

# GENERAL TERMS OF DELIVERY AND PAYMENT FOR HOMANIT GERMANY (STATE: 2005)

## § 1 Validity of the Terms

- 1 The following Terms of Delivery and Payment apply to all deliveries, even if they are not expressly agreed upon in future contracts. The purchaser's purchasing terms do not apply to us. We hereby contradict confirmations of orders or other confirmations made by the purchaser with reference to his terms of business or purchase.
- 2 Differing arrangements require our express consent in writing. The written form serves as proof and as a condition for their effectiveness.

## § 2 Offers and Conclusion of Contracts

- 1 An offer is not binding for us unless another arrangement has been expressly made in writing.
- 2 Declarations of intent submitted by a representative only become effective when we have given our express written consent.
- 3 Telephone or oral agreements only become effective when we have given our express written consent.
- 4 Contracts only become effective when we have expressly confirmed the order in writing.
- 5 We are entitled to assign our claims to a third party.
- 6 The seller is entitled to collect, to record, to process and to use information and data concerning the purchaser and to pass this on to third parties, in particular for the purposes of debtor management or out-sourced receivables management for recording, processing and use.

## § 3 Delivery and Dispatch

- 1 Delivery dates expressly indicated as expected delivery dates in our confirmation of order are not binding.
- 2 In the event of delivery and service being delayed due to force majeure and events which also considerably aggravate, or make impossible, delivery or service (including but not limited to scarcity of material, breakdowns, strikes, lockouts, staff shortages, transport difficulties, official arrangements, etc., even if they occur on our supplier's or their subcontractor's premises), we do not have to adhere even to our binding deadlines and delivery dates agreed upon. They entitle us to postpone delivery or the services by the duration thereof plus an appropriate initial period and to withdraw from the

contract completely or in part because one part thereof has not yet been adhered to.

- 3 If the hindrance lasts for more than 3 months, following an appropriate extension of the deadline and a threat of repudiation, the purchaser is entitled to withdraw from the contract because one part thereof has not yet been adhered to.
- 4 If we are in arrears because of our non-compliance with the agreed deadlines and delivery dates, a claim for compensation by the purchaser is ruled out insofar as our arrears are not caused by gross negligence or by intention.
- 5 The purchaser is liable for the consequences of incorrect and incomplete details as well as errors in transmission of requests for delivery.
- 6 We are entitled to provide partial deliveries and partial services at any time.
- 7 The goods are delivered to the agreed location. If this location is changed at a later date, all costs incurred are chargeable to the purchaser.
- 8 If acceptance of the delivery is refused, late, delayed, or otherwise adverse, the purchaser owes us damages unless we are responsible for the adverse acceptance.
- 9 The goods are delivered at the purchaser's risk. If they are transported with our own vehicle or with one hired from us, the risk as defined by § 446, Paragraph 1 of the BGB (German Civil Code) is passed on to the purchaser as soon as the goods are moved to be taken to the goods vehicle for loading purposes. If transport becomes impossible through no fault of our own, the risk is passed on to the purchaser with the announcement that the goods are ready to be delivered.

## **§ 4 Prices and Payments**

- 1 Prices stated in price lists and catalogues are subject to price changes without prior notice.
- 2 In principle, the prices given in our written confirmation of order plus the value added tax (VAT) applicable at the date of service are fixed. Should our delivery or service be carried out more than 4 months after our written confirmation of order, the price applicable is exceptionally fixed as that valid on the day of our delivery or service according to our price list or catalogue plus the value added tax (VAT) applicable on that same day.
- 3 We reserve the right to change our prices should the dimensions or the ratio for the cutting service and/or the cutting loss in orders for cutting differ from our offer by more than 2%.

- 4 Our prices are net ex factory unless another arrangement has been expressly made in writing. Transport costs are chargeable to the purchaser.
- 5 Payment has to be made net within 30 days of delivery under § 3. Cash discounts are given. A cash discount is not permitted for cash sales and amounts invoiced for less than € 100. Cash discounts are also not permitted if the purchaser defaults punctual compliance of other payment obligations to us. The cash discount only applies to the goods value excluding transport costs. In exceptional cases, invoices can be settled by cheque or bill of exchange but this requires our prior agreement. We cannot guarantee that such payment will be presented or protested in good time. All costs arising from the discounting of a cheque or bill of exchange are chargeable to the purchaser.
- 6 All payments are only considered to be effected at the time the receipt of the credit is booked to our account.
- 7 For delayed payments, we are entitled to charge interest payable on arrears at a rate of 4% p.a. above the respective discounting rate of the Deutsche Bundesbank, but a minimum rate of 8 %. Interest payable on arrears is fixed at a higher or lower rate if we prove financial strain with a higher interest rate or if the purchaser proves less financial strain. The enforcement of a further claim for delayed payment is excluded.
- 8 All payments, partial payments, credits, etc. are settled in accordance with § 367, Paragraph 1 of the BGB (German Civil Code).
- 9 In the case of delayed payments, the onset of payment difficulties, bills of exchange or cheques not being cashed on schedule, the introduction of bankruptcy or insolvency proceedings for the purchaser's assets, all debts, including deferred claims (for instance by acceptance of bills of exchange) must be settled. Discounts, reductions, special conditions, etc. cease to apply to all invoices not yet paid.
- 10 The purchaser is only entitled to have set-off-rights if his counterclaims are legally determined, indisputable or accepted. Furthermore the exercise of a right of retention is only authorised as far as his counterclaim is based on a similar legal relationship.

## **§ 5 Reservation of Title**

- 1 Goods remain our property until all of the purchaser's debts connected with the business connection, including claims arising in future from contracts concluded at the same time or in future, are settled. This is applicable even if individual or all debts have been included in an outstanding invoice and the balance is drawn and accepted.
- 2 The purchaser is only entitled to subsequently resell the reserved goods as part of proper business if he has already assigned to us all claims against the purchaser or a third party, which result from the resale. If the reserved goods are sold either raw or after fabrication in connection with objects which are our exclusive property, the purchaser will immediately assign to us the total amount of the claims resulting from the resale. If the reserved goods are sold by the purchaser after fabrication / connection with goods not belonging to us, the purchaser will immediately assign the

claims resulting from the resale for the total value of the reserved goods with all ancillary rights according to their standing in relation to the others. We will accept this assignment. The purchaser is also authorized to withdraw claims after they have been assigned. Our authorization to withdraw claims ourselves remains unaffected by this. However, we undertake to not exercise this right as long as the purchaser fulfils his payment and other obligations in accordance with the rules. If payment is delayed, the purchaser is obliged to announce the assigned claims and his debtors to us, to give us all details required for the collection thereof, to hand over the necessary documents and to inform his debtors of the assignment.

- 3 The purchaser may carry out processing or treatment of the reserved goods for us without that resulting in obligations for us. If the reserved goods are treated, connected, blended, or mixed with other goods, which do not belong to us, we are entitled to the share in co-ownership in the new object in relation to the value of the reserved goods at the moment of treatment, connection, blending or mixing. If the purchaser acquires sole ownership of the new object, it is hereby agreed that the purchaser will concede us joint ownership of the new object in relation to the value of the treated, connected, blended or mixed reserved goods and stores them free of charge for us.
- 4 If reciprocal liability is justified by the purchaser in connection with the payment of the purchase price, the reservation of proprietary rights as well as the claim based on this in relation with goods deliveries do not expire until the bill of exchange is cashed by the purchaser as the acceptor.
- 5 If the value of the existing securities of the claims to be secured is exceeded by more than 20%, we are obliged to release them in this respect at the purchaser's request.
- 6 In the case of seizures and other types of access to the goods or end product by third parties, the purchaser has to point out our ownership thereof. In addition, he is obliged to inform us immediately of any seizures and other types of access to the goods or end product by third parties. In the case of seizures, he has to immediately send us the seizure protocol and thereby assure us that the seized object is identical to the delivered object with the reservation of proprietary rights or to the end product. In both cases, any intervention costs occurred are chargeable to the customer.
- 7 If the purchaser delays payment, especially in the case of the cessation of payments, the application for or the initiation of bankruptcy proceedings - as well as judicial or extrajudicial insolvency proceedings for the purchaser's assets, we are entitled to demand that the goods which have not yet been resold are immediately handed back. In this case, we are also entitled to demand the cession of statutory reversion by the purchaser to a third party. If we withdraw or seize the goods or the end product, there is no withdrawal possible from the contract.
- 8 In the case of cessation of payments, the application for or the initiation of bankruptcy proceedings as well as judicial or extrajudicial insolvency proceedings for the purchaser's assets, the right to resell, to treat or to reorganize as well as to connect or to blend the goods or the associated end product ceases to be applicable. Authorization for the collection of the assigned claims also expires in this case.

- 9 The purchaser is obliged to insure the goods and the end product against the dangers of fire and burglary and to show us the insurance contract upon request. The purchaser assigns us the full extent of claims against the insurer arising from the goods or the end product being insured for security reasons.
- 10 A possible withdrawal/return of the goods is exclusively effected in precautionary manner and does not signify a withdrawal from the contract, even if instalments were permitted afterwards.

## **§ 6 Guarantee**

- 1 We guarantee that our goods are free from manufacturing and material defects.
- 2 Deviations in the colour, the surface quality, the dimensions, the strength and water absorption caused by the raw materials and the type of treatment used, are not considered as defects under § 434, Paragraph 1 of the BGB (German Civil Code).
- 3 Indications of dimensions and quantity referred to in offers and agreements are not considered as characteristics under § 434, Paragraph 1 of the BGB (the German Civil Code).
- 4 The guarantee period is one year. The guarantee period for the purchase of consumer goods is 2 years. It begins with the day of delivery of the goods.
- 5 The purchaser must immediately inform us in writing of any defects and at the latest within a week of delivery. Defects which cannot be detected within this time period, even after careful inspection, shall be communicated to us in writing immediately on their detection.
- 6 If our operating and maintenance instructions are not followed, if changes are made to the goods, parts are changed and materials are used which do not correspond to the original specifications, the guarantee becomes null and void.
- 7 In the case of complaints, we are authorized to cure the defects. If we fail to cure the defects, the purchaser has the right to detract or to withdraw from the contract at his discretion.
- 8 Other damage claims with the exception of damage claims arising from a danger to life or health are excluded unless we have caused the damage to the purchaser by gross negligence or by intention.

## **§ 7 Place of Performance and Court of Jurisdiction**

- 1 Our registered office is the place of performance for the delivery unless another arrangement has been expressly agreed upon in writing.

- 2 Our registered office is also the court of jurisdiction for disputes in legal transactions with full-scale merchants under commercial law.
  
- 3 German law is agreed upon.

## **§ 8 Clause of Nullity**

Should individual regulations in these terms of delivery and payment not be valid or their validity cease at a later date, the validity of the other regulations remains unaffected by this fact. The null and void regulation is to be replaced by an appropriate regulation which the contracting parties would have agreed upon had they known of the nullity of that regulation.