

## **Terms and Conditions (General Terms of Business)**

### **§1 Miscellaneous – Range of Application**

- (1) Our General Terms of Business are valid exclusively. Contrary or differing terms to our GTB, such as the GTB of the orderer, we do not accept, unless we have agreed to these terms explicitly in writing. Our GTB are also valid, if differing terms to our GTB's are known to us and we are unconditionally executing the order despite the orderers differing terms.
- (2) All agreements made between us and the orderer regarding the execution of this contract, are laid down in this contract in writing. Performance information and other declarations or assurances are only binding, when they have been issued by us in writing or have been confirmed by us. Our staff, unless members of the company, person holding power of attorney or authorized officers, are not authorized to give binding declarations in the name of the company.
- (3) Our GTB's are only valid in front of corporations in the sense of § 310 I BGB.
- (4) Our GTB's are also valid for all upcoming business with the orderer.

### **§2 Offer – Quotation Papers**

- (1) Our offer – also on our websites – is nonbinding, unless nothing different is resulting from the order confirmation. Is an order not confirmed in writing or executed within two weeks of reception, the orderer is entitled to withdrawal, although he is not entitled to any damage compensation.
- (2) Written or verbal notices from our side regarding use and fabrication of merchandise are noncommittal and do not liberate the orderer from his own examination of the merchandise for the intended use. The orderer is bound to inform his customers of the correct use of the merchandise and to indicate the dangers in the case of noncompliance.

### **§3 Commercial Protective Rights, Copyright**

- (1) We are reserving all property- and copyrights on any figures, pictures, drawings, samples, mock-ups, products, projects, pre-studies, calculations and other documents. This is also binding for all written documents, classified as „confidential“. Before they are passed on to third persons, the orderer is required to obtain our explicit agreement in writing.

### **§4 Equipment**

- (1) Equipment of all kinds (molds, matrix etc) such as examples or models, which we produce or obtain to the order of the orderer, will be proportionally charged to the orderer. The same applies for manufacturing drafts. The definitions under §5 apply accordingly.

- (2) This equipment such as mock-ups and samples, are solely our property and are not handed over to the orderer. This applies also, if the equipment, mock-ups and samples have been produced at the orderers cost, but according to our design pattern.
- (3) All equipment, mock-ups and models are kept for one year after the last delivery of goods manufactured therewith or according to the mock-ups or samples. We are not obliged to further storage.

## **§5 Prices – Payment Conditions**

- (1) Unless not stated otherwise in the order confirmation, our prices are effective „ex-works“, excluding packing, this will be invoiced separately. We reserve the right to change our prices reasonably – also in the case of already received pre-payments - if price reductions or price increases occur after conclusion of contract. We shall prove them to the orderer on demand.
- (2) The value added tax is not included in our prices; it is stated separately in the invoice at the legal rate of the day of invoicing.
- (3) Discounts need special written agreement. Discounts are not granted in the case of payment commitments from previous deliveries.
- (4) Unless not stated differently in the order confirmation, the purchase price is due for payment net (without deductions) within the prescribed period. In the case of the orderer's payment default, we are entitled to claim default interest of 8% above the basic interest rate. Should we be able to prove a higher delay damage, we are entitled to claim this.
- (5) Cheques are only taken in for payment by collection, bills of exchange cannot be accepted.
- (6) We are entitled to charge a flat rate price for reminder costs to the amount of 5,00€.
- (7) Should the orderer terminate his payments or has he not made payment to a previous delivery, or an over-indebtedness has occurred, or in the case of having applied for insolvency or composition proceedings, or if the orderer is in default with encashing bills of exchange or checks or should another significant depreciation of the orderers economic relations occur, our full demand is due immediately net (without deductions), even if the order confirmation is differently phrased. In these cases, we are entitled to resign from the contract.
- (8) A purchase or retention by the orderer is deprived, unless the purchase- or retention claim has been realised as final, uncontested or approved by us.
- (9) Any orderers demands towards us cannot be assigned.

## **§6 Delivery period**

- (1) Delivery periods and delivery dates are only binding, if they have been confirmed by us explicitly in writing.
- (2) The compliance with our obligation to deliver assumes the clarification of the orderer of all technical questions and the orderly realisation in time. The statement of defense of the unfulfilled contract remains conditional.
- (3) Should the orderer be in acceptance default or should he breach any other obligation to cooperate, we are entitled to claim any damages, including any

further expenses having occurred in the process. Further claims are conditional.

- (4) If the preconditions of paragraph (3) apply, the danger of a coincidental fall or coincidental degradation of the goods are carried over to the orderer as of the moment of him being in acceptance or default of debt.
- (5) We are liable for the legal terms, as long as the submitted contract is a fixed trade in the sense of § 286, paragraph 2.4 BGB or of § 376 HGB. We are also liable according to the legal terms, if an orderer can claim his interest in a continuing performance has gotten into discontinuance as consequence of a default of delivery being caused by ourselves.
- (6) We furthermore are liable to the legal terms, should a default of delivery caused by us is based on a willful or neglective breach of contract from our side. If the default of delivery is not based on a willful breach of contract from our side, our damage compensation is restricted to the foreseeable, typically occurring damage.
- (7) We are also liable for the legal terms, as far as the default of delivery caused by ourselves should be due to a culpable breach of a significant contractual obligation; in this case through, the liability for damage compensation is restricted to the foreseeable, typically occurring damage.
- (8) We are liable in the case of default of delivery up to a maximum of 5% of the value of the delivery.
- (9) Operating troubles due to Acts of God, labor disputes, fire, flooding, delivery blockages, refusal of Im – or Export, official commands, territorial interventions, strike, lockout and power- or raw-material shortages, as well as incorrect or not timely delivery through our suppliers, elongate the time of delivery appropriately.

## **§7 Shipping – Transition of Danger**

- (1) As far as it is not stated differently in the order confirmation, the delivery has been agreed upon as „Ex Works“.
- (2) The cost for packing and transport including all additional costs are to be settled by the orderer.
- (3) Transport- and all other packaging according to the packaging regulations, are not taken back. The orderer is liable to dispose of the packing materials at his own expense.
- (4) If the orderer requests to, we will cover the delivery with a transport insurance, the occurring costs are to be settled by the orderer.
- (5) Partial deliveries are permissible, as long as the orderer does not show recognizably to have no interest in this or this is recognizably not reasonable to him. In the case that this rule applies, packing and transport costs are only charged once.

## **§8 Protective Rights of Third Parties**

We are not liable for the violation of third parties' protective rights for a delivery item, which has been manufactured according to drawings, models, samples, developments or other specifications from the orderer, or under utilization of provided parts by the orderer, or for a use which could not be anticipated by ourselves. In this

case, the orderer has to exempt us from third parties' demands and to replace the accrued damage as well as to take over the necessary cost for legal defense.

#### **§9 Liability for Defects**

- (1) The orderers rights of default assume that he has acted according to the in §377 HGB owed liabilities of rogatory and reproof.
- (2) Proceedings for a reproof of the orderer do not depict our abandonment of our rights according to §377 HGB.
- (3) We are authorized to check a fault on the premises claimed by the orderer.
- (4) As far as a fault of goods is known, we are authorized to choose fulfillment either by removal of fault or by delivery of a new, faultless item. In the case of removal of fault, we carry the cost up to the amount of the buying price.
- (5) Should the fulfillment fail, the orderer is entitled to choose rescission or reduction.
- (6) We are liable according to the legal regulations, as long as the orderer claims damage compensation, which is based on intent or gross negligence, including intent or gross negligence by our representatives or auxiliary persons. As long as we have not been blamed with willful infringement of contract, the liability for damage compensation is restricted to the foreseeable, typically occurring damage.
- (7) We are liable according to the legal regulations, if we infringe an essential contractual obligation, which we are responsible for; in this case, the liability for damage compensation is restricted to the foreseeable, typically occurring damage.
- (8) The liability for culpable harm of life, the body or health remains untouched; this is also valid for the mandatory liability according to the product-liability rule.
- (9) Liability is excluded, unless something differing has been declared above.
- (10) The period of limitation is 12 months.
- (11) The period of limitation in the case of a delivery recourse according to §§478, 479 BGB stays – if legally applicable – untouched.

#### **§10 Joint Liability**

- (1) A continuing liability for damage compensation other than intended in §9, is excluded – without consideration of the kind of right of the claimed demand. This applies particularly for damage compensations resulting from fault at the conclusion of contract, because of other breach of duty or because of offense claims for replacement of damages to property according to §823 BGB.
- (2) If the liability for damage compensation towards us is excluded or restricted, this is also valid for the personal damage compensation for our employees, work force, staff members, representatives and auxiliary persons.

#### **§11 Property Reservation Perpetuation**

- (1) We reserve the right that all goods remain in our property until all payments from business relations with the orderer and / or from the existing current account relation (in this case: approved balance) have been received. If we agree with the orderer on payment of purchase price obligations because of

check-bill-of-exchange procedure, the reservation extends also to the encashment of the bill of exchange from the orderer, accepted by us and does not expire with the crediting of the received check to our account. In the case of the orderer's contrary to the contract behaviour, in particular in the case of payment default, we are entitled to take back the goods after an appropriate prescribed period. In taking back the goods, we do not withdraw from the contract, unless we had declared this in writing. In the case of the goods being claimed back by warrant of distress, this is always a withdrawal from the contract. We are entitled to take back the goods for their utilization, the earnings from this utilization are to be charged to the liabilities of the orderer – less appropriate utilization costs.

- (2) The orderer is obliged to treat the goods caringly; he is particularly obliged, to insure them adequately at his own expense against theft, fire-, and water-damage up to the value at new condition. If maintenance or inspection work is required, the orderer must carry these out at his own expense and in due course.
- (3) In cases of distress or intervention of third parties, the orderer has to refer to our rights and has to inform us in writing immediately, that we can take legal action according to §771 ZPO. If the third party is not able to reimburse the legal and out-of-court costs of any legal action according to §771 ZPO, the orderer is liable for our accrued check.
- (4) The orderer is entitled to sell the goods in a full business case, although he already assigns all demands of our demand up to the amount of the total of the invoice (including VAT), which arise to him from the resale against his buyers or third parties, independent of the goods being resold without or after fabrication. In the case of a consisting current account relationship, the demand already assigned by the orderer, refers also to the recognized balance and in the case of insolvency of the buyer to the existing causal balance. The orderer is still authorized to collect the demand, even after the assignment. Our authorisation to collect the demand ourselves, is untouched by this. We are committed not to collect the demand, as long as the orderer meets his payments obligation from the taken earnings, does not get into default of payment and particularly does not apply for opening of a bankruptcy-settlement or insolvency case, or that no suspension of payment has occurred. Should this be the case, we can demand from the orderer to make known to us all assigned demands and their debtors, that he informs us of all relevant details for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment.
- (5) The fabrication or changing of the goods through the orderer is always carried out for us. If the goods are treated with other items not belonging to us, we obtain co-ownership for the new matter in relation of the value of the goods (invoice total, including VAT) to the other fabricated items at the time of fabrication. Incidentally, the same applies for the items developed through fabrication as to the goods delivered conditionally.
- (6) Are the goods mixed inseparably with items not belonging to us, we obtain co-ownership for the new matter in the relation of the value of the goods (invoice total, including VAT) to the other fabricated items at the time of mixing. Does the mixing occur in a way that the matter of the orderer can be seen as main issue, it is agreed, that the orderer carries over co-ownership proportionally.
- (7) The orderer also assigns the claims to secure our claims towards him, which arose through the connection of the goods with a location against a third party.

- (8) We are bound to clear the securities we are entitled to on the demand of the orderer as far as the realizable value of our securities increases the claims to be secured by more than 10%; the selection of the securities to be released, are up to us.

## **§12 Confidentiality**

- (1) Confidential information, which we reveal to the orderer during the cooperation, business- and corporational secrets, in particular also the know-how passed on for the purpose of carrying out the work, the orderer may only use for the contractual purpose intended. The orderer has to avoid its unauthorized utilization, transmission or publication with the same, but reasonable standard of care, which he also uses for the protection of his own information of comparable nature.
- (2) Confidential information are all such informations (flow charts, logic specifications, samples, drawings, descriptions of procedures, formulas, courses of business, business partners, information on the ultimate customer etc), which are not recognizable for the passing-on to third parties.
- (3) Information is not classed as confidential, if they have been publicly accessible. Information is not classed as confidential anymore, when they have been made publicly accessible without breach of this definition, the orderer has received them from another party legally without commitment to treat them confidentially, or if they have been ascertained or developed by the orderer independently.
- (4) The orderer is obliged to pay a contract penalty of 20% of the net turnover which is object of the contract, for any single case of contravention against this obligation to maintain secrecy, in the case of willful acting under exclusion of statement of the defense of the context of continuation. Further damage claims of ours stay untouched by this.

## **§13 Utilization**

- (1) Confidential information, which we reveal to the orderer within the cooperation, business and corporate secrets, in particular the know-how passed on for the purpose of carrying out the work, the orderer may not use for his own work according to §12.
- (2) For any case of contravention against this commitment, the orderer is obliged to pay a contract penalty of 20% of the net turnover which is object of the contract in the case of willful acting under exclusion of statement of the defense of the context of continuation. Further damage claims of ours stay untouched by this.

## **§14 Usage of Websites**

- (1) As far as the orderer uses our websites, the following terms apply in addition.
- (2) The orderer is bound to keep and use his access data carefully and to ensure the secrecy of his personal password. The access data and the password cannot be passed on to third parties. Should third parties be able to get access

to our websites through a breach of confidentiality, the orderer is liable for any damage caused by this breach. This obligation does continue even after the finalization of the contract.

- (3) The orderer's personal password is not known to our employees, work force, staff members, representatives or auxiliary persons. We are not liable for damages, which occurred to the orderer by misuse or loss of his access data or his password. According to the standard of technics, the transmission of access data or the password via the internet is not absolutely secure.
- (4) The orderer is obliged to inform us immediately in the case of loss of his password and / or if he is suspicious of third parties knowing the password. This can be done either by fax, letter and additionally by e-mail.
- (5) The orderer recognizes the unlimited validity of an e-mail sent to him. In this e-mail, the common data is not permitted to be suppressed and / or be made anonymous, meaning, the mail must include the name, e-mail address of sender, time of sending (date and time) and a repetition of the sender's name at the end of the message. An e-mail received according to these terms seems certainly to be from the orderer, subject to the counterevidence.

## **§15 Protection of the Privacy of Personal Data**

The orderer is herewith informed, that the necessary data relevant for the execution of business are processed in the sense of the Federal Data Protection Act.

## **§16 Court of Jurisdiction – Place of Fulfillment of Contract**

- (1) In the case of the orderer being a trader, court of jurisdiction is our place of business; this also applies for check- and bill transactions. The same court of jurisdiction applies, if the orderer does not have a general court of jurisdiction in the Federal Republic of Germany at the time of institution of legal proceedings. Although we are also entitled to institute proceedings at the court of the orderer's place of residence.
- (2) The law of the Federal Republic of Germany applies, the validity of the UN – Right of Purchase is excluded.
- (3) Unless the order confirmation does not state anything different, our place of business is place of fulfillment of contract.