



### Version 09.2014

#### I. Applicability

- 1) These general terms and conditions apply to all present and future contracts entered into with companies, public law entities or public law entities with special public funds in respect of deliveries and other services including specific-task contracts, particularly for the delivery of solid and liquid fuels and minerals as well as associated ancillary services. The buyer's purchasing conditions shall be deemed void notwithstanding the fact that we have not expressly refused to be bound by them upon receipt.
- 2) Our offers are subject to change without notice. Any oral agreements, promises, commitments, or guarantees made by our employees in connection with the contract shall not be binding upon us unless confirmed by us in writing.
- 3) In the case of any doubt, the commercial clauses shall be interpreted pursuant to the Incoterms 2010.
- 4) All specifications such as dimensions, weights, illustrations, descriptions, assembly/installation sketches and drawings contained in sample books, price lists and other printed matter have been determined to the best of our ability but are approximate only and therefore not binding on us. This shall also apply to any information given by the factories. All models and drawings shall remain our property.
- 5) For the purpose of these terms and conditions, the Buyer shall also be the orderer in the case of specific-task contracts.

#### II. Prices

- 1) Prices are quoted ex works or warehouse plus freight and value added tax.
- 2) In the event of any change to taxes, duties or other external costs forming a component of the agreed prices later than four weeks after the contract is entered into, we shall be entitled to adjust the prices accordingly.
- 3) With respect to goods whose delivery is still pending, we reserve the right to increase the agreed price in the event of any circumstances arising as a result of a change in the supply of raw materials or the general state of the economy making production and / or procurement of the products in question materially more expensive than was assumed on the date on which the prices were agreed upon. In such case, the Buyer may cancel the orders concerned within four weeks of being informed of the price increase.

#### III. Payment and offsetting

- 1) In the absence of anything agreed to the contrary or stated in our invoices, the purchase price shall be due net immediately upon delivery and shall be paid such that we are able to draw on the proceeds on the day on which payment is due. The Buyer shall bear all payment costs. The Buyer may only retain or offset payment if his counterclaims are undisputed or have been upheld in a court of law.
- 2) If it is not possible to dispatch or ship the goods from the point of dispatch on account of missing instructions or documents or if delivery is delayed for any other reasons for which we are not responsible, the full invoice amount shall be due for payment on the 15th day of the month following notification that the goods are ready for dispatch. In all cases in which a letter of credits is opened, the Buyer undertakes to modify the terms of the letter of credit accordingly.
- 3) If the buyer fails to pay the invoice amount by the due date or is in default of payment, we shall charge interest at a rate of 8 percentage points above the base rate unless higher interest rates have been agreed upon. This does not restrict our right to any other remedies available on account of the buyer's default.
- 4) The buyer shall be deemed to be in default of payment if he fails to pay within ten days of the invoice / Payment list failing due and being received or of the goods or service being received.
- 5) We are entitled to offset against all claims due to the Buyer by us, This shall also apply if one side has agreed upon cash payment and the other payment by bill of exchange or other arrangements as fulfilment of the contractual obligations. Where applicable, these agreements shall apply only to the balance. If the receivables fall due for payment on different dates, our receivables shall be due by no later than the date on which our liability falls due for payment and is invoiced with full effect on payments.
- 6) If it becomes evident that, in our view, that circumstances impair the creditability of the Buyer after the contract has been entered into, we shall be entitled to exercise the rights under § 321 BGB (German Civil Code; defense of uncertainty). Therefore we are entitled to refuse delivery of the goods or effect deliveries only against advanced payments or the other payment guarantees. Moreover, in such case we shall also be entitled to demand immediate payment of all amounts under the current business relations with the Buyer not barred by the passage of time. Moreover, the defense of uncertainty shall apply to all other outstanding deliveries and performances under the business relations with the buyer.
- 7) If any Cash discount has been agreed upon, this shall always only apply to the invoice value excluding freight and may only be taken if the Buyer has discharged in full all liabilities due for payment as of the date on which he seeks to take the cash discount.

#### IV. Executions of deliveries, delivery dates and periods

- 1) We shall only be bound by our obligation to deliver provided that our own suppliers provide us with the requisite goods correctly and on time, except in cases in which incorrect or delayed delivery on the part of our suppliers is due to reasons for which we are responsible.
- 2) All delivery dates and periods shall be approximate only. Delivery periods shall commence on the date on which we confirm the order has been clarified and the Buyer has complied with all his duties, e.g. the provision of all official permits, letters of credit and guarantees or the remittance of advanced payments.
- 3) The date on which the goods are dispatched from the factory or warehouse shall be decisive for determining compliance with delivery dates or periods. In the event of any delay in shipment for reasons for which we are not responsible, they shall be deemed to have been complied with upon notification that the goods are available for dispatch.
- 4) In the event of any events beyond our control, we may delay delivery for the duration of such event plus a reasonable start-up time. This shall also apply if such events occur during prior default. Events beyond our control shall also be deemed to include monetary, trade and other government measures, strikes, lockouts, any disruptions to our production operations for reasons beyond our control (e.g. fire, breakage of machinery or rollers, non-availability of raw materials or energy), transportation obstructions, delays in import/customs clearance as well as all other circumstances for which we are not responsible materially impairing delivery of rendering it impossible. In this respect, it shall be of no consequence whether the effects of such circumstances are sustained by us or one of our factories or suppliers. If as a result of any of the aforementioned events either party can no longer be responsibly ex-



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pected to execute the contract and, in particular, if performance of material parts of the contract is delayed by more than six months, such party may rescind the contract.

### **V. Retention of title**

1) All supplied goods remain our property (reservation commodity) up to the fulfilment of all demands, in particular also the respective demands for balance, us in the context of the business relation are entitled (balance reservation) and the demands, which are justified on one side by the insolvency manager in the way of the fulfilment choice. This applies also to in the future developing and conditioned demands, e.g. from acceptor changes, and also, if payments are made on particularly designated demands. This balance reservation expires finally with the reconciliation of all at the time of the payment still open and of this balance reservation seized demands.

2) And processing of the reservation commodity take place for us as manufacturers in the sense from § 950 BGB (German Civil Code), without obligating us. And finished commodity is considered as reservation commodity in the sense of the NR. 1. In the case of processing, connection and mixture of the reservation commodity with other goods by the buyer the co-ownership stands for us proportionately at the new thing too in the relationship of the invoice amount of the reservation commodity to the invoice amount of the other used goods. If our property expires by connection or mixture, then the buyer us transfers already now it being entitled vested titles at the new existence or the thing to the extent of the invoice amount of the reservation commodity and keeps her free of charge for us. Our joint ownerships are considered as reservation commodity in the sense of the NR. 1

3) The buyer may do the reservation commodity only in the usual course of business to his normal trading conditions and so long he in delay is, does not sell, provided that the demands from the far sale in accordance with. Nm. 4 to 6 on us turns into. For other orders over the reservation commodity it is not entitled.

4) The demands from the far sale of the reservation commodity are surrendered already now, as well as all collateral, which the buyer for the demand acquires, to us. They serve to the same extent for the safety device as the reservation commodity. If the reservation commodity is sold goods by the buyer as well as others, not by us, then the demand from the far sale in the relationship of the invoice amount of the reservation commodity to the invoice amount of the other sold goods is retired to us. During the sale of goods, at which we co-ownership portions in accordance with. NR. 2, has us our co-ownership portion appropriate part is retired. If the reservation commodity is used from the buyer to the fulfilment of a work contract, then the demand from the work contract to same extent is surrendered in advance to us.

5) The buyer is entitled to draw in demands from the far sale. This collection authorization expires in the case of our revocation, at the latest however with delay of payment, non-redemption of a change or a request for opening of an insolvency procedure. From our right of revocation we will make use only if after conclusion of the contract it becomes recognizable that our pecuniary claim from this or from other contracts with the buyer is endangered by its efficiency lacking. On our demand the buyer is obligated to immediately inform its to customers from the transfer at us and us the documents necessary for the collection give.

6) A transfer of demands from the far sale is inadmissible, it is, it concerns a transfer in the way of the genuine Factoring, which is indicated to us and with which Factoring proceeds the value of our secured demand exceeds. With the credit note of Factoring proceeds our demand becomes immediately due.

7) From a seizing or other impairments through third has to inform us immediately the buyer third has to inform us immediately the buyer. The buyer bears all cost, which must be spent for the abolition of the access or for the return motion of the reservation commodity, as far as they are not replaced of third.

8) Equipment of the buyers in delay of payment or he redeems a change with maturity not, is entitled we to take the reservation commodity back and to enter the enterprise of the buyer for this purpose if necessary. Same applies, if after conclusion of the contract it becomes recognizable that our pecuniary claim from this or from other contracts with the buyer is endangered by its efficiency lacking. The cancelling is not cancellation of the contract. Regulations of the insolvency order remain unaffected.

9) The invoice amount of the existing collateral exceeds the secured demands including secondary claims (interest; Costs etc..) altogether around more than 50/hundert, we are to that extent obligated upon the requests of the buyer to the release of collateral after our choice.

### **VI. Qualities, mass and weights**

1) Qualities and mass determine themselves according to with contract conclusion valid the DIN /EN/ UIC and railway standards and/or material sheets, for lack of such according to commercial custom. References to standards, company standards, material sheets or inspection certificates as well as data to qualities, masses, weights and usefulness are not warranties or warranties, likewise few conformity explanations, manufacturer explanations and appropriate characteristics such as CE and GS.

2) For the weights the weighing made by us or our supplier is determining. The weight proof takes place via collecting main of the cradle note. So far legally permissible, weights without weighing can be determined according to standard. And the anticipated payments (commercial weights), usual in the steel trade of the Federal Republic of Germany, remain unaffected. In the transmittal note indicated numbers of items, federation numbers of or the like are noncommittal with goods computed after weight. If usually a single weighing does not take place, in each case the total weight of the transmission applies. Differences in relation to the computational individual weights are distributed relatively on these.

### **VII. Acceptance**

1) If an acceptance is agreed upon, it can take place only in the supplier and/or our camp immediately after message of the acceptance readiness. The buyer, who becomes material acceptance costs it after our price list or the price list of the supplier computed, carries the personal acceptance costs.

2) If the acceptance without our being to blame for does not take place not, in time or not completely, we are entitled to dispatch or store the commodity without acceptance and it compute at expense and danger of the buyer.

### **VIII. Dispatch, passage of the risk, partial deliveries**

1) We determine transit period and means as well as carrier and freight carrier.

2) Without our being to blame for if transport on the intended way or to the intended place in the intended time is not possibly or substantially made more difficult, then we are entitled to supply on a nother way or to another place; the buyer carries developing extra costs. Opportunity is given to the buyer before to the statement.

3) With the delivery of the commodity at a carrier or a carrier, at the latest however with the leaving of the camp or the supplier the danger, also a seizure of the commodity, turns into with all business, also in the case of post paid and free house supplies, on the



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buyer. For insurance we provide only at instruction and costs of the buyer. Obligation and costs of unloading go debited to the buyer.

4) The commodity is supplied not packed and not protected from rust. If commercial, we supply packed. For packing, protection and/or transportation device we provide after our experience at expense of the buyer. They are taken back at our camp. We do not take over costs of the buyer of the return motion or of their own disposal of the packing.

5) We are entitled to partial deliveries to reasonable extent. Surpluses or shortfalls over the contracted quantity shall be permissible in keeping with standard industry practice.

### **IX. Call-Offs**

1) With call-offs ready for dispatch announced commodity must be called up immediately, otherwise we are entitled to dispatch or after own discretion store it immediately after reminder at expense and danger of the buyer after our choice and compute.

2) In the case of orders entailing continuous delivery, we are to be notified of call-offs and quantities of types for roughly identical monthly quantities, failing which we may determine this using our own discretion.

3) If the individual calls exceed altogether the contract quantity, then we are entitled for the supply of the multi-quantity, but does not obligate. We can compute the multi-quantity at the prices valid in the case of the call and/or the supply.

### **X. Adhesion for material defects**

1) Material defects of the commodity are immediate to indicate at the latest seven days in writing since delivery. Material defects, which cannot be discovered also with most careful examination within this period, are immediate - under immediate attitude of any and processing - after discovery to indicate at the latest before expiration of the agreed upon or legal period of limitation in writing.

2) After execution of an agreed upon acceptance of the commodity by the buyer, he shall not have any right of recourse with respect to any defects, excluded from material defects, which could be recognized with the agreed upon kind of the acceptance.

3) If a complaint is justified and is lodged within the requisite period, we may at our discretion either repair or replace the defective goods (subsequent performance). In the event, that subsequent performance fails or is rejected, the buyer shall be entitled to reduce the purchase price or - if we fail to successfully remedy the goods within a deadline set by the buyer - rescind the contract. In the case of a minor fault, the buyer may only be entitled to a reduction of the purchase price.

4) All claims under this warranty are excluded, if Buyer does not immediately give us an opportunity to verify the defect and, in particular, fails to furnish the defective goods or samples immediately upon our request.

5) If the goods are sold as lower-grade material - e.g. so-called II a material - the Buyer shall not have any rights with respect to defects if these are due to the reasons for which the material was degraded and those he could reasonably be expected to encounter. We shall not be liable for defects in the case of II a material.

6) We shall bear the costs of subsequent performance only up to a reasonable amount in individual cases particularly in the light of the purchase price of the goods. We shall not assume any costs arising as a result of the fact that the goods sold have been transported to a location other than the buyer's domicile except in cases in which this is normal practice.

7) This shall not have any effect on the buyer's right of recourse pursuant to § 478 of the BGB (German Civil Code).

### **XI. General restrictions of liability**

1) We shall only be liable for the breach of contractual and non-contractual obligations, particularly impossibility, default, pre-contractual fault and tort, including on the part of our management staff and other servants, in the event of wilful misconduct and gross negligence. It is being understood that such liability shall be confined to the typical loss or damage which could have responsibly been foreseen on the date on which the contract was entered into.

2) These restrictions shall not apply in the case of a breach of any material contractual obligations for which we are responsible jeopardizing the achievement of the purpose of the contract, cases of mandatory liability pursuant of the German Product Liability Act injury to persons or cases in which and to the extent that we fraudulently conceal the existence of the rules governing the course of proof.

3) In the absence of any agreement to the contrary, contractual claims held by the Buyer against us as a result of or in connection with the delivery of the goods shall be time-barred one year after delivery of the goods. This period shall also apply to goods customarily used for construction purposes and which have caused a defect to the whole construction. This shall have no effect on our liability for wilful misconduct and gross negligence or the expiry of statutory rights of recourse. The period of limitation shall not restart in the case of subsequent performance.

### **XII. Place of fulfilment, legal venue, applicable law**

1) The place of fulfilment for our deliveries shall be the factory in the case of delivery ex works or our warehouse in all other cases. Any disputes shall at our discretion be referred to the courts of law responsible for the city in which our main office is located or in which the Buyer is domiciled.

2) All legal relations between the Buyer and us shall be subject to German substantive law in addition to these Terms and Conditions. The provisions of the Convention for the International Sale of Goods (CISG) of April 11, 1980 shall be excluded.

### **XIII. Miscellaneous**

1) If the Buyer is domiciled outside the Federal Republic of Germany and he or his agent collects EU-duty paid goods, or transports or dispatches them to a foreign location, the Buyer shall be required to furnish us with the export papers required for tax purposes. Failing this, the Buyer shall be liable to pay the value added tax on the invoice amount applicable.

2) In the event of deliveries from a member country of the EU to another member country of the EU, the Buyer shall notify us of his VAT identification number under which his income is taxed within the EU (European Union). Failing this, he shall be required to pay the VAT amount stipulated by law.