

**1. Scope of application**

The following terms and conditions shall apply exclusively to all of our sales, deliveries and services, including service contracts, the supply of non-fungible goods and advice and recommendations provided to companies, public legal persons and public trusts, except where individual variations are agreed in individual cases. We shall be bound by differing terms and conditions or confirmations of the purchaser only if and to the extent that we have expressly agreed to these in writing. In particular, a lack of response on our part to differing terms and conditions of this kind is not to be interpreted as acknowledgement or acquiescence to such differing conditions. We hereby expressly object to differing terms and conditions or confirmations of the purchaser.

**2. Conclusion of the contract, scope of delivery, divergences**

- 2.1 Our offers are not binding to us. The purchaser is bound to his order for 4 weeks. An order is only deemed to have been accepted when we have confirmed it in writing or have dispatched the goods.
- 2.2 Collateral agreements, warranties and all other agreements are only effective if they have been expressly confirmed by us in writing.
- 2.3 The purchaser is liable for the accuracy of the documentation supplied by him, especially for the accuracy of patterns and drawings.
- 2.4 Any specifications, drawings, illustrations and service descriptions contained in catalogues, price lists or documentation relating to the offer shall be regarded as approximations customary in the industry. Quality, appearance and colour may be subject to customary deviations if this is unavoidable due to the availability of materials and/or for technical reasons. Adherence to specific weights, dimensions and quantities is not guaranteed and deviations customary in the industry are reserved.
- 2.5 Reference to norms and similar technical regulations, technical specifications, descriptions and illustrations of the supplied goods are only a description of the service and do not constitute a guarantee of the quality and condition of the goods. Specific characteristics of supplied goods are guaranteed only if we have expressly confirmed this in writing.
- 2.6 Foam material products may be subject to variations in the pore size and the occurrence of individual larger pores, so-called contraction cavities.

**3. Prices**

- 3.1 All prices are deemed to be in Euro, including customary packaging charges plus Value Added Tax.
- 3.2 If customary in the trade, the goods will be supplied packaged. We will provide packaging, protective material and/or transportation equipment in accordance with our reasonable discretion. These will be taken back at our warehouses. We will not be liable for the purchaser's return transportation costs or the costs associated with his own disposal of the packaging.
- 3.3 Insofar as prices are not specified or are only specified with the proviso "current list prices", we will charge the list prices applicable on the day of delivery. However, the above only applies in the case of delivery periods of more than 2 months and for price adjustments up to 4%; price increases will only occur in accordance with the terms of clause 3.4. A new price agreement must be reached in the event of higher price adjustments. In the absence of such an agreement, the purchaser is entitled to withdraw from the contract.
- 3.4 In case extraneous expenses such as acquisition costs, production costs, shipping costs, assembly costs, insurance costs or government levies and charges (e.g. customs duties, import or export levies) are newly introduced or increased after conclusion of the contract, we shall be entitled to add such additional costs to the agreed price.

**4. Delivery periods**

- 4.1 Binding delivery deadlines and periods must be expressly agreed in writing.
- 4.2 Delivery periods commence with the receipt of our order confirmation by the purchaser, but not before all details relating to the execution of the contract have been clarified and all other requirements to be met by the purchaser, particularly relating to documentation, authorisations and licences, are in place and an agreed payment has been received; the same shall apply to delivery deadlines.
- 4.3 Deliveries carried out before the agreed delivery date are permissible. The day of delivery is deemed to be the day when notification is given that the goods are ready for dispatch, otherwise it is the day on which the goods are dispatched. We are entitled to make partial deliveries.
- 4.4 If our delivery is delayed by our fault, the purchaser is obliged to set an appropriate period of grace of at least 2 weeks. If this period of grace passes without delivery of the goods, the purchaser is entitled to withdraw from the contract provided that the goods have not been declared ready for dispatch on expiry of the period of grace. Claims for damages and incurred expenditure - for whatever reason - are subject to the terms of clause 11 of these conditions.
- 4.5 We are not deemed to default in delivery in case the purchaser himself defaults in the fulfilment of his obligations to ourselves, including those from other contracts.

**5. Force Majeure and other impediments**

- 5.1 Our commitment to delivery is subject to the proviso that we are correctly and punctually supplied ourselves. If, for reasons for which we are not responsible, we do not receive correct or punctual deliveries or services from our suppliers, or in the event of instances of force majeure, we are entitled to extend the delivery period by the duration of the impediment or we may partially or completely withdraw from the contract because of the unfulfilled part thereof. Deemed equivalent to force majeure are instances of strike, lock-out, official intervention, shortages of energy and raw materials, transportation bottlenecks, operational problems for which we are not responsible e.g. due to fire, water and equipment damage and all other impediments that, upon objective consideration, have not been caused by fault of ours. The above terms shall also apply if the circumstances described occur after we have fallen into default with the performance of our obligations.
- 5.2 If a binding delivery deadline or delivery period is agreed but the said delivery deadline is not kept due to the occurrence of events set out in clause 5.1, the purchaser can request that we declare within 2 weeks whether we wish to withdraw or to deliver within a reasonable period of grace. If we do not make this declaration, the purchaser is entitled to withdraw from the unfulfilled part of the contract.

**6. Shipping and transfer of risk**

- 6.1 Insofar as different terms are not agreed in writing, we will ship the goods uninsured and at the risk and the expense of the purchaser. We reserve the right to select the route and the means of transportation. In the event of express shipping, excess charges will be borne by the purchaser. No refund will be made in the event of collection by the purchaser.
- 6.2 In the absence of any other agreement, the risk is transferred to the purchaser at the time the goods are handed over to the purchaser, the shipping agent, the carrier or any other organisation charged with transportation of the goods, but at the latest when the goods leave the factory, the warehouse or the branch. This also applies if we have arranged shipping. Damage incurred during transportation is to be immediately recorded on the delivery note and confirmed by the carrier or, in the event of rail or postal shipping, to be confirmed by the railway or postal company for validation of claims for damages. We will only arrange shipping insurance on special request, and the costs will be borne by the purchaser.
- 6.3 The purchaser must immediately request delivery of all goods that have been notified to him as ready for dispatch and due for delivery. If goods that have been notified as ready for dispatch are not immediately requested and accepted, we are entitled, at our discretion, to ship or store such goods at the risk and at the cost of the purchaser.
- 6.4 The return of ordered and correctly delivered goods is excluded. In exceptional cases, return of goods may occur after prior written agreement.

**7. Notification of defects**

The purchaser, or the recipient of the goods designated by the purchaser, must examine the goods immediately after receipt. On discovery of defects, processing of the defective goods is to be halted immediately. Visible defects, including the absence of quality guarantees, are to be reported in writing immediately but at the latest within 7 days of receipt of the goods. Hidden defects are also to be reported in writing immediately but at the latest 7 days after their discovery. If the purchaser neglects to report defects in the correct manner and within the allotted time period, the goods are deemed to have been accepted. Punctuality of notification is based on the time of receipt by us.

**8. Liability for defects**

- 8.1 In the event of justifiable notifications of defects we are obliged, at our discretion, to remedy the deficiency by either supplying defect-free replacement goods or removing the defect. If we supply a non-defective product for the pur-

pose of correcting the deficiency, the defective product becomes our property, with the purchaser storing the defective product for us. Disposal, further processing or transfer of the defective goods to a third party is only permissible after having received our written permission. We are entitled to refuse to remedy a deficiency in accordance with the terms of the law.

- 8.2 If we fail in our obligation to remedy deficiencies, the purchaser may withdraw from the contract or reduce the price, at his discretion, after having set us a reasonable period of grace, unless this is not required according to the applicable statutory provisions. In the event of withdrawal from the contract, the purchaser is liable for deterioration or damage or the denial of benefits of use, not only in cases where he must demonstrate a duty of care, but in all cases for which he is responsible.
- 8.3 Further claims for damages and expenses from the purchaser due to, or in connection with, defects or damage resulting from defects, irrespective of the reason, are only recognised in accordance with the terms of clause 11.
- 8.4 Our liability for defective goods shall lapse if the goods delivered by us are not defective, i.e. especially when defects are due to incorrect use, incorrect or careless processing, natural wear and tear or interference by the purchaser or a third party with the supplied goods or if the purchaser or third parties has disregarded our information relating to dimensions, storage or processing of the goods. Furthermore, the purchaser is obliged to carry out examinations at his own cost to ascertain the suitability of the goods for the intended purpose; otherwise our obligation to provide a warranty shall lapse.
- 8.5 Without prejudice to §§ 438 Sect. 1 No. 2, 634 a Sect. 1 German Civil Code (BGB), claims resulting of the delivery of defective goods against us fall under the statute of limitations at the latest one year after delivery of the goods to the purchaser or to a delivery location specified by the purchaser.
- 8.6 In the event of concealment of a defect in bad faith or the assumption of a quality guarantee, the purchaser's claims are subject exclusively to the applicable statutory provisions.

**9. Payment conditions**

- 9.1 Deliveries of goods are to be paid in full without deductions at the latest on the due date as detailed in the invoice or, in the absence of such, within 30 days of the invoice date. Agreed discounts will always relate to the invoice value excluding costs of shipping, and require the complete settlement of all obligations by the purchaser at the time of the discount. Insofar as not otherwise agreed, discount deadlines will commence from the invoice date. Upon maturity of the invoice, interest from the date due is calculated, upon purchaser's entry into default, default interest is calculated. The day of payment is deemed to be the date when payment is received by us or a credit is received in our account. In the event of payment default we reserve the right to pursue claims for additional damages.
- 9.2 We will only accept cheques if expressly agreed, and only on account of payment. Credit notes for cheques are issued on proviso of receipt, and are valid from the day that the funds are released to us.
- 9.3 If payment conditions are not met or we become aware of circumstances which raise reasonable doubt, in our due commercial opinion, of the creditworthiness of the purchaser, including such facts as existed at the time of conclusion of the contract but were not known to us or must not have been known to us, all claims from the business relationship will immediately become due, irrespective of the maturity of any accepted and credited bills, notes or cheques. In this event, without prejudice to further legal claims, we are entitled to request pre-payment or the provision of acceptable guarantees for outstanding deliveries and, after the expiry of an appropriate extension for the provision of said guarantees, to withdraw from the contract or to make claims for damages. In addition, we are entitled to object to the sale or processing of the goods that are our property or that are our co-property; we may request their return to us or the transfer of the co-possession at the cost of the purchaser.
- 9.4 The purchaser is only entitled to retain or set-off in regard to such counter-claims which are undisputed or have become legally binding.

**10. Reservation of title**

All goods delivered to the purchaser shall remain our property (Reserved Property) until all of the purchaser's accounts resulting from the business relationship with him, in particular any account balances have been settled. This condition shall apply to any future as well as any conditional claims including accepted notes and such cases where the purchaser will affect payments on specifically designated claims. As soon as the purchaser has settled his accounts with us in full, he shall obtain title to those goods which were delivered to him before such payment was effected.

**11. Exclusions and limitation of liability**

- 11.1 In cases of minor negligence we shall only be liable for claims for damages and expenditures due to a failure to meet our obligations, for whatever reason, in the event of a breach of fundamental obligations, which endanger the purpose of the contract. Any further liability for minor negligence is excluded.
- 11.2 In the event of liability in accordance with clause 11.1 and liability without fault of ours, we may only be held liable for typical and predictable damages. The assertion of claims for other expenditures by the purchaser is excluded.
- 11.3 The purchaser will make his own decisions at his own risk as to the utilisation of the goods or other services supplied by us. Insofar as we have not confirmed specific characteristics and suitability of the products for a contractually defined application in writing, any advice regarding the technical application of the products shall not be binding. Furthermore, we are only liable in accordance with clause 11.1 for the provision or non-provision of advice that does not relate to the characteristics and usability of the supplied goods.
- 11.4 The disclaimer according to clauses 11.1 – 11.3 applies equally to our executive bodies, legal representatives, managing and non-managing employees and other agents.
- 11.5 The terms of clauses 11.1 – 11.4 do not apply in case we are held liable under the provision of the Product Liability Act if liability for loss of life or injury to the body or to health is at issue, on acceptance of a quality guarantee or in the event of concealment of a defect in bad faith.
- 11.6 All claims for damages and expenditures against us shall fall under the statute of limitations within a period of 12 months from delivery of the goods, or in cases of tortious liability, from the point of awareness or grossly negligent unawareness of the circumstances underlying the claim or the person that is liable. This does not apply in the event of wrongful intent and in the cases described in clause 11.5.
- 11.7 If the end user of the goods is a consumer, the statutory provisions shall apply to the limitation of any rights of recourse by the purchaser against us.

**12. Intellectual property rights**

- 12.1 Ownership rights and copyrights are reserved on all cost estimates, drafts, drawings and other documentation. These may only be made available to third parties with our consent. Drawings and other documents that form part of offers are to be returned to us on our request and in case no order is placed.
- 12.2 If the intellectual property rights of third parties are infringed by the production of goods according to drawings, details or patterns belonging to the purchaser, the said purchaser releases us from all claims of liability. In particular, we are not obliged to verify pre-drawn documents, even with regard to existing commercial intellectual property rights of third parties.

**13. Tools/moulds**

Insofar as not agreed otherwise, only proportions of the cost of tools or moulds will be reimbursed proportionally and separately from the value of the goods. The purchaser will not receive any titles on tools / moulds due to the payment of proportions of their costs but instead they will remain in our possession and ownership.

**14. Place of performance, place of jurisdiction and applicable law**

- 14.1 The place of performance for all contractual obligations is Bad Wildungen. The place of jurisdiction for any disputes, including lawsuits concerning notes or cheques, shall be at Bad Wildungen. However, we are also entitled to pursue claims against the purchaser before the competent court at the seat of the purchaser.
- 14.2 All legal relationships between us and the purchaser shall be governed by the laws of the Federal Republic of Germany, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG).

**15. Partial ineffectiveness**

If individual provisions of this contract should prove to be ineffective, this does not affect the validity of the re-

maining clauses. Ineffective provisions are to be immediately replaced with clauses whose sense and purpose comes closest to the commercial effect intended by the ineffective clause.