

## General Standard Terms and Conditions (GSTC)

### 1. Scope of the GSTC

All contracts concluded by us shall be governed exclusively by our GSTC. We shall only be bound by diverging GSTC of our buyers or other contracting parties if we have expressly agreed to them in writing. These conditions are deemed accepted at the latest with the acceptance of the goods. They also apply if we, with knowledge of Customer's conflicting conditions, carry out the delivery without reservation.

### 2. Formation of contract, written form

- (a) Our offers are subject to confirmation. A contract is accomplished only by our written confirmation of the order.
- (b) Side agreements as well as modifications of and amendments to the contract shall only be valid if confirmed by us in writing.

### 3. Prices

- (a) If applicable, the valid rate of value added tax on the date the invoice is raised shall be added to our prices.
- (b) If more than six weeks lie between the conclusion of the contract and the intended delivery date of the whole delivery or a part of the same and the expenses which we must incur in connection with the delivery increase after the conclusion of the contract for reasons that are not attributable to us we shall be entitled to demand the extra costs from our Customers in addition to the contract price. This shall apply irrespective of whether such extra costs are based on statutory or other provisions and/or on actual circumstances. Expenses for the account of our Customers according to sentence 1 shall in particular include export and import charges, such as customs duties and levies as well as taxes, storage charges, freight charges, forwarding expenses, insurance premiums and the like.

### 4. Conditions of payment

- (a) Payment by the Customer is due within 14 days after receipt of the invoice, however at the latest 30 days after delivery, without any deductions, in cash or by remittance to us free of expense. The handing over of bills of exchange and of cheques, which shall require our prior consent shall not be deemed performance until honoured in full.
- (b) If the Customer does not comply with his payment obligations according to contract for reasons attributable to him or ceases payments, we are entitled to make the further debts due.

### 5. Set-off and Right of Retention

Any set-off or retention of payments shall be admissible only in case of counter-claims recognised by us or established by non-appealable judgement. A right of retention is furthermore available to the Customer

only in so far as his counter-claim is based on the same contractual relationship.

### 6. Default by Customer

- (a) In the event of default by the customer we are entitled without prejudice to further rights to make further part deliveries as well as deliveries under other contracts dependant upon security by the Customer.
- (b) The statutory rules apply to the amount of default interest.

### 7. Time for delivery and delivery weight/discrepancies in weight

- (a) Agreed times for delivery and delivery weights shall be estimates only unless expressly confirmed by us as having been firmly agreed on. If delivery times and delivery weights are to be understood as estimates only under sentence 1, we can exceed delivery times by up to two weeks and deviate upwards or downwards from the delivery weight by up to 10%.
- (b) The weight stated by us on delivery shall be relevant. The Customer may, however, demand weighing at his own expense. Discrepancies in weight must be notified within 3 days of the delivery of the goods. The Customer shall enable us to verify the weight discrepancy without undue delay.

### 8. Part deliveries

- (a) We shall be entitled to effect part deliveries in reasonable volume, in particular when the part deliveries can be used individually by the Customer and no fixed delivery date for the complete delivery was arranged.
- (b) In the case of part deliveries, each delivery shall be deemed a separate transaction. Any defective or late delivery shall have no influence on part deliveries already effected or yet to be effected. As far as the part performance is of no interest to the Customer, the Customer is entitled to withdraw from the contract as a whole or to demand damages for non-performance of the entire contract.

### 9. Delivery on Call

If the Customer in case of delivery on call fails to call for the goods within the periods agreed upon or, if no such period has been agreed upon, within 6 months from the date of the contract, we shall be entitled to grant the Customer an additional reasonable period of time for calling and after its unsuccessful expiry withdraw from the contract. Further we have the right to deposit or realise by public auction the affected goods. In the event the Customer is responsible for the delay or failure of the calling we can further demand, subject to the conditions in the previous sentence 1, damages for non-performance of the entire contract.

## 10. Default of Acceptance

- (a) In so far as the Customer is responsible for the default of acceptance we are entitled, after an unsuccessful determination of a reasonable period and notwithstanding proof of a greater damage, to demand damages in lieu of performance amounting to 25% of the value of the delivery not accepted. It remains for the Customer to prove that we suffered no or lesser damage. We can refuse the delivery of the part quantity not accepted on time without the effectiveness of the remaining contract being affected.
- (b) If the Customer is in default of acceptance we are entitled to demand any additional expenses to be reimbursed.

## 11. Dispatch/passage of risk

- (a) As far as we dispatch goods, dispatch shall be for the Customer's account. The same shall apply if we comply with the Customer's dispatch instructions.
- (b) The risk of accidental deterioration or accidental loss shall pass to the Customer upon delivery of the goods to the carrying party. The same shall apply in case of carriage by our staff, at the beginning of carriage, and in case of collection of the goods by the Customer's staff, upon delivery of the goods to them.

## 12. Obtaining supplies ourselves

We shall be obliged to effect delivery only subject to our obtaining proper, complete and timely supplies ourselves: this shall also apply to obtaining the delivery of the raw materials and auxiliary materials required for production of the goods.

## 13. Warranty

- (a) We do not accept liability based on public statements by us, the manufacturer or its assistants, if and insofar as the contract partner is unable to prove that the statement influenced him in his purchase decision, if we were unaware of the statement and not ought to have been aware of the same or if at the time of the purchase, the statement was already amended.
- (b) Aberrations which only affect the suitability or value of the product by a negligible amount are not considered as a defect. Negligible aberrations are in particular minor deviations in shape, colour, weight as well as when the defect rectifies itself within a short period of time or where the defect can be rectified without considerable expense by the purchaser. Negligible aberrations are also deviations lying within the usual trade borders.
- (c) Where the contracting party demands that we repair or replace an item, we can choose whether to rectify the defect or deliver a defect-free replacement. The right of the customer to reduce the purchase price or to withdraw from the contract remains unchanged in instances of failure to rectify.

Clause 14 applies to claims for damages and for the reimbursement of costs on the grounds of defects.

- (d) Obvious defects are to be reported to us in writing within three (3) days following receipt of the goods. The same applies for obvious transport damages, even if we are not responsible for the transport. If the customer fails to notify on time, this is seen as unconditional approval of the goods.
- (e) In commercial business the customer has to inspect the goods immediately, at the latest within three days following receipt, and to notify us immediately in writing of possible objections. If the customer fails to notify us, this is seen as an unconditional approval. The warranty for hidden defects, which despite a careful inspection within the period of three days were not found, is excluded if the customer does not inform us in writing immediately after discovery.
- (f) Further, warranty claims are excluded when as a result of further deliveries and processing or similar the goods delivered by us can no longer be inspected by us to see whether there is actually a defect.
- (g) Where a defect is due to the delivery or services of a third party to us, our customer can only request that our warranty claims and/or claims for damages against the third party be transferred to him. Only where the previous legal claims against the third party by our customer fail, is the customer able to demand on us according to the previous clause.
- (h) All warranty claims against us are only for the customer and are not capable of being assigned.
- (i) §§ 478, 479 BGB (German Civil Code) remain unchanged.
- (j) The necessary transport costs for replacement will only be borne by us in so far as they arise for the replacement or rectification at the arranged delivery place.

## 14. Liability

We are solely liable pursuant to the following provisions:

- (a) We accept liability for the wilful or grossly negligent behaviour of our organs, statutory representatives and executive employees.
- (b) Any claim for damages – based on whatever legal basis – for slightly negligent infringement of non-material contractual duties by our organs, statutory representatives, executive employees and our vicarious agents are excluded. The previous sentence applies correspondingly in the event of wilful or grossly negligent injury to non-material contractual duties by our vicarious agents.
- (c) In the event of slightly negligent infringement of material contractual duties by our organs, statutory representatives, executive employees and vicarious agents we accept liability on every legal merit only for contractually typical and foreseeable damage

and not for remote damage. The previous sentence applies correspondingly in the event of wilful or grossly negligent infringement of material contractual duties by our vicarious agents.

- (d) All further contractual claims or non-contractual claims of our customers are excluded.
- (e) The liability according to the Product Liability Act, the liability resulting out of culpable damage to life, body or health as well as the provision of § 444 BGB and liability arising from other warranties remain unaffected by the above provisions.
- (f) The customer is liable for all damages which occur from the infringement of co-operation duties.

#### 15. Limitation Period

- (a) All claims based on defects become time-barred after one year following delivery of the item. §§ 478, 479 BGB (German Civil Code) remain unchanged.
- (b) The customer's claims for damages based on other legal grounds become time barred after eighteen (18) months. § 199 (1) and (3) BGB dictate the beginning of the limitation period.
- (c) In as far as we are liable under clause 14 for grossly negligent behaviour, damages as a result of culpable damage to life, body and health and for guarantees as well as pursuant to the Product Liability Act, the statutory limitation periods apply.

#### 16. Retention of title

- (a) Title to the goods delivered by us remains our property until payment of all our existing and future demands out of the contractual relationship with the Customer, including all existing incidental demands and current account balances.
- (b) The Customer shall be entitled to use, intermix, or treat and process the goods subject to retention of title (hereinafter: conditional goods) in the ordinary course of business. The treatment and processing of the conditional goods is for us as manufacturer within the meaning of Section 950 BGB (German Civil Code).

In case of mingling or intermixing with goods not owned by us, we shall become joint owners, with Sections 947 and 948 BGB being applied directly or *mutatus mutandis*, namely in proportion to the value of the conditional goods to the value of the other processed goods at the time of processing. In the event that the mingling or intermixing occurs in a manner that the Customer's object is to be seen as the main object, it is now agreed that the Customer transfers to us proportionately the sole or joint ownership corresponding to the above named value. The objects in which we acquire sole or joint ownership pursuant to the aforesaid provisions shall be stored by the Customer for us free of charge. No claims against us shall arise to the Customer from intermixing or processing or storing.

For new objects existing as a result of the mingling or intermixing the same applies as for the conditional goods. Under the condition of the complete payment according to (a) above, the new goods or our co-ownership share will be transferred to the Customer.

- (c) The Customer is entitled, within the ordinary course of business, to resell the goods and the products that are the result of intermixing subject to reservation of title. The pledge and transfer by way of security of the conditional goods or the assigned claims is not permitted.

The Customer assigns now all claims from the sale of conditional goods including the goods within our ownership under (b) with all ancillary and security rights as well as balance claims within the scope of a current account to the amount of our demands as security for all our stated claims in (a). We accept the assignment.

In case of sale of goods to which we hold title as joint owners, the assignment shall be limited to such part of the claim as corresponds to our co-ownership share. If conditional goods are sold at a total price together with things not owned by us, the assignment shall be limited to the proportionate amount of our invoice including – if applicable - turnover tax for the conditional goods sold along therewith. The aforesaid provision shall apply *mutatus mutandis* to a compensation for work claim if the Customer shall use the conditional goods to perform a contract for work and services or contract for work and materials.

- (d) The authority for further sale of conditional goods is excluded if the Customer's buyer has excluded the assignment of the demands against him. The Customer must *vis-à-vis* his contractual partners exclude the set-off and the right of retention within the legally permitted ambit. At our request the Customer shall at all times be obliged to inform us of the debtors of the claims assigned to us and of their addresses.
- (e) The Customer shall be obliged to take good and proper care of the conditional goods and those things in which we acquire sole ownership or joint ownership and to store for us free of charge. The Customer must insure the goods against the usual dangers and assigns herewith compensation claims against the insurers or other liable persons to us to the amount of the invoice. We accept the assignment.
- (f) Further the Customer is obliged to notify us immediately about every infringement or endangerment to our rights on the goods within our ownership, in particular by distraint or other infringements by third parties and to meet in the meantime all safeguards that do not tolerate deferment. The

Customer is to reimburse us for all costs incurred by us in the assertion of our ownership and our rights to the claims.

- (g) The Customer remains authorised to collect claims without prejudice to our right to collect the claims as well. Other dispositions of the goods owned by us and of the claims assigned to us must not be made by the Customer without our prior written consent. We shall revoke the authority to dispose or collect only if the customer shall be in default with any payment to us, shall commit not only insignificant breaches of his duty to us under the retention of title arrangement, bankruptcy or composition proceedings against the Customer's assets shall be applied for or instituted or otherwise any material deterioration shall occur in the Customer's financial condition.

The Customer must forward amounts received immediately to us as far as our claims are due, alternatively preserve these amounts separately for us.

- (h) If we have revoked the authority pursuant to the foregoing subclause (g), the Customer shall at our request be obliged to inform us of all goods owned by us and of the buyers to whom the Customer sold the goods, to enable us excluding any right of retention to take possession of, particularly to take back the goods owned by us, to notify his buyers of the assignment of the claims assigned to us and to furnish us with all information necessary to enforce our claims and to surrender the documents required.
- (i) If the Customer acts in a manner contrary to the contract, in particular default of payment, the Customer is obliged to hand back the goods at our request. In so far as we take the goods back or seize them according to sentence 1 this is not to be seen as rescission of the contract. In the event of the goods being handed back we are free to realise the objects as best possible after prior warning and the giving of a reasonable period. The realisation proceeds will be deducted from our claims after deduction of reasonable realisation costs.
- (j) If the value of the security provided to us exceeds the secured claims by more than 20%, we shall as far as that goes at the Customer's request release items of security at our discretion.

#### **17. Place of performance**

The place of performance for all mutual obligations out of the purchase contract shall be Hamburg.

#### **18. Venue**

In the case of contracts entered into with fully qualified merchants, the venue for all disputes over the formation of the contract and over the claims reciprocally arising out of the contract, also in the case of Customers for which there is no place of general ju-

isdiction in the Federal Republic of Germany, shall be Hamburg, however, we shall also be entitled to sue at the Customer's legal domicile.

In the case of contracts entered into with fully qualified merchants, legal disputes shall at our option be heard and determined either by a court of law pursuant to the aforesaid stipulation as to venue or by the "Hamburger Freundschaftliche Arbitrage" (Hamburg Friendly Arbitration) pursuant to Article 20 of the "Platzusancen für den Hamburgischen Warenhandel" (Local Trade Rules for the Hamburg Merchandise Trade). We shall also be entitled to exercise the aforesaid option if the Customer wants to assert claims against us. We will exercise the option within 14 days after receipt of the Customer's written request, otherwise the option right shall pass to the Customer.

In case of notices of defects, we shall be entitled at our option to demand that the assessment of the condition of the goods be made in accordance with the "Regulativ für Qualitätsfeststellungen durch Sachverständige" (Rules for Quality Inspections by Experts), published by the Hamburg Chamber of Commerce on 12 April 1911.

#### **19. Applicable law**

The law of the Federal Republic of Germany shall apply exclusively excluding the application of the Hague Conventions relating to a Uniform Law on the International Sale of Goods and of the International Law on Sales pursuant to the United Nations Conventions on Contracts for the International Sale of Goods of 11.04.1980.