

Standard Terms and Conditions of Sale

As of: 02 July 2013

§ 1 In General – Applicability

- (1) Our Standard Terms and Conditions of Sale apply exclusively. We do not recognize the customer's Standard Terms and Conditions of Sale if they conflict with or differ from our own, unless we have expressly agreed in writing that they shall apply. Our Standard Terms and Conditions of Sale shall apply even if we make delivery to the customer without reservation of rights in the knowledge that the customer's Standard Terms and Conditions of Sale conflict with or differ from our own.
- (2) All agreements entered into between us and the customer for the purpose of implementing this Agreement have been incorporated into this Agreement in writing.
- (3) Our Standard Terms and Conditions of Sale shall only apply to companies within the meaning of § 310 (1) of the German Civil Code [BGB]. Our Standard Terms and Conditions of Sale shall also apply to all future transactions and contracts with the customer.

§ 2 Offer – Offer Documents

- (1) If the customer's order qualifies as an "offer" within the meaning of § 145 of the BGB, we can accept the offer within two weeks. A legally binding agreement shall come into being through the acceptance of the offer, especially in the form of a written order confirmation, issuance of an invoice, or receipt of a delivery slip.
- (2) We reserve all ownership rights and copyrights to illustrations, drawings, calculations, and other documents. This also applies to written documents designated as "confidential." Before disclosing such documents to third parties, the customer must obtain our express written consent.

§ 3 Prices – Payment Terms

- (1) Unless otherwise stated in the order confirmation, our prices are "ex works," including packaging.
- (2) The statutory value-added tax is not included in our prices. VAT in the statutory amount will be stated separately on the invoice on the date of invoicing.
- (3) The deduction of discounts requires a separate written agreement.
- (4) Unless otherwise stated in the order confirmation, the net purchase price (without deductions) shall be due and payable within 30 days of the invoice date. The statutory rules governing the consequences of default of payment shall apply.
- (5) The customer shall have a right of set-off only if the customer's counter-claims are uncontested, have been determined to be valid by a court of law, or have been acknowledged by us. In addition, the customer shall be entitled to exercise a right of withholding to the extent its counter-claims are based on the same contractual relationship.

§ 4 Delivery Period

- (1) The prerequisite for the commencement of the delivery period we have established in the order confirmation is the clarification of all technical questions.
- (2) An additional prerequisite for compliance with our delivery obligation is the timely and proper fulfillment of the customer's obligations. We reserve the right to assert the defense that the Agreement has not been fulfilled.
- (3) If the customer is in default of acceptance or culpably fails to meet other duties of cooperation, we shall be entitled to demand compensation for the resulting losses, including any additional expenditure made. We reserve the right to assert other applicable claims and rights.
- (4) To the extent the conditions of Paragraph (3) have been met, the risk of accidental destruction or deterioration of the sales item shall pass to the customer at the time of the customer's default of acceptance or payment.
- (5) We shall be liable under the applicable provisions of law to the extent that the underlying purchase agreement constitutes a "transaction to be settled on a fixed date" within the meaning of § 286 (2) No. 4 of the BGB or § 376 of the German Commercial Code [HGB]. We shall also be liable under the applicable provisions of law to the extent that the customer is entitled to assert it is no longer interested in implementing the Agreement as the result of a default in delivery for which we were responsible.
- (6) We shall also be liable under the applicable provisions of law to the extent that the default in delivery is based on a willful or grossly negligent breach of the Agreement for which we are responsible. Any fault on the part of our representatives or agents shall be attributable to us. To the extent the default in delivery is based on a grossly negligent breach of the Agreement for which we are responsible, our liability for compensatory damages shall be limited to typical, foreseeable losses.
- (7) We shall also be liable under the applicable provisions of law to the extent that the default in delivery for which we were responsible is based on a culpable breach of a cardinal contractual obligation. However, in this case, our liability for compensatory damages shall be limited to typical, foreseeable losses.
- (8) In other respects, if we default in delivery, we shall be liable for liquidated damages of 0.5% of the value of the goods to be delivered for every full week of default – up to a maximum of 5% of the value of the goods to be delivered.
- (9) The customer reserves all other claims and rights.

§ 5 Transfer of Risk – Packaging Costs

- (1) Unless otherwise stated in the order confirmation, it is agreed that delivery shall be "ex works."
- (2) Separate agreements shall apply to the return of packaging.
- (3) If the customer desires, we shall purchase transport insurance for the delivery. The customer shall bear the costs incurred in this regard.

§ 6 Liability for Defects

- (1) As a prerequisite for filing a claim for defects, the customer must properly comply with its duty to inspect and file a letter of complaint under § 377 of the HGB.
- (2) To the extent the sales item has a defect, we shall be obliged to rectify the defect by either eliminating it or delivering a new, defect-free item, at our election. If we rectify the defect, we shall bear the necessary costs up to the amount of the purchase price.
- (3) If the attempt to rectify the defect fails, the customer shall be entitled to demand rescission of the Agreement or a reduction in the price, at the customer's election.
- (4) We shall be liable under the applicable provisions of law to the extent that the customer asserts claims for compensatory damages based on wrongful intent or gross negligence, including wrongful intent or gross negligence on the part of our representatives or agents. To the extent we are not charged with a willful breach of the Agree-

ment, our liability for compensatory damages shall be limited to typical, foreseeable losses.

- (5) We shall be liable under the applicable provisions of law to the extent that we culpably violate a cardinal contractual obligation. However, in this case, too, our liability for compensatory damages shall be limited to typical, foreseeable losses.
- (6) This shall not affect our liability for the culpable infliction of bodily injury, loss of life, or impairment of health. This also applies to strict liability under the Product Liability Act.
- (7) All liability is excluded, unless otherwise provided above.
- (8) The period of limitation for filing claims for defects shall be 12 months, calculated from the date on which risk passes to the customer. This shall not apply to the extent that the sales item is customarily used in construction and caused the defect.
- (9) The period of limitation in the event of recourse against a supplier under §§ 478 and 479 of the BGB remains unaffected. It is five years, calculated from the delivery of the defective item.

§ 7 Total Liability

- (1) There shall be no liability for compensatory damages other than that provided for in § 6 – without regard to the legal nature of the claim asserted. This shall apply, in particular, to claims for compensatory damages based on culpa in contrahendo, other breaches of obligation, or tort claims seeking compensation for property damage under § 823 of the BGB.
- (2) The limitation in Paragraph (1) shall also apply to the extent that the customer demands reimbursement of expenses it has incurred in vain, instead of claiming compensatory damages in lieu of performance.
- (3) To the extent our liability for compensatory damages is excluded or limited, this shall also apply to the personal liability for compensatory damages of our employees, representatives, and agents.

§ 8 Retention of Ownership

- (1) We reserve ownership of the sales item until payment of all claims due at the time of delivery arising from the business relationship with the customer, including all incidental claims and claims for compensatory damages. If the customer violates the Agreement – in particular, if the customer is in default of payment – we shall be entitled to repossess the sales item. Our repossession of the sales item constitutes rescission of the Agreement. After repossessing the sales item, we shall be entitled to sell it. The sales proceeds shall be applied to the customer's debt – after deducting reasonable sales costs.
- (2) The customer shall treat the sales item with care. In particular, it shall adequately insure the sales item, at replacement value, against fire and water damage and theft at its own expense. To the extent that maintenance and inspection work is necessary, the customer must perform this work in a timely manner at its own expense.
- (3) The customer shall promptly inform us in writing of any attachments or other encroachments by third parties so that we can file a claim in accordance with § 771 of the German Code of Civil Procedure [ZPO]. To the extent that the third party is unable to reimburse us for the judicial and extrajudicial costs associated with the complaint under § 771 of the ZPO, the customer shall be liable for the losses we incur.
- (4) The customer shall be entitled to resell the sales items in the ordinary course of business. However, the customer hereby assigns to us all claims – in the total invoice amount of our claim (including VAT) – against the customer's buyers or third parties, which arise from resale of the goods, regardless of whether the sales items are resold before or after processing. The claim hereby assigned to us by the customer also relates to the acknowledged balance as well as the "causal" balance in the event of the buyer's insolvency. The customer shall be entitled to collect on its claims even after the assignment. This shall not affect our authority to collect on the claim ourselves. However, we agree to refrain from collecting on the claims as long as the customer meets its payment obligations from the proceeds collected, does not default on payment, and, in particular, as long as no petition to open insolvency proceedings is filed and there is no cessation of payments. However, if the foregoing occurs, we can demand that the customer inform us of the assigned claims and the pertinent debtors, provide all information necessary for collection, surrender the relevant documents, and inform the debtors (third parties) of the assignment.
- (5) Any processing or alteration of the sales item by the customer is always undertaken on our behalf. If the sales item is processed, mixed, or combined with other items that do not belong to us, we shall acquire co-ownership of the new item in the ratio of the value of the sales item (total invoice amount, including VAT) to that of the other processed items at the time of processing. Moreover, the same applies to an item that results from processing as applies to a sales item delivered under retention of ownership.
- (6) If the sales item is inseparably mixed or (chemically) combined with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the value of the sales item (total invoice amount, including VAT) to that of the other mixed items at the time of mixing or combining. If the mixture or combination is accomplished in such a manner that the customer's item is regarded as the main item, it is agreed that the customer transfers pro rata ownership to us. The customer shall hold the sole ownership or co-ownership so created in trust for us.
- (7) To secure our claims against the customer, the customer also assigns to us the claims against third parties that arise from the combination of the sales item with a parcel of land.
- (8) At the customer's request, we agree to release the security interests to which we are entitled to the extent that the realizable value of our security interests exceeds the claims that have been secured by more than 10%. The choice of the security interests to be released shall be ours.

§ 9 Jurisdiction – Place of Performance

- (1) To the extent that the customer is a businessman, the competent courts where we have our registered office shall have jurisdiction over all disputes. However, we shall also be entitled to sue the customer in the court where the customer has his place of residence or at the customer's place of general jurisdiction in accordance with § 17 of the ZPO.
- (2) The laws of the Federal Republic of Germany shall apply, excluding the UN Convention on Contracts for the International Sale of Goods.
- (3) Unless otherwise stated in the order confirmation, the place of performance shall be where we have our registered office.

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