

## **General Terms of Delivery of Taufenbach GmbH (Status: 01/2010)**

### **1. General information**

- (1) Our supply contracts are exclusively concluded and are carried out according to the following terms and conditions. By placing the order the sales partner/buyer (hereinafter: Buyer) recognises these terms and conditions as legally binding. Deviations from these terms and conditions, in particular also contrary terms and conditions of the Buyer, as well as amendments and addendums to the supply contracts shall not be acknowledged and require our written confirmation in order to be valid.
- (2) These terms of delivery are the basis for all single purchase transactions between us and the Buyer and exclude any other agreement.
- (3) Insofar as changes are made or become necessary to our products after conclusion of the contract within the framework of the constant further development, we may deliver the changed design. We are entitled to deviations insofar as they are deemed reasonable for the Buyer.

### **2. Prices**

- (1) Our prices are "ex works" of our stated address within the meaning of the INCOTERMS 2000 of the International Chamber of Commerce Paris (ICC) excluding all secondary costs, in particular for freight, packaging, insurance and handling plus the respective applicable rate of value added tax.
- (2) We shall charge the packaging at the cost price. It shall not be taken back.

### **3. Terms of payment**

- (1) The Buyer has to pay the purchase price within 30 days from the invoice date without cash discount. Decisive for the punctuality of the payment is the receipt of the payment by us. Cheques, payment orders and bills of exchange are not accepted in lieu of payment, but only as conditional payment. The additional costs incurred for discount, collection charges, etc. with these modes of payment shall be for the account of the Buyer.
- (2) If we become aware of circumstances which raise doubts about the creditworthiness of the Buyer, in particular if due payments are omitted, we can deem the total residual debt due and payable immediately. In addition, in this case we are entitled to only provide outstanding services against advance payment or request collateral.
- (3) The offsetting against counter-claims of the Buyer which are disputed by us and/or which have not been declared final and binding is not permitted. The Buyer is only insofar authorised to exercise a right of retention to the extent that the undisputed counter-claim or counter-claim which was declared final and binding are based on the same contractual relationship.
- (4) In case the Buyer does not satisfy his payment obligation on the due date we may – without giving up possible further rights and claims to which we are entitled – at our choice terminate the contract or suspend further deliveries to the Buyer or charge the Buyer interest on the unpaid amount which amounts to 8 percentage points above the respective base lending rate of the European Central Bank per annum until it has been paid finally and in full. The Buyer is entitled to prove that no or only less damages have been incurred as a result of the default of payment.

### **4. Delivery time**

- (1) Delivery dates or deadlines which have not been explicitly agreed as binding are exclusively non-binding details. The Buyer must also satisfy all obligations for which he is responsible properly and in time.
- (2) The day of the delivery is deemed as the day on which the goods have left our warehouse.
- (3) Force majeure, unforeseeable interferences to operation, transport or shipment, war, acts of terrorism, fire damages, flooding, unforeseeable shortages of workers, energy, raw materials or auxiliary materials, strikes, lock-outs, official disposals or other impediments for which the party, which is liable to provide the service, is not responsible which delay, prevent or deem unreasonable the production, the shipment, the acceptance, shall be released from the obligation of delivery and acceptance for the duration and scope of the interference. Both parties are entitled to cancellation if the delivery and / or acceptance are exceeded by more than 10 weeks as a result of the interference.
- (4) We are entitled to make partial deliveries and provide partial services at all times insofar as this is deemed reasonable for the customer.

### **5. Passing of risk**

- (1) We deliver non-insured ex works. Taufenbach shall make every effort to take the Buyer's wishes into account with regard to type of shipment and shipment. Additional costs caused hereby shall be borne by the Buyer.
- (2) The risk of accidental loss and damage shall pass to the Buyer by no later than when the goods are dispatched. The goods shall be insured in transit at the Buyer's request and at its costs.

## **6. Reservation of title**

(1) Until the satisfaction of all claims including all balance claims from current account, to which we are entitled against the Buyer now or in future, the delivered goods (reserved goods) shall remain our property. In the event of a conduct of the Buyer which is in breach of the contract, e.g. default of payment after setting a prior reasonable deadline we are entitled to take the reserved goods back. If we take the reserved goods back this represents a cancellation of the contract. If we attach the reserved goods this is a cancellation of the contract. We are entitled to sell the reserved goods after they have been taken back. After deduction of a reasonable amount for the sales costs the sales proceeds are to be offset against the amounts owed to us by the Buyer.

(2) The Buyer must inform us immediately in writing in case of attachment or other interventions of third parties so that we can file legal action according to § 771 ZPO [Code of Civil Procedure]. Insofar as the third party is not in the position to reimburse us, the in-court and out-of-court costs of legal action according to § 771 ZPO the Buyer shall be liable for the loss incurred to us.

(3) The Buyer is entitled to resell the purchased object in ordinary business transactions. He hereby now already assigns to us all claims arising from the resale of the reserved goods with all secondary and security rights including bills of exchange and cheques in advance for collateral irrespective of whether the purchased object has been resold without or after processing. The Buyer shall also remain authorised to collect this claim after the assignment. Our authorisation to collect the claim ourselves remains unaffected hereby. However, we undertake not to collect the claim as long as the Buyer satisfies his payment obligations from the collected proceeds, is not in default of payment and in particular no application has been filed for the opening of insolvency or composition proceedings or payments have been suspended. If the obligation for non-collection ceases to apply we can request that the Buyer notifies us of the assigned claims and their debtors, provides all information which is necessary for the collection and hands over the documents which are relevant in this respect, and informs the debtors of the assignment.

(4) The processing or conversion of the goods by the Buyer is always carried out on behalf and at the order of us. In this case the Buyer's right of entitlement to the purchased object is continued to the converted object. Insofar as the purchased object is processed with other objects which do not belong to us we acquire the co-ownership to the new object in the ratio of the objective value of our purchased object to the other processed objects at the time of the processing. The same shall apply to the event of mixing. Insofar as the mixing is carried out to the extent that the Buyer's object is to be seen as the main object it is deemed as agreed that the Buyer assigns us pro rata co-ownership and keeps the thus established sole ownership or co-ownership in safekeeping on our behalf. In order to secure our claims against the Buyer, the Buyer shall also assign those claims to us to which he becomes entitled against a third party by connecting the reserved goods with a property; we hereby now already accept this assignment.

(5) If the value of the collateral items exceeds the value of the claims which are to be secured by more than 20 % we, at the Buyer's request, are obliged to release collateral items of his choice.

## **7. Damages**

(1) Claims for damages of the Buyer – also of a non-contractual kind – against us, our legal representatives and other vicarious agents are excluded in the event of only slightly negligent breaches of duty by us, our legal representatives and other vicarious agents unless the breach relates to a duty which is of essential significance for the achievement of the contractual object and with the compliance with which the customer may rely upon (cardinal duties).

(2) We shall only be liable for damages which were not foreseeable at the time when the contract was concluded if there is wilful intent or gross fault on our part, the part of our legal representatives and other vicarious agents.

(3) The afore-mentioned restrictions shall not apply to damages from the injury to life, the body or the health. Mandatory statutory liability regulations, such as e.g. the Product Liability Act or the assumption of a guarantee shall also remain unaffected.

## **8. Rights of the Buyer in case of defects**

(1) Warranty rights of the Buyer presume that he has satisfied his responsibilities for inspection and reporting complaints according to § 377 HGB [Commercial Code].

(2) The Buyer's claims for defects are limited to the right to subsequent performance. If the subsequent performance fails the Buyer can reduce the purchase price or at his choice cancel the contract. The subsequent improvement shall as a rule be deemed as failed with the second futile attempt insofar as further attempts at subsequent improvement are not deemed appropriate and are reasonable for the Buyer owing to the object of contract. Claims for damages according to Subclause 7 remain unaffected hereby.

(3) If it is determined over the course of the executed subsequent improvement work that not our product, but rather another product and/or the plant of the customer are the cause for the defect, the customer must reimburse us the incurred expenses (e.g. travelling expenses, customer services, etc.) upon request and against proof.

(4) If the warranty concerns a recourse of the Buyer after a claim was successfully asserted against him according to the provisions of the consumer good purchase the claims for recourse shall remain unaffected owing to the regulations concerning the consumer good purchase. Subclause 7 shall insofar also apply to the claim for damages.

(5) The Buyer undertakes to inform us immediately of each case of recourse occurring in the supply chain.

### **9. Statute-of-limitations**

Claims for defects of the Buyer shall become statute-barred in one year from the start of the statute-of-limitations. Mandatory legal statute-of-limitations and liability regulations such as e.g. the liability with the assumption of a guarantee, the liability for wilful or grossly negligent actions, for the injury to life, the body or the health, the breach of essential contractual duties (cardinal duties; cf. in this respect Subclause 7 Par. 1), the liability according to the Product Liability Act and the regulations concerning the consumer good purchase remain unaffected.

### **10. Industrial property rights and copyrights**

The Buyer shall inform us immediately in writing should third parties assert claims against the Buyer owing to an infringement of industrial property rights or copyrights due to the use of the goods by the Buyer. For these cases we reserve the right to all defence and out-of-court measures for legal defence. The Buyer shall support us hereby.

### **11. Rights to software**

(1) We grant the Buyer a simple right of use to delivered or installed software which is limited to the use and not limited in terms of time. We do not grant the Buyer further rights beyond the rights which are necessary for the use of the software as per contract.

(2) The Buyer is not entitled to reproduce the software or a parallel multiple use.

### **12. Product liability**

(1) The Buyer undertakes to inform Taufenbach of special risks of which he becomes aware which arise from the use of the object.

(2) Should claims be asserted against Taufenbach according to foreign product liability laws owing to the contractual delivery it shall satisfy justified claims for damages up to the amount of converted Euro 200,000.- per damaging event, a maximum up to the amount of Euro 600,000.- per annum whereas the Buyer shall bear the amount exceeding this. The Buyer must insure himself accordingly at own costs and prove this to Taufenbach upon request.

### **13. Business protection**

(1) The Buyer undertakes to treat all documents handed over to the Buyer by us confidentially. They may only be passed onto third parties with our prior consent. Planning and technical calculation documents shall remain our property and may only be used or changed by us or with our prior written consent. The Buyer in particular undertakes not to forward business secrets, in particular details relating to process technology concerning our products to third parties apart from the operating instructions.

(2) The Buyer grants his consent that the data stored regarding his person/company within the framework of satisfying the object may be stored by Taufenbach and processed using IT.

### **Written form, escape clause, applicable law, place of jurisdiction**

(1) No collateral agreements have been reached for this contract. Amendments or addendums must be made in writing in order to be legally valid. The same shall apply to the waiver of the written form requirement.

(2) In the event of the invalidity of one or several provisions of this contract the contractual parties shall agree upon a substitute legally valid regulation which shall as far as possible satisfy the commercial intention of the invalid regulation.

(3) The law of the Federal Republic of Germany shall apply exclusively to this contract. The application of the UN Convention concerning Contracts for the International Sale of Goods (CISG) is excluded.

(4) All disputes which arise from or in connection with this contract are to be finally decided and legally binding by the state courts of jurisdiction in Germany for the head office of Taufenbach.