

### § 1 Applicability of these International Terms and Conditions of Sale

- (1) The terms and conditions set out in these International Terms and Conditions of Sale shall form an integral part of the sales contract ("Contract of Sale"). These International Terms and Conditions of Sale apply exclusively. The buyer's terms and conditions which conflict or differ from these International Terms and Conditions of Sale and/or from the legal provisions do not apply, even if we do not object to them or render performance or accept the buyer's performance.
- (2) These Terms and Conditions of Sale do not apply if the goods are bought for personal, family or household use and we knew or ought to have known at any time before or at conclusion of the Contract of Sale that the goods were bought for any such use. The buyer declares that the goods are not bought for personal, family or household use.
- (3) Insofar as provisions have been agreed with long-standing customers by concluding framework agreements which contradict the provisions contained in these International Terms and Conditions of Sale, the provisions contained in the framework agreements shall take precedence.

### § 2 Formation of the Contract of Sale

- (1) A Contract of Sale always requires a written order of the buyer.
- (2) We may accept the buyer's written order with our order confirmation (hereinafter the "Order Confirmation") within 10 (ten) calendar days after receipt of the buyer's order.

### § 3 Applicable Law

- (1) The Contract of Sale is governed by the United Nations Conventions of 11 April 1980 on Contracts for the International Sale of Goods (UN Sales Convention / CISG) in the English version and all legal questions beyond the scope of the CISG are governed by the Swiss law of obligations (Obligationenrecht). The CISG also applies to all agreements as to the jurisdiction of courts and arbitral tribunals.
- (2) Should commercial terms be used the Incoterms® 2010 of the International Chamber of Commerce apply taking into account the provisions stipulated in these International Terms and Conditions of Sale.

### § 4 Specifications of the goods; Third party rights

- (1) The goods to be delivered have to conform to the agreed specifications and quality requirements. To the extent no specifications or quality requirements are agreed upon, the goods conform with the contract if they are fit for the purpose which – at the time of conclusion of the contract – is usual in Germany and fit for the purpose for which goods of the same description are usually used for in Germany. Unless otherwise explicitly agreed to, the goods do not have to conform to any laws or regulations existing outside of Germany. Second-hand goods are delivered without any liability for their conformity.
- (2) Should the buyer intend to use the goods in circumstances which are unusual or which could entail a particular risk to the safety and health of any person or to the environment, the buyer has to inform us in writing about these intentions before concluding the Contract of Sale.
- (3) Rights and claims of third parties (in particular rights and claims based on title or industrial property rights) only constitute a defect in title if these rights and/or claims are in force and registered in Germany and impede the use of the goods in Germany.

### § 5 Obligation to deliver; Passing of risk

- (1) We have to deliver the goods referred to in the Order Confirmation including a packaging that is suitable for the means of transportation. If agreed, the buyer shall pay the packaging costs in addition to the purchase price.
- (2) If no other delivery mode has been agreed upon in the Order Confirmation, delivery will be made FCA Incoterms 2010 at the place of delivery indicated in the Order Confirmation. If no place of delivery is indicated in the Order Confirmation, delivery has to be made FCA Incoterms 2010 at our premises in 32457 Porta Westfalica/Germany. If the buyer so requests and we agree in individual cases, we shall contract for carriage at the buyer's risk and expense; the associated costs shall then be invoiced to the buyer and shall additionally be paid by the buyer together with the purchase price. If we contract for carriage at the buyer's risk and expense, the place of performance for the delivery shall remain at 32457 Porta Westfalica/Germany.
- (3) Adherence to the delivery date respectively the delivery period stated in the Order Confirmation is not of the essence and non-adherence to the delivery date or the delivery period respectively does not constitute a fundamental breach of contract. If delivery periods are agreed to, we reserve the right to determine the exact delivery time within the delivery period.

- (4) All delivery dates and delivery periods are dependent upon the buyer performing all of his obligations in due time. In particular, the buyer has to procure or confirm any necessary permits, drawings etc. and make agreed payments in due time.
- (5) We are entitled to make partial deliveries and to invoice these separately.
- (6) The passing of risk takes place with delivery in accordance with § 5 sec. 2. Should the buyer fail to take delivery, the risk passes at the time the buyer fails to take delivery.
- (7) In addition to our statutory rights we are entitled to suspend the performance of our obligations if there are reasonable indications that the buyer will not perform his obligations under the Contract of Sale, in particular not be able to pay the agreed price in due time.

### § 6 Delivery Note, Invoice and other documents

- (1) We will provide the buyer with a delivery note issued according to our standard.
- (2) Irrespective of the Incoterms-clause used, we are not obliged to clear the goods for export. We will however at the buyer's risk and expense apply for any necessary export licences and formalities as regards customs provided that the buyer has provided us with all necessary information.
- (3) We will provide the buyer only with such documents explicitly stated on the Order Confirmation.

### § 7 Force Majeure

Any inability to supply as a result of force majeure or other unforeseen incidents outside our responsibility including, without limitation, strike, lock out, acts of public authorities, subsequent cease of export or import opportunities shall, for their duration and in accordance with their impact, relieve us from the obligation to comply with any agreed delivery period and delivery time as well as any other obligation.

### § 8 Obligation to pay the purchase price

- (1) The buyer is obliged to pay the agreed purchase price as well as agreed packaging costs to the bank account nominated by us. The place of payment is 32457 Porta Westfalica/Germany. Banking fees accrued outside of Germany will be borne by the buyer. The payment shall be made without any deductions and is due for payment on the date or within the time limit as stated on the Order Confirmation. A time limit for payment stated on the Order Confirmation shall be calculated from the date of invoice. In the absence of any payment dates or time limits stated on the Order Confirmation, payment shall be made within 30 (thirty) calendar days after date of invoice. The buyer's acceptance of the goods is no precondition for the payment to become due.
- (2) The agreed prices shall exclude any statutory VAT applicable at the date of delivery.
- (3) The buyer is only entitled to exercise a lien or to suspend his performance if this is based on the same transaction as well as based on a due and undisputed or finally adjudicated counterclaim of the buyer.
- (4) The buyer may only offset any claims insofar as the buyer's counterclaim is acknowledged, undisputed or assessed in a legally binding judgement.
- (5) If and until such time the buyer is in arrears with payment of the purchase price, the buyer is obliged to pay interest at the rate of nine (9) percentage points above the base rate of the German Central bank per annum.

### § 9 Non-Conforming goods; Goods with a defect in title

- (1) The goods do not conform to the contract if at the time the risk passes they significantly deviate from the requirements set out in § 4 sec. 1 and sec. 2.
- (2) The goods are not free from rights or claims of third parties if at the time the risk passes they significantly deviate from the requirements set out in § 4 sec. 3.

### § 10 Duty of examination and notification

- (1) Without prejudice to the legal provisions, the buyer is obliged to examine the goods comprehensively in respect of deviations as regards type, quantity, quality and packaging. If necessary, the buyer is obliged to conduct the examination with the help of external third parties.
- (2) Notice of non-conformity has to be made in within ten (10) calendar days. For very obvious non-conformities, the period for such notification starts with the delivery of the goods, in all other cases after the buyer has discovered the non-conformity or ought to have discovered it. Notice of non-conformity has to be given in writing.

The notice of non-conformity has to clearly indicate and describe the non-conformity in such a way that we can take remedial actions.

- (3) Apart from the aforesaid as well as with respect to defects in title, the statutory provisions apply.

#### **§ 11 Limitation Period**

Without prejudice to claims resulting from a malicious, grossly negligent or intentional conduct as well as claims due to injury of life, body or health, the buyer's claims in respect of the delivery of non-conforming goods and goods with a defect in title become time-barred one (1) year after delivery of the goods. For second-hand goods § 4 sec. 1 sentence 4 applies. The delivery of substitute goods or the repair of delivered goods does not lead to an extension or a restart of the limitation period.

#### **§ 12 Remedies in case of non-conforming goods and goods with a defect in title; Limitation of Liability**

- (1) In case of delivery of non-conforming goods, the buyer can claim delivery of substitute goods or declare avoidance of the Contract of Sale only in accordance with the legal provisions.
- (2) Remedying a non-conformity by repair can lead to considerable expenses due to the associated costs. The buyer and we therefore – in order to comply with the obligation to mitigate damages – agree that in the event of a delivery of non-conforming goods the rectification by repair shall at our discretion either be performed by us or by the buyer. If the buyer performs the rectification of the non-conformity by repair for us, we shall be obliged to reimburse the buyer for the expenses incurred. The buyer and we can agree on separate lump sums to determine the reimbursable expenses.
- (3) To the extent any costs associated with performing remedies are increased by the fact that the buyer has removed the goods to a place not stated in the Order Confirmation or, in the absence of such an indication, to a place other than the buyer's place of business, these costs will be borne by the buyer.
- (4) If we deliver non-conforming goods or goods with a defect in title or breach any other obligation resulting from the Contract of Sale or the business relationship with the buyer, the buyer is entitled to demand damages only in accordance with the following provisions and any recourse to concurrent bases of claim (in particular of a non-contractual nature) is excluded:
  - a. We are not liable for the conduct of our associates (Hilfspersonen) unless they have intentionally breached their duties. Neither are we liable for damages to the extent the buyer has contributed to them.
  - b. The buyer has to prove that either (i) our directors or employees have deliberately or negligently breached contractual obligations owed to the buyer, or (ii) that our associates (Hilfspersonen) have intentionally breached contractual obligations owed to the buyer.
  - c. In case of liability, the amount of damages for late delivery is limited to 0,5 per cent for each full week of delay, up to a maximum of 5 per cent of the net purchase price of the goods delivered late or not at all, and in case of all other breaches of obligations is limited to the net purchase price of the goods affected.
  - d. Irrespective of § 12 sec. 4 c), we are not liable for loss of profit, damages for interruption of production and loss of usage.
  - e. The aforesaid limitations in § 12 sec. 4 do not apply
    - i. to injury of life, body or health,
    - ii. if we have acted maliciously, grossly negligent or intentionally,
    - iii. if we are liable according to mandatory product liability laws, and
    - iv. to liabilities which may not be excluded or limited according to the applicable laws.

- (5) Apart from the aforesaid, the statutory provisions apply.

#### **§ 13 Right to use Software; Rights in documents etc.**

- (1) In case the goods include software, with the delivery of the goods the buyer is hereby granted a non-exclusive, royalty-free license to use the software, but strictly and only in connection with the goods purchased under this Contract of Sale. With the exception of the right to make one backup copy, the buyer is not entitled to copy the software.
- (2) We reserve all intellectual property rights in any documents, pictures, drawings etc. (collectively "Documents") arising in connection with the performance of the obligations arising under the Contract of Sale and such Documents shall belong exclusively to us.

#### **§ 14 Other Provisions**

- (1) Title of the goods that have been delivered remains with us until all of our claims against the buyer have been settled. The Buyer is obliged to take all measures necessary for the protection of our property and ensure that the our title is not prejudiced. If this is necessary for a valid reservation of our title, the Buyer in particular undertakes to arrange for any necessary entry in the public registers in the country of location of the goods at its own expense.

- (2) We are not obliged to perform any obligations not stated in the written Order Confirmation or in these International Terms and Conditions of Sale.

- (3) There are no side agreements to the Contract of Sale.

- (4) Any amendments to a concluded Contract of Sale require our written confirmation, duly approved by signature.

- (5) The buyer is not entitled to assign his rights and obligations against us to a third party.

- (6) The place of performance for delivery is governed in § 5 sec. 2, the place of performance for the payment in § 8 sec.1. For all remaining obligations and irrespective of the agreement of a differing Incoterms-clause, the place of performance is agreed to be 32457 Porta Westfalica/Germany, including for a replacement delivery, for the rectification of non-conformities and for the restitution of the contractual obligations in case of avoidance of the Contract.

- (7) All communications, declarations, notices etc. (hereinafter collectively "Notices") are to be drawn up exclusively in German or English. Notices by means of fax or email fulfil the requirement of being in writing. A signature is not required, unless these International Terms and Conditions of Sale explicitly require a signature.

#### **§ 15 Agreement on arbitration and jurisdiction**

- (1) If the Buyer's place of business is located within the European Economic Area and/or within Switzerland, for all disputes, including disputes under insolvency law, arising out of or in connection with a Contract of Sale and/or these International Terms and Conditions of Sale, including its validity, invalidity, violation or cancellation as well as other disputes arising out of the business relationship between the Buyer and us, the state court which has jurisdiction for 32457 Porta Westfalica/Germany shall have exclusive jurisdiction. Instead of bringing an action before the state court which has jurisdiction for 32457 Porta Westfalica/Germany, we are also entitled to bring an action before the state court of the Buyer's place of business.
- (2) If the Buyer's place of business is located outside of both the European Economic Area and Switzerland, all contractual and extra-contractual disputes, including disputes under insolvency law, arising out of or in connection with a Contract of Sale and/or these International Terms and Conditions of Sale, including its validity, invalidity, violation or cancellation as well as other disputes arising out of the business relationship between the Buyer and us shall be finally settled in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers' Arbitration Institution in force on the date on which the Notice of Arbitration is submitted in accordance with these Rules. The place of the arbitration shall be Zurich/Switzerland, the language used in the arbitral proceedings shall be English.

#### **§ 16 Severability**

If provisions of these International Terms and Conditions of Sale should be or become partly or wholly ineffective, the remaining provisions will continue to apply. We and the buyer are bound to replace the ineffective provision with a legally valid provision as close as possible to the commercial meaning and purpose of the ineffective provision.