

# International Terms and Conditions of Sale

## § 1 Applicability of these International Terms and Conditions of Sale

- (1) The terms and conditions set out in these International Terms and Conditions of Sale shall form an integral part of the Sales Agreement.
- (2) Terms of business of the Buyer do not apply, even if the Buyer makes reference to his terms of business and/or we accept the Buyer's performance without objecting to the Buyer's terms of business.
- (3) These Terms and Conditions of Sale (including, without limitation, the provision on the applicable law) apply even if the goods are bought for personal, family or household use and we knew that the goods were bought for such use.

## § 2 Formation of the Sales Agreement

A Sales Agreement for the goods stated in the order confirmation (hereinafter the "Order Confirmation") only comes into effect, if the Buyer confirms by his signature his unconditional agreement with the provisions set out in Order Confirmation and these International Terms and Conditions of Sale. The offer to conclude a Sales Agreement as contained within this Order Confirmation can be withdrawn by us until accepted by the Buyer. Subject to a withdrawal of the Order Confirmation, the Order Confirmation can be accepted by the Buyer within 30 (thirty) calendar days from the date stated in the Order Confirmation.

## § 3 Specifications of the goods; Third party rights

- (1) The goods to be delivered have to conform to the specifications and quality requirements set out in the Order Confirmation. To the extent no specifications or quality requirements are stated in the Order Confirmation, the goods conform with the contract if they are fit for the purpose which is usual in Germany and fit for the purpose for which goods of the same description are usually used for in Germany. Unless otherwise explicitly agreed to, the goods do not have to conform to any laws or regulations existing outside of Germany. Second-hand goods are delivered without any liability for their conformity.
- (2) Should the Buyer intend to use the goods in circumstances which are unusual or which could entail a particular risk to the safety and health of any person or to the environment, the Buyer has to inform us in writing about these intentions before concluding the Sales Agreement.
- (3) All statements contained in brochures, drawings, illustrations and other kind of descriptions, in particular statements regarding colors, shape and measurements, do not constitute a non-conformity of the goods to the extent the goods are nevertheless fit for the purpose they are usually used for in Germany. Likewise, customary deviations which do not restrict the use of the goods which is usual in Germany does not constitute a non-conformity of the goods.
- (4) Rights and claims of third parties (in particular rights and claims based on title or industrial property rights) only constitute a defect in title if these rights and/or claims are in force and registered in Germany and impede the use of the goods in Germany.

## § 4 Obligation to deliver; Passing of risk

- (1) We have to deliver the goods referred to in the Order Confirmation including a packaging that is suitable for the means of transportation. Such packaging will be invoiced separately, unless explicitly otherwise stated in the Order Confirmation.

- (2) Unless otherwise specified in the Order Confirmation, delivery has to be made FCA Incoterms 2010 at the place of delivery indicated in the Order Confirmation, or – if no place of delivery is indicated in the Order Confirmation - at our premises in 53894 Mechernich /Germany. We are not obliged to contract for carriage and we are not obliged to inform the Buyer that the goods have been delivered or that the carrier or another person nominated by the Buyer has failed to take the goods within the time agreed.
- (3) Adherence to the delivery date respectively the delivery period stated in the Order Confirmation is not of the essence and non-adherence to the delivery date or the delivery period respectively does not constitute a fundamental breach of contract. If delivery periods are agreed to, we reserve the right to determine the exact delivery time within the delivery period.
- (4) All delivery dates and delivery periods are dependent upon the Buyer performing all of his obligations in due time. In particular, the Buyer has to procure or confirm any necessary permits, drawings etc. and make agreed payments in due time.
- (5) We are entitled to make partial deliveries and to invoice these separately.
- (6) The passing of risk takes place with delivery in accordance with § 4 sec. 2. Should the Buyer fail to take delivery, the risk passes at the time the Buyer fails to take delivery.
- (7) In addition to our statutory rights we are entitled to suspend the performance of our obligations if there are reasonable indications that the Buyer will not perform his obligations under the Sales Agreement, in particular not be able to pay the agreed price in due time.

#### **§ 5 Delivery Note, Invoice and other documents**

- (1) We will provide the Buyer with a delivery note issued according to our standard.
- (2) Irrespective of the Incoterms-clause used, we are not obliged to clear the goods for export. We will however at the Buyer's risk and expense apply for any necessary export licences and formalities as regards customs provided that the Buyer has provided us with all necessary information.

#### **§ 6 Force Majeure**

Any inability to supply as a result of force majeure or other unforeseen incidents outside our responsibility including, without limitation, strike, lock out, acts of public authorities, subsequent cease of export or import opportunities shall, for their duration and in accordance with their impact, relieve us from the obligation to comply with any agreed delivery period and delivery time as well as any other obligation.

#### **§ 7 Obligation to pay the purchase price**

- (1) The Buyer is obliged to pay the agreed purchase price to the bank account nominated by us. Banking fees accrued outside of Germany will be borne by the Buyer. The payment shall be made without any deductions and is due for payment on the date or within the time limit as stated on the Order Confirmation. A time limit for payment stated on the Order Confirmation shall be calculated from the date of invoice. In the absence of any payment dates or time limits stated on the Order Confirmation, payment shall be made within 30 (thirty) calendar days after date of invoice. The Buyer's acceptance of the goods is no precondition for the payment to become due.
- (2) Unless explicitly stated otherwise in the Order Confirmation, the agreed prices shall exclude packaging, assembling, any statutory VAT applicable at the date of delivery and any other ancillary costs.

- (3) The Buyer is only entitled to exercise a lien or to suspend his performance if this is based on the same transaction as well as based on a due and undisputed or finally adjudicated counterclaim of the Buyer.
- (4) The Buyer may only offset any claims insofar as the Buyer's counterclaim is acknowledged, undisputed or assessed in a legally binding judgement.

### **§ 8 Retention of Title**

We retain the title in the goods delivered until the settlement of all accounts receivable and other claims by us to the Buyer which have accrued under the particular agreement, including those which will only fall due in the future.

### **§ 9 Duty of examination and notification**

- (1) Without prejudice to the legal provisions, the Buyer is obliged to examine the goods comprehensively in respect of deviations as regards type, quantity, quality and packaging. If necessary, the Buyer is obliged to conduct the examination with the help of external third parties.
- (2) Notice of non-conformity has to be made in within ten (10) calendar days. For very obvious non-conformities, the period for such notification starts with the receipt of the goods, in all other cases after the Buyer has discovered the non-conformity or ought to have discovered it. Notice of non-conformity has to be given in writing. The notice of non-conformity has to clearly indicate and describe the non-conformity in such a way that we can take remedial actions.
- (3) Apart from the aforesaid as well as with respect to defects in title, the statutory provisions apply.

### **§ 10 Limitation Period**

Without prejudice to claims resulting from a malicious, grossly negligent or intentional conduct as well as claims due to injury of life, body or health, the Buyer's claims in respect of the delivery of non-conforming goods and goods with a defect in title become time-barred after one (1) year after the statutory beginning of the limitation period. For second-hand goods § 3 sec. 1 sentence 4 applies.

### **§ 11 Remedies in case of non-conforming goods and goods with a defect in title; Limitation of Liability**

- (1) In case of delivery of non-conforming goods, the Buyer can claim delivery of substitute goods or declare avoidance of the Sales Agreement only in accordance with the legal provisions.
- (2) To the extent any costs associated with performing remedies are increased by the fact that the Buyer has removed the goods to a place not stated in the Order Confirmation or, in the absence of such an indication, to a place other than the Buyer's place of business, these costs will be borne by the Buyer.
- (3) Delivery of substitute goods or repair does not lead to a restart or extension of the limitation period.
- (4) If we deliver non-conforming goods or goods with a defect in title or breach any other obligation resulting from the Sales Agreement or the business relationship with the Buyer, the Buyer is entitled to demand damages only in accordance with the following provisions and any recourse to concurrent bases of claim (in particular of a non-contractual nature) is excluded:

- a. We are not liable for the conduct of our suppliers or subcontractors. Neither are we liable for modifications or damages to which the Buyer or a third Party has contributed.
- b. The Buyer has to prove that either our directors or employees or other members of staff have deliberately or negligently breached contractual obligations owed to the Buyer.
- c. In case of liability, the amount of damages for late delivery is limited to 0,5 per cent for each full month of delay, up to a maximum of 5 per cent of the net purchase price of the goods delivered late or not at all, and in case of remedies because of delivery of non-conforming goods and/or goods with a defect in title and in cases of all other breach of obligations is limited to the net purchase price of the goods affected.
- d. Irrespective of § 11 sec. 4 c), we are not liable for loss of profit, damages for interruption of production and loss of usage.
- e. The aforesaid limitations in § 11 sec. 4 do not apply
  - i. to injury of life, body or health,
  - ii. if we have acted maliciously, gross negligently or intentionally,
  - iii. if we are liable according to mandatory product liability laws, and
  - iv. to liabilities which may not be excluded or limited according to the applicable laws.

(5) Apart from the aforesaid, the statutory provisions apply.

## **§ 12 Right to use Software; Rights in documents etc.**

- (1) The Buyer has to ensure that the software and the data recorded on the good's electronic storage unit may be ceded for use only for proper and ordinary operation of the goods. Such software and data are not sold. Instead, the Buyer is hereby granted a non-exclusive, royalty-free and irrevocable license to use the software, but strictly and only in connection with the goods purchased under this Sales Agreement. For the avoidance of doubt, this license does not include the right to make any modifications, adaptations or to make copies of this software.
- (2) The data recorded on the good's electronic storage unit are not destined for the Buyer or any third party. Neither the Buyer nor the third party is entitled to gain access to such data. In case anyone gains access to such data without authorization, this constitutes a crime.
- (3) We reserve all intellectual property rights in any documents, pictures, drawings etc. (collectively "Documents") as well as software arising in connection with the performance of the obligations arising under the Sales Agreement and such Documents and software shall belong exclusively to us.

## **§ 13 Confidentiality**

- (1) "Confidential Information" means all information we reveals to the Buyer in connection with the discussions leading up to or the performance of this Sales Agreement, in whatever format or media obtained (and whether verbal or written) which is marked or notified to the Buyer as being confidential, or which would in the normal course of business be considered to be of a confidential or proprietary nature. Irrespective of the foregoing, all data referred to in § 12 sec. 2 shall constitute "Confidential Information". The term „Confidential Information“ does however not include such information which:
  - a. is or becomes in the public domain or generally available at the time the Buyer was provided with such information;
  - b. was already legitimately in the possession of the Buyer and not subject to a duty of confidentiality, before Buyer received the information from us; or
  - c. the Buyer had received from a third party who was entitled to disclose this information without restriction.

- (2) The Buyer is obliged to hold the Confidential Information in strict confidence and take such precautions and make such arrangements as are reasonably necessary to protect the Confidential Information. The Buyer agrees to use at least the same degree of care to avoid unauthorised disclosure, use or publication of the Confidential Information as it uses with respect to its own Confidential Information and in any event no less than a reasonable degree of care.

#### **§ 14 Regulatory Compliance**

The Buyer acknowledges that we operate in a highly regulated environment and that we support a program for compliance with regulations in order to protect our name, standing, integrity and goodwill by means of a careful examination and determination of the integrity and suitability, initially as well as at a later date, of any person or company with whom we cooperate in business. It is therefore essential that also the integrity of the Buyer remains intact. The Buyer is obliged to comply with all applicable money laundering laws and similar regulations. Should there be reasonable grounds that the Buyer does not comply with the applicable money laundering laws and similar regulations, then we are entitled to use an electronic shutdown system so that the goods can no longer be used until the Buyer disproves the justified reasons. The Buyer is obliged to compensate us for all damages that we incur as a result of the Buyer failing to comply with all applicable money laundering laws and similar regulations.

#### **§ 15 Other Provisions**

- (1) Title of the goods that have been delivered remains with us until all of our claims against the Buyer have been settled.
- (2) We are not obliged to perform any obligations not stated in the written Order Confirmation or in these International Terms and Conditions of Sale.
- (3) If the Buyer wants to dispose of the goods, the Buyer is obliged to adhere to the legal provisions applicable at its place of business and at the place where the goods were last used.
- (4) As regards the sale of the goods, there are no side agreements to the Sales Agreement.
- (5) Any amendments to a concluded Sales Agreement require our written confirmation, duly approved by signature.
- (6) The Buyer is not entitled to assign his rights and obligations against us to a third party.
- (7) The place of delivery is governed in § 4 sec. 2. For all remaining obligations and irrespective of the agreement of a differing Incoterms-clause, the place of performance is agreed to be 53894 Mechernich/Germany, including for a replacement delivery, for the rectification of non-conformities and for the restitution of the contractual obligations in case of avoidance of the Contract.
- (8) All communications, declarations, notices etc. (hereinafter collectively "Notices") are to be drawn up exclusively in German or English. Notices by means of fax or email fulfil the requirement of being in writing. A signature is not required, unless these International Terms and Conditions of Sale explicitly require a signature.

#### **§ 16 Applicable Law**

- (1) The Sales Agreement is governed by the United Nations Conventions of 11 April 1980 on Contracts for the International Sale of Goods (UN Sales Convention / CISG) in the English version and all legal questions beyond the scope of the CISG are governed by the Swiss law of obligations (Obligationenrecht). The CISG also applies to all agreements as to the jurisdiction of courts and arbitral tribunals.

- (2) Should commercial terms be used the most recent version of the Incoterms of the International Chamber of Commerce apply taking into account the provisions stipulated in these International Terms and Conditions of Sale.

### **§ 17 Agreement on arbitration and jurisdiction**

- (1) If the Buyer's place of business is located within the European Economic Area and/or within Switzerland, for all disputes, including disputes under insolvency law, arising out of or in connection with a Sales Agreement and/or these International Terms and Conditions of Sale, including its validity, invalidity, violation or cancellation as well as other disputes arising out of the business relationship between the Buyer and us, the state court which has jurisdiction for 53894 Mechernich/Germany shall have exclusive jurisdiction. Instead of bringing an action before the state court which has jurisdiction for 53894 Mechernich/Germany, we are also entitled to bring an action before the state court of the Buyer's place of business.
- (2) If the Buyer's place of business is located outside of both the European Economic Area and Switzerland, all contractual and extra-contractual disputes, including disputes under insolvency law, arising out of or in connection with a Sales Agreement and/or these International Terms and Conditions of Sale, including its validity, invalidity, violation or cancellation as well as other disputes arising out of the business relationship between the Buyer and us shall be finally settled in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers' Arbitration Institution in force on the date on which the Notice of Arbitration is submitted in accordance with these Rules. The tribunal shall consist of three (3) arbitrators, and if the amount in dispute is inferior to € 250.000,00 there shall be one (1) arbitrator. The place of the arbitration shall be Zurich/Switzerland, the language used in the arbitral proceedings shall be English.

### **§ 18 Severability**

If provisions of these International Terms and Conditions of Sale should be or become partly or wholly ineffective, the remaining provisions will continue to apply. We and the Buyer are bound to replace the ineffective provision with a legally valid provision as close as possible to the commercial meaning and purpose of the ineffective provision.

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Place, Date

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Buyer