



## Standard Terms and Conditions of Sale and Delivery (Last revised in November 2010)

### 1. General Scope

1.1 These Standard Terms and Conditions of Sale and Delivery ("T&C") are applicable to all business relations with the customer ("Customer"). These T&C apply only to Customers that are businesses (Section 14 German Civil Code [BGB]), legal entities under public law or special funds under public law.

1.2 Individual agreements made with the Customer in individual cases (including side agreements, amendments and changes) shall always have priority over these T&C. Our written confirmation and/or a written contract is required to validate the contents of such agreements. These T&C apply in particular to contracts and/or the delivery of movable objects regardless of whether we make the goods ourselves or buy them from our suppliers (Sections 433, 651 BGB). These T&C as amended from time to time shall also apply as a master agreement governing future contracts of sale and/or delivery of movable objects with the same Customer without the necessity of specifically referring to them in each and every case.

1.3 These T&C apply exclusively. Deviating, contrary or supplementary standard terms and conditions of the Customer become an integral part of the contract only if we have expressly agreed to their validity and only to the extent agreed. This requirement regarding our agreement shall always apply, even in cases where, for example, we deliver the goods ordered to the Customer without any reservation but in full knowledge of the Customer's terms and conditions.

1.4 Any legally relevant declarations and notifications to be given by the Customer to us after conclusion of the contract (such as specifying deadlines, notices of defect, declarations regarding rescission or reduction of the purchase price) must be made in writing in order to be effective.

1.5 Any reference to the applicability of statutes shall be for the purposes of clarification only. The provisions of the law shall apply in any event without such clarification to the extent that these provisions have not been directly modified or expressly excluded in these T&C.

### 2. Quotations and Conclusion of the Contract

2.1 Where imported goods and services are concerned, the entering into a contract shall be subject to any required export and import licenses being granted to us.

2.2 Contracts with us and amendments thereof shall be deemed entered into only after we have accepted work or purchase orders from the Customer in writing, agreed upon requests for supplements or amendments in writing with the Customer, or performed the work or delivered the goods ordered by the Customer.

2.3 We shall be obligated to perform only such work and deliver only such goods that have been expressly specified in our quotations and/or cost estimates.

### 3. Copyright and Confidentiality

3.1 Any and all samples and documents (e.g. technical descriptions, drawings, illustrations, details regarding color, measurements and weights) made available to the Customer reflect approximations only, as is customary in the industry. We shall be entitled at any time to improve or modify these samples and documents as well as the delivery items or services themselves, i.e. to make changes in design or form or colors, to the extent that these improvements and/or modifications are reasonably acceptable to the Customer. For standardized goods, the tolerances specified in the standard sheets shall apply.

3.2 We retain the title, copyright and/or any other industrial property rights in and to all of the samples and documents within the meaning of 3.1 above. Unless authorized by us in writing, said samples and documents may not be used in any manner other than for the purpose of fulfilling each of the contracts concluded with us, and may in particular not be copied or disclosed to third parties. These samples and documents must be returned without delay by the Customer upon request.

### 4. Dates/Deadlines

4.1 Dates and deadlines shall be binding upon us only to the extent expressly agreed upon with the Customer in writing.

4.2 Any delivery period or period allowed to perform work shall start on the date the order confirmation is dispatched, but not before the provision of the documents, permits, clearances to be procured by the Customer, and not before we have received payments that are due.

4.3 If the contract between us and the Customer is modified or supplemented upon the Customer's request, the delivery dates and period for the performance of work shall be reasonably modified based on the additional time that is required to comply with the changes requested by the Customer.

4.4 The occurrence of force majeure and any other extraordinary circumstances including, but not limited to, labor disputes, acts of state, or interruption of traffic, regardless of whether these incidents affect us or our suppliers, shall release us from our obligation to the Customer to make deliveries and provide services for the duration of the effects thereof, or permanently if such events result in our inability to make deliveries and provide services. Any stipulated

penalty agreed upon between the parties shall be void under these circumstances.

4.5 We shall be entitled to rescind the contract concluded with the Customer if our supplier – due to reasons for which we are not responsible – fails to provide us with goods or delivers them late, so that we are not able to fulfill our obligations towards the Customer at all or not on time.

4.6 Should the shipping of the goods to the Customer be delayed due to a request by the Customer, we will put the goods in storage and charge the Customer one month after receipt by the Customer of our notice of readiness for shipment with the storage costs incurred to us. Our right to rescind the contract and/or claim damages after the expiration in vain of a reasonable date set for the Customer to take delivery of our goods shall remain unaffected by the aforesaid.

4.7 We are entitled to make partial deliveries and provide partial services.

4.8 The time as of which we are deemed in default with the delivery of goods shall be determined according to the law. In any event, however, the Customer must send us a reminder.

### 5. Pricing

5.1 Our prices are net prices in EUR ex Bremen and exclude any transportation, packaging or other ancillary costs which are invoiced separately to the Customer. Unless agreed otherwise, we have the right to determine the shipping mode ourselves (in particular the carrier, forwarding route, packaging).

5.2 The statutory value-added tax is not included in our prices and will be shown separately in our invoices. The same applies to import duty and public dues that are introduced for the first time or increased by way of legislative act after the date of conclusion of the contract.

5.3 The measurements of the goods determined by us or our agents at the place of dispatch shall form the basis on which prices are invoiced to the Customer.

### 6. Invoices and Payment

6.1 Our payment claims against the Customer fall due upon receiving or acceptance, as applicable, by the Customer of the goods delivered and services performed by us. The amount payable shown in our invoice must be paid to us within the term agreed upon.

6.2 In the event installments have been agreed upon with the Customer, and the Customer is in default of payment regarding one installment or an amount equivalent to one or more installments, our full payment claim shall become due immediately.

6.3 Any deductions, including, but not limited to, cash discounts shall be subject to a written agreement.

6.4 Bills of exchange and checks are accepted only upon prior written agreement and bills only subject to their discountability. The amounts of bills and checks are credited to the Customer's account as soon as the equivalent is available to us without reservation. Any costs incurred by us must be reimbursed.

6.5 Starting with the payment due date, the Customer shall owe us interest in the amount of 5% p.a., and from the date of default of



payment, in the amount of eight (8) percentage points above the base rate as applicable from time to time. We reserve the right to assert further damages due to the Customer's default of payment.

**6.6** If, after the conclusion of the contract with the Customer, it becomes recognizable that our claim against the Customer for payment of the purchase price is jeopardized due to the lack of solvency of the Customer (e.g. by an application to open insolvency proceedings), we shall be entitled under the law to refuse to deliver goods and perform services and – after having set a grace period, as the case may be – to rescind the contract (Section 321 *BGB*). If the contract is for the production of non-negotiable goods (manufacture to Customer's specification), we shall be entitled to declare rescission without delay; the statutory provisions governing the setting of deadlines and the dispensability thereof shall remain unaffected.

**7. Receiving/Acceptance**

**7.1** The Customer must take delivery of or accept, as applicable, the contractual goods delivered and services performed by us without delay, but no later than within eight (8) workdays of our request ex warehouse Bremen.

**7.2** In the event of failure by the Customer to take delivery of or accept the goods or performance of services on schedule, we shall be entitled to rescind the contract after a reminder has been sent to no avail and a reasonable period of time has elapsed, and claim, at our option, either compensation for the damage sustained, or – without substantiating any damage – payment in the amount of ten (10) percent of the agreed-upon price from the Customer. The Customer shall, in particular, have the right to submit proof that we have suffered no or only little damage.

**8. Assignment/Setoff and Retention**

**8.1** The Customer may not assign claims and rights directed against us to third parties without our written consent.

**8.2** The Customer may offset only against claims that are undisputed, have been established *res judicata* or are ripe for judgment (i.e. have been proven).

**8.3** The Customer shall have a right of retention only to the extent that its counterclaim is based on the same contractual relationship. The provisions set forth in 7.2 above shall apply in addition.

**9. Place of Performance and Passing of Risk**

**9.1** The place of performance for the goods delivered and services performed by us is our factory in Bremen.

**9.2** The risk of accidental loss, destruction or accidental deterioration of the delivery item/service shall pass to the Customer upon acceptance of such item/service by the Customer, but no later than upon the item leaving our warehouse. This shall also apply to partial deliveries and in cases where we have taken on additional services (such as transportation or transfer).

**9.3** In cases where we deliver goods abroad, the Customer must provide us with any and all information/documents required for our shipment abroad in a timely manner prior to the delivery. Documents required by us that can be prepared only upon arrival at destination must be forwarded to us by the Customer without delay.

**10. Retention of Title**

**10.1** We retain title to all items delivered by us to the Customer and/or installed by us on behalf of the Customer (i.e. goods subject to retention of title; hereinafter collectively referred to as "Reserved Goods") until receipt of all payments due under the business relationship with the Customer. This shall also apply in cases where we have agreed with the Customer upon payment by way of a procedure involving checks/bills of exchange.

**10.2** The Customer shall be entitled to sell, process, blend or combine and subsequently resell Reserved Goods within the scope of an extended retention of title if this is done within the Customer's ordinary course of business. The Customer shall not be allowed to pledge or transfer ownership of Reserved Goods by way of security.

**10.3** Any processing or remodeling of Reserved Goods by the Customer shall be done exclusively on our behalf. If Reserved Goods are combined or blended by the Customer with other goods not belonging to us, we shall acquire co-title to such new item on a pro-rata basis of the total value of the new item in proportion to the invoice value of the Reserved Goods. The new item resulting from processing shall also be deemed Reserved Goods within the meaning of the T&C.

**10.4** The Customer hereby assigns to us in advance and as a security all claims and ancillary rights to which the Customer is entitled in connection with the resale of Reserved Goods, as well as any other claims against its insurers. If the goods are exported, the Customer shall also assign to us all claims to which the Customer is entitled now or in the future from German and foreign banks in connection with the exportation, including, but not limited to, claims due under collection orders, L/Cs or confirmed credit, as well as under bonds and guarantees. If the Customer sells Reserved Goods together with other goods not belonging to us, either without or after processing, the claims specified above shall be deemed assigned to us on a pro-rata basis, i.e. in the net amount invoiced by the Customer for Reserved Goods. The assignments above

shall not imply any deferral with regard to our claims for payment from the Customer.

**10.5** The Customer shall retain its right to collect the claims assigned to us. Our authority to collect the claims ourselves at any time shall remain unaffected thereby. We agree and undertake, however, that we will not collect the claims for as long as the Customer is not in default of payment towards us and has not brought an application to open insolvency proceedings, or such application has been rejected due to lack of assets. Should any of these cases occur, the Customer shall provide us with all information and documents required for the collection of the claims assigned to us and disclose the assignment to its respective debtors.

**10.6** The Customer must maintain Reserved Goods in proper condition, store them separately from other goods and mark such goods as owned by us. The Customer must notify us without delay of any impairment of our title to the Reserved Goods – in particular due to attachment of property or seizure – and provide us with copies of the record of attachment, etc.

**10.7** Upon the Customer's request, we will retransfer to it any title we have to Reserved Goods and the claims assigned to us by way of security to the extent the value of the Reserved Goods exceeds the total value of our claims against the Customer by more than twenty (20) percent.

**10.8** In the event that the Customer is in breach of contract, including, but not limited to, its failure to pay the purchase price when due, we shall be entitled according to the law to rescind the contract with the Customer and/or to request return of the goods based on our right of retention of title. Requesting the return of the goods does not automatically imply the rescission of the contract; rather, we are entitled to request the return of the goods only and to reserve the right of rescission. Should the Customer fail to pay the purchase price when due, we shall be entitled to assert these rights only after having set a reasonable time for Customer to make payment without payment being made, or if the setting of such deadline may be dispensed with under the law.

**11. Lien**

**11.1** In order to secure our claims under the business relationship with the Customer, the Customer shall grant us a contractual lien to all objects having come into our possession.

**11.2** This lien shall also extend to any claim we have against the Customer based on work performed for the Customer and claims due to replacement provided by us, as well as those resulting from any other performance.

**12. Defects**

**12.1** Unless provided otherwise herein, the Customer's rights in the event of defects of quality and in title (including wrong shipment or short delivery) shall be governed by the law. Special provisions of the law regarding the final delivery of goods to consumers (recourse to initial supplier pursuant to Sections 478, 479 *BGB*) shall remain unaffected in any event.

**12.2** The basis of our liability for defects is first and foremost the agreement made concerning the quality of the goods. Any and all product descriptions that form the subject matter of the individual contracts shall be deemed an agreement on the quality of the goods; whether the product description is provided by the Customer, the manufacturer or by us does not make any difference.

**12.3** To the extent that the quality has not been agreed upon, the question of whether or not there is a defect shall be determined in accordance with the law (Section 434 (1) sentences 2 and 3 *BGB*). We decline, however, any liability with regard to public statements made by the manufacturer or any other third party (such as advertising messages).

**12.4** The Customer's warranty claims are subject to the Customer having fulfilled its legal requirements to examine the goods and having made a complaint in respect of a defect immediately upon receipt thereof (pursuant to Sections 377, 83 German Commercial Code [*HGB*]). If the item delivered is defective, we may first choose whether we fulfill our obligation by remedying the defect (repair) or by providing an item free from defects (replacement). Our right to refuse the chosen manner of subsequent fulfillment as provided under the law shall remain unaffected. We shall be entitled to make our subsequent fulfillment conditional on the Customer paying the purchase price when due. The Customer, however, shall have the right to retain a reasonable portion of the purchase price commensurate with the defect. The Customer must allow us the time and room we need to perform the subsequent fulfillment owing and must in particular hand over the item complained about for examination.

**12.5** All expenses necessary for the purpose of examination and subsequent fulfillment, including, but not limited to the costs of transportation, fares/toll, labor and material costs, shall be borne by us if there is an actual defect. If, however, the Customer's request to remedy a defect turns out to be unjustified, we shall be entitled to claim reimbursement of the costs incurred by us thereby.

**12.6** Should the subsequent fulfillment fail, or a reasonable period set by the Customer for this purpose has lapsed in vain, or if there is no requirement under the law to grant such period, the Customer shall have the right to rescind the contract or reduce the agreed-upon price. However, in cases of minor defects, there is no right of rescission.



**12.7** The limitation period for defects in quality and of title is one year and shall start upon passing of risk. This shall not apply if longer periods are applicable pursuant to Sections 438 (1) No. 2, 479 (1), 634a (1) No. 2, and 651 *BGB*, or if we fraudulently concealed the defect, or any of the liability cases mentioned in 13.1 below has occurred.

**12.8** Subject to Section 13 hereof, we deliver used items only under exclusion of warranty for defect of quality and in title.

**12.9** Our obligation to pay damages shall be governed by the following Section of these T&C.

**12.10** These provisions do not constitute a reversal of the burden of proof to the Customer's disadvantage.

**13. Liability**

**13.1** Claims for damages and compensation of expenses (hereinafter jointly referred to as "Damages") by the Customer against us shall be excluded, regardless of the legal basis thereof, unless they are based on the provisions of the Product Liability Act, a deliberate or grossly negligent violation of contractual or legal obligations on our part, damage caused to the health and bodily harm of the Customer or its employees due to a breach of duty for which we are responsible, the assumption of warranty for a specific quality or our violation of essential contractual obligations.

**13.2** In the event of a violation of essential contractual obligations on our part, the Customer's claim for Damages against us shall be limited to foreseeable damage that is typical of this type of contract, unless it is based on willful misconduct or gross negligence, or we are liable for damage caused to health or bodily harm or due to the assumption of a warranty for a specific quality.

**13.3** A breach of duty by our legal representative or person employed in performing our obligation is deemed a breach of duty by us.

**13.4** Subsection 12.8 above shall apply to our liability *mutatis mutandis*.

**14. Protection of Data Privacy**

The Customer agrees to allow us to electronically store all necessary data of the Customer under this business relationship and process and use such data for our operational purposes in accordance with the law.

**15. Place of Jurisdiction and Applicable Law**

**15.1** If the Customer is a merchant within the meaning set forth in the German Commercial Code, a legal entity under public law or a special fund under public law, our headquarters in Bremen, Federal Republic, shall be the exclusive, as well as international, place of jurisdiction for any disputes arising directly or indirectly under the contractual relationship with the Customer. We shall, however, also be entitled to bring action before the courts at the Customer's regular place of jurisdiction.

**15.2** The laws of the Federal Republic of Germany, exclusive of the United Nations Convention on Contracts for the International Sale of Goods, shall apply. The requirements and effects of the retention of title under Section 10 of these T&C are, however, subject to the laws of the place of storage of the goods if and to the extent that the choice of law in favor of German law is impermissible or ineffective.

**16. Severability Clause**

Should any of the provisions of a contract for the delivery of goods and performance of services of which these T&C form a part be or become invalid, the validity of the remaining provisions of the relevant contract shall not be affected thereby.