



## **§ 1 Scope**

The following General Terms and Conditions of Sale shall apply to any business with customers or Purchasers (hereinafter jointly referred to as the "Purchaser"), irrespective of not being referred to in later contracts. Inclusion of the Purchaser's General Terms and Conditions of Purchase or any other general business terms and conditions shall be explicitly rejected herewith. These shall include any reference by the Purchaser to his own business terms and conditions even when including any defence and/or exclusivity clauses and not explicitly rejected by the Company, irrespective of the time sequence, in which competitive terms and conditions are referred to by the Parties hereto, unless specifically approved in writing.

## **§ 2 Contracts**

1. The Company's quotations shall be subject to prior sale. Any orders submitted by a Purchaser shall be a firm quotation. The Company shall be entitled to accept the said quotation at the Company's discretion, within a period of four weeks by posting a confirmation of order or dispatching the goods.
2. The scope of delivery shall be based on the Company's written confirmation, including any cases in which any services owed by the Company are to be rendered according to the Purchaser's specifications, in particular drawings originated by him. Reference by the Company to DIN/ISO standards and any other regulations shall be deemed specifications and no promise of any properties.
3. Should substantiated doubts be raised retrospectively in the Purchaser's creditworthiness, the Company shall be entitled to refuse deliveries until a security is provided or cash payment is promised on delivery. Should the Purchaser not be prepared to provide a security or cash payment, irrespective of the Company's request and after having set an adequate deadline, the Company shall be entitled to rescind from the transaction subject to lodging claims for damages.
4. Verbal information and promises by the Company shall only be firm when confirmed in writing by the Company or by shipment of the goods and posting of an invoice accordingly.
5. Any statements included in a confirmation of order and/or correspondence exchanged between the Company and the Purchaser for the condition of any goods, shall not constitute any guarantee in compliance with § 276 para. 1 BGB (German Civil Code), nor an independent guarantee, unless success has been guaranteed, explicitly defined and stated by the Company.
6. The Company shall not be liable for obvious, typing and arithmetic errors in any documents provided by the Company. The Purchaser agrees to notify the Company of such errors in order to allow the Company to edit its confirmation of order and/or an invoice. The above shall include any missing documents.
7. The order No., Purchaser's No. and invoice No. listed in the Company's confirmation of order and/or an invoice, which refers to the said order, shall be quoted on payment of an invoice and in any correspondence of the Purchaser.



8. Should the Purchaser have modified an acceptance statement, the said Party agrees to explicitly notify the Company of any changes in contents. Should such explicit notification be lacking, the Company's previous version shall prevail.
9. The customer will supply us promptly with VAT vouchers requested by us in connection with foreign and intra-community deliveries.

### **§ 3 Long-term and release-order contracts**

1. Open-ended contracts may be terminated at 6 months' notice.
2. If a significant change occurs in labour, material or energy costs affecting long-term contracts (open-ended contracts and those with a validity term exceeding 12 months), either Party is entitled to demand negotiations on an appropriate price adjustment taking account of these factors.
3. Where no binding order quantity has been stipulated, we base our costing on the non-binding order quantity (target quantity) expected by the Purchaser for a specific period. If the Purchaser calls less than the target quantity, we are entitled to increase the unit price appropriately. If he calls more than the target quantity, we decrease the unit price appropriately, provided that the Purchaser has notified us of the additional requirement at least 6 months before delivery.
4. In the case of release-order contracts in the absence of agreement to the contrary we must be informed of binding quantities by release order at least 3 months before the delivery date. Additional costs caused by a late release order or subsequent time or quantity alterations to the release order by the Purchaser are at the latter's expense; our cost calculations are definitive here.

### **§ 4 Cost of rescission from the contract**

Should the Purchaser rescind from any contract signed without justification, the Company shall be entitled to demand 10% of the sales price for any costs incurred by handling the contract and loss of profit, irrespective of the option of claiming a higher than the actual loss suffered. The Purchaser shall be subject to the onus of proof for any smaller loss suffered by the Company.

### **§ 5 Prices, Price Adjustments**

1. In principle, the Company's prices shall be subject to statutory VAT plus packaging and shipping costs.
2. Unless otherwise specified in the confirmation of order, the Company's ex works prices shall apply.
3. Price adjustments shall be permissible if more than four months separate the signing of a contract and an agreed delivery date. If wages, raw-material prices, other material costs, customs duties, taxes, other dues and/or freight charges increase or decrease thereafter, or if any such are introduced before the goods for delivery are produced, we are entitled and obliged in the case of either an increase or decrease in price to adjust the price commensurately in light of these factors. This applies even if a fixed price was agreed. The customer is entitled to rescind only if a price change exceeds the rise in the general cost of living between order placement and delivery more than merely in-



significantly. If the customer is a businessman or a corporate entity or special fund under public law, price adjustments are permissible on the above terms if more than six weeks have passed between order placement and the agreed delivery date.

4. Agreed prices shall be applicable to a specific order only. Unless otherwise agreed, these prices shall not be fixed for any repeat orders.

#### **§ 6 Terms of Payment, Set-off**

1. The purchasing price and/or payments and any consideration for ancillary services shall be payable within 8 days after the date of invoice, unless otherwise agreed. Should the Company be entitled to render part services, such services may be invoiced and payable within a uniform delivery contract by part invoices.
2. Orders shall be deemed completed on credit of payments to the Company's bank account.
3. Bank transfers, cheques and bills of payment shall be accepted for completion only. Acceptance of bills of exchange shall in all cases be subject to prior written agreement with the Company. Where bills are accepted, the discount and collection charges customary in the banking system are charged from the date on which the invoice amount is due. They are payable immediately in cash. A guarantee that the bill and cheque will be presented on time and the bill protested is precluded.
4. Cash discounts to be deducted from invoices, if separately agreed in writing, shall only be permitted subject to no other payment arrears existing from the parties' entire business relationship.
5. The Company shall be entitled to deduct payments initially from the Purchaser's oldest debts. Should costs and interests have been incurred, the Company shall be entitled to initially allocate payments to cover costs, followed by interests and then the principal.
6. The Purchaser shall only be entitled to offset the Company's accounts receivable by uncontested or legally confirmed counterclaims.
7. Should faults be found, the Purchaser shall only be entitled to retain part of the purchasing price equal to the value of such faults.
8. The Company shall be entitled to supply goods and/or to render services after payment by the Purchaser only, should the Purchaser not have abided by the terms of payment agreed for past deliveries or be in arrears with payments and/or should the Purchaser's solvency be questionable.
9. Irrespective of the due date of any bills of exchange accepted and credited, bills shall become payable at once should terms of payment not be met or should the Company become aware of any circumstances objectively suitable for reducing the Purchaser's creditworthiness. In this case, the Company shall also be entitled to complete any deliveries outstanding against prepayment only and to rescind from the contract after expiry of a suitable period of grace or to claim damages for default. In addition, the Company shall be entitled to forbid the sale or processing of any goods supplied and to demand their return or assignment of direct ownership in the supplied goods at the Pur-



chaser's expense and to revoke any authority for collection in compliance with § 8 para. 5.

10. Should difficulties occur in the transfer of an invoiced amount to the Federal Republic of Germany for any reason whatsoever, the Purchaser shall be responsible for any disadvantages caused. The purchaser shall be responsible for the currency risk from the date of the contract for any sales effected in foreign currencies. Should the agreed mode or channel of payment not be complied with, the Purchaser agrees to make payments according to the Company's choice.

### **§ 7 Delay**

1. The Purchaser shall be in delay should payments not be made at a point in time defined for payment in the contract or on receipt of a reminder from the Company, issued after the date on which the purchasing price becomes due. The above shall not affect any statutory regulation, according to which the debtor will be automatically in delay after a period of thirty days after receipt of an invoice.
2. Should the Purchaser delay payment, the Company shall be entitled to demand interests of five percent above the base lending rate from the due date and for any legal business, in which no end user is involved, interests of eight percent above the base lending rate. The statutory regulation, according to which a higher rate of interest may be claimed for any other legal reason and claiming of further losses/damages is not ruled out, shall remain unaffected by the above. In the event of delay in payment we may after advising the customer in writing suspend fulfilment of our obligation until the payments are received.

### **§ 8 Reservation of Title**

1. Any goods supplied shall remain the Company's property (goods supplied subject to reservation of title) prior to settlement of any accounts receivable, in particular any accounts receivable outstanding from balances due to supplies. This shall include any payments made to specifically designated amounts outstanding.
2. Any goods supplied subject to reservation of title shall be handled with due care.
3. The Purchaser shall be entitled to sell on any items supplied during ordinary business, for as long as his liabilities to the Company are met in due course. However, the Purchaser agrees to assign to the company at this point in time any accounts receivable due to him from any resale. After assignment, the Purchaser shall be entitled to collection of the said accounts receivable. This shall not affect the Company's authority to personally collect the said accounts receivable. However, the Company agrees not to collect the said accounts receivable for as long as the Purchaser duly honours his payment commitments.
4. Where the customer is entitled to recover the debt as trustee as part of normal business or remains so with our consent, it must be recovered into a bank account separate from the other bank accounts and kept for us in trust. The customer must take all necessary and reasonable actions to ensure that the third party's payment is not made into a different account. The customer is obliged to pay over to us amounts collected in respect of the assigned debts. On request the customer is obliged to provide documen-



tary evidence that a restricted-use trust account has been opened for the third-party funds collected by him.

5. The customer's entitlement to collect debts ceases if we revoke it in writing, if the customer does not meet his payment commitments out of the collected funds, or if an application is made for the opening of insolvency proceedings against the customer's assets or if he ceases making payments. In these cases we are entitled to collect the assigned debt ourselves. The customer is obliged to give us all the information needed for collection and to surrender the associated documents. In this case the customer is further obliged to apprise the debtors of this assignment.  
If the customer does not pay over to us amounts collected out of assigned debts, he is obliged to safeguard them for us in trust and without charge.
6. In the event of breaches of obligation by the customer, especially default in payment, we are entitled, after fruitless expiry of a reasonable time limit set for the customer for rendering what is due, to rescission and recovery of the goods; this shall not affect the statutory provisions concerning the dispensability of setting a time limit. The customer is obliged to surrender the goods.  
We are entitled to rescind the contract if the opening of insolvency proceedings against the customer's assets is applied for.
7. Processing or conversion of the goods by the Purchaser shall always be effected on behalf of the Company without any commitment being generated to the Company. Should any goods supplied be integrated into other items not being the property of the Company, the Company shall become the joint owner of the new item according to the proportional value of any of his processed items at the time of processing.
8. Should any goods supplied be inseparably mixed with other items not being the Company's property, the Company shall become the joint owner of the new item proportional to the value of the item supplied in relation to any other combined items. The Purchaser agrees to protect free of charge the said joint ownership on behalf of the Company.
9. The Purchaser shall neither be entitled to subject to liens any items supplied nor to use these as a security. For any liens, attachment or other disposal by third parties, the Purchaser agrees to notify the Company immediately and to provide to the Company any information and documentation required for guarding the Company's rights. Enforcement officers and/or third parties shall be notified of the Company's property. Should the goods be held in storage, the Company's title to the goods shall be notified to the storage provider prior to storage.
- 10 The Company agrees to release any securities due to the Company at the Purchaser's request, subject to their value exceeding any accounts receivable secured by more than 20%.
- 11 Should reservation of title or assignment in compliance with the law, in the jurisdiction of which the goods are held, not be effective, reservation of title or assignment, compliant with the law in that area, shall be deemed agreed. Should the Purchaser's support be required in this matter, the Purchaser agrees to take any action required for substantiation and upholding of the said rights.



### **§ 9 Delivery Dates, Scope of Delivery**

1. Agreed deliveries and dates shall be approximately only unless agreed as firm dates in writing.
2. The period of delivery shall commence on dispatch of a confirmation of order but not before all details of completion have been clarified and any other conditions to be met by the Purchaser have been met. The same shall apply to delivery dates. Delivery dates shall be deemed kept subject to readiness for shipment having been notified prior to their expiry or the item to be delivered having left the factory.
3. The period of delivery shall be extended by any action due to labour disputes, strikes, lockouts, government intervention, problems in material procurement, casting problems, scrap and reworking, disruptions in operations, lack of staff and transport and generally on occurrence of any unforeseen obstacles, including any delays not subject to the Company's control, according to the duration of the said events, including any delays in fixed deadlines and dates and any of these events occurring to subcontractors. For as long as the above obstacles prevail, no consequences of delays shall be applicable, although the Company may have been in delay on occurrence of the said events. Although the delivery period may have been exceeded, the Purchaser is obliged to accept the goods at the price agreed for the date of delivery.
4. Part deliveries and services shall be acceptable in principle, subject to not constituting an unfair disadvantage to the Purchaser or having been excluded by the Purchaser in writing on signature of the contract.
5. Claims for damages and the right of rescission due to delays in delivery or services or non-delivery or lack of services, shall be ruled out unless due to gross negligence. Claims shall be limited to any additional expenses incurred for covering the purchase of identical products by the Purchaser.

### **§ 10 Dispatch, Packaging**

1. In principle, the Company shall deliver "ex works". Goods shall always be dispatched at the Purchaser's expense and risk, including any consignments for which no freight is charged.
2. Any packaging used shall remain the Purchaser's property unless subject to compulsory statutory regulations specifying the contrary, and the cost of packaging and transport charges shall be invoiced separately by the Company. Selection of the mode of transport shall be subject to the Purchaser's due discretion.
3. Take-over by the forwarder shall be deemed conclusive proof for the correct condition of any outer packing.

### **§ 11 Acceptance, Transfer of Risk**

1. The Purchaser agrees to accept delivered items and to check these for any defects without delay.
2. Should the Purchaser be in arrears with the collection or acceptance of any goods supplied for more than fourteen days from receipt of a notice of readiness for shipment,



due to intent or gross negligence, the Company shall be entitled, after having set a period of grace of another fourteen days, to rescind from the contract and/or to claim damages. No period of grace need to be set should the Purchaser seriously and finally refuse to accept the goods or be obviously not in a position to pay the purchasing price.

3. The risk shall be transferred to the Purchaser on handover of the goods to the forwarder even if we have taken delivery.

## **§ 12 Faults, Warranty**

1. In compliance with § 377 HGB (German Commercial Code), notices of defects shall be sent in writing without delay, for obvious faults within an exclusion period of seven days after delivery to the Purchaser, for hidden faults within a period of three days after discovery. Any notices of defects initially made verbally (by telephone) by the Purchaser shall be notified again in writing within a period of eight days after verbal notification and include more details. The Purchaser agrees to examine any goods for completeness on delivery of the goods.
2. Use, application or processing by the Purchaser of any goods supplied shall be deemed acceptance of the goods and the Purchaser's waiver of any claims for faults or any other claims whatsoever from the said delivery.
3. Any goods delivered and subject to a notice of faults shall not be modified without the Company's agreement prior to the notice of faults having been dealt with. The Purchaser agrees to store the faulty goods with due care, to keep them available for inspection and to agree to provide the Company with samples on request. The Purchaser shall have no claim for compensation for storage charges or any other costs.
4. We must be given an opportunity to establish the reported fault. Rejected goods shall be returned to us promptly on request; we will meet the transport costs if the defect complaint is warranted. If the customer does not fulfil these obligations or makes changes without our consent to the goods already rejected, he forfeits any entitlements in respect of material defects.
5. Should a specific quality have been ordered or should the goods be sent to another addressee or country for and on behalf of Purchaser, the goods will have to be inspected and accepted on behalf of the Purchaser in the Company's factory prior to shipment, otherwise the goods shall be deemed delivered free from any liability when shipped.
6. The Purchaser shall notify the Company, should the Purchaser wish the Company to perform any tests required. The type and scope of tests shall be agreed on signature of a contract.
7. Production-related over- or under-deliveries are acceptable within an allowable limit of 10% of the total order volume. The total price alters according to their extent.
8. The Company shall not assume any guarantee for the suitability of any materials quoted by the Company for a scheduled application. On the contrary, the Purchaser shall be responsible in view of the scheduled application for the correct design subject to compliance with applicable safety regulations, the selection of material and required



test procedures, the correctness and completeness of technical delivery conditions and any technical documentation and drawings submitted to the Company, plus the construction of any manufacturing jigs supplied, including any modifications suggested by the Company, requiring the Purchaser's acceptance.

9. We accept no liability for material defects due to inappropriate or improper use, incorrect assembly and/or operation by the customer or third parties, normal wear and tear or incorrect or negligent treatment, nor for the consequences of improper changes/repairs or changes/repairs made by the customer or third parties without our consent. The same applies to defects which only insignificantly diminish the goods' value or usefulness.
10. In addition, the Purchaser shall be responsible for the protection of any third party patent or any other rights. The supplier is at liberty to prove to us that he is not to blame for infringing third-party rights. Where we are subsequently found liable to third parties, he shall indemnify us against all claims arising from the exercise of such industrial property rights and expenses necessarily incurred by us from or in connection with the claim made on us. We are not entitled – without the supplier's consent – to make any agreements, in particular to agree a compromise settlement.
11. Should faulty goods be supplied, the Company may at its discretion supply replacements, or, where possible, repairs. Goods subject to complaints may only be returned subject to prior agreement by the Company. Warranty rights shall be exclusively due to the Company's contracting parties. Assignment shall be excluded.
12. The Purchaser shall be entitled to reductions or rescission from the contract, should any period of grace set to the Company for retrospective completion (remedy of faults, redelivery, provision of spare parts) referring to a fault according to these terms and conditions of delivery, caused by the Company, expire with no effect, should retrospective completion fail or be unacceptable to one of the parties involved. Refund of expenses is precluded where expenditure increases because the goods were taken to another place after being delivered by us, unless this accords with the goods' intended use.
13. Liability for any faults shall be excluded unless explicitly listed in the above and if not caused to any items delivered as such. This shall exclude any damage/loss caused by intent or gross negligence of the Company's owners, executives or its agents or by culpable breach of essential contractual duties. However, in the latter case liability shall be assumed for typically sustained, foreseeable losses/damage only.
14. Furthermore, exclusion of liability shall not apply to cases in which claims are submitted, due to a faulty item supplied, for loss/damage to life or impairment of health or by privately used items, caused to objects. In addition, exclusion of liability shall not apply to any lack of assured properties, should these have been assured for securing the Purchaser against any loss/damage not caused to a supplied object as such.
15. For any goods delivered as new and subject to correct use, the period of warranty for businesses shall be twelve months after transfer of the risk to the Purchaser. Statutory periods of warranty shall apply to end users. Warranty shall be excluded for businesses for second-hand items and shall be limited to a period of twelve months for end users.



### **§ 13 Global Liability**

1. Any other liability for damages than scheduled in § 12 shall be excluded, irrespective of the legal nature of any claims submitted. This shall apply in particular to claims for loss of expected profit, damages caused on signature of a contract, for any other breach of duty or claims for compensation for material damage due to tortuous acts, in compliance with § 823 BGB.
2. The limitation in accordance with para. 1 shall also apply, should the Purchaser claim compensation for expenses incurred in vain instead of any claim for damages.
3. Should any liability for damages against the Company be excluded or limited, this rule shall also apply to any personal liability for damages of the Company's employees, representatives and agents.
4. This shall not affect the statutory provisions regarding the burden of proof.

### **§ 14 Samples, Tools, drawings**

1. As and when required, samples and tools shall be delivered to the Company's factory free of any charges for packaging and freight.
2. Should the Company make any samples or tools required for production, based on patterns submitted by the Purchaser, the Purchaser shall pay a share of the manufacturing costs, which shall be notified to him whilst the contract is negotiated and be charged after release. Irrespective of any share of the manufacturing costs being paid, the Company shall remain the owner of the manufactured tools.
3. The Company shall only be responsible for the correct use and storage of any samples and tools submitted to the Company. The owner of any samples and tools shall be responsible for insuring these against fire, flood damage and theft.
4. Samples that have not been used for five years or longer shall become the Company's property without any specific notification and may be destroyed in order to release the Company from any responsibility for these.
5. Where one Party supplies the other with drawings or technical documents relating to the goods to be supplied or their production, or with masters/patterns, these remain the property of the supplying Party.
6. Each Party will keep secret from third parties all records/materials (also including masters/patterns, models, tools and data) and knowledge obtained from the business relationship only for the joint purposes and with the same care as its own equivalent records/materials and knowledge, if the other Party designates them confidential or has an obvious interest in their being kept secret. This obligation starts when the records/materials or knowledge are first obtained and ends 36 months after the business relationship has ended.
7. The obligation does not apply to records/materials and knowledge which are in the public domain or were already familiar to the Party on receipt when it was under no obligation to maintain secrecy, or which were subsequently communicated by a third party



entitled to disclose them or which are developed by the receiving Party without making use of the other Party's records/materials or knowledge subject to secrecy.

**§ 15 Jurisdiction, Place of Performance**

1. The legal relationship between the Purchaser and the Company, although the Purchaser may be resident in another country, shall be exclusively based on German law. UN Purchasing Law shall be explicitly ruled out.
2. The place of jurisdiction and performance for businesses shall be Hagen (Westphalia, Germany).
3. If individual provisions in these General Terms and Conditions of Sale are or become void, this shall not affect the validity of the remaining provisions.