

# **GENERAL CONDITIONS OF DELIVERY AND PAYMENT**

as of April 1, 2008

## **1. Exclusive Validity of these Conditions**

Any and all deliveries - including any and all future deliveries - shall exclusively be made on the basis of these General Conditions of Delivery and Payment. Purchasing Conditions of the Customer shall not be applicable to the contract and are herewith rejected in so far as they do not correspond to these conditions.

## **2. Conclusion and Contents of Contract**

2.1 All offers are submitted without any obligation unless the Supplier expressly gave a binding promise or declaration.

Any statements by representatives or agents must be confirmed in writing by the Supplier.

All contracts shall become binding only if acknowledged by the Supplier in writing.

2.2 Alterations and Amendments of this contract must be in writing.

2.3 Documents attached to the offer by the Supplier serve as information for the Customer only and shall not be deemed to be guarantees.

2.4 The rights of the Customer deriving from this Contract are not transferable.

2.5 The Supplier shall retain full title to all cost-estimates, drawings, diagrams and other documents attached to the offer. These documents shall not be disclosed to third parties in whole or in part without prior written approval of the Supplier.

## **3. Prices**

3.1 Prices are quoted net ex works, exclusive of packing and VAT (Sales Tax).

3.2 Even if the Customer pays part or all of the costs of tools used by the Supplier, such tools shall remain the exclusive property of the Supplier.

## **4. Passing of Risk**

Any risk shall pass to the Customer when the merchandise leaves the factory or is placed at the Customer's disposal.

## **5. Delivery**

5.1 Partial deliveries are permitted unless otherwise expressly stipulated.

Differences between the quantity delivered and the quantity ordered of up to 10 per cent are permitted. This applies both to the delivered quantity as a whole and to partial deliveries.

5.2 Delivery periods accepted in the acknowledgement of order begin to run at the time of delivery from the Supplier's works. They may be exceeded by the Supplier by up to one week. Furthermore, these periods do not run while the Customer does not fulfill all his contractual duties.

An appropriate extension of the delivery time shall be granted in the following cases: unforeseeable and inevitable shortfall of energy or raw materials, strike, lock-out, unforeseeable state action, default or non-performance on the part of ancillary suppliers or any other, comparable unforeseeable and uncontrollable event. If such events either last for more than one month or if the works of the Supplier himself or those of his ancillary suppliers close down or if any other event of comparable duration and gravity occurs, the Supplier shall be free to withdraw from the contract.

5.3 If the Supplier gets in default with delivery, the Customer shall be entitled to withdraw from the contract if the Supplier fails to effect delivery within an additional period of time granted to him for delivery. The same right shall inure to the Customer if the Supplier is or becomes unable to perform delivery for reasons within his responsibility or control.

5.4 Once a stipulated delivery time has expired, the Supplier shall no longer be obligated to effect deliveries.

## **6. Incoming Inspection, Notice of Defects, Warranty and Liability**

6.1 Notice of obvious defects, such as deviations in the quantity or identity of any products received or of defects in the packing or due to transportation must be given in writing not later than one week after receipt of such delivery. With respect to any other kind of defects, said period shall be counted from the date on which such defect could have been detected.

6.2 For any defects in the products delivered by the Supplier which are property and timely notified by the Customer the Supplier shall be liable to the Customer, at the Supplier's discretion, either to repair or replace such product ("supplementary performance"). If such a supplementary performance has failed twice, the Customer shall be entitled, at his option, either to reduce the purchase price appropriately or to rescind the contract.

Furthermore, the Customer shall be entitled to the following damages:

Any costs necessary for such supplementary performance, in particular travel and transportation expenses, labour and material costs. However, increased costs on grounds of a subsequent transportation of the product to a location other than the seat of the Customer shall not be covered by this liability, unless such a relocation occurs within the Customer's ordinary course of business.

The Supplier shall be liable without any limitation on the basis of the statutory regulations for any damage caused by intent or through gross negligence of the Supplier or of any person employed by him in the performance of his obligations and for any damage caused through the bodily injury of a natural person.

Any other claims of the Customer to compensate any direct or indirect damage not heretofore explicitly mentioned and no matter on which legal grounds they are based - including any claims for damages on grounds of the violation of precontractual duties as well as tort shall be excluded.

6.3 The period of limitation for any of the above-mentioned claims shall be 24 months, except for claims for supplementary performance which, if raised by business-men/businesses, shall be 12 months only. The period of limitation for any claims vis-

à-vis consumers shall be 24 months. Such period shall begin to run from the date of delivery respectively acceptance of the products in question.

6.4 The period of limitation for replacements and/or for repaired products shall run until expiration of the original period of limitation, at least, however, for three months.

## **7. Credit Unworthiness of the Customer**

7.1 The absolute creditworthiness of the Customer is an indispensable precondition for delivery. If, after the conclusion of the contract, the Supplier obtains information which gives rise to doubts in this respect, he shall have the right, at his discretion, to demand either advance payment or collateral or, if a kind of payment other than cash had been agreed upon, to demand payment in cash or to withdraw from the contract for non-performance.

7.2 Such doubts shall be justified, in particular, but not exclusively, in the following cases: A considerable deterioration in the Customer's financial situation, suspension of payments, bankruptcy or composition proceedings, termination of business, substantial assignments or encumbrance as collateral by the Customer of inventories, claims or of purchased merchandise as collateral to other creditors or failure of the Customer to pay due claims to the Supplier even after being formally reminded to do so.

## **8. Retention of Title**

8.1 The Supplier shall retain full title to all merchandise delivered until all current or future claims he or any company he is associated with have against the Customer are fully satisfied. In the case of payment by cheque or by bill of exchange payment shall be deemed effected only after cashing of the respective instrument.

8.2 If the merchandise delivered is mixed or assembled with other objects, such processing shall be carried out by the Customer on behalf and in the name of the Supplier. If the merchandise delivered is being mixed or assembled with other objects, the Customer shall assign his rights of return, of property or of co-ownership in the mixed object(s) or the newly created object(s) to the Supplier and shall keep the mixed or new object(s) with reasonable care.

8.3 The Customer may sell the merchandise under retention only in the ordinary course of business. The Customer herewith assigns in advance to the Supplier as collateral all claims he may have out of the resale of this merchandise or out of any other legal transaction in this respect. The Customer is authorized to collect the assigned claims. When the Supplier's claims are due, the Customer shall keep separately such collected amounts and shall immediately transfer them to the Supplier. The Customer must immediately notify the Supplier when any third party claims attachment of the merchandise under retention or of any of the assigned claims. Any costs of a potential intervention shall be borne by the Customer.

8.4 If the total value of collateral obtained by the Supplier exceeds the total amount of claims open to the Supplier by more than 20 per cent, the Supplier shall on request be obligated to retransfer the excess amount to the Customer.

8.5 The authorization of the Customer to process or resell merchandise under retention of title or to collect claims assigned to the Supplier expires in the following cases: the conditions of payment are not observed, bills of exchange or cheques of the Customer are protested, a petition for insolvency proceedings is filed, payments are suspended, business is terminated or negotiations regarding a moratorium are initiated. In such case, the Supplier may take the merchandise into his possession. Unless expressly stated by the Supplier, such repossession, if conducted, shall not in itself constitute a withdrawal from the contract. In such case the Customer is obligated on request of the Supplier to notify the garnishees about the above mentioned retention of title and assignment of claims. He shall also provide the Supplier with all information and data needed by the Supplier in order to pursue his claims against the garnishees. The Supplier may, at his discretion, credit merchandise retaken from the Customer at its invoice value, at its current market value or at the value reasonably obtainable by the utilization or sale of such merchandise.

## **9. Conditions of Payment**

9.1 Invoices must be paid net (i.e., without rebate) within 30 days after receipt of the delivered items. From the 31<sup>st</sup> day after such receipt the Customer shall pay interest as foreseen by law.

9.2 Under no circumstances must the Customer withhold due payments. Set-offs may only be made against claims that have become res judicata or against uncontested claims. Irrespective of whether the claims of the Supplier are due he is entitled to set off his claims against claims the Customer has against companies he is directly or indirectly associated with.

9.3 In case of a substantial deterioration in the financial situation of the Customer, the Supplier shall have the right to demand immediate payment of all claims he has against the Customer.

## **10. Final Provisions**

10.1 The place of performance for all obligations deriving from this contract shall be Dunningen-Seedorf.

10.2 This contract as well as all disputes arising out of it or in connection with it shall exclusively be governed by German Law.

10.3 All disputes arising out of or in connection with this contract shall exclusively be decided by the competent court in Nuremberg/Germany. Notwithstanding this provision, the Supplier shall alternatively have the right to sue the Customer at the competent court at the Customer's seat.

10.4 The legal invalidity of individual provisions of this contract shall not affect the validity of the remaining provisions.