

Terms and Conditions of Sale and Delivery 01/2015

1. General and Scope

1.1 Our Terms and Conditions of Sale and Delivery apply to all business relationships with customers, provided the customer is a trader as defined in section 14 of the German Civil Code (BGB), a legal entity under public law or a special fund under public law.

1.2 Our Terms and Conditions of Sale and Delivery shall apply whether we ourselves or third parties fulfill the respective sales or delivery obligations.

1.3 Our Terms and Conditions of Sale and Delivery shall apply exclusively. We do not acknowledge any terms and conditions of the customer that may contradict or deviate from our Terms and Conditions of Sale and Delivery unless we have expressly agreed in writing to their application.

1.4 Our Terms and Conditions of Sale and Delivery shall also apply in cases where we execute the sale or delivery to the customer without reservation in the knowledge of customer's terms and conditions which contradict or deviate from our Terms and Conditions of Sale and Delivery. This shall not affect the precedence of individual agreements, which must always be made in writing.

1.5 Legally relevant statements and notices of the customer, such as setting of deadlines, notices of defects, notices of withdrawal or reductions of the purchase price, shall be made in writing as defined in section 126 of the German Civil Code (BGB).

1.6 References to the validity of statutory provisions serve clarification purposes. Even without such a clarification, the statutory provisions shall apply unless they are directly changed or excluded in these Terms and Conditions of Sale and Delivery.

2. Conclusion of the contract and content of the contract

2.1 All offers are non-binding and subject to confirmation. This shall also apply if we have furnished the customer with catalogues, technical documentation, drawings, plans, calculations, estimates, references to DIN standards or other documents relating to the performance of the services – also in electronic form – to the customer.

2.2 We shall be entitled to accept purchase orders of the customer within 3 weeks from the date of their receipt. Within this time the customer shall remain bound to adhere to the terms of the offer.

2.3 The contract can be accepted by written or electronic order confirmation, or implicitly by actual provision of the service by us.

2.4 Specifications relating to dimensions, weight, colour, material and fea-

tures are approximations unless they were expressly described or warranted as being exact figures prior to the acceptance of the contract.

3. Prices, terms of payment, delayed payment and set-off

3.1 Should nothing to the contrary be agreed in special cases, our prices are quoted "ex works" net of valid value-added tax and any applicable customs duties.

3.2 Invoice amounts are immediately due for payment and shall be paid within 30 days without deduction. The deduction of cash discounts shall be subject to a separate written agreement.

3.3 Agreed prices shall not apply to subsequent orders. These must be agreed on a case-by-case basis.

3.4 If the customer is in default of payment, it shall be obliged to pay interest on arrears of 8 percentage points above the applicable base lending rate. If we are able to prove that we have incurred a greater damage due to the default of payment, we shall be entitled to assert this higher damage by way of supplement. In this case, the customer is entitled to prove that we have to the contrary incurred no damage or substantially lower damage as a result of delayed payment.

3.5 The customer shall only be entitled to offset payments in cases where its counter-claims are established by due legal process, uncontested or acknowledged by us.

3.6 The customer shall only be entitled to exercise a right of retention to the extent that either its counter-claims are based on the same contractual relationship or a legally binding decision declares the entitlement to the counter-claims or the counter claims are undisputed or acknowledged.

3.7 We shall be entitled to make sales or deliveries conditional upon advance payments or security deposits if we learn of circumstances which considerably diminish the customer's creditworthiness from an objective point of view or which endanger the payment of our receivables.

4. Delivery period, delay in acceptance, shipping

4.1 The delivery period shall depend on the contractual scope of delivery in each case. For an event of default to occur the customer must issue a reminder.

4.2 Should we be unable to keep to delivery periods through no fault of our own, the customer will be informed of this situation without delay. Provided it is objectively possible and economically practical, a new delivery date will be advised. If the delivery still cannot be made by the new delivery date, we shall

be entitled to withdraw entirely or partly from the contract. This shall apply particularly in the event that one of our own supplier's fails to make timely delivery to us, provided we have concluded a congruent covering transaction ("kongruentes Deckungsgeschäft") to perform the service. Statutory rights to withdraw from the contract and other statutory regulations, including but not limited to those relating to the exclusion of the duty of performance in the case of impossibility or unreasonableness of performance/subsequent performance, shall remain unaffected.

4.3 Should the customer delay acceptance or be in breach of any other duty of cooperation, or should the delivery be delayed for other reasons for which the customer is responsible, we shall be entitled to demand compensation for any damages incurred by us, including any increased expenses such as storage and additional transport costs. In such cases, the risk of accidental loss or accidental impairment to the delivery shall pass to the customer.

4.4 The passing of risk shall occur upon handing over the consignment to a forwarding agent. Delivery and passing of risk shall take place ex works Ostfildern, carriage prepaid, and the choice of forwarding agent, including means of transport and transport routes, shall be at our discretion, taking the legitimate interests of the ordering party into consideration.

4.5 For deliveries under EURO 135.00 we reserve the right to forward the order to a distributor and to charge pro-rated handling costs of EURO 25.00 per order.

4.6 Should the customer request a special means or method of shipment, any increased costs incurred as a result shall be borne by the customer. In the case of scheduled or call-forward orders, risk passes to the recipient upon placement of the goods ready for delivery. Individually produced packaging required for custom orders due to non-standard dimensions shall be invoiced at cost price. Return delivery of non-standard packaging is not possible.

5. Return of goods and modification of custom orders

5.1 Return of duly delivered goods is only possible with our prior written consent. Damaged goods cannot be returned.

5.2 For goods duly returned with our consent, we shall be entitled to levy a reasonable flat fee to cover administrative costs, inspection and repackaging when we take the goods back and issue a credit note.

5.3 In the event of a modification to ordered custom produced items, the ordering party shall bear the costs incurred due to the modification and

pay the agreed remuneration less any costs saved by us as a result of the discontinuation of the contract.

6. Warranty claims, notification of defects

6.1 The customer may only assert warranty rights if it has properly complied with its duties of inspection and complaint in accordance with section 377 of the German Commercial Code (HGB).

6.2 We must be notified of defects in writing without delay. Given the fact that an earlier notification is unreasonable to the customer in a particular case, notification within at the latest 10 days shall be deemed without delay, the timely dispatch of notice being sufficient to keep to the time limit. If the customer fails to notify us of the defect within the time limit, any liability for the defect not notified shall be excluded.

6.3 In the event of a defect, we shall at our choice be entitled to remedy the defect or at our option to deliver a replacement. The customer shall grant the time needed and opportunity to remedy the defect or deliver a replacement, and in particular shall allow us to investigate the complaint.

6.4 In urgent cases the customer shall be entitled to rectify the defect itself and demand that we reimburse the necessary costs of such rectification. We shall be notified without delay, if possible in advance, that the customer has elected to remedy the defect itself. The entitlement to a reimbursement of the costs shall not exist if we would have been entitled to refuse any corresponding subsequent performance.

6.5 The customer may only assert claims for damages or reimbursement of unfruitful expenses under the liability provisions contained in these Terms and Conditions of Sale and Delivery.

7. Period of limitation

7.1 Contrary to section 438 par. 1 (3) of the German Civil Code (BGB) the general period of limitation for the assertion of customer claims due to defects of quality or legal defects of title shall be one year from the date of delivery. In case that the provisions of sect. 438 par. 1 (2) apply, the general period of limitation shall be unaffected.

7.2 The foregoing period of limitation shall also apply to contractual and non-contractual damage claims resulting from a defect in the service performed. Moreover, damage claims are governed by the statutory limitation periods. The limitation periods of the Product Liability Act shall remain unaffected in any event.

8. Limitation of liability

8.1 We accept unlimited liability in case

of intent or gross negligence, in case of culpable injury to life or limb or damage to health, according to the provisions of the Product Liability Act and within the scope of independent (manufacturer's) guarantees. Our liability for the violation of obligations, the fulfilment of which are essential for proper contract execution and on which the customer may regularly rely, also remains unaffected.

8.2 In the case of simple negligence of an obligation our liability shall be limited in amount to the compensation of foreseeable, typically occurring damage.

8.3 Foreseeable, typically occurring damage as defined in the above paragraph is in all cases limited to a maximum amount of EUR 5,000,000.00.

8.4 The above-mentioned limitations of liability shall also apply to the benefit of our employees, vicarious agents and management bodies.

9. Reservation of title

9.1 We reserve title in the delivered goods until payment in full of all claims under the contract. We shall be entitled to demand that the delivered goods be returned if the customer acts in violation of the contract.

9.2 The customer shall handle the delivered goods with care as long as title has not passed to the customer.

9.3 As long as title has not yet passed to the customer, the customer must immediately notify us in writing if the delivered goods are to be seized or subjected to any other intervention of third parties.

9.4 The customer is entitled to resell the reserved goods in the ordinary course of business. It shall not be otherwise authorised to dispose of such goods, in particular by pledging them or assigning them by way of security. The customer hereby assigns to us all receivables due from the buyer from the resale of reserved goods in the amount of the final invoice (including value-added tax) agreed with us. Such assignment shall apply regardless of whether the goods have been re-sold without or after processing. The customer shall remain authorised to collect the receivables after the assignment. This shall not affect our entitlement to collect the receivables ourselves. However, we will not collect them as long as the customer meets its payment obligations in connection with the proceeds of the resale, is not in arrears with payment and, in particular, if it has not petitioned for bankruptcy or stopped payments.

9.5 If the goods are processed with other goods not belonging to us, we shall acquire a co-ownership of the new product proportional to the objective value of our goods in relation to the

other processed items at the time of processing. The same shall apply in the event that our goods are merged with other goods. If the merging takes place in such a way that the customer's item must be considered to be the main item, it shall hereby be deemed agreed that the customer shall transfer to us a proportional co-ownership and hold the sole property or joined property thus created in safekeeping on our behalf.

9.6 The customer shall, at our request, provide appropriate insurance at its own expense against normal risks for the goods belonging to us, and shall cede any insurance claims to us. We shall also be entitled to pay the insurance premiums on customer's account.

10. Copyrights

10.1 We reserve all ownership rights, copyrights and other industrial property rights to our descriptions of services and deliveries such as those concerning weights, dimensions, values in use, power rating, tolerances and technical data and to our representations of the same, such as drawings, illustrations, calculations, leaflets, catalogues and models and other documents and aids. The customer is not entitled to make these accessible to third parties, to disclose them or to use or reproduce them either itself or via third parties without our written consent.

10.2. Upon our request the customer shall return our descriptions of services and deliveries and our representations of the same and destroy any copies which it might have made.

11. Export, export control regulations and final use

11.1 According to our business philosophy and company policy our products are intended solely for export and use within the scope of national and international legal obligations and to serve sustainable development in the world. Our products must therefore be used exclusively for civil and non-nuclear applications, and may not be used in whole or in part in nuclear or military applications, including but not limited to ABC-related applications, or be exported for a use of this kind. Their re-sale to embargoed countries or to Barred Persons is also not permitted.

11.2 The customer assures, by way of an independent promise of guarantee, that all products on its premises or on the premises of the final customer are used exclusively in civil and non-nuclear applications and not in nuclear or military applications, including but not limited to ABC-related applications, that our products will not be exported to embargoed countries or supplied to Barred

Persons and that our products will not be used or exported in such a manner that they do not comply with legal or governmental authorisation procedures or prohibitions such as for example the EC Directive No. 428/09 (Dual Use), German foreign trade legislation, German foreign trade regulations or the German War Weapons Control Act.

11.3 The customer is aware that the use of our products, in their entirety or in part, on the customer's premises or on the premises of the final customer for nuclear or military purposes, including but not limited to ABC-related purposes, or in embargoed countries or by Barred Persons is not only subject to the reservation of statutory powers but is hereby expressly prohibited by the contract. In the event of violations we shall be entitled to rescind the contract, and we expressly reserve the right to assert further claims and in particular damage claims.

11.4 We shall be entitled, at any time after giving prior notice, to inspect the customer's compliance with its legal and contractual obligations within a reasonable period of time. If we have sufficient suspicions that it has failed to comply with such obligations, the customer shall be obliged to furnish us without delay with all information necessary to review compliance with said prohibition. If the customer has its own doubts regarding its compliance with the foregoing obligations or regarding compliance by the final customer, it shall notify us immediately thereof in writing.

11.5 We shall be entitled to withhold our services if the customer infringes an obligation stated in the foregoing paragraphs or if sufficient suspicions regarding non-compliance or own doubts of the customer exist.

11.6 Besides the foregoing obligations, the customer shall ensure at any time at its own expense that it has the export and customs authorisations that may be needed for exporting products purchased from us. We shall not be liable for the legitimacy of exporting the products and their compliance with legal and technical regulations of the importing country. The customer hereby holds us harmless from and against any claims and claims for compensation in this respect.

11.7 In connection with exports to the U.S.A., we hereby advise the customer that the products may additionally be subject to the special U.S. Export Administration Regulations. The customer shall not export, re-export or transfer the products contrary to U.S. laws, whether directly or indirectly, and will not cause, facilitate or otherwise

approve third parties in doing so. The customer shall vouch at all times that neither the U.S. Bureau of Industry and Security nor any other federal agency has revoked, suspended or denied its relevant export privileges.

11.8 Our products are regularly not approved for aeronautic or aerospace applications. Should the customer intend to use them for such an application, we must be notified thereof in writing. We will then consult with the customer to discuss the possibility of manufacturing a corresponding custom order and if necessary conclude a separate project agreement.

12. Data protection

Personal data shall be used in compliance with the statutory regulations. In particular, personal data shall only be used after the persons concerned have given their consent and have been informed of their right to object informally at any time.

13. Written form and subsidiary agreements

13.1 Changes to these Terms and Conditions of Sale and Delivery and to the underlying contracts must be made in writing.

13.2 Oral subsidiary agreements and amendments to these Terms and Conditions of Sale and Delivery and to the underlying contracts shall require our written confirmation within 14 days to be effective.

14. Place of performance, legal venue, applicable law

14.1 Ostfildern shall be the place of performance and the exclusive – also international – place of jurisdiction for all disputes arising from or in connection with these Terms and Conditions of Sale and Delivery or the underlying contracts. We shall, however, also be entitled to file an action at the court having jurisdiction at the customer's registered place of business.

14.2 The law of the Federal Republic of Germany shall be applicable to the contractual relationship between us and the customer.

15. Severability clause

Should any of the above provisions be or become invalid, this shall not affect the validity of the remaining provisions.