

General Terms and Conditions of Sale (Validity 01-2009)

§ 1 – Application of the conditions

- (1) The following conditions are integral to the agreement concluded with us.
- (2) Our General Conditions of Sale in their respective latest version also apply to all follow-up businesses without that having to be expressly mentioned or agreed upon conclusion.
- (3) Herewith, we object to any counter-confirmations, counter-offers or other references on the part of the buyer relating to his Terms and Conditions; the diverging conditions of the buyer only apply if we have confirmed that validity in writing.

§ 2 – Offer and conclusion of the agreement

- (1) Our offers are always non-binding – in particular regarding quantity, price and delivery times.
- (2) The buyer's orders are considered accepted once we have confirmed them in writing.
- (3) If we do not confirm in writing an agreement, which has been concluded verbally or by telephone the invoice we issue is considered as confirmation.

§ 3 - Prices

- (1) Our prices are quoted exclusive of the Value Added Tax as legally applicable at the time of the delivery.
- (2) We are entitled to increase the agreed purchase price accordingly if due to legal provisions additional or increased fees – in particular customs, taxes, currency adjustment payments – incur in the period between the conclusion of the agreement and the delivery. This previous sentence also applies to inspection fees.

(3) The costs for transport and packaging are not included in our net prices quoted. The buyer must bear the same and we will invoice these separately.

§4 – Divergences in dimensions/weights/technical details/colours

(1) The dimensions, weights and technical details stated in our catalogue are significant for the calculation of the purchase price.

(2) Unless otherwise expressly agreed we are entitled to diverge from the details in dimensions and weights upwards or downwards.

(3) The qualities of the goods may diverge from the technical details in the catalogue insofar as the technical divergence does not affect the good's functionality described in the catalogue.

(4) Colour details in the catalogue are exemplary; divergences in colours are permissible.

(5) If the customer requires precision parts despite the tolerance area mentioned in the Paragraphs 1 - 4 he must inform us expressly.

§ 5 - Passing of risk

(1) Unless otherwise agreed the delivery is agreed ex factory Plaidt.

(2) The goods are always transported without insurance and at any rate at the buyer's risk. This also applies to the free delivery and irrespective of the fact, which means of transport are used. The transport insurance is only concluded upon the buyer's express request. The incurring costs are solely at the buyer's expenses.

§ 6 - Delivery

(1) In the absence of a different written agreement the choice of the way and means of the transport is arranged to the best of our abilities, without assuming any liability for the cheapest and fastest transport.

(2) We are entitled to provide adequate partial deliveries.

(3) Our obligation to delivery is always subject to our being supplied timely and orderly.

(4) The delivery and loading times stated are always non-binding unless expressly agreed otherwise in writing.

(5) Impediments to the delivery due to force majeure or due to unforeseeable events, which we are not responsible for, such as for example breakdowns, strike, lock-outs, official ordinances, subsequent loss of exporting or importing opportunities as well as our own supply clause according to the above Paragraph 3 release us from the obligation to meet any agreed delivery or unloading times for the duration and the extent of their influences. They also entitle us to withdraw from the agreement without the buyer therefore being entitled to compensation for damages or any other claims.

(6) If the agreed delivery or unloading time is exceeded without there being an impediment to the delivery according the above Paragraph 5 the buyer must grant us in writing an adequate period of respite of at least two weeks. If we culpably do not meet this period of respite the buyer is entitled to withdraw from the agreement, however, he is not entitled to assert compensation for damages from non-fulfilment or delay, unless we are guilty of intention or gross negligence.

(7) If upon the buyer's request the dispatch of the delivery is delayed by more than two weeks after the agreed delivery date or if no exact delivery date was agreed after the notification of readiness for dispatch by more than two weeks we are entitled to demand from the buyer the common storage costs and we may charge interest on the purchase price after the expiry of the two-week-period at a rate of 8 % points above the ECB base rate.

(8) If certain delivery times are agreed and if the order is changed upon the buyer's request, any delivery times stated in the original agreement between the parties are no longer binding. If they are supposed to remain binding or if a new binding delivery term is to be agreed this must be agreed again in writing on the occasion of the change to the agreement between the customer and ourselves.

§ 7 - Payment

- (1) As a rule our purchase price claims are payable net cash and without any deductions after receipt of the invoice unless other payment terms have been agreed in writing.
- (2) We only accept bills of exchange or cheques on the basis of special agreements and on account of payment. Discount and exchange fees are at the buyer's expense and are payable immediately.
- (3) If the amount invoiced is not settled within ten calendar days at the most after the date invoiced or at the agreed due date we are entitled to charge interest for default to the proven amount, at least, however, amounting to 8 % points above the ECB base rate without any requirement for a specific warning.
- (4) If there is no longer an orderly business operation at the buyer's, in particular if there are garnishments, if there are proceedings regarding cheques or bills of exchange, if there are payment delays or payment suspensions or if he files for an extra-judicial settlement proceeding or relevant insolvency proceeding we are entitled to make all our claims from this business relationship payable immediately even if we have accepted bills of exchange or cheques.

This previous sentence also applies if the buyer is in delay with his payments to us or if other circumstances become known, which make seem the buyer's creditworthiness doubtful. Furthermore, in such a case we are entitled to demand advance payments or guarantees and to withdraw from the agreement.

- (5) The buyer is only entitled to offsetting, retention or reduction if the asserted counter-claims have been legally recognised or if we have expressly acknowledged the same.

§ 8 – Assignment ban

The buyer may only assign claims from his legal transactions with us with our express consent.

§ 9 – Restraint on competition and non-disclosure

- (1) The buyer is not entitled to use the knowledge passed on to him in connection with the goods via technical documents, sketches etc. for the production, the use and distribution of competitive products.
- (2) The buyer is obliged to treat strictly confidentially all information included in the technical know-how handed over to him.
- (3) The obligation to secrecy applies for the duration of five years from the termination of the contractual relationship.
- (4) All technical information that the buyer already had before the time of the handover is excluded from this secrecy. If this is the case the buyer is obliged to notify the seller in writing of such information within a period of limitation of four weeks from the handover date.
- (5) If the buyer does not provide this notification it is merely assumed that the documents, sketches etc. handed over are know-how subject to secrecy.
- (6) Furthermore, the obligation to secrecy expires if the know-how subject to secrecy becomes publicly known without the buyer's breach of the agreement being the cause for this.

§ 10 – Notice of defects, liability for defects, breaches of secondary duties and consequential damages

(1) Upon the delivery of the goods at the agreed destination or in the event of collection upon acceptance the buyer is obliged immediately

a) to inspect the goods for quantities, weights and packaging and to note any complaints in this connection on the delivery or consignment note and

b) to carry out a quality control at least randomly and representatively, to this end to open to an adequate extent the packaging and to personally inspect the goods for their external quality.

(2) In the event of notice of defects the buyer must comply with the following forms and terms:

a) We must have received complaints for obvious defects or shortfall quantities within a period of limitation of two weeks and in writing. The period of limitation commences with the expiry of the day following the day of the delivery of the goods at the agreed destination or their collection. In the event of notices of hidden defects, which initially remain hidden despite the orderly initial inspection according to Paragraph 1, the period of limitation commences with the expiry of the first following working day.

b) The detailed notice of defects must be received within the above-mentioned periods in writing, by wire, by telex or by fax. A notice of defects by telephone does not suffice. Notices of defects against sales representatives or agents are insignificant.

c) The complaint must clearly state the kind and extent of the claimed defect.

d) The buyer is obliged to make available the good subject to the notice of defects at the inspection location for the inspection on our part, on the part of our suppliers or specialists commissioned by us or at our expenses to return the goods to be inspected by us.

e) The obligation of d) also applies if we have acknowledged the warranty and if we have carried out amendments or have provided replacements without the goods subject to the notice of defect having been returned to us first. If in the event of a warranty provided by us without the prior inspection of the defective good the goods are not returned to us within a period of two weeks the warranty case is considered non-existent. In such a case the buyer must pay back to us the costs incurred due to the warranty claim.

(3) Complaints relating to quantities, weights, technical details and colours are excluded if the divergences are in accordance with § 4 of these General Terms and Conditions and if for obvious defects the note required according to 1 a) on the delivery or consignment note or the acceptance note is missing. Furthermore, all reclamations are excluded as soon as the buyer mixes, uses and sells on the delivered goods or as soon as he has commenced the treatment and processing of the same. Also, we are not liable for depreciations of the goods due to common wear and tear and/or the use of the devices in so-called aggressive media (thus their use under uncommon technical or chemical influences).

(4) Any goods that have not been complained about according to form or within the required period are considered as acknowledged and accepted.

(5) For complaints, which we acknowledge, we are entitled at our discretion to provide the removal of the defect or supplementary performance. The buyer bears any additional costs for the removal of defects or the supplementary performance, which incur due to the fact that the goods have been taken to a location other than the place of fulfilment.

If the removal of the defect and the supplementary performance fail the buyer is entitled at his discretion to withdraw from the agreement or to demand the reduction of the purchase price, in the event of partial deliveries, however, only relating to the share of the purchase price of the partial delivery. In the event of the fulfilment failing the buyer's rights are limited to reduction if the goods are merely insignificantly defective.

(6) In cases of doubt declarations from our part in connection with this agreement in preliminary talks, prospectuses, advertising statements, service descriptions and references to DIN standards etc. do not include the acceptance of a guarantee. In cases of doubt they are only to be considered as guarantee declarations if we have declared them as guarantee declarations expressly and in writing.

(7) The buyer's further claims, in particular due to consequential damages are principally excluded. This does not apply in the event of intention, gross negligence or breach of significant contractual duties on our part as well as in the event of injury to life, body and health. Significant contractual duties are such duties, the fulfilment of which characterise the agreement and in the fulfilment of which the customer may trust. Our right to withdraw from the agreement remains unaffected.

(8) The statute of limitation for defects and consequential damages is one year. Claims for a defect, which the seller has maliciously concealed, or claims regarding missing qualities of the goods, which have been assured expressly, are excluded; in such events the legal regulations apply.

(9) The buyer is not entitled to assert claims and rights for defects if he has not settled outstanding payments and if the amount due is adequate to the amount of the partial delivery – which is defective.

§ 11 – Limitation of liability

(1) We are not liable for damage compensation claims instead of fulfilment or the buyer's further claims; in particular, we are not liable for lost profits or the buyer's other financial losses.

(2) The above limitations, however, do not apply if the cause of the damage is based on intention or gross negligence or if despite a guarantee assured in writing a quality of the goods is missing. Furthermore, they do not apply in the event of breaches of a significant contractual duty, which might put at risk the achievement of the contractual purpose; in such an event the liability is limited to the damage, the possible occurrence of which was obvious at the time of the conclusion of the agreement due to circumstances, which the buyer expressly made us aware of (e.g. high-risk contractual purpose).

(3) Significant contractual duties are such duties, the fulfilment of which characterise the agreement and in the fulfilment of which the customer may trust.

(4) Furthermore, the limitation of liability does not apply to damages from injuries to life, body and health. In any case, the breach or liability from the Product Liability Act remains unaffected.

§ 12 – Retention of title

(1) The goods we deliver remain our property until the buyer has settled all claims from the business relationship – including the balance claims from the current account as well as from refinancing or conversion bills of exchange.

(2) The buyer is entitled to sell on the goods we supply in orderly business transactions. The authorisation granted herewith expires in particular in the events stated above in § 7 Para. 4.

Furthermore, we are entitled to revoke the buyer's authorisation to sell in a written declaration if he is in default with the fulfilment of his obligations towards us and in particular if he is in default with his payments or if other circumstances become known, which may make his creditworthiness doubtful.

(3) If our good subject to retention of title is processed or inseparably combined with goods that are still in foreign property we acquire the joint property rights of the new objects or the mixed stock. The extent of the joint property right results from the ratio of the amount invoiced of the goods subject to retention of title, which we supplied, to the invoice amount of the remaining goods.

(4) In the sense of the following provisions all goods, for which we acquire property rights or joint property rights according to the above Paragraph 3 are considered goods subject to retention of title like the goods, which we supply subject to retention of title according to Paragraph 1.

(5) Herewith, the buyer assigns to us already the claims from the sale of the goods subject to retention of title. The claims from the sale also include the claim against the bank that issued or confirmed a documentary credit within the scope of the sale in favour of the buyer (= re-seller). Herewith, we accept this assignment. If the good subject to retention of title is a processed product or a mixed stock, which in addition to the goods we supplied also includes objects, which either belonged to the buyer or which third parties supplied for him subject to the simple retention of title, the buyer herewith assigns to us the entire claim from the sale of the goods. In any other cases, thus in the event of pre-assignments to us and other suppliers we are entitled to the share of the sale proceeds, and that is in the ratio of the amount invoiced of our goods to the invoice amount of the other processed or combined goods.

(6) If the total of our claims are doubtlessly assured by more than 125% due to the above-declared assignments and retentions we will release the excess of the outstanding amounts or the retention of goods upon the buyer's request at our discretion.

(7) The buyer is entitled to collect the outstanding amounts from the sales of the goods. This authorisation to collect lapses if the buyer no longer undertakes orderly business transactions in the sense of the regulation in § 7 Para. 4. Furthermore, we may revoke the buyer's authorisation to collect if he is in default with the fulfilment of his obligations towards us, in particular if he is in default with payments or if any other circumstances become known, which may make his creditworthiness doubtful. In the event of the authorisation to collect lapsing or being revoked by us the buyer must notify upon our request the debtors of the assigned claims immediately and must hand over the information and documents required for the collection of claims.

(8) In the event of third parties accessing our goods subject to retention of title or the outstanding amounts assigned to us the buyer is obliged to point out our property and our right respectively, and he must notify us immediately. The buyer bears the costs for an intervention.

(9) In the event of behaviour in breach of the agreement, in particular in the event of default in payment the buyer is obliged upon our first request to hand over the goods subject to retention of title that are still in his possession and to assign to us any surrender claims existing against third parties regarding our goods subject to retention of title. The taking back or garnishment of goods subject to retention of title on our part is not a withdrawal from the agreement.

(10) In the events of § 7 Para. 4 we may demand from the buyer that he discloses his debtors of the claims incurred due to the resale and assigned to us according to Paragraph 5. We are then entitled at our discretion to disclose the assignment.

§ 13 – Place of fulfilment and jurisdiction, applicable law, final provisions

(1) The place of fulfilment for all services from the agreement is Plaidt, unless agreed otherwise.

(2) In our favour Koblenz is the place of jurisdiction for all disputes arising from the contractual relationship. However, we may also choose a different place of jurisdiction.

(3) The Law of the Federal Republic of Germany applies. The International Sale of Goods Law is excluded. This also applies in particular to the application of the UN Convention on Contracts for the International Sale of Goods (UN-Kaufrecht = "CISG").

(4) The invalidity of individual provisions of these General Terms and Conditions shall not affect the validity of the remainder of the provisions. Invalid provisions are considered replaced with such valid provisions, which are suitable to realise the economic purpose of the discontinued provision as far as possible.

(5) We are entitled to save and pass on to third parties the details of the goods traffic and payment transactions with the buyer.