

General Terms of Trade (status as of: January 2009)

§1 Scope of the GTT

- (1) The Seller's goods, services and offers are provided exclusively under these Terms of Trade. The Buyer's statements to the contrary, referring to their Terms of Trade or Terms of Purchase, are hereby rejected.
- (2) Any agreements concluded between the Seller and the Buyer in order to perform this Agreement must be made in writing.

§2 Offer and contracting

- (1) The Seller's offers are not binding. Statements regarding acceptance of offer and any orders must be confirmed by the Seller in writing or by fax, or shall otherwise be null and void.
- (2) Drawings, illustrations, dimensions, weights and other operating details shall be binding only when expressly agreed in writing.
- (3) The Seller's sales staff are not authorised to conclude oral auxiliary agreements or make oral commitments exceeding the scope of the written agreement.
- (4) Changes in the prices of raw materials used by us or components made by third parties, or changes in the amount of our remuneration provide grounds for an appropriate adjustment of the agreed prices.
- (5) We reserve the right to make slight variations to the information presented in brochures, price lists and offers with regard to dimensions, structure, shape, veneer, colour and patterns. We reserve the right to make technical changes due to improved structural solutions.

§3 Prices

- (1) Unless otherwise stated, the Seller shall be bound to the prices presented in their offer for a period of 30 days after a given offer is presented. Apart from that, the prices quoted in the Seller's order confirmation apply, with the statutory amount of VAT added. Delivery and additional services shall be accounted for separately.
- (2) The prices apply to the delivery ex factory including standard packaging, unless otherwise agreed.

§4 Delivery and order completion dates

- (1) Delivery lead times or deadlines, whether binding or not, must be agreed in writing.
- (2) The Seller shall not be held responsible for missing contractually agreed deadlines for the delivery of goods or services in the event of *force majeure* or events making it difficult or impossible for the Seller to perform the delivery not only temporarily, including but not limited to strike, lockout, administrative decisions, etc. The above provision also applies to the Seller's suppliers and their sub-suppliers respectively. The above-mentioned circumstances give the Seller the right to extend the lead time for the delivery of goods or services to account for the duration of the obstruction and applicable run-up process, or to withdraw from the Agreement in whole or in part related to the yet-unrealised scope of delivery.

- (3) If the obstruction impeding order execution persists over 3 months, the Buyer, having set an appropriate additional deadline, shall be entitled to withdraw from the Agreement in its unrealised scope [of goods or services]. An extension of the lead time or termination of commitment on the part of the Seller shall not provide grounds for the Buyer to pursue any claims for compensation. The Seller may invoke the above-mentioned circumstances solely on the condition that the Buyer has been notified thereof immediately.
- (4) If the Seller is at fault for failing to meet the deadlines committed to in a binding way or falls in default, the Buyer is entitled to compensation for the delay amounting to 1/2% for each full week of delay, no more however than the total of 5% of the amount invoiced for the delivery of goods or services subject to the Seller's delay. The option to pursue damages in excess of the above scope is hereby excluded, unless the delay has been caused by no less than gross negligence on the part of the Seller.
- (5) The Seller has the right to make partial deliveries of goods or services at any time, unless partial deliveries of goods and services are not in the Buyer's interest.
- (6) Keeping the obligations related to the deliveries of goods and services on the part of the Seller depends on the timely and proper performance of obligations by the Buyer.
- (7) Should the Buyer be in default of acceptance, the Seller shall be entitled to claim compensation for the incurred losses. In the case of default of acceptance, the risk of accidental deterioration and accidental destruction of the supplied goods or services passes onto the Buyer.

If the Ordering Party fails to accept the [ordered] goods, the Supplier, having set an additional deadline of 5 working days, shall have the right to demand compensation for default in the performance of contractual obligations.

In such a situation, the Supplier has the right to demand compensation amounting to 20% of the purchase price without having to prove the incurred damage, or compensation up to the amount of actual damage.

§5 Transfer of risk

The risk shall pass to the Buyer as of the moment when the consignment is handed over to the person responsible for transport or when the consignment leaves the Seller's warehouse for shipment. If the shipment is delayed at the Buyer's request, the risk passes to the Buyer at the date the consignment is reported as ready for shipment.

§6 Buyer's rights in the case of defects

- (1) The products supplied are free from manufacturing and material defects; any claims concerning defects may be raised for a year after the delivery. The above restriction does not apply in the event of a threat to life, personal injury or health impairment.
- (2) Failing to comply with the Seller's operational and maintenance guidelines, making arbitrary changes in the products, replacement of elements or use of consumables non-compliant with the original specification shall result in rejecting claims related to product defects, unless the Buyer is able to disprove a reasonable claim that it was the occurrence of one of the above circumstances that led to the given damage.
- (3) The Buyer must immediately notify the manager of the customer service department in writing about the discovered defects, not later however than a week after receiving the delivery. Defects which are impossible to discover in the above-mentioned period even following a diligent inspection, are to be reported to the Seller in writing as soon as they are discovered.
- (4) In the event of the Buyer reporting defects in the product, the Seller may request one of the following at their discretion and expense:
 - a) that the defective part or appliance be returned to the Seller for repair and then sent back to the Buyer;

- b) that the Buyer prepare the defective part or appliance, and a service technician be sent out to the Buyer to do the repair work. If the Buyer demands that the repair work take place at a specific location, the Seller may consent to the request. In such a case the replaced parts are not included in the cost, but instead it is necessary to add the costs of travel and man-hours to the Seller's standard rates.
- (5) If the repair works end up in failure after a reasonable period, the Buyer may, at their discretion, demand a reduction of remuneration or withdraw from the Agreement.
- (6) Liability with regard to the customary wear and tear of the product is hereby excluded.
- (7) The right to pursue claims due to product defects is vested solely in the Buyer and shall not be subject to assignment.
- (8) In the case of freight damage during rail transport, proceedings to determine the factual circumstances must be initiated immediately and a damage claim must be submitted to the appropriate dispatch department.

§7 Title retention clause

- (1) Until all amounts receivable have been settled (including all balances in the current account) that are due to the Seller from the Buyer under any legal title now or in the future, the Seller shall be granted such security as shall be accepted at their discretion, as long as its value permanently exceeds the amount outstanding by more than 20%.
- (2) The goods shall remain the property of the Seller. Goods can be reworked or modified always to the benefit of the Seller as the manufacturer, yet without obligation on their part. If the Seller's (joint) ownership right should expire due to incorporation, it is hereby established that the Buyer's (joint) ownership of the combined object shall pass to the Seller on a pro-rata basis according to the value share (value as per the invoice). The Buyer shall secure the Seller's (joint) ownership right free of charge. The goods to which the Seller holds the title of (joint) ownership are hereunder referred to as 'retained goods'.
- (3) The Buyer has the right to modify or sell retained goods in the ordinary course of business, as long as the Buyer is not in default. Placing a pledge or transfer of ownership in order to secure a debt is hereby forbidden. The Buyer hereby assigns to the Seller for the sake of security the full scope of amounts receivable (including all amounts receivable due to balances in the current account) resulting from onward sale or another legal title (insurance, tort). The Seller hereby grants irrevocable authorisation to the Buyer to recover on their own behalf the amounts receivable assigned to the Seller on their account. The authorisation in question to recover debts may only be revoked if the Buyer fails to meet their own payment obligations properly.
- (4) If the retained goods are accessed by third parties, including but not limited to seizure, the Buyer shall invoke the Seller's ownership title and immediately notify the Seller so that they can enforce their ownership rights. If the third party is not able to cover the court and out-of-court costs incurred for this reason by the Seller, this obligation shall fall to the Buyer.
- (5) If the Buyer falls in breach of the contractual provisions, including but not limited to default in payment, the Seller is entitled to withdraw from the Agreement and demand that retained goods be released.
- (6) The Ordering Party is obliged to insure the retained goods against damage from fire and water and hereby assigns the proceeds of all claims arising from the insurance relationship to the Supplier.

§8 Payment

- (1) Unless otherwise agreed, the Seller's invoices shall be payable within 30 days of issuing without discount. The Seller has the right, regardless of the Buyer's decisions to the contrary, to apply payments primarily against the Buyer's older debts, and shall notify the Buyer of the settlement applied. If costs and interest have arisen, the Seller is entitled to apply the payment first against the costs, then against the interest, and lastly against the principal performance.
- (2) The payment is considered to be made only when the Seller is able to dispose of the amount. In the case of cheques, the payment is considered to be made once the cheque clears.
- (3) If the Buyer defaults on payment, the Seller is entitled to charge interest from that moment on, amounting to 8 percent above the base interest rate as the lump-sum amount of damage compensation. The rate is to be reduced if the Buyer can prove lower encumbrance. The Seller may document a higher amount of damage.
- (4) If the Seller becomes aware of circumstances undermining the Buyer's credit rating, including but not limited to the inability to clear cheques or suspension of payments, or if the Seller becomes aware of other circumstances undermining the Buyer's credit rating, the Seller shall be entitled to claim payment of all the outstanding debt, even if they have accepted the cheques. In such a case, the Seller also has the right to demand advance payment or collateral.
- (5) The Buyer shall be entitled to deduct, withdraw or reduce [amounts due], even in the case of defect-related complaints or mutual claims, only if such mutual claims have been legally established or if they are incontestable. The Buyer, however, is also entitled to withdraw [amounts due] due to mutual claims under the same contractual relationship.

§9 Structural changes

The Seller reserves the right to introduce structural changes at any time, they are, however, not obliged to introduce such changes in products that have already been dispatched.

§10 Patents

- (1) The Seller shall indemnify the Buyer and their customers against claims invoking infringement of copyright, trademarks or patents, unless the design of the delivered goods is authored by the Buyer. In such a case the Ordering Party shall accept the responsibility for the fact that the manufacture and supply of goods according to the drawings, models and patterns should not infringe on the protection rights of third parties within the framework of their business activity and shall indemnify the supplier against all third party claims. The Seller's obligation to indemnify [against claims invoking infringement of copyright, trademarks or patents] is capped to the amount of predictable damage. As an additional condition for indemnity [against claims invoking infringement of copyright, trademarks or patents], the handling of legal disputes should be entrusted to the Seller and the alleged infringement of law should be limited exclusively to the scope regarding the construction type of the Seller's deliverables, without combination or application with other products.
- (2) The Seller may release themselves from the obligations assumed under item (1) hereinabove at their own discretion by:
 - a) acquiring the required licences for the alleged patent breaches, or
 - b) providing the Buyer with an altered deliverable or a part thereof which, when replacing the deliverable in breach of [a patent] or its part will lead to the dismissal of the claim of infringement [of a patent] with regard to the deliverable.

§11 Confidentiality

Unless otherwise expressly agreed in writing, the information submitted to the Seller in connection with the orders shall not be considered confidential.

§12 Civil liability

- (1) Compensatory damages are excluded, regardless of the type of breach of duty, including tort, unless the damage involves a threat to life, personal injury or health impairment resulting from the Seller's unintentional breach of duty or intentional/unintentional breach of duty by the Seller's statutory representative or by an entity to whom the Seller entrusted the performance of goods/service, or unless there has been damage resulting from the Seller's gross breach of duty or intentional/gross breach of duty by the Seller's statutory representative or an entity to whom the Seller entrusted the performance of goods/service.
- (2) In the event of breach of important contractual obligations, the Seller shall be liable for every case of negligence, however, up to the amount of predictable damage. Claims involving lost profits, saved costs, third-party compensatory claims and other indirect damage are hereby excluded, unless a product feature guaranteed by the Seller has the express purpose of safeguarding the Buyer against this type of damage.
- (3) The limitations and exclusions of civil liability referred to in items 1 and 2 above do not apply to the claims arising out of the Seller's fraudulent acts or in the case of civil liability for promised qualities, in the case of claims under the German Product Liability Act.
- (4) While the Seller's liability is excluded or limited, this provision also applies to the Seller's associates and representatives, as well as entities to whom the Seller has entrusted the performance of goods/services.

§13 Governing law, venue of litigation, severability

- (1) The governing law applicable to these Terms of Trade and any legal dealings between the Seller and the Buyer shall be the law of the Federal Republic of Germany. The provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply.
- (2) If the Buyer is a trader, a legal person under public law or a special fund under public law, the court of local jurisdiction to settle any disputes arising directly or indirectly out of the legal relationship shall be exclusively the court in Großröhrsdorf. The above provision also applies to any claims related to cheques and bills of exchange.
- (3) If one of the provisions of these Terms of Trade or another agreement becomes or is found invalid, it shall not affect the validity of the remaining provisions or agreements.

Großröhrsdorf, January 2009