



## Terms & Conditions of Sale and Delivery (as at: November/2011)

### 1. General

The terms and conditions set out hereinafter shall apply to all of the offers/quotations, purchase contracts, contracts for work and materials and contracts for work and services, including for consultancy services and other contractual services, which are made or entered into by us, even in the cases of individual contracts where no reference is made to these Terms & Conditions, provided that the purchaser is a commercial undertaking. The purchaser's general terms and conditions shall not apply.

### 2. Offers and the conclusion of a contract

Our offers shall be subject to change. A contract shall be concluded when we confirm an order in writing or when we make the delivery.

### 3. Pricing

Our prices are listed ex works Hamburg. Invoices shall be based on the list prices for the goods which are valid on the date of delivery as stipulated in our catalogues or brochures, in case delivery should be made in accordance with the contract six weeks or later from the order date. In the case of goods which are produced pursuant to the purchaser's specifications, the following price adjustment provisions shall apply: if after the conclusion of the contract and prior to delivery any cost factors which have an impact on the calculation increase significantly, we reserve the right to make a commensurate adjustment to the price, to the extent that binding prices have not been expressly agreed and the prices stipulated in offers and order confirmations are not expressly identified as fixed prices. Should we increase prices in such a case, the purchaser shall have a special right of termination which, in order to be effective, must be exercised within a period of seven days from the date of the notification of the price increase.

Any agreement relating to price shall only apply to the individual order in connection with which it is reached. In the event of follow-up orders, the price shall be renegotiated. Value added tax at the applicable statutory rate shall be added to all prices. Independently of any cost supplements which may be agreed, the stipulated list prices shall include delivery in complete packaging units. The right to round orders up or down to the nearest full packaging unit is expressly reserved. Should the value of the order amount less than EUR 50.00, an additional supplement in respect of small orders shall be charged in accordance with the applicable schedule of discounts.

### 4. Shipping/Transfer of risk

Deliveries of goods shall be made EXW (ex works, Incoterms 2010) Hamburg, to the extent that nothing is agreed to the contrary. Even in individual cases where deliveries are agreed with freight prepaid, shipping shall take place at the sole risk of the purchaser. If goods which have been notified as ready for shipping are not collected in accordance with the contract, risk shall be transferred to the purchaser on the notification of the goods' readiness for shipping and the purchase price shall be due and payable. We shall then be entitled to store the goods as we see fit at the expense and risk of the purchaser.

### 5. Payment terms

Should any discount be granted, such discount may only be applied if all earlier invoices have already been settled. Should it become apparent after the conclusion of the contract that our entitlement to payment is threatened by the purchaser's inability to pay, we shall be entitled to declare any outstanding payments as immediately due and payable, even if cheques have already been accepted. We shall also be entitled to make any outstanding deliveries contingent on advance payments or the grant of appropriate security and to withdraw in full or in part from all contracts, to the extent that they have not been performed, if within a reasonable period any demand to make an advance payment or to grant security is not complied with. Set-off shall only be permissible in the case of undisputed or legally established counter-claims. This shall also apply to any rights of retention.

### 6. Retention of title

The delivered goods shall remain our property until the payment in full of any sums due as a result of the commercial relationship, irrespective of their legal basis and until all cheques have been cleared and until all debits from any accounts become irrevocable. The payment to us shall only be deemed to have been made with discharging effect when such amount has been received by us in full. The adaptation or processing of the goods to which title is retained shall occur without this giving rise to any obligations for us. If the goods delivered by us are processed, amalgamated or mixed with goods belonging to third parties, we shall have joint title to the new goods constituting the mixed stock, in accordance with the ratio of the value of the goods to which title is retained to the value of the other products at the time of the processing, amalgamation or mixing. Should the purchaser acquire sole title to the new goods, it hereby assigns to us co-ownership rights in the new goods in the ratio of the invoice value of the goods to which title is retained to the value of the other goods at the time of the processing, amalgamation or mixing, and the purchaser shall administer such co-ownership rights for us with the due care of a merchant. The purchaser, who shall only be entitled to further dispose of the delivered goods in the ordinary course of its business and only then when any claims arising from such on-sale are assigned to us, hereby assigns to us all claims arising from such on-sale, irrespective of whether or not the on-sale occurs without or after any processing or amalgamation or mixing of our goods with other goods. We hereby accept such assignment. The value of the goods to which title is retained shall be the amount invoiced by us plus a security supplement of 10%, which shall not however be applied in case that it conflicts with the rights of any third party. In the event on the on-sale of our goods after their processing, amalgamation or mixing or the on-sale of the new goods created by such processing, amalgamation or mixing, any claim against the party who purchases such new goods from the purchasers shall be assigned to us in the amount of the invoice value of our processed, amalgamated or mixed goods or only in the amount which corresponds to our share of the co-ownership rights, should the latter amount be lower. This provision shall also apply in the event of any disposal after our goods have become an integral part of other goods pursuant to amalgamation, processing or mixing. Subject to our right to revoke such authorisation at any time, the purchaser shall be authorised by us to collect any assigned claims. Any collection costs shall be borne by the purchaser. The purchaser must notify us immediately of any restriction or of any other impairment of our rights. The purchaser shall be prohibited from pledging or transferring by way of security the goods to which title is retained. Should the value of the security interests granted to us exceed the sums payable to us by more than 10% in total, we shall be required at the request of the purchaser to release the security interests of our choice. Upon the payment of all of the sums payable to us pursuant to the commercial relationship, title to the goods to which title was retained and the assigned claims shall be transferred to the purchaser.

### 7. Liability for defects; deliveries involving more or less than the contractual volumes in the case of customised goods

Should the purchaser be a merchant, the duty to carry out an examination and to notify any defects in accordance with section 377 of the German *Handelsgesetz* (Commercial Code) shall apply, subject to the provision that only notifications of defects which are made in a period of seven days from the date of the discovery of the defect shall be deemed to be immediate notifications. Screws, nuts and other threaded and standard parts shall be delivered by us in accordance with the applicable technical standards, to the extent that nothing is agreed to the contrary. In the case of goods in connection with which it can be demonstrated that they were defective at the moment of the transfer of risk, we may at our discretion deliver replacement goods at no charge or repair the already delivered defective goods. Further rights may exist in accordance with the law and in accordance with the provisions of these Terms & Conditions. In the case of customised goods, should deliveries be made which contain up to 10% more or less than the ordered quantities, the purchaser shall not have any right of return or any right to demand supplementary deliveries of the outstanding quantities.

Section 8 of the Terms & Conditions shall apply to any liability to pay compensation in the context of liability for defects. Other claims based on defects in accordance with section 437 of the German *Bürgerliches Gesetzbuch* (Civil Code) shall be time-barred on the expiry of a period of twelve months from the date of delivery. This provision shall not apply in the event of the fraudulent concealment of any defect or in the case of goods used in accordance with their normal use in the context of a construction project which cause such construction to be defective. Should the sale to the final consumer entered into by the final seller constitute a sale of consumer goods in accordance with section 474 of the German *Bürgerliches Gesetzbuch* (Civil Code), the statutory provisions shall apply to any of the purchaser's rights of recourse against us.

### 8. General liability; Reimbursement

Irrespective of the provisions set out in section 9 of these Terms & Conditions, claims in respect of compensation of any nature shall be excluded. Liability shall only exist in the event of intent or gross negligence, should an unlawful death or injury or damage to health be caused, in the event of defects which we have fraudulently concealed, the grant of a quality guarantee or defects in the subject-matter of the delivery, to the extent that liability exists in accordance



with the German *Produkthaftungsgesetz* (Product Liability Act) in respect of property damage caused to objects of which use is made privately and in respect of physical injury. We shall also be liable in the event of our negligent breach of material contractual terms; in such a case liability shall however be limited, in the absence of gross negligence or intent, to damage which is typical for the type of contract in question and which could have been reasonably foreseen. Material contractual terms shall be deemed to be those terms which make it possible in the first instance to duly perform the contract and on compliance with which the contractual counterparty may duly rely and does rely.

Any claims for reimbursement which the purchaser may have in accordance with section 284 BGB shall be waived to the extent that a claim for compensation in respect of loss instead of performance is excluded in accordance with the previous provisions.

#### **9. Deliveries and delivery periods; the delivery of the necessary supplies to ourselves and the grant of official authorisations**

The stipulated delivery periods shall not begin until all of the necessary and/or agreed preconditions have been satisfied. This shall include in particular but without limitation any agreed advance payments, sample approvals, the provision of any documentation required and/or the subsequent clarification of any technical questions in connection with the subject-matter of the contract.

Our performance is subject to our receipt of the appropriate supplies in a timely manner. Partial deliveries in accordance with stipulated delivery periods and volumes shall be permissible and may be invoiced separately. Should we be prevented from complying with our delivery obligations by force majeure, industrial action or the results thereof which we are unable to avert despite having taken due care in the circumstances – irrespective of whether such events occur within our business or the business of any of our suppliers –, the delivery period shall be extended by the term of the delay. If as the result of such events delivery subsequently becomes unreasonable for one of the parties, such party shall be entitled to withdraw from the contract.

Whenever goods are ordered on call (i.e. on the basis of a delivery schedule), they shall as far as possible be collected at regular intervals and in equal quantities, but in the absence of any agreement within a period of ten weeks from the order date. Should this not occur, after a period of two weeks has been notified we shall be entitled to invoice the goods without prejudice to any of our other rights.

Should delivery be delayed, the purchaser shall in accordance with the statutory provisions be entitled to withdraw from the contract. Should our delivery be delayed and should such delay cause the purchaser to suffer a prejudice, the purchaser shall be entitled to demand a fixed sum in compensation for the delay, subject to the exclusion of compensation in respect of any further loss caused by the delay. Such fixed sum shall amount to 0.5% for every full week of delay, which amount shall however be capped at 5% of the value of that portion of the overall order of which it was impossible to make use in good time or in accordance with the contract. Contracts concluded with commercial counterparties shall be subject to the condition that we ourselves obtain the requisite supplies and subject to the grant of any required official authorisations.

#### **10. Take-back obligations in respect of transport and sales packaging**

The purchaser shall be entitled to return transport packaging (packaging which facilitates the transport of the goods, protects the goods from damage during transport or which is used during transport for safety reasons and which we are required to provide) for no consideration. The place of return shall be our place of business.

Insofar as, in accordance with section 6 of the German *Verpackungsverordnung* (Packaging Regulation), we are obliged to guarantee that we shall take back sales packaging (packaging which is offered as a sales unit and which is used by the final consumer, including any packaging which enables or facilitates the transfer of the goods to the final consumer [service packaging]), which is used by a private final consumer within the meaning of the German *Verpackungsverordnung* [Packaging Regulation], we shall comply with this obligation through co-operation with a specialist take-back system operator. In case that we are bound by the provisions of section 7 of the German *Verpackungsverordnung* [Packaging Regulation], sales packaging which is not used by the non-commercial final consumer within the meaning of the German *Verpackungsverordnung* [Packaging Regulation] shall be taken back for no remuneration, and the place of the take-back shall be our place of business.

The take-back of packaging in accordance with the paragraphs above shall be possible only during our hours of business. Significant volumes must be notified in advance. The packaging which is returned must be clean and must not contain any foreign materials. Should this not be the case, we shall have a claim to compensation in respect of any additional costs which might arise during disposal.

#### **11. Catalogues, designs, initial samples, etc.**

The information, illustrations, patterns, designs, technical information and data and recommendations for use contained in catalogues (which shall also include electronic catalogues), price lists or in the documentation provided in connection with an offer shall not be binding upon us. Such information, illustrations, patterns, designs, technical information and data and recommendations for use shall not release the purchaser from its personal obligation to check the goods in order to ascertain their suitability for the use to which they will be put and the processes in which they will be used. Such data shall not be incorporated into the contract until it is expressly confirmed by us as binding. Quality guarantees shall only be comprised of the confirmed technical data which we expressly identify as such in the order confirmation or in another contractual document. The use, application and processing of the goods supplied shall be subject to the sole liability of the purchaser. Should the purchaser provide documentation such as drawings or patterns etc. which contain defects, the purchaser shall be solely liable for the consequences of such defects.

We shall hold all proprietary rights and copyright in illustrations, designs and other technical documentation. Without our consent such proprietary rights and copyright may only be used for the contractually stipulated purposes and may not be made available to third parties.

Should the purchaser waive its right of approval in the context of an agreed initial sampling, or should an order or call-off (i.e. scheduled) orders be submitted instead, the approval of the purchaser shall be deemed to have been given for the goods which are ordered or which constitute the subject-matter of the call-off (i.e. delivery schedule). Delivered products which correspond qualitatively to the initial sample shall be deemed to be in accordance with the contract.

#### **12. Terms and conditions specific to internet orders and electronic catalogues**

By registering as an internet purchaser, the purchaser also agrees to be bound by these General Terms & Conditions. The presentation of products on the internet and in electronic catalogues does not constitute a binding internet offer by us but serves to incentivise the purchaser to submit a binding offer to us. In order to be able to submit a binding offer, the purchaser must be registered as an internet purchaser. With the submission of such an order, a purchaser is making a binding offer to conclude a contract. A contract shall only be concluded on our confirmation of an order, which confirmation may be sent by e-mail or in a written form or by our delivery of the goods. Any delivery periods stipulated on *inter alia* the internet, in electronic catalogues and on electronic marketplaces, constitute general guidelines and shall not be binding on us.

#### **13. Confidentiality**

Each contractual partner will only use all documents and knowledge received within the business relationship (including samples, models and data) for the mutually pursued objectives and will retain confidentiality towards third parties to the same extent as if they were his own documents, if the other contractual partner defines them as confidential or has a clear interest in their non-disclosure. This obligation begins from the initial receipt of the documents or knowledge and ends 36 months after the end of the business relationship.

The obligation does not apply for documents and knowledge which are generally known or already known to the contractual partner on receipt, without him being obliged to nondisclosure, or subsequently are provided by a third party with the appropriate authorisation or is developed by the recipient contractual partner without the use of confidential documents or knowledge of the other contractual partner.

#### **14. Place of performance, place of jurisdiction and other provisions**

The place of performance for all of the obligations which arise pursuant to the contract shall be Hamburg. The exclusive place of jurisdiction for disputes with merchants, legal persons under public law or persons who do not have any general place of jurisdiction in Germany shall be our place of business. We however reserve the right to instigate at our discretion proceedings within the jurisdiction of the place of business of the purchaser.

German law shall apply. The provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be excluded. Should any individual provisions of these Terms & Conditions be or become invalid, they shall not affect the validity of the remaining provisions of these Terms & Conditions.