

## General Terms and Conditions of Sale

### § 1 Applicability

(1) These terms and conditions of sale apply exclusively. Any terms and conditions which are contrary to or differ from these terms and conditions will not be recognised by us unless we have explicitly agreed to them in writing.

(2) Any amendments or additions to or the annulment of a contract or these terms and conditions will only be effective once we have confirmed them in writing.

(3) On no account can our silence be deemed to constitute agreement or any other declaration of will. We will not be bound by terms of purchase of the customer even if do not explicitly object to them.

(4) These terms and conditions of sale also apply to all future transactions between the parties, including if we deliver the goods to the customer without any reservations in the knowledge of differing or contradictory terms and conditions.

(5) These General Terms and Conditions of Sale only apply with respect to companies, legal persons under public law or public special funds in the meaning of Article 310.1 of the German Civil Code [Bürgerliches Gesetzbuch – BGB].

### § 2 Offer and acceptance

(1) If the order constitutes an offer in the meaning of Article 145 BGB, we shall have the right to accept it within a time limit of two weeks.

(2) The contract will be deemed to be concluded, with the content of our order confirmation including our General Terms and Conditions of Sale, if the principal fails to promptly object, i.e. within a time limit of three days. If the end of that time limit falls on a Sunday, a Saturday or a statutory public holiday, it shall be extended until the end of the next business day.

### § 3 Prices and payment terms

(1) Our prices should be understood as being ex works, i.e. from delivery from the seller's place of business, exclusive of packaging, transportation costs and insurance costs.

(2) Statutory VAT is not included in our prices. It shall be separately specified in our invoice in the statutory amount as of the date when the invoice is issued.

(3) The deduction of discounts shall require a special written agreement.

(4) Unless otherwise provided for in the individual arrangement, the purchase price shall be due for payment immediately after the receipt of the invoice. After the due date, interest for late payment in the amount of 8% over the current base interest rate per annum will be charged. We reserve the right to assert claims for more far-reaching default compensation.

(5) In the event of late payment or justified doubts regarding the buyer's ability to pay or creditworthiness, without prejudice to further rights we shall have the right to demand security or advance payments for outstanding deliveries and make all claims stemming from the business relationship immediately due.

#### **§ 4 Set-off / right of retention**

The buyer shall only have the right to carry out a set-off if its counterclaims are undisputed, have been established with legally binding effect or have been acknowledged by us. The buyer shall only have the right to assert rights of retention on the basis of counterclaims stemming from the contractual relationship.

#### **§ 5 Shipping and packaging**

(1) Unless otherwise agreed in writing in an individual contract, an obligation to send shall always exist. This shall also apply if the interpretation of the declarations of will of the parties does not return a conclusive result.

(2) We shall carry out the shipping and packaging according to our best judgement, but will not be liable for the cheapest shipment. The acceptance of the goods by the carrier or forwarder shall be sufficient as proof of correct packing.

(3) As a rule, our shipments shall be transported “ex works” at the buyer’s expense and always at its risk, including if “carriage paid” prices have been agreed. We shall decide the type of shipment, the shipping route and the carrier unless otherwise agreed in the individual contract.

#### **§ 6 Transfer of risk**

(1) The shipment shall be at the buyer’s risk, even if freight paid delivery has been agreed. The risk shall transfer to the buyer when the shipment leaves our warehouse. The moment when the goods are handed over to the carrier or forwarder, and not later than the moment when they leave our factory or warehouse shall be decisive as regards the condition of our delivery complying with the contract, including in the case of carriage paid delivery. The risk of accidental loss or accidental deterioration of the goods during shipment shall be borne by the buyer. This shall also apply if we are late in making delivery.

(2) If the shipment is delayed at the buyer’s request or due to its fault, the risk shall transfer when notification is given that the goods are ready to be shipped. For return shipments of goods, the buyer shall bear every risk until we receive the goods in our warehouse.

(3) Partial deliveries are permitted, provided that they are reasonable. In the case of partial delivery to the risk shall transfer to the buyer when the shipment leaves our warehouse.

(4) The provisions of paragraphs 1 and 2 shall also apply if, in an individual case, we have agreed to bear the shipping costs or handle delivery and installation.

(5) If the shipment is delayed due to circumstances for which we are not responsible, the risk shall transfer to the buyer on the date of the notification that we are ready to ship the goods. However, we shall be obliged to take out the insurance policies that the buyer demands at its request and expense.

#### **§ 7 Insurance policies**

(1) The buyer shall bear the insurance costs for the transportation. If the buyer has not issued any specific instructions we shall have the right to cover, on its behalf and at its expense, the transportation insurance and in the precious metal business the transport insurance of valuables. Forwarding agent’s transport, logistics and storage insurance (SLVS) cannot be taken out at our expense.

(2) At the buyer's request, the shipment shall also be insured by us at its expense against theft, breakage, fire and water damage and other insurable risks.

## **§ 8 Delivery**

(1) The time limit for delivery shall begin when the order confirmation is sent, but not before the provision of any documents, permits or approvals to be obtained by the buyer and the receipt of any agreed advance payment.

(2) The time limit for delivery will be deemed to have been met if by the end of that period the goods have left our warehouse or the customer has been notified that the goods are ready to be shipped.

(3) If the buyer incurs damage due to a delay which occurred as a result of our own or legally attributable fault, the buyer shall have the right to demand compensation for delay if it demonstrates that it incurred damage due to the delay. The compensation for delay shall amount to 0.5% for each full week of the delay, but in total no more than 5% of the value of the part of the entire delivery which cannot be used on time or in accordance with the contract as a result of the delay. In the case of a fixed date transaction, the provisions of law shall apply, with due consideration for § 10 of these terms and conditions.

(4) If the delivery is delayed at the buyer's request, beginning one month after the notification that the goods are ready to be shipped for each month we shall charge it the costs incurred due to the storage, and where the goods are stored at our place of business at least 0.5% of the invoice amount. However, we shall have the right, after setting a reasonable time limit and the ineffective lapse thereof, to otherwise dispose of the subject of the delivery or to deliver to the buyer in compliance with an appropriately extended time limit.

(5) Compliance with the delivery period presupposes the fulfilment of the buyer's contractual obligations.

(6) As long as the buyer is in arrears with a liability, our obligation to make delivery shall be suspended.

(7) In the event of culpable exceeding of an agreed delivery date, a delay in making delivery will only be deemed to have occurred after a reasonable additional time limit has been set.

(8) We reserve the right to raise the objection of non-fulfilment of the contract.

## **§ 9 Compensation for damage**

(1) If the customer is late in accepting the delivery or culpably breaches other cooperation obligations, we shall have the right to demand compensation for the damage we have incurred as a result, including any additional expenses. We reserve the right to assert more far-reaching claims. In particular, if the delivery is not accepted, the seller will be able to exercise its statutory rights. If it demands compensation for losses in such a situation, it shall amount to 10% of the purchase price. The compensation shall be set higher or lower if we prove that higher damage was incurred or the buyer proves that lower damaged was incurred.

(2) As a rule, claims for damage which the customer also incurs due to a late delivery, including damage resulting from a culpable breach of contract or impermissible acts due to negligence or consequential damage, are excluded. § 10 of these terms and conditions shall also be applicable in such a situation.

## **§ 10 Warranty and liability**

(1) The assurance of required properties must be established individually on a case-by-case basis and in writing.

(2) The customer's rights regarding defects are subject to the condition that it has properly fulfilled its inspection and complaint obligations under Article 377 of the German Commercial Code [Handelsgesetzbuch – HGB]. Complaints of any kind must be received by us promptly, and not later than within 14 days after the receipt of the goods (in the case of hidden defects promptly and not later than within 14 days after their discovery) in writing and broken down according to the type and scope of the complaints. In the drop shipment business, the 14-day time limit shall begin from the receipt of the goods by the third party, and in the case of hidden defects from the discovery at or by the third party.

(3) If a defect is identified in the purchased goods, we shall have the right to provide a supplementary performance in the form of elimination of the defect or deliver a new defect-free item, according to our choice. In the event of supplementary performance, we shall bear the necessary expenses only up to the amount of the purchase price. If possible, we shall additionally make delivery to make up for any shortfalls, otherwise we shall issue a credit note.

(4) If the supplementary performance fails twice, the buyer will have the right to rescind the contract or demand a price reduction, according to its choice.

(5) The time limitation period for claims for defects amounts to 12 months from the transfer of risk.

(6) All further claims of the buyer for compensation for damage of any kind or for expenses are excluded, irrespective of their legal nature. This particularly applies to claims for compensation based on culpability in connection with the contractual negotiations, due to other breaches of obligation, such as a breach of secondary contractual or statutory obligations, or due to tortious claims for compensation for property damage in accordance with Article 823 BGB. Claims related to consequential damage are also essentially excluded. The above exclusion of liability shall not apply:

a) if the cause of the damage relates to wilful misconduct or gross negligence of our management or senior employees or serious organisational fault on our part;

b) in the event of an injury to life, the body or health;

c) also in the event of any culpable breach of key contractual obligations, particularly assured properties; however, in this context we will only be liable for compensation for the typically foreseeable damage; properties which are specified in our advertising brochures/leaflets do not constitute assured properties; key contractual obligations include all key obligations which the contractor or principal are required to fulfil based on the respective individual contract and which are crucial for the achievement of the objective of the contract, as well as secondary obligations which, if they are culpably breached, could lead to the achievement of the objective of the contract being jeopardised;

d) outside the scope of key contractual obligations, including in the event of intentional or gross culpability of simple vicarious agents, unless we can be exempted by virtue of commercial practice; the amount of our liability shall be limited to compensation for the typically foreseeable damage;

e) with regard to material defects, if we fraudulently conceal a defect or have provided a guarantee for the quality/characteristics of the goods;

f) insofar as we are liable under the German Product Liability Act [Produkthaftungsgesetz], irrespective of culpability, in the event of defects in the delivered goods for death, injury to the body or health or damage to predominantly privately used items.

If our liability is excluded or limited, this shall also apply to the personal liability of our employees, representatives and vicarious agents.

### **§ 11 Force majeure, insolvency and inability to pay**

(1) Events of force majeure which cannot be prevented by exercising the diligence of proper operational management shall suspend the contractual obligations of the parties for the duration of the disruption and to the extent of its effects. If resulting delays exceed a period of six weeks, both the parties shall have the right to rescind the contract with regard to the affected scope of the performance. This shall also apply if those events occur at a time when we are already in default.

(2) An event of force majeure shall be deemed to have occurred, in particular, in the event of industrial disputes, operational disruptions beyond a party's control, civil unrest, official measures and other events that are beyond the control of the contract party. An event of force majeure shall also be deemed to have occurred if our upstream supplier is prevented from making delivery due to an event of force majeure or other events for which neither it nor we are responsible.

(3) If one of the parties ceases making its payments or if bankruptcy proceedings concerning its assets, insolvency proceedings or arrangement proceedings in or out of court are opened, the other party shall have the right to rescind the part of the contract which has not been fulfilled.

### **§ 12 Retention of ownership**

(1) We shall retain the ownership title to the purchased goods until we have received all payments resulting from the respective business relationship with the customer.

(2) The customer has the right to resell the purchased goods in the course of normal business. However, it assigns to us already now, as security, all receivables from its customers or third parties, in the amount of the final invoice amount (including VAT) of our claim, that arise for it from the resale, regardless of whether this occurs before or after possible processing of the goods delivered under retention of ownership. Notwithstanding our right to collect the claim ourselves, the buyer shall retain the authorisation to collect the claim also after the assignment. In this context we undertake not to collect the claim as long and to the extent that the buyer fulfils its payment obligations, no application has been submitted for the opening of insolvency or similar proceedings and no cessation of payment has occurred.

(3) If the customer fails to fulfil its payment obligations or if its financial position changes for the worse, we will be able to demand that it inform us of the assigned claims and their debtors, provide us with all the information necessary to collect the claims and the related documents and notify the debtor of the assignment.

(4) We shall be obliged to release the security (according to our choice) at the customer's request to the extent the above-mentioned security exceeds the claims to be secured by more than 10%.

(5) The processing or alteration of the purchased goods shall always be carried out for us. If the purchased goods are processed with other items, we shall acquire the co-ownership to the new item in the ratio of the value of the purchased goods to the other processed items at the time of the processing. Otherwise, the same conditions apply to the item resulting from processing as to the goods subject to retention of title.

(6) If the purchased goods are inseparably combined with other items, we shall acquire the co-ownership of the new item in the ratio of the value of the purchased goods to the other combined items at the time of the combining. If such combining occurs in such a manner that the customer's item must be deemed to be the main item, it will be considered agreed that the customer shall transfer the ownership title to us on a pro rata basis.

### **§ 13 Protective rights**

(1) We shall retain the ownership title, copyrights and industrial property rights to our designs, samples, models, images, drawings, calculations and other documents (including the right to register those rights). They cannot be used for other purposes or made available to third parties without our explicit written consent. The above-mentioned documents can only be made available to third parties if it is clear that they do not need to be kept confidential.

(2) With regard to items which are manufactured according to the buyer's stipulations, the buyer shall be liable as to whether the production of such an item breaches the industrial property rights of third parties. The buyer shall indemnify us against any losses incurred by us due to the assertion of claims based on industrial property rights of third parties.

### **§ 14 Place of performance and place of jurisdiction**

The place of performance for the delivery is the respective dispatching location for the goods. The place of performance for the payment is the seller's place of business. If the buyer is a registered trader, the place of jurisdiction is Frankfurt am Main or, according to the seller's choice, the general place of jurisdiction of the buyer.

### **§ 15 Other provisions**

(1) Rights and obligations of the parties are non-transferable, unless they have agreed otherwise in writing in an individual contract, except for assignments of purchase price claims to banks and insurance companies of the seller.

(2) The laws of the Federal Republic of Germany apply, with the exception of the conflict of laws provisions. The applicability of the UN Convention on Contracts for the International Sale of Goods is excluded.

(3) This contract shall remain binding even if individual provisions hereof are ineffective.