

## GENERAL CONDITIONS OF SALE

(As of November 2008)

### **I. General:**

These general conditions of sale are applicable to the object of the Agreement as well as all follow-up contracts. We reject any other conditions or restrictions of our customers regarding the object of the Agreement as well as for all follow up contracts. There are no other agreements. Changes or deviations of our general conditions are, in single cases, only valid if we explicitly consented to these changes or deviations in writing.

### **II. Offers, Orders:**

Our offers are not binding. Orders by our customers are only binding for us when they are confirmed in writing (also on invoice and delivery papers). The formulas marked as confidential by our customers or other documentation which we receive from our customers for the fulfilment of the order shall be treated confidential by us and shall be made available to third parties only with the consent of our customers. Recommendations, applications and other information, which are provided by our employees, are only binding for us if they are confirmed in writing.

### **III. Delivery:**

The deliveries have to be effected to the prices and conditions confirmed by us. Fixed delivery deadlines are not granted. We shall use our best effort to deliver as quickly as possible. Delivery deadlines shall commence after receipt of all documents and materials needed for the execution of the order. The delivery deadline is fulfilled with notice of our readiness to deliver even when dispatch is not possible without our default. In the event that in single cases a fixed delivery deadline is agreed in writing, the customer has in the event of our delay to give us notice grating a period of at least 6 weeks. In the event that we cannot deliver the customer may rescind from the contract. Exceeding claims of the customer are excluded. We are entitled to deliver in parts. The customer is not entitled to reject delivery in parts. We are not under the obligation to deliver in case we do not receive correct or timely delivery according to our contract.

Delivery is effected at risk of the purchaser. For goods sold freight free we bear the cost of the freight but we do not accept the risk of transportation/shipment. In case freight, duties, taxes or other expenditures are increased after the contract was entered, the increased amounts have to be borne by the customer.

When delivering in small trading units the order quantity shall be agreed as roughly unless otherwise agreed in writing. We shall use our best effort to fulfil the demand. Production caused over deliveries or short deliveries may still occur. This shall also apply to partial deliveries upon request.

The quality or the agreed specification shall be deemed fulfilled if the goods have these qualities at the place of dispatch/delivery.

### **IV. Quality structure:**

The quality of the goods as well as the purpose and intended use of the goods results from the agreed production parameters. Each sale of goods therefore is effected on the basis of the agreed production parameters. Any further qualities are only deemed granted if they were explicitly granted in writing.

Application, use and manipulation, as well as insert of the delivered goods are beyond our control and are exclusively in the responsibility of our customers. Our application advice, be it orally or written is only a non-binding guideline and does not free the customer of his proper examination of the delivered goods with respect to the intended use and purpose.

The use registered under REACH shall not constitute an agreement of certain specific qualities of the goods, nor shall the registered use be deemed contractually granted or agreed. The customer is solely responsible to examine prior to the entering into an agreement whether the intended use of the goods matches the product relevant use under REACH.

## **V. Consignment:**

The risk of loss, destruction, deterioration of the goods or damage to the goods shall unless otherwise agreed upon in single cases pass over to the customer at the time the goods are delivered/handed over to haulier / carrier or in case of „will collect“ once goods are held ready for the customer. We reserve the choice of the transportation way. Special requests regarding the shipment instructions causing additional cost have to be borne by customer.

## **VI. Payment:**

Deliveries are payable according to the instruction given on our invoices, and set-off shall be excluded. We are entitled to shorten terms of payment and to accelerate granted credits in the event that the customer is in default with due payments or in case of payment in instalments in default with a due instalment. In case of founded doubt regarding the creditworthiness of the customer we can terminate all contracts regarding the then outstanding deliveries or make further deliveries dependent on suitable securities, including pre-payment. Payments shall only be effected once the amount is fully available on our account. We are despite contrary dedication entitled to use payments for the eldest open balance plus interest and fees, which means in the following chronological order: fees, interest, capital. The presentation of bill of exchange requires our consent. It shall be made lieu of payment. Discount, fees, taxes, and any similar levies regarding bill of exchange shall be borne by customer. In the event that foreign currency was expressly agreed, a decrease of the currency in the period within the effective date of the contract and the date of invoice shall be at customer´s risk.

Partial deliveries shall be due for payment with the amount which equals such delivery. Retention and set off form the side of the customer are excluded. The customer is only entitled in case of fragmentary deliveries to retention of the amount equalling the portion which has not been delivered. In the event of default with due payments interest amounting to 9% over the basis interest rate are agreed. Additional damages resulting from late payment or non-fulfilment may be claimed as well. In case of default of customer, the customer is obliged to pay all fees which result from our ascertained claims.

## **VII. Reservation of Title:**

Absolute ownership of the delivered goods only passes over to customer once payment of the liabilities was effected in full. Until then the goods shall remain our unrestricted property. The customer is entitled to use the goods within the normal course of his business, as long as he is not in default with payments. Encumbrances or assignments as security are not allowed. The receivables resulting from the sale of the delivered goods or any other legal title regarding the reserved goods are hereby transferred by customer to us in order to secure our claims. In the event of seizures of the reserved merchandise by third parties, Purchaser shall undertake to point out the Seller's ownership and to notify the same without delay. The reserved ownership shall extend to the products made from processing. If the reserved merchandise is processed together with other goods, mixed or joined with the same, Seller shall acquire co-ownership in the products thus made at a ratio of the invoice value of the reserved merchandise to the invoice value of the merchandise owned by third parties or the Purchaser. Seller shall be entitled to demand from Purchaser the return of the reserved merchandise without grant of any grace period and without rescinding the contract in the event that Purchaser is in default with his obligations towards the Seller. Taking back of the reserved merchandise shall only constitute a rescission of the contract if so declared expressly in writing by the Seller.

## **VIII. Force Majeur, Restrictions:**

As cases of Force Majeur for example but not limited the following shall be deemed: production stop, production stand still, interruptions, fire, flooding, destruction of machines, shortage of raw material, of employees, of energy or of any other materials, total or partial outage of our supplies, strike, lock-out, interruption in consignments, official decrees or any other impediment that hinders, delays, reduces or renders intolerable the production, the dispatch, the acceptance or the consumption. For the duration of the incident of Force Majeur we are not obliged to deliver. In the event that the period of such an incident exceeds more than 8 weeks, then both parties are entitled to withdraw from the contract. In case of rescission from the contract the customer is not entitled to claim damages. Any reimbursement of expenditures borne by customer (such as penalty payments of third parties) is excluded. In case our source of supply discontinues, we are not obliged to cover these missing resources. We are entitled to cut the deliveries according to our own needs of the products. By such a procedure we are relieved from any further delivery obligation. A further obligation shall not exist.

#### **IX. Warranty and Damages:**

Notice of defect has to be given immediately after goods were delivered or the services were rendered. The specific description of the flaw has to be given in writing and proper proof has to be given, any samples, documents, invoice number, batch number etc. has to be added. The customer is obliged to examine the goods / services immediately once he received them. In case a notice of default is founded, we will react – at our choice - by a price reduction or exchange of the product or we take back the goods. The queried goods have to be stored by the customer. The warranty period shall amount to 1 year after delivery of the goods. The customer may only return the goods with our consent. Any claims for follow up costs, indirect damages, recourse claims or claims asserting a breach of collateral duties shall be excluded for cases of slight negligence of the persons acting on our behalf. Claims shall be limited to the amount of the invoice relating to the queried goods / services. Any effects of the contract vis a vis third parties is excluded. Should the customer intend to file claims based on product liability against us he has to specify the supporting facts within 14 days after he the underlying facts became known to him or immediately after a law suit was filed. In case customer does not observe this obligation, he shall forfeit any claims against us resulting from recourse under product liability. Damages to goods, property damages or indirect damages which the customer being entrepreneur suffers by the defect of the product are excluded.

We are not liable in the event that the goods are not used in accordance with the intention described by us or identified by REACH for the product. The obligation to examine the correct aptitude of the goods is exclusively with the customer.

In the event that we have to follow legal obligations in connection with REACH and this is caused by customer and this further more causes a delay or impossibility in fulfilling our delivery obligation, we are exempt from any liability for such delays or impossibilities.

#### **X. Other rights and obligations:**

The customer may only place the goods in circulation according with our packaging and under adding the additional information, papers and customer-information as ordered by law or decree. The customer has to fulfil any and all labelling and packaging provisions. We are not obliged to take back sold goods or to reimburse customer in the event that the marketing of the goods was restricted regarding the quantities, regarding time or in other matter by authorities. In the event that an authority orders the taking back of the goods the customer is obliged to return the goods at his own cost to us where no other material may be added and the original packaging has to be used. In the event that the customer becomes aware of an unknown quality of our products he has to immediately inform us accordingly. Advertising with our goods may only be undertaken in consent with us and under observance of all applicable provisions. The customer shall be liable for all damages (especially pecuniary damages), which is caused by the failure to observe such regulations.

In case the source of goods depends on an official permit, the customer has to proof to us that such a permit – still - exists at the time of delivery. Any changes to such permits have to be communicated to us. In case this obligation is breached, the customer shall be liable for the damages suffered by us from such breach.

#### **XI. Disposal:**

After the contract is terminated all materials arranged for the order such as labels, raw material, packaging materials may be delivered and invoiced to the customer. Should deliver not be accepted we are entitled to hand over these materials to an authorized recycling enterprise at customer´s cost. Specially regarding this order raw materials purchased can be disposed of event during the term of the contract in case these became useless due to delays in acceptance of the goods.

#### **XII. Place of Performance, Venue, Clause of Effectiveness:**

The place of delivery shall be the respective place of shipment, for the payment the place as indicated in the invoice. Venue shall be the proper court in Vienna. We are entitled to file our claims against customer with a court having jurisdiction over customer. Austrian law is applicable. UN-sales of goods law is excluded.

Should certain clauses in these General Conditions of Sale be invalid, in whole or in part, this shall not affect the remaining conditions. The invalid one shall be substituted by a valid one which meets the economic purpose as much as possible.

**XIII. Applicable languages:**

In case of discrepancies of multilingual contracts, which we entered with a customer, the German version shall always prevail. This shall also pertain to these General Conditions of Sale.

These General Conditions of Sale shall not be applicable to consumers under Austrian law, with the exemption of the Reservation of Title.

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