

## **1. General**

1.1 The following terms and conditions apply to all the advisory services, offers, sales, deliveries, service performance and legal relations between us and the customer except where regulated otherwise in individual agreements. Customer terms and conditions which are wholly or partly in conflict with our terms and conditions or statutory provisions, or supplement them, are herewith expressly rejected unless we have agreed to them in writing in individual cases. Nor do they become an integral part of any agreement or contract by virtue of our having executed a delivery in knowledge of such conflicting or supplementary terms and conditions. If the customer is not advised of the applicability of our terms and conditions at the time of contract conclusion and is also not informed of this on any other occasion, they shall nevertheless be applicable if the customer was or should have been aware of them on the basis of an earlier business connection.

1.2 Our terms and conditions shall apply only to companies within the meaning of section 14 of the BGB (German Civil Code).

1.3 With the exception of subsection 13.5, our terms and conditions shall apply, even without separate reference thereto in each case, to all future legal relations between us and the customer.

1.4 In addition, contractual relations shall be governed exclusively by German law. The Convention on Contracts for the International Sale of Goods and German private law shall not be applicable.

1.5 There are no supplementary oral agreements. Arrangements deviating from these terms and conditions in individual cases and alterations or additions to a contract are carried out by the management or by persons specifically authorised to do so. Oral agreements or declarations by other persons shall only be effective if confirmed in writing by the supplier's management or by persons specifically authorised for the purpose by said management.

## **2. Prices**

2.1 Our prices for deliveries apply, except when expressly agreed otherwise, free truck/wagon incl. loading and do not include turnover tax and packing.

2.2 If after the conclusion of the contract the price calculation basis is changed because of higher wage and material costs, an increase in turnover tax or other circumstances, in particular technically induced changes in the price calculation basis, we shall be entitled to raise the contract price reasonably in proportion to the change in the calculation basis. This shall also apply to call orders.

## **3. Deliveries and delivery dates**

3.1 If after conclusion of the contract there are signs that the customer's financial performance capacity is in jeopardy, e.g. default on payment, suspension of payment, application for the opening of insolvency proceedings, assignment of current assets as security, unfavourable information from banks or credit institutes or credit insurers, we shall be entitled to refuse performance and, after unavailing setting of a deadline for the provisions of security in the form of directly enforceable bank guarantees and other bank guarantees or payment in advance, to withdraw from the contract and/or demand payment of damages. No deadline will be required if the customer's financial capacity is manifestly in jeopardy.

3.2 The delivery dates given by us are approximate dates. Fixed dates have to be confirmed by us in writing and expressly designated as such. Statutory provisions will determine as from what time default on delivery has occurred. In any event, however, a reminder from the customer will be necessary.

3.3 We shall be entitled to make part deliveries if the goods are divisible and provided this is acceptable to the customer. We shall also be entitled, having given due notice thereof in advance, to deliver an earlier date. 3.4 In the case of call orders a reasonable delivery period, which must not be less than 6 weeks after call, shall be deemed agreed. If no manufacturing and acceptance dates have been agreed, we may, no later than three months after confirmation of order, require a commitment to specific dates. If the customer does not comply with this request within 3 weeks after dispatch of our letter to the relevant effect, we shall be entitled to set an extension period of two weeks and, if this deadline expires to no avail, to required payment of damages and/or to withdraw from the non-fulfilled part of the contract. The same shall apply if, after expiry of the delivery period, delivery has not been taken of the contract goods or parts thereof, or if they have not, through the fault of the customer, been delivered.

3.5 If circumstances for which we are not responsible make it difficult or impossible to execute accepted orders or delay their execution, we shall be entitled to postpone delivery or delivery of the balance or part delivery by the length of time said circumstances endure, without any claims for damages accruing to the customer. The circumstances for which we are not responsible include acts by public authorities, operational breakdowns, strikes, lockouts, interruptions to work caused by political or economic conditions, shortage of essential raw and operating materials, energy supply difficulties, delays in transit caused by traffic problems or unavoidable events whose occurrence affects us, our sub-suppliers or third-party companies on which we are dependent for maintaining our own business operations. The above shall also apply if such events occur at a time when we are in default on delivery.

3.6 The customer may only set us an extended delivery date if the agreed delivery date has been exceeded by more than two weeks. Such extension must be of reasonable duration. After such extension period has expired to no avail, the customer may withdraw from the contract. A claim for damages on ground of breach of obligation shall only be possible subject to the provisions of section 9.

## **4. Dispatch and transfer of risk**

4.1 The contracted goods are dispatched by us ex works at the customer's risk, even when freight and other costs are at our expense. We will have the contract goods insured against damage in transport only on the express written instructions and for the account of the customer.

4.2 If collection has been agreed and the goods have not been collected within 8 days after the agreed date, the goods will be dispatched by us, using a method of transport which seems favourable to us, for the customer's account.

4.3 In the case of sale ex works we place the goods on the collecting agent's vehicle subject to the instructions of the driving crew. The collecting agent shall be responsible for loading the goods to make them secure for transport and operation, in accordance with the latest standards of cargo securing technology, and for deploying a correctly trained driving crew. The collecting agent shall also provide the necessary cargo securing equipment.

4.4 If dispatch is delayed at the customer's request or if there is default on acceptance, the risk of the goods shall pass as of the notification of readiness for dispatch. The safekeeping of the contract goods shall then be in the name and at the expense of the customer.

## **5. Retention of title**

5.1 The contract goods shall remain our property until such time as all our claims against the customer, including future claims due to us, have been paid in full. This also applies to the payment of specially designated claims until such time as any current account balances have been settled.

5.2 The goods to which title is reserved must, at the customer's expense, be stored correctly and separately from other goods and must, at our request, be specially labelled and insured against damage, destruction and loss. The customer must, on our request, submit the corresponding insurance policy to us. The customer herewith transfers to us in advance all claims under any such insurance policies to the full value of the reserved-title goods and consents to insurance payments being made to us. In the event of breach of contractual obligations by the customer, in particular default on payment, we shall be entitled to require the surrender to us of the contract goods and/or to withdraw from the contract and, where necessary, to arrange for persons authorised by us to enter the customer's business premises; the customer shall be obliged to surrender the goods. A demand for the surrender of the contract goods shall not entail a withdrawal from the contract on our part unless such withdrawal is expressly stated.

5.3 Provided the customer firm fulfills its contractual obligations towards us, it is entitled to sell the reserved-title goods through standard trade channels. However, this clause may be revoked at any time. In such cases, or where the reserved-title goods are delivered to a third party, irrespective of the value or condition thereof, or are assembled, the customer now hereby transfers all claims against the purchaser arising from the sale, delivery or assembly of the goods, together with all related rights and including any claims for damages which may result therefrom, to us until such time as all of our claims arising from these deliveries have been met, up to the invoice amount for said deliveries.

5.4 Where the reserved-title goods are reprocessed, combined with other goods or remodelled, this work shall be carried out for us, but no warranty shall be provided. In all such cases, our co-ownership of the new product shall be proportionate to the value of the reserved goods in comparison to the value of the new product at the time it was produced.

5.5 Where assignment is prohibited in cases of onward sale, assembly or late payment, the customer shall be obliged to inform the third-party purchaser of the advanced assignment. Where the reserved-title goods delivered by us are sold to a third party together with other goods, the share of the total price asked which corresponds to the invoice value of our delivery shall be assigned to us. In the event of default on payment by the customer, we shall be entitled to collect the assigned claim directly from the third-party debtor.

5.6 The customer shall not be permitted to conduct non-standard transactions, such as the pledging, assignment by way of security and transfer of the reserved-title goods. The customer is obliged to inform us without delay should third parties gain access to goods and claims belonging to us, for example through seizures and any form of impairment of our property. Where the customer is responsible for such circumstances it shall meet the costs of any resulting third-party legal proceedings.

5.7 Should the total realisable value of the surety provided to us for the purposes of the business relationship exceed the value of our claims by more than 10%, we shall, at the customer's request, release sureties of our own choice.

## **6. Payment**

6.1 Unless otherwise agreed, all invoices must be paid, without deduction, in the agreed currency within 30 days from the invoice date. Cash discounts shall only be granted where specifically agreed and must be calculated on the basis of the invoice value ex delivery works.

6.2 Payments shall only be deemed completed when the amount is finally and freely at our disposal. Payments by bill of exchange and cheque are only accepted where expressly agreed. Discount and bill of exchange charges shall in every case be borne by the customer. Where payment by bill of exchange is agreed, the term of the bill of exchange shall not exceed 90 days from the invoice date.

6.3 We are free to decide whether incoming payments are used to settle the oldest obligation or the least secured obligation.

6.4 Partial deliveries are invoiced immediately and become due individually, irrespective of the date on which the delivery as a whole is completed. Unless otherwise agreed in writing, all advance payments shall be offset against the oldest partial delivery.

**6.5 Counterclaims** may be used to offset payment claims only where these have been established at law or formally recognised by us. The same applies to the assertion of rights to withhold payment of the amounts stated in our invoices.

## **7. Export / confirmation of arrival**

7.1 To the extent that turnovers from intra-community deliveries are free of turnover tax according to German turnover tax law, our customer shall, by request and according to our requirements, be obliged to cooperate in the issue of all and any proofs of delivery necessary according to German turnover tax law in this connection (for example, a confirmation of arrival fulfilling the requirements of § 17 a Turnover Tax Implementation Ordinance, as amended at the time in question, with which there is confirmation that the object of delivery has reached the remaining territory of the community) and/or of other documents. Such a duty to cooperation shall also exist for our customer if the delivery fulfills the preconditions of an intra-community triangulation according to § 25 b German Turnover Tax Act and we require the proofs of delivery necessary according to German turnover tax law for this reason (for example, confirmation of arrival or other equivalent proofs). To the extent not requested by us to the contrary, the confirmation of arrival must at least contain the consignee's name and address, the quantity of the object of delivery and the designation customary in the trade, place and date of receipt of the delivery in the remaining territory of the community or, in the event of transport by the customer, place and date of the end of the transport in the other member state of the EU and the date of issue.

7.2 If not expressly agreed or required by us to the contrary in the individual case, the customer must use a sample provided by us for production of the confirmation of arrival and sign the confirmation of arrival by hand or transmit it electronically by request. In the event of the transmission of the confirmation of arrival by e-mail, our customer shall, if necessary, grant a declaration of approval for the electronic receipt of the confirmation of arrival (self-collector). The confirmation of arrival may only be issued by our customer after the goods have actually arrived in the other member state of the EU.

7.3 Our customer shall reimburse all subsequent costs actually incurred by us due to a lack of the aforementioned proofs and in the event of its defective cooperation, e.g. subsequent charging of turnover tax and also other damage which may be incurred.

## **8. Damages and withdrawal from contract**

8.1 Should the customer fail to adhere to the agreed payment deadlines, we shall be entitled to exercise our rights under section 288 of the BGB (German Civil Code). (Interest on default).

8.2 If the customer defaults on acceptance of a delivery or a service or defaults on payment, we shall be entitled, after allowing an appropriate extension, to withdraw from the contract, in part or in full, and/or require payment of damages to the amount of 20% of the purchase price, whereby we reserve the right to prove that the actual damage or loss incurred is greater than this amount, with particular reference to the take-back costs, unless the customer for its part proves to us that the actual damage or loss incurred is lower. An extended deadline shall not be required where, after conclusion of the contract, there are clear signs that the customer's financial capacity is in jeopardy as defined in section 3.1.

## **9. Warranty**

9.1 The quality level we agree to adhere to for the contract goods shall arise exclusively from the contractual agreements with the customer and not from any promotional statements, brochures, advisory meetings and the like, for which we therefore accept no liability. Our commitment to a specific quality level shall not entail commitment to provide a specific feature or the assumption of a guarantee, e.g. in the sense defined in section 443 of the BGB. Owing to the great variety of possible uses of our products we accept no liability for the actual possible uses and specific conditions of use at the customer's firm, except when we have made an express commitment thereto in writing and the specific conditions of use on site have been set out for us correctly, accurately and in written form. We accept in principle no liability for information or advice except where it has expressly been made an integral part of the contract in any individual case. Information and advice in connection with the initiation or execution of an order shall in principle not constitute a material contractual obligation shall not be subject to liability except in case of gross negligence, such liability being limited to predictable damage or loss.

9.2 We accept liability for defects relating to purchase transactions, to the exclusion of further claims, as follows:

a) The provisions of section 377 of the HGB (German Commercial Code) apply to complaint and inspection obligations.

b) The customer must give our authorised representatives the opportunity to inspect and check all contract goods which have been complained about, in particular supply representative samples for inspection and provide all the cooperation in the rectification of defects that can reasonably be expected. Otherwise all claims under warranty shall be deemed invalid.

c) We guarantee for 1 year from the delivery date that all contract goods will be fault-free and produced in accordance with professional best practice. The above reduced time limitation shall not apply in cases of recourse by the supplier (section 478 of the BGB) and in cases of bad faith. The same shall apply to the claims for damages regulated in section 9.2 and to claims under the German product liability act. The latter case shall be governed solely by the statutory provisions on time limitation. The same shall apply to buildings and to specially produced articles and materials which, in accordance with their normal use, have been used for a building and for whose faulty condition we are responsible (section 438(1) para. 2 of the BGB)

d) Should the customer, after transfer of risk, use, handle or store the contract goods in an incorrect manner, fail to adhere to our instructions and guidelines or damage or destroy the contract goods, all claims under warranty shall be deemed invalid.

e) The production process for technically complex articles which incorporates natural raw materials can by its nature result in deviations of various parameters and properties, including the dimensions and materials of the product. Such variations of measurements and materials, which are standard for the sector and/or caused by the manufacturing technology used, do not constitute defects unless they impair or are detrimental to the functional capability and standard intended use of our products, and do not entitle the client to object to the contract goods. The relevant DIN norms, where available, and our own works standards apply for all tolerance margins.

f) Variations of up to 10% either way in delivery amounts and quantities shall be acceptable, and the total price shall be adjusted accordingly.

g) Defects will be remedied, at our choice, either by corrective action or by supplying replacements. We are entitled to make the rectification of defects dependent on payment by the customer of the purchase price due. The customer shall however be entitled to withhold a part of the purchase price that is commensurate with the degree of defect. The customer must allow us reasonable time and opportunity to remedy defects. If this is refused, no claims under warranty of any kind shall be admissible. Should attempts to remedy defects fail repeatedly, the customer shall also be entitled to withdraw from the contract or require a price reduction. Minor defects, however, shall not entail a right of withdrawal from the contract. Claims by the customer for damages or alternatively compensation for unavailing expenditure shall be limited to and governed by the provisions of section 9; no other claims shall be admissible.

## **10. Other liability**

10.1 Except as otherwise provided in these terms and conditions, including the conditions stated below, we accept liability in the event of a breach of contractual and extra-contractual obligations subject to the pertinent statutory provisions.

10.2 We accept liability for payment of damages, on whatever legal basis, if the damage or loss is premeditated or caused by gross negligence. In the case of ordinary negligence we accept liability only

a) for damage or loss arising from injury to life, person or health,  
b) for damage or loss arising from the breach of a material contractual obligation (that is, an obligation on which the contract is dependent for its due and correct performance and on whose fulfillment the client normally relies and is entitled to rely); in that case, however, our liability shall be limited to compensation for predictable damage or loss occurring in standard conditions.

c) No customer claims of greater extent, in particular every form of claims for damages and specifically consequential damage or loss resulting from defects, shall be admissible. We shall in particular, as far as this is permitted by law in the respective individual case, not be liable for damage, which was not caused to the object of delivery itself, for example, assembly and disassembly costs (i.e. for the reimbursement of expenses for the removal of the faulty and the installation or the affixation of the subsequently improved or delivered fault-free object according to Section 439 Para. 3 BGB respectively according to Section 445a BGB respectively according to Section 475 Para. 4 and 6 BGB).

d) Should liability be present according to the aforementioned paragraphs, it shall, as far as respectively permitted in an individual case, be limited with regard to possible expenses that are to be reimbursed by us, as far as these have been proven, to an amount in the volume of twice the net sales price of the respective faulty object of delivery and otherwise to the claims covered by our third-party liability insurance.

10.3 The limitations on liability stated in section 9.2 shall not apply in the event of our failing, in bad faith, to declare a defect or having assumed a guarantee for the condition of the goods. The same shall apply to claims by the customer under the German product liability act, to cases of mandatory liability under the law, and to injury to persons.

10.4 The customer shall be entitled to withdraw from or terminate the contract on grounds of a breach of obligation only if we are responsible for the breach of obligation. The customer shall have no unrestricted right of contract termination (in particular under sections 651 and 649 of the BGB). The statutory conditions and legal consequences shall apply in all other respects.

## **11. Confidentiality**

The customer shall be obliged to use the trading and operational secrets entrusted to it, or coming to its knowledge in the context of the business relationship, solely for the performance of the contract; it shall also be obliged not to turn such information to account for the duration and after the termination of the contractual relationship, and to not to disclose such information to third parties.

## **12. Proprietary rights**

12.1 All printed, punched and stamped parts and samples produced by us remain our property.

12.2 We reserve the right to exercise all copyrights and, where applicable, industrial property rights covering all patterns, stamps and samples designed by ourselves or third parties engaged by us, even where the customer has met the relevant costs.

## **13. Remote orders**

13.1 In the case of remote orders, the contract shall come into effect as of delivery of our order confirmation, which, immediately after receipt of a full and correctly completed order form, will be sent to the customer by post, e-mail, fax or via the internet, the choice of method being left to us.

13.2 Should the customer exercise its right to return the goods under section 12 of these terms and conditions and should it have made use of the goods between their delivery and return, it must repay the value of the use made of the goods.

13.3 The customer must reimburse us for the value of the goods should they become lost or damaged during the time between their delivery and return, or should it no longer be possible to return the goods. Payment of further compensation in case of a breach of the obligation to return the goods shall be regulated by the relevant statutory

provisions. The customer must, before it returns the goods, ensure that their condition is such as to make resale possible, and in particular return the goods in their complete original packaging.

#### 14. Other provisions

14.1 We are entitled to process all data received from the customer for the purposes of the business relationship in accordance with the provisions of the German data protection act and, in particular, to provide the credit insurers with the data they require to issue the credit insurance.

14.2 The customer is not entitled to transfer any claims against us arising from the business relationship.

14.3 Should any of the above provisions be legally invalid, this shall not affect the validity of the remaining provisions and of the contract as a whole. Any invalid provisions shall be replaced by new provisions which serve the same economic purpose. Where such provisions have not become an integral part of the contract, the corresponding content of the contract shall be governed by the relevant statutory provisions.

14.4 The place of performance for deliveries is our delivery works. The place of performance for payments is the registered office of our company.

14.5 The sole court of jurisdiction for all disputes arising from this contractual relationship, including those arising from bills of exchange, cheques and other documents, is that of the registered office of our company, provided that the customer is a merchant or is, ostensibly but accountably, a merchant in the legal sense, as defined in the HGB.

Pfleiderer Deutschland GmbH, Ingolstaedter Str. 51, D-92318 Neumarkt  
Tel.: +49 (0) 9181 28-0