

GENERAL TERMS AND CONDITIONS OF DELIVERY – 11/2010

1 General

1.1 The following terms and conditions shall apply to all orders. Customers' terms and conditions that are at variance with our own are expressly rejected: they shall only be deemed binding when expressly acknowledged in writing.

1.2 Verbal agreements made prior to or simultaneously to the signing of the contract shall not be valid unless confirmed by us in writing.

2 Deliveries

2.1 Our offers are subject to change without notice. Any documents enclosed with our offers such as illustrations, drawings and details of weight are without obligation.

2.2 Partial deliveries and the respective invoices shall be permitted to a reasonable extent.

2.3 Delivery dates shall only be binding if agreed in writing. The delivery period shall begin when the goods leave the factory or warehouse, but not before the customer's standard duty to cooperate has been fulfilled, particularly in respect of the submission of necessary documents, payment of deposits or the agreed call-up by the customer. Should the customer fail to call up the goods on time, we reserve the right, at our discretion, to ship them to the customer at the latter's expense or to keep them in storage and charge the customer the normal warehousing fees.

2.4 Force majeure and other influences beyond our control that may hinder the smooth handling of the order, in particular belated deliveries on the part of our suppliers, as well as traffic congestion and stoppages, labour disputes, shortage of materials, power cuts, action by government authorities or import and export restrictions shall entitle us after notification to the customer to postpone the delivery date or, insofar as the fulfilment of the order is seriously jeopardised or prevented by the aforementioned events, to cancel the order in part or in whole, without a right to compensation on the part of the customer.

2.5 Shipping and packaging will be arranged to the best of our judgement. However, we shall not be liable for the cheapest form of shipping. Acceptance of the goods without objection by the carrier or haulage company shall be taken as proof of flawless packaging. Unless agreed otherwise in writing, our shipments shall always be sent at the customer's expense and risk.

2.6 The risk of accidental loss or deterioration of goods sent to the customer shall pass over to the latter when the customer's authorised carrier takes possession of the goods and no later than the time at which they leave our factory or warehouse, regardless of whether the goods are dispatched from the place of performance and who pays the freight costs. In the event that dispatch is delayed at the customer's request, the risk shall be passed to the customer as soon as he has been notified of readiness for dispatch.

2.7 Reusable pallets, special crates and other special packaging for the shipping shall remain our property and must be returned to the sender carriage paid as soon as they have been emptied, without being utilised in the interim. If these items are not returned within eight weeks of delivery, we shall be entitled to invoice the customer for them.

2.8 We shall not be obliged to take back other saleable product packaging not included in 2.7 above, unless the latter is product packaging for private consumers.

3 Return of goods

Unless the customer has a legal right of return, the return of goods to us shall require our prior written consent. In the event of agreement, the customer must return the goods to us at his own risk and expense. Following a physical inspection we will make an offer to the customer with regard to the price at which we will retake possession of the goods. This offer shall be binding for a period of two weeks from the date it is made. In the event that the customer does not accept this offer within the given period, we shall be entitled to return the goods to the customer at the latter's risk and expense.

4 Cancellation and compensation in lieu of performance

4.1 Should we fail to render services according to the contract (breach of obligation) the customer shall only be entitled to cancel the contract and demand compensation in lieu of performance if

- a) the breach of obligation is substantial
- b) the customer demands in writing that the services be rendered within a reasonable period of at least 14 days, and
- c) we still do not render the services before the given deadline.

4.2 This shall be without prejudice to Articles 323 (2) to (6), 326 (5) and 281 (2) to (5) BGB (German Civil Code). In appointing a date, the outstanding services for which the deadline has been set (qualified period) must be accurately described.

4.3 In the event that we fail to render the services in conformance with the contract before the deadline set by the customer, we shall be entitled to demand that the customer state within a reasonable period whether he still insists on performance. Until the customer reaches a decision, we shall not be under obligation to perform.

5 Warranties

5.1 We represent and warrant the use of flawless materials, execution in accordance with specifications and – insofar as standard products are concerned – conformance with European standards for dimensions, performance and marking. Our advice is based on the findings of numerous research studies and many years of experience. However, it is without obligation and does not relieve the customer of his duty to inspect our products and methods with regard to their suitability for the purpose in question.

5.2 We promise to fulfil our obligations with the due care and diligence of a prudent business. We accept liability for a period of 12 months, beginning with the time of delivery, for the flawlessness of contractual goods and services. This does not affect rights pursuant to Article 438 (3) BGB. The customer's right of recourse pursuant to Articles 478 and 479 BGB likewise remains unaffected.

5.3 Claims by the customer due to defects shall be barred if the latter are minor material deficiencies. A minor material deficiency shall be, in particular, if the value or suitability for a standard application is only marginally reduced. In the event of defective contractual goods and services we reserve the right to either deliver a replacement or to remedy the defect. Remedy shall be excluded as an alternative if it incurs unreasonable costs to us.

5.4 In the event that the remedial measures fail, are declined or considered unreasonable, or if a deadline for remedial work set by the customer has not been adhered to or a deadline can be dispensed with, the customer shall be entitled to claim a reduction in the price or rescind the contract. This shall not affect his right to demand damages or compensation for wasted expenditure.

5.5 As far as possible, short shipments will be made up, otherwise we will credit the customer's account.

5.6 Any defects discovered must be notified to us without delay in writing – in the case of obvious defects within seven days of taking delivery of the goods.

5.7 Our liability for defects does not apply to natural wear and tear and improper handling, nor to damage resulting from incorrect or negligent handling, undue stress, unsuitable operating materials, non-compliance with our recommendations for handling, inspecting and storing our products or other factors beyond our control. Nor shall we be held liable in the event that the customer or a third party performs modifications or improper restoration work on goods delivered by us.

6 Liability

6.1 The supplier shall only be liable – irrespective of the legal grounds – if the damage has been caused by negligent breach of a contractual obligation in a manner that is likely to jeopardise the achievement of the objective of the contract or is attributable to gross negligence or intent on the part of the supplier.

6.2 In the event that the supplier is liable for breach of a contractual obligation without gross negligence or intent, this liability shall be limited to the typical extent of foreseeable damages at the time of signing the contract based on the supplier's knowledge of the circumstances.

\_\_6.3\_\_ Claims for damages pursuant to the German Product Liability Act and on account of bodily injury or damage to health shall remain unaffected by the aforementioned limitations of liability.

**\_\_7\_\_ Transport damage**

\_\_7.1\_\_ A record of visible transport damage must be made upon receipt of the goods in the presence of the shipping agent and submitted to us immediately in writing. Transport damage that is discovered at a later date must be notified to us in writing immediately upon detection.

\_\_7.2\_\_ Furthermore, a damage report including all the necessary information must be submitted without delay to the shipping agent (e.g. Deutsche Bahn AG or Deutsche Post AG).

\_\_7.3\_\_ No alterations may be made to damaged items before they have been released by us or the transport insurance company.

\_\_7.4\_\_ Non-compliance with the above stipulation shall result in the exclusion of claims for transport damage.

**\_\_8\_\_ Terms of payment**

\_\_8.1\_\_ Unless terms to the contrary have been agreed, the purchase price shall be payable within ten days less 2% discount or no later than thirty days after the date of the invoice without deduction. Payments by bill of exchange shall be permissible only upon prior agreement. Bills of exchange and cheques will only be accepted by us in fulfilment of debt and shall only be valid as a means of payment after having been honoured without reservation. No discounts will be granted in the case of payment by bill of exchange.

\_\_8.2\_\_ The customer shall be in arrears if the purchase price has not been paid within 30 days of the date of the invoice.

\_\_8.3\_\_ We shall be entitled to set payments off against the longest outstanding debt on the customer's account.

\_\_8.4\_\_ In the event of delayed payment we shall be entitled to charge interest on arrears at the statutory rate. We reserve the right to provide proof of higher interest rates.

\_\_8.5\_\_ Should there be a substantial deterioration in the customer's net asset position, resulting particularly in non-conformance with payment deadlines, seeking of deferment, composition, or suspension of payments, we shall be entitled to demand immediate payment of all debts arising from the business relationship. Under the same conditions we shall be entitled to demand payments on account or the deposit of a security for all current transactions.

**\_\_9\_\_ Reservation of title**

\_\_9.1\_\_ We reserve title to the goods supplied until full settlement of all debts due to us arising from the business relationship and any subsequent claims, irrespective of the legal grounds.

\_\_9.2\_\_ The customer shall be entitled to process our goods or combine them with other goods within the scope of his normal business activities. To safeguard claims under 9.1 above, the customer herewith conveys partial ownership of the goods resulting from processing or combination. The customer shall hold the co-owned goods in safe custody and free of charge. The level of co-ownership shall be determined by the value of our product in proportion to the value of the goods produced by processing or combination.

\_\_9.3\_\_ The following shall apply if the goods are delivered according to the terms of the contract to an address within the Federal Republic of Germany or conveyed to such a place by the customer: We grant our customers the revocable right to resell the goods in the normal course of business. The customer shall forfeit this right in the case of delay of payment. The customer herewith transfers to us all claims and ancillary rights accruing from the resale of goods in the amount of the invoice value of our goods subject to reservation of title; we herewith accept this transfer. The assigned debt claims shall serve to satisfy all claims pursuant to 9.1. If the assigned debt claims continuously exceed the debts due to us by more than 10 %, we shall release the assigned claims in a reasonable amount. This assignment shall apply regardless of whether the object of sale has been processed or not. The customer shall be entitled to call in the debt claims as long as we have not revoked this authorisation. The authorisation to call in debt claims shall be forfeited, even

without express revocation, if the customer is in delay of payment. At our request the customer shall notify us immediately in writing to whom he has sold the goods and what debt claims ensue from the transaction, and provide us with documentary evidence of the assignment of claims that has been certified at his expense by a notary. In the event of a legitimate interest we may notify the purchaser of the reserved goods of the assignment of our customer's debt claim to him.

\_\_9.4\_\_ The following shall apply in addition to 9.3 above if the goods are delivered according to the terms of the contract to an address outside the Federal Republic of Germany or conveyed to such a place by the customer: The customer shall ensure that the reservation of title is effectively safeguarded in the country in which the contractual goods are located or to which they are to be transferred. Insofar as certain steps are necessary (for example special marking or local registration of the contractual goods), the customer shall perform them in our name. Should our assistance or support be required, the customer shall notify us without delay. In addition, the customer shall inform us of all events and circumstances relevant to achieving maximum possible protection of our property. In particular, he shall place at our disposal all documents and information necessary for the enforcement of rights ensuing from the reserved title. The provisions of this paragraph 9.4 shall apply accordingly if under the laws of the country in which the contractual goods are located an effective reservation of title cannot be agreed that creates a legal position for us in which our interests and claims are safeguarded in an equally effective or other suitable manner, insofar as this is legally possible.

\_\_9.5\_\_ The customer shall not be entitled to otherwise dispose of the goods to which we have reserved title or of which we are co-owners, or to transfer debt claims already assigned to us. In particular, the goods may not be pledged or assigned to a third party by way of security. The customer shall immediately notify us of any seizure or enforcement proceedings by a third party or other curtailment of rights to the goods/debt claims wholly or partly owned by us.

\_\_9.6\_\_ We shall be entitled to demand the surrender of goods owned by us at any time if the customer is in default with payments or there is a serious deterioration in his financial status. In the event that we exercise this right, it shall only be construed as a cancellation of the contract – without prejudice to other statutory provisions – if explicitly stated by us.

\_\_9.7\_\_ The customer shall take out adequate insurance for the goods wholly or partly owned by us and maintain such coverage and shall handle the goods with care. The customer herewith assigns to us all claims against his insurance company in the event of loss, insofar as they relate to the goods wholly or partly owned by us. We herewith accept this assignment.

\_\_9.8\_\_ We reserve ownership and copyrights in respect of cost estimates, samples, drawings and other documents handed to the customer in conjunction with our offer or our deliveries. They may not be made available to a third party and must be returned to us upon request.

**\_\_10\_\_ Final provisions**

\_\_10.1\_\_ The customer shall be permitted to offset payments only in the case of undisputed or legally binding claims. The customer may only assert a right of retention if it is founded on a claim ensuing from the same contractual relationship that is undisputed, ripe for judgement or already binding.

\_\_10.2\_\_ Claims against us may not be assigned to a third party.

\_\_10.3\_\_ The place of performance for all deliveries ensuing from this contract shall be the place at which the supplying factory or warehouse is located.

\_\_10.4\_\_ The place of jurisdiction shall be Ellwangen (Jagst), Germany.

\_\_10.5\_\_ This agreement shall be governed by the laws of the Federal Republic of Germany. The application of the statutory German conflict-of-laws provisions, insofar as they refer to a foreign legal system, as well as the unified UN Convention on Contracts for the International Sale of Goods shall be precluded.

