

# General Conditions of Delivery and Payment as of May 1<sup>st</sup>, 2010

## 1. Exclusive Validity of these Conditions

Any and all deliveries - including any and all future deliveries - shall exclusively be governed by these General Conditions of Delivery and Payment. Purchasing Conditions of the Customer are herewith explicitly rejected to the extent they are in conflict with these conditions.

## 2. Conclusion and Contents of Contract

2.1. Unless explicitly stated otherwise by the Supplier in any particular case, no declaration of intent issued by the Supplier at the initial phase of any negotiation shall be deemed to constitute a binding offer but is to be understood merely as an invitation to the Customer to make such an offer.

Any declarations of intent issued by representatives or agents of the Supplier shall become effective only upon being confirmed by the Supplier in writing.

All contracts shall become binding only upon the written confirmation and/or acceptance by the Supplier.

2.2. Any Amendments shall become effective only if made in writing.

2.3. Any documents provided by the Supplier are meant for information purposes only and do in no way constitute any kind of guarantee.

2.4. Rights deriving to the Customer from this Contract must not be assigned.

## 3. Prices

3.1. Prices are quoted net ex works, inclusive of packing and of VAT (U.S.: Sales Tax).

3.2. Unless otherwise explicitly agreed upon, title in tools used by the Supplier shall fully remain with him, even if the Customer bears part or all of their costs.

## 4. Passing of Risk

Any and all risk shall pass to the Customer when the merchandise leaves the factory or is placed at the Customer's disposal.

## 5. Delivery

5.1. Partial deliveries are permitted unless otherwise explicitly agreed upon.

A delivery that either exceeds or falls short of the quantity ordered by up to 10% must be accepted as a discharge of the Supplier's contractual duty of delivery. In the case of such a deviation, payment shall be made on the basis of the quantity actually delivered.

5.2. Delivery periods accepted in the acknowledgement of order shall be deemed to run from the pertinent merchandise either leaving the Supplier's works or from their being held at the customer's disposal, as the case may be. Such periods may be exceeded by the Supplier by up to one week and shall stop running as long as the Customer is in default with any contractual obligations of his own.

An appropriate extension of the agreed-upon delivery time shall be granted in case of an unforeseeable and inevitable shortfall of energy or of raw materials, in case of a strike, lock-out, of an unforeseeable state action, or of a default or non-performance on the part of sub-suppliers or of any other, comparably unforeseeable and uncontrollable event. If such a delay exceeds one month or if there is a close down of the works either of the Supplier himself or of one of his sub-suppliers or if any other event leads or threatens to lead to a delay of a similar duration, the Supplier shall be entitled to terminate the contract by giving the Customer written notice to that effect.

5.3. If the Supplier is in delay with his delivery, the Customer may, after having set the Supplier an additional period of time of a length reasonable under the circumstances to effect such delivery and the Supplier having failed to do so, to terminate the contract with regard to the delivery in question by giving the Supplier written notice to that effect. The same right shall inure to the Customer even without the need to set such an additional period if the Supplier is or has become unable to perform delivery for reasons that are or were within his own responsibility or control.

5.4. Once a stipulated delivery time has expired, the Supplier shall no longer be obligated to effect deliveries.

## 6. Incoming Inspection, Notice of Defects, Warranty and Liability

6.1. Notice of obvious defects, such as deviations in the quantity or identity of any products received or of defects in the packing or due to transportation must be given in writing not later than one week after receipt of such delivery. With respect to any other kind of defects, said period shall be counted from the date on which such defect could have been detected.

6.2. For any defects in the products delivered by the Supplier which are properly and timely notified by the Customer the Supplier shall be liable to the Customer, at the Supplier's discretion, either to repair or replace such product ("supplementary performance"). If such a supplementary performance has failed twice, the Customer shall be entitled, at his option, either to reduce the purchase price appropriately or to rescind the contract.

Furthermore, the Customer shall be entitled to the following damages:

Any costs necessary for such supplementary performance, in particular travel and transportation expenses, labour and material costs. However, increased costs on grounds of a subsequent transportation of the product to a location other than the seat of the Customer shall not be covered by this liability, unless such a relocation occurs within the Customer's ordinary course of business.

The Supplier shall be liable without any limitation on the basis of the statutory regulations for any damage caused by intent or through gross negligence of the Supplier or of any person employed by him in the performance of his obligations and for any damage caused through the bodily injury of a natural person.

Any other claims of the Customer to compensate any direct or indirect damage not heretofore explicitly mentioned and no matter on which legal grounds they are based – including any claims for damages on grounds of the violation of precontractual duties as well as tort shall be excluded.

6.3. The period of limitation for any of the above-mentioned claims shall be 24 months, except for claims for supplementary performance which, if raised by businessmen/businesses, shall be 12 months only. The period of limitation for any claims vis-à-vis consumers shall be 24 months. Such period shall begin to run from the date of delivery respectively acceptance of the products in question.

6.4. The period of limitation for replacements and/or for repaired products shall run until expiration of the original period of limitation, at least, however, for three months.

## 7. The Need of Continued Creditworthiness of the Customer

The continued absolute creditworthiness of the Customer is an indispensable precondition for delivery. If, after the conclusion of the contract, the Supplier obtains information which warrant reasonable doubts in this respect, he shall be entitled to demand, at his discretion, either advance payment or collateral or, if a consideration other than payment in cash had been agreed upon, payment in cash. Alternatively, he may terminate the contract, at his discretion, in whole or in part.

Such doubts shall be justified, in particular, but not exclusively, in the following cases: A considerable deterioration in the Customer's overall financial position, suspension of payments, bankruptcy or composition proceedings, termination of business, substantial assignments or encumbrance as collateral by the Customer of inventories, claims or of purchased merchandise to other creditors, or failure of the Customer to pay claims of the Supplier when due after having been formally admonished to do so.

## 8. Retention of Title

8.1. The Supplier shall retain full title to all merchandise delivered until all claims due at the date of delivery are fully satisfied that either he or any company he is associated with have against the Customer. In the case of payment by cheque or by bank transfer, payment shall be deemed to be effected only when the pertinent amount has been irrevocably credited to the Supplier's account.

8.2. If the Customer uses such merchandise as material or component to manufacture a new product out of it, such manufacturing/assembly shall be deemed to be carried out by the Customer on behalf and in the name of the Supplier. With regard to merchandise used as a component to create a new item, the Customer herewith assigns to the Supplier all rights he thereby obtains in such new product to the extent these rights are to be considered as consideration for the loss/destruction of the pertinent merchandise. The Supplier shall take proper care of and maintain for the Supplier such new product.

8.3. The Customer may resell such merchandise/product only in the ordinary course of business. The Customer herewith assigns to the Supplier as collateral for his open receivables all claims he will obtain as consideration for such resales, respectively, in the case the object of such a resale is a product manufactured/assembled out of such merchandise, to the extent the overall value of this new product must be attributed to the use as a part or component of such merchandise. The Customer is authorized to collect the assigned claims. When the Supplier's claims are due, the Customer shall keep separately such collected amounts and shall immediately transfer them to the Supplier. The Customer must immediately notify the Supplier in case any third party claims attachment of the merchandise under retention or of any of the assigned claims. Any costs of a potential intervention shall be borne by the Customer.

8.4. If the total value of collateral obtained by the Supplier exceeds the total amount of claims open to the Supplier by more than 20 per cent, the Supplier shall on request be obligated to retransfer the excess amount to the Customer.

8.5. The authorization of the Customer to process or resell merchandise under retention of title or to collect claims assigned to the Supplier expires in the following cases: the conditions of payment are not observed, bills of exchange or cheques of the Customer are protested, a petition for insolvency proceedings is filed, payments are suspended, business is terminated or negotiations regarding a moratorium are initiated. In such case, the Supplier may take the merchandise into his possession. Unless expressly stated by the Supplier, such repossession, if conducted, shall not constitute a termination of the contract. In such case and upon pertinent request by the Supplier, the Customer shall inform the garnishees about the retention of title and assignment of claims. He shall also provide the Supplier with all information and data needed by the Supplier in order to pursue his claims against the garnishees. The Supplier may, at his discretion, credit merchandise retaken from the Customer at its invoice value, at its current market value or at the value reasonably obtainable by the utilization or sale of such merchandise.

## 9. Conditions of Payment

9.1. Invoices must be paid net (i.e., without rebate) within 30 days after receipt of the delivered items. From the 31st day after such receipt the Customer shall pay the statutory interest.

9.2. Under no circumstances must the Customer withhold due payments. Set-offs may only be made against claims that are either uncontested or have become res judicata. Irrespective of whether the claims of the Supplier are due he is entitled to set off his claims against claims the Customer has against companies he is directly or indirectly associated with.

9.3. In case of a substantial deterioration in the financial situation of the Customer, the Supplier shall have the right to demand immediate payment of all claims he has against the Customer.

## 10. Final Provisions

10.1. The place of performance for all obligations deriving from this contract shall be the address of the works from which the pertinent delivery must be made.

10.2. This contract as well as all disputes arising out of it or in connection with it shall exclusively be governed by German Law.

10.3. Any disputes arising out of or in connection with this contract shall exclusively be decided, at the option of the plaintiff, either by the competent Court in Remscheid, Germany, or by arbitration according to the rules and provisions of the Deutsche Institution für Schiedsgerichtsbarkeit e.V. (DIS) [German Institution for Arbitration]. Such proceedings shall be held in Nuremberg and in the English language.

10.4. If any provision contained in these conditions is or becomes invalid or ineffective, the remainder of these conditions shall not be affected thereby. Rather, in the stead of the invalid/ineffective provision out of all valid/effective provisions such provision shall be deemed to have been agreed upon that in its effects comes closest to what the parties wished to achieve with the invalid/ineffective clause.