

# E-T-A

## Terms of sale.

This is only a non-authorized translation. In case of doubt, the German version shall be exclusively binding.

### 1. Scope of validity

- 1.1. Our terms of sale shall apply to all deliveries made by us to all customers now and in future. They shall also apply for future offers and any further obligations and services, as far as no other stipulations are expressly confirmed in writing by us.
- 1.2. Our terms of sale shall have precedence as the exclusive valid terms of sale over other provisions, particularly over terms of purchase of customers. In the case that orders are placed with reference to terms of purchase which do not comply in part or in whole with our terms of sale, we hereby expressly state that we do not recognise such terms of purchase at all.
- 1.3. Any divergences from our terms of sale require our expressed written confirmation.
- 1.4. The invalidity of any provision of these terms of sale or the alteration of individual provision shall not affect any part of the remaining provisions.

### 2. Order

- 2.1. To be legally accepted each order requires our written confirmation.
- 2.2. To become legally effective any supplementary agreements as well as subsequent supplements and alterations require our expressed written confirmation.

### 3. Terms of delivery

- 3.1. Any terms and dates of delivery are approximate, as long as no fixed date is specified. In any case of non-compliance with set terms and dates of delivery, each customer has to send us a written reminder and grants us an additional and reasonable period of time of a least two weeks, before he can exercise his legal and contractual rights.
- 3.2. Partial deliveries are permitted and are treated as separate deliveries with regard to payment and complaint. If a partial delivery has been received, compensation can only be claimed in case the customer cannot make use of the partial.

- 3.3. Excess or short deliveries of up to 10% of the overall quantity shall be permissible for mass market (unit price less than 25.00 EUR). The price will be determined on the basis of the delivered overall quantity.
- 3.4. All risks will pass to the customer as soon as the goods are handed over to the carrier or as soon as the goods leave our premises or our distribution centre.
- 3.5. Packing costs are charged separately, as long as no other expressed written provisions are stipulated. We will take back packing material, charges for return shipment, however, are at the customer's expense.
- 3.6. Both contracting parties agree that all deliveries to customers are subject to a punctual, proper and sufficient self-supply from our own suppliers. The same shall apply for products or primary products bought from third parties and especially for any delay or impossibility of performance due to products or primary products bought from abroad. We and the customer are entitled to withdraw from the contract in case of omitted self-supply.
- 3.7. In any cases of force majeure, e.g. industrial dispute, administrative actions or regulations, severe disturbances of traffic etc., which prolong the stipulated delivery times by the duration of their effects, we are fully exempted from all delivery obligation and liability claims and entitled to withdraw from the contract if impossibility of performance is caused by said force majeure or in case of other exclusion of liability according to § 275 para. (1)-(3) BGB.

### 4. Terms of payment

- 4.1. Our invoices are due for immediate payment. Payments within 14 days as from the date of invoice are eligible for a 2% discount. If payment is not made within 30 days as from the date of invoice, the full amount is subject to an obligatory interest rate of 8% over the current base discount rate (§ 247 BGB). We reserve the right to substantiate higher claims.
- 4.2. Payment by bill of exchange requires our prior expressed written confirmation. In this case, all expenses, e.g. bill charges, collection charges and discount charges shall be borne by the customer. Bills of exchange and

# E-T-A

## Terms of sale.

cheques become valid as payment only after being finally honoured.

- 4.3. Customers can only offset against our demands for due payment or exert a right of retention with uncontested or non-appealable counterclaims.
- 4.4. If there is a substantial deterioration in the financial circumstances of the customer, which might affect the full and prompt payment after the contract has been concluded or if such circumstances are present before the contract is concluded but are only recognised at a later date, further deliveries will be made only on advance payment or on security. This shall also apply if the customer is in arrears in paying for previous deliveries. In this case we can also ask for immediate and full payment of all unsettled invoices as regards all business transactions, even when a respite on all or parts of our demands was granted or when payment by bill of exchange was accepted.

### 5. Rights in case of defects

- 5.1. Notification of defects must be given according to § 377 HGB, providing that complaints on faulty or incomplete deliveries must be notified to us in writing no later than 2 weeks after the delivered goods reached their point of destination. Hidden defects must be notified to us in writing no later than 2 weeks after detection. Damages to goods in transit must be notified to the carrier immediately.
- 5.2. If the delivered goods are defective (§ 434 para (1)-(3) BGB), we shall fulfil our warranty obligations by rectification of defects or replacements as we choose. If several attempts at repairs or replacements fail, the customer can demand a reduction of the purchase price or cancellation of the contract. All further warranty, especially damage claims or compensation claims for unavailing expenditure, is hereby excluded. All warranty rights fall under statute of limitation according to legal regulations.
- 5.3. Apart from the guarantee mentioned above we grant a two-year warranty on our products being free of defects. This 24-month period starts when risks are passed to the customer (Nr.3.3) and grants either a rectification of defects (free of charge) for all our delivered goods or a

supplied replacement as we choose. This warranty does not grant any further rights. Expenses necessary for rectification (particularly transport, tolls and materials costs) are paid by us. This is not valid for increased expenses caused by transporting the purchased goods after delivery to a different place than the residence or place of business of the addressee unless the transport corresponds to the actual purpose of the goods.

### 6. Damage claims

- 6.1. Any damage claims of customers, especially damage claims for non-performance, positive violation of contractual duties, breach of duties prior to contract, tortious acts and all subsequent damages (which means any damages which do not directly relate to the delivered goods) are excluded.
- 6.2. This exclusion of liability, however, is not valid in cases of deliberate acts or gross negligence. This exclusion is also not valid in case of injury of life, body or health and in case of infringement with fundamental contractual obligations nor in cases where the exclusion would mean an unreasonable disadvantage.
- 6.3. In cases of slightly negligent violations of vital contractual obligations by common vicarious agents (no legal representatives or executives) liability is limited to expected damage at the time of the conclusion of the contract or to the invoice value, whichever is the less. This limitation of liability is also valid in case we are liable because of delay in delivery unless we acted with intent or gross negligence.
- 6.4. If it is stipulated to pay a penalty for delays in delivery, non-achievement of guaranteed characteristics and the like, all damages caused by delays in delivery, non-achievement of guaranteed characteristics and the like are considered as compensated with payment of the penal sum.

### 7. Reservation of ownership

- 7.1. The delivered goods shall remain our property until all our accounts receivable have been settled. The reservation of ownership also embraces the current balance of account as far as we book receivables from the customer

# E-T-A

## Terms of sale.

into current accounts (current account reservation).

- 7.2. Our taking back the goods does not mean a cancellation of the contract unless we declare this expressly in writing. In case of attachments or other infringements from third parties the customer has to inform us in writing without delay.
  - 7.3. The customer may resell the goods in the usual course of business; however, as of now he assigns to us all future claims against his customers or third parties resulting from resale. This is independent of the fact whether the goods were re-sold without or after processing, transformation or mixture. We are obliged to use this assignment only to the amount of our receivables and to distribute any possible profit surplus. The customer is entitled to recover these receivables even after the assignment. This leaves our right to recover the receivables ourselves unaffected; however we commit ourselves not to recover the receivables as long as the customer does not fall in arrears with his payments. In case the customer falls in arrears we are entitled to revoke the right of recovery from the customer and to request the customer to inform us on the assigned receivables and their debtors, to furnish all necessary information for the recovery, to send us the relevant documents and to inform third party debtors about the assignment. As far as the customer assigns the goods in the usual course of business he has to reserve ownership at least up to the amount of the claim which had been assigned to us.
  - 7.4. The customer has to inform us immediately in the event of insolvency proceedings, be they voluntary or involuntary. As soon as the insolvency petition has been received by the municipal court the customer loses all rights to sell or process the supplied goods which are still our property.
  - 7.5. Processing or restructuring of the supplied goods by the customer is always carried out for us. If the supplied goods are processed with other goods which are not our property, we obtain ownership of the new object in proportion to the value of our goods compared to the other goods at the time of processing.
  - 7.6. If the supplied object is mixed inseparably with other objects which are not our property we obtain a co-ownership of the new object in proportion to the value of the supplied goods compared to the other mixed objects at the time of the mixture. The same is valid if the supplied goods are connected with other moveable objects in a way so that they become essential parts of a single object. If the mixture or connection is done in a way that the object of customer has to be seen as main part, it is taken as agreed that the customer transfers a co-ownership to us proportionally. The customer holds our co-ownership in custody for us.
  - 7.7. The co-ownership we obtained of the new object created by processing, restructuring or mixture will as of now be transferred to the customer for the same conditions valid for the original supplied goods. The regulations mentioned in para 7.3 are equally valid for the new object created by processing, restructuring or mixture. As far as third parties have the right of co-ownership of the new object, the customer assigns any claims resulting from re-sale to us only the in proportion of our co-ownership.
  - 7.8. The customer is obliged to inform us in writing of the whereabouts and the co-owners of the processed, connected or mixed objects or the buyers of the sold goods upon request.
  - 7.9. To secure our claims the customer will also assign his claims to us which he obtains against third parties by connection of the supplied goods with real estate.
  - 7.10. We are obliged to release the securities we are entitled to upon request of the customer if their value exceeds our claims resulting from the business relationship with the customer, as far as they have not yet been settled, by more than 20%. The buy price and, as soon as the customer has processed the goods, the cost are authoritative for the evaluation of the reserved property.
8. **Place of performance, place of jurisdiction and applicable law**
    - 8.1. The place of performance for all mutual contractual obligations shall be Altdorf bei Nürnberg. In case the goods are sold from one of our distribution centres, it will be this place.
    - 8.2. The sole place for jurisdiction for all disputes including

# **E-T-A**

## **Terms of sale.**

legal action concerning cheques and bills of exchange shall be Nürnberg, if the customer is a merchant, a legal entity under private law or a juristic person of the public law or if the customer is non-resident or has no registered office in Germany.

- 8.3. The law of Germany shall be applied exclusively an all legal relations between ourselves and customers. The United Nations Convention on Contracts for the international sale of Goods shall not be applied. In doubt, trade terms should be interpreted according to Incoterms 2000.