

GENERAL TERMS AND CONDITIONS

1. GENERAL

- 1.1 Business dealings between our customer ("Customer") and us are exclusively governed by these General Terms and Conditions ("GTC") unless explicitly otherwise stipulated on the face hereof or agreed upon separately in writing. The conditions shall only apply to persons who are entrepreneurs within the meaning of Section 310 of the German Civil Code (*Bürgerliches Gesetzbuch*, "BGB").
- 1.2 For a contract to become valid, it has to be confirmed in writing, whereby the terms and conditions of the order acknowledgement are the extent of our obligation. If the contract is concluded by using electronic means (*Vertrag im elektronischen Geschäftsverkehr*), Section 312e para 1 No. 1-3 and sentence 2 BGB is excluded.
- 1.3 These GTC are considered as accepted by the Customer at the latest when the Customer notes our order confirmation. We will not recognize any of the Customer's terms and conditions which are contrary to or vary from our own, unless we expressly consented to them in writing.
- 1.4 Proposals, delivery times, technical information and descriptions of the goods or the like in our offers and any other of our information, including advertising, are not binding on us unless our order confirmation explicitly stipulates otherwise. We retain unlimited property, in particular intellectual property relating to such documents or information.
- 1.5 Place of jurisdiction for disputes arising from or in connection with any agreement between us and the Customer shall be Düsseldorf, Germany. However, we are also entitled to bring an action against the Customer at the Customer's place of business.
- 1.6 The GTC and any agreement between us and the Customer shall be governed as to all matters, including validity, construction and performance, by and under the laws of the Federal Republic of Germany except for the UN Convention on the International Sale of Goods (CISG).

2. SHIPMENT

- 2.1 Shipments and deliveries ("Shipment") will be made ex works (Incoterms 2000) from our warehouses as specified in the order confirmation
- 2.2 We may at our own discretionary option ship the goods from any Japanese or other port(s), by means of any vessel(s) and/or aircraft(s), with or without partial Shipment(s) and/or transshipment(s), subject to freight space available for us. The Customer may, at its own cost and risk, designate the means and route of transport.
- 2.3 Each Shipment to the Customer shall be considered as a separate contract insofar as the Customer's obligation to accept and to pay for the goods is concerned. The Customer agrees to accept and pay for each such Shipment, as provided in the order confirmation. Should the Customer fail to accept or pay for any one Shipment, we may without prejudice to any other lawful remedy defer further Shipments until the outstanding acceptance of or payment for the respective Shipment is notified and made by the Customer.
- 2.4 We may without liability whatsoever terminate any order as to any unaccepted or undelivered portion thereof and the Customer shall be responsible for any expenses and/or losses sustained by us by so doing.
- 2.5 If any Shipment of goods for any reason whatsoever beyond our control does not reach the destination, we shall not be liable for failure of the goods to arrive or be delivered. In this case, we are further released from our obligation to re-deliver the goods or any part thereof so failing to arrive or be delivered except when we grossly negligently caused such non-arrival or non-delivery. The bill of lading shall be accepted by the Customer and shall be conclusive as to the quantity, quality, time and place of Shipment.
- 2.6 We engage reasonable efforts to comply with the delivery deadlines or dates specified by us.
- 2.7 In the absence of our express written confirmation that a delivery deadline will be binding on us, delivery deadlines or dates are only estimated delivery deadlines or dates. In particular, they are subject to the condition that our own suppliers deliver at the proper time and in sufficient quantities. The delivery deadline commences when we send our order confirmation. In any case, our compliance with the delivery deadline presupposes that the Customer provided us in time with all necessary delivery documents and that the Customer complies with the agreed conditions of payment and its other obligations.

3. PAYMENT

- 3.1 Shipments shall be made at the prices given in the order confirmation (plus the applicable amount of value added tax) provided nothing to the contrary is agreed in writing.
- 3.2 The Customer shall be entitled to set off against our claims only if the Customer's counterclaims are undisputed or non-appealable.
- 3.3 The Customer shall not be entitled to exercise a right of retention on account of such claims; in particular the Customer is not entitled to exercise a right of retention where it claims the delivered goods to be defective.
- 3.4 The Customer is entitled to assign claims against us only upon our prior written consent.
- 3.5 The Customer shall through a major bank approved by us establish a confirmed irrevocable without recourse letter of credit in our favor for the full payment amount of each order. Such letter of credit shall be furnished to us within 15 calendar days after the effective date of each order and shall remain in effect for at least 30 working days after the due date for final payment provided for under each order. The Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (ICC) in force at the date of conclusion of a respective order shall apply to such letter of credit. The Customer shall accept to pay the full amount of bill(s) of collection to be drawn by us upon presentation of such bill(s) by the collecting bank. The Uniform Rules for the Collection of Commercial Paper of ICC in force at the date of each respective order shall apply to such bill(s) of collection.
- 3.6 The purchase price owed by the Customer shall be due and payable upon receipt of the respective invoice. It must be paid net (without deductions) in cash or by bank transfer. Where payment is made by bank transfer, payment will be considered as being made when the money is credited to the account named by us for this purpose. The Customer will be in default of payment if payment of the purchase price is not made within 14 calendar days of the date of the invoice without necessity on our part for submitting a special reminder notice.

4. RETENTION OF TITLE

- 4.1 We retain title to any and all goods sold by us in the possession of the Customer or of any company or person affiliated with the Customer until Customer has finally settled all our claims arising from the business dealings between the Customer and us. Where there are several claims or current accounts, the retention of title shall be security for the balance of claims even if payment has already been made for individual deliveries of goods.
- 4.2 In the case that our goods are shipped to any other jurisdiction but Germany the Customer undertakes to verify at its own cost and before such Shipment is carried out whether the laws of the destination acknowledge a retention of title materially comparable to the retention of title agreed herein. The Customer will perform any action, implement any protective measure and make any registration or filing necessary or feasible in order to effect a protection of our title to the goods materially of the same level as agreed hereunder. For such purposes, we undertake to support the Customer with all legally necessary action and information reasonably requested by the Customer in writing. The Customer is liable to us for any damage incurred by us due to the fact that no sufficient protection of our title to our goods is created or the retention of title as agreed in this Section 4 is partly or fully not acknowledged by the law of a country of destination other than Germany due to the fact that the goods are shipped to such country.
- 4.3 The Customer may process or resell the goods in the normal course of business. However, the Customer shall not be entitled to pledge the goods, transfer them by way of security or otherwise unreasonably dispose of them. We and the Customer agree now that the accounts receivable arising from such transactions must be assigned to us. The Customer shall be entitled to collect on the claims. However, it must administer incoming amounts in a fiduciary capacity on our behalf and maintain separate bookkeeping for such amounts. The Customer must allow us to collect on the claims where it fails to meet its obligations to us or has the knowledge of its impending insolvency. The Customer is obliged to fully assist us in collecting on the claims. For such purposes the Customer must provide us with all necessary information and all necessary documents. The Customer, at our request, shall immediately notify in writing third party debtors of this assignment.
- 4.4 The Customer is obliged to treat our goods with due professional care of a custodian. Insofar as it is necessary to perform any maintenance or inspection work on the goods, the Customer must, at its own expense, immediately notify us in writing and have this work immediately performed by us or by a third party authorized in writing in each individual case by us.
- 4.5 The Customer is obliged to obtain at its own cost sufficient insurance coverage for the goods, in particular but not limited against fire and theft (110% of the invoiced amount of the delivered goods unless otherwise agreed in writing). A copy of the insurance certificate must be immediately submitted to us upon request. The Customer hereby assigns any claim against the insurance company to us in the amount of the value of the retained goods. We hereby accept such assignment.
- 4.6 The Customer shall immediately notify us in writing of any attachment of retained goods or other seizure by third parties. The name and address of the persons who attach or seize the retained goods must be stated in such notification. The reasonable costs of judicial or extra-judicial intervention in order to protect our rights shall be borne by the Customer.
- 4.7 We are entitled to recover the goods, in particular due to the Customer's payment default. In this case the Customer must tolerate the taking away of the goods and allow us to enter its offices and business premises for such purposes. The same shall apply in the event of any material breach of duty by the Customer. However, such recovery shall not be considered as rescission by us of any order unless we have explicitly

declared such rescission in writing. Upon recovery we are entitled to resell or otherwise dispose of the recovered goods and to deduct any proceeds from the sale or other disposal from the Customer's liabilities less reasonable disposal expenses.

- 4.8 Without limiting any of our rights, we may recover any goods or directly collect accounts receivable from third party debtors, if:
- 4.9 the Customer is in default of any terms of an agreement with us;
- 4.10 any declaration or application of bankruptcy, insolvency, appointment of a receiver, liquidator, assignee, trustee, sequester (or other similar official) has been issued regarding the Customer or any substantial part of its property or if the Customer's affairs are being dissolved or liquidated for other reasons;
- 4.11 the Customer is late in payment or fails to comply with other material duties arising under an agreement with us, or if we become aware of circumstances which serve to reduce the Customer's creditworthiness, in particular composition or insolvency proceedings.
- 4.12 In such cases, notwithstanding our right to rescind any affected agreement with the Customer, we are entitled to demand immediate payment of all claims including those in respect of which we accepted a bill of exchange, and to withhold outstanding deliveries or to make such deliveries only upon receipt of prepayment or security. In such cases we are also entitled to demand that the Customer immediately returns unpaid goods to us at its own expense.
- 4.13 If the aggregate value of securities granted by the Customer exceeds our claims to be secured by more than 20%, the Customer may demand the release of securities to that extent. We are entitled to determine at our own discretion which securities are to be released.

5. INDUSTRIAL AND INTELLECTUAL PROPERTY RIGHTS

- 5.1 We are not responsible for any infringement with regard to patent, utility-model, trademark, design or copyright or other intellectual property right, whether in Germany or any other place. Nothing herein contained shall be construed as transferring any right to any patent, utility-model, trademark, design or copyright or other intellectual property right on the goods. In the case that any dispute and/or claim arises in connection with the afore mentioned intellectual property right(s), the Customer is responsible for any loss and/or damage caused thereby and shall indemnify us from any loss or damage.

6. CONTINGENCIES

- 6.1 Any increase in freight rate, insurance premium or other charges and any contingency increase and/or imposition of taxes, import surcharge, customs duties, in particular EU duties, anti-dumping duties or equalizing duties or other governmental charges as well as changes in parity of exchange of currencies whether or not foreseeable at the time of conclusion of an order shall be charged to the Customer's account and payable by the Customer.

7. WARRANTIES

- 7.1 We warrant that the goods have the characteristics described in the order confirmation. It is the Customer's sole responsibility to examine whether our products are suitable for purposes which go beyond normal usage, including for any further processing by the Customer as well as for the purposes of the Customer's own customers. We are not liable for the suitability of the goods for such additional purposes of the Customer unless we confirmed such suitability or unless it has provided a guarantee of such suitability.
- 7.2 The Customer must examine each delivery carefully and completely immediately upon receipt as to recognisable defects. The Customer shall notify us in writing of any claim due to a recognisable defect within 5 calendar days after receipt of the goods at the destination stated in the individual order confirmation or agreement, accompanied by satisfactory evidence(s) thereof.
- 7.3 The Customer shall only have a claim based on the existence of a defect of the goods if:
- (i) it notifies us in accordance with Section 7.2 hereof and
 - (ii) such defect occurs through normal usage of the delivered goods and in compliance with the instructions for use and maintenance, and is not the result of normal wear and tear of individual parts, of improper repairs, or of modifications by the Customer or any third party.
- 7.4 In accordance with the above, if the Customer proves any goods to be defective, we will, at our own discretion and within a reasonable period of time, either repair the defective goods, charge a third party with the proper repair of the defective goods or exchange them for faultless goods. Any costs incurred for the transport of such goods from the Customer to us shall be borne by the Customer.
- 7.5 The Customer is only entitled to rescind any agreement, to reduce the price or to demand damages if two consecutive attempts by us to remedy any defect or to perform our contractual obligations have failed. In particular, this will be the case if:
- (i) we permanently unjustifiably refuse to repair or exchange any defective goods, or both remedies are unreasonable for the Customer,
 - (ii) we do not respond within a reasonable time limit of at least three weeks to a justified notice of defect,
 - (iii) the repair work performed by us or any authorised third party has finally failed or
 - (iv) a substitute delivery is also defective and the Customer makes a proper complaint in this regard in accordance with the provisions contained herein.
- If the Customer chooses to rescind an agreement, it thereby waives any right to claim damages except in cases of our fraudulent intent.

- 7.6 Nothing herein or in an order confirmation or any accompanying documentation is to be deemed as a warranty in the meaning of Section 443 BGB unless explicitly otherwise stated in writing.

- 7.7 In respect of ready-made supply parts not produced by us, we agree to assign to the Customer those claims against our suppliers which are based on defects. In such cases, the Customer may only make a claim against us based on defects in accordance with the provisions stated herein, if the Customer is verifiably unable to succeed in its claim against our supplier in court.

- 7.8 Unless otherwise agreed in writing, the Customer's claims for defects shall be time barred within one year from the date the goods are delivered to the Customer.

- 7.9 Insofar as the Customer's claims for damages are not related to a defect of the delivered goods, such claims shall be time barred within one year from the end of the year in which they arose and in which the Customer has knowledge of the circumstances founding the claim or should have knowledge of the circumstances founding the claim if it had not been caused grossly negligent by us. Section 444 BGB shall remain unaffected.

8. LIABILITY

- 8.1 Subject to the provisions herein, we are only liable for any intentional or grossly negligent acts. We are only liable for our employees or agents if their wrongdoing is intentional or grossly negligent.
- 8.2 The above does not apply to a culpable breach of duties essential for the performance of the contractual purpose; the extent of our liability will, however, be limited insofar to the kinds of damage which usually occur in comparable transactions and the damage must have been foreseeable when we concluded the respective agreement with the Customer or at the latest when the breach of duty occurred.
- 8.3 Section 444 BGB, claims for damages based on injury to life, body or health and claims pursuant to the Product Liability Act remain unaffected.

9. FORCE MAJEURE

- 9.1 We are not liable to the Customer for failure of or delay in delivery or any defect of goods caused by riots, civil commotions, wars, terrorist acts, hostilities between nations, governmental laws, orders or regulations, embargoes, actions by any government or any agency thereof, acts of God, storm, fire, accident, strike, sabotage, explosion, shortage in supplies and stock, or other similar or different contingencies beyond our reasonable control, and the Customer is bound (1) to accept the delayed Shipment made within a reasonable period after such event has ceased to exist or (2) to accept the termination by us of all or any part of the respective agreement.

- 9.2 Upon the occurrence of any of the above events, the Customer shall only be entitled to rescind an agreement if the deadline for delivery has been exceeded by ten weeks, at least. Prior to such time the Customer shall only be entitled to rescind an agreement if we have notified in writing that we will not deliver. If the circumstances described above make it impossible for us to perform our duties under an agreement, we are nevertheless entitled to reasonable compensation for expenditures incurred by us up to such time in relation to the work already done on or in relation to the goods.

- 9.3 The above mentioned restrictions shall not apply to transactions where a fixed delivery date has been agreed in writing.

10. SEVERABILITY CLAUSE

- 10.1 If any agreement with the Customer or a provision of these GTC should be or become invalid in whole or in part or if any agreement with the Customer or these GTC contain a contractual gap, this shall not affect the validity of the remaining provisions. Instead of the invalid provision, such reasonable provision shall apply which, as far as legally permissible, best approximates what the parties have intended. For the purpose of filling a contractual gap, such reasonable provision shall apply which the parties had intended in view of the purpose of the affected agreement or the GTC, if they had considered the issue. If the invalidity of a provision is caused by the extent of a performance or time (deadline or date) determined therein, such extent of performance shall be deemed to be agreed which comes closest to the originally agreed extent of performance or time (deadline or date) which is legally permissible.

11. EXPORTATION REGULATION

- The Buyer is aware that the delivered goods may be subject to export control, dual use and/or anti misuse regulations. The Buyer assures that he has knowledge of the respective export regulations and will comply with these regulations. In particular the Buyer will neither export nor re-export the delivered goods to countries which are subject to such export limitations without respective limitations. The Buyer is responsible for the compliance with all respective export regulations."