

## GENERAL TERMS AND CONDITIONS OF DELIVERY AND PAYMENT

### I. SCOPE, OFFERS

1. These general terms and conditions of delivery and payment apply to all contracts – including future contracts – with contractors, legal persons governed by public law and special funds under public law for deliveries and other services including consultations, the provision of information, and the like. The conditions of the Buyer shall not be recognised even if we do not explicitly object to them again after receipt.
2. Our offers are non-binding. The conclusion of contracts and oral agreements, acceptances, assurances and warranties from our employees in connection with the conclusion of a contract shall become binding only upon our written confirmation. A suspension or annulment of sales transactions is only permissible on the basis of special agreements.
3. The information, drawings, copies, technical data, and descriptions of weight, measurements and performance in the documents attached to the offer are non-binding unless they are explicitly described as binding in the order confirmation.
4. In cases of doubt, trade terms shall be interpreted according to the latest version of Incoterms.

### II. PRICES

1. Unless otherwise agreed, the prices and conditions which were valid at the time the contract was concluded shall apply.
2. The costs for shipping, insurance and packaging shall be borne by the Buyer.

### III. PAYMENT AND SETTLEMENT

1. Unless otherwise agreed or stated in our invoices, payment must be made without deductions by the 15th of the month following delivery ex works or following the indicated completion date so that the sum required settling the invoice is available to us by the due date at the very latest. Costs for the payment transaction shall be borne by the Buyer.
2. If the payment deadline is not met, and at the latest upon default, we shall charge interest at a rate of 8 percentage points above the base rate (Section 247 of the German Civil Code) – unless higher interest rates have been agreed. The right to claim further damages as a result of this default is reserved.
3. The Buyer is deemed to have defaulted 10 days at the latest following the due date without the requirement of a reminder.
4. All of our outstanding claims from the current business relationship shall become due for payment immediately, irrespective of the term of any accepted or credited bills, if after the conclusion of the contract it becomes apparent that our pecuniary claims are endangered by a lack of solvency on the part of the Buyer, the Buyer defaults on payment by a considerable amount, or other circumstances emerge after the conclusion of the contract which indicate a considerable worsening of the Buyer's solvency. We are then also entitled to only carry out outstanding deliveries and performances upon prepayment or the furnishing of other appropriate securities, and if this does not occur, to withdraw from the contract after an appropriate grace period and to demand compensation on the grounds of non-fulfilment.
5. The Buyer is only entitled to withhold payment or offset payment in so far as its counterclaims are deemed to be undisputed or legally valid.
6. An agreed discount is always based on the invoice value excluding freight and is conditional on the complete settlement of all the Buyer's due liabilities at the time of the discount. Unless otherwise agreed, discount deadlines begin on the invoice date.

### IV. PERFORMING DELIVERIES, DELIVERY PERIODS AND DELIVERY DATES

1. Information concerning delivery times is always approximate and non-binding on us. Delivery periods start on the date of our order confirmation, yet not before the all details of the order have been clarified or before the Buyer has fulfilled all of its obligations, such as the provision of all necessary certificates, the production of accreditations and guarantees, or the payment of deposits or advance payments.
2. The point in time of the shipping from the factory or the warehouse is the decisive factor in determining adherence to the delivery periods and delivery times. They are deemed to have been complied with upon notification of readiness to dispatch, even if the goods in question cannot be dispatched on time through no fault of our own.
3. The delivery periods and times shall be extended – without prejudice to our rights stemming from the Buyer defaulting – by the period of time in which the Buyer is behind schedule in its obligations from this contract and other contracts with us.
4. In the case of delayed delivery the Buyer can set a reasonable extension and once these lapses without successful delivery it may withdraw from the contract if the contract has not yet been fulfilled. Claims for damages in such cases are governed by Section x of these conditions.
5. Occurrences of force majeure entitle us to postpone the delivery by the length of time of the hindrance plus a reasonable start-up period. This shall apply even when such occurrences present themselves during an existing delay. All circumstances which significantly impede delivery or make it impossible shall be regarded in the same light as "force majeure", for example monetary or trade policy measures or other governmental measures, strikes and lock-outs, operational disturbances (e.g. fire, breakages to machines or rollers, lack of raw materials or energy) as well as disruption to transport routes. If, on the basis of the abovementioned occurrences, the execution of the contract becomes intolerable for one of the parties, the party in question may withdraw from the contract.

### V. RIGHT OF RETENTION

1. We reserve the right of retention on the delivered goods until all claims from the business relationship with the partner have been settled.
2. The partner is entitled to sell these goods in the course of ordinary business as long as it fulfils its obligations from the business relationship with us in a timely manner. However, the partner may not pledge or transfer the goods subject to a reservation of title (conditional goods) as a security. It is under obligation to secure our rights upon the credited resale of the conditional goods.
3. In case of a breach of duty on the part of the partner, particularly in the case of a default on payment, we are, after the unsuccessful expiry of a reasonable deadline for performance that has been set to the partner, entitled to withdraw from the contract and take back the retained goods. The statutory provisions dispensing with the need of a time limit remain unaffected. The partner is obligated to return the goods in question. We are entitled to withdraw from the contract if an application is made to open insolvency proceedings against the partner's assets.
4. With immediate effect the partner assigns to us as security all claims and rights deriving from the sale or any hiring, for which we may have given the partner permission, of goods over which we have rights of ownership. We hereby accept this assignment.
5. Any possible processing or treatment of the conditional goods is always undertaken by the partner for us. If the conditional goods are processed or inseparably mixed with other items not owned by us, we shall acquire joint ownership of the new product in proportion to the invoice value of the goods which are subject to reservation of title (conditional goods) to the other processed or mixed items at the time of processing or mixing. If our goods are combined or mixed inseparably with other movable objects to form a single object, and if the other object is to be regarded as the main object, the partner shall assign co-ownership to us pro rata to the extent that the main object belongs to it. The partner shall maintain ownership or co-ownership on our behalf. In all other respects the same shall apply to the product created by processing, combining or

mixing as applies to the goods which are subject to reservation of title (conditional goods).

6. The partner is obliged to inform us without delay of any recovery measures imposed on the conditional goods, on any claims assigned to us, or on any other securities and shall at the same time submit all documents to enable us to file an objection. This shall also apply to any other kind of impairment.
7. If the value of the securities should exceed the total value of the relevant claims by more than 20%, we shall be obligated to release certain portions of the securities of our choosing.

### VI. SHIPPING, TRANSFER OF RISK, PACKAGING, PARTIAL DELIVERIES

1. We determine the dispatch route and method as well as the carrier and shipping agent.
2. The Buyer shall immediately request delivery of those goods which have been notified to it as ready for dispatch. Otherwise we are entitled, following a reminder, to ship such goods at the Buyer's cost and risk or to store them at our discretion and to invoice immediately.
3. If transport on the proposed route or to the proposed location in the proposed period is not possible or is significantly hindered and we are not culpable for this, we are entitled to deliver using a different route or to a different location. The Buyer shall bear the resulting costs. The Buyer shall be given the opportunity to state its views on the matter in advance.
4. The risk (including that of confiscation) of all transactions involving prepaid and free deliveries is transferred to the buyer when the goods are passed to a carrier or shipping agent, but at the latest when they are released from the warehouse. We shall only take out insurance upon the instruction of the Buyer. The responsibility and costs for unloading shall be borne by the Buyer.
5. The goods shall be delivered packaged. If it is the normal practice, we shall deliver the given goods unpackaged.
6. We shall provide packaging, protection and/or transportation aids in accordance with our own experience and at the expense of the Buyer. They will be taken back at our warehouse. We shall not bear the costs of the Buyer for the return transport or disposal of the packaging.
7. We are entitled, within reason, to make partial deliveries. Customary deviations to the agreed quantity (excess or short deliveries) are permissible.

### VII. LIABILITY FOR DEFECTS

1. Defects must be reported in writing without delay, but at the latest seven days after delivery. Defects which cannot be detected within this period even following careful checks must be reported in writing without delay, but at the latest before the expiry of the agreed or statutory limitation period. All processing and handling must be immediately halted upon the discovery of said defect.
2. In the case of a justified notification of defects that is issued within the given deadline we can – taking the interests of the Buyer appropriately into account – at our discretion either rectify the defect or take back the defective good and replace it with a non-defective good (supplementary performance). In the case of an unsuccessful supplementary performance or if a supplementary performance is refused, the Buyer may, after the unsuccessful expiry of a reasonable additional period of time, withdraw from the contract or reduce the purchase price. If the defect is not significant or if the good has already been sold, processed or altered, the Buyer is only entitled to reduce the purchase price.
3. Costs arising in connection with the supplementary performance shall only be borne by us on a case by case basis to the extent that they are reasonable, particularly in relation to the purchase price. Costs which arise by the sold good being taken to a place other than the agreed place of fulfilment shall not be borne by us unless this corresponds to its contractual use.
4. If the buyer does not give us an immediate opportunity to satisfy ourselves of the defect, in particular if it does not immediately make available on demand the goods in question or samples thereof, all rights arising from the defect are inapplicable.

### VIII. GENERAL LIMITATION OF LIABILITY AND LIMITATION PERIODS

1. We shall only be liable for violation of contractual and extra-contractual obligations, in particular for impossibility, delay, default in negotiating the agreement and any unauthorised action – including for our managerial employees or agents – in cases of deliberate intent and gross negligence, limited to such damage typical of the agreement foreseeable at the time it was concluded. This applies in particular to claims for damages. Otherwise we do not accept any liability for damage and consequential damage from defects.
2. These limitations do not apply in the case of culpable violations of essential contractual obligations to the extent that the fulfilment of the purpose of the contract is endangered, in the case of culpably caused damage to life, body or health, in the case of the fraudulent concealment of a defect, if we have guaranteed the characteristic of the sold good, and in cases involving mandatory liability pursuant to the Product Liability Act (Produkthaftungsgesetz). The rules regarding the burden of proof shall remain unaffected.
3. Unless otherwise agreed, contractual claims which the Buyer makes against us because of and in connection with the delivery of the goods become time-barred one year after delivery of the goods in question. This does not affect our liability arising from intentional and grossly negligent breaches of obligation, culpably inflicted damage to life, body and health, or to the limitation period for rights to recourse pursuant to Sections 478 and 479 of the German Civil Code. In cases of supplementary performance the limitation period does not start again.

### IX. PLACE OF PERFORMANCE, PLACE OF JURISDICTION AND APPLICABLE LAW

1. The place of performance for our deliveries ex works is our warehouse in Solingen.
2. The exclusive place of jurisdiction is the place of the registered office of CARL MERTENS International GmbH in Solingen, Germany.
3. All legal relationships between us and the Buyer shall be governed by the non-unified law of the Federal Republic of Germany, particularly the German Civil Code and the German Commercial Code, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (UNCITRAL).

### X. SEVERABILITY

Should individual provisions of these conditions be invalid, regardless of the reason, this shall not affect the validity of the remaining provisions of these conditions.

- XI. We save your personal data in accordance with the Federal Data Protection Law (Bundesdatenschutzgesetz).

January 2007