

I. General - scope of application

(1) Our terms and conditions of sale shall apply exclusively; contradictory terms and conditions of Customer or ones deviating from our terms and conditions shall only be acknowledged by us if we have expressly approved their validity. Our terms and conditions of sale shall apply even if we implement delivery to customer despite knowledge of contradictory terms and conditions of Customer or ones deviating from our terms and conditions.

(2) All agreements made between ourselves and Customer for the purpose of performance of the present contract have been stated in writing in these terms and conditions of sale.

(3) Our terms and conditions of sale shall only be valid towards enterprises within the meaning of § 310 subsection 1 German Civil Code.

II. Quotation - quotation documents, acceptances of orders

(1) Our quotations shall be subject to change without notice. Verbal agreements or arrangements with our employees shall only be binding if they are confirmed by us in writing. If Customer's order is to be qualified as a quotation pursuant to § 145 German Civil Code, we can accept it within 2 weeks.

(2) Statements in our brochures such as photos, drawings and other specifications shall only be approximate and only binding for us following our express confirmation. Drawings, sketches, portrayals and other documents, in particular written documents marked as being „confidential“, shall remain our property and may only be forwarded to third parties with our express approval. Customer shall assume full responsibility for the fact that no patent rights or copyrights of third parties are breached by the provision of drawings of Customer.

(3) Order acceptances by us shall require a written confirmation for legal effectivity (sufficient by telefax). They shall exclusively be given on the basis of these general terms and conditions of sale. Supplements, amendments and verbal agreements shall likewise require a written confirmation by us for legal effectivity. Revocation of an order already placed by Customer shall be inadmissible.

III. Prices – payment terms

(1) To the extent that nothing to the contrary results from the order confirmation, our prices shall apply „ex works“, exclusive of packaging, which shall be charged separately if applicable.

(2) The Value Added Tax valid at the time in question has not been included in our prices; it shall be stated separately on the invoice at the statutory rate on the date of invoicing.

(3) Deduction of discount shall require a specific written agreement.

(4) To the extent that nothing to the contrary results from the order confirmation, the purchase price shall be due for payment (without deduction) within 20 days of the date of the invoice. The statutory rules concerning the consequences of arrears in payment shall apply.

(5) Bills shall not be accepted as payment. Discount and collection charges, costs of protests shall be charged to Customer. All orders shall be accepted under the proviso that Customer is in the position to pay the complete amount of the purchase price. If this prerequisite is no longer fulfilled, which shall be assumed if unfavourable information about Customer's economic situation exists and payments are not made within the agreed payment period, we can demand immediate cash payment before delivery of the commodities, regardless of the agreed payment date. In the event of a considerable deterioration of the financial situation of Customer becoming known after conclusion of the contract or in the event of arrears in payment, we shall have the right to withdraw from the contract and can demand immediate settlement of all claims, both due for payment and not yet due for payment. If we make use of the right to withdraw from the contract, Customer shall reimburse us for the loss of profits or expenditure incurred with a view to the order placed, in particular with a view to the working hours taken up. Payments must be made exclusively to us.

(6) Rights of offset shall only accrue to Customer if its counterclaims are legally effective, undisputed or have been recognised by us. In addition, it shall only be entitled to exercise a right of retention to the extent that its counterclaim is based on the same contractual relationship.

IV. Delivery period, arrears in delivery, deliveries

(1) The start of the delivery period stated by us shall presuppose clarification of all technical questions.

(2) Compliance with our delivery obligation shall further presuppose punctual and proper performance of Customer's obligation. The right to the plea of non-performance of contract shall remain reserved.

(3) If Customer falls into arrears of acceptance or culpably breaches other co-operation duties, we shall be entitled to demand reimbursement of the damage incurred by us to this extent, including all and any additional expenditure. The right to further-reaching claims shall remain reserved.

(4) Insofar as the prerequisites of sub-section (3) have been fulfilled, the risk of chance destruction or chance deterioration of the object of purchase shall pass to Customer at the point in time at which the latter has fallen into arrears of acceptance or debtor's arrears.

(5) We shall be liable according to the statutory provisions to the extent that the underlying purchase contract is a fixed transaction within the meaning of § 286 sub-section 2 no. 4 German Civil Code or of § 376 German Commercial Code. However, Customer shall have the duty to make reference to the existence of a fixed transaction to the extent that this can be reasonably expected in the individual case. We shall also be liable according to the statutory provisions insofar as Customer is entitled to claim that its interest in further performance of the contract has been forfeited as a consequence of arrears in delivery for which we are answerable.

(6) We shall further be liable according to the statutory provisions to the extent that the arrears in delivery are based on a breach of contract by malice aforethought or gross negligence for which we are answerable; culpability of our representatives or vicarious agents shall be ascribed to us. Insofar as the arrears in delivery are not based on breach of contract by malice aforethought for which we are answerable, our liability to damages shall be limited to the foreseeable damage typically incurred.

(7) We shall also be liable according to the statutory provisions to the extent that the arrears in delivery for which we are answerable are based on a breach of a cardinal contractual duty; in such a case, however, the liability to damages shall be limited to the foreseeable damages typically incurred.

(8) Apart from this, i.e. in the event of occurrence of liability pursuant to IV. (5), (6), (7), we shall be liable in the event of arrears in delivery for each completed week of arrears within the framework of liquidated reimbursement to the amount of 0.1% of the delivery value, albeit no more than 3% of the delivery value.

(9) Further statutory claims and rights of Customer shall be reserved. Liability for loss of profits, in particular liability for income which can customarily be achieved with the sold product(s), shall be ruled out.

(10) To the extent possible, the quantity ordered by Customer shall be provided. Any difference in quantity resulting from the delivery note or the invoice shall be notified to us in writing, albeit no later than 5 working days after receipt of the commodities. Part deliveries shall be admissible.

V. Passage of risk, duties to notification and examination

(1) Risk shall pass to Customer as soon as the consignment has left our factory or is provided for collection by Customer. This shall also apply in the event of us assuming the transport costs.

(2) To the extent that no specific requirements have been notified and accepted by us, the control of the incoming goods with Customer shall be in accordance with the manufacturer's instructions for the delivered products or for comparable products. Complaints of any kind shall be ruled out if they are

not made within 14 days of receipt of the commodities. This shall not apply if it is a question of hidden defects which are difficult to discover in the course of the customary examinations. Defects in a part of the delivery shall not entitle Customer to complain about the entire commodities.

VI. Liability for defects

- (1) Claims from defects of Customer shall presuppose that the latter has properly complied with its duties to examination and notification owed pursuant to Section V. sub-section (2) of these general terms and conditions of sale and also pursuant to § 377 German Commercial Code.
- (2) To the extent that a defect in the object of purchase exists, we shall carry out subsequent performance in the form of a remedy of the defect (taking Customer's wishes into reasonable account) or deliver a new object free of defects. In the event of remedy of defects, we shall be obliged to bear the expenditure necessary for the purpose of remedying the defect (transport, travel and working costs) to the extent that they are not increased by the fact that the object of purchase has been taken to a place other than the place of performance.
- (3) If subsequent performance fails, Customer shall be entitled, at its discretion, to demand withdrawal or reduction of the purchase price.
- (4) We shall be liable according to the statutory provisions, insofar as Customer makes claims to damages based on malice aforethought or gross negligence, including malice aforethought or gross negligence of our representatives or vicarious agents. Insofar as no breach of contract by malice aforethought can be put down to us, the liability to damages shall be limited to the foreseeable damages typically incurred.
- (5) We shall be liable according to the statutory provisions, insofar as we culpably breach a cardinal contractual duty; however, in such case, the liability to damages shall be limited to the foreseeable damages typically incurred.
- (6) Liability on account of culpable injury of life, limb or health shall remain unaffected; this shall also apply to cogent liability on the basis of the Product Liability Act.
- (7) To the extent not regulated to the contrary above, liability shall be ruled out apart from this.
- (8) The period for barring by limitation for claims from defects shall be 12 months, starting from passage of risk.

VII. Joint and several liability, manufacturer's guarantees

- (1) Liability for further-reaching damages than those provided for in Section VI. shall be ruled out - regardless of the legal nature of the claim being made. This shall in particular apply to claims to damages from culpa in contrahendo, on account of other breaches of duties or claims from tort for reimbursement of property damage pursuant to § 823 German Civil Code. Liability for loss of profits, in particular liability for income which can customarily be achieved with the product(s) sold, shall be ruled out.
- (2) The limitation pursuant to sub-section (1) shall also apply to the extent that Customer demands reimbursement of vain expenditure in lieu of performance instead of a claim to reimbursement of the damage.
- (3) We are not the manufacturers of the products sold by us. We therefore assume no kinds of duties from such guarantees granted by the manufacturer. Claims of Customer from manufacturer's guarantees shall be made exclusively against the manufacturer. Written guarantee assurances granted by us shall remain unaffected.

VIII. Retention of title

- (1) All delivered commodities shall remain our property until all purchase price claims have been fulfilled to the full amount, in the event of payment by cheque until crediting of the equivalent. We shall be entitled to demand return of the conditional commodities at any time if Customer behaves in breach of contract and shall be entitled to take the object back, in particular in arrears in

payment. Taking back the object of purchase by us shall represent withdrawal from the contract. After taking the object of purchase back, we shall be entitled to exploitation, the yield from the exploitation being offset against Customer's liabilities - less suitable costs of utilisation.

- (2) Customer shall be obliged to treat the object of purchase carefully until passage of ownership; in particular, it shall be obliged to insure the object of purchase adequately at its own expense against fire, water and theft damage at the new value.
- (3) In the event of seizures or other interventions of third parties, Customer shall notify us in writing without delay, so that we can initiate proceedings pursuant to § 771, Code of Civil Proceedings. Insofar as the third party is not in the position to reimburse the judicial and extra-judicial costs of proceedings pursuant to § 771 Code of Civil Proceedings, Customer shall be liable for the losses incurred by us.
- (4) Customer shall be entitled to resell the object of purchase in the normal course of business; however, it here and now assigns to us all claims to the amount of the final invoice amount (including VAT) of our claim accruing to it from the resale against its customers or third parties, regardless of whether the object of purchase has been resold without or following processing. Customer shall remain authorised to collect said claim even after assignment. Our authorisation to collect the claim ourselves shall remain unaffected. However, we engage not to collect the claim as long as Customer complies with its payment duties from the yield collected, does not fall into arrears in payment and, in particular, no application for the opening of settlement or insolvency proceedings has been made or payments have ceased. But if this is the case, we can demand that Customer notifies us of the assigned claims and their debtors, gives us all the information necessary for the collection, provides us with the pertinent documents and notifies the debtors (third parties) of the assignment.
- (5) Processing or reshaping of the object of purchase by Customer shall always be done on our behalf. If the object of purchase is processed with other objects not belonging to us, we shall acquire co-title to the new object in the ratio of the value of the object of purchase (final invoice amount including VAT) to the other processed objects at the time of the processing. Apart from this, the same shall apply to the object created by processing as for the conditional commodities supplied.
- (6) If the object of purchase is inseparably blended with other objects not belonging to us, we shall acquire co-title to the new object in the ratio of the value of the object of purchase (final invoice amount including VAT) to the other processed objects at the time of the blending. If the blending is done in such a way that Customer's object is to be regarded as the main object, it shall be deemed agreed that Customer assigns co-title to us pro rata. Customer shall keep the sole title or co-title originating in this way on our behalf.
- (7) Customer shall also assign the claims to secure our claims against it accruing against a third party as a result of the blending of the object of purchase with a real property.
- (8) We engage to release the collaterals accruing to us by request of Customer to the extent that the realisable value of our collaterals exceeds the claims to be secured by more than 10%; the selection of the collaterals to be released shall be a matter for us.

IX. Final provisions

Contracts with Customer shall be governed by German law, expressly ruling out UN purchase law. The exclusive place of jurisdiction for all disputes in direct or indirect connection with the contract shall be Munich, Germany, to the extent legally admissible. In cases of legal disputes, the German version shall be authoritative.

Our general terms and conditions of business can also be seen in the Internet under www.donauer.eu.