

# Terms and Conditions of Sale

Effective: 02-2017

## 1. APPLICATION OF TERMS AND CONDITIONS

The sale of our goods and other services is subject to the terms and conditions of sale set forth below. Unless a special written agreement has been reached in an individual case, the general terms and conditions of a customer do not apply. Any confirmation from customer referring to customer's terms and conditions is herewith objected to.

## 2. OFFER AND EXECUTION OF CONTRACT

Our offers are non-binding. All delivery agreements and other agreements become effective only after having been confirmed in writing by us.

## 3. ORDERS

3.1 All orders and modifications and amendments of them must be in writing. Once orders have been placed they cannot be revoked.

3.2 Unless otherwise agreed, the applicable German DIN standards shall apply. As a rule, the goods delivered by us are of customary design and quality subject to manufacturing-related, customary measurement, weight and quality tolerances. References to standards, material sheets and manufacturer's inspections do not constitute a guarantee of quality. Public statements by us, our servants and agents or by manufacturers or their servants and agents, in particular in advertising documents regarding the quality of our goods, entitle customers to claims for defects only if they have been incorporated in a quality agreement between the parties.

3.3 Unless otherwise agreed, excess or short deliveries by us are allowed up to 10 % of the order quantity.

3.4 Partial deliveries and services by us are permissible unless it is not economically reasonable for customer.

3.5 Unless otherwise agreed in writing, deliveries shall be made at our option ex factory or ex warehouse; this may also apply to the factory or warehouse of a third party. The risk of loss shall pass to customer no later than the transfer to the shipper or other transportation person; this also applies if the goods are delivered by our employees. The risk of loss shall also be transferred if the goods are stored by us upon the request of customer.

3.6 Our service and delivery obligation is subject to correct and timely delivery to us.

3.7 Unless the parties have agreed otherwise, information regarding the time of delivery or performance of services is only an approximation; if the time of delivery and performance are only an approximation customer may demand delivery or performance at the earliest one month after the expiration of the stated or possibly deferred deadline. In case of an approximate delivery time, customer must accept the goods within two weeks after notice from us about the readiness for transfer or shipment.

3.8 The delivery period shall be reasonably extended in case of measures within the scope of labor disputes, in particular strikes and legal lockouts, as well as in case of other obstacles for which we are not responsible. This shall also apply if the subcontractor is subject to these events. We are also not responsible for the above events if they occur within the scope of an already existing default.

3.9 In case of call orders, customer must call the goods within two weeks after our notice of readiness for

transfer or shipment. If in case of call orders more than the call order amount is called we shall be authorized to deliver only the call amount or charge for the excess amount at the current price.

3.10 If the goods are not accepted or called for in a timely manner, we are, irrespective of our claim to performance and other rights, entitled to demand reimbursement for our additional expenses for the unsuccessful offer and to store the goods at the expense and risk of customer.

3.11 Customer may demand changes in the construction and design of the goods to be delivered only if they are reasonable. The parties must mutually agree on their effect, in particular their additional or lower costs.

## 4. TERMS AND CONDITIONS OF PAYMENT AND PAYMENT

4.1 Unless agreed otherwise, prices plus applicable statutory value added tax are calculated based on the prices in effect on the date of delivery or rendering of the service (if between the date of order confirmation and delivery of the goods, changes in material or labor costs as well as other costs occur, we may demand corresponding price changes). Prices are in euro and, unless provided otherwise, in case of delivery ex factory excluding packaging. If the delivery has been promised freight paid, this means freight paid to buyer's place of destination excluding drayage. Additional costs for special packaging, special type of packaging and changes in packaging requested by buyer shall be paid by buyer.

4.2 All payments shall be made to Lydall Gutsche GmbH & Co. KG, Fulda. Payments shall be made postage prepaid and free of charge to our place of payment. Discount charges or interest shall be charged to buyer. Date of performance for all payments is the date on which we can dispose of the funds. Payments received will be applied according to our option, generally first to the oldest open account receivable. Offsets or late payments on account of possible counterclaims are excluded.

4.3 Offsets or the exercise of a possible statutory right to withhold or right to refuse performance on account of customer counterclaims (e. g., for defective goods) contested by us or not finally adjudicated are excluded. The exercise of a right to withhold or right to refuse performance is also excluded to the extent customer's counterclaims are not based on the same contract.

4.4 The assignment of customer claims against us to third parties is excluded. § 354 HBG remains unaffected.

## 5. SECURITIES

We are entitled to the customary type and extent of securities for our accounts receivable even if they are subject to conditions or limited as to time.

## 6. SHIPMENT, NOTICE OF DEFECT

6.1 Unless provided otherwise, shipment is always at the risk of buyer. Details are provided in item 3 of these terms and conditions of sale.

6.2 Immediately upon delivery, buyer shall inspect the goods for completeness and any apparent damages and buyer shall notify us without any delay of any loss or damages. If the loading or shipment of the goods is delayed for reasons for which buyer is responsible we are entitled, at the expense and risk of buyer, to store the goods, to take all measures we consider suitable

to maintain the goods and to invoice the goods as delivered.

## 7. RESERVATION OF TITLE

7.1 We reserve title to the goods („goods delivered subject to reservation of title“) until satisfaction of all our present and future accounts receivable from transactions with customer. In case of current account deliveries, the right to reservation of title applies to our respective open balance claim.

7.2 The processing or transformation of goods subject to reservation of title by customer is always performed on our behalf without creating any liability on our part. If the goods are processed with other goods not belonging to us, we shall acquire joint ownership of the new product pro rata of the value of our goods to the value of the other processed items at the time of processing. In case the goods subject to reservation of title are combined, mixed or commingled with tangible items of customer so that customer's item is considered the main product, customer herewith transfers his ownership to the entire product pro rata to the value of the goods subject to reservation of title to the value of the other combined, mixed or commingled items. If goods subject to reservation of title are combined, mixed or commingled with tangible items of a third party so that the item of the third party is considered the main product, customer shall assign to us the compensation claim against the third party in the amount that corresponds to the invoice amount for the goods subject to reservation of title. The item (hereafter „new item“) created by the combination or mixing, resp. the (joint) property rights pursuant to item 7.2, to which we are entitled or which shall be transferred to us, in the new item as well as the compensation claims assigned to us pursuant to this provision shall secure our accounts receivable in the same manner as the goods subject to reservation of title pursuant to item 7.1.

7.3 Customer may sell the goods subject to reservation of title or the new item, respectively, in the ordinary course of business subject to reservation of title. Customer shall ensure that the accounts receivable from these sales may be transferred to us in accordance with the above provisions. Other dispositions are not allowed.

7.4 Customer's accounts receivable from the resale of the goods subject to reservation of title are herewith assigned to us. They shall secure our claims to the same extent as the goods subject to reservation of title. If customer sells the goods subject to reservation of title with other goods not delivered by us, the assignment shall apply only to the invoice amount which results from the resale of the goods subject to reservation of title. In case of the sale of goods of which we are co-owners pursuant to item 7.2 or the statutory provisions regarding the combination, mixing or commingling of items, the assignment of the accounts receivable in the amount of our co ownership shall apply. The assignments pursuant to this item 7.4 and item 7.5 below are accepted herewith.

7.5 If customer includes the accounts receivable from the resale of the goods subject to reservation of title in a current account relationship with his buyers, customer herewith assigns the recognized balance or final balance in his favor to us, which corresponds to the total amount of the accounts receivable in the current account from the resale of the goods subject to reservation of title.

7.6 Customer shall be authorized to collect the accounts receivable assigned to us from the resale of

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the goods subject to reservation of title or new items, respectively. Customer may not, within the scope of a true factoring agreement, assign the accounts receivable from the resale to third parties.

7.7 We may revoke the authorization to resell the goods subject to reservation of title or new item pursuant to item 7.3 and the authorization to collect accounts receivable assigned to us pursuant to item 7.6 in case of default in payment or discontinuance of payment by customer as well in case of an application for insolvency proceedings or in case of impaired credit- or trustworthiness of buyer. In case of a revocation of the right to resell or collect, customer shall immediately notify his customers of the assignment of the accounts receivable and shall provide us with all information and documents required for collection. In addition, customer shall turn over or transfer to us all securities to which he is entitled for customer claims.

7.8 Customer shall immediately inform us of an attachment or other legal or actual impairment or endangerment of the goods subject to reservation of title or any other securities.

7.9 Customer agrees to adequately insure the goods subject to reservation of title against fire, water and theft damages at the acquisition cost. Customer herewith assigns his insurance claims to us. We herewith accept the assignment.

7.10 In case of default in payment or any other substantial conduct of customer in violation of the agreement and in case of cancellation of the agreement, customer herewith consents to our removal of the goods subject to reservation of title in his possession and to the extent we are the sole owners the new item pursuant to item 7.2. The removal shall constitute a cancellation of the agreement only if this has been expressly declared by us. Customer shall let our representative inspect the goods subject to reservation of title or the new item, respectively, at any time to perform these measures.

7.11 Upon a prior order, we shall be entitled to dispose of the removed goods subject to reservation of title.

7.12 Customer shall grant us a security interest in the material provided to us to perform the order and in the claims resulting from it to secure all present and future claims from the business relationship with customer.

## **8. CLAIMS FOR DEFECTS, LIABILITY FOR DEFECTIVE MATERIAL AND DEFECTIVE TITLE, CUSTOMER INSTRUCTIONS, ADVICE**

8.1 Customer shall immediately, but within no more than two weeks after delivery, complain in writing about all recognizable defects, and about all non-recognizable defects immediately, but within no more than two weeks, upon their discovery. The deadlines are exclusive periods. The timeliness of a complaint shall be determined by the date of receipt by us.

8.2 Any claims by customer about a defect are limited to a right to cure. We may in our option cure the defect by removal of the defect or delivery of goods free of defects. We shall be entitled to at least two attempts to cure the defect. In case the cure will be unsuccessful, customer may, at his option, cancel the agreement or reduce the purchase price.

8.3 If according to the statutory provisions – irrespective of what legal reason including possible claims to damages on account of breach of contract, culpa

in contrahendo and tort – we shall be obligated to pay damages, the obligation to pay damages shall be limited pursuant to items 8.5, 8.6, 8.7 and 9.

8.4 Any claims to recourse against customer pursuant to 478 Civil Code shall remain unaffected. If within the scope of such recourse pursuant to the statutory provisions we must pay damages, the obligation to pay damages shall be limited pursuant to items 8.5 and 8.6.

8.5 Customer's claims to damages are subject to a one year statute of limitations starting from the date of delivery of the goods. If formal acceptance has been agreed on, acceptance shall correspond to the date of delivery. This does not apply (1) in case of intentional wrongdoing or intentional concealment of the defect, (2) in case of violation of a warranty of quality by us and (3) for goods that customarily are used in the construction of a building, which have caused the defectiveness of the building. The above one-year statute of limitations also shall not apply to damage claims for defects if the damages are caused by gross negligence of our legal representative or an officer of the company or if personal injury is involved or if we are liable for a tort. If the damages are caused to third party real estate on account of which the restitution of the property may be demanded or in any other right recorded in the real property register, the statute of limitations shall be three years. The statutory provisions regarding the statute of limitations of any right to recourse pursuant to § 479 Civil Code as well as the statute of limitations and exclusion date pursuant to the product liability act shall remain unaffected.

8.6 In case of downgraded goods and second-class quality goods known to customer at the execution of the contract, all warranty claims for such goods are excluded. We shall not be liable for defects that are unknown to customer at the time of execution of the contract on account of gross negligence unless the defects were intentionally concealed by us or we warranted the quality of the goods. In case of defective goods delivered by us we are liable for replacement, cancellation (returned goods) or reduction of the purchase price in accordance with the statutory provisions. In connection with the delivery of defective goods we are only liable for damages, removal of defect, reimbursement of expenses for the cure of the defective goods and reimbursement of expenses for unsuccessful cure if this has been agreed upon with customer in writing.

8.7 For defects on account of a customer instruction or specification we are liable in accordance with the statutory provisions and these general terms and conditions of sale and delivery only if we have assumed the risk of the occurrence of the damages in accordance with the instructions or specifications in writing. Customer is responsible to us that the instructions and specifications do not lead to a defect of the goods to be delivered by us unless we have assumed the risk of the occurrence of damages in writing.

8.8 Customer shall be responsible for examining the suitability of the goods for his intended purpose. Any proposals, advice or recommendations by us to customer are provided without creating any liability.

## **9. LIMITATIONS OF LIABILITY**

9.1 We shall be liable for damages caused by intentional wrongdoing or gross negligence of our legal

representatives or officers and for personal injury in accordance with the statutory provisions.

9.2 In case of intentional wrongdoing or gross negligence of our servants or agents and in case of light negligence in a material contractual obligation, which is indispensable for accomplishing the purpose of the contract or on the strict compliance with which customer must rely, we shall be liable pursuant to the statutory provisions limited to damages foreseeable by us as to type and extent at the time of the execution of the contract. In case of our default in delivery or performance, foreseeable default damages shall be limited to no more than of 5 % of the invoice amount.

9.3 In all cases our liability – regardless of legal ground – is limited to the asset liability insurance maintained by us and the extent of the coverage of this insurance.

9.4 Any other claims of customer for reimbursement of any direct or indirect damages irrespective of the cause including reimbursement for violation of pre-contractual obligations and tort are excluded.

9.5 Customer's claims for damages for defects are subject to the statute of limitations under item 8.5. Other damage claims of customer are subject to a two year statute of limitations from the date on which customer acquired knowledge of the circumstances and person causing the claim or should have obtained knowledge without being negligent but in no case later than three years from the date of the event causing the damages. The above sentence does not apply in case of intentional wrongdoing, malice or gross negligence of our legal representative or officer, personal injuries as well as in case of tort and liability in accordance with the product liability act.

9.6 The above limitation of liability shall also apply to damage claims of customer vis-à-vis our legal representative, officer or other servant or agent.

## **10. PROTECTED RIGHTS**

Customer shall be solely responsible for the legality of the use of the drawings, sketches, models etc sent to us and herewith releases us from third party claims for violation of all protected rights. We are not obligated to examine the above documents with regard to existing intellectual property rights of third parties.

## **11. PLACE OF PERFORMANCE, VENUE, APPLICABLE LAW**

11.1 Place of performance for our deliveries is the factory or warehouse which makes the goods available for pickup or from which they are shipped. This may involve the factory or warehouse of a third party. Place of performance for payments is Fulda.

11.2 If customer is a merchant, public law legal entity or public law special fund, Fulda shall be the exclusive place of performance for all direct or indirect disputes resulting from the business relationship. We are authorized to apply to any other competent court in lieu of the agreed venue.

11.3 The laws of the Federal Republic of Germany shall apply excluding the provisions of the Convention of the United Nations for the Sale of Goods of April; 11, 1980.

## **12. GENERAL PROVISIONS**

The invalidity of individual provisions of these terms and conditions shall not affect the validity of the remaining provisions.