

## **I. Conclusion of a Contract**

1. All the supplier's offers, services and deliveries shall be based on these General Terms and Conditions of Business and any separate contractual agreements entered into. Deviating, conflicting or supplementary General Terms and Conditions of Business of the ordering party or a third party shall become part of the contract only if and insofar as the supplier has expressly consented to their application. This requirement of consent shall apply in any event, even if, for example, the supplier carries out the delivery to the ordering party without any reservations despite being aware of the ordering party's General Terms and Conditions of Business.

It is hereby agreed that these General Terms and Conditions shall also apply to the conclusion of future transactions with the ordering party.

2. The supplier's offers shall be subject to change without notice and to written confirmation of the order, unless otherwise expressly stipulated in writing.
3. In the absence of specific agreement, a contract shall come into effect when the supplier gives written confirmation of the order.

This shall also apply to all collateral agreements, consultations and assurances of any kind, as well as in particular to agreements under which these General Terms and Conditions of Business are deviated from.

4. The documents forming part of the offer, such as illustrations, drawings, weights and measurements, shall apply only on an approximate basis, unless expressly designated as binding. The supplier shall retain rights of title and copyrights in cost estimates, drawings and other documents. Such cost estimates, drawings and other documents shall not be made accessible to third parties. Plans designated as confidential by the ordering party shall be made accessible to third parties by the supplier only with the ordering party's consent.
5. Commitments made verbally by the supplier prior to the conclusion of the contract shall not be legally binding, and any agreements made verbally between the parties to the contract shall, unless it is expressly stated therein that these will continue to be binding in each case, be superseded by the written contract.
6. Supplements and amendments to the contract concluded, including these General Terms and Conditions of Business, shall only be effective in writing.

## **II. Prices**

1. Unless otherwise agreed upon, the prices shall apply subject to change without notice, in euros, ex supplier's works, plus packaging, carriage, freight, unloading and installation charges. Unless value-added tax is shown separately, prices shall be deemed to be net prices excluding value-added tax. The respective valid rate of value-added tax shall be taken into account when invoicing.
2. Insofar as the agreed prices are based on the supplier's list prices, and delivery is not to take place until more than four months after the conclusion of the contract, the supplier's list prices valid at the time of delivery (less an agreed percentage-based discount or fixed discount in each case) shall apply.

3. The packaging shall - if agreed upon - be made by the supplier in the design customary in the trade, be charged at cost price and be non-returnable.
4. In the case of export deliveries, the ordering party shall bear any customs duties and charges and other public levies.

### **III. Payment Terms**

1. Unless otherwise agreed upon, amounts invoiced shall be paid, in cash or by bank-transfer without any deduction, free of charge to the supplier's point of payment within 14 days of invoicing and delivery or formal acceptance. Payment by cheque is hereby excluded, unless separately agreed upon in the individual case concerned.
2. In the event of default in payment, the supplier shall be entitled to demand, from the due date onwards, interest at the rate of 9 % above the base interest rate. The right to assert a claim for higher interest and further loss in the event of default shall remain unaffected hereby.
3. All the supplier's claims shall fall due immediately, if the ordering party fails to meet the set payment periods, or if, after the contract has been concluded, the supplier becomes aware of circumstances that are, in its view, likely to reduce the ordering party's credit-worthiness. In such case, the supplier shall, additionally, be entitled to demand full payment or sufficient security and, provided that the statutory prerequisites are met, rescind the contract and demand damages.
4. The ordering party shall have the right to withhold payments or set off with counter-claims only insofar as its counter-claims are undisputed or have been determined by a final and non-appealable court judgement.

### **IV. Delivery and Delivery Period**

1. Unless otherwise agreed upon, deliveries shall take place ex supplier's works.
2. The delivery period shall ensue from the individual agreements made between the parties to the contract. A prerequisite for adherence to the delivery period by the supplier is that all commercial and technical issues between the parties to the contract must have been cleared up, and the ordering party must have fulfilled all obligations falling to it, e.g. by providing the official certificate or permit required or by making a down payment. If this is not the case, the delivery period shall be appropriately extended. This shall not apply insofar as the supplier is at fault for the delay.
3. The set delivery period shall be deemed met, if the delivery item has left the supplier's works, or notification of readiness for shipment has been given, by the time when this period expires. Insofar as formal acceptance is required, the set date for formal acceptance or alternatively the date of notification of readiness for formal acceptance shall - except in the case of any justified refusal of formal acceptance - be decisive.
4. The supplier shall not be liable for impossibility of delivery, or for delays in delivery, insofar as such impossibility or delays have been caused by force majeure or other events that were unforeseeable at the time of the conclusion of the contract (e.g. strike or lockout, non-delivery or late delivery by the supplier's supplier (congruent covering transaction)) and for which the supplier is not at fault. Insofar as such events make it

considerably more difficult or impossible for the supplier to deliver, the supplier shall be entitled to rescind the contract. In the event of temporary hindrances, the set delivery period shall be extended by the duration of the hindrance plus a reasonable start-up period.

5. If shipment is delayed at the ordering party's request, or if the risk has passed to the ordering party, the ordering party shall, from one month after notification of readiness for shipment, be charged for the storage costs incurred. In the case of storage at the supplier's works, this charge shall be 0.5 % of the total net invoice amount per month. The right to assert and prove claims for further or lower storage costs shall remain reserved.
6. The supplier shall be entitled to make sub-deliveries, if
  - i. the Ordering Party is able to use such sub-delivery for the purpose intended under the contract,
  - ii. it has been ensured that the residual goods ordered will be delivered, and
  - iii. no considerable extra expenditure or additional charges are incurred upon the ordering party as a result thereof (unless the supplier has agreed to bear these costs).

#### **V. Passage of Risk, Taking Receipt**

1. Unless otherwise agreed upon, the risk shall pass to the ordering party no later than when the delivery item is loaded at the supplier's works or is posted, even if sub-deliveries are carried out, or the supplier has agreed to bear other costs, e.g. shipping costs. The ordering party shall ensure secure transportation, unless otherwise agreed upon.

At the ordering party's request, the supplier shall, at its expense, insure the consignment against theft, breakage, transport damage, fire damage, water damage and other insurable risks. Insofar as formal acceptance is required, formal acceptance shall be decisive for the passage of risk. The acceptance test shall be carried out without undue delay, by the set date for formal acceptance, or alternatively following the supplier's notification of readiness for formal acceptance.

The ordering party shall not refuse formal acceptance on the grounds that an insignificant defect exists.

2. If shipment or formal acceptance is delayed, or fails to take place, owing to circumstances for which the ordering party is at fault, the risk shall pass to the ordering party from the day of readiness for shipment or formal acceptance. However, the supplier shall, at the ordering party's request and expense, bring about the insurance requested by the ordering party.
3. Notwithstanding the ordering party's rights, the ordering party shall take receipt of items delivered even if they contain insignificant defects.

#### **VI. Retention of Title**

1. The supplier shall retain title to the delivered items until all present and future claims based on the supply contract and the ongoing business relationship have been settled. If

the ordering party conducts itself in breach of the contract, in particular by failing to pay the purchase price due, the supplier shall, subject to the statutory provisions, be entitled to rescind the contract and reclaim possession of the goods on the basis of the retention of title and this rescission. After the item purchased has been repossessed, the supplier shall be authorised to realise this item. The proceeds from such realisation shall be set off against the ordering party's liabilities, less reasonable realisation costs.

2. Until the claims secured have been fully paid, the goods delivered under retention of title shall not be pledged to third parties or assigned as security. The ordering party shall promptly notify the supplier in writing, if an application for the institution of insolvency proceedings has been filed, or insofar as third parties have seized (e.g. taken in execution) the goods belonging to the supplier.
3. The ordering party shall, until revoked by the supplier, be entitled to resell and/or process in the ordinary course of its business the goods under retention of title. The retention of title shall extend to the products - at their full value - resulting from any processing, mixing or combining of our goods. In this respect, the supplier shall be deemed to be the manufacturer. If the goods under retention of title are processed, mixed or combined with goods belonging to the ordering party or third parties, the supplier shall acquire joint title in relation to the net amounts invoiced for the goods processed, mixed or combined. In case the supplier does not acquire such title, the ordering party hereby transfers to the supplier in advance, as security, its future title or - in the ratio referred to above - joint title to the product. In all other respects, the resulting product shall be subject to the same terms as those applicable to the item delivered under retention of title. The ordering party hereby assigns to the supplier in advance as security, in total or in the sum of any joint title held by the supplier, the claims resulting against third parties from any reselling of the goods or the product. The supplier hereby accepts this assignment. The same shall apply to other claims that arise in place of the goods under retention of title or that otherwise ensue in respect of these goods, e.g. insurance claims or tort claims in the event of loss or destruction. The ordering party's duties specified in Section 2. shall also apply with regard to the claims assigned to the supplier. In addition to the supplier, the ordering party shall remain authorised to collect the claims. The supplier shall not collect the claims as long as the ordering party meets its payment obligations in relation to the supplier, and there is no deficiency in its ability to pay. If this is the case, the supplier may demand that the ordering party inform the supplier of the claims assigned and the debtors concerned, provide all information necessary for collecting the claims, hand over the documents relating thereto and give the debtors notification of the assignment. Additionally, the supplier shall be entitled to revoke the ordering party's authorisation to resell and process the goods that are under retention of title.
4. Insofar as the items delivered are under retention of title, the ordering party shall treat these with care. In particular, it shall, at its own expense, sufficiently insure these, on a replacement value basis, against fire damage, breakage and theft. In so far as servicing and inspection work is necessary, the ordering party shall carry this work out in due time at its own expense.

## **VII. Assembly**

Insofar as the supplier agrees to additionally carry out assembly work on the ordering party's items delivered, this work shall, at the contractually agreed hourly rate, be remunerated on the basis of the necessary expenditure actually incurred. If an hourly rate has not been agreed upon, the customary fee shall apply.

#### **VIII. Liability for Defects in the Delivery**

1. The warranty period shall be one year from the time of delivery or, insofar as formal acceptance is necessary, formal acceptance. This warranty period shall not apply to damage claims of the ordering party arising from mortal injury, physical harm or health damage or from intentional or grossly negligent breaches of duty on the part of the seller or its authorised agents; such claims shall become statute-barred in accordance with the statutory provisions in each case.
2. The items delivered shall be diligently inspected without undue delay after having been delivered. They shall, in respect of any obvious defects or in respect of other defects that would have been evident upon prompt diligent inspection, be deemed approved by the ordering party, unless the supplier receives written notification of defects within seven business days of delivery. In respect of other defects, the items delivered shall be deemed approved by the ordering party, if no notification of defects is received by the supplier within seven business days of a defect having become apparent. If the defect was already evident to the ordering party at an earlier point in time during normal use, this earlier point in time shall be decisive for the commencement of the time limit for giving notification of defects.
3. If component parts from other manufacturers are defective, and the supplier is unable to monitor and eliminate these defects for reasons relating to licence law or for factual reasons, the supplier shall, at its option, assert or assign to the ordering party its warranty claims against the manufacturer and the supplier's supplier for the ordering party's account. In the case of such defects, the existence of warranty claims against the supplier shall, subject to all other prerequisites and to these General Terms and Conditions of Business, be conditional upon judicial enforcement of the aforementioned claims against the manufacturer and the supplier's supplier having been unsuccessful or, owing to insolvency for example, having no prospect of success.
4. The ordering party shall, after having consulted the supplier, give the supplier the time and opportunity necessary for carrying out all rectifications or replacements that the supplier considers to be necessary at its reasonable discretion. If rectification or replacement fails, i.e. is impossible or unreasonable or is refused or unreasonably delayed, the ordering party may rescind the contract or appropriately reduce the price. If the supplier is at fault for a defect, the ordering party may, subject to the prerequisites stipulated in Section 7., demand damages.
5. The warranty period for replacement or rectification shall be 12 months. However, it shall run at least until the original warranty period for the item delivered expires.
6. The warranty shall cease to apply, if, without the supplier's consent, the ordering party alters the item delivered or has it altered by third parties, and this makes it impossible or unreasonably more difficult to eliminate defects. In any event, the ordering party shall bear the extra cost of defect elimination arising as a result of such alteration.

7. The supplier's liability - on any legal grounds whatsoever - for damage not incurred on the delivery item itself shall be limited to:
- i. cases of wrongful intent on the part of the supplier, its organs or its managerial employees;
  - ii. cases of gross negligence on the part of the supplier, its organs or its managerial employees,
  - iii. cases of culpable mortal injury, physical injury or health damage,
  - iv. cases of defects that have been fraudulently concealed or whose absence was guaranteed by the supplier;
  - v. cases of defects in the items delivered, insofar as the supplier is liable under the *Produkthaftungsgesetz* [Product Liability Act] for personal injury and for property damage to items used privately. This shall also apply in the case of loss incurred as a result of fraudulent misrepresentation or despite specific guarantee undertakings.

If the supplier culpably breaches material contractual duties, the supplier shall be liable also in the case of gross negligence and in the case of ordinary negligence. In the latter case, the supplier's liability shall be limited to reasonably foreseeable loss typical of this type of contract.

Further claims are hereby excluded.

#### **IX. Place of Jurisdiction, Applicable Law**

1. All legal relations between the supplier and the ordering party shall be governed exclusively by the laws of the Federal Republic of Germany. The UN Sales Law (CISG) is hereby excluded.
2. In the case of all disputes ensuing from the contractual relationship, an action shall be brought before the court that has jurisdiction over the place where the supplier's head office is situated. However, the supplier shall also be entitled to bring an action at the place where the ordering party's head office is situated.

#### **X. Omissions**

Insofar as the contract or the General Terms and Conditions of Business contain omissions, these omissions shall be deemed filled by the legally effective provisions that the parties would have agreed upon in keeping with the economic objectives of the contract and the purpose of the General Terms and Conditions of Business, had they been aware of the omission concerned.