

- 5.1 Prices indicated in the order confirmation shall be binding. Unless otherwise agreed upon, the prices shall be considered “ex works” prices exclusive of packaging, freight, postage and insurance costs, customs duties, other expenses and statutory value-added tax. Packaging costs will be separately invoiced on a time and material basis.
- 5.2 To the extent to which the costs increase between the times of contract conclusion and order execution, such as due to higher wage/salary or materials

costs or the introduction of and/or increase in tax or customs duties, for reasons we were unable to foresee, we have the right to adjust the relevant prices within the framework of the changed situation and without generating additional profits from this; however, this shall not apply in cases where we are in default of delivery.

- 5.3 Should the Customer be totally or partially in default of payment, we shall have the right to withdraw from the relevant contract after unsuccessfully granting a grace period. Our right to withdraw from the contract shall also exist in the case where any circumstances come to our attention which might downgrade the Customer's credit standing.
- 5.4 The Customer shall be entitled to offsetting only against counter-claims which are either undisputed or which a court legally determined to exist. In addition, the Customer shall have a right to assert a claim for retention of title only in the case where such claim is based on the same contract relationship.

## **6. Quality defects**

- 6.1 The Customer shall be obliged to immediately inspect the goods and to notify us of any defects without undue delay. Hidden defects must be indicated immediately after their detection, in default whereof deliveries shall be considered to be accepted.
- 6.2 Unless the Contractual Parties agree otherwise, all the goods delivered to the Customer shall comply with applicable DIN and/or EN standards when it comes to quality and dimension accuracy. Our liability shall extend to the goods being free from defects and being in compliance with the state of the art.
- 6.3 The Customer is aware of us not being the manufacturer of the goods. To the extent to which we have any claims against our suppliers due to a defect, we hereby assign these claims to the Customer who shall accept such assignment. In this case, the Customer shall be entitled to assert any claims against us based on quality defects only if they previously referred to the competent courts in order to assert their claims against our suppliers based on quality defects under the rights we assigned to them. The claims which the Customer has against us shall not be time-barred for so long as the Customer is enforcing their claims against our supplier.
- 6.4 Should any defects exist for which we are responsible, we shall have a right to subsequent performance by either rectifying such defect or by delivering goods free from defects at our discretion. If we refuse to subsequently perform, if subsequent performance failed or if subsequent performance is unacceptable for

the Customer, the latter shall be entitled to make use of any other legal rights to which they are entitled.

## **7. Damages**

7.1 We shall be liable for damages in cases of wilful intention and gross negligence, regardless of the legal reason. In cases of slight negligence, our liability shall be limited to

- damages resulting from an injury to life, body or health;
- damages resulting from a violation of important contractual obligations (obligations whose performance make ordinary contract performance possible and upon whose compliance the Customer regularly relies and may rely), in which case our liability shall be limited to foreseeable damage which typically arises.

7.2 These limitations of liability shall not apply to the extent we maliciously concealed any defects, expressly granted a warranty and we are liable in terms of the German Product Liability Act [*Produkthaftungsgesetz*].

7.3 The above provisions shall not affect the legal regulations concerning the burden of proof.

## **8. Limitation**

8.1 Unless stated otherwise below, the general period of limitation concerning the Customer's claims due to defects of quality and title shall be one (1) year from delivery. This period of limitation shall also apply to the Customer's contractual and extra-contractual claims for damages which are based on defects with the goods.

8.2 The statutory periods of limitation shall apply

- to claims for damages resulting from an injury to life, body or health;
- to liability in terms of the German Product Liability Act;
- to the extent to which we maliciously concealed any defects;
- to the extent to which we granted a warranty;
- to the extent to which the goods we delivered represent a building or an item which was used for the construction of such building in compliance with the intended use and whose defect caused the building to be defective;

- to claims under supplier's recourse with final deliveries to consumers (sec. 479 BGB).

## **9. Retention of title**

- 9.1 Until the time of complete settlement of any and all payment claims resulting from existing contracts, we retain the title in any and all goods we delivered to the Customer, including any scrap materials resulting from processing. These claims shall include cheque and draft claims as well as any claims resulting from current account. In the case where we are liable for payments in relation to a draft, retention of title shall cease to exist only after it was guaranteed that no claims will be asserted against us on the basis of such draft.
- 9.2 Should the Customer be in default or should it be foreseeable that there is a risk of our payment claims not being fulfilled due to the Customer's lack of solvency, we shall have the right to request the goods to be returned based on retention of title.
- 9.3 The Customer must immediately inform us about attachments or any other measures implemented by third parties. The Customer shall bear any and all costs which are required for reversing such interference and for recovering the delivered items, unless it is possible to collect them from the above third parties.
- 9.4 Subject to revocation for cause, the Customer shall be entitled to dispose of the delivered items within the ordinary course of their business; a transfer by way of security and pledging shall be particularly prohibited. The Customer shall be entitled to re-sell any goods subject to retention of title to final consumers only on the condition that the Customer timely fulfilled any and all obligations with respect to us.

In the case of re-selling, the Customer shall assign to us, right from the beginning, all of their claims resulting from re-selling, in particular any payment claims, but also any other claims which are in any way related to the sale, to the amount of the final invoice value (including the relevant amount of value-added tax).

Until we withdraw from a contract for cause, the Customer shall have the right to collect the payment claims assigned to them on a fiduciary basis. Re-selling those payment claims within the context of non-recourse factoring transactions shall require our previous written approval. For legitimate reasons, we may inform third-party debtors about the payment claims being assigned, also in the name of the Customer. Upon such third-party debtors being notified of the assignment, the Customer's right to debt collection shall cease to exist. If the authorisation to debt collection is revoked, we may request the Customer to provide us with the payment claims they assigned and the relevant debtors, to give any information

which is required for collection, to hand over to us any documents related to this and to inform the debtors about such assignment.

A “cause” in terms of this provision shall particularly include default of payments, suspension of payments, the institution of insolvency proceedings, protests of a bill of exchange or justified reasons to believe that the Customer suffers from excessive debt or is about to become insolvent.

9.5 As a general rule, the Customer processes the goods to be delivered exclusively on our behalf and we shall be considered “manufacturers” in terms of sec. 950 *BGB* without any other obligations. Should the goods to be delivered be processed together with other items which we do not own, we shall acquire co-ownership of the new item in the ratio of the invoice value to the acquisition price of the co-processed item. Apart from the above, the provisions applicable to the goods to be delivered shall also apply to the item created through processing.

9.6 In the case where the goods to be delivered are connected to, blended or mixed with movable objects of the Customer in a way that the Customer’s object must be considered the principal object, the Customer shall assign to us, right from the beginning, co-ownership of the overall object in the ratio of the value of the goods to be delivered to the value of the other object to/with which the goods to be delivered are connected, blended or mixed. The Customer shall store the property free of charge for us. In the case where the goods to be delivered are connected to, blended or mixed with movable objects of third parties in a way that such third party’s object must be considered the principal object, the Customer shall assign to us, right from the beginning, the claim for remuneration to which they are entitled towards the third party in the ratio of the amount payable for the goods to be delivered to the final invoice amount.

The new items resulting from connection or blending, the (co-)ownership rights in the new item to which we are entitled and/or which must be assigned to us and the claims for remuneration assigned to us in terms of the above paragraph shall equally serve the purpose of securitising our claims as do the goods to be delivered.

9.7 To the extent retention of title or the assignment of payment claims is invalid or non-executable due to foreign legal provisions which cannot be waived, such security shall be considered to be agreed upon which corresponds to retention of title or the assignment of claims in this industry. Should this require the Customer’s co-operation, the latter shall be obliged to take any and all measures which are required for establishing and maintaining such security.

9.8 For the purpose of securitising our claims towards the Customer, the latter shall transfer to us any processing credits on metal deposits we manage for them and

other materials stored with us to the extent that these credits and materials are in their possession. We agree upon the transfer of property with regard to the items in our possession. To the extent we have any accounts receivable from the Customer, we shall be entitled to translate them into monetary claims based on the daily value (stock market value) and to offset them against our claims towards the Customer.

- 9.9 If the securities realisable value exceeds the amount of our claims by more than 10%, we shall release securities at our sole discretion if the Customer requests this.

## **10. Non-disclosure**

10.1 The Customer hereby undertakes to treat as a secret any confidential information which we directly or indirectly provide to them and to take any measures required for preventing third parties from having access to such confidential information. Commercial offers, order confirmations and any commercial and technical details related to this must be considered to be confidential information. The term “confidential information” shall particularly include construction and manufacturing processes, technical and economic expertise, 3D data, materials, calculations, drawings, data, machine-readable information, files and documents.

10.2 This obligation to non-disclosure shall not apply to information

- ▶ which has already been known to the public at the time of receipt of to which the general public had access with no violation of these Terms;
- ▶ which, prior to receiving confidential information, had been in the legal possession of the Customer with no obligation to non-disclosure; and
- ▶ which the Customer legally received from third parties subject to no obligation to non-disclosure whatsoever.

10.3 This obligation to non-disclosure shall survive termination of the business relationship and shall extend to any and all employees, vicarious agents, consultants, suppliers and sub-contractors of the Customer, regardless of the type and the legal structure of employment or assignments.

## **11. Place of performance; place of jurisdiction; governing law**

- 11.1 The place of performance for deliveries, payments and any other obligations resulting from the contractual relationship shall be Pforzheim, unless otherwise agreed upon.
- 11.2 The place of jurisdiction for both Contractual Parties with regard to any and all legal disputes resulting from the contract relationship and concerning its establishment and validity shall be the courts competent of our registered office on the condition that the Customer is an entrepreneur or a body corporate organised under German law. At our discretion, we may also file actions at the Customer's registered office.
- 11.3 This contractual relationship shall be subject to German law; the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.