

## **International Terms & Conditions of Sale for Customers Located Outside Germany**

### **I. Sphere of Application of International Conditions of Sale**

1. These International Terms & Conditions of Sale apply to all business conducted with Customers of our company whose principal place of business is located outside Germany. Our General Terms & Conditions of Sale, which will be made available upon request, apply to business conducted with Customers whose principal place of business is located in Germany. The choice of Conditions of Sale will depend upon the location of the entity that orders the goods in its own name.
2. These International Terms & Conditions of Sale will apply to the present contract and all subsequent contracts in which the preponderant part of our obligations consists in the supply of goods.
3. We will not accept any terms and conditions of the Customer that conflict with or differ from our International Terms & Conditions of Sale even if we do not expressly object to such terms and conditions or accept performance from or render performance to the Customer despite the existence of such terms and conditions. Regardless of the content of these International Conditions of Sale, we will also not be bound by any terms and conditions of the Customer that do not comply with applicable legislation.

### **II. Execution of the Contract**

1. The Customer agrees to notify us accordingly in writing prior to execution of the contract if the goods must be fit not only for the purposes which they would ordinarily be used or will be used under operating conditions that are unusual, entail special risks to health, safety or the environment or are especially severe.
2. Customer orders must be submitted in writing. In the event of any discrepancies between the Customer's order and our quotation, the Customer must make any such differences especially obvious in the Customer's order.
3. Orders received by our employees will become effective only if accepted by us in writing. Neither actual delivery of the goods ordered nor any other acts or omissions on our part will constitute execution of a contract. We reserve the right to issue notification of acceptance of orders received from the Customer up to 14 calendar days from the time of receipt. Orders may not be cancelled prior to expiration of this period.
4. Our written notification of acceptance of the Customer's order will be determinative for the purposes of definition of the scope of the entire content of the order and form a contract between the Parties even if it otherwise, except as regards purchase price and quantity, deviates from instructions received from the Customer or these exclusive International Terms & Conditions of Sale. Special wishes of the Customer and any representations or warranties made by us must be explicitly confirmed in writing by us. Regardless of the nature and scope of any discrepancies, the contract will be binding unless the Customer objects to such discrepancies in writing and notifies us thereof in a timely manner, but no later than 7 calendar days after receipt of notification of acceptance of the order.

### **III. Delivery of Goods**

1. Subject to the proviso of exemption from liability pursuant to Section VII below, we

will deliver the goods specified in our written notification of acceptance of the Customer's order. We assume no obligation in connection with the sale or marketing of the goods outside Germany.

2. Our obligations arising from the contract entered into with the Customer exist exclusively towards the Customer. Third parties, and in particular customers of the Customer, may not authority to require that we make delivery to them or bring any other claims of a contractual nature against us. The Customer will also remain responsible for acceptance of goods if the Customer assigns its rights to a third party. The Customer agrees to hold us harmless from any claims brought against us by third parties in connection with the contract entered into with the Customer. This hold harmless clause will also cover in particular reimbursement of costs and expenses incurred by us, and the obligations contained therein are undertaken by the Customer unconditionally and without reservation, which includes but is not limited to waiver of any right to plead limitation.
3. We agree to deliver products of average kind and quality that meet usual commercial tolerances as regards type, quantity, quality and packaging. Dimensions, structure and colour may vary as a function of the nature of the materials used and commercial practice. We reserve the right to make partial delivery and invoice partial shipments separately.
4. We deliver ex works Incoterms 2010 unless agreed otherwise with the Customer.
5. Delivery dates or specific periods will be binding only if the Customer has provided all documents, permits, approvals or licenses on a timely basis, obtained letters of credit and made payments on account as agreed and fulfilled in a timely manner all other obligations incumbent upon the Customer. The specific time agreed for delivery will commence as of the date of our written notification of acceptance of the order. We reserve the right to make delivery prior to the agreed time of delivery.
6. We will be under no obligation to pay any fees incurred outside Bielefeld, to comply with any systems of weights and measures, identification or labeling regulations or registration or certification requirements in effect outside Bielefeld or to take back packing materials to comply with any laws or regulations governing waste disposal.
7. Without prejudice to any further legal rights we may have, we reserve the right to suspend performance of our obligations under this contract in the case of reasonable grounds to expect that the Customer will fail to honour any or all of its obligations under the contract. We may exercise this right in particular if the Customer should fail to duly honour its obligations to process payment or fail to make payment in a timely manner or exceed the limit of a credit insurer with the pending order. Instead of suspension of performance, we may at our sole discretion also make future shipments that have already been accepted contingent on the issuance of a letter of credit by a major German bank or payment in advance. We will be under no obligation to continue to fulfill our obligations in the event security provided by the Customer to avert suspension of performance by us is not adequate or could be contested under applicable law.

#### **IV. Price, Payment and Acceptance of Goods**

1. The Customer is bound to pay the agreed purchase price in full through the financial

institution designated by us in the currency specified in our notification of acceptance of the order without deduction of any fees or charges. In the event delivery is not made within four months after placement of the order, we may invoice the corresponding price on the basis of our current prices instead of the agreed price. The contract will also enter into force and effect in the event no price has been agreed; we will in any such case then apply the usual prices (list prices) in effect as of the agreed time of shipment.

2. Payment will in any case be due as of the date specified in the written order acceptance or, alternatively, upon receipt of the invoice. Payment will become due as of that date regardless of whether or not the Customer has already received the goods and/or documents and/or had an opportunity to inspect the goods and/or documents. Terms of payment will become void and all outstanding amounts due immediately in the case of initiation of insolvency proceedings in respect of the assets of the Customer, if the Customer should fail to meet its obligations towards us without good reason, if the Customer should provide misleading information in respect of its creditworthiness or if the amount guaranteed by a credit insurer is reduced for reasons beyond our control.
3. The Customer warrants that all conditions have been fulfilled for tax-free delivery as seen from the German perspective. Insofar as we have not received proof of tax-free export delivery or must pay value-added tax due to the nature of delivery or circumstances that can be attributed to the Customer, the Customer will hold us completely harmless without prejudice to any further claims we may have. The obligations contained in this indemnification are undertaken by the Customer unconditionally and without reservation, which includes in particular a waiver of any right to plead limitation and also covers reimbursement of costs and expenses incurred by us.
4. We reserve the right to credit payments received as we see fit, regardless of currency or jurisdictional venue, towards amounts due by the Customer by virtue of our own or rights or rights that have been assigned to us as of the time of receipt of such payments.
5. The Customer waives its legal rights to set off its claims against our claims unless such counterclaims are denominated in the same currency, are held by the Customer in its own right and are either legally enforceable or due and undisputed or have been acknowledged by us in writing.
6. The Customer waives its legal rights to withhold or contest payment or assert counterclaims unless we have seriously breached our obligations under the same contract and failed to remedy such breach despite being requested to do so in writing and failed to offer appropriate security.
7. The Customer agrees to accept goods on the day of delivery at the delivery destination specified in our written notification of acceptance of the order. The Customer may refuse to accept delivery only by exercising its rights to cancel the contract pursuant to the provisions contained in Section VI.1.

## **V. Conformity of Goods and Third-Party Rights**

1. Without prejudice to any waivers or limitation of our responsibility under the law, the goods will be considered to lack conformity if, taking into account the provisions contained in Section III above, the Customer can provide proof to the effect that the packaging, quantity, quality or nature of the goods deviates significantly from the specifications set forth in the written notification of acceptance of the order or are not fit for the purposes for which goods of the same description would be used in Germany due to failure to comply with the agreed specifications. In the event of any lack of conformity of the goods with any provisions of law or regulations applicable in Bielefeld, the goods will nevertheless not be considered to lack conformity if general use of the goods is not prohibited by provisions of law or regulations in effect in the jurisdiction of the registered place of business of the Customer.
2. In the event the written notification of acceptance of the order does not explicitly specify otherwise, we can in particular not guarantee that the goods are fit for any purposes other than those for which goods of the same description would ordinarily be used in Germany or will fulfill any other expectations of the Customer or comply with legal requirements outside Germany, for example, in the country in which the Customer is located. We will not be liable for any lack of conformity occurring after the passage of risk.
3. The Customer will inspect the goods for compliance with the provisions of law and thoroughly examine each individual shipment to determine the presence of any obvious or typical lack of conformity.
4. Without prejudice to any waivers or limitation of our responsibility under the law, title to the goods will be considered defective if the Customer can demonstrate that the goods were not unencumbered by enforceable rights or claims of third parties at the time of passage of risk. Without prejudice to any other legal rights we may have, rights or claims of third parties based on industrial property or other intellectual property will constitute a defect of title only if the rights have been registered and published in Germany. Notwithstanding any provisions of law or regulations in effect in Germany, title to the goods will not be considered defective if general use of the goods is not prohibited by provisions of law or regulations in effect in the jurisdiction of the registered place of business of the Customer.
5. The Customer will notify us in writing without delay of any lack of conformity or defects of title as required by law.
6. The Customer may seek remedy as provided in these International Terms & Conditions of Sale after giving proper notification pursuant to paragraph 5. The Customer will have no further rights or remedies under the contract or otherwise. In the event we should satisfy any claim brought by the Customer in connection with such remedies, this will not entail extension of any guarantee or warranty. The Customer's remedies in the case of a defect of title will become time-barred under the same conditions that apply in the case of remedies for defects in materials and workmanship. In the case of failure to make proper notification, the Customer may rely upon remedies only insofar as we have intentionally concealed defects in materials, workmanship or title. Our acknowledgement of any defects in materials and workmanship or defects of title will serve only to clarify the situation, but will not, however, constitute waiver of the duty to make proper notification.

7. Insofar as the Customer is entitled to legal remedies in the case of delivery of defective goods and/or goods encumbered by the rights of others under the provisions of these International Terms & Conditions of Sale, the Customer may require replacement, remedy of any lack of conformity or a reduction in the price of the goods pursuant to the provisions of the U.N. Convention on the International Sale of Goods . The Customer will have no further claims. Notwithstanding the remedies available to the Customer, we reserve the right to remedy any lack of conformity, provide replacement or issue a credit in an appropriate amount in lieu of any remedy to which the Customer might otherwise be entitled.
8. Any claims of the Customer in respect of any lack of conformity or third-party rights will become time-barred one year after receipt of the goods by the Customer.

## **VI. Declaration of Avoidance**

1. The Customer may declare the contract avoided only if the legal conditions for declaration of avoidance have been fulfilled, the Customer has notified us in writing of its intention to declare the contract avoided and we fail to perform our obligations within the additional period of time fixed for such purpose by the Customer and communicated to us in writing. If the event the Customer claims replacement, remedy of lack of conformity or performance in some other form, the Customer will fix a reasonable period of time for performance before declaring the contract avoided. The Customer may otherwise declare the contract avoided in writing within a reasonable period of time and inform us accordingly.
2. Without prejudice to any other legal rights we may have, we may declare the contract, or any part thereof, avoided if the Customer refuses to accept these International Terms & Conditions of Sale, if the Customer fails to receive our written acceptance of the order within 14 calendar days of its date of issuance, if insolvency proceedings are initiated in respect of the assets of the Customer, if the Customer fails to perform any of its material obligations towards us or any third parties without good reason, if the Customer should provide misleading information on its creditworthiness or if the amount guaranteed by a credit insurer is reduced for reasons beyond our control, if, through no fault of our own, our suppliers fail to make delivery as agreed or fail to make delivery on time or if, taking into account our interests and the reasonable needs of the Customer discernible at the time of execution of the contract as well as the agreed consideration, we cannot be reasonably expected to perform our obligations for other reasons.

## **VII. Damages**

1. The Customer may claim damages under the contract and/or on the basis of contractual negotiations only under the following conditions:
  - a) The Customer must first seek other remedies and may claim damages only in an amount equal to that of any remaining deficit, but may in no case claim damages instead of seeking other remedies;
  - b) We will not be liable for disruptions due to natural disasters or political occurrences, governmental measures, labour disputes, sabotage accidents, terrorist acts, biological, physical or chemical processes or other circumstances beyond our reasonable control. Our liability will otherwise be limited to intentional

or grossly negligent breach of contractual obligations towards the Customer on the part of our directors, officers or employees.

- c) In the case of liability on our part, we will indemnify the Customer within the limits pursuant to subparagraph d) to the extent the proven loss of the Customer was inevitable and the occurrence and amount of the loss as a result of such a breach could have been foreseen by us at the time of execution of the contract. The Customer must notify us in writing of any special risks, possible untypical loss events and unusually high losses prior to execution of the contract. The Customer must also take action to contain losses as soon as any lack of conformity of the goods is recognized or recognizable.
- d) We will not be liable for loss of profit or immaterial losses. Damages for delayed delivery or failure to make delivery will otherwise be limited to 0.5% for each week of delay or any fraction thereof, not to exceed a maximum of 5% and 200% of the value of the goods not in conformity with the contract for other breaches of contract.

This subparagraph will not apply in the case of willful misconduct or gross negligence on the part of directors, officers and managerial employees.

- e) In the case of claims that have not become time-barred, the Customer may take legal action to claim damages only after a period of 12 months from the time of our refusal to pay damages.
  - f) The limits to our liability set forth above will not apply in the case of liability for loss of life, bodily injury or illness or in the case of liability under the Product Liability Act (*Produkthaftungsgesetz* – ProdHaftG).
2. Without prejudice to further claims under the law or this contract, the Customer will be liable for damages as specified below:
- a) If we fail to receive payment when due, the Customer the Customer will reimburse us for the usual costs of judicial and non-judicial legal enforcement incurred in Germany and abroad and pay interest at the prevailing rate for unsecured short-term loans denominated in the agreed currency in Germany but not less than 8 percentage points above the base interest rate of the ECB.
  - b) In the event of significant delay in delivery for reasons attributable to the Customer or failure to take delivery by the Customer, we reserve the right to claim damages in the amount of a flat 10% of the value of the respective shipment.

## **VIII. Miscellaneous**

1. We will retain ownership of all goods after delivery until all outstanding amounts due by the Customer are paid in full.
2. The Customer will hold us harmless from all claims of third parties brought against us under product liability or similar legislation insofar as such liability arises from circumstances – such as, for example, the presentation of the product – that are determined by the Customer or other third parties without our explicit written consent. This hold harmless clause covers in particular reimbursement of costs and expenses incurred by us and is given by the Customer unconditionally and

without reservation, who also waives in particular compliance with and recall requirements and the right to plead limitation.

3. We retain all rights of ownership, copyright and other industrial rights and intellectual property in respect of illustrations, drawings, calculations and other documents and software as well as rights arising from know-how.
4. All communication, statements, notices, etc., may be made only in the German or English languages. Communication by facsimile or e-mail will satisfy the written form requirement.

## **IX. General Contractual Bases**

1. Bielefeld is the place of performance for all obligations arising from the contract. This provision will also apply if we assume the cost of payment transactions, perform services for the Customer elsewhere or payment is due upon delivery of the goods or documents or a transaction is reversed. We may also bring action against the Customer to enforce payment in the jurisdiction of the Customer's place of business.
2. The execution of the contract, including understandings as regards jurisdiction and arbitration as well as the rights and obligations of the Parties, including precontractual and other accessory obligations, will be governed and construed exclusively in accordance with the U.N. Convention on the International Sale of Goods together with these International Terms & Conditions of Sale. Apart from application of the U.N. Convention on the International Sale of Goods, the legal transactions between the Parties will be governed by non-uniform German law.
3. In the event any provision of these International Conditions of Sale should be or become invalid, in its entirety or in part, the remaining provisions will remain valid. The Parties to the contract will then replace the invalid provision by a valid provision that most closely approximates the economic intent and purpose of the invalid provision.

## **X. Applicable Law, Jurisdiction**

1. Transactions with the Customer will be governed by the U.N. Convention on the International Sale of Goods of 11 April 1980 and comply with customary practice in Germany. The U.N. Convention on the International Sale of Goods will apply beyond its scope of application and notwithstanding reservations of member states to all contracts that are governed by and construed in accordance with these International Terms & Conditions of Sale as specified in Section I above. In the case of the use of commercial terms, the Incoterms 2010 of the International Chamber of Commerce will apply, taking into account the understandings contained in these International Terms & Conditions of Sale.
2. Any disputes with the Customer arising from this contract will be submitted exclusively to the courts of Bielefeld. We may, however, at our discretion, take action before the courts having jurisdiction over the registered place of business of the Customer.