

§ 1. General, Scope

- 1) Seller's General Conditions of Sale shall apply exclusively; any conditions of Buyer conflicting with or deviating from the present General Conditions of Sale shall not be applicable unless Seller has expressly agreed to their application in writing. The present General Conditions of Sale shall also apply in those circumstances where Seller is aware of Buyer's conditions conflicting with or deviating from the present General Conditions of Sale and performs the delivery to Buyer without reservations.
- 2) The present General Conditions of Sale shall apply for all future contracts concluded with the Buyer unless such future contract is based on new General Conditions of Sale.
- 3) The General Conditions of Sale shall only be applicable in dealings with companies, legal entities under public law or special asset funds under public law within the meaning of Section 14 BGB (*German Civil Code*) and Section 310 Para 1 BGB.

§ 2. Prices and Terms of Payment

- 1) All agreed prices shall apply plus value added tax at the statutory rate in effect on the invoice date.
- 2) In the event that increases of import duties, levies, freight costs, etc. should become effective after signature of contract, Seller reserves the right to adjust his prices accordingly. Buyer shall not be entitled to refuse acceptance and payment of the goods on the grounds of such price increases.
- 3) The deduction of discounts shall require a special agreement in writing to this effect.
- 4) In the event that Buyer does not pay the agreed purchase price or pro rata installments in due time, Seller shall be entitled, without prejudice to any other rights or remedies, to withdraw from the contract wholly or in part, to withhold outstanding deliveries or to execute such deliveries only against advance payments or other securities. Furthermore, Seller shall be entitled to declare all existing receivables from the existing business relationship immediately due for payment.
- 5) The above paragraph shall apply mutatis mutandis in the event that insolvency proceedings are instituted against Buyer's assets or if other circumstances emerge giving rise to serious doubts regarding the solvency or creditworthiness of Buyer or his ability to dutifully perform the contract.
- 6) In the event of delayed payment, Seller shall be entitled to demand interest in the amount of 9% p.a. above the applicable European Central Bank base rate as of the due date.
- 7) As an essential term of contract it shall be understood that Buyer makes payments in the currency set forth in the contract ("contract currency"). The obligation of Buyer to make payments in the contract currency is not fulfilled or satisfied by the fact that Seller receives payments in a different currency than the contract currency based on a payment by Buyer following a court judgment or the enforcement of such judgment, for as long and to the extent that payments in such other currency result in the receipt of the payable amount in the contract currency.
- 8) Buyer shall be entitled to offset payments only if his counter-claims are undisputed or have been established by a court of law or have been accepted by Seller in writing. Furthermore, Buyer shall only be entitled to exercise a right of retention insofar as his counter-claim is based on the same contractual relationship.
- 9) Unless agreed otherwise, the place of payment shall be Seller's registered office.
- 10) Seller shall be entitled to assign his claims against Buyer, wholly or in part, to third parties, in particular for the purpose of debt collection or factoring.

§ 3. Conditions of Delivery, Term of Delivery, International Deliveries

- 1) Unless explicitly agreed otherwise or provisions to the contrary are stipulated in the present General Conditions of Sale, the Incoterms of the International Chamber of Commerce in their latest version shall apply for all deliveries.
- 2) The place of performance shall be the agreed place of delivery as per the Incoterms of the International Chamber of Commerce.

- 3) Unless expressly agreed otherwise, the dimensions, weights, quantities and qualities stated in the documentation provided by Seller or Seller's supplier shall be authoritative for invoicing and billing purposes.
- 4) Agreed delivery dates shall be binding provided that the underlying purchase contract is a transaction for delivery by a fixed date within the meaning of Section 286 Para 2 No. 4 BGB or of Section 376 HGB (*German Commercial Code*). If it is not a transaction for delivery by a fixed date, a delay on the part of Seller shall be excluded if the goods are supplied within an adequate period after the agreed delivery date; Buyer may thus not claim any damages. For any delays going beyond that, Seller shall only be liable in the case of intent or gross negligence. Buyer may withdraw from the purchase contract on the grounds of delayed delivery if he has set a reasonable deadline in advance and if this deadline has expired without performance being made.
- 5) Seller is entitled to make partial deliveries and/or partial performances unless otherwise agreed. Buyer's rights regarding the remaining partial performances shall be governed by the present General Conditions of Sale.
- 6) Compliance with and adherence to the relevant regulations concerning foreign trade or other laws in his country and in the country to which the goods are to be delivered falls within Buyer's scope of responsibility. Buyer undertakes to procure, in due time before delivery by Seller, all official permits or other authorizations or licenses that are required or seem appropriate for import or the performance of other contractual obligations of Buyer, and to maintain such licenses and permits.

§ 4. Reservation of Title, Other Securities

- 1) The goods and all pertinent documents and delivery items ("reserved ownership goods") shall remain the sole property of Seller until all claims of Seller against Buyer resulting from business relationships with Buyer have been fully satisfied and settled.
- 2) Buyer undertakes to handle reserved ownership goods with care; in particular, he is obligated to take out, at his expense, insurance against fire and water damage and theft, with the insured sum being adequate to cover the replacement value. If any maintenance and inspection activities are required, Buyer shall perform such activities in due time at his own expense.
- 3) In the event of attachments or other interventions by third parties, Buyer must inform Seller without delay in writing about such circumstance. If the third party is unable to reimburse the judicial or out-of-court costs of litigation as set out in Section 771 ZPO (*German Code of Civil Procedure*), Buyer shall be liable for such reimbursable costs.
- 4) Buyer is entitled, in the ordinary course of business, to resell the purchased goods; however, he already now assigns to Seller all receivables in the amount of the total invoice amount (including VAT) of the claim against his buyers or third parties to which Seller is entitled as a result of the resale, irrespective of whether the purchased goods are resold without or after processing. Buyer shall remain entitled to collect such claim also after the assignment. Seller's entitlement to collect the claim on his own shall remain unaffected by this. However, Seller undertakes not to collect the claim himself as long as Buyer fulfills his payment obligations from the collected proceeds, does not default on payment and, in particular, no application is lodged for institution of insolvency or composition proceedings and payment has not been suspended. If this should be the case, however, Seller may demand that Buyer discloses the assigned claims and their debtors to Seller, provides all the particulars required for collection, hands over the documents pertaining thereto and notifies the debtors (third parties) of such an assignment.
- 5) The processing or modification of the purchased goods by Buyer shall always be made on behalf and by order of Seller. If the purchased goods are processed with other items not belonging to Seller, Seller acquires co-ownership in the new goods at the ratio of the value of the purchased goods (total invoice price including VAT) in relation to the other items processed at the time of processing. For the

goods created by processing the same provisions shall apply as for the purchased goods delivered with reservations.

- 6) If the purchased goods are inseparably mixed with other objects not belonging to Seller, Seller acquires co-ownership in the new goods at the ratio of the value of the purchased goods (total invoice amount including VAT) in relation to other mixed goods at the time of mixing. If mixing is done in such a way that the goods of Buyer are to be regarded as the main goods, it shall be deemed to have been agreed that Buyer assigns a pro rata co-ownership to Seller. Buyer shall hold the resulting sole ownership or co-ownership in safe custody for Seller.
- 7) Seller undertakes to release the securities accruing to him upon Buyer's request in the event that their value exceeds the claims to be secured by more than 20%.
- 8) If, and inasmuch as, applicable law does not allow the agreement of a reservation of title or does not stipulate it in the way described herein above, Buyer shall, upon first demand of Seller, provide other suitable securities, e.g. by granting a security interest. Should the effectiveness or enforceability of a reservation of title or other security require the registration or fulfillment of other requirements, Buyer is under an obligation to take all necessary measures at his own expense to enable the establishment of the reservation of title or alternative security. Buyer herewith irrevocably authorizes Seller to take all measures deemed to be necessary by Seller to establish his reservation of title or alternative security regarding the goods.

§ 5. Warranty and Liability

- 1) Seller does not give any guarantees or warranties for the marketability of the goods, their fitness for a specific purpose or in any other way.
- 2) Buyer shall inspect the delivered goods promptly after their receipt. He shall lose his right to invoke a contractual defect if he fails to inform Seller in writing of such defect specifying the nature of the defect promptly after having established this or after the time he should have established it. Buyer is under an obligation to submit such notification of defects together with adequate evidence.
- 3) Insofar as the purchased goods are defective, Buyer shall be entitled, at Seller's discretion, to subsequent performance in the form of remedying of the defect or to delivery of new goods free from defects. Buyer is not entitled to remedy defects on the purchased goods himself without first consulting with Seller.
- 4) If the subsequent performance fails, Buyer shall be entitled to demand rescission or a price deduction.
- 5) Seller shall be liable under statutory regulations to the extent that Buyer asserts damage compensation claims based on intent or gross negligence, including intent or gross negligence on the part of representatives or vicarious agents.
- 6) Liability for culpable injury to life, limb or health shall remain unaffected; this shall also apply for compelling statutory liability provisions under the German Product Liability Act.
- 7) Except as otherwise provided hereinabove, any other liability is hereby excluded. Recourse to officers, employees or other staff of Seller is not possible.
- 8) The limitation period for claims in respect of defects shall be twelve (12) months, beginning with the transfer of risk. The statute of limitations in the event of delivery recourse pursuant to Sections 478, 479 BGB shall remain unaffected and is governed by the relevant legal provisions.

§ 6. Advice and Information

To the extent that Seller makes suggestions for the use of the products, such suggestions are given with due consideration of the state of the art, of Seller's experience and of the information communicated by Buyer. This shall not be construed as a consultancy agreement. Seller guarantees neither the results to be achieved nor that third party rights are not infringed.

§ 7. Acts of God, Force Majeure

- 1) The contractual parties shall not be liable for noncompliance with their obligations if such noncompliance is caused by circumstances beyond their control or, in particular, if they are caused by one of the following reasons: fire, natural disasters, war, seizure, export ban, blockades, embargos or other official measures, general shortage of materials, restrictions in the use of power, strike, industrial disputes, lack or shortage of means of transport or if a breach of contract of subcontractors is based on one of these reasons. The impediment and its elimination shall be promptly notified to the other contractual party.
- 2) Should Buyer invoke force majeure regarding such volumes for which Seller has already booked means of transport or storage capacities, Buyer is under an obligation to reimburse to Seller the resulting costs, like for example dead freight or cancellation costs.
- 3) Each party may terminate the contract by written notice in the event that its performance is impeded for a period of more than six (6) months pursuant to Section 7 Para 1.

§ 8. Place of Jurisdiction, Place of Performance, Applicable Law

- 1) The laws of the Federal Republic of Germany shall be applicable to the exclusion of the United Nations Conventions on Contracts for the International Sale of Goods (CISG).
- 2) If the Buyer is a merchant, a legal entity under public law or a special asset fund under public law, the place of jurisdiction for all claims under this business relationship shall be the registered office of Seller.
- 3) Unless provided otherwise in individual contracts, in the order confirmation or in the present General Conditions of Sale, the place of performance for contractual claims under the business relationship shall be Seller's registered office.
- 4) In case of disputes arising from this business relationship, these may be resolved before the courts. Arbitration proceedings are not provided for.

9. Miscellaneous

- 1) Should individual provisions of the present General Conditions of Sale be ineffective, this shall not affect the effectiveness of the remaining provisions. The contractual parties undertake to replace ineffective provisions by effective provisions reflecting as closely as possible the original intention.
- 2) Amendments and supplements to the contract shall be made out in writing. This provision shall also apply for the revocation of the requirement of the written form.
- 3) Notifications related to the contract may be submitted informally unless a stricter form has been agreed or is required by law.
- 4) Buyer is not entitled to transfer rights or obligations under this contract, wholly or in part, to third parties without prior written consent of Seller.