

Thiele General Terms and Conditions of Sale, Delivery and Payment

### **I. Validity of General Terms and Conditions, Conclusion of Contract**

1. All quotations, orders and agreements are effected on the basis of these terms and conditions only. Terms and conditions of purchase used by the Purchaser are excluded. Any dissenting agreements shall only apply if we have confirmed the same in writing.
2. Our terms and conditions are regarded as accepted by placing of orders or taking deliveries even without written confirmation. They are incorporated in all future business relation, even if we don't refer to expressly.
3. All agreements and contracts, even with our representatives, shall not become binding without our written confirmation. This especially applies to additions, changes or subsidiary arrangements and all agreements that change this general terms and conditions.

### **II. Time of Delivery and Performance, Delay**

1. The delivery term starts with sending the order confirmation, but not before the Purchaser brings up documents, approvals and releases, further not before receipt of the agreed deposit.
2. The meeting of the delivery term is preconditioned to the fulfilment of the Purchaser's duties.
3. The delivery term is kept, when – until its expiry - the delivery goods have left the Seller's place of business or the goods have been announced being ready for shipment.
4. The delivery term changes appropriately, in case of measures based on events of force majeure, industrial actions, especially strike and lockouts as well as similar unexpected obstacles, which lie out of the Seller's sphere of influence as far as such obstacles have a provable considerable influence on completion or delivery of the goods. This also applies when the previously mentioned circumstances happen to a sub-contractor.
5. The Seller can not be charged for the previously mentioned circumstances even if they occur during an existing delivery delay. The Seller will inform the Purchaser as soon as possible about beginning and ending of such obstacles.
6. If the date of delivery or the delivery term is not kept by the Seller, the Purchaser shall be indebted to grant a respite against the Seller in writing. If the Seller doesn't deliver the goods culpable within the additional respite, the Purchaser has the right to withdraw from the contract.

7. The Purchaser shall declare on demand within an adequate period of time, if he wants to withdraw from the contract because of the delay and/or if he claims damages instead of performance and/or insists on delivery.

8. If damages arise to the Purchaser due to the delay, which occurs because of the Seller's fault, the Purchaser is entitled under exclusion of further claims to claim a compensation for damage caused by delay. For every complete week the compensation will be  $\frac{1}{2}$  p. c. in total at most 5 p.c. of the worth of the part of delivery, which, due to the delay, is not in time or could not be used contractually. Limitation of liability is not valid as far as the Seller is charged with intent or gross negligence or there is a forcing liability for breach of life, body or health.

9. If the dispatch is delayed on request of the Purchaser, costs of the storage at the Seller's place of business will be charged with the beginning of one month after notice that the goods are ready for shipment. The minimum charge is  $\frac{1}{2}$  p.c. of the invoice amount for every week, in total at most 5 p.c.. Proof of higher or lower storage expenses stays free for both parties.

### **III. Prices**

1. The prices are valid, except special agreements, ex works exclusive freight, packaging and insurance costs. VAT will be additionally raised at the present rate in force at that time.

2. Pricing is based on pricelists and price agreements valid on the date of conclusion of the contract.

3. The seller reserves the right to invoice additionally the real costs incurred for possible arising alloying and scrap surcharges of supplementary proceedings.

### **IV. Terms of payment**

1. If no other agreement does apply goods shall be paid net without any discount after presentation of the invoice till the 15th of the following month. Payment has taken place as soon as the Seller can dispose of the amount. For remittances and cheques the date of credit entry is authoritative.

2. If the Purchaser does not perform within the time of performance, he will be in default even without further demand.

3. If the date of receipt of the invoice or payment schedule or the receipt itself is insecure, the payment becomes due 30 days on receipt of counter-performance at the latest. Thus default arises from the 31. day on receipt of the counter-performance at the latest.

4. All payments have to be made free of expenses in the currency shown on the invoice at the location of the Seller.

5. Giro transfer orders, cheques and bills of exchange are only accepted by way of provisional performance upon specific arrangement and only pending full discharge of the debt and under charge of all collection and discount charges. Passing on and renewal will not be regarded as contractual fulfilment.

6. Discounts like discount because of cash payment, cash discount or other reductions will only be provided on special written agreements. Any type of discount is cancelled if at the time of payment other due debts are unpaid or the Purchaser went bankrupt or went into composition proceedings.

7. The Purchaser shall have no right to set off or retention unless the underlying counterclaims have been conclusively determined by a court or expressly acknowledged by the Seller.

8. If the Purchaser is in delay, the Seller has the right to claim interest for late payment against the Purchaser, who is consumer, of 5 % p.a. above the ECB base rate and against all other Purchasers 8% p.a. above the ECB base rate according to § 247 BGB. The Purchaser is not allowed to oppose that there is only a lower or no loss of interest receipts. The right to claim further damages remains unaffected hereof.

9. Independent of separately agreed terms of payment in individual cases, Seller's claims become due immediately, if – in the person of the Purchaser – circumstances arise which make an adherence to agreed terms no longer reasonable. This is the case when there are well-founded signs for a substantial financial setback of the Purchaser, particularly by stopping payments, cheque or bill protest or default in payment, revealing that the Seller's claim on counter performance is at risk due to the lack of efficiency of the Purchaser. In these cases the Seller is entitled to demand simultaneous performance or creation of additional securities. In addition the Seller has got the right to set an adequate period of time in which the Purchaser has to operate the counter-performance reciprocal and simultaneous against performance or providing additional securities on Seller's choice. After ineffective expiry of the term the Seller has got the right to withdraw from the contract.

### **V. Extended Reservation of Title**

1. The ownership rights to the goods supplied by the Seller shall pass to the Purchaser only when the Seller has received full payment for all sums owed by the Purchaser and until all existing and future claims by the Seller against the Purchaser arising from their business relationship have been performed. This also applies to single or all claims of the Seller which have been integrated into current account and balance has been draught and accepted.

2. Retention of title remains until all claims of the Seller or connected companies have been fully paid and/or, in so called cheque or bill coverage, the offered bills of exchange or cheques are fully discharged.

3. The Purchaser is entitled to sell or process the goods within his normal course of business, presupposed, he doesn't reach any agreements with his sub-purchasers, which exclude or impair Seller's rights in any way. The Purchaser is interdicted to enter any agreements, which undo or impair the assignment of future claims to the Seller.

4. The Purchaser hereby assigns to the seller all claims arising from the resale of the goods against his sub-purchasers or third parties under retention of title. The Purchaser shall be authorised to collect any claims even after the assignment to the Seller. The Seller's authorization to collect the claims by himself remains unaffected; but the Seller is obliged not to collect the claims as long as the Purchaser properly fulfils his payment obligations and other duties.

Upon the Seller's demand the Purchaser shall immediately specify his debtors and the claims assigned and provide all information and documentation necessary for collection and shall announce the assignment to the debtors.

5. Processing or transformation of such goods with retention of title always shall be effected by the Purchaser on behalf of the Seller, in so far the Seller is producer within the means of § 950 BGB. If the goods for which the Seller has retained title shall be processed with goods that are third party property, then the Seller shall acquire co-title in the new goods. The proportion of title shall follow the proportion of the invoice value of the goods delivered by the Seller under retention of title and the invoice value of the other goods in time of processing. The goods resulting from such processing are subject to the same conditions as the goods with retention of title.

6. As far and as long as the retention of title exists the Purchaser may not pawn the goods or things processed out of the Seller's goods or pass title for safety without agreement of the Seller. In case of distraint or any other third party action against the goods delivered the Purchaser shall immediately send a written notification to the Seller.. If claims shall be secured by more than 120% of the value of the goods, the Seller - in so far - has to release the goods upon demand of the Purchaser.

7. In case of contract violation on the part of the Purchaser, in particular default of payment, the Seller is entitled to withdraw from the contract and to take back all goods.

The Purchaser is obliged to restitution. Taking back privileged property resp. assertion of retention of title does not require a withdrawal from the contract and is no implied declaration of withdrawal from the contract by the Seller unless the Seller expressly declares that these actions should be considered as withdrawal.

8. All tools and devices used for production of our goods remain - in spite of calculation of cost-shares – property of the Seller.

### **VI. Passing of Risk**

1. The risk of accidental loss devolves upon the Purchaser as soon as the goods are sent resp. remitted to the person effecting the transport. This also applies to the case that the Seller himself resp. his agents effect the transport.

Any insurance against theft or other insurable risks shall be provided only upon demand of the Purchaser. Any costs arising therefrom shall be at the expense of the Purchaser only.

2. If consignment delays due to circumstances the Purchaser is responsible for, the risk of loss devolves upon the Purchaser by the day goods are ready for shipment; nevertheless the Seller is prepared, on request and on cost of the Purchaser, to conclude all insurances Purchaser may demand.

3. Deliveries by instalments are allowed in acceptable extent.

### **VII. Warranty**

For defects of the goods delivered the Seller, under exclusion of further claims, is only liable as follows:

1. Warranty claims do not exist in case of irrelevant divergence from the agreed condition and irrelevant impairment of usability.

2. There shall be no warranty for damages arising from the following reasons:

Unsuitable or improper use, faulty assembly respectively commencement of operations through the Purchaser or third parties, natural wearing off, faulty or careless treatment, atmospheric or temperature influences and all kind of physical, chemical or electro-chemical treatment which are not subject to the contract.

3. For improper changes or repairs through the Purchaser, done without previous approval of the Seller, liability shall be cancelled for all effects developing out of this.

4. The Purchaser has to check up the sent goods without delay on their proper condition and to announce in writing any open defects within a term of ten days on receipt of goods. For hidden defects the term runs from their discovery.

5. In case of well founded notification of defects, i.e. existence of defects, which or the cause of which existed already at the time of the passing of risk, the Seller is entitled to subsequent improvement (correction) or subsequent delivery (replacement) on his own choice.

6. If the Seller is not able to do subsequent improvement or subsequent delivery resp. the Seller is entitled according to § 439 Abs. 3 BGB to refuse subsequent improvement resp. subsequent delivery or a delay of subsequent improvement or subsequent delivery over and above an adequate period of time occurs, which the Seller is responsible for, or subsequent improvement or subsequent delivery

fails twice, the Purchaser has got the right to withdraw from the contract or demand adequate diminution on the purchase price on his own choice.

7. Statutory claims of recourse of the Purchaser against the Seller do only exist as far as their legal requirements are met. Therefore in particular no rights of recourse do exist, if the Purchaser has reached agreements with his customers that go beyond legal warranty claims within the limits of a guarantee or accommodation.

8. As far as the statutory rules on consumer goods acquisition (§§ 474 ff BGB) in particular regarding recourse liability (§§ 478 ff BGB) are not applicable in default of the statutory requirements, a warranty period of one year is valid. This is not applicable, if the law compulsory regulates a longer term according to § 438 passage 1 Nr. 2 BGB or by reason of a guarantee agreement or in case of malice.

9. The legal consequences of an infringement of the mercantile duty to investigation and notification (according to § 377 HGB) remain unaffected.

10. Incidentally for all compensation claims chapter VIII applies. Further or other claims than regulated in this subclause or in chapter VIII of the Purchaser against the Seller and his agents because of a defect are excluded.

### **VIII. Compensation for Damage, Limitation of Liability**

1. Purchaser's claims for damages, no matter out of which legal foundation, especially because of infringement of duties out of the contractual obligation and tort are excluded, as far as no compulsory liability according to the product liability law occurs, in cases of liability for wilful intent or gross negligence, by reason of an infringement of life, body or health or because of an infringement of basic contractual obligations.

2. Claim for damages for the infringement of basic contractual obligations however is limited to the typical contractual foreseeable damage, as far as a limitation is not excluded by another reason of wrongful intent or gross negligence resp. by reason of an infringement of life, body or health.

3. In the case that his customer or latter's customers have got justified claim for supplementary performance within the scope of consumer goods acquisition or the thereof resulting recourse liability, the purchaser has to grant opportunity to the Seller to effect supplementary performance himself within an adequate period of time, before the Purchaser obtains "replacement" elsewhere. The Purchaser has to impose this obligation to his consumers. If the Purchaser infringes these obligations, the Seller reserves the right to shorten the reimbursement of expenses to the amount that would have been incurred by own supplementary performance. § 444 BGB remains unaffected.

4. Reimbursement of expenses for expenses in the scope of the supplementary performance of the Purchaser opposite to his customer, as far as claims of the consumer goods acquisition or the

therewith associated liability upon recourse are existing, are excluded further, if the Purchaser does not make use of his right to deny this.

5. Form of supplementary performance respectively both forms of supplementary performance by reason of disproportion of the costs contrary to his right of minimizing loss.
6. Claims of the Purchaser regarding necessary expenses due to the supplementary performance, especially transport, infrastructure, working and material costs are excluded, if the expenses increase because the subject of delivery subsequently was delivered to another place than the Purchaser's branch, unless the passing complies with its intended use. This accordingly applies to the liability of recourse.
7. For claims for damages and expenses connected with the faultiness of the goods the titles for binding statutory periods of limitation apply (c.f. VII 8). For claims for damages due to a liability according to product liability law, wilful intent or gross negligence as well as an infringement of life, body or health or the infringement of basic contractual obligations however the legal statutory periods of limitation do apply.

### **IX. Control of Export**

1. Conclusion of contract as well as performance of contract take place under compliance with all applicable national, European and US-American export control regulations, including all European or US-American lists of sanction or other personal embargos (altogether "export control regulations").
2. Compliance and implementation with relevant export control regulations and other law of Purchaser's country or the country delivery has to be made into are liable to Purchasers responsibility. The Purchaser has to inform the Seller about all specialities, which arise out of these regulations, in writing at conclusion of the contract.
3. The Purchaser engages herewith, that all delivered goods neither will be used by himself in any military or nuclear purpose nor that he is going to sell or to procure the goods directly or indirectly to third parties for any military or nuclear purpose. On Sellers demand the Purchaser shall transmit documents, which make evident, where the goods final deposit, in the way the Federal Office of Economics and Export Control orders in original and immediately, at most within a period of 10 working days.
4. In case the Seller detects circumstances after conclusion of contract which justify the presumption of a possible or actual violation of export control regulations or the duties of the Purchaser from this number and the sub-numbers, the Seller will inform the Purchaser in writing.
5. In any case in which circumstances which justify the acceptance of a possible or actual violation of export control regulations or the duties of the customer from this number and her sub-numbers are confessed, a performance delay is impossibly for an adequate time period, to give us the opportunity of proof.
6. If actual violations of export control regulations or of duties set out in this number and its sub-numbers of the Purchaser can be stated or be not excluded, we can withdraw from the contract.

7. The Purchaser obliges himself to exempt us from every damage, which result on the default or not fulfilment of the obligations of the Purchaser from this number or sub-numbers. The scale of the damages to be replaced also contains the replacement of all necessary and adequate charges which arise for us or have arisen, particularly the costs and expenses of a possible on the right defence, as well as possible official order or fines.

## **X. Adaption of contract**

In case of unforeseen incidents as mentioned in part II of these terms of delivery, as far as those incidents change economic importance or the content of the performance or have a serious impact on the Seller's enterprise and in case of a subsequent appearing impossibility of conduction, the contract will be appropriately changed. As far as this is not economically reasonable, the Seller has the right to withdraw from the whole contract or from parts of the contract. Purchaser's claims for damages because of such Seller's withdrawal do not exist.

If the Seller intends to withdraw, an immediate announcement to the Purchaser is necessary immediately after the Seller recognizes the consequences of such event even if an agreement concerning prolongation of the delivery term has been agreed with the Purchaser.

## **XI. Assignment, Data Protection**

1. Assignment of claims against the Seller by the Purchaser is interdicted.
2. The person-related data of the Purchaser getting known directly or by third parties in the context of the business relations are saved in an automatic file and processed for the business relationship by the Seller. (Note according to the Federal Data Protection Law). The Seller may process any personal data, acquired directly by the Purchaser or through third parties in the course of the business relationship in reference to federal data protection laws.
3. We will notice the relevant data protection regulations (of particularly the Federal Data Protection Law) in the field of use of person-related data.
4. The Purchaser complies to processing of person-related data, getting known directly or by third parties, through us.

## **XI. Place of performance, applicable law, place of jurisdiction, partial nullity**

1. Place of performance for all obligations connected with the contractual relationship of the parties is Iserlohn, if no otherwise agreement exists.
2. The legal venue for all disputes arising directly or indirectly from the contractual relationship is county court of Iserlohn or district court of Hagen.
3. For all contractual relationships German Law shall apply under preclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).
4. The invalidity of any provision of these general terms and conditions shall not affect the validity of the other provisions.

5. These general terms and conditions are executed in German and English. In case of doubt the German version shall prevail.