

# STANDARD SALE AND DELIVERY TERMS

## 1. GENERAL PROVISIONS:

Our Standard Sale Terms are a component part of every contract signed between us and our customers and only apply in relation to merchants. They apply, after they have once been received by the customer, for all subsequent business. Terms diverging from them, unless they are set forth in the entire bid and the order confirmation will not apply even if we fail to contradict them explicitly.

## 2. BIDS, ORDERS:

- 2.1 Our bids are without obligation.
- 2.2 Orders, regardless of whether they are issued to us or our representatives in writing, electronically or verbally are only binding on us if they have been confirmed in writing or complied with by dispatch of the goods. Modifications, including for ongoing orders, and ancillary agreements must be in writing to be valid or, in any case, must be confirmed by us in writing. The purchase agreement only comes about when we confirm the order. If delivery is made immediately without confirmation, then the invoice is simultaneously deemed to be an order confirmation.
- 2.3 In cases where an order is transmitted electronically the provisions of Sec 312 e, para 1, sentence 1, nos 1 through 3 of the Civil Code (obligations in electronic communication) are expressly barred. We are not obliged to confirm receipt of the order by electronic means. Incoming emails reaching us between the hours of 9 a.m. and 5 p.m. on working days are deemed to have been received at 5 p.m. unless earlier retrieval can be shown. Emails received by us outside of these hours are deemed to have been received on the next working day at 5 p.m. unless earlier receipt can be shown. The contract terms as well as the Standard Business Terms will only be stored by us in case of non-individual communication and may then be sent to the buyer by email upon request.

## 3. PAYMENT TERMS; LATE PAYMENT; POSTING OF SECURITY:

- 3.1 Unless otherwise agreed, our invoiced amounts are due within 30 days of the invoice date without deduction and are payable in euro to one of the bank accounts listed overleaf. Indirect charges are at the buyer's expense. With exports, costs occasioned by receipt of payment are chargeable to the buyer where incurred in the latter's jurisdiction.
- 3.2 In case of late payment, we charge late payment interest in the amount of conventional bank overdraft interest, but at most in the amount of 8% above the base lending rate of the day, with exchange rate losses included; we reserve the right to assert additional late payment damages. The buyer is at liberty to show that we have incurred a lower loss, or none at all.
- 3.3 Acceptance of orders and execution of deliveries can be made dependent upon the posting of security or advance payment.
- 3.4 Should the customer's financial situation deteriorate significantly after signing of the contract, either by filing for insolvency, initiation of composition proceedings, petition to provide an affidavit of disclosure or an arrest order or equivalent, then we are entitled at our option to demand advance payments or posting of security within an appropriate period of time. Up until fulfillment, we are entitled to suspend performance. At the end of the period we are entitled to withdraw from the contract if by that time advance payment or posting of security has not occurred. A significant deterioration of the customer's financial situation will be assumed if the latter is in arrears with more than two payments.
- 3.5 Crediting and deductions are only allowed if the counterclaims have been acknowledged by us or are legally enforceable. Expressly barred are, in addition, retention rights not based on the same contractual relationship.
- 3.6 We expressly reserve the right to reject drafts. Their acceptance is in any case only by way of provisional performance. Discounting and draft charges will be

chargeable to the buyer and are immediately payable. Drafts are accepted without guarantee for correct presentation and protest. The acceptance of cheques is likewise only pending full discharge of the debt.

## 4. DELIVERIES AND SHIPPING:

- 4.1 We endeavour to deliver as expeditiously as possible. Delivery dates or deadlines which may be agreed with binding or non-binding force must be indicated in writing. Fixed-date transactions must be expressly designated as such and must bear our confirmation.
- 4.2 If through force majeure events or other unforeseeable, extraordinary or non-culpable circumstances such as raw materials shortages, operational disturbances or labour disputes (strikes or lockouts) at our plant, with our suppliers or with shipping companies preventing or delaying production, purchasing or delivery, then the delivery deadline will be extended to an appropriate extent. If due to the circumstances in question our delivery or performance becomes impossible or unreasonable to expect of us, then we will be released from our obligation to deliver.
- 4.3. If we are otherwise late in delivering, any damage compensation claims under Sec 286 of the Civil Code are expressly barred unless we are guilty of deliberate intent or gross negligence. The claim to compensation is limited to the typically foreseeable damages.
- 4.4 Unless otherwise agreed, loading and shipping occur uninsured at the recipient's risk ex works or ex storage facilities.

## 5. PRICES:

Orders placed are carried out by us at the list prices applicable as of the date of delivery. These prices contain no VAT. The latter is accordingly charged separately at the applicable VAT rate of the day. Delivery prices are understood, unless otherwise agreed, as being per net/kg, free to the customer's address if within the national jurisdiction, for foreign orders free of freight to the German border, duty unpaid, for delivery in non-returnable packing (barrels and containers); if deliveries are requested in one-way canisters, the price is increased by the canister surcharge applicable when the invoice is issued. If express or airfreight shipping is requested then we charge for the extra costs.

## 6. RETENTION OF TITLE:

- 6.1 We retain ownership title to goods delivered up through receipt of all payments stemming from the supply contract wherever allowed in the legal system of the venue where the goods are located.
- 6.2 If the ownership title retention hereby expressly agreed is not recognised in the legal system of the national jurisdiction in which the object of the delivery is located, or is only complied with under certain prerequisites, then the customer is obliged to point this out to us at the latest when the contract is signed. If that legal system does not allow for such title retention or extended title retention while according us other rights serving security purposes in a manner similar to retained title, then we hereby declare that we will avail ourselves of such rights. The buyer must obligate itself to cooperate in taking any measures required for this purpose (including compliance with regulations of form).
- 6.3 Any treatment or processing of the retained title goods for free on assignment by us as well as without any obligation for us such that we are acknowledged to be manufacturers within the meaning of Sec 950 of the Civil Code thus retain ownership title to the products as per that date and to the extent of processing. In case of processing by the buyer (combination, commingling) with other goods not belonging to us, then the provisions of Secs 947 and 948 of the Civil Code will

apply with the consequence that our co-ownership in the new object is henceforth retained title goods within the meaning of these present Terms.

- 6.4 In case of resale to which the buyer is entitled in the course of routine business, any claims incurred by the buyer are hereby assigned to us as security. The buyer is obligated, at our request, to identify for us the customers to which it has resold the goods.
- 6.5 The buyer must store the goods on our behalf and must obligate itself to insure the same against fire, theft and leakage. The buyer hereby assigns to us its compensation claims on insurance companies entitled for damages of the kind cited or any other compensation claims up through the extent of our claims. We hereby accept such assignment. We are entitled, if the buyer fails to comply with its obligations under contracts signed with us or is late in fulfilling the contract, to disclose such security assignments to the ultimate customer and to immediately collect on the claims.
- 6.6 To the extent that the value of our securities exceed our outstanding claims by more than 10% we will release them if so requested. Repossession of goods delivered with retained title is not to be deemed a withdrawal from the contract unless this is explicitly declared to be so.
- 6.7 The buyer is not entitled to mortgage, or transfer title by way of security or take any other such measures without our express written consent. In case of mortgaging or other such measures by third parties, the buyer must immediately notify us and, if required, take appropriate immediate measures.

## 7. WARRANTY, NOTIFICATION OF DEFECTS, LIABILITY

- 7.1 Warranty for defective products is governed by statutory regulations unless otherwise provided for here below. Exempted from the warranty obligation are damages due to improper usage, storage, setup or other external causes.
- 7.2 The buyer must immediately upon delivery examine the goods delivered, wherever appropriate by means of test processing, for defects in regard to their quantity and construction and to immediately notify the seller, failing which the goods will be deemed to be accepted. We must be notified immediately upon discovery of any defects not ascertainable upon such examination. Complaints must be reported in writing with indication of the order data and the invoice and shipping numbers.
- 7.3 In case of justified defects notified on time we will at our option either remedy the defect at no charge or supply replacement goods free of defects (subsequent fulfilment). In the case of delivery recourse (Secs 478 and 479 of the Civil Code) the option is incumbent on the buyer. Our agreement must be obtained prior to any return of the goods. Replaced goods become our property. If we fail to comply within a second deadline appropriately set for us for remedy of the defects or replacement delivery of goods free of defects, should subsequent fulfilment fail (in which case we are entitled to two attempts), should we refuse subsequent fulfilment or if such subsequent fulfilment cannot reasonably be expected of us, then the customer is entitled under the provisions of statutory regulations to withdraw from the contract, reduce remuneration (reduction), obtain compensation for expenses as well as, within the bounds of cited here below, to damage compensation. Claims to withdrawal and reduction do not apply in case of an insignificant defect. Any claim to damage compensation in lieu of performance in the event that we do not fulfil performance due or do not do so properly (Sec 281 of the Civil Code) or that we violate (Sec 282 of the Civil Code) an obligation under Sec 241, para 2 of the Civil Code (ancillary obligations) is expressly barred provided that we are only accused of simple negligence. This does not apply if a significant contractual

obligation or an indispensable obligation has been violated. The claim to damage compensation is limited to typically foreseeable damage.

- 7.4 Warranty claims are statute-bound one year from delivery of the goods.
- 7.5 Other damage compensation claims are expressly barred unless they are due to deliberate intent or gross negligence. This does not apply to damages resulting from injury to life, limb or health due to negligent fulfilment of obligations on our part or to any deliberate or negligent violation of obligations by our legal representatives or agents. Likewise not expressly barred are any claims under the Product Liability Act.

## 8. VENUE OF PERFORMANCE; VENUE OF JURISDICTION AND APPLICABLE LAW:

- 8.1 Venue of performance for deliveries is Lehrte.
- 8.2 Venue of jurisdiction for all disputes ensuing over the contract is Lehrte. We are also entitled to sue the buyer in the courts of the latter's registered offices.
- 8.3 Solely applicable is the law of the Federal Republic of Germany to the exclusion of the United Nations Convention on the International Sale of Goods.
- Where nothing to the contrary is contained in these present Terms, the Incoterms published by the International Chamber of Commerce apply in the most recent version available.

## 9. SEVERABILITY CLAUSE

Should any of the clauses above be or become void, the validity of other provisions and agreements will not be affected thereby.

Lehrte, September 2002

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