

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

- (1) The terms and conditions set out in these International Terms and Conditions of Purchasing, which form an integral part of the sales contract ("Contract of Sale"), shall apply if (i) the Seller's relevant place of business is not in Germany, and (ii) if the prevailing object of the contract is the supply of goods.
- (2) These International Terms and Conditions of Purchasing apply exclusively to the Contract of Sale. We are not bound by the Seller's terms of business irrespective of whether they conflict with our International Terms and Conditions of Purchasing or whether they deviate from statutory provisions.

## § 2 Formation of the Contract of Sale

A Contract of Sale always requires a written order ("Order") and a written acceptance of the offer. However, the Seller may also accept our Order by making delivery of the goods within the time limits stated in the Order or – if no such time limit is stated therein – within fourteen (14) calendar days as of the date of the Order.

## § 3 Applicable Law

The Contract of Sale 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.

## § 4 Obligation to deliver, Passing of risk and title

- (1) The Seller has to deliver the goods referred to in the Order including a packaging that is suitable for the means of transportation. The Seller is obliged to take back the packaging. If requested by the Seller in writing, we will send the packaging back to the Seller on Seller's costs and risk or have the packaging disposed of at Seller's costs.
- (2) The delivery has to be made DAP Incoterms 2020 at place of delivery indicated in the Order. If no place of delivery is indicated in the Order, delivery has to be made DAP Incoterms 2020 at our premises in 32257 Bünde/Germany. Furthermore, the Seller has to fulfil all the duties imposed on him by the Contract of Sale, these International Purchasing Conditions, the rules of the ICC for the use of the clause DAP Incoterms 2020 as well as other statutory provisions.
- (3) The delivery date respectively the delivery period stated in the Order must be strictly complied with. Non-compliance with the agreed delivery periods or delivery dates constitutes a fundamental breach of contract. The Seller is hereby made aware of the fact that any non-adherence to agreed delivery dates and/or delivery periods can cause a stop of production at our facilities. Moreover, as we deliver to our customers just-in-time, any non-compliance with the agreed delivery periods or delivery dates can also lead to severe damages and/or contractual penalties.
- (4) The Seller is obliged to give us a written notice of an imminent violation of the agreed delivery date or delivery period as soon as such a delay is identifiable for the Seller. Such written notice does not deprive us of the rights resulting from any late delivery.
- (5) To the extent we have to give specifications or have to comply with further obligations of cooperation, the Seller has to inform us thereof in writing and has to take into account reasonable response times from our side for the determination of the delivery period or delivery date.
- (6) Without prejudice to other obligations to inform, the Seller has to inform us in writing with a reasonable lead time of the forthcoming delivery.
- (7) The Seller is not entitled to make partial deliveries, unless we have given our explicit consent in advance.
- (8) The passing of risk takes place with delivery in accordance with § 4 sec. 2. If by no fault of our own we are prevented from taking delivery of the goods, the temporary inability to take delivery shall not be considered as a breach of contract and we are not in default of acceptance.
- (9) Title to the goods and to the documents is transferred to us at the time of delivery.

## § 5 Examination of the goods by the Seller

The Seller has to examine the goods prior to their handing-over to the same extent as we are obliged to examine them after taking delivery. The Seller is obliged to record the result of this examination in writing and provide us with such examination documents upon request.

## § 6 Specifications of the goods

- (1) The goods to be delivered have to conform to the specifications and quality requirements set out in the Order. To the extent no specifications or quality requirements are stated in the Order, the goods have to conform to the latest state of the art in science and technology as well as conform to any information contained in data sheets, product descriptions etc. Moreover, the goods only conform with the contract if they are fit without restrictions for

the purpose made known to the Seller or for the purpose for which goods of the same description are usually used for. The Seller is fully aware of the kind and method in which the goods are used.

- (2) Without prejudice to § 6 sec. 4, the Seller warrants that the goods comply with all requirements that have to be respected when importing the goods and making them available on the market in Europe.
- (3) If the Order includes details of amounts, size and weight and/or the Order is accompanied by pictures, these are binding, unless they are expressly marked as approximate descriptions.
- (4) The Seller is fully aware of the fact that the goods – if applicable in a processed form – will potentially be used throughout the whole world. Therefore, without prejudice to our statutory rights, the Seller warrants that the goods are free from rights and claims of third parties, which could prevent the usability of the goods anywhere in the world. This applies in particular for those rights or claims based on title or industrial property.

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

- (1) Irrespective of the Incoterms clause agreed, the Seller is under a duty to hand over at the agreed delivery date or within the agreed delivery period all documents necessary for the free export, transit or import of the goods in the European Union. Moreover, if the Seller has its place of business within the European Union he has to provide us with a supplier's declaration.
- (2) The Seller is obliged to clearly state the applicable customs tariff number on the delivery note which has to be enclosed to every delivery.
- (3) The Seller must clearly state his tax number on his invoices and moreover issue the invoices in accordance with all legal requirements applicable in Germany.
- (4) The Seller is only entitled to exercise a lien or to suspend his performance if this is based on a due and undisputed or finally adjudicated counterclaim of the Seller.

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

- (1) We are obliged to pay the agreed purchase price to the bank account nominated by the Seller. The place of payment is 32257 Bünde/Germany. Banking fees accrued outside of Germany will be borne by the Seller. Payment of the purchase price has to be made either with a discount of three (3) percent if paid within ten (10) calendar days or net without deduction if paid within 30 (thirty) calendar days, each after we have received a correct invoice and the Seller has delivered the goods completely and in conformity with the Contract of Sale and has fulfilled all other obligations imposed on him by these International Terms and Conditions of Purchasing in due form. The invoice has to state the supplier number as indicated on our Order, date and number of the Order, place of destination, number and date of the delivery note and the quantity of the goods.
- (2) The agreed purchase price is a fixed price. An increase in the purchase price, for whichever reason, is excluded.
- (3) Payment of the purchase price does not imply a confirmation that the goods comply with the legal and/or contractual requirements and is made with reservation.

#### **§ 9 Non-Conforming goods; freedom of rights and claims of third parties**

- (1) Further to statutory regulations, the goods do not conform to the contract if they do not conform to the requirements set out in § 6 sec. 1 to sec. 3. Furthermore, it does constitute a non-conformity if third parties have claims based on product liability law.
- (2) Further to statutory regulations the goods are not free from rights or claims of third parties if the requirements set out in § 6 sec. 4 are not complied with.

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

- (1) We are only obliged to examine the goods in respect of typical deviations of a factual kind in type, quantity, quality and packaging. We are not obliged to conduct an examination that requires the help of external third parties. An examination in relation to the freedom from any right or claim of a third party is not required.
- (2) The period for examination only starts at the moment we use or process the goods, however at the latest four (4) months after the goods have been delivered. However, this does not apply to very obvious non-conformities, for which no period of examination is applicable.
- (3) Notice of non-conformity has to be made within fourteen (14) calendar days. For very obvious non-conformities, the period for such notification starts with the delivery of the goods (or, if deviating from § 4 sec. 2 an E-, F- or C- clause of the Incoterms 2020 is agreed, as soon as the goods reach the place of destination), in all other cases when we finally knew or ought to have known of the non-conformity of the goods. We are not obliged to give notice of non-conformity if the Seller knew or must have known the non-conformity based on his outgoing examination.
- (4) In the notice of non-conformity we do not have to reserve our rights in respect of the breach of contract. It is sufficient that we describe the non-conformity in general terms. In case the Seller needs further details, e.g. in order to rectify the non-conformity, he is obliged to ask us in writing.

### § 11 Limitation Period

- (1) Our claims in respect of the delivery of non-conforming goods become time-barred after three (3) years after the statutory beginning of the limitation period. However, to the extent the claims for compensation of our customers are binding towards us because our customers or their customers have sold the goods in a supply chain to consumers, the limitation period for claims because of delivery of non-conforming goods is five (5) years.
- (2) The limitation period in respect of freedom of rights or claims of third parties is ten (10) years.

### § 12 Remedies in case of non-conforming goods and goods which are not free of rights or claims of third parties

- (1) Without prejudice to the statutory provisions, in case of delivery of non-conforming goods or goods that are not free from rights or claims of third parties our right to avoid the contract and/or require delivery of substitute goods does not require a fundamental breach of contract. It is sufficient that the breach of contract is not of only totally minor importance.
- (2) Deviating from Art. 46 para. 2 CISG, the right to require the delivery of substitute goods is – apart from the limitation period – not subject to any time limits.
- (3) Avoidance of the contract needs to be declared within one (1) year in case of late delivery, and within two (2) years in case of other breaches of contract. The period for such declaration of avoidance starts in accordance with the statutory provisions.
- (4) In the event we are obliged towards our customers to compensate expenses, the Seller is obliged to reimburse us in the same amount insofar as such expenses are attributable to the fact that the goods delivered by the Seller do not conform with the contract or are not free of rights or claims of third parties. To the extent the claims for compensation of our customers are binding upon us because our customers or their customers have sold the goods in a supply chain to consumers, the time when the non-conformity has to exist in relation to the Seller is determined by the passing of risk to the consumer.
- (5) Apart from the aforesaid, the statutory provisions apply.

### § 13 Other Provisions

- (1) There are no side agreements to the Contract of Sale.
- (2) Any amendments to a concluded Contract of Sale require our written confirmation, duly approved by signature.
- (3) The Seller is not entitled to assign his rights and obligations against us to a third party. In case the Seller purchases parts of the goods from third parties, he is liable for their behavior to the same extent as he would be liable for his own behaviour.
- (4) The place of performance for delivery results from § 4 sec. 2, the place of performance for payment results from § 8 sec.1. For all remaining obligations and irrespective of the agreement of a differing Incoterms-clause, the place of performance is agreed to be 32257 Bünde/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.
- (5) All communications, declarations, notices etc. (hereinafter collectively “Communications”) are to be drawn up exclusively in German or English. Communications by means of fax or email fulfil the requirement of being in writing (*Schriftform*). A signature is not required, unless these International Terms and Conditions of Purchasing explicitly require a signature.

### § 14 Agreement on jurisdiction and arbitration

- (1) If the Seller’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 Contract of Sale and/or these International Terms and Conditions of Purchase, including its validity, invalidity, violation or cancellation, the state court which has jurisdiction for 32257 Bünde/Germany shall have exclusive jurisdiction. Instead of bringing an action before the state court which has jurisdiction for 32257 Bünde/Germany, we are also entitled to bring an action before the state court of the Seller’s place of business.
- (2) If the Seller’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 Contract of Sale and/or these International Terms and Conditions of Purchase, including its validity, invalidity, violation or cancellation, 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 place of the arbitration shall be Zurich/Switzerland, the language used in the arbitral proceedings shall be English.

### § 15 Severability

If provisions of these International Terms and Conditions of Purchasing should be or become partly or wholly ineffective, the remaining provisions will continue to apply. We and the Seller 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.