

# Delivery and Payment Conditions for International Sales

## 1 General.

**1.1** These conditions form an integral part of all our offers and contracts, also in current or future business relationships. They take precedence over any conflicting contractual documents, draft agreements, or terms and conditions of the customer.

**1.2** All deviating provisions must be agreed upon in writing and signed by both parties in order to be valid. Notices given or declarations made with respect to individual contracts may also be sent by email.

**1.3** If we use terms such as DAP, FCA, FOB, CFR, or CIF for the respective order, they shall have the meaning assigned to them in the ICC INCOTERMS 2010; these provisions apply correspondingly to domestic sales.

## 2 Ordering.

**2.1** Our offers are in general non-binding. A contract is not made until the order is confirmed by us. Contracts are normally conditional upon the transaction being covered by trade credit insurance or upon security, such as a bank guarantee, being provided for our claims. This applies also if we confirm an order without reservations. A contract is deemed made when the customer accepts the delivery, at the latest.

**2.2** Contracts (orders) are binding and cannot be changed. If change requests are made after the order has been confirmed, we may submit a new offer; in general the customer will be charged for any additional costs. The new offer is accepted when the customer accepts the delivery that is in conformity with the customer's change requests, at the latest.

**2.3** By placing an order, the customer warrants that he is solvent and/or of sound financial standing. If we are in doubt, in particular if we receive an adverse notice from a credit insurer after the contract has been entered into, we may choose not to perform the contract or ask to be provided with adequate security or demand advance payment within 4 working days. If this period of time expires to no avail, we may rescind the contract. In the event that the customer fails to provide the contractually agreed-upon security or if he does not provide the security in full (e.g., if he makes only 50% of the advance payment) within the periods of time agreed upon, we hereby rescind the contract. In the event that the contract is rescinded, we have the right to claim damages, in particular the cost of procuring raw materials and semi-finished products that cannot be used for another purpose.

## 3 Delivery; Default of Acceptance.

**3.1** The delivery will be carried out in accordance with the delivery conditions set forth in the offer or in the order confirmation.

**3.2** The customer will be in default of acceptance and have to pay reasonable storage costs if he fails to collect the goods or have them collected or forwarded within two weeks after notice has been given that the goods are ready for shipment. In the event of default of acceptance, we may claim damages in an amount equal to 0.5% of the order value per week, limited to a maximum of 15% of the order value in total; this does not exclude a larger claim for damages if we can prove that the damage actually suffered is larger. The customer may prove to us that no damage was suffered or that the damage actually suffered is smaller than the asserted claim for damages.

**3.3** The customer has to bear the cost of any fast freight or express delivery made at the customer's request.

## 4 Quality of the Goods; Samples.

**4.1** The quality parameters are stipulated exclusively by the order confirmation. In general, the goods comply with the standards that apply in the European Union; if different standards are to be applied, the customer must so advise us before the contract is entered into. To the extent that reference is made to information contained in brochures when the order is placed, such information is normally to be understood as an example only.

**4.2** With natural materials, such as wood or leather, as well as with fabrics, surfaces and linoleum, the customer accepts that any descriptions, illustrations

or samples, in particular sample or pattern cards, can only be examples due to the natural and/or typical variations in quality.

**4.3** Please be advised that surfaces are subject to wear by normal use during the warranty period.

**4.4** If samples are provided, the customer has the same duty of care as with items provided on a loan basis. The customer may keep the samples for a maximum of two months and must return them unasked, at his own expense.

## 5 Delivery Period; Request for Delivery.

**5.1** In the event of delays that are due to force majeure, industrial action, official acts, and business interruptions through no fault of our own, the delivery period will be appropriately extended. The same applies to delays that are due to export restrictions or in the event of acts of war or terrorism in a transit country or in the country of destination. If we prove that we have chosen our supplier carefully and this supplier fails to supply us as agreed, the delivery period will also be extended for the delay so incurred if we cannot reasonably be expected to make a replacement purchase.

**5.2** Our failure to meet delivery dates or delivery periods will only entitle the customer to assert remedies after a reasonable additional time period of at least 21 working days has expired. In the event of default due to slight negligence, our liability for damages will be limited on the merits to the additional cost of a replacement purchase; in terms of the amount, it will be limited to 0.5% of the order value concerned by the default for each entire week of default, up to a maximum of 5% of the order value concerned.

**5.3** We may deliver ahead of schedule and make partial deliveries unless this places the customer at an unreasonable disadvantage. If, contrary to what has been agreed upon, the customer does not collect the goods or have them collected or forwarded, we have the right after the expiry of a period of 2 weeks to invoice the customer for the goods and demand storage fees.

## 6 Prices.

**6.1** Our prices do not include freight, customs duties, taxes, and other fees (e.g., certification costs) that may be incurred; these will be charged to the customer additionally. We will invoice the customer for special packaging – e.g., if the customer requests particular lot sizes – at cost price.

**6.2** If it is agreed that the goods are to be delivered directly to the end user, we will charge freight plus a reasonable handling surcharge.

## 7 Payment.

**7.1** Our invoices are denominated, and have to be paid, in euros; currency risks are borne by the customer. Making deductions is not allowed. If the time allowed for payment is exceeded, we may charge 12% interest, subject to further damage.

**7.2** All payments must be received such that the amount is credited to our bank account by the due date. Incoming payments will be applied to the outstanding receivable that has been due longest, irrespective of the customer's payment instructions, if any.

**7.3** Upon default of payment, we may combine all quantities of goods yet to be supplied in a single delivery and make such delivery contingent upon the payment of all invoices due and on an advance payment on the invoices yet to be paid. We may further demand immediate payment of all receivables outstanding at the time of default, for whatever legal reasons and, in particular, under whatever contract, and terminate any agreements concerning payment in installments. Until all outstanding receivables have been paid, we have the right to retain any goods not yet supplied or other services yet to be provided.

## 8 Warranty for Defects.

**8.1** The customer must, without undue delay, carry out a thorough examination of the products supplied; for this purpose, he must examine the entire delivery. The examination must, in particular, include a visual examination of the surfaces. Any defects must be reported to us without

undue delay, but in any case within 4 working days after delivery. If an examination does not occur or the defects are not reported, the customer will forfeit all his warranty claims.

**8.2** If we bear the transport risk in particular cases, any damage in transit must be confirmed by the carrier upon delivery. If the carrier has not been instructed by us, the customer assigns any and all claims against the carrier to us and delivers to us all the documents that are required to enforce such claims; we hereby accept this assignment.

**8.3** Warranty claims for defects become time-barred within two years of the delivery (limitation period). The running of the limitation period will be suspended for the duration of subsequent performance (i.e., replacement delivery or repair); the customer cannot demand upon completion of the subsequent performance that the limitation period start all over again.

**8.4** Warranty claims for defects will only exist for defects that are contained in the products manufactured by us upon delivery; this does not, however, apply to materials that have been provided to us by the customer or third parties.

**8.5** We will primarily carry out the subsequent performance – where appropriate, with the assistance of third parties – at the customer's place of business, even if we are aware of the final destination of the consignment, or reduce the purchase price appropriately. We may choose at our discretion, within a reasonable period of not less than 14 days, between subsequent performance – replacement delivery or repair – and a reduction of the purchase price. If the subsequent performance repair is to be carried out at a place other than the customer's place of business, e.g., at the place of business of the end user, we will invoice the customer for the additional costs thereby incurred.

**8.6** If the subsequent performance fails, the customer may rescind the contract, reduce the purchase price, or claim damages. A right to rescind the contract will only exist for defects that affect 30% of the consignment or eliminate the functionality of the goods supplied.

**8.7** The customer is not authorized to return any goods without our express approval. If complaints about defects are unjustified, we may invoice the customer for the cost of examining the defect.

## 9 Retention of Title.

**9.1** The goods remain our property until the customer has paid all claims arising from the business relationship, including future claims and, in particular, any current account balance, or until all bills of exchange and checks that were delivered in payment have been honored.

**9.2** Furthermore, the goods remain our property if and to the extent that we assume an obligation to third parties on behalf of the customer until such obligation ceases to exist.

**9.3** The customer may sell the goods only in the ordinary course of business; he is not authorized to pledge the goods or transfer them by way of security. To the extent permitted by law, the following provisions apply additionally: if the goods are sold or otherwise made available to third parties, the customer hereby assigns to us all financial and other claims accruing to him. The customer is authorized to collect such claims; in the event of default of payment, this right will be forfeited immediately.

**9.4** If the value of the security provided to us exceeds our claims by more than 20%, we will be obligated to release part of the security upon request. If the customer resells the goods, he must retain title to such. To the extent permitted by law, the following provisions apply additionally: any processing and/or machining of the goods will be done on our behalf and for us, but without any obligation or liability arising from such on our part. If the goods supplied by us are mixed or combined with other items, the customer hereby assigns to us his ownership or co-ownership rights to the mixed inventory or new item in proportion to the value of our goods.

**9.5** The customer is obligated to take out the usual insurance for the goods or include them in any existing insurance policies and hereby assigns to us all of his rights against the insurer.

**9.6** The customer is obligated to notify

us immediately of any attachment of goods that are subject to this retention-of-title clause or of claims that have been assigned to us. The customer bears the cost of any intervention.

**9.7** If the enforcement of the above rights requires formal acts, such as the registration of the goods, under applicable law, the customer is obligated to so advise us and assist us in performing these acts. Should individual provisions of this retention-of-title clause be invalid under applicable law, such provision as is permissible under applicable law and comes closest to the invalid provision shall be deemed agreed upon.

## 10 Designs; Protection of Designs and Models.

**10.1** With designs or similar contracts, the following provisions apply: until the price has been paid in full, the customer is prohibited from using – e.g., copying or communicating to the public – any designs or concepts that have been created for the customer (irrespective of whether or not they qualify as copyrightable works). We retain all ownership rights and rights of use in respect of illustrations, drawings, sketches, collections, and other records that are made available to the customer; such must be returned to us upon request.

**10.2** We are the sole owner of all right, title, and interest in and to any forms, samples, and technical solutions in respect of or in connection with the goods. The customer is prohibited from reproducing, having reproduced, or participating in the distribution of reproduced goods, irrespective of whether we are entitled to industrial property rights and, if so, to what extent. If the customer violates this prohibition, he will be liable to pay a contractual penalty in an amount of EUR 100,000 for each willful or negligent violation; this does not affect any claims for damages to which we may be entitled. We may further exercise any rights to demand that the customer refrain from reproduction, which we may also enforce by obtaining a temporary restraining order.

## 11 Liability.

Claims for damages by the customer which are not based on the violation of material contractual obligations, willful misconduct or gross negligence, or bodily injury are excluded to the extent permitted by law. If excluding such claims is not permissible, they shall be limited to a maximum amount of damages of EUR 2 million. The customer will be fully entitled to any claims for damages which are based on the violation of material contractual obligations, willful misconduct or gross negligence, or bodily injury. To the extent that the law applicable to general terms and conditions allows a further limitation of our liability, such limitation of liability shall be deemed agreed upon.

## 12 Miscellaneous.

**12.1** This agreement shall be governed by German law, with the exception of the law applicable to general terms and conditions. In this respect, the laws that apply in the customer's jurisdiction shall apply.

**12.2** The place of performance for the delivery and payment is 31848 Bad Münde (urban district: Eimbeckhausen), Germany.

**12.3** The place of jurisdiction for all disputes with an amount in controversy of up to EUR 150,000 that arise directly or indirectly from the contractual relationship, including disputes arising from or in connection with bills of exchange or checks, is Hameln, Germany. We may also sue the debtor at the debtor's general place of jurisdiction. Disputes with an amount in controversy of over EUR 150,000 will be finally settled by the court of arbitration at the Hamburg Chamber of Industry and Commerce in accordance with its rules of procedure, as amended from time to time, and the German Code of Civil Procedure (ZPO). There will be three arbitrators. The language of the arbitral proceedings will be English, except in disputes with customers who are based in Austria or Switzerland (in this case, the language of the arbitral proceedings will be German). The place of arbitration is Hamburg, Germany.

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