

## GENERAL TERMS AND CONDITIONS OF PURCHASE

### 1. General

- a) All contracts of purchase shall be exclusively subject to our Terms and Conditions of Purchase; we reject any terms and conditions of the Seller to the contrary or deviating from our Terms and Conditions of Purchase unless we have expressly consented to their validity in writing. Our Terms and Conditions of Purchase shall apply even if we accept the Seller's delivery without reservation with knowledge of terms and conditions of the Seller to the contrary or deviating from our Terms and Conditions of Purchase.
- b) All agreements which are made between the Seller and us for the purpose of executing this contract shall be set down in writing in this contract.
- c) Our Terms and Conditions of Purchase shall only be applicable vis-à-vis entrepreneurs as defined by § 14 of the German Civil Code (*BGB*), vis-à-vis public entities and public special funds.
- d) Our Terms and Conditions of Purchase shall also apply to all future transactions with the Seller.
- e) The terms of the Incoterms as last amended shall apply supplementary to these Terms and Conditions of Purchase; deviating terms and conditions in these Terms and Conditions of Purchase shall take precedence over the Incoterms.
- f) Statutory rights constituted in the Purchaser's favour shall not be excluded by these Terms and Conditions of Purchase. The Purchaser may rely, at its option, on the law or these Terms and Conditions of Purchase.

### 2. Placing of orders, conclusion of contracts

- a) A valid contract of purchase shall be brought into being between the Purchaser and Seller on the conditions of the Purchaser's order if a copy of the order bindingly signed by the Seller is received by the Purchaser (confirmation of order) or the delivery is executed without objections on the Purchaser's Terms and Conditions of Purchase.
- b) The Purchaser reserves the right to reject a confirmation of order of the Seller as being late if this confirmation is not sent to the Purchaser within 14 (fourteen) days of receipt of the order placed by it.
- c) If the Seller's confirmation of order deviates from the order placed by the Purchaser, a contract shall not be brought into being until the Purchaser has issued its express written confirmation.

### 3. Scope of Deliveries

- a) The scope of deliveries, the individual terms and conditions as well as the conditions and specifications of manufacturers or suppliers, insofar as these are attached, shall follow from the contract.

Unless more extensive requirements are laid down therein, the delivery item shall be of merchantable quality and be in conformity with any DIN, DVGW, VDE, VDI or similar standards as may exist for the delivery item and with the agreed test certificates. Where standards vary, the standard higher in priority shall be applicable in each case.

- b) All declarations contained in the contract and in the documents mentioned therein (particularly indications of weight, performance, consumption and power requirements) as well as drawings and illustrations shall be binding on the Seller unless they are expressly termed only "approximate". If a contract is concluded on the basis of an offer made by the Seller, the same shall apply to all declarations made by the Seller therein or in the appurtenant documents. However, in case of deviations, the declarations contained in the contract and in the documents mentioned therein shall take precedence.

c) Drawings, drafts, samples and other documents or objects which the Purchaser has made available to the Seller for the making of an offer or the execution of an order shall remain the Purchaser's property and may not be used by the Seller for other purposes nor reproduced or made available to third parties.

d) If and to the extent that the measurements and weights of the delivery item exceed the declarations made in the offer, the Seller shall be liable to the Purchaser for the additional expenses incurred as a result for freightage, customs duties etc.

#### **4. Prices**

a) Unless otherwise agreed, prices shall be fixed prices on the basis of "FOB named port of shipment/FCA named place" including the packing appropriate to the respective shipment.

b) If the Seller reduces its prices prior to the date of delivery, it shall adjust the agreed unit prices and the total price of the contract to the new price level and take the same as a basis of the invoicing.

#### **5. Terms of payment**

a) Payments shall be made at the Purchaser's option either within 8 days of receipt and checking of invoice at a 3% (three percent) discount or as of the end of the month following the month of receipt of the invoice without discount by bank transfer, cash payment or cheque.

A prerequisite of payment shall be delivery of the delivery item in accordance with the contract and receipt of proper shipping and technical documents.

b) Until the contract has been duly performed in full by the Seller, the Purchaser may withhold payments unless it is obliged to make advance payments. To the extent that the Seller has to bear or to reimburse costs pursuant to statutory or contractual provisions or other counter-claims of the Purchaser exist, the Purchaser may, at its option, withhold or set off payments. This shall apply even if the Purchaser's claims and the Seller's counter-claims are not based on the same contractual relationship.

c) Payments shall not fall due and periods allowed for payment shall not commence until deliveries have been effected in full and free from defects, the shipping and technical documents have been received and proper accounts submitted. In the event of deliveries being accepted prior to the agreed date, the due date of payment shall depend on the originally agreed delivery date.

d) If payment prior to delivery has been agreed, the Seller shall be obliged to furnish at its expense a bank guarantee payable on first demand or other first-class securities to the amount of this payment. Until performance of this obligation the Purchaser may withhold its payment.

#### **6. Delivery time**

a) The dates of and terms for delivery stated by the Purchaser in the contract shall be binding and relate to the date of arrival at the delivery address stated in the contract. If a term for delivery is agreed instead of a delivery date, such term shall commence on the date on which the contract is sent off by the Purchaser.

b) In the event of a term for delivery or a date of delivery being overrun as a result of an unforeseen event or an event of force majeure, the Purchaser may either demand that the contract be executed at a later date or may withdraw from the contract if, as a result of the delay, the performance is of no interest to it and it would be unreasonable to require the Purchaser to wait.

c) If the Seller asserts an unforeseen event or an event of force majeure (e.g. war, warlike state, riot, rebellion, sabotage, boycotts, seizures, embargoes, quarantine, disruptions of transportation, orders made by governments, authorities or similar institutions, disasters) as the reason for the delay in performance, it shall furnish suitable proof thereof at the Purchaser's request.

The following events shall not be unforeseen events or events of force majeure and shall not justify delays in performance: non-delivery on the part of the Seller's suppliers, holiday shutdowns, production of substandard goods.

d) By accepting part of the ordered delivery item the right to withdraw from the contract with respect to the remaining delivery shall not be excluded.

e) If the Seller defaults in effecting the delivery, the Purchaser shall be entitled to demand lump-sum compensation for damage caused by the default amounting to 1 % of the delivery value per week ended, but a maximum of 10 %; more extensive statutory claims (rescission and damages in lieu of performance) remain reserved. The Seller is entitled to prove to the Purchaser that no damage or significantly less damage has resulted from the default.

#### **7. Passing of risk and dispatch**

a) The Seller shall bear the risk of loss and/or of deterioration of the delivery item until delivery to the consignee named by the Purchaser at the place of destination/seaport/airport (passing of risk). The passing of risk shall be governed by the terms of the Incoterms as last amended, unless otherwise agreed. If the Purchaser makes payments prior to delivery, the Seller shall insure the delivery item at its expense until the date of the passing of risk against the usual transport and/or storage risks for the Purchaser's benefit and furnish the Purchaser with proof of such insurance.

b) The Seller shall be liable for increased transport costs and damage to the delivery item resulting from any shipment, packaging and/or declaration which is not in due form or in accordance with the contract. In case of dangerous (inflammable, explosive, caustic, toxic etc.) goods, the Seller shall observe the relevant regulations (e.g. "Seefrachtordnung" [regulations relating to the carriage of goods in ships], IMDG/IATA/DGR code, etc.) and declare, pack and label the goods according to regulations, already point out the goods to the Purchaser at the offer stage and inform the Purchaser in detail 10 (ten) days prior to dispatch at the latest, making any written statement as may be necessary to enable the Purchaser, for its part, to hand over the documents and make the statements required for the transportation and transit to and importation into the country of destination.

c) The Seller shall be liable for all damage resulting from any late, incorrect, incomplete or lacking declaration, packing, labelling or statement.

#### **8. Transfer of rights, reservation of title**

a) Neither the contract nor individual rights, duties or claims may be transferred to third parties without the Purchaser's express written consent.

b) The Seller shall not have any reservation of title whatsoever; statements made by the Seller on delivery notes, invoices or other documents shall only be binding if confirmed by the Purchaser in writing. Taking delivery of the goods shall not constitute any acknowledgement of a reservation of title declared by the Seller.

#### **9. Transfer for purposes of security in case of payments effected**

In the event that the Purchaser makes payments prior to delivery, the Seller herewith transfers to the Purchaser to the extent of the value of the payment the title to the delivery item intended to be delivered to the Purchaser and to all other items belonging to the delivery. The Seller is obliged to label the delivery item clearly as the Purchaser's property in accordance with the Purchaser's instructions. Until its delivery the Seller shall store the delivery item free of charge for the Purchaser separately from other items upon request.

#### **10. Liability for defects**

a) The Seller shall guarantee that the delivery item does not have any defects impairing its value or fitness and that it conforms with the terms and conditions and quality descriptions set forth in the contract. The Seller shall further guarantee that the delivery item complies with government regulations and statutory provisions, particularly the relevant health and safety regulations and regulations for the prevention of accidents, even if it has been manufactured to the customer's specifications.

b) If deliveries or performances do not meet the requirements pursuant to item 10 a), the Purchaser shall, at its option, be entitled to demand that the defect be remedied or that it be supplied with an object free from defects – if necessary by using other designs or other combinations of materials – or to rescind the contract or to reduce the purchase price. Damage claims for defective deliveries or performances according to the statutory provisions shall remain unaffected.

c) If the Seller defaults in remedying a defect or in delivering a thing free from defects or if it is necessary to remedy a defect immediately to safeguard the Purchaser's interests, the Purchaser may at the Seller's expense – in the latter case after informing the Seller – remedy the defect itself or have the defect remedied by third parties or arrange for the delivery of an object free from defects. In any event, the Purchaser may remedy minor defects itself or arrange for the same to be remedied, i.e. without the conditions mentioned in sentence 1; the Seller shall be sent a report and a statement of costs concerning this after a defect has been remedied or an object free from defects has been delivered.

d) All costs of remedying a defect or of delivering an object free from defects shall invariably be borne by the Seller.

e) After a failed attempt at remedying a defect and in the event of default in delivering an object free from defects, the Purchaser shall be entitled to rescind the contract or reduce the purchase price. Claims for damages, particularly damages in lieu of performance, remain reserved.

f) The Purchaser shall not be under any obligation to carry out an inspection or give notice of defects before the Seller has effected deliveries or performed in full. The Purchaser shall properly carry out a receiving inspection by taking samples on a reasonable scale with regard to the identity, weight, measurements and appearance of the item delivered without undue delay after receipt, within five working days at the latest. The Purchaser shall not be obliged to carry out technical operational tests and other inspections until the putting into operation (e.g. trial run). The Purchaser shall give notice of obvious defects of the delivery item without undue delay, within 7 (seven) days of receipt of the delivery item at the latest. Notices of other defects shall be given within 7 (seven) days of discovery of the defects.

g) The limitation period shall amount to 36 (thirtysix) months, calculated from the passing of risk; the limitation period may not be shortened without the Purchaser's express written consent. The limitation period shall be prolonged by the period of measures taken by the Seller to remedy defects and to deliver an object free from defects as from receipt of the Purchaser's notice of defects, until the Seller has declared in writing the measures to be completed or refuses to remedy a defect further or to deliver an object free from defects. In the event of the Purchaser remedying a defect itself or arranging for the delivery of an object free from defects pursuant to Section 10 c), the limitation period shall be prolonged by the period until the completion of the remedying of the defects or the delivery of an object free from defects.

h) The Seller shall give a separate warranty for the remedying of a defect and delivery of an object free from defects to the extent and in the periods applicable to the primary obligation, whereby the limitations periods shall each begin to run as from the completion of the remedying of defects or the delivery of an object free from defects.

i) The Seller shall indemnify the Purchaser against all claims of third parties based on product defects to the extent that the Seller is answerable for the defect giving rise to liability. Furthermore, the Seller shall bear the costs of any recall campaign.

#### **11. Purchaser's right to rescind the contract or to reduce the purchase price**

a) If it becomes impossible for the Seller to perform the contract in whole or in part, the Purchaser may rescind the contract in case of total impossibility, and in case of partial impossibility may, at its option, demand an appropriate reduction of the purchase price or rescind the contract as a whole if partial performance of the contract is of no interest to it.

b) The Purchaser may further rescind the contract if the Seller has let expire a reasonable extension of time granted for the remedying of a defect for which it is responsible as contemplated by the terms of delivery, unless the Seller proves that it is not at fault.

c) If the Purchaser avails itself of a right of rescission held by it, the Seller shall reimburse the Purchaser for payments already made without undue delay, whereby the Seller shall pay interest on such payments at a rate of 8 % (eight percent) above the base lending rate pursuant to § 247 BGB as from the date of receipt, unless the Seller proves that the actual loss suffered by the Purchaser is lower. The Purchaser may further claim from the Seller reimbursement of the expenses incurred by it

for customs duties and transportation, including transport insurance. This duty to pay interest or to make a refund shall exist only if the Seller is responsible for the (partial) impossibility or the Purchaser rescinds the contract pursuant to Section 11 b).

### **12. Product liability, indemnification, liability cover**

a) In the event that the Seller is responsible for damage to a product, it shall be obliged to indemnify the Purchaser against damage claims made by third parties in this respect on first demand to the extent that the cause of the damage emanates from its domain or area of organization and the Seller is itself liable vis-à-vis third parties.

b) The Seller undertakes to maintain a product liability insurance with a comprehensive coverage of € 10 m (Euro ten million) per case of personal injury / property damage for the duration of the contract, i.e. until expiration of the respective limitation period for claims based on defects; any further damage claims to which the Purchaser may be entitled shall remain unaffected.

### **13. Infringement of rights of third parties**

a) The Seller shall guarantee that no rights of third parties are infringed in connection with its delivery and that the delivery is not burdened with rights of third parties.

b) If the Purchaser is held liable by a third party, the Seller shall be obliged to indemnify the Purchaser on first written demand against these claims. The Seller's indemnity obligation shall pertain to all expenses arising out of or in connection with the claim made by a third party as may be inevitably incurred by the Purchaser. The Purchaser shall further be entitled in the event of an infringement of rights of third parties to cancel all orders affected thereby, to return goods not yet sold and to claim damages from the Seller.

c) The limitation period shall be 10 (ten) years, calculated from the conclusion of the contract.

### **14. Purchaser's liability**

a) To the extent that the Purchaser may be liable to the Seller under the contract or statutory provisions, it shall be liable only in case of intentional or grossly negligent conduct and in case of a negligent infringement of material contractual duties, the infringement of which jeopardizes the attainment of the purpose of the contract.

b) In case of liability, with the exception of liability for intent, any obligation to pay damages shall be limited to the typical and foreseeable damage.

c) In case of liability for damages on account of bodily injury or injury to life or health based on an intentional or negligent breach of duties by the Purchaser, its legal representatives or a vicarious agent of the Purchaser, the Purchaser shall be liable according to the statutory provisions.

d) The above provisions shall also apply to any personal liability of the statutory representatives and other employees and vicarious agents of the Purchaser.

### **15. General provisions**

a) All legal relationships between the Seller and the Purchaser shall be governed by the laws of the Federal Republic of Germany. The UN Convention on Contracts for the International Sale of Goods (CISG) and any other international conventions, even after being incorporated in German law, shall not be applicable.

b) If the Seller is a merchant (*Kaufmann*) as defined by the German Commercial Code, the courts at the place of the Purchaser's business seat or the Seller's business seat, at the Purchaser's option, shall have jurisdiction over all disputes arising out of this contract in the event of an action being filed by the Purchaser, and exclusively the courts at the place of the Purchaser's business seat shall have jurisdiction in the event of an action being filed by the Seller. Statutory provisions concerning exclusive jurisdictions remain unaffected.

c) If the Seller is served with a third party notice in a lawsuit between the Purchaser and one of its customers or – insofar as it is not possible to serve the Seller with a third party notice at the place of jurisdiction – is given an opportunity by the Purchaser to inform itself of the proceedings in detail and to assist the Purchaser, it shall accept the decision rendered in this lawsuit for or against itself as defined by § 68 of the German Code of Civil Procedure (*ZPO*).