

# GENERAL TERMS AND CONDITIONS OF DELIVERY AND PAYMENT

## 1. Scope

These General Terms and Conditions apply exclusively between entrepreneurs, towards legal persons under public law or special funds under public law regarding all our offers, contracts, deliveries and other services (hereinafter "delivery"), including all future business relations, even if not explicitly and separately stipulated. The Terms and Conditions shall be considered as accepted at order placement or receipt of goods at the latest. Conditions to the contrary set by our customer shall not be accepted. These may only be applicable with our express written consent. If any one clause of these Terms and Conditions becomes invalid the validity of the remaining stipulations shall not be affected. For framework contracts concluded before January 1<sup>st</sup>, 2002, these Terms and Conditions shall apply only as of January 1<sup>st</sup>, 2003; until then our previous Terms and Conditions are valid.

## 2. Completion of contract, documents, industrial property rights

2.1 Our offers are not binding. A contract shall only be completed upon our written order confirmation. Only our written order confirmation is relevant for the date and quantity of delivery. If the order is not confirmed by us in writing the contract shall be completed upon order execution at the latest. Statements made by our representatives orally or by phone shall be legally binding only if confirmed in writing.

2.2 We reserve all proprietary rights and copyrights of estimates, designs, drawings and other documents; these shall be modified or made available to third parties only with our express approval. Drawings and other documents provided as part of an offer must be returned to us on request at any time; this is mandatory when the order is not placed with us. In case of our delivery of items according to drawings, models, samples or other documents provided by the customer, the latter shall ensure that industrial property rights of third parties are not infringed upon. If a third party, referring to proprietary rights, prohibits in particular the manufacturing and delivery of such items, we shall be entitled to suspend all relevant activities and to claim damages without being obliged to analyse legal responsibilities (see also section 8.3). In addition, the customer shall undertake to indemnify us immediately from third-party claims related to documents made available to us.

2.3 We reserve the right to charge the costs for samples and testing parts as well as for tools required for their manufacturing. In case of doubt any agreed payment shall be due and payable after acceptance of the first respective model, test component or tool. We shall charge the provision and manufacturing costs for tools required for serial production, unless agreed upon otherwise. All tools made or provided by us shall in any case remain in our ownership even if their provision- or manufacturing costs have been wholly or partly covered by the customer.

2.4 For call orders we shall be entitled to procure materials for the entire order and to manufacture the total order quantity immediately. Any customer requests for changes after order placement can, therefore, not be taken into consideration, unless explicitly agreed upon otherwise.

### **3. Performance description**

- 3.1 The quality of the delivery item shall be finally described by explicitly agreed features (e.g. specifications, labels, approvals, and other information). Any deviating features or other qualities of deliveries and services are subject to a further explicit agreement. Therefore, any further warranty for a special purpose or particular suitability after passing of risk shall be given only in case of explicit written agreement; otherwise the risk of suitability and use shall be assumed by the customer. We shall reserve any customary or technically unavoidable deviations from physical and chemical quantities, including colours, formula, recipes, processes and the use of raw materials as well as order sizes and reasonable quantity variances, as far as this may not be accepted as unreasonable by the customer.
- 3.2 Details of the delivery item (e.g. provided in catalogues, good information, electronic media or on labels) are based on our general experience and knowledge and are, thus, reference values or markings only. These good details as well as expressly stipulated features/purposes shall not relieve the customer of the need to test the good for the intended purpose.
- 3.3 Details on quality and possible uses of our goods do not include any warranties, in particular as stipulated in Sec. 444, 639 German Civil Code (BGB), unless these are explicitly specified as such in writing.

### **4. Delivery and delivery time**

- 4.1 Delivery time information – even if a delivery date has been agreed upon with the customer – is provisional and not binding, unless the delivery date has been fixed explicitly as binding, this means the customer has declared this in writing or it is obvious to us, that the customer has no further interest after the delivery time. Confirmed delivery dates shall be subject to the correct, complete and timely obtaining of supplies to ourselves from our suppliers. Delivery deadlines shall be considered as met if prior to deadline expiry the delivery item has left our factory or if we have informed the customer that the order is ready for shipment. Delivery deadlines shall remain ineffective as long as the customer has not properly fulfilled his obligations, such as furnishing technical data and documents, approvals as well as making a down payment or providing a payment guarantee.
- 4.2 We shall be entitled to deliver by instalments.
- 4.3 Acts of God or other events beyond our control that render the timely execution of accepted orders impossible shall relieve us of our delivery commitment as long as these events prevail. Therefore, we assume no exercise risk. Furthermore, we reserve the right of recession in case - despite of the conclusion of a supply agreement with our supplier – we do not receive the respective good from our supplier; whereas our responsibility for intentionally or grossly negligent caused damages according to point 8 remains unaffected. However, we will timely inform the customer about the availability of goods and in case of a recession by us we will compensate any corresponding consideration which has already been paid by the customer for such goods.
- 4.4 It is generally not possible to return sold and non-defective goods.
- 4.5 In case customer becomes insolvent or subject to bankruptcy proceedings, reorganisation proceedings, or comparable proceedings, customer's statements in lieu of an oath according to Sec. 807 German Code of Civil Procedure (ZPO), shortages of liquid funds or a significant deterioration of financial circumstances we shall be entitled to suspend deliveries immediately and to refuse the fulfilment of current contracts unless the customer executes counter-performance or, on our request, provides appropriate securities.

4.6 In case of any default of acceptance or culpable breach of accessory or any secondary obligations by our customer, the latter shall indemnify us for any respectively caused damages and related costs, whereas further claims and rights according to the applicable laws remain unaffected. In case of delay or default of acceptance the risk of accidental loss or damage of the goods passes onto the customer.

4.7 In case the goods are sent or shipped to the customer or a third party, the risk of accidental loss or accidental damage of the goods passes onto the customer once the goods have left our facility or warehouse, irrespective of the agreed place of performance or who pays for the shipment.

## 5. Securities

5.1 We shall reserve the ownership of all and any goods delivered until all existing claims, including conditional and subsidiary claims, maintained by us towards the customer from our business relation have been satisfied; all deliveries shall be considered as one inclusive delivery transaction. The reserved ownership shall be security for our current account claims. All aforementioned stipulations shall also apply to future claims. We are entitled to immediately, without prior notice claim back any and all of our goods in case of non-performances by the customer, whereas the legitimate interests of the customer have to be reasonably considered.

5.2 The customer shall be entitled to resell or process the purchased item or mix or combine it with other goods in the scope of his ordinary business only; however, he will, thus, now assign to us all claims resulting from resale, processing, mixing, combining or other causes in law related to the purchased item (in particular from insurance contracts or unlawful acts) in the amount of the mutually agreed final invoice total (incl. VAT). The same applies if an item is not sold but subject to a contract for work and materials or a contract for work and services.

5.3 Reservation of ownership shall also apply to such new goods resulting from the processing, mixing or combining of the purchased items with other goods in their full amount. These processes shall be performed on our part so that we shall be deemed to be the manufacturer. If third-party ownership rights extinguish after processing, mixing or combining with goods from those parties, we shall acquire joint ownership at a ratio of the objective value of those goods. If our ownership ceases as a result of combining or mixing, the customer shall transfer to us now his ownership and/or expectant rights of the new stock or item to the extent of the invoice value of goods delivered by us, and shall hold them in custody on our behalf at no charge.

5.4 The customer shall be authorised to collect debt claims from the resale despite the assignment as long as we have not revoked this authority. We will not collect debt claims ourselves, as long as the customer meets his payments with us in due course. Upon our first written request the customer shall be obliged to inform us about the debtors of assigned claims as well as to notify debtors of the assignment.

5.5 We shall have the right to revoke the customer's authority for resale according to point 5.2 and collection of assigned claims with immediate effect if the customer is in arrears with payments to us, experiences a shortage of liquid funds due to a significant deterioration of financial circumstances or does not carry out mutually agreed contractual obligations properly. In case customer becomes insolvent or subject to bankruptcy proceedings, reorganisation proceedings, or comparable proceedings, discontinues payments, gives statements in lieu of an oath according to Sec. 807 German Code of Civil Procedure (ZPO), or if due to a shortage of liquid funds a change of ownership occurs in the customer's business, the authority for resale and collection of assigned claims will cease automatically.

5.6 The customer shall hold our (jointly) owned materials in custody on our behalf at no charge with due care and diligence as a prudent businessman and shall insure them against fire, burglary and other usual risks. Any required maintenance and inspection services have to be timely executed at customer's expense.

5.7 Any pledge or assignment as security by the customer of goods delivered under reservation of ownership or goods processed and/or manufactured on our behalf are forbidden. Prior to any pledge or any other infringement of our ownership rights by third parties the customer shall notify us immediately and confirm the right of ownership in writing both to us and the third parties. Any residual costs arising from resulting legal action despite us winning a case shall be covered by the customer.

5.8 If the customer violates the contract, in particular by delays in payment, we shall be entitled to recover the goods; the customer hereby gives his advance consent to this recovery in such a case. The recovery shall be considered as a termination of contract only if explicitly stated by us. All costs incurred by the recovery (in particular transport costs) shall be charged to the customer. The customer may demand the delivery of goods recovered without an express notice of withdrawal only once the purchase price and all costs have been fully paid.

5.9 Securities which we are entitled to shall not be accounted for insofar as the value of our securities exceeds the nominal amount of claims to be secured by 20%.

## **6. Prices and payment**

6.1 Subject to an independent written agreement, our prices are in Euro ex works excluding VAT and packing costs.

6.2 Unforeseen changes in costs – including without limitation – raw materials, wages, energy and other costs beyond our control shall entitle us to adjust prices accordingly. For deliveries by instalments each delivery may be invoiced separately. If no prices have been independently contractually agreed, our delivery-day prices shall be applicable.

6.3 Our invoices are due immediately and payable without discount. Any discount has to be independently agreed.

6.4 We shall not be obliged to accept bills, cheques and other promises to pay, their acceptance shall at all times be on account of performance.

6.5 The day on which the amount is in our possession or has been credited to our bank account shall be the date of receipt of payment. In case of delay of payment by the customer we shall be entitled to charge an annual rate of interest of 8% above the base interest rate for the duration of the delay. This shall not restrict the right to claim additional damages or costs.

6.6 In case of delay of the customer's payment, we may additionally choose to call outstanding purchase price instalments or other existing claims against the customer due as well as make future deliveries under this or other contracts dependent on an advance security or a contemporaneous payment against delivery.

6.7 Advance or part payments are non-interest bearing.

6.8 The customer may set off or withhold payments only if his counterclaim is undisputed or res judicata.

## **7. Claims for defects**

7.1 We shall be liable for defects of goods delivered by us only according to the following stipulations:

7.2 The customer shall properly fulfil his duties regarding inspection and lodging complaints according to Sec. 377 German Commercial Code (HGB).

- 7.3 If defective goods are delivered, we shall be given the opportunity, prior to manufacturing (processing or installing), to sort out such goods and rectify the defect or to make an additional delivery, unless this cannot reasonably be expected from the customer. In case we are unable to accomplish this or fail to comply with it in due course, the customer may rescind the contract to this extent and return the goods at our risk. In urgent cases he may correct the defects himself or have this done by a third party. Expenses incurred by this shall be reimbursed by us according to point 8.
- 7.4 If the defect comes to light only after the start of manufacturing or initial operation, despite the fulfilment of duties according to point 7.1, the customer may demand subsequent performance (rework or substitute delivery by our choice). The delivery of defective goods results only in a right of retention insofar as it is in due proportion to the respective defect and the expected costs of the subsequent performance; however, in each case provided that such retention is based on a customer's mutual counterclaim.
- 7.5 Any damage-payment for defective goods shall be subject to two useless attempts of supplementary performance. In case of substitute delivery the customer is obliged to return the defective material on request.
- 7.6 Claims for rescission of contract or reduction of purchase price shall be granted only if the defect cannot be remedied within an appropriate period, if subsequent performance will incur unreasonable expenses, is unacceptable or must be considered as failed for other reasons. The customer shall, however, have no right to rescind the contract in case of minor defects.
- 7.7 The customer shall allow us to promptly inspect any rejected goods, in particular these shall be made available to us on request and at our cost. If complaints are unfounded, we shall reserve the right to charge transport costs and inspection expenses to the customer.
- 7.8 No claims for defects may be lodged in case of merely insubstantial deviations of the agreed quality or utility or if the defect can be put down to a violation of operating, maintenance and installation instructions, improper use or storage, faulty or negligent handling or assembly, natural wear and tear or tampering with the delivery item by the customer or a third party. Any claims and costs regarding the subsequent performance, the recession of the contract and/or damages because of defective goods, in particular costs for shipment, transportation, labour and material are excluded, insofar as these claims and costs result from a shipment to another place as the agreed place of performance after passing of risk. However, this does not apply in case such shipment does correspond with the normal use known to us.
- 7.9 Damages, compensation and reimbursement of expenses may only be claimed according to point 8.
- 7.10 For goods other than new goods, delivered as mutually agreed upon, the customer may not make the aforementioned claims.

## **8. Liability**

- 8.1 We shall be liable for any damages, in particular resulting from culpa in contrahendo, breach of duty and unlawful acts (Sec. 823 ff. German Civil Code), only insofar as we, our employees or assistants are charged with intent or gross negligence.
- 8.2 For damages resulting from injury to life, body or health, guarantees or violation of material contractual duties, we shall also be liable for ordinary negligence. In case of a violation of material contractual duties ("Kardinalpflichten") our liability shall be limited to the direct average damage, predictable and typical according to the type of goods. Aforementioned stipulation shall also apply to breach of duty by our employees, vicarious agents ("Verrichtungsgehilfen") and assistants ("Erfüllungsgehilfen").

- 8.3 We shall be liable for the infringement of third parties' industrial property rights in connection with the sale of our goods only if such third parties' industrial property rights are valid in the Federal Republic of Germany and have been published at the time of delivery and only to the extent that such third parties' proprietary rights are infringed upon when using the goods as agreed. This shall not apply if we have manufactured the delivery items according to drawings, models, descriptions or other documents or data provided by the customer and if we, thus, do not or need not have knowledge of any infringement of industrial property rights in connection with goods developed by us. In this case our customer undertakes to warrant that there has been and will be no infringement of third parties' industrial property rights, to inform us without delay of any potential and alleged cases of infringement of third parties' industrial property rights which may become known to him, to indemnify us from third parties' claims and, to bear all costs and expenses incurred.
- 8.4 Claims for defects of delivered goods, including – without limitation – any damages relating to defective goods, notwithstanding the respective cause in law, shall lapse 1 year after delivery of the goods. This shall not apply to items that consistent with their common application are used in buildings and have caused the latter's defectiveness; in that case claims shall lapse 5 years after delivery. All other claims governed by points 8.1 to 8.3 shall lapse as provided by the law.
- 8.5 Claims for price reduction and rights to rescind the contract shall be rejected insofar as the primary claim for performance or the secondary claim for subsequent performance has lapsed, whether we invoke the lapse of the primary or secondary claim or not.
- 8.6 Our liability pursuant to the provisions of the Product Liability Act and Sec. 478, 479 German Civil Code (last seller recourse) shall remain unaffected by the aforementioned stipulations.
- 8.7 We do not assume any liability beyond the legal obligations which the customer may have agreed with his own customer. Except agreed otherwise in writing, point 7 and this point 8 shall apply to any Customer's claims for recourse against us.
- 8.8 Otherwise we shall be exempt from liability.

## **9. Place of performance and jurisdiction, other provisions**

- 9.1 The customer may assign his claims from the contractual relationship only with our prior written consent.
- 9.2 Customer shall keep strictly confidential towards third parties any information of a technical or economical nature he has received from us in connection with the supply of goods ("Confidential Information") at any time, even after the supply; however, save such information which is, or becomes public knowledge other than through a fault of the customer, is, at the time of disclosure, already in the possession of the customer, or is subsequently verifiably independently developed by the customer or received by the customer from a third party which is not under a confidentiality obligation related thereto. We are and remain the sole owner of any documents, in particular engineering drawings, which therefore have to be handled back to us upon our respective request but at latest automatically once the supply of goods has been finished. Any license regarding Confidential Information is subject to a written agreement. Customer has no right of retention regarding Confidential Information or respective documents or materials.
- 9.3 Customer guarantees neither directly nor indirectly to deal with or otherwise cooperate with any terrorist or any criminal individuals, entities or organizations. Customer will in particular establish reasonable organizational measures to implement the EC-regulations No. 2580/2001 and 881/2002 as well as other respective requirements under US or international laws and regulations. Such measures shall include – without limitation – adequate software solutions. As soon as a product has left our facilities, customer alone shall be responsible for the aforesaid compliance and will indemnify Freudenberg for any and all claims or related costs, including reasonable attorney or consultant fees or administrative penalties and/or damages

resulting from the violation of the respective laws and regulations by the customer, its affiliates, employees, officers and/or any of its agents.

- 9.4 We will comply with such obligations resulting from the EC-regulation No. 1907/2006 ("REACH") which are directly applicable towards us; we will implement reasonable and adequate measures and will be responsible therefore according to section 8. However, customer shall be solely responsible for any negative consequences resulting from the provision of false or incomplete information by the customer, including - without limitation – any information relating to the use of goods within the supply chain.
- 9.5 For all claims from business relations, in particular our deliveries, the place from which performance/delivery is made shall be the place of performance.
- 9.6 For all claims from business relations, in particular our deliveries, the exclusive place of jurisdiction shall be Weinheim/Bergstraße, Federal Republic of Germany. This shall also apply to disputes as to the creation and validity of a contractual relationship. We shall, however, have the option to proceed against the customer in appropriate courts at the customer's place of business. If a customer's place of business is located out of Germany, we shall be entitled to have all disputes, claims or differences arising out of or in connection with business relations finally settled under the rules of Arbitration of the Zurich Chamber of Commerce by one to three arbitrators appointed in accordance with the said rules. The place of arbitration shall be Zurich, Switzerland. The arbitration proceedings shall be conducted in the English language. The award rendered by the arbitrators shall be final and binding upon the parties concerned.
- 9.7 The business relations with our customers shall be exclusively governed by the laws of the Federal Republic of Germany to the exclusion of its private international law as far as it refers to the applicability of another legal system. The UN-Convention on the International Sale of Goods (C.I.S.G.) and other international conventions on uniform law on the sale of goods shall not be applicable.

## **10. Remark**

In order to achieve optimal product function and high duration of life it is recommended to pay attention to our catalogues including assembly directions as well as our guidance for storing parts, maintenance and cleaning of rubber parts (according to DIN 7716).

Stand: 20.01.2011