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## Terms of delivery and payment

### 1. General information

Our deliveries are carried out in accordance with the following terms of delivery and payment. This shall also apply for future business transactions, even if no express reference is made to these, they were however received by the buyer in the case of an order confirmed by us. We shall not recognise any deviating terms of purchase. Deviating verbal agreements must be confirmed by us in writing or confirmed by e-mail to be effective.

We shall be entitled to assign the claims from our business relations.

### 2. Terms of delivery / force majeure

Deliveries are carried out as agreed. We reserve the right to correct and timely self-delivery. In particular, in the event of force majeure and other unforeseeable, exceptional circumstances and circumstances beyond our control – e. g. in case of difficulties in procuring materials, disruptions to operations, strike, lock-out, lack of transport means, official measures, difficulties with energy supply, etc. – even if they occur at sub-suppliers – the term of delivery shall be extended to a reasonable extent, if we are prevented from the timely satisfaction of our obligation. In the event that the delivery is deemed impossible due to the stated circumstances we shall be released from the delivery obligation. The same shall apply in case it is deemed unreasonable. In the afore-mentioned cases we undertake to inform the buyer immediately and in the event of cancellation to immediately reimburse the corresponding consideration. Alternative possibilities for delivery and their prices shall be negotiated separately between the parties in such cases.

### 3. Notice of defects and warranty claims

Allowances made for quantity and quality that are customary to trade do not constitute material defects. Obvious defects are to be notified immediately, no later however than within 8 days after receipt of the goods, hidden defects immediately after they are discovered according to § 377 HGB [German Commercial Code]. Type and scope of the defects and the number of the delivery note or the invoice are to be stated. The goods for which a complaint has been made are to be kept available and must be stored and treated properly in a manner corresponding with the product. Any differences with regard to the number of units or the types of the sales units belonging to a delivery, can only be recognised if they are determined immediately upon receipt of the goods and are noted on the confirmation of receipt. Complaints due to damages or shortfalls in weight of consignments by rail or post are to be determined immediately by the buyer upon receipt of the goods in the presence of a civil servant or employee of the railway or postal service and the claim documents to be submitted to us. In case of a justified and timely notice of defect we shall correct the defects by way of subsequent performance. We are entitled to refuse subsequent performance in accordance with the legal provisions. The buyer shall be entitled to cancel the contract or reduce the purchase price according to the provisions of the following paragraph if subsequent performance is refused, fails or is deemed unreasonable for the buyer.

The buyer shall only be entitled to cancel the contract – insofar as a cancellation is not excluded by law – or to reduce the purchase price after the unsuccessful expiry of a reasonable deadline for subsequent performance set by him unless it is unnecessary to set a deadline according to the legal provisions. In the event of cancellation the buyer shall not be liable for deterioration, loss and a use not taken advantage of in case of customary personal care, but for all cases of negligence and wilful intent.

The provisions in Clause 4 shall apply for any claims for damages and claims for reimbursement of expenses on the part of the buyer.

In the event of malicious non-disclosure of a defect or in the event of the assumption of a guarantee of a condition of the object on the date when the risk is passed (declaration of the seller that the object of purchase has a certain feature when the risk is passed and that the seller intends to be responsible for all consequences of its absence independent of fault) the rights of the buyer shall be exclusively oriented to the legal provisions.

In the event that the end buyer of the object of purchase in the supply chain is a consumer then the buyer – under the further prerequisites of § 377 HGB – is entitled to recourse according to the legal provisions, however the buyer shall only be entitled to possible claims for damages and claims for expenses according to Clause 4.



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## 4. Other claims for damages

- a) In the event of a pre-contractual, contractual and extra-contractual breach of duty, even in the case of a faulty delivery, tortious act and producer liability, we shall only be liable for damages and reimbursement of expenses – subject to further contractual or legal prerequisites for liability – in the event of wilful event, gross negligence and in the event of slightly negligent breach of an essential contractual obligation (contractual obligation, the breach of which poses a risk for achieving the object of the contract). However, our liability – except in the event of wilful intent – is limited to the typical contractual damages foreseeable upon conclusion of the contract. The buyer is not entitled to assert useless expenses.
- b) We shall only be liable for damages due to delay in case of slight negligence in the amount of up to 5 % of the purchase price agreed with us.
- c) A liability for slight negligence is excluded, in any case however limited to the amount of the purchase price, outside of the breach of essential obligations. This shall have no effect on sub-item b).
- d) The liability exclusions and restrictions contained in sub-items a) to c) shall not apply in the event of the assumption of a guarantee for the condition of the object in accordance with § 444 BGB [German Civil Code], in the event of malicious non-disclosure of a defect, in the event of damages regarding injury to life, body or health and in the event of a obligatory liability according to the Product Liability Act.
- e) All claims for damages asserted against us, no matter for which legal reason, shall become statute-barred no later than in one year after the delivery of the object to the customer, in the event of the tortious liability from knowledge or grossly negligent lack of knowledge of the circumstances justifying the claim and the person obliged to reimburse. The regulations of this paragraph shall not apply – and then the legal provisions shall apply – in the event of a liability for wilful intent and the cases stated in sub-item d). Shorter statutory periods of limitation shall have precedence.
- f) If the end buyer of the goods is a consumer the legal provisions shall apply for the statute of limitations for possible claims for recourse on the part of the buyer against us.

## 5. Reservation of title

Delivered goods shall remain our property until full payment of all of our claims, even those incurred in future, from the business relationship, even of an existing current account balance. The buyer may only resell reserved goods in customary business transactions, however he may not pledge these or assign these as security to a third party before settling his total debts. The buyer must reserve the property to which he is conditionally entitled towards his buyers until they have paid the purchase price in full. Third parties or bailiffs must be informed of our property. We irrevocably agree with the buyer that the claims from resale of our goods are hereby assigned to us now already as a precautionary measure and indeed in the amount of the value of the respective resold reserved goods. The buyer shall upon our request provide detailed information and make available to us the necessary documents concerning the assigned claims. In the event of default of payment we shall be entitled to personally collect the assigned claims at all times. Upon request we undertake to release the securities to which we are entitled insofar at our choice, if their value exceeds all claims to be secured by 20 %. The processing or conversion of the goods by the buyer is always carried out on our behalf. If the goods are processed with other objects which do not belong to us we shall acquire the co-ownership of the new object as a ratio of the value of the goods to the other processed objects at the time of the processing. If the goods are inseparably mixed with other objects which do not belong to us then we shall acquire the co-ownership of the new object as a ratio of the value of the goods to the other mixed objects. The buyer shall safeguard the co-ownership on our behalf.

## 6. Right of cancellation / access of third parties

We shall be entitled to cancel contracts of purchase not yet fulfilled by declaration towards the buyer without setting a deadline and in the case of existence of the legal prerequisites to demand damages if the buyer seriously and finally refuses to make payments, an application is filed for judicial insolvency proceedings to be opened against him or negotiations are initiated for an extra-judicial settlement. The buyer undertakes to inform us immediately of judicial measures or other access of third persons to the goods under reservation of our title. In the event of an essential deterioration to the financial circumstances of the buyer our claims shall become due and payable immediately. Upon request existing reserved goods are to be returned to us immediately.



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## **7. Prices/terms of payment**

The deliveries shall be charged in Euro at the prices valid on the date of despatch. The respective applicable rate of value added tax shall be invoiced separately in addition to the prices. Subject to another agreement the invoice amount must have been received by the payee no later than 20 days from invoice date. In the event that the buyer is in default of any payment obligations towards us then all existing claims shall be due and payable immediately. The buyer cannot refuse or retain his payments due to any counter-claims nor offset these with counter-claims unless the counter-claims have been acknowledged by us or have been determined by a court. In the event that the payment is not received on time we shall be entitled to charge interest on default from the date of the invoice in the amount as stipulated by law irrespective of further claims for damages, in particular additional costs and expenses. It is not permitted to make any deductions which have not been expressly agreed.

In the event that a liability concerning a bill of exchange is justified on the part of the seller in connection with the payment of the purchase price by the buyer then the reservation of title and the underlying claim from deliveries of goods shall not expire before the bill of exchange is encashed by the buyer as payer.

## **8. Place of performance/ place of jurisdiction**

Place of performance for all deliveries is the location of the plant or the warehouse, from which the goods are delivered, for all payments Straelen. Place of jurisdiction is at our choice Straelen or Mainz, insofar as the buyer is a businessman.

## **9. Partial invalidity**

Should individual provisions of these terms be or become or invalid either in part or in whole this shall have no effect on the validity of the remaining provisions. The invalid provision is in this case to be replaced by a valid provision, which shall as far as possible satisfy the intended commercial purpose of the invalid provision.

## **10. Applicable law**

The legal provisions of the Federal Republic of Germany shall apply. The CISG convention shall not apply to contracts of purchase, in which the buyer has his registered seat or his usual place of residence outside of the Federal Republic of Germany.

Straelen, August 2006