



#### **I. Applicability**

1. These General Purchase Conditions shall apply to any and all current and future orders for delivery of goods or current and future bids for services, including without limitation their execution, delivery, implementation and performance by commercial buyers, public (ega) entities as well as public trusts. We do not accept, and hereby expressly refuse, any and all delivery, sales or other terms of seller unless otherwise agreed upon herein or in our written contract with seller. Acceptance of deliveries without express refusal of seller's terms shall in no event be construed to constitute acceptance of such seller's terms.
2. Parol agreements made with our staff shall only bind us insofar as confirmed by ourselves in writing.
3. All offers are gratuitous yet non-binding.
4. All trade terms shall be construed pursuant to Incoterms, as may be amended from time to time.

#### **II. Prices**

1. Agreed upon prices are not subject to revisions.
2. If deliveries are agreed upon "in store" or "free destination ...", or if other "delivery/carriage paid" clauses have been agreed upon, prices shall be inclusive of freight and packaging cost. If no such clause is agreed upon, we shall only bear the costs for the cheapest means of transport, unless we have required special precautions or measures for delivery.

#### **III. Payment**

1. Unless otherwise agreed upon or unless more favourable conditions of seller apply, payment shall be made within 14 days less 2 pct. discount, or within 30 days net, in our sole discretion.
2. Payment and discount terms shall run from receipt of invoice by ourselves, however not prior to delivery of goods or acceptance of services, and, to the extent manuals, inspection certificates (such as certificates of origin) or other documents are part of the delivery, not before these have been duly handed over to us.
3. Interest may only be charged on past due date payment amounts. Default interest is charged at a rate of 5 percentage points above the base rate. We shall always be entitled to prove that actual damages incurred as a result of our default are less than claimed by seller.
4. We shall be entitled to offset claims and avail ourselves of rights of retention as may be available under applicable law. We shall expressly be entitled to retain the purchase price if and as long as the agreed test certificates according to EN 10204 are not delivered.

#### **IV. Delivery Schedules and Delayed Delivery**

1. Agreed upon delivery dates and schedules shall be binding. Any impending delay must be communicated to us in writing without undue delay. At the same time, seller shall submit proposals to mitigate the impact of any such delay.
2. Delivery dates and schedules shall be deemed met upon our reception of goods, unless otherwise agreed upon in writing.
3. If seller delays delivery, we shall be entitled to avail ourselves of all remedies as may be available under applicable law. In particular, we shall be entitled to fix a reasonable extension date, and to claim damages in lieu of performance if no delivery is effected until such extension date. Our claims for specific performance shall remain unaffected unless seller has paid damages in full.
4. Seller may only plead lack of necessary documents if these are to be submitted by us and if he has not received such documents after reminding us of the submission thereof in writing.

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

1. Any seller's retention of title clause shall only be valid with the proviso that title to goods delivered shall pass to ourselves upon payment; we thus refuse and disclaim any retention of title subject to settlement in full of all current accounts with seller.
2. Seller may only claim repossession of the goods and thus avail himself of the retention of title clause if he rescinds the contract.

#### **VI. Performance of Deliveries and Passing of Risk**

1. Seller bears the risk of accidental loss and damage to goods until delivery at the agreed upon delivery site, even if "delivery/carriage paid" or "in store" deliveries have been agreed upon.
2. Partial deliveries shall at all times require our prior consent.
3. Short shipments or increased deliveries are only accepted in as far as customary under trade usage.
4. Packaging costs shall be borne by seller, unless otherwise agreed upon in text form. If packaging costs are to be borne by ourselves, such costs shall not exceed the cheapest available price. Any obligation to return packaging material shall be governed by the Packaging Material Act ("Verpackungsverordnung"), as amended from time to time, resp. the Packaging Act ("Verpackungsgesetz") of 05.07.2017.

## **VII. Declaration of Origin**

1. Upon demand, seller provides us with a supplier's declaration on the preferential origin of the goods.
2. If seller makes representations on the origin of goods sold, the following special rules shall apply:
  - a) Seller hereby undertakes to do each and every act and take or direct such further steps and measures as may be required for the ascertainment of certificates of origin by customs and excise agencies, and to give all pertinent information and submit any declaration in connection therewith as may be required by such agencies.
  - b) Unless Seller bears no fault of his own or other liability for third parties or chance, he shall make us whole for any and all damages incurred as a result of incorrect certification of origin or lack of ascertainability resulting in nonacceptance of declaration of origin by the competent agency.

## **VIII. Liability for Defects**

1. Seller shall deliver goods to us free of defects in quality or title.
2. Upon receipt, we shall inspect the goods delivered to the extent which may be reasonably expected and which is technically practicable in order to ascertain quality and completeness. For lack of concrete reference points for defectiveness, only examinations of the external condition – visible to the unaided eye – are considered to be reasonable, not examinations of the inner condition of the goods. Notice of defects shall be deemed timely if received by seller within eight working days by letter, telefax, email, or telephone. The period of notice for defects shall run from such moment in time in which we, or, in the event of chain-of-delivery business, our customers, have actually ascertained the defect or could reasonably have ascertained the defect.
3. If goods present defects in quality, we shall be entitled to avail ourselves of any right or remedy available under applicable law, in our sole discretion. Any of our customer's expenses shall also be deemed expenses required for successive performance ("Nacherfüllung"). Seller shall have to refund any of our incurred costs of subsequent performance (Sec. 439 para. 2 of the German Civil Code), including costs for finding the defect and sorting costs.
4. Our claims of defects shall be time-barred after 36 month of the passage of risk. Statute of limitation periods for any of our claims for defects shall run from timely notice of defects pursuant to no. 2 herein above. Seller's liability shall in no event end any later than ten years after delivery of goods. The foregoing shall not apply if our claims are based on facts or circumstances not disclosed to us yet actually known to seller, or which seller could not reasonably have ignored.
5. Seller herewith assigns any and all claims as he may have against his suppliers as a result of defective goods or lack of guaranteed qualities, in lieu of performance. He shall provide us with such documentation as may be required to enforce such claims.

## **IX. Place of Performance, Venue and Choice of Law**

1. Our headquarters or our branch office, whichever the contract was concluded with, shall be deemed place of performance for any and all deliveries. Place of performance for payments shall be our company headquarters. The Nettetal local court (Amtsgericht), or, as the case may be, the Krefeld district court (Landgericht) shall have nonexclusive jurisdiction on any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination. We may at all times also file suit against the seller at the courts sitting in his district, in our sole discretion.
2. The legal relationships between the seller and ourselves shall be governed in their entirety by the internal substantive laws of the Federal Republic of Germany.
3. In cases of doubt, the German version of these General Conditions of Purchase shall prevail.