

## I **Terms of Delivery and Payment**

### I General

1. Our deliveries and services are based solely on these terms. By placing an order, the ordering party accepts these Terms of Delivery and Payment. The ordering party's general terms and conditions shall not be valid if they differ from the terms specified below. Such general terms and conditions shall also not be accepted if we do not expressly contradict them again upon receipt. These Terms of Delivery and Payment shall be deemed accepted at the latest upon delivery of our goods.
2. Orders placed shall be deemed accepted only when confirmed in writing by us or upon delivery of the goods.
3. All agreements must be given in writing. This shall also apply to collateral agreements, guarantees and any subsequent contract amendments.
4. We shall not be liable for any errors, spelling mistakes and other obvious inaccuracies.
5. If any provision of these Terms of Delivery and Payment is invalid or voidable or has not become an integral part of the contract, this shall not affect the legal validity of the remaining provisions. An invalid or voidable provision shall be replaced by a provision which most closely corresponds to the economic intent of the contract.
6. The transfer of the ordering party's rights and obligations under the contract shall require our written approval.
7. We are entitled to assign claims and receivables arising from our business relationship.

## II Prices

1. All prices are ex works. Prices confirmed by us or otherwise valid according to our price list on the date the goods are dispatched plus value added tax shall prevail. Our prices are not subject to discounts or other deductions. Any additional services agreed shall be invoiced separately.
2. Additional deliveries carried out at the request of the ordering party shall, unless otherwise agreed, be subject to our general price list. We are not obliged to make any additional deliveries.

## III Dispatch, packaging

1. Goods are dispatched freight collect. Where an alternative contractual agreement is made, we shall decide on the method of dispatch and means of transport, and shall not be held liable in any way. Additional costs incurred by other requests of the ordering party and any additional freight charges, including charges incurred as a result of the specific nature of the goods, e.g. bulky goods with special dimensions, shall be borne by the ordering party.
2. Packaging shall be invoiced at cost price. Packaging material intended for recycling by us shall be reimbursed in the agreed amount, if it is returned to Schwerte freight paid in good condition and with its full quantity of filling material within 8 weeks (4 weeks in the case of wooden drums).

## IV Acceptance, passing of risk

1. If goods are supposed to be tested under special conditions, acceptance procedures shall be conducted at our plant. We shall bear all material costs for such procedures but personal travel and accommodation expenses of the party commissioned to conduct acceptance shall be borne by the ordering party. If the ordering party waives acceptance at our works, the goods shall be deemed accepted upon our notice to the ordering party that they are ready for dispatch but at the latest when the goods leave our works.

2. The ordering party must take delivery of goods immediately after notification that they are ready for dispatch. If the ordering party defaults in taking delivery of the goods, we shall be entitled to rescind the contract, claim damages or store the goods at the expense and risk of the ordering party.
3. Damages shall amount to 15 % of the purchase price unless we prove a higher amount of damages was incurred.
4. If we assert one of the rights as specified in para. 2, we can freely dispose of the goods and in their place supply a similar product on these terms.
5. The risk shall pass to the ordering party when the goods are handed over to the forwarder or carrier, also where the goods are delivered in our own vehicle, but at the latest when the goods leave the works or dispatch depot.

## V Delivery

1. If unforeseeable circumstances prevent us from performing our obligations and it was impossible for us to recognise or avert these circumstances, even by applying reasonable care in such a situation, the delivery period shall be appropriately extended, if we are still in a position to make delivery. Otherwise our delivery obligation shall cease. Damage claims by the ordering party are in any case excluded. Unforeseeable circumstances include in particular the interruption of operations occurring at our company or our sub-contractors, delays in the delivery of essential raw materials and supplies or the effects of industrial disputes, also at third parties. We shall notify the ordering party immediately of any circumstances preventing our performance as soon as they become known. Unforeseeable circumstances are deemed the equivalent of force majeure and any other circumstances that materially impede delivery or make it impossible e.g. measures of currency policy or trade policy and other mandatory measures.

2. Delivery dates and times are not binding and only approximate. Delivery times shall be deemed to commence only after clarification of all issues required to perform the contract, at the earliest as of issuance of our order confirmation.
3. Part deliveries are permitted unless otherwise expressly agreed. Where delays affect part deliveries, the ordering party may not assert any rights in respect of the remaining part deliveries.
4. Call orders shall be deducted without obligation and based on actual deliveries made. If quantities in excess of the ordered amount are requested, we shall be entitled to cancel the excess or invoice this at the current price on the date of delivery.
5. We are permitted to make underdeliveries and overdeliveries not exceeding 10 % of the ordered quantities.

## VI Payment

1. Our invoices are payable net without deductions within 8 days of the invoice date or dispatch of our notice to the ordering party stating that the goods are ready for collection. More favourable terms of payment or the possible use of cash discounts shall only apply where this was agreed in the contract or specifically stated on the invoice.
2. Cash discounts shall in any case - regardless of any statement on the invoice to the contrary - only apply if the ordering party has met all due payment obligations in full from earlier deliveries.
3. Discountable bills of exchange on which tax has been duly paid shall only be accepted by way of payment and only when accordingly agreed in advance. If a bill of exchange is presented, no cash discount can be claimed. Credits for bills of exchange and cheques are made subject to receipt and less expenses at the value on the date we receive the equivalent amount. The ordering party must pay discount and bank charges immediately. We give no guarantee as

to timely presentation or protest. After the due date has expired, we shall be entitled to charge default interest of 4 % above the base rate but at least 8 % p.a. Default interest shall be fixed at a higher rate if specific evidence is produced.

4. All amounts payable to us shall fall due immediately and regardless of the term of any collected and already credited bills of exchange or other payment agreements if any term of payment agreed with us is not met or we become aware of circumstances which appear to impair the creditworthiness of the ordering party. In any such case, we shall be entitled at our option to carry out outstanding deliveries strictly on a cash-in-advance basis, to rescind the contract after an appropriate period of grace, or to claim damages.
5. Where part deliveries relate to a single order, each part delivery shall be deemed an independent transaction. If the ordering party fails to meet its obligations in respect of a part delivery, apart from our rights in para. 4, we shall be released from making further deliveries.
6. The ordering party may only offset claims which are undisputed or recognised by declaratory judgement against our claims with respect to the ordering party. The ordering party shall not be entitled to a right of retention.
7. Delays, additional expenses or any other difficulties in transferring amounts payable to us in the Federal Republic of Germany shall be borne by the ordering party. If the agreed method of payment cannot be met, payment shall be made by an alternative method of our choice.

## VII Measurements, weights, quality

1. Deviations in measurement, weight and quality are permitted according to prevailing practice or DIN.
2. Weights shall be determined according to customary procedures in our company. Details we provide on delivery shall be decisive unless they are

clearly incorrect. We do not guarantee the accuracy of the number of units stated on the invoice and the individual items contained in each unit.

#### VIII Retention of title

1. We retain title to all goods we supply to the ordering party until the ordering party has paid all amounts due from our business relationship, and in particular has paid any current account balance.
2. It is not necessary for us to rescind a contract in order to assert retention of title in the event of default in payment or where our title is in jeopardy.
3. The ordering party is prohibited from pledging goods or assigning goods as security which we have supplied subject to retention of title. The ordering party must notify us immediately of any pledging or other impairment of our titles by third parties, and the ordering party must notify such third parties of our retention of title. The ordering party shall bear all costs we incur to eliminate attachment and to secure the object of purchase.
4. Retention of title shall also extend to new products that are derived from processing. Both during and after processing, the ordering party shall be deemed custodian of the new product. In all cases of combining or processing the goods with other goods which do not belong to us, we shall have a claim to co-ownership in the new product in a ratio of the value of the product subject to retention of title to the other processed goods. The same shall apply to all such new products created by combining or processing as applies to products subject to retention of title within the meaning of these terms.
5. The ordering party may only dispose of our property in the ordinary course of business subject to its normal terms and conditions and only for as long as the ordering party is not in default of any obligation towards us. The ordering party is entitled and authorised to resell goods subject to retention of title only provided that the claim from the resale passes to us in accordance with para.

6. The ordering party shall not be entitled to dispose of goods subject to retention of title in any other manner.
  
6. It is hereby agreed that any claims by the ordering party from the resale of the goods subject to retention of title shall be assigned to us regardless of whether these goods are resold without or following further processing. Claims assigned shall be security in an amount equivalent to the value of the goods respectively sold. If the goods which are subject to retention of title are sold by the ordering party together with other goods which do not belong to us following combining or processing operations, assignment of the claim from the resale shall only be in an amount equivalent to the value of our goods which are subject to retention of title.
  
7. The ordering party shall only be entitled to collect claims from resale until and at whatever time we revoke this entitlement. The ordering party shall not be entitled to dispose of such claims by way of assignment. At our request, the ordering party shall be obliged to advise its customer of the assignment to us. If the ordering party defaults with respect to any obligation towards us, this collection authority shall be revoked with immediate effect. In this case, the ordering party shall be obliged to notify its debtor of the assignment under para. 6 immediately, and to send us a list of the debtors for the claims assigned according to para. 6.
  
8. If the value of securities existing in our favour exceeds our claims by a total of more than 20 %, and if the ordering party is not in default with respect to any obligation towards ourselves, we shall be obliged at the request of the ordering party to release securities of our choice.
  
9. We shall be entitled, in each of the cases defined in Article VI 4, to prohibit the resale and processing of the goods supplied and to request the return or transfer of indirect ownership thereof at the expense of the ordering party. The ordering party authorises us herewith to pick up and remove the goods supplied.

## IX Notices of defects

1. Notices of defects of any kind and underdeliveries or incorrect deliveries must be asserted immediately in writing. If we are notified later than 8 days after receipt of the goods, any claims against us shall be excluded unless they could not be identified even if the goods were carefully inspected. Notices of defects must be accompanied by labels of contents or the inspection tickets supplied with the consignment.
2. Neither transport damage nor goods mislaid during transport shall justify a notice of defect and shall not affect our claim for payment. The ordering party must have a statement of the facts prepared by the competent office immediately after establishing the damage.
3. Where complaints are justified, a replacement shall be sent free of charge and freight paid to the original destination, in the case of quality defects, however, only when the defective items are returned. In the case of very small parts, replacement shall be provided as per weight. Instead of delivering a replacement, we may at our option remedy defects, if necessary at the ordering party's site or a third party site. If we fail to remedy a defect or deliver a replacement, the ordering party may at its option request a reduction in price or rescind the contract. The ordering party shall not be entitled to any further replacement.
4. We reserve the right to take back defective goods and reimburse the purchase price instead of remedying the defect or delivering a replacement.

## X Contracts for work and services

1. We shall not test objects made available to us for processing purposes to establish whether they are free of defects or whether processing is possible. The ordering party alone shall be responsible for such testing. The ordering party shall be obliged to make available perfect ingoing material only. Where defects are established, even if they affect only certain parts of the material,

we may reject the entire delivery. At our request, the ordering party must at any time provide proof of the perfect quality of the ingoing material provided.

2. If a claim for commission processing is recognised by our quality department, our liability is limited to either repeat the processing free of charge or to refund the received hire.

## XI Liability

1. Claims by the ordering party for damages of any kind shall be excluded, especially claims for product defects, underdeliveries and incorrect deliveries unless they are caused intentionally or by gross negligence.
2. The legal representatives of our company, our vicarious agents and employees shall not be liable to the ordering party.

## XII Place of performance and legal venue

1. Place of performance for mutual obligations is Schwerte. Any present and future claims arising from the business relationship with general merchants including claims attaching to bills of exchange and cheques shall be settled solely before a competent Schwerte court.
2. The same legal venue shall apply if the ordering party does not have a general legal venue in the Federal Republic of Germany, relocates its domicile or customary place of residence abroad after concluding the contract or its domicile or customary place of residence are not known at the time legal action is brought.
3. The law of the Federal Republic of Germany alone shall apply.