

## **1 Conclusion of contracts**

- 1.1 *The following conditions shall apply exclusively to all offers submitted by us and to all contracts concluded with us. General conditions of purchase or deviating conditions of the ordering party shall apply only if their applicability has been confirmed by us in writing.*
- 1.2 *All of our offers, in particular those in catalogues, sales documentation or in the Internet, are non-binding. They must be considered, in legal terms, as an invitation to submit an offer. Orders are deemed accepted if they are either confirmed by us in writing or executed without delay after the receipt of the order. In cases of doubt, the content of the contract shall be in accordance with our confirmation of order or, if such is absent, with our offer. Should, moreover, also no offer be available and the ordering party order the goods directly at the works, the content of the contract shall be determined by our delivery note.*
- 1.3 *The ordering party shall be bound by any of its orders issued to us until they are either accepted or refused. It may, however, set a reasonable grace period of 10 working days, which requires written form and shall only be possible 10 working days after placing the order, at the earliest. Should this grace period expire without results, the order shall be considered refused by us.*
- 1.4 *Information on dimensions, weight and performance, illustrations and drawings shall be considered approximations if they are not identified by us as binding. We reserve the right to make excess or short deliveries up to a quantity of 10 %.*
- 1.5 *We reserve the unrestricted right of ownership and copyright to the exploitation of all cost estimates, construction drawings and other documents. These may only be made accessible to third parties with our approval and must be returned immediately if the contract is not concluded.*
- 1.6 *Additional agreements – also those made with our representatives, field personnel or other agents – shall require our express written confirmation to be valid.*
- 1.7 *We reserve the right to make changes to the construction or form of the products during the time until delivery, if these are insignificant with regard to performance and are deemed acceptable to the ordering party.*

## **2 Delivery**

- 2.1 *Delivery periods shall begin only after the final clarification of all details with regard to the execution of the order. Adherence to the delivery periods shall require that all of the ordering party's contractual obligations, especially the payment of any agreed down-payments and the timely submission of documents, have been fulfilled.*
- 2.2 *In the case of delays in delivery due to reasons of Force Majeur or due to events beyond our control impeding us substantially in delivery or rendering the same temporarily impossible – including strike, lockouts, official orders, transport disruptions, etc. – also if these affect our suppliers or sub-suppliers, the agreed period of delivery shall be reasonably extended. If the impediment to performance continues for more than 3 months, then both contracting parties shall have the right to withdraw from the contract in whole or in part. Any claims for damages shall be excluded.  
The same shall apply if we are not supplied by our suppliers, or not supplied in good time, without any fault on our part.*
- 2.3 *Partial deliveries shall be permitted to a reasonable extent.*
- 2.4 *We endeavour to meet the agreed periods of delivery. In the event that we culpably fail to meet agreed periods of delivery, the ordering party shall be obliged to grant us a reasonable grace period. After expiry of this grace period, the ordering party may withdraw from the contract. Item no. VI shall apply mutatis mutandis to the assertion of claims for damage resulting from delay and non-performance.*
- 2.5 *If shipping is delayed for reasons attributable to the ordering party, a storage fee in the amount of 0.5 % of the invoice amount can be charged for each month started, at most, however, a total of 5 % of the invoice amount. The assertion of claims for greater damages shall not be not excluded by this. The ordering party shall be permitted to furnish proof that no or significantly lower damages were incurred.*
- 2.6 *If the ordering party culpably refuses the performance of the contract, we shall have the right to claim liquidated damages in the amount of 20 % of the total order value excluding VAT. The assertion of claims for greater damages shall not be not excluded by this. The ordering party shall be permitted to furnish proof that no or significantly lower damages were incurred.*
- 2.7 *In the case of call-off orders, a period of at least 15 working days must be given between the call-off and the delivery date, unless expressly agreed otherwise in writing.*

*In the case of call-off orders, the ordering party must call off the goods within a period of one year after placing the order, unless agreed otherwise. Failing this, the entire order value from the call-off order shall become due for payment in full, regardless of the existence of any products that have not yet been called off, with the ordering party being obliged to accept the goods awaiting acceptance.*

- 2.8 *In the case of products tailored to customer specifications (letterings, badges, signs, trademarks, etc.), for technical reasons, we reserve the right to make excess or short deliveries up to a quantity of 10 % of the batch.*

### **3 Prices, terms of payment**

- 3.1 *Prices are calculated net, ex works, including loading and plus value-added tax in the statutory amount applicable in each case. Packaging is charged separately. If return of packaging has been agreed upon, the packaging must be sent back without undue delay on a carriage-paid and free-of-expense basis and in proper condition.*
- 3.2 *All duties, taxes and similar fees incurred in connection with our deliveries and services in the ordering party's country shall be borne by the ordering party.*
- 3.3 *In the event of increases in costs – in particular increases in the prices of supplies and raw materials or in personnel, manufacturing and transport costs – which occur after the conclusion of the contract, we reserve the right to increase our prices reasonably. We shall furnish proof of these to the ordering party upon request. This shall not apply if the service or delivery is supposed to be provided within four months after the conclusion of the contract.*
- 3.4 *The ordering party may only offset against claims with counterclaims that are not contested by us or recognized by final declaratory judgement. If a legal action regarding our claim is pending, the ordering party may offset against our claim with counterclaims that are ready for a decision together with our claim.*
- 3.5 *The assertion of a right of retention based on counterclaims that are disputed or not recognized by final declaratory judgement shall be excluded if such claims do not relate to the same contractual relationship.*
- 3.6 *Bills of exchange are accepted only on account of payment and based on a special agreement and only if they can be discounted and if the bank discount charges are paid immediately in cash.*
- 3.7 *Payments may only be made to us. Claims against us may not be transferred to third parties.*

### **4 Transport, passing of risk**

- 4.1 *The risk shall pass on to the ordering party as soon as the goods have left our works or the ordering party is in default of acceptance, even if carriage-paid delivery has been agreed upon. This also applies to partial shipments. If shipping is delayed for reasons the ordering party is responsible for, the risk shall pass on to the ordering party upon notification of readiness for dispatch.*
- 4.2 *All shipments, whether carried out by us from our works or from the works of a third party contracted by us and located in the Federal Republic of Germany, shall be effected at the risk and expense of the ordering party. The recipient must make a complaint to the carrier in respect of any transport damages prior to payment of the shipping costs and acceptance of the goods. Any damages to or deterioration of the goods that are not visible externally upon acceptance must be notified by the recipient to the carrier within 1 week after delivery.*

### **5 Notice of defect, claims based on defects, limitation**

- 5.1 *Information on the condition of the goods, e.g. on dimensions or weight and other technical data, shall be deemed to be a mere description of the condition and do not imply the acceptance of a guarantee. The ordering party shall be solely responsible for checking if the delivered goods are suitable for its purposes.*
- 5.2 *The goods delivered by us must be inspected by the ordering party immediately after receipt for quantity, defects and condition, in accordance with section 377 of the German Commercial Code [HGB]. They shall be considered accepted if recognizable defects are not notified to us in writing immediately or at the latest within a period of one week after receipt of the goods or, if a defect becomes apparent later, after detection of the defect. This shall not apply if acceptance was expressly agreed upon.*
- 5.3 *In the case of defects or failure of the delivered goods to meet the specified condition, we can, at our own discretion, either remedy the defect or deliver a non-defective item. The same applies if a defect becomes apparent within the limitation period due to circumstances that already existed upon the passing of risk, with the limitation period being 12 months, unless agreed otherwise. The costs incurred for remedying the defect shall be borne by us.*  
*This shall not apply to any increased expenses resulting from the goods having been transported after delivery*

*to another location other than the domicile or business location of the ordering party, unless this change of location was in accordance with the designated use of the goods. With regard to remedying defects, we shall be entitled to carry out at least 3 attempts to remedy a defect.*

5.4 *If the remedy of the defect or the delivery of a substitute fails, is impossible, is unreasonable to the ordering party, is refused by us or is delayed beyond a reasonable period of time, the ordering party may, at its own discretion, either demand the reduction of the remuneration (reduction of the purchase price), the rescission of the contract (withdrawal) or compensation for expenses. Item no. VI shall apply mutatis mutandis to any damages incurred by the ordering party.*

## **6 Defects, limitation of liability**

6.1 *Damage claims based on defects may be asserted by the ordering party only if supplementary performance has failed.*

6.2 *We shall be liable for any injury to life, limb or health which is based on a culpable breach of duty by us, for damage which gives rise to mandatory liability under the German Product Liability Act as well as for damage which is based on a culpable breach of material contractual obligations.*

6.3 *If we have accepted a guarantee on the condition and/or durability of the goods or parts of them, we shall also be liable within the scope of this guarantee. For any damage resulting from the absence of a guaranteed condition or durability, but which do not occur directly on the goods, we shall only be liable if the risk of such damage is obviously covered by the condition and durability guarantee.*

6.4 *For other damage – regardless of the legal grounds – we shall only be liable if this is based on a wilful or grossly negligent breach of duty, unless mandatory statutory provisions give rise to a more extensive liability.*

6.5 *To the extent that any liability on our part is established, excluded or limited in accordance with the previous regulations, these provisions shall apply mutatis mutandis to any breach of duty and personal liability of our employees, staff members, clerks, representatives and vicarious agents.*

6.6 *Our liability shall be limited to the predictable, typical damage, except for wilful breach of duty. The limitation of liability shall not apply to damage that can be covered by insurance, if it was possible and reasonable for us to take out insurance, up to the amount of the sum insured.*

## **7 Retention of title**

7.1 *All delivery items shall remain our property until all of our claims, even future claims, deriving from the business relationship are paid in full.*

7.2 *The inclusion of individual claims in a current account or the balancing of accounts and acknowledgement of the balance shall not repeal the retention of title in all its stages. If the ordering party includes a claim from a resale of goods, which has been assigned to us, in an existing current account relationship with its customer, the current account claim shall be assigned to us in the full amount.  
After the balancing of accounts, this shall be replaced by the acknowledged balance which shall be assigned up to an amount corresponding to our original claim.*

7.3 *In the case of payments made by cheque or bill of exchange, we shall retain title to the delivery items in all stages until the ordering party has completely fulfilled all payment obligations to us.*

7.4 *In the event of default in payment by the ordering party, we shall be entitled, after issuing a reminder for overdue payment, to demand surrender of the items delivered under retention of title, even without prior withdrawal from the contract.*

7.5 *The ordering party shall be entitled to sell the delivery items only in the ordinary course of business and only as long as it is not in default. The right to resell the delivery items shall cease in particular if the ordering party is illiquid or has filed an application for the opening of insolvency proceedings.*

7.6 *However, the ordering party hereby and already now assigns to us all claims equivalent to the final invoice amount if it has such claims against its customers or third parties in the form of the proceeds from the resale, regardless of whether the delivery item has been resold without or after further processing.*

7.7 *The processing or transformation of delivery items by the ordering party shall always be carried out for us. If the item delivered by us is processed with other objects which do not belong to us, we shall acquire co-ownership of the new item in proportion of the value of the items delivered by us to the value of the other objects processed at the time of processing. In other respects, the same regulations shall apply to the object created through processing as apply to the item delivered under retention of title.*

- 7.8 *If an item delivered by us is mixed or commingled inseparably with other objects not belonging to us, we shall acquire co-ownership of the new object in proportion of the value of the item delivered by us to the value of the other objects mixed or commingled at the time of mixing or commingling. If the mixing or commingling is carried out in such a way that the ordering party's object is to be seen as the main object, it is agreed that the ordering party shall assign proportional co-ownership to us. The ordering party shall keep the sole ownership or co-ownership created in this way in safe custody for us.*
- 7.9 *We undertake, at the request of the ordering party, to release the securities to which we are entitled to the extent that the value of our securities exceeds the value of the claims to be secured by more than 20 %. The selection of the securities to be released shall be made by us.  
In the case of simple retention of title, the value of the securities shall be determined by our respective invoice amounts, in the case of assigned claims, by the amounts invoiced by the ordering party for the resale.  
If the goods that have undergone further processing are still in the possession of the ordering party, the value of the securities shall be determined by the invoice amounts. This shall be notified to the ordering party in writing. The ordering party shall be entitled, within a period of 14 days from the receipt of this notification, to provide us with documentary proof of buyers who are prepared to pay a higher price than the invoice amounts. To the extent that payment is secured, we shall be obliged to release securities.*
- 7.10 *In cases of default in payment, suspension of payment, filing an application for the opening of insolvency proceedings with regard to the assets of the ordering party or rejection of such application, the ordering party's right to sell or process the items delivered under retention of title or to mix, commingle or combine them with other objects or otherwise exploit them shall cease. After taking back the delivery item, we shall be entitled to exploit it. The proceeds from exploitation shall be offset against the payment obligations of the ordering party – minus reasonable exploitation costs.*
- 7.11 *The ordering party shall be obliged to insure the delivery items at its own cost against damage by natural hazards until it has acquired unconditional ownership. In the event of any damage, the ordering party's claim against its insurance company shall be assigned to us up to the amount of our still unsettled claims for payment.*

## **8 Tools, samples and drawings**

- 8.1 *We accept no liability for the correctness of models, samples, drawings or tools that are provided to us by the ordering party.  
To the extent that these infringe any property rights of third parties, the ordering party shall be obliged to indemnify us against all third-party claims.*
- 8.2 *If the models, samples or drawings or the orders do not provide any clear information on production tolerances, we shall manufacture the goods according to standards customary in our industry, or with the tolerances determined by the manufacturing process.*
- 8.3 *Tools that we have produced ourselves shall remain our property. Tools provided by the ordering party shall be stored for up to 5 years for follow-on orders. If their return is not requested within this period of time, they shall be scrapped. The proceeds from scrapping is already included in the calculation of the tool costs. If stored tools are lost due to Force Majeure, we shall not be liable to compensation for the loss.*
- 8.4 *If any of the tools become unusable under normal use conditions, the ordering party shall not be entitled to claim compensation. The unusable tool shall be sent to the ordering party. If, in such case, replacement tools are produced by us at our own cost, these shall remain our property and the ordering party shall not be entitled to demand surrender of these, except in return for payment of the manufacturing costs. If the ordering party orders provisional or sample tools, it shall be agreed that only small batches can be produced with such tools.*
- 8.5 *Drawings or drafts produced by us may not be made accessible to third parties without our consent, neither the original nor any copy. They shall be invoiced to the ordering party if no contract is awarded and if the drawings or drafts are not returned or if they are actually used.*

## **9 Governing law, place of jurisdiction and final provisions**

- 9.1 *The place of performance for both parties and for all mutual business relations shall be the place of the registered office of our company (Neu-Ulm).*
- 9.2 *The place of jurisdiction for business persons, legal entities and special public funds, for any actions upon cheques or bills of exchange and for all disputes arising directly or indirectly from the business relationship shall be the place of the registered office of our company (Neu-Ulm). For all ordering parties having their registered office within the area of applicability of the European Regulation on Jurisdiction and Enforcement of*

*Judgments, international jurisdiction of the German courts shall be agreed with regard to all disputes arising from this Agreement.*

- 9.3 *The place of jurisdiction at the place of the registered office of our company (Neu-Ulm) shall even then apply if, after the conclusion of the agreement, the registered office, the domicile or the usual place of abode is transferred by the ordering party outside of the area of applicability of the regulations of the German Code of Civil Procedure or is not known at the time of bringing an action.*
- 9.4 *We shall also be entitled to take legal action at the registered office of the ordering party or to bring an action before other courts which may have jurisdiction in accordance with German or foreign law.*
- 9.5 *The legal relationship to the ordering party shall be governed by German law, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG), except for the provisions on the place of payment pursuant to section 57 (1) lit. a CISG.  
Should one or several provisions be invalid in whole or in part, this shall not affect the validity of the other provisions. Any valid, reasonable portion that may be contained in such invalid provisions shall be maintained. The parties hereby and already now undertake to agree on a substitute regulation that comes as close as possible to the economic purpose of the invalid regulation.*