

## **GENERAL TERMS AND CONDITIONS OF PURCHASE**

### **1. General Provisions**

1.1 Orders of Buyer shall be accepted by Seller exclusively on the basis of the following General Terms and Conditions of Purchase ("General Terms"), unless agreed otherwise in writing. Agreements or business terms and conditions of the Seller which deviate from these General Terms shall, in order to be effective, require the express written approval of the Buyer to the extent they conflict with these General Terms. At the latest upon first-time delivery of Goods by Seller the General Terms of Buyer become an integral part of the Contract.

1.2 Orders and bids invitations issued by Buyer shall only be binding if made in writing or if Seller has confirmed the order in writing. Unless explicitly agreed otherwise in writing, the invitation to bid shall only be binding for a period of 14 days.

### **2. Prices and Payment**

2.1. Prices described in this Contract shall be firm and final and shall not be subject to any adjustment as a result of a change in Seller's costs which may occur due to a change in material or labor costs or in freight rate(s) or insurance premium(s), any increase in tax(es) or duty (ies), imposition of any new tax(es) or duties, or any other events.

2.2. Invoices shall be issued after shipment without undue delay specifying the order and item number(s). Seller shall state the VAT separately if required by law.

### **3. Charges**

All customs duties, taxes, fees, banking and other charges imposed on the goods, containers and/or documents arising in the country of shipment and/or origin shall be borne by Seller.

### **4. Shipment**

Seller agrees to ship the goods described in the framework of this Contract punctually within the time frame stipulated in this Contract. If Seller fails to make timely shipment of the goods, Buyer may, at its sole discretion and upon written notice to Seller, extend the prescribed delivery period or cancel this Contract in either event without prejudice to any rights and remedies available to Buyer, including but not limited to, claims for damages arising out of or in connection with such delay in

shipment. If shipping/freight space is arranged by Seller, Seller shall, unless otherwise agreed in this Contract, ship the Goods on an ocean going vessel or aircraft of a type normally used for the transportation of goods of the same type as the contractually delivered goods. The goods shall be carried by the usual route(s) without any deviation, and shall be marked, packed and stowed as required by Buyer. Seller shall notify Buyer by cable or other means, immediately upon completion of the loading of the above mentioned vessel or aircraft, of the particulars of shipment including the contract number, name of vessel or flight number, shipping date, loading port, description of the Goods and packing, quantity loaded, invoice amount and any other particulars essential to this Contract.

## **5. Terms and Conditions of Letter of Credit**

In case the terms and conditions of the letter of credit opened by Buyer are not in compliance with this Contract, Seller in receipt of the l/c shall notify Buyer thereof immediately and request to amend it as necessary. In case of failure of such immediate notice and request, Seller shall be deemed to have waived its claim against Buyer with regard to such a noncompliance.

## **6. Insurance**

If this Contract requires or authorizes Seller to insure the Goods, Seller shall, unless otherwise contractually agreed, insure the Goods, (i) for a value equal to one hundred and ten percent (110 %) of the invoice amount of the Goods, (ii) on the basis of all risks (Institute Cargo Clauses) or on equivalent terms, (iii) with internationally recognized underwriter(s) or insurance company(ies) of good repute. Any additional insurance coverage shall be arranged by Seller upon Buyer's special request and to Buyer's account.

## **7. Warranty**

7.1. Seller warrants that (i) the Goods will fully conform to the description of the contractually stipulated Goods and any and all data and documents forming the basis of this Contract, such as specifications, samples, patterns, drawings, etc. and (ii) that the Goods shall be of good quality, merchantable and be free of any defects, including hidden defects, and encumbrances and/or rights of third parties

7.2 Buyer shall inspect the Goods upon their arrival at the destination to which they are dispatched pursuant to the Contract for the purpose of ascertaining whether the Goods have been damaged in transit.

7.3 Buyer shall report defects in written form and without delay, at the latest within 30 days of receiving the goods. Defects which cannot be discovered within this period despite careful inspection must be reported to the Seller in written form as soon as they are discovered.

7.4 If Buyer should find any defect in the Goods and notify Seller of that fact, Buyer shall, at its sole discretion, have the following option(s) (i) to demand Seller to replace or repair the goods at Seller's expense and risk, including any transportation expenses for sending and returning such defective or faulty Goods or the parts thereof to and from Seller and (ii) to cancel the whole or any part of this Contract if the repair proves to have been to no avail after a reasonable period of time. In either event, Buyer may demand Seller to compensate for any losses or damages suffered by Buyer or its customer(s) due to or arising from such defect. The mentioned rights of the Buyer shall exist independently of the place (internal or abroad) where the Goods will be used, set-up or started-up by Buyer after purchase.

## **8. Hold Harmless**

8.1 Seller shall hold harmless Buyer from all claims raised by Buyer's customers with respect to any defects of the Goods, if Seller has acted wilfully or negligently. This duty shall apply to all cases in which the customers of the Buyer are consumers. This clause shall survive after the expiration or termination of this Contract.

8.2 Seller shall hold Buyer harmless from, and shall waive any claim against Buyer for, any liability for infringement of patent, utility model, design, trademark, brand, pattern, copyright, or other intellectual property rights in the Goods. In case any dispute or claim arises in connection with the above rights, Seller shall indemnify, reimburse and compensate Buyer for all losses and damages including costs, expenses and charges for defensive actions by Buyer, if Buyer should incur them as the result of such dispute or claim and if Seller has acted wilfully or negligently.

## **9. Force Majeure**

Buyer shall not be liable for any delay or failure in taking delivery of all or any part of the Goods, or for any other default in performance of this Contract due to the occurrence or consequence of any event of force majeure (hereinafter referred to as "Force Majeure"), including but not limited to, Acts of God, or governmental authorities, or any other causes or circumstances directly or indirectly affecting the activities of Buyer or any of its customer(s) beyond their control. In any event of Force Majeure Buyer shall notify Seller in writing of such event(s) and Buyer may, upon notice to Seller, either terminate or delay for a reasonable period of time performance of this Contract in whole or part. If Seller delays the delivery of the Goods for more

than thirty (30) days on account of any event of Force Majeure, Buyer may, upon written notice to Seller terminate this Contract in whole or part and Seller shall reimburse Buyer for any money paid by Buyer to Seller with respect to any undelivered portion of this Contract. Buyer shall not be liable or responsible for any failure or delay in obtaining any governmental permission to perform this Contract or any restriction by government on import or payment after execution of this Contract.

#### **10. Default**

If Seller fails to perform any provisions of this Contract or any other contract with Buyer or commits a breach of any of the terms, conditions and warranties in this Contract or any other contract with Buyer, or if proceedings in bankruptcy or insolvency or similar proceedings are instituted by or against Seller, or if a trustee or receiver for Seller is appointed, or if Seller goes into dissolution or liquidation or transfers a substantial part of its business or assets, Buyer may, at its sole discretion and by giving notice to Seller, (i) stop or suspend its performance of this Contract or any other contract with Seller, (ii) reject the shipment or taking delivery of the Goods, (iii) dispose of the Goods, if delivery has been taken on Seller's account (in such manner as Buyer deems appropriate) and allocate the proceeds thereof to the satisfaction of any or all of the losses and damages caused by Seller's default (except in cases of insolvency), and/or (iv) cancel the whole or any part of this Contract or any other contract with Seller. In any such event, Buyer may recover all losses and damages caused by Seller's default including but not limited to, loss of profit which would have been obtained by Buyer from resale of the Goods and damages caused to any customer's purchasing the Goods from Buyer.

#### **11. No Assignment**

Seller shall not transfer or assign the whole or any part of this Contract, or any of its rights or obligations accruing hereunder without Buyer's prior written consent.

#### **12. No Waiver**

No claim or right of Buyer under this Contract shall be deemed to be waived or renounced in whole or in part unless the waiver or renunciation of such claim or right is acknowledged and confirmed in writing by Buyer.

#### **13. Arbitration Clause**

Any dispute, controversy or difference which may arise between the parties hereto, out of or in relation to or in connection with this Contract shall be settled by arbitration to be conducted in accordance with the Rules of the International Chamber of

Commerce in Paris. The seat of the arbitration shall be Düsseldorf and the language shall be English.

#### **14. Trade Terms and Governing Law**

The trade terms used in this Contract shall have the meanings specified in the latest Incoterms, unless otherwise specifically provided in this Contract. This Contract shall be governed by and construed in accordance with the laws of the Federal Republic of Germany.

#### **16. Entire Agreement**

This contract supersedes all prior discussions and agreements between the parties with respect to the subject matter hereof, and this Contract constitutes the sole and entire agreement between the parties with respect to the matters covered hereby. This Contract may not be modified or amended except by a written instrument signed by the parties or their duly authorized representatives.

#### **17. Severability**

If any of the provisions in these General Terms of Purchase or any of the provisions in other agreements prove or become invalid, this shall not affect the validity of the remaining provisions or agreements.