

## **GENERAL TERMS AND CONDITIONS OF SALE**

### **1. Area of Applicability**

Deliveries of Seller shall only be made on the basis of the following General Terms and Conditions of Sale ("General Terms"). Agreements or business terms and conditions of Buyer which deviate from these General Terms shall, in order to become effective, require the express written approval of the Seller to the extent they conflict with these General Terms. At the latest with the acceptance of the delivery by Buyer the General Terms of Seller shall become an integral part of the contract.

### **2. Bid and Conclusion of the Contract**

2.1. Seller's offers are not binding and subject to change. Declarations of acceptance and all orders shall only be valid if confirmed by Seller in writing. The same shall apply to any supplements, amendments and subsidiary agreements.

2.2. Drawings, illustrations, dimensions, weights and other performance data shall only be binding if this has explicitly been agreed in written form.

### **3. Payment**

3.1 Buyer shall pay the full contract amount plus all banking charges, including advising charges, and shall not be entitled to offset any of them against the purchase price agreed under the Contract except in cases of undisputed or legally enforceable claims which result from the same contractual relationship.

3.2 Unless agreed otherwise, Seller's invoices shall be payable without deduction on or before 30 days after the invoice date.

Notwithstanding Buyer's instructions to the contrary, Seller shall be entitled to set off Buyer's payments against older sums outstanding first of all. Seller shall inform Buyer accordingly. If costs and interests have already incurred, Seller shall be entitled to set off payments against costs first, then against the interest and finally against the main debt.

3.3. A payment shall not be deemed to have been effected until Seller can dispose of the sum concerned. If cheques are presented, payment shall be deemed to have been effected when the cheques are honoured.

3.4. If Buyer is to establish a Letter of Credit in favour of Seller, such Letter of Credit shall be (i) unconditional, irrevocable, (ii) established by an internationally recognized first class bank satisfactory to Seller immediately after the conclusion of this Contract, (iii) valid for a period of twenty one (21) days for negotiation after the date of shipment, and (iv) in strict compliance with the terms and conditions of this Contract.

3.5. Failure of Buyer to furnish such Letter of Credit as specified above or other defaults of payment shall be deemed to be a breach of this Contract, and Seller, without prejudice to any other rights and remedies hereunder and under the governing laws shall have the option(s) at its sole discretion to (i) cancel the whole or any part of this Contract and claim for damages whether direct or consequential caused by Buyer's default, (ii) defer the shipment of the Goods and hold them on Buyer's account and risk, and/or (iii) resell the goods on Buyer's account.

#### **4. Costs**

4.1. If Seller's cost(s) of performance is (are) increased after the date of this Contract by reason of increased freight rate(s), tax(es), or other governmental charge(s), surcharge (bunker, currency, demurrage and so on) or insurance premium(s) including War & S.R.C.C. risks, such increased cost(s) is (are) entirely on Buyer's account.

4.2. All prices are quoted exclusive of the statutory value-added tax (VAT). VAT shall be added when required by law. Additional deliveries and performances shall be charged separately.

4.3. Unless agreed otherwise, prices are quoted FOB warehouse (place, including normal packaging)

#### **5. Shipment**

5.1. If under FOB, FAS or any other trade terms, Buyer has to secure or arrange for shipping space, Buyer shall provide the same and give Seller the shipping instructions in a timely manner after receiving shipping advice by Seller. If Buyer fails to give Seller the shipping instruction in a timely manner, Seller may, at its sole discretion, designate the shipping instrument and Buyer shall not have the right to claim for such designation. The date of the Bill of Lading or any other similar transport documents shall be conclusive evidence of the date of shipment. Risk of loss of the goods shall be transferred from Seller to Buyer upon delivery of the Goods to the carrier or its agent for transportation. If shipment is impossible for reasons beyond Seller's control, the risk shall pass to Buyer when the Goods are declared ready for shipment.

5.2. Any delay in shipment or non shipment of individual lots shall consequently not be deemed a breach of Contract or non-compliance with the Contract. Buyer in particular shall not acquire any right to annul the Contract or to refuse acceptance of the other lots in consequence.

## **6. Retention of Title**

6.1 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these General Terms, the property in the Goods shall not pass to the Buyer until Seller has received payment in full of the purchase price of the Goods and all other Goods agreed to be sold by Seller to Buyer for which payment is then due.

6.2 Seller shall have absolute authority to repossess, sell or otherwise deal with or dispose of all or any part of the Goods in which title remains vested in Seller if Buyer has not paid the purchase price in accordance with the Contract.

6.3 Until such time as the property in the Goods passes to Buyer, Buyer shall hold the Goods as Seller's fiduciary agent and shall keep the Goods properly stored, protected and insured.

6.4 Buyer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to Seller for the proceeds of sale or otherwise of the Goods including insurance proceeds and shall keep all such proceeds separate from any money or properties of Buyer and third parties.

6.5 If the Goods are processed or reshaped by Buyer and if processing is done with Goods that Seller does not own, Seller shall become co-owner of the Good. The same shall apply if Seller's Goods are completely reshaped and mixed with other goods.

6.6. If third parties take steps to pledge or to otherwise dispose of the Goods, Buyer shall immediately notify Seller in order to enable Seller to seek a court injunction in accordance with § 771 of the German Code of Civil Procedure. If Buyer fails to do so in due time it will be held liable for any damages caused.

6.7 Seller shall on demand of Buyer release any part of the collateral if the value of the collateral held in favour of Seller exceeds the value of the claims being secured. It is Seller's decision to release those parts of the collateral suitable for him.

## **7. Insurance**

Unless otherwise agreed, where Seller is to effect insurance at its own expense, such as in case of CIF, such insurance shall (i) cover one hundred and ten percent (110%) of the invoice amount of the Goods, (ii) be against marine risks only and (iii) be Free from Particular Average, F.P.A. (Institute Cargo Clauses) or on equivalent terms. Any additional insurance requested by Buyer shall be on Buyer's account and its premium shall be added to the invoice amount for which the Letter of Credit/Payment Terms shall provide for accordingly. If Buyer shall provide insurance under D/P or D/A payment terms, Buyer shall inform Seller of its insurance policy/certificate number, name(s) of insurance company(ies) and other necessary information well in time for the scheduled shipment.

## **8. Claims and Liability**

8.1. No claim based on defects of the products shall be raised by Buyer under this Contract unless made in writing to be accompanied by full particulars of claim and evidence within thirty (30) days after the arrival of the Goods at the port of destination specified in this Contract or in the transport document. Unless such notice is received by Seller within such period, Buyer shall be deemed to have waived any claim.

8.2. Defects which cannot be discovered within this period despite careful inspection must be reported to Seller in written form and without delay as soon as they are discovered.

8.3. Seller shall have at its sole discretion, the option in full and final settlement of such claim to repair the defective goods, replace with conforming goods or repay the purchase amount. If Buyer demands that work under warranty be carried out at a specific place and if Seller agrees to this demand, only the parts covered by the warranty shall not be charge to the Buyer. Seller's necessary labour and travel expenses must be borne by the Buyer.

If the repair proves to have been to no avail after a reasonable period of time, Buyer may demand a reduction in price or cancellation of the Contract at its discretion.

8.4. In the event of defective delivery or breach of another contractual duty liability is excluded unless a fundamental contractual duty has been breached and Seller proves that neither it nor its management executives have acted intentionally or with gross negligence and that no other agent or employee has deliberately caused the breach of the duty. With regards to claims not founded in the Contract (e.g. based on tort), all liability is excluded unless Buyer proves that Seller has acted intentionally or with gross negligence. All claims for damages of the Buyer remaining thereafter shall be

limited to the loss foreseeable upon conclusion of the Contract. This limitation of liability does not affect liability under the Product Liability Act and also does not apply in the event of harm to life, physical injury or harm to health.

8.5. All claims of Buyer based on defects become time-barred one year from the date of delivery, unless longer periods are mandatorily prescribed by statute.

UNLESS EXPESSLY STIPULATED IN THIS CONTRACT AND HEREIN, SELLER MAKES NO WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO THE FITNESS AND SUITABILITY OF THE GOODS FOR ANY PARTICULAR PURPOSE AND/OR MERCHANTABILITY.

## **9. Intellectual Property Rights**

9.1. Seller shall indemnify Buyer and its customers from all claims based on violation of copyright trademark or patent rights insofar as the delivered item was not designed by Buyer. Seller's obligation to indemnify shall be limited to the value of the foreseeable loss.

Such indemnification always requires that Seller is free to take legal action if desired and that the claimed violation is exclusively attributable to the design of the item delivered by Seller without involving its combination or use with other products.

9.2. Seller can discharge the obligations assumed pursuant to this clause of the General Terms at its discretion by either

- a) acquiring the licences required for the purportedly violated rights or
- b) providing Buyer with a modified item or parts thereof thus eliminating the charge of violating rights by replacing the delivery item or part concerned.

## **10. Force Majeure**

10.1. Seller shall not be liable for any delay in shipment of delivery, or non-delivery, of all or any part of the Goods, or for any other default in performance of this Contract due to the occurrence or consequence of any event of Force Majeure (hereinafter referred to as "Force Majeure") including but not limited to, Act of God, flood, typhoon, earthquake, Tsunami, landslide, fire, plague, epidemics, marine peril, war, riot, civil commotion, lockdown, commandeering of vessel or airplane by the government, strike, lockout, sabotage, other labour unrest, explosion, trouble or accident of all or any part on machinery, factory, transport and loading appliance, request, guidance, order and control from the Government, non existence of transportation or loading

appliance, inability to obtain raw material, equipment fuel, industrial water, power, utility, crude oil or petroleum product, bankruptcy of supplier or manufacturer, boycott, significant change of present international monetary system, or any other Acts of God, nature, or governmental authorities, or any other causes or circumstances directly or indirectly, affecting the activities of Seller, manufacturer or supplier of the Goods beyond their reasonable control. On the occurrence of any event of Force Majeure, Seller may, at its sole discretion and by giving notice to Buyer, (i) perform part all of the Contract within a reasonable time after the removal of the cause preventing or delaying performance, and/or (ii) research the whole or any unfulfilled portion of this Contract, and Buyer shall accept such action(s) as Seller may take.

10.2. If the obstruction due to Force Majeure continues for more than three months, Buyer and Seller shall be entitled to withdraw from the Contract with regard to the outstanding part, after setting a due period of grace. Buyer shall not be entitled to claim any damage if the delivery period is prolonged or if Seller is relieved from its obligation.

## **12. Default**

If Buyer fails to perform any provisions of this Contract or any other contract with Seller or if Buyer becomes insolvent or bankrupt, or takes any proceedings admitting the inability to pay or meet its obligations, or if Buyer transfers any or all of its business or important assets, or changes its legal status or organization, or if Buyer is found to be unqualified by competent government authority, for the export Draft Insurance under D/P or D/A payment terms, or for permit the Export License, Seller may, at its sole discretion, without prejudice to any other rights and remedies hereunder and under the governing laws and by giving written notice to the Buyer, (i) cancel immediately, or reserve the right to cancel the whole or any part of this Contract or any other contract with Buyer, (ii) delay or suspend shipment or delivery of the goods, (iii) stop the Goods in transit, (iv) hold and/or resell the Goods on Buyer's account and risk, (v) accelerate any instalment or otherwise postponed or deferred payment for shipment already made under this Contract or an other contract with Buyer. In such event, Buyer shall be liable to Seller for any loss or damage whether direct or consequential, incurred as a result thereof.

## **13. No Assignment**

Buyer shall not transfer or assign the whole or any part of this Contract or any of its rights or obligations accruing hereunder without Seller's prior written consent.

#### **14. No Waiver**

No claim or right of Seller under this Contract shall be deemed to be waived or renounced in whole or in part unless the waiver or renunciation of such claim or right is acknowledged and confirmed in writing by Seller.

#### **15. Secrecy**

Unless explicitly agreed otherwise in written form, the information placed at Seller's disposal in conjunction with orders shall be deemed not confidential.

#### **16. Arbitration Clause**

Any dispute, controversy or difference which may arise between the parties hereto, out of or in relation to or in connection with this Contract shall be settled by arbitration to be conducted in accordance with the Rules of the International Chamber of Commerce in Paris. The seat of arbitration shall be Düsseldorf and the language shall be English.

#### **17. Trade terms and Governing Law**

17.1. The trade terms used in this Contract shall have the meanings specified in the latest Incoterms, unless otherwise specifically provided in this Contract.

17.2. Amendments of the latest Incoterms shall only be valid if agreed in written form insofar as they are not already affected by the above terms and shall specify which costs and duties each party is to assume.

17.3. Seller and Buyer agree that the validity of all contractual provisions shall depend on whether or not realization of the transaction violates export control rules applicable at the time of realization. If Seller is prevented from fulfilling its order by export control rules applicable at the time of delivery, it shall be relieved of all contractual obligations without compensation. In individual cases, Seller may also make fulfilment of the order contingent on Buyer's submission of a clearance certificate in conjunction with the applicable export control rules. Seller shall not be obliged to carry out the order if such a clearance certificate is not submitted in good time eight (8) days before the order is executed.

17.4. This Contract shall be governed by and construed in accordance with the laws of the Federal Republic of Germany.

### **18. Entire Agreement**

This Contract supersedes all prior discussions and agreements between the Parties with respect to the subject matter hereof, and this Contract constitutes the sole and entire agreement between the parties with respect to the matters covered hereby. This Contract may not be modified or amended except by a written instrument signed by the Parties or their duly authorized representatives.

### **19. Severability**

If any of the provisions in these General Terms of Sale or any of the provisions in other agreements prove or become invalid, this shall not affect the validity of the remaining provisions or agreements of the parties.