

# GENERAL SALES TERMS AND CONDITIONS

## **§1 General**

1. The following Terms and Conditions shall be valid for this business transaction as well as all future business transactions with us insofar as nothing to the contrary has been expressly agreed in the individual case.
2. The sales confirmation shall regulate the legal relationships between us and the Buyer completely and exclusively. Any oral ancillary agreements and subsequent contractual amendments shall only then be binding if they have been confirmed by us in writing via a supplement to the sales confirmation.
3. Any objections to the content of the sales confirmation must be lodged in writing and received by us by no later than by the end of the next work day after the receipt of the sales confirmation. After this point in time, the contractual confirmation shall be considered to be definitively binding.
4. Any Purchasing Terms and Conditions of our contractual partners shall not obligate us even if we have not expressly objected to them.
5. Claims of our contractual partners from the contractual agreements shall not be assignable.
6. The Terms and Conditions shall also then be binding even if individual provisions should be discovered to be invalid.
7. The place of performance for our services shall be the place of taking in charge.
8. The legal venue for both parties shall be Speyer. This shall also be valid for any disputes involving bills of exchange and checks.
9. Exclusively German law shall be valid for the entire legal relationships with our contractual partners.

## **§2 Offers and Prices**

1. If another provision has not been expressly agreed, the offers based upon quantity, price and delivery timeframe shall be non-binding for us and shall be submitted subject to the suspensive condition of correct and timely delivery upon the part of our suppliers. This shall be valid particularly for goods from government-operated intervention stocks of the EC.
2. Any cost increases that become effective during the timeframe between the conclusion of the contractual agreement and when the delivery is made that are based upon cost factors which are outside of our control shall be correspondingly charged to the Buyer.

## **§3 Delivery**

1. The delivery timeframes which we announce shall be considered to be non-binding insofar as they have not been expressly designated to be binding. The agreement on "prompt" delivery shall obligate us to make delivery within 14 days after the conclusion of the transaction; in the case of a foreign or international transaction, this shall be considered to include loading and/or shipping in the country of origin within 21 days.
2. Force majeure as well as impediments of any kind which are not in our sphere of responsibility shall release us from all delivery obligations; in this regard, the Buyer shall be entitled to no claims whatsoever against us. The delivery shall be made subject to the proviso of "correct and timely delivery by our suppliers" and, for reloadings or travelling parties, subject to the additional proviso of "safe arrival". This shall also be valid if this type of delivery is not prescribed in the other agreements.
3. We shall be entitled to render our deliveries before the agreed delivery deadline or in partial deliveries.
4. If we fail to meet a delivery deadline which we have committed to with binding validity, then the Buyer must initially grant us an appropriate extension period of at least seven days. He shall be entitled to no rights whatsoever against us until this extension period fruitlessly lapses. Subsequently, in the case of a delivery delay or an impossibility of rendering performance for which we are responsible, damage compensation claims upon the part of the Buyer shall be excluded unless they are based upon intentional wrongdoing or gross negligence.
5. Partial deliveries shall be permissible.
6. The fulfilment of the delivery deadline shall require the fulfilment of the contractual obligations by the Buyer. Thus, as long as he is in arrears with the fulfilment of a contractual obligation owed to the Seller, the Seller's delivery obligation shall be suspended.  
(see also §7 No. 7 and No. 8)

## **§4 Handover, Acceptance**

1. Insofar as nothing to the contrary has been expressly agreed, the goods shall, upon leaving the Seller's factory, be taken possession of and, at the same time, qualitatively accepted by the Buyer. This shall also then be valid if freight-free delivery to the delivery destination has been agreed. Any transport costs shall be charged to the Buyer if nothing to the contrary has been expressly agreed.
2. The Buyer shall be obliged to take possession and make acceptance of the goods as soon as we have notified him that the goods are ready for delivery. If he fails to promptly fulfil this obligation, then we shall be entitled, after setting an extension period of seven days, while being released from our delivery obligations, to withdraw from the contractual agreement or demand damage compensation owing to non-performance. In the latter case, we shall be entitled, without being required to provide any additional documentation, to demand 25% of the sales price of the goods as compensation. If the damages which we have suffered exceed this amount, then we shall reserve the option of asserting the damage compensation claim in its full amount. The Buyer shall have the right to document that we have suffered no damages or substantially smaller damages.
3. Upon our request, the Buyer must take possession of any goods that are shipped by boat or transported in any other manner even outside of normal business hours as well as on Sundays and legal holidays. If he does not do this, then he must pay compensation for any resulting damages.
4. Upon the handover, the risk of the destruction or deterioration of the goods shall be transferred to the Buyer regardless of who assumes the costs of any shipping. In the case that a shipment is made, insurance coverage shall be concluded only upon the basis of special agreements with the Buyer at his expense.

## **§5 Notifications of Defects, Warranty, Liability**

1. Complaints must be submitted to us, immediately after the good are accepted, in written form and via the fastest method of communication (fax), but nonetheless by no later than within 24 hours. After the lapsing of this timeframe, the Buyer's right to make a notification of defects shall be extinguished and the goods shall be considered to have been accepted.
2. The Buyer himself must assume responsibility for the qualitative controlling at the location where acceptance is made.
3. If the quality is unsatisfactory only for a portion of the delivery which does not exceed 5% and the rest of the batch fulfils the agreed quality standard, then the complaints shall be excluded.
4. If goods are sold based upon a sample, then the sample shall serve only as a display item in order to show the approximate character of the goods overall. We shall be liable for other features of the goods only if we have expressly guaranteed this.
5. For frozen goods, the Buyer shall be entitled and obliged, for quality assurance purposes, to thaw individual samples. Up to ½ percent of canned goods may be opened. Otherwise, the Buyer, in order to preserve his rights, must supply the goods in unopened fashion at the delivery destination for inspection purposes.
6. If the goods are meat or meat products, any complaint must be documented by means of a veterinary health certificate.
7. If we acknowledge a defect in writing, then the Buyer may demand a replacement delivery in lieu of the portion of the goods about which a notification of defects was lodged. He shall not be entitled to rescind the contractual agreement or demand a purchase price reduction unless we are unable to make a replacement delivery; even in the latter case, the Buyer may demand a purchase price reduction only if the reduction in value does not exceed 15% of the purchase price. Insofar as this is permitted by law, any more extensive claims shall be excluded.
8. Damage compensation claims upon the part of the Buyer arising from a positive contractual violation, culpability during contractual negotiations and tortious acts shall be excluded unless they are based upon intentional wrongdoing or gross negligence.
9. Notwithstanding the provisions in §5 Clause 8, we shall have the right to make a reimbursement for the defective goods in lieu of a replacement delivery whereby the upper limit of such a reimbursement shall be determined by the purchase price of the goods.
10. If we ourselves have procured the sold goods from a third party and they are resold in unaltered fashion, then the Buyer shall receive a reimbursement in this regard to the extent that we ourselves obtain such a reimbursement from our supplier. In this case, in order for the Buyer to be able to assert all of his rights, we may assign him our own claims against this subsupplier.
11. Any warranty shall be excluded as soon as the goods have been altered by a third party and it cannot be ruled out that the damages, regarding which a notification of defects was made, are causally related to this alteration.
12. Each delivery or partial delivery shall be considered to be an independent transaction. Any defects in a delivery shall trigger no legal consequences for other deliveries.

13. Notifications of defects shall be excluded as soon as the Buyer has dispatched the goods or begun their handling or processing.

## **§6 Quantity Determination**

1. The invoicing shall be based upon the quality determinations in accordance with the following standard:
  - a) For packaged goods, the information stated on the packaging,
  - b) For unpackaged goods, the weight determined upon handover,
  - c) For goods to be unloaded or transported, the dispatch weight.
2. The quantities determined in this manner shall be binding for both parties.
3. In the case of the transit of entire batches, wagons, etc., the Buyer shall, with regards to the quantity determination and the corresponding restrictions of his rights, enter into the terms and conditions of our purchasing transaction with our subsupplier.
4. If the sale is designated to be for the supplying of an approximate quantity, then we shall be entitled to supply up to 10% more or less.

## **§7 Payment**

1. Our sales prices shall be considered to be net prices in addition to the statutory VAT.
2. Our invoices must in principle be paid immediately upon their receipt net without any discounts, but nonetheless must be received by no later than on the day of the latest payment due date specified on the invoice. In the event that this payment due date is not met, notwithstanding the assertion of claims for higher actual damages suffered, payment default interest in the amount of 12% shall be charged without being required to provide more extensive documentation of such damages.
3. Our invoices shall be considered to have been acknowledged if they are not objected to in writing within one week's time after the invoicing date.
4. By lodging notifications of defects, the Buyer shall nonetheless not be released from his payment obligations.
5. The Buyer may neither offset against our claims nor assert a right of retention unless his claim is undisputed and has been legally upheld. He hereby waives particularly his right to assert a right of retention from previous or other transactions from the on-going business relationship.
6. Bills of exchange, checks and payment orders shall be accepted only by special agreement for payment satisfaction purposes subject to the billing of all debt collection and overdraft charges, taxes on bills of exchange and bank commissions. We shall provide no guarantees regarding the timely redemption, protests, notifications and returns of bills of exchange and checks. Insofar as we do not grant a discount for the bills of exchange, we shall have a claim to the customary bank discount interest rates.
7. Our business relationships with the Buyer shall be based upon the prerequisite of his undiminished creditworthiness. If this prerequisite has not been fulfilled, regardless of whether the Buyer has entered into default with his payments, we have received negative information about him or owing to other sets of circumstances which indicate that he has payment difficulties, we may make the continued supplying of the Buyer, from this transaction as well as from all other transactions which have not yet been completed, contingent on the prior rendering of an advance payment or provision of security for all claims already due or not yet due from all transactions concluded with the Buyer. If the advance payment or the security is not provided within a timeframe of 14 days after it has been demanded, then we shall be entitled to withdraw from the contractual agreement or demand damage compensation owing to non-fulfilment. In the case of damage compensation, the provisions of §4 Clause 2 Items 3, 4 and 5 shall be valid accordingly.
8. If the Buyer enters into payment default and he does not make the missed payment within one week after receiving a warning letter in this regard, then all payment claims which he still owes—including from other transactions—shall become immediately payable; at the same time, we shall be released from our delivery obligations.
9. In the event that payments are discontinued or bankruptcy proceedings are opened regarding the Buyer's assets, all claims from all transactions concluded with him shall become immediately payable. The same shall be valid if a bill of exchange or check is not honoured which has been given to us for payment satisfaction purposes.
10. In the case of the issuance of a SEPA company direct debit mandate, we shall announce to the customer the direct debit on the invoice. The SEPA direct debit shall become payable within three calendar days after the invoicing date. If the payment due date falls on a weekend/legal holiday, then the payment due date shall be shifted to the first subsequent workday.

## **§8 Reservation of Ownership**

1. The goods which we supply shall remain our property until payment in full has been rendered for the purchase price and all payment claims from the business relationship including any claims created in the future from contractual agreements concluded simultaneously or later—including with regards to §47 of the Insolvency Regulations. The Buyer must properly handle and store as well as insure the goods which we still own; if he violates this obligation to exercise due care, then he shall be liable for any resulting damages.
2. The processing or reworking of the goods subject to the reservation of ownership shall always be undertaken by the Buyer for us. If the goods subject to the reservation of ownership are processed with goods which are solely owned by the Buyer or with goods to which no extended reservation of ownership exists, then we shall be entitled to sole ownership to the new goods. If the goods subject to the reservation of ownership are processed with other goods not belonging to us, then we shall be entitled to co-ownership to the new goods based upon the proportional value of the goods subject to the reservation of ownership to the other processed goods at the time of their processing.
3. The Buyer may resell the goods that we have supplied and the new goods created from their processing only during normal business dealings. The Buyer shall already now assign to us in their full amount all claims of the Buyer from the resale of the goods that we have supplied and the goods created from their processing. If the reserved goods are resold by the Buyer after processing/combining together with other goods not belonging to us, then the Buyer shall already now assign to us the payment claims created from the resale in the amount of the value of the reserved goods with all ancillary rights and priority over the rest. We hereby accept the assignment. The Buyer may collect the payment claims assigned to us, but must nonetheless immediately remit such payments insofar as our payment claims become due. Otherwise, he must separately book the assigned payment claims and, upon collecting them, separately safeguard them insofar as they have not yet been remitted to us. We shall not exercise our right to collect the payment claim as long as the Buyer properly fulfils his payment obligations to us. From the point in time when we forbid the collection of the assigned payment claims, the Buyer may no longer accept payments. Upon request, the debtors of the assigned payment claims must be disclosed to us. The Buyer must also notify the debtors of this assignment and provide us with the documents required in order to assert the assigned payment claims. In the event of payment default, the Buyer shall be obliged to grant us, or our authorised representative, the opportunity to inspect his accounting records at any time. If the value of the security provided to us exceeds our payment claims, overall and not just temporarily, by at least 20%, then we shall, upon the Buyer's request, release the security in the corresponding amount as we so choose.
4. The Buyer may neither pledge, nor assign by way of security, goods which we still own; in the event of interventions by his creditors—particularly in the event of seizures, he must promptly notify us of this via registered letter and, at the same time without this having to be requested, undertake measures in order to ward off such interventions. The Buyer must assume the costs for such measures as well as the costs which we incur from our own intervention processes.
5. If the Buyer has assigned the reserved goods or otherwise assigned the goods affecting his operations beforehand to third parties or they are otherwise encumbered with third-party rights or he otherwise disposes of his payment claims from sales—particularly through a general assignment, then he must promptly notify us of this before delivery is made; in this case, we shall be released from our delivery obligations. If the Buyer accepts our goods without notifying us of the aforementioned pre-disposals, then he shall not be entitled to process and resell the goods.
6. If the Buyer does not fulfil his obligations from this or other transactions or his financial circumstances deteriorate substantially, then we shall be entitled to directly seize the goods subject to our reservation of ownership after having sent a warning letter without asserting a legal claim in court. For this purpose, the Buyer must, at any time, grant us access to his business premises and storage areas. The goods that we take back shall be credited to the Buyer, as we so choose, at the prices that were charged or at the prices which were valid on the date that they were seized whereby, for lost profit and for the costs of the delivery, 25% plus the costs of the seizure shall be deducted. An additional deduction shall be taken if the goods are no longer as good as new. We shall also be authorised to utilise the goods without being obliged to follow the statutory guidelines on the sale of pledged property. The Buyer shall continue to hold the right to document that no damages have been suffered or that lesser damages than 25% have been suffered.
7. If, in conjunction with the payment of the purchase price by the Buyer, liability is created for us based upon a bill of exchange, then the reservation of ownership as well as the underlying payment claim for this from the deliveries of goods shall not be extinguished before the redemption of the bill of exchange by the Buyer as the payer.