

## **General Conditions of Purchase (Validity 01-2009)**

### **§ 1 – Application of the conditions**

- (1) The following conditions are integral to the agreement concluded with us.
- (2) Our General Conditions of Purchase in their respective latest version also apply to all follow-up businesses without that having to be expressly mentioned or agreed upon conclusion.
- (3) Herewith, we object to any counter-confirmations, counter-offers or other references on the part of the seller relating to his Terms and Conditions; the diverging conditions of the buyer only apply if we have confirmed that validity in writing.
- (4) Our written confirmation must be declared expressly; the tacit acknowledgement of the seller's Conditions of Sales does not represent the consent to the same.

### **§ 2 – Offer and conclusion of the agreement**

- (1) The conclusions of agreements require the written form to take effect.
- (2) Subsidiary agreements, additions and changes only take effect if they have been agreed in writing or if we have confirmed the same in writing. Irrespective of the form chosen (thus e.g. verbal, tacit or in written form) the seller's guarantee declarations apply.
- (3) We reserve the property rights and copyrights for illustrations, drawings, calculations and any other documents; they may not be made available to third parties without our express written consent. They are to be used exclusively for the manufacture on the basis of our order; after the processing of the order they must be returned without being requested. They must be kept secret towards third parties.
- (4) In the event that an offer is requested from the seller the latter must keep to this offer regarding the kind, quality, quantity and structure and in the event of divergences he must point these out expressly. The preparation of an offer is free of charge; otherwise the seller must point that out expressly.

### **§ 3 - Prices**

(1) The price stated in the order is binding. In the absence of different written agreements the price includes the carriage free delivery including packaging.

(2) Unless another currency is stated expressly, the prices are quoted in Euros. The Value Added Tax as legally applicable, customs and other fees are included in the price.

### **§ 4 - Passing of risk**

(1) Unless otherwise agreed in writing the delivery is carriage free. Thus the dispatch is at the seller's costs and risk.

(2) The seller also bears the costs for the transport insurance.

### **§ 5 - Delivery**

(1) The seller is obliged to ensure that the goods are packaged for the required transport to us in such a way that damages are avoided with normal handling of the goods. The seller bears the costs for this packaging.

(2) The delivery time stated in the order is binding.

(3) The seller is obliged to notify us immediately in writing if circumstances occur or if he becomes aware of circumstances, which may result in the fact that the agreed delivery time cannot be met.

(4) In the event of delayed delivery we are entitled to demand a contractual penalty amounting to 0.5% of the delivery value, at most, however, 5% of the delivery value for each full week of delay. We reserve the right to assert the claim for higher damages. We are entitled to assert the contractual penalty even in addition to fulfilment. Insofar we are obliged to issue the seller with the caveat regarding the contractual penalty at the latest within ten working days, from the acceptance of the delayed delivery. However, the seller is granted the express right to provide evidence that we have not incurred any damage due to delay at all or that the damage due to delay incurred is significantly less than the flat rate.

(5) The seller is obliged on all dispatch documents and delivery notes to state exactly our order numbers and relating to the individual items the item numbers stated in the agreement. If he fails to do so processing delays may occur, which we are not responsible for.

### **§ 6 – Extension of the exercise risk**

The seller is responsible without limitations for the acquisition of the supplies and services required for the delivery – even without fault.

### **§ 7 – Payment conditions**

(1) We can only process invoices if the respective order numbers and item numbers are stated according to the agreement. The seller is responsible for all consequences, which occur due to non-compliance with this obligation.

(2) We pay the purchase price to the 20<sup>th</sup> of a month if the payment term commenced at the latest on the 10<sup>th</sup> of the same month. If the payment term commences to the 20<sup>th</sup> of a month we will pay to the 30<sup>th</sup> of the same month. If the payment term commences to the 30<sup>th</sup> of a month we will pay to the 10<sup>th</sup> of the following month. For payments within the above-mentioned terms we are entitled to deduct three percent as early payment discount. Furthermore, we pay net within 30 days.

(3) We are entitled to offsetting and retention rights as legally applicable.

(4) The seller is not entitled to assign his claims against us without our written consent or to have third parties collect the same; this previous sentence, however, does not apply if a valid retention of title has been agreed.

### **§ 8 – Liability for defects, shortfalls, breaches of secondary obligations in the absence of consequential damages**

(1) We are obliged to inspect the delivered goods within an adequate period of time for any divergences as to quality or quantity. The complaint has been declared timely if the seller receives the same within a period of five working days from our receipt of the goods.

(2) We are entitled without limitations to all legal claims for defaults and guarantees. In particular, we are entitled at our discretion to demand the removal of the defect or the delivery of a good free of defects (supplementary performance). After the first fruitless attempt each amendment is considered as failed. At any rate, the seller bears the costs for the supplementary performance. In this event the seller must bear the expenses required for the purposes of the removal of the defect or the delivery of a good free of defects.

(3) If the supplementary performance or the replacement delivery does not occur within an adequate period of time or if the supplementary performance is legally superfluous we are entitled at our discretion and relating to the agreement in parts or in full to withdraw from the agreement and to reduce the purchase price.

(4) Furthermore, we are entitled to damage claims for defects and shortfall quantities instead of the performance and we are entitled to damage claims for consequential defects or damages from breaches of secondary obligations against the seller.

(5) The seller is liable to damage compensations for each event of negligence.

(6) The entitlement to compensation of futile expenses remains unaffected. We are also entitled to the withdrawal from the agreement and compensation for damages instead of the entire performance if there is only an insignificant divergence from the agreed quality or if the usability of the service is only affected insignificantly.

(7) Defect claims come under the statute of limitations after three years from the passage of risk. For buildings and building materials the guarantee period is five years in accordance with the legal regulations.

#### **§ 9 – Product liability and manufacturer's recourse**

(1) If the seller is responsible for product damage he is obliged upon the first request to release us from the damage claims of third parties insofar as the cause is within his domain and area of organisation and as he is liable in relation to third parties.

(2) Within this scope according to §§ 683, 670 BGB (Civil Code) the seller is also obliged to pay compensation for expenses, result from or in connection with a product recall carried out on our part.

(3) The seller is obliged to take out and maintain a product liability insurance with a limit of liability amounting to – the flat rate of – 5 m Euros per damage to person/property. If we are entitled to further damage claims, these shall remain unaffected.

(4) Our rights according to § 478 BGB (Civil Code) remain unaffected. Even if the seller only is the supplier he will be included in the recourse chain of § 478 BGB (Civil Code).

#### **§ 10 – Release from advertising message liability**

The seller releases us from all claims of our customers asserted on the basis of advertising messages on the part of the seller, of a supplier to the seller (as manufacturer in the sense of § 4 Para. 1 or 2 of the Product Liability Act) or of an agent of the named party, which would not exist or would not exist in this kind or would not exist to this extent. This provision applies irrespectively of whether the advertising message is issued before or after the conclusion of this agreement.

### **§ 11 – Protective rights**

(1) The seller is liable for the delivery object being free from rights of third parties and from the object not breaching any rights of third parties. However, this only applies if he may be charged with culpability.

(2) If the seller is liable due to a culpable breach of the obligation from Para. 1 he is obliged at our discretion to provide compensation for damage or upon the first written request to release us from the claims. If we do not exercise our right of choice the seller is obliged to provide compensation for damages.

(3) The seller's obligation to compensation or release also applies to all expenses, which we incur from or in connection with a third party asserting a claim against us.

### **§ 12 – Retention of title**

(1) If we make available parts to the seller we reserve their property rights. The processing or remodelling on the part of the seller is carried out for us. If the goods subject to retention of title are processed with objects, which do not belong to us, we acquire the common property rights of the new object in relation to the value of our object to the other processed objects at the time of processing.

(2) If the object, which we make available, is inseparably mixed with other objects, which do not belong to us, we acquire the joint property rights of the new object in relation to the value of the object subject to retention of title to the other mixed objects at the time of the combination process. If the mixture takes place in a way that the seller's object must be considered as the main object, it is agreed that the seller transfers the joint property rights pro rata to us; the seller holds the sole property right or the joint property right for us.

(3) We reserve the property right for tools. The seller is obliged to use the tools exclusively for the manufacture of the goods, which we order. Furthermore, the seller is obliged at his own expenses to insure the tools belonging to us to their reinstatement value against damages from fire, water and theft. In addition, he is obliged to carry out any maintenance and inspection works at his own expenses in due time. He must notify us immediately of any breakdowns; if he culpably refrains from doing so the damage claims remain unaffected.

**§ 13 – Place of fulfilment and jurisdiction, applicable law, final provisions**

(1) The place of fulfilment for all services from the agreement is Plaidt.

(2) The place of jurisdiction for all legal disputes resulting from the contractual relationship is Koblenz. We are also entitled to file a suit with the Court that is responsible for the seller's head office. The terminology "legal disputes resulting from the contractual relationship" must be interpreted in the widest possible sense. For example, it also includes the claims to compensation for damages and/or for illicit action.

(3) The conclusion of the agreement and the contractual relationship are subject to the Law of the Federal Republic of Germany exclusively, with the exemption from the German International Private Law. The application of the UN Convention on Contracts for the International Sale of Goods (UN-Kaufrecht = "CISG") is excluded.

(4) The possible invalidity of individual provisions does not affect the binding nature of the remaining provisions.

(5) We are entitled to save and pass on to third parties the details of the goods traffic and payment transactions.