

## Conditions of sale and delivery

### Preamble

As a basic rule, we supply entrepreneurs within the meaning of § 14 BGB (German Civil Code), legal entities under public law and funds under public law only according to the following conditions of sale and delivery. If in exceptional cases other conditions – in particular purchasing conditions of the recipient - are to be valid, then this requires our previous, explicit written confirmation.

### § 1 Offer and acceptance

- a) Our offers are made without engagement. Orders are first binding for us when and to the extent that we have confirmed them in writing or started their execution. Verbal agreements, assurances and guarantees of our employees – with the exception of executive bodies and holders of a general commercial power of attorney – in connection with the closure of the contract first become binding with our written confirmation. The waiver of the requirement of written form must also be made in writing.
- b) Supplementary remarks describing the goods such as “about the same”, “as previously supplied”, “as in the past” or similar remarks in our offers only relate to the quantity or to the quality of the goods, not however to the price. We shall understand such remarks in orders we receive correspondingly and any confirmation is also made in this sense.
- c) Quantity volumes are always approximations. Due to safety considerations or filling methods, deviations of 10 % +/- are as per agreement for deliveries in mounted tanks, tankers and silo vehicles. Such volume deviations will be fully accounted for by correspondingly increasing or reducing the invoice sum.

### § 2 Purchase price and payment

- a) Our prices are always subject to addition of VAT at the respective legally valid rate. The calculation is made on the basis of the volume or weight determined by us or our supplier. The calculation can however be made on the basis of the volumes or weights determined by the recipient if this determination is carried out using calibrated instruments and the goods have been transported at our risk.
- b) The purchase price falls due upon delivery of the goods net without deduction – insofar as nothing else has been agreed in writing.
- c) We reserve the right, from the due date onwards, to charge default interest of 5 percentage points above the basic interest rate.
- d) In the case of delays in performance, we charge interest on arrears at 8 percentage points above the basic interest rate and reserve the right to claim compensation for any further damages.
- e) Cheques and bills of exchange are accepted as conditional payment; they are recognised as payment after they have been honoured unconditionally. Any bank fees in this connection are for the account of by the purchaser.
- f) The purchaser may only set off counterclaims against our payment price which are undisputed or legally enforceable. The purchaser is only entitled to rights of retention which have arisen from the same contractual relationship.
- g) If the purchaser is in arrears in paying an invoice of ours – and this is significant sum in terms of the business relationship (20 % of the total invoice sum for one month calculated as the average of the 12 months preceding the beginning of the delay), then all our claims from the business relationship become due immediately – irrespective of any acceptance of bills of exchange. We are further entitled to demand cash payment before making any further deliveries. If the delay in payment is not remedied – even within an appropriate extension of term – then we are entitled to withdraw from the contract and claim compensatory damages for the delay or non-performance. This applies in particular to agreed further business which has not yet been carried out. If facts become known to us which indicate a significant deterioration in the purchaser's financial situation, we are then entitled to demand cash payment before delivery of goods. This is the case even if previously otherwise agreed. All our valid claims from the current business relationship become due.

### § 3 Delivery

- a) The agreed delivery periods and dates are always considered to be approximate unless a fixed date has been specifically agreed.
- b) For deliveries which do not come from our premises (drop shipment business), delivery dates and periods are considered to have been fulfilled if the goods leave the supplying works in time for them to reach their destination on time allowing for the usual shipping period.
- c) Occurrences of force majeure – including public legal restrictions, strikes and lockouts – entitle us to withdraw from contracts. In such cases, no damages for breach of duty may be claimed. This also applies when, through no fault of our own, goods from our suppliers are late in arriving. We are obliged to inform the purchaser about such events without delay and the purchaser is also entitled to withdraw from the contract.
- d) If we are late in delivering, the purchaser is obliged to grant us an appropriate additional period of time. If this elapses without the delivery taking place, the purchaser may withdraw from the contract. He may only claim damages for breach of duty in this case if the delivery delay was due to at least a negligent breach of essential contractual obligations by our legal representative or by a person employed by us.

### § 4 Dispatch and acceptance

- a) The transport risk from the site of delivery is always for the account of the purchaser. This also applies in cases where freight is prepaid or free domicile except for when we carry out the transport with our own vehicles from our factory or warehouse.
- b) By collection from the site of delivery, the purchaser or his agent is responsible for loading the vehicle and adhering to the legal requirements concerning the transport of dangerous goods.
- c) Unloading and storing the goods is always the responsibility of the purchaser.
- d) For deliveries in tankers and mounted tanks, the recipient is responsible for ensuring that his tanks or other storage containers are in technically perfect condition and is also responsible for the filling connections to his own storage system. Our obligations are limited to the operation of the delivery vehicle's own equipment.
- e) Insofar as our employees provide additional assistance in unloading or discharging and cause damage to the goods or other damage in the process, then these persons are deemed to be acting at the sole risk of the purchaser and not on our behalf.
- f) The above regulations apply accordingly to deliveries by third party carriers if a seller's liability can be deduced from their behaviour. The third party's liability remains unaffected.

### § 5 Packaging

- a) Insofar as our deliveries are carried out in loan containers, these are to be returned to us the by the purchaser not more than 30 days at the latest after their arrival at the purchaser. The returned containers must be empty and in excellent condition and returned at the purchaser's cost and risk or, if applicable, be returned free our vehicle against confirmation of receipt.
- b) If the purchaser does not fulfil the obligation according to a) in due time we are authorised to charge a suitable fee for the time exceeding 30 days. After then setting a deadline for return with no result we are further authorized to demand the replacement price of the container – crediting the aforementioned fee.
- c) Fixed labels and markings may not be removed. Loan packaging may not be exchanged or filled with other materials. The purchaser is held liable for deterioration of value, substitution or loss irrespective of fault. The judgement here is based on our findings upon the arrival of such loan packaging at our premises. Use as a storage container or passing on to third parties is inadmissible unless this has been previously agreed in writing.

d) In case of delivery in tank wagons, the purchaser, on his own responsibility, must ensure that they are emptied and returned to us or to the given address as quickly as possible. In cases of standstill times at his premises for which the purchaser is responsible, the hiring fee for the tank wagons during this idle time goes to the purchaser's account.

#### **§ 6 Retention of title**

- a) The title to the goods is first transferred to the purchaser upon full payment of the purchase price and all other debts including future debts arising from the business connection with us. This also applies if payments are made against specially designated debts. If an invoice is still outstanding the retained title shall serve as a security for the balance due to us. Title finally transfers to the purchaser at the latest when we definitely have no more claims against him.
- b) As long as the purchaser correctly performs his obligations towards us he is authorised to further use conditional goods in normal business practice under the provision that his claims from the resale according to e) are transferred to us.
- c) If the purchaser fails to fulfil his payment obligations, even after being given more time, we are authorised to claim repossession of the conditional goods without granting further payment time and without notice of cancellation. If necessary, we are entitled to enter the purchaser's premises for the purpose of seizing the goods.
- d) Processing or conversion of the conditional goods is carried out on our behalf without putting us under any obligation. We are considered the manufacturer in the sense of § 950 BGB (German Civil Code) and acquire ownership of the intermediate and end products in proportion to the invoice value of our conditional goods to the invoice values of the third party goods; to this extent, the purchaser holds in safe custody, on our behalf and free of charge. The same applies to combination or mixing of conditional goods with third party goods in the sense of §§ 947, 948 BGB.
- e) As security for all our claims, the purchaser hereby assigns to us any claims arising from resale of the conditional goods to third parties. If the purchaser sells goods of which we only have partial ownership according to letter d), he assigns to us his claims against third parties in the corresponding partial sum. If the purchaser uses the conditional goods within the scope of a contract of work (or similar agreement), the purchaser assigns the claim (remuneration for work) to us for the sum of the invoice value of our goods used here.
- f) In the normal course of business, the purchaser is entitled to collect claims arising from the further use of conditional goods. If facts come to our knowledge which indicate a significant deterioration in the purchaser's financial situation, then, upon request from us, the purchaser must inform his customers of the assignment, refrain from disposing of the debts in any way, give us all the necessary information about his inventory of goods which are our property and the claims assigned to us, and shall provide us with the necessary documents to enforce the assigned claims. We must be informed immediately about any third party seizure of the conditional goods or the assigned claims.
- g) If the value of our securities exceeds the total claim against the purchaser by more than 10 %, then, at the request of the purchaser, we are obliged to release excess securities of our choice.

#### **§ 7 Warranty rights, purchaser's obligations to inspect and give notice of defects**

- a) According to the relevant legal regulations, we are liable for quality defects and in this case must either provide subsequent performance (repair or replacement supply) or alternatively grant a purchase price reduction if, in addition to the legal requirements, the following prerequisites are fulfilled:
- 1) The purchaser must inspect the goods and packaging immediately upon delivery according to the usual commercial practice. If the goods are delivered in packages the customer must in addition check the labelling of each individual package to ensure that it corresponds with the order. Moreover, before discharging, the purchaser must make sure that the contents correspond to the order by taking a sample according to usual commercial practice.
  - 2) Any defects determined by the purchaser's examination must be notified to us in writing without delay.
  - 3) If the purchaser does not carry out the necessary examinations or if a discovered or discoverable deficit is not reported as soon as possible the goods are considered to be approved. This also applies in the case of the mistake of wrong delivery - even if the variation is so large that the approval by the purchaser could not be expected.
  - 4) In cases of hidden deficits, the purchaser must inform us about these immediately after they have been discovered. Otherwise the goods are considered to have been approved in this respect.
- b) The right of the purchaser to withdraw from the contract due to a quality defect under the provisions of § 437 No. 2 BGB (German Civil Code) remains unaffected.
- c) We are liable for damages or for the replacement of wasted expenditure in cases of quality defects according to the following § 8.

#### **§ 8 Liability for damage**

- a) The provisions of product liability law remain unaffected by the following conditions as does our liability in cases of our negligent breach of contract where there is injury to life and limb and impairment of health.
- b) We are liable as follows for damage caused to the purchaser's property and objects under his legal protection by defects of the goods purchased from us, including packaging deficits and wrongly delivered goods:
1. If the damage could have been avoided by adherence to the customer's inspection obligation, then any liability on our part is excluded unless the damage was caused by the deliberate behaviour of our legal representative. An alteration of the burden of proof to the disadvantage of the purchaser is not implied by this regulation.
  2. If damage occurs although the purchaser fulfils his inspection obligation, we are only liable for deliberate or grossly negligent breaches of contract.
- c) We are only liable for other damage than that regulated above – no matter what is the reason for liability such as illicit action or breach of contract – if this has been caused by a deliberate or grossly negligent action on our part or that of our legal representative.
- d) We are not liable for the suitability of the goods for the intended purpose of the purchaser unless the intended purpose has been designated in writing as part of the contract. Insofar as we provide advice about applications, give information or recommendations etc., we are only liable for grossly negligent wrong information etc. if this has been given in writing.
- e) Warranty claims regarding the delivered goods become statute-barred after one year.

#### **§ 9 Place of jurisdiction, applicable law, salvatory clause**

- a) The place of jurisdiction is the seat of our company.
- b) The law of the Federal Republic of Germany applies excluding the UN purchasing regulations in the version current at the time (United Nations Convention on Contracts for the International Sale of Goods, CISG, dated 11th April 1980).
- c) In case any part of the above clauses should be or become ineffective, such provisions are to be replaced by provisions which come as close as possible to the original commercial purpose of the contract – taking appropriate account of the interests of both parties.