

## Terms and Conditions of Delivery for Use in Business Transactions with Traders and Manufacturers

- (1) All supplies, services and offers by the Seller (hereinafter also referred to as the "Supplier") are provided exclusively on the basis of these General Terms and Conditions of Delivery. These form an integral part of all contracts that the Seller concludes with its contracting parties (hereinafter also referred to as the "Customer") and which cover the supplies or services offered by it. They also apply to all future supplies, services or offers to the Customer even if they are not agreed separately again.
  
- (2) Business terms and conditions of the Customer or third parties shall not apply, even if the Seller does not separately oppose their validity in an individual case. Even if the Seller makes reference to a letter that contains the business terms and conditions of the Customer or a third party or refers to such, this does not mean that the Seller agrees to the validity of these business terms and conditions.
  
- (3) These General Terms and Conditions of Delivery shall only apply to traders and manufacturers.

### **§ 2 Offer and conclusion of contract**

- (1) All offers by the Seller are non-binding and subject to change without notice unless they are expressly marked as binding or contain a specific acceptance period. The Seller can accept orders within fourteen days following receipt.
  
- (2) The contract of sale concluded in writing, inclusive of these General Terms and Conditions of Delivery, shall be solely decisive for the legal relations between the Seller and the Customer. This contract completely reflects all agreements entered into by the contracting parties regarding the subject matter of the contract. Verbal commitments given by the Seller prior to the conclusion of the contract are not legally binding and verbal agreements between the contracting parties are replaced by the written contract unless it expressly appears from these or the written contract that they continue to be binding.

The qualities and properties stipulated in the contractual performance specification determine the qualities and properties of the delivery item comprehensively and conclusively. In particular, public statements by the Seller, its assistants or third parties (for example, statements about product qualities and properties made publicly and openly) shall not contain descriptions of the delivery item that supplement or amend this performance specification.

- (3) Additions and amendments to the agreements made, including these General Terms and Conditions of Delivery, require the written form if they are to be valid. Except for managing

directors or authorised signatories, the Seller's employees are not authorised to make verbal agreements deviating herefrom. Transmission by fax shall be deemed sufficient regarding the observance of the written form requirement. However transmission by telecommunications systems, in particular by e-mail, is not sufficient.

(4) The Seller's information about the item delivered or service supplied (for example, weight, dimensions, service or use values, load-carrying capacity, tolerances and technical data) as well as the illustrations thereof (for example, drawings and figures), are only approximately authoritative unless usability according to the contractually intended use requires exact conformity. They are not guaranteed features but rather descriptions or identifications of the service or supply. Customary deviations and deviations due to legal provisions or deviations presenting technical improvements as well as the replacement of components by parts of equal quality are admissible provided that they do not affect usability according to the contractually intended use.

(5) The Seller reserves ownership of or copyright to all offers and estimates submitted by it, as well as ownership of and copyright to drawings, figures, calculations, brochures, catalogues, models, tools or other documents and material resources provided to the Customer. Without the Seller's express consent, the Customer must not allow third parties to access these items or their contents, it must not disclose them, use them itself, allow them to be used by third parties, or reproduce them. At the request of the Seller, these items are to be returned in full and any photocopies are to be destroyed if they are no longer necessary in the ordinary course of business or if negotiations do not result in the conclusion of a contract.

### **§ 3 Prices and payment**

- (1) The prices shall be valid for the scope of service and supply indicated in the order confirmations. Additional or special services shall be invoiced separately. The prices shall be in EURO, ex works plus packaging, applicable VAT, customs duty in the case of export deliveries, as well as fees and other public charges.
- (2) If the agreed prices are based on the Seller's list prices and delivery or service is to be effected more than four months after conclusion of the contract, the Seller's list prices applicable at the time of delivery shall apply (minus each time an agreed discount on a percentage or fixed basis).
- (3) Payment shall be due in full upon delivery and/or acceptance. Invoiced amounts are to be paid within thirty days without any deduction unless otherwise agreed in writing. Regarding receipt of payment by the Seller, the date of payment shall be decisive. Cheques shall be deemed paid only after they have been turned into cash.

Without further declaration by the Seller, the Customer shall be in arrears if it has not paid invoiced amounts within 30 days following due date. Interest at the rate of 5 % per annum shall

be paid on the outstanding amounts from due date. In the event of payment default, the Supplier is entitled to demand interest on arrears amounting to 9 percentage points above the base lending rate (§ 247 German Civil Code). The Supplier is allowed to prove that damage caused by default has amounted to a higher figure.

- (4) In the event of the existence of defects, the Customer does not have a right of retention unless the delivery is obviously defective or the Customer obviously has the right to refuse to accept the work; in such a case the Customer is only entitled to retain payment if the retained amount is reasonably proportionate to the defects and estimated costs of supplementary performance (particularly a remedying of the defect). The Customer is not entitled to assert claims and rights on account of defects if the Customer has not made payments when due and the amount due (including payments that may have been made) is reasonably proportionate to the value of the delivery or work that is affected by defects.
- (5) Set-off against counterclaims of the Customer or retention of payments due to such claims is only admissible if these claims have not been contested and have been recognised by declaratory judgement.
- (6) The Seller is entitled to execute outstanding deliveries or render outstanding services only against advance payment or provision of security if after conclusion of the contract it becomes aware of circumstances which may significantly reduce the creditworthiness of the Customer or due to which the settlement of the Seller's outstanding receivables by the Customer resulting from the respective contractual relationship is endangered.

#### **§ 4 Delivery and delivery time**

- (1) Deliveries are made ex works.
- (2) Times and dates for deliveries and services announced by the Seller are only approximate unless a fixed term or date is expressly guaranteed or agreed. If forwarding has been agreed, the delivery times or dates refer to the time of handover to the carrier, forwarder or any other third party entrusted with the transport.
- (3) Irrespective of its rights resulting from delay on the part of the Customer, the Seller can ask the Customer to extend the delivery and performance periods or to postpone the delivery and performance dates by that period during which the Customer failed to comply with its contractual obligations towards the Seller.
- (4) The Seller shall not be liable for the impossibility of delivery or for delays in delivery provided that the latter were caused by force majeure or other circumstances which could not be foreseen at the time that the contract was concluded (for example, interruption of operations of any kind, difficulties in the procurement of material or energy, transport delays, strikes, legal

lock-out, lack of labour, energy or raw materials, difficulties in the procurement of required official authorisations, official measures or outstanding, incorrect or defaulting delivery by suppliers) and for which the Seller is not responsible. Insofar as such circumstances significantly impede the delivery or performance or render the delivery or performance impossible and insofar as such impediments are not temporary, the Seller is entitled to withdraw from the contract. In case of temporary impediments, the dates of delivery and/or performance shall be extended or postponed by the period of impediment plus a reasonable starting period. If the Customer cannot be expected to take delivery or accept the provision of service as a consequence of the default, it can withdraw from the contract by declaring this in writing to the Seller immediately.

- (5) The Seller shall only be entitled to make partial deliveries if
  - the partial delivery can be used by the Customer within the scope of the contractual intended use,
  - delivery of the remaining ordered goods is ensured, and
  - the Customer does not incur any considerable additional expenditure or costs (unless the Seller states that it is prepared to take over these costs).
- (6) If the Seller is in default with its delivery or performance or if its delivery or performance is impossible for any reason, the Seller's liability for damages is limited in accordance with Section 8 of these General Terms and Conditions of Delivery. In the event of default, the Customer's liability for damage caused by delay in the event of slight negligence is limited to 5 % of the value of that part of the total delivery that cannot be used in good time or as per the contract as a result of the delay.

## **§ 5 Place of performance, shipment, packaging, transfer of risk, acceptance**

- (1) The place of performance for all obligations ensuing from the contractual relationship shall be the place where the Seller's branch is located unless otherwise agreed. If the Seller is also responsible for installation, the place of performance shall be the place at which the installation is to be effected.
- (2) The mode of shipment and the packaging are at the discretion of the Seller after due assessment of the circumstances.
- (3) The risk is transferred to the Customer at the latest upon handover of the delivery item (the beginning of the loading operation is decisive) to the forwarder, carrier or other third parties entrusted with the shipment. This also applies if partial deliveries are effected or if the Seller has also taken over other services (for example, dispatch or installation). If shipment or handover is delayed due to a circumstance for which the Customer is responsible, the risk is transferred to the Customer when the goods are ready for dispatch at the Seller's site and the

Customer is notified thereof by the Seller.

- (4) Storage costs after transfer of risk are borne by the Customer. If dispatch of the deliveries is, at the request of the Customer, delayed by more than two weeks after the agreed delivery date or, if no exact delivery date was agreed, following notification by the Seller that the goods are ready for dispatch, the Seller can charge a flat-rate storage fee for each month (if applicable, proportionate to the period) that totals 0.5 % of the price of the delivery item, the maximum amount being however 3 %. The Customer shall be allowed to prove that the Seller has not incurred any damage or it has incurred significantly less damage. The Seller shall be allowed to prove that a higher amount of damage has been incurred.
- (5) The Seller shall take out insurance policies for the consignment against theft, breakage, transport, fire and water damages or other insurable risks only at the express request of the Customer and at its expense.
- (6) If the goods are subject to acceptance, the object of sale is deemed accepted if
  - the delivery and the installation, if the Seller is also responsible for the installation, are completed,
    - the Seller notified the Customer thereof referring to the implied acceptance according to Section 5 Subsection 6 and requested the Customer to accept the items,
    - 4 weeks have passed since the delivery or installation or the Customer started using the object of sale (for example, the delivered equipment was put into operation) and 2 weeks have passed since the delivery or installation in this case, and
    - the Customer fails to accept the object of sale within this period for a reason other than a defect notified to the Seller which renders the use of the object of sale impossible or impairs the use considerably.

## **§ 6 Warranty, material defects, withdrawal**

- (1) The warranty period for delivered plant and machinery amounts to one year as from delivery or as from acceptance if an acceptance is required.
- (2) The warranty period for services rendered (for example, fluorination services) is determined by the respective individual agreement.
- (3) The supplied items are to be checked thoroughly and immediately after delivery to the Customer or a third party designated by the Customer. They shall be deemed approved if the Seller does not receive a written notice of defect as defined in Section 2 Subsection 3 Clause 3 in respect of obvious defects or other defects that were visible in the event of an immediate and thorough check within seven working days following delivery of the item or otherwise within seven working days following detection of the defect or at an earlier point in time when the defect was visible for the Customer when using it under normal circumstances without any further inspection. At the request of the Seller, the rejected item is to be returned to the Seller

freight paid. In the event of justified notice of defect, the Seller shall reimburse the costs for the cheapest forwarding route; this shall not apply if the costs are higher because the delivery item is at a place other than the place of intended use.

- (4) In the event of material defects in the delivery items, the Seller is obliged and entitled to select remedy or replacement delivery within a reasonable period. In the event of failure, that is, impossibility, hardship, refusal or unreasonable delay of remedy or replacement delivery, the Customer can withdraw from the contract or reasonably reduce the purchase price. If the Customer wants to claim compensation for damage instead of performance or remedy the defects itself, then in this respect a failure to remedy the defect exists only after the unsuccessful second attempt. Apart from that, the statutory cases of dispensability of the fixing of a time limit remain unaffected
- (5) If the Seller is to blame for a defect, the Customer may claim compensation for damage according to the conditions defined in Section 8.
- (6) In the event of defects in components provided by other manufacturers which the Seller cannot remedy for licensing or factual reasons, it is at the Seller's discretion to lodge its warranty claims against the manufacturers and suppliers for the account of the Customer or to transfer its warranty claims to the Customer. Warranty claims that may be lodged against the Seller exist in the event of such defects and in the event of a manufacturer's warranty granted according to the other conditions and these General Terms and Conditions of Delivery only if the legal enforcement of the aforementioned claims against the manufacturers and suppliers was not successful or is unpromising, for example, due to insolvency. During the duration of the legal dispute, the limitation of the respective warranty claims by the Customer against the Seller shall be suspended.
- (7) The warranty is not applicable if the Customer modifies the delivery item or has it modified by third parties without the Seller's consent and the removal of the defect is hence impossible or rendered unreasonably difficult. In any case, the Customer undertakes to bear the additional costs of removal of the defect arising due to the modification.
- (8) Delivery of used articles agreed with the Customer in an individual case shall be effected without any warranty for material defects.
- (9) Warranty claims cannot be asserted if there has been only a slight deviation from the agreed quality or if usability has only been slightly impaired.
- (10) Within the scope of the statutory provisions, the Customer can only withdraw from the contract if the Seller is responsible for the breach of duty; in the event of defects however the statutory rights of the Customer remain unaffected. In the event of breaches of duty, the Customer must declare to the Seller within a reasonable period of time, as requested by the

Seller, whether it intends to withdraw from the contract due to the breach of duty or whether it intends to insist on delivery.

## **§ 7 Property rights**

- (1) In accordance with Section 7, the Seller guarantees that the delivery item is free of industrial property rights or copyrights of third parties. Each contracting party undertakes to inform the other party immediately in writing if claims regarding violation of such rights are lodged against it.
- (2) If the delivery item violates any industrial property right or copyright of a third party, the Seller shall modify the delivery item or replace it at its discretion and expense in a way that third parties' rights are no longer violated, but the delivery item shall continue to perform the contractually agreed functions or the Seller shall provide the Customer with the right of use by concluding a licence agreement. If the Seller fails to execute the above within a reasonable period of time, the Customer is entitled to withdraw from the contract or to reasonably reduce the purchase price. Any claims for damages by the Customer are subject to the limitations of Section 8 of these General Terms and Conditions of Delivery.
- (3) In the event of violations of law by products from other manufacturers delivered by the Seller, it is at the Seller's discretion to lodge claims against the manufacturers and sub-suppliers for the account of the Customer or to transfer its claims to the Customer. Claims against the Seller exist in such cases pursuant to section 7 only if the legal enforcement of the aforementioned claim against the manufacturers and sub-suppliers was not successful or is unpromising, for example, due to insolvency.

## **§ 8 Liability for damages due to fault**

- (1) The Seller's liability for damages (in particular, compensation for damage in addition to performance and compensation for damage instead of performance) for whatever legal reason, especially for impossibility, delay, faulty or incorrect delivery, breach of contract, breach of duties in the event of contractual negotiations and tortious act, is limited pursuant to this Section 8 insofar as it involves a fault.
- (2) The Seller is not liable in the event of slight negligence on the part of its executive bodies, legal representatives, employees or other vicarious agents if it is not a violation of contractually relevant obligations. Contractually relevant obligations are obligations involving timely delivery, installation and commissioning of the delivery item free of fundamental defects as well as obligations involving training, consultancy, protection and proper care which are intended to allow use of the delivery item by the Customer in accordance with the contract or to



protect life and limb of the Seller's personnel or the Customer's property against serious damage.

- (3) Insofar as the Seller is liable for damages pursuant to Section 8 Subsection 2, and in the case of its own gross negligence as well as that of its executive bodies, legal representatives, employees or other vicarious agents, this liability is limited to damages that the Seller foresaw upon conclusion of the contract as a possible consequence of a breach of contract or would have foreseen if ordinary care had been exercised. Indirect or consequential damages caused by defects in the delivery item are only recoverable damages if such damages are to be typically expected when the delivery item is used as intended.
- (4) In the event of liability for slight negligence, the Seller's liability to pay for material damages and additional pecuniary damages ensuing therefrom is limited to an amount of EUR 5,000,000 per case of damage (corresponds to the current sum insured by its extended product liability insurance policy) even if it involves a violation of contractual obligations.
- (5) The aforementioned disclaimers and limitations shall apply to executive bodies, legal representatives, employees and other vicarious agents of the Seller's company to the same extent.
- (6) Insofar as the Seller provides technical information or acts as a consultant and this information or advice is not included in the contractual scope of performance owed by the Seller, this is effected free of charge and without any liability.
- (7) The limitations of this Section 8 shall not apply to the Seller's liability due to wilful behaviour or injury to life, body or health or to its liability for guaranteed features or pursuant to the Product Liability Act.
- (8) The aforementioned regulations do not involve an amendment to the burden of proof to the detriment of the Customer.

## **§ 9 Statutes of limitation**

- (1) The period of limitation for claims and rights due to defects in the delivery - for whatever legal reason - is one year. However this does not apply in the cases covered by Section 438 Subsection 1 No. 1 German Civil Code (defects in title for immovable property), Section 438 Subsection 1 No. 2 German Civil Code (buildings, objects for buildings), Section 479 Subsection 1 German Civil Code (claim by the trader or manufacturer under a right of recourse) or Section 634 a Subsection 1 No. 2 German Civil Code (building or work the result of which consists in the provision of planning or supervisory services therefor). The periods referred to in the preceding Clause 2 are subject to a period of limitation of three years.
- (2) The periods of limitation according to Subsection 1 also apply to all claims for damages



against the Supplier that relate to the defect - regardless of the legal basis of the claim. If any type of claim for damages is made against the Supplier that does not relate to a defect, the period of limitation referred to in Subsection 1 Clause 1 shall apply.

- (3) The periods of limitation according to Subsection 1 and Subsection 2 shall apply with the following proviso:
  - a) Generally the periods of limitation do not apply in the event of acts of intent or fraudulent concealment of a defect or if the Seller has furnished a guarantee for the quality of the delivery item.
  - b) Moreover the periods of limitation do not apply to claims for damages in the case of injury to life, body or health or to freedom, in the event of claims pursuant to the Product Liability Act, in the event of a grossly negligent breach of duty or in the event of a breach of fundamental contractual obligations.
- (4) For all claims the period of limitation begins upon delivery or upon acceptance in the case of work performance.
- (5) Unless otherwise stipulated expressly, the statutory provisions covering the commencement of the limitation period, the suspension of the running of a period, the suspension and recommencement of periods remain unaffected.
- (6) The aforementioned regulations do not involve an amendment to the burden of proof to the detriment of the Customer.

#### **§ 10 Reservation of title**

- (1) The delivery item remains the property of the Supplier until all claims - including future claims - ensuing from the business relationship have been met by the Customer.
- (2) The Supplier is entitled to insure the delivery item, at the expense of the Customer, against fire, water and other damages if the Customer has not, as proven, taken out such insurance cover.
- (3) Loan or transfer for use, pledging or collateral assignment is not permissible during the time that the Supplier retains title to the delivery items.
- (4) If the delivery item is seized by a third party, the Supplier must be notified of this immediately.
- (5) If the Supplier takes back or seizes the delivery item, this does not constitute withdrawal from the contract unless the Supplier has declared this expressly in writing.

- (6) If, in the event of exports, the validity of the reservation of title is subject to special prerequisites or formal requirements in the Customer's country, the Customer is obliged to ensure that these are complied with at its expense. If the law of the country in which the delivery item is situated does not allow a reservation of title, but does allow the Seller to hold other rights to the delivery item, the Supplier can exercise any of these rights. The Customer is obliged to assist the Supplier when it wishes to take measures to protect its right of ownership or instead of this to exercise some other right to the delivery item.
- (7) If the realisable value of all security rights that the Supplier holds exceeds the amount of all secured claims by more than 110 %, at the request of the Customer the Supplier shall release a corresponding part of the security right.

## **§ 11 Final provisions**

- (1) The place of jurisdiction for any disputes ensuing from the business relationship between the Supplier and the Customer is, if the Customer is a trader, either the registered office of the Supplier or that of the Customer, as decided upon by the Supplier. For legal actions against the Supplier, the registered office of the Supplier is the exclusive place of jurisdiction. Binding legal provisions covering exclusive places of jurisdiction shall remain unaffected by this regulation.
- (2) The relations between the Supplier and the Customer shall be subject exclusively to the law of the Federal Republic of Germany excluding the conflict of law rules under International Private Law and excluding the UN Sales Law. The United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 (CISG) shall not apply.
  - (3) If the contract or these General Terms and Conditions of Delivery contain legal loopholes, in order to close these loopholes, those legally valid regulations that the contracting parties would have agreed according to the economic objectives of the contract and the purpose of these General Terms and Conditions of Delivery if they had known about the gap in the provisions, shall be deemed to be agreed.

The Customer acknowledges that the Seller stores data from the contractual relationship pursuant to Section 28 German Federal Data Protection Act for the purpose of data processing and that the Seller reserves the right to transfer the data to third parties (for example, insurance companies) insofar as this is required for the performance of the contract.