

## **1 Scope of Application**

- 1.1 Our terms and conditions below apply exclusively.
- 1.2 Any differing, conflicting or additional terms and conditions of the buyer are only effective if we have confirmed them in writing. Our Terms and Conditions are applicable even if we unconditionally deliver to the buyer in the knowledge that the terms and conditions of the buyer conflict with or differ from our Terms and Conditions.
- 1.3 References to the validity of statutory regulations shall only have clarifying significance. The statutory provisions shall therefore apply even without such clarification if they are not directly amended or expressly excluded in these Terms and Conditions.

## **2 Offers**

As far as price, quantity, delivery date and availability are concerned, our offers are always subject to change.

## **3 Formal requirements**

- 3.1 All agreements reached between the buyer and ourselves for the purposes of executing contracts shall be set forth in writing. All agreements, orders by telephone or arrangements are only binding if we have confirmed them in writing. Declarations for which power of agency exists by law or under the principles of agency by estoppel or ostensible authority are not affected.
- 3.2 Claims of the buyer arising from the agreements concluded with us are not assignable.

## **4 Prices**

- 4.1 Unless otherwise agreed, our prices are FCA Follmann, Minden (Incoterms 2010) excluding packaging, which is billed separately. The specified prices do not include value added tax; this will be charged separately at the statutory rate.
- 4.2 We reserve the right to amend the prices for contracts with an agreed term of more than six weeks in accordance with the following provisions: should wages, cost of materials or other cost factors change up to completion of the delivery, we are entitled to adjust the price by a reasonable amount according to the changes in costs. The buyer shall only be entitled to withdraw if the price increase considerably exceeds the increase in the general cost of living between the time the order was placed and the delivery. At the request of the buyer we shall verify the changes in costs. In the case of successive delivery agreements the right of withdrawal of the buyer is limited to the part of the delivery that is affected by the price increase.

## **5 Delivery**

- 5.1 Unless otherwise agreed, the transport risk shall be borne by the buyer, regardless of who bears the freight costs.
- 5.2 Special requests by the buyer in relation to the mode of forwarding or any insurance must be communicated to us in writing and on time; we shall take these into account where possible. The costs incurred thereby shall be borne by the buyer. Unless a special mode of dispatch has been agreed, the most expedient mode shall be chosen at our discretion.
- 5.3 We shall specify the delivery period on acceptance of the order and if necessary it will be agreed individually. The occurrence of our delay in delivery is determined according to the statutory regulations. Unless they are excluded or restricted under subsections 10 and 12, the legal claims by the buyer shall remain unaffected.

## **6 Force majeure/operational disruptions**

Cases of force majeure (e.g. riots, traffic embargoes, weather factors) as well as events of any type that affect the pricing and operating conditions for which we are not responsible give us the right to withdraw from the contract in whole or in part without the buyer having any claim to compensation against us. Operational disruptions of any type due to which the production process is delayed or rendered impossible release us from complying with the delivery time for the duration of the impediment caused by this event.

## **7 Reservation of title/Processing**

- 7.1 All delivered goods shall remain our property until all claims against the buyer from the business relationship, including claims arising in future from contracts concluded at the same time or at a later date, have been settled in full (reserved goods). When accepting checks and bills of exchange the reservation of title does not expire until they have been cashed.
- 7.2 Until the reservation of title has expired the Buyer is not entitled to pledge the goods to third parties or transfer them as security. If our

property is impaired by third parties through seizure or otherwise, the buyer is obliged to notify us thereof without delay. The buyer shall pay the costs of interventions by third parties.

- 7.3 In the event of conduct that contravenes the agreement and the culpable infringement of the buyer's key contractual obligations, especially in the case of payment default, we are entitled to take back the reserved goods if the prerequisites for withdrawal from the agreement are met. If we take back the reserved goods, this does not constitute withdrawal from the contract unless we have confirmed it in writing in advance.
- 7.4 The buyer is entitled to process or resell the goods in the ordinary course of business as long as it has not defaulted on fulfilling its obligations towards us or suspended payment(s). Subsections 7.5 to 7.9 apply in particular.
- 7.5 The processing of delivered goods by the buyer is always carried out for us. If the reserved goods are processed or inseparably blended with other items not belonging to us, we shall acquire joint title to the new item in proportion to the value of the reserved goods compared with the other processed or blended items at the time of processing or blending. The provisions of subsection 7 apply accordingly to the item produced through processing. If the blending occurs in such a way that the buyer's item has to be seen as the main item, it is agreed that the buyer will transfer joint title to us on a pro rata basis. The buyer shall hold the resultant sole property or joint property in safe custody for us.
- 7.6 If the buyer sells the reserved goods, all payment claims against the secondary buyer arising from the resale of the reserved goods shall hereby be assigned to us in advance. We hereby accept the assignment. The assignment shall take place based on the sum of the total amounts owed to us by the buyer. The provision of this subsection 7.6 shall apply on a pro rata basis even if the buyer has processed our reserved goods.
- 7.7 We may demand that the buyer informs his customers of the assignment and notifies us of the debtors of the assigned claim. The buyer shall only collect proceeds as our trustee. Upon suspension of payment by the buyer or the filing or institution of insolvency proceedings the right to resell, utilise or process the reserved goods and the authority to collect the assigned claims shall expire. The authorisation for collection shall also expire in the event of a cheque or bill protest.
- 7.8 We undertake to release the security that we hold at the buyer's request in so far as the realizable value thereof exceeds the claims to be secured by more than 20%. It is incumbent upon us to select the security to be released.
- 7.9 The buyer shall hold the reserved goods in safe custody for us free of charge. It shall insure them against the usual risks such as fire, theft and water to the customary extent. The buyer shall hereby assign its compensation claims to which it is entitled based on claims of the said type against insurance companies or any other obligated parties to us in the amount of its claims. We hereby accept the assignment.

## **8 Due date and payment**

- 8.1 Unless otherwise agreed in writing, each invoice is due for payment within 30 days from the invoice date without deduction.
- 8.2 After this time the buyer is in arrears. During the arrears period, we charge interest of 8 percentage points above the base interest rate (section 288 (2) of the German Civil Code (BGB)) on the money owed. We reserve the right to prove and claim higher damages for delay. Payment deferrals granted in individual cases do not eliminate the occurrence of payment default.
- 8.3 We only accept cheques, bills and drafts on account of performance and without allowance for discount.
- 8.4 Set-off against the purchase price claim is only admissible if the counterclaims have been finally established in law or are due.
- 8.5 In the event that a direct debit mandate is issued, the direct debit collection shall be carried out without discount unless otherwise agreed. The pre-notification period shall be reduced to one working day (24 hours). The buyer is obliged to ensure that there are sufficient funds on its account and that we can collect the due amounts. The costs arising from non-payment shall be borne by the buyer if it is at fault. The same applies to the costs for reversal of the direct debit.
- 8.6 Payment default, deterioration in the buyer's financial circumstances, suspension of payment, filing for the institution of bankruptcy proceedings or a change in or liquidation of the company entitle us to demand advance payment or the provision of security for all contracts yet to be executed, subject to our other rights. Invoiced amounts not yet due shall in this instance become immediately due for payment.

8.7 At our discretion we may in such cases withdraw from all current contracts with the buyer in whole or in part without the buyer being able to file compensation claims in this respect.

## 9 Acceptance default

If the buyer defaults in taking delivery of the goods, we are authorised, without granting a grace period, to invoice the goods and to store them for the account and at the risk of the buyer. If storage is at our premises, we charge 1% of the invoiced amount for each commenced month. The buyer is entitled to prove lesser damage.

## 10 Liability for defects and warranty

10.1 Claims for defects by the buyer are subject to it having fulfilled his legal duty to examine the goods and to give notice of defects (section 377 of the German Commercial Code (HGB)). The buyer shall examine the goods immediately after delivery in so far as is convenient in the ordinary course of business and, if a defect is found, report it to us in writing without delay. If the buyer fails to report the defect, the goods shall be deemed approved unless the defect is such that it was not visible upon inspection. Should such a defect become apparent at a later date, it must be reported immediately after detection, otherwise the goods shall be deemed to have been approved, even taking into consideration this defect. Punctual posting of the notification is sufficient to preserve the buyer's rights. If we have maliciously concealed the defect, we cannot cite the aforementioned provisions regarding the duty to examine the goods and give notice of defects.

10.2 We accept no responsibility for defects caused by natural wear and tear, incorrect or negligent handling, improper onward transport, improper storage or unsuitable or improper use or failure to follow the instructions for processing and use. Standard deviations in quality, dimensions and quantities do not constitute grounds for complaint.

10.3 We are only liable for the suitability of our goods for specific purposes or for the attainment of a specific production result or for chemical resistance in further processing with other substances if we have expressly given an assurance of this quality. In terms of the quality of goods, only the product description in our Technical Leaflets is deemed to have been agreed. Public statements, claims or advertising do not constitute contractual quality of the goods.

10.4 In so far as a defect exists in the goods for which we are responsible, we are entitled at our discretion to supply a replacement item or to repair the goods. Our choice must take into account the type of defect and the legitimate interests of the buyer. If our goods have already been processed, this rules out repair in principle.

10.5 In the event of replacement by way of remedy, we are obliged to bear all the expenses necessary for the purpose of remedy, provided they do not increase because the goods are brought to a place other than the agreed delivery address, unless doing so conforms to the intended use. If the subsequent performance fails after a reasonable time period, the buyer may at his discretion demand a reduction or withdraw from the contract. If the buyer chooses to withdraw from the contract, it is not entitled to compensation as a result of the defect. If the buyer opts for compensation, the buyer keeps the goods if this can reasonably be expected of it. Compensation is limited to the difference between the purchase price and the value of the defective item unless we have maliciously caused the breach of contract. If only one part of the entire deliveries of goods is defective, the buyer may then only withdraw from the contract as a whole if it has no interest in the remainder of the delivery or it would be unreasonable to expect it to adhere to the terms of the contract.

10.6 By way of derogation from section 438 (1) No. 3 of the German Civil Code (BGB) the general limitation period for claims arising from defects in quality or defects in title is one year from delivery. In so far as an acceptance has been agreed the statute of limitations shall begin with the acceptance. Special statutory provisions for building materials (section 438 (1) No. 2 BGB), claims by third parties in rem for the restitution of property (section 438 (1) No. 1 BGB), malice on the part of the seller (section 438 (3) BGB) and claims of recourse against the supplier for final supply to a consumer (section 479 BGB) remain unaffected.

10.7 The aforementioned limitation periods of commercial law also apply to the buyer's contractual and extra-contractual claims for compensation based on a defect in the goods, unless the application of the regular statutory limitation period (section 195, 199 BGB) would result in a shorter limitation period in the individual case. In each case the limitation periods of the Product Liability Act remain unaffected. Otherwise, the statutory limitation periods apply exclusively for

compensation claims by the buyer pursuant to the provisions of subsection 11.

## 11 Other warranty and compensation claims

11.1 The aforementioned clauses deal conclusively with the warranty we provide for the goods and exclude other warranty and compensation claims of any type irrespective of the legal nature of the asserted claim, especially due to a breach of duty from a contractual obligation or tortious act and for claims for compensation of lost profit or due to other property damage suffered by the buyer.

11.2 This does not apply in the case of acceptance of a guarantee or a supply risk, to liability under the Product Liability Act or liability for damage due to the loss of life, personal injury or illness or the negligent breach of essential contractual obligations (obligations whose fulfilment is a prerequisite for enabling the proper fulfilment of the contract in the first place and on which the customer regularly relies and can rely).

11.3 In the case of the negligent breach of essential contractual obligations we are only liable – except in cases of intent, gross negligence and liability for damage arising from the loss of life, personal injury or illness – for the contractually typical, reasonably foreseeable damage. An amendment of the onus of proof to the detriment of the buyer is not associated therewith. In so far as our liability is excluded or restricted, this also applies to the personal liability of our salaried employees, employees, workers, representatives or vicarious agents.

## 12 Place of performance, applicable law, severability clause

12.1 German law applies. The validity of the UN Convention on Contracts for the International Sale of Goods (CISG) is excluded.

12.2 The place of performance is our registered office in Minden.

12.3 The place of jurisdiction for all disputes is our registered office in Minden or the location of the nearest court of competent jurisdiction. We are, however, entitled to institute legal proceedings against the buyer at a general place of jurisdiction.

12.4 Should the provisions of the contract and the General Terms and Conditions of Sale, Delivery and Payment be invalid in whole or in part, the remainder of the provisions shall not be affected thereby.

As at: 12 December 2014

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