

# STANDARD TERMS OF SALE AND SUPPLY

## 1. General

**1.1** All sale and supply transactions are exclusively subject to the following terms. We will not be bound by differing terms of the purchaser, even if we do not expressly reject them separately. Such terms will only apply if they are separately agreed and confirmed by us in writing.

**1.2** The purchaser accepts our Standard Terms of Sale and Supply by placing its first order. Until otherwise agreed these will apply to all present and future business transacted, even if no special mention is made of these terms when an individual order is placed within the framework of an existing business relationship.

**1.3** These terms only apply to traders.

**1.4** Without our express consent the purchaser may not assign any claims to third parties.

## 2. Offers

Prices and delivery dates in orders are not binding. Details of weights and dimensions and illustrations supplied in offers are not binding. Prices quoted on the basis of samples and drawings and in offers for special valves are conditional on the types and quantities specified being ordered without any reductions.

## 3. Orders

We accept orders by written confirmation. Good/services to be supplied will be exclusively as specified in our written acknowledgement of order.

## 4. Prices, payment, the Purchaser's ability to pay and rights

**4.1** The prices quoted are not binding and are quoted on an ex-works basis excluding packing. We will charge packing at cost price. Postage, freight, other shipping costs, insurance, customs duties and the cost of any return of packing materials will be borne by the purchaser. If goods are shipped in containers rented from German Railways (Deutsche Bundesbahn), the rent for the containers will be payable in addition to packing costs.

**4.2** If there is a substantial increase in certain types of cost, in particular wages, production materials or freight, the price agreed may be increased appropriately as required, to cover the relevant additional costs. If the increase represents more than 5% of the agreed price, the purchaser will be entitled to cancel the contract.

**4.3** Payments may only be made to us. Payment must be made within 30 days of invoice date in cash without any deduction or within ten days at 2% discount. We will only accept a deduction of discount if the purchaser has no pre-existing debts to us outstanding. If the deadline for payment is not met we will be entitled to charge interest at 8% above the base rate as provided by §247 German Civil Code.

**4.4** If we are under an obligation to supply on credit and learn after the conclusion of a contract of facts indicating an inability of the purchaser to pay, in particular of any substantial deterioration in the purchaser's financial position - e.g. resulting from the purchaser having judgement enforced upon it, becoming insolvent, stopping payments, ceasing to trade or failing to pay due invoices more than once in spite of reminders - we will be entitled to refuse performance if those facts are such as to jeopardise our claim to remuneration. This right to refuse performance will cease to apply if claims are settled or security for them is provided.

We may set a reasonable deadline before which the purchaser must, as it sees fit, either pay the remuneration or provide security as a concurrent condition of our performance. If this deadline expires without result, we will be entitled to withdraw from the contract.

**4.5** If the purchaser culpably falls into arrears with payments to us or culpably becomes unable to pay (Point 4.4 of these terms), we may require the immediate payment of the purchase price and the settlement of any other outstanding claims against the purchaser.

**4.6** Bills of exchange and cheques of any kind will only be accepted by agreement and reserving due payment. Bills of exchange and cheques will in all cases only be accepted on account of performance and all expenses will be charged. We will only be liable for the punctual submission and charging-on of bill of exchange and cheque protests as specified in the liability provisions in point 7 of these terms.

**4.7** The purchaser is only entitled to offset against our claims or exercise a right of retention if its counterclaims are undisputed or have been made legally final and binding. This will not apply where the purchaser's counterclaims are based on defective performance on our part.

## 5. Delivery

**5.1** The right to agree a delivery date for each individual order is reserved.

**5.2** If it is impossible to dispatch the goods through no fault of ours the delivery deadline will be held to have been met if notification of readiness for shipping is sent off on time.

**5.3** In the case of force majeure or unforeseeable exceptional circumstances which we, through no fault of our own, are unable to prevent (including ones affecting any of our suppliers), e.g. strike, lockout, production breakdowns, difficulties in obtaining materials arising after the conclusion of a contract, scrapping of an important work item, directives issued by public authorities etc., the delivery deadline will be extended by the duration of the circumstances plus a reasonable allowance of time for us to resume operations. If such circumstances continue to apply for more than two months or if it becomes impossible for us to supply, either party will be entitled to withdraw from the contract.

**5.4** The risk will pass to the purchaser on the handover of goods by us to the carrier or on notification of readiness for shipping. This will also apply where free delivery has been agreed and in spite of any reservation of ownership. Unless specific instructions are given, we will decide the method of transport and the transport route as we see fit. We do not guarantee to choose the cheapest and quickest method.

**5.5** Part deliveries of a reasonable size are permissible.

**5.6** For the return of goods for reasons for which we are not to blame please contact us in advance. Goods returned without a return delivery code from GSR will not be accepted by GSR. The costs for the return delivery will be charged from GSR from case to case.

## 6. Liability for defects

**6.1** The purchaser's entitlement to make claims on the basis of defects is conditional on the former having met its obligations to inspect and check as specified in § 377 German Commercial Code. The purchaser must notify us of defects in writing within a maximum of 8 days following the receipt of the goods at their destination. Defects which are not discovered within this period in spite of careful checking must be made the subject of complaint without delay once discovered. Otherwise the goods will be held to have been approved.

**6.2** If goods supplied are defective, we may choose whether to rectify the defect or to supply a perfect item (remedy).

**6.3** If we are unable to rectify the defect or supply a replacement, if this is delayed beyond a reasonable extension of deadline by at least two weeks set

by the purchaser or if we fail in any other way to rectify the defect or supply a replacement. The purchaser will be entitled to choose whether to cancel the contract or to require an appropriate reduction in the purchase price. Claims for damages are hereby excluded. This does not apply to claims for damages where liability is not excluded in point 7 of these terms.

**6.4** The purchaser's claims on the basis of defects will expire by limitation two years after the delivery of the goods.

**6.5** If the purchaser makes claims for defects based on public statements made by us, a manufacturer or an assistant of the latter, in particular in advertising or in labelling which attributes specific characteristics to an item (§434 Para. 1 Sentence 3 German Civil Code), the purchaser will bear the burden of proving that the statement concerned was a reason for its decision to purchase.

**6.6** There is no liability for statements or advertising claims by third parties.

**6.7** If the purchaser is obliged to take back a newly manufactured item because it is defective or if the purchaser's customer reduces the sale price (§478 German Civil Code), the purchaser's legal rights in the case of defects will apply without the restrictions of guarantee rights specified in this provision (claims for damages are expected here). The purchaser will not be obliged to grant us the extension which is otherwise necessary for the remedy of the defect which the final customer has complained about.

## **7. Liability, cancellation**

**7.1** Compensation claims against us, our employees, representatives or vicarious agents are excluded, irrespective of the cause in law, especially on the grounds of impossibility, default, inadequate performance, infringement of contractual accessory obligations or other duties arising from the contractual obligation, or tortious act.

This does not apply to the loss of life, personal injury or illness. This liability exclusion does not apply to other damage if it is based on an intentional or grossly negligent breach of duty by us or by our executives, if an essential contractual obligation (cardinal duty - especially a primary contractual obligation) has been breached or another duty which is not classed as a basic contractual obligation has been breached by simple vicarious agents intentionally or through gross negligence. In the event that a basic contractual obligation is breached or that another obligation is breached through intent or gross negligence by simple vicarious agents, our liability for compensation shall be limited to the typically foreseeable damage.

**7.2** The above exclusion of liability does not apply to claims under the German Product Liability Act.

**7.3** If the purchaser requires us in place of performance to reimburse it for expenses which it has incurred in reliance on our performance in accordance with contract, instead of claiming damages (§284 German Civil Code), these expenses will be limited in amount to what would have been spent by a sensible third party.

**7.4** The purchaser will only be entitled to withdraw from the contract on the basis of a breach of obligation by us not consisting of defective performance if we have been culpable.

## **8. Reservation of ownership**

**8.1** We reserve ownership of the goods supplied by us until the purchase price has been paid in full, including all subsidiary claims. If an ongoing business relationship exists, the goods will remain our property until all of our existing and future claims against the purchaser have been fully settled including, in particular, the full settlement of any recognised balance on a current account with the purchaser.

In the case of payment by cheque or bill of exchange our reservation of ownership will continue to apply until the amount concerned has been credited to us and the purchaser has paid all subsidiary costs.

**8.2** The purchaser is under an obligation to take good care of a sale item until ownership is transferred to it. If maintenance and inspection work has to be carried out, the purchaser must do this at its own expense. Until ownership is transferred the purchaser must inform us without delay in writing if goods supplied are damaged, lost, subjected to seizure or otherwise affected by third-party action. To the extent that a third party is not in a position to reimburse to us the costs of enforcing our ownership rights in and out of court, the purchaser will be liable to us for the deficit.

The purchaser is entitled to dispose of goods subject to reservation of owner-

ship (reserved goods) in the normal course of business. The purchaser hereby assigns to us the purchaser's claims against its customer arising out of the selling-on of reserved goods with immediate effect up to the price agreed with us for those goods (including turnover tax). If the purchaser enters its claim to the purchase price in a current account maintained with its customer, it also assigns the resulting claim on balance to us.

This assignment will apply regardless of whether reserved goods are sold on without or following processing.

We hereby accept the assignment.

**8.3** The purchaser will remain entitled to enforce the claim after assignment. This will not affect our authority to enforce the claim ourselves. We shall however refrain from enforcing the claim as long as the purchaser continues to meet its payment obligations from the proceeds obtained, as long as the purchaser does not fall into arrears with payment and, in particular, as long as no application is made for the initiation of insolvency proceedings and the purchaser does not stop payments.

**8.4** Any processing or transformation of a sale item will in all cases be carried out on our behalf. Processed goods will serve as security for us only up to the value of the reserved goods. If reserved goods are processed or combined with other items which do not belong to us, we will acquire proportional joint ownership of the new item based on the ratio of the objective value of our sale item to the value of the other items processed at the time of processing or combination. If processing is such that the new item must be regarded as the central item, it is hereby agreed that the purchaser assigns proportional joint ownership to us and must hold the joint property so created for us free of charge.

**8.5** We undertake to release our choice of the securities granted to us by the above provisions to the extent that their value exceeds the claims to be secured by 20%.

## **9. Drawings, documents**

Drawings, documents or drafts received from us may not be made accessible by the recipient to any third parties whatsoever. In cases of breach the purchaser will be liable to pay damages as prescribed by law. If no order is placed, drawings and documents supplied must be returned by the recipient.

## **10. Legal venue, place of performance, invalidity of individual terms**

**10.1** The laws of the Federal Republic of Germany apply exclusively.

**10.2** The place of performance for obligations arising under this contract is our registered office. The legal venue is Bad Oeynhausen.

**10.3** Should any of these terms be or become invalid, this shall not affect the validity of the contract as a whole or of the remaining terms.

State January 2012