

## General Terms of Sale

Jebagro GmbH

### 1. General

- 1.1. Offers, sales and deliveries to companies will only be provided on the following conditions (hereafter called the "GCS") of Jebagro GmbH (hereafter called the "seller") insofar as they are not amended in writing overleaf or by an explicit written agreement between the purchaser and the seller. These GCBs replace all other agreements previously concluded in writing or verbally between the seller and the purchaser. These GCBs do not apply to consumers in the sense of § 13 BGB (German Civil Code).
- 1.2. These GCB also form the basis for all future business transactions between the purchaser and the seller and exclude any other agreements.
- 1.3. The seller will not recognise the purchaser's contradicting or deviating General Conditions of Business or Purchasing unless the seller has explicitly agreed to their application. Regardless of how such conditions are expressed, the shipment of the goods in particular does not constitute the recognition of such conditions. The transfer of title to the goods shall only take place in accordance with these GCBs. An objection to contradicting conditions shall remain in force even if no repeated explicit declaration is made before, during or after contract conclusion.

### 2. Deliveries and fulfillment location

- 2.1. Where Incoterms clauses are specified in offers or confirmations of order, the Incoterms 2010 shall apply.
- 2.2. Where the customer has not accepted the goods within three days after arrival at the delivery destination, the seller can have the goods stored at the purchaser's cost.
- 2.3. For both partners, the fulfillment location for goods contracted to be supplied "ex warehouse" is Hamburg (ex warehouse (EXW) Hamburg, Incoterms 2010), insofar as nothing to the contrary is stated in the seller's confirmation of order or offer. Insofar as the confirmation of order and the seller's offer specify different fulfillment locations, the confirmation of order - as the most recently dated document - is definitive.
- 2.4. Insofar as unloading, shipping, departure or arrival times or data respectively are stated or listed by date, such dates are approximate. Fixed dates have only been agreed where the respective dates have been specially highlighted with a corresponding remark.
- 2.5. The seller has the right to ship or dispatch the contracted goods in one or more partial loads with or without transshipment, insofar as these amount to at least 25 % of the ordered quantity.

### 3. Proviso on delivery to ourselves and hindrance to performance

- 3.1. The contract is concluded on the proviso that the seller's own supplier delivers correctly and punctually. The proviso of delivery to ourselves only applies in case the seller has concluded a congruent covering transaction with his own supplier.
- 3.2. The contract is concluded subject to the seller obtaining the necessary import and export licences or export approval. Should the fulfillment of the contract fail due to the lack of such a licence or approval, the purchaser shall not be entitled to a claim on the seller for damages or for any other reasons. The latter shall not apply insofar as the seller has caused the rejection of such licence or approval deliberately or through gross negligence.

### 4. Insurances

- 4.1. Where delivery is effected in accordance with CIF or CIP Incoterms 2010, the seller undertakes to insure the goods in accordance with the minimum ICC Institute Cargo Clause cover. Extended insurance cover will only be provided in accordance with a separate written agreement.

### 5. Liability for defects and compensation for damages

- 5.1. The purchaser is obliged to examine the goods immediately upon delivery by the seller and to notify all defects, quantity shortages and incorrect deliveries without delay.
- 5.2. Hidden defects must be notified immediately upon their discovery or at the time when such defect was recognisable for the customer assuming normal use of the goods without a more detailed examination.
- 5.3. The seller's receipt of the defect notification is definitive for compliance with the period of notice. The defect notification must be given in writing. The purchaser shall forfeit all claims for defects which have not been notified within the specified periods.

5.4. Insofar as the purchaser is not entitled to a claim for recourse in accordance with the provisions of the consumer goods purchasing (§ 478 BGB) (German Civil Code) the following shall apply:

5.4.1. The contractual nature of the goods is exclusively stated in the product description. Public statements, promotion or advertising of the goods do not constitute additional information concerning their nature. Minor deviations in range, quality, colour, weight, accessories or design which are usual in business or are technically unavoidable cannot be objected to. The suitability of raw materials for a particular use is not a contractual quality.

5.4.2. If the seller refuses subsequent fulfillment or such subsequent fulfillment fails, the purchaser can reduce the purchase price or rescind from the contract. Claims for damages remain unaffected.

5.5. In case of export transactions the seller accepts no liability that the goods are free of rights or claims of third parties based on commercial or other intellectual ownership or as regards the possibility of importing the goods into the target country requested by the purchaser. The purchaser is exclusively responsible for examining the situation regarding protection rights in the country of destination. The purchaser undertakes to advise the seller in writing before an award of contract of contradicting protection rights, import constraints and especially embargos with regard to the goods in the country of destination.

5.6. The seller accepts no guarantee in a legal sense for the nature or durability of the goods. Possible claims against manufacturers remain unaffected.

5.7. The seller is only liable to provide compensation for damages in case of culpability. The seller's liability to provide compensation for damage, especially for a violation of obligations, delay in fulfillment, non-fulfillment or non-contractual fulfillment due to minor negligence is excluded. This shall not apply in case of the negligent violation of essential contractual obligations by the seller or his legal representatives or vicarious agents. In such a case the seller's liability is limited to directly foreseeable damage typical of the contract. An essential contractual obligation is given where the violation is related to an obligation upon which the purchaser depended and was entitled to depend.

5.8. The seller accepts no liability for the proper (pre)registration of the substances contained in the goods by a sub-supplier in accordance with EC regulation no. 1907/2006 (REACH), insofar as such lack or error in (pre)registration is not apparent. Clause 5.7 remains unaffected.

5.9. The purchaser's right to rescind from the contract due to a violation of obligations not concerning a defect in the purchased goods is only given where the seller is responsible for such violation.

5.10. The purchaser's claims for defects shall expire one year after the delivery of the goods insofar as legal regulations do not prescribe a longer expiry period.

5.11. The expiry period in case of delivery regress in accordance with §§ 478, 479 BGB remains unaffected. It shall be five years from the delivery of the defective goods to the purchaser.

5.12. The aforementioned liability limitations shall not apply in case of the seller's liability for damage resulting from injury to life, body or health or in case of compulsory liability in accordance with the German Product Liability Act.

## **6. Total liability**

6.1. Regardless of the legal nature of the claim raised, further liability than that foreseen in Paragraph 5 is excluded. This applies particularly to claims for damages with regard to culpability in contract conclusion, other violations of obligations or tort claims in accordance with § 823 BGB.

6.2. The limitation specified in chapter 6.1 also applies where the purchaser claims compensation for fruitless expenditure instead of fulfillment of contractual obligations.

6.3. Insofar as the claim for damages against the seller is excluded or limited, this also applies with regard to personal liability for damages on the part of our employees, representatives and vicarious agents.

## **7. Payment terms**

7.1. In cases of sales for cash against documents, payment must be made immediately "strictly net against documents" unless stipulated otherwise in the seller's offer or order confirmation. Insofar as the seller's order confirmation and offer state differing payment terms, the order confirmation as the most recent document is definitive.

7.2. Insofar as no other agreement has been concluded, the payment terms, "Strictly net cash against invoice shall apply, whereby agreed discounts may be deducted.

- 7.3. Offset or the exercise of a right of retention by the buyer in respect of due invoices for delivered goods is only permitted where we recognise the claims upon which it is based, such claims have been legally established or the counter claim is in connection with the goods invoiced. The seller is free to raise the aforementioned claims in law.
- 7.4. The seller is entitled to make outstanding deliveries only in return for advance payment or security payment if he becomes aware, after contract conclusion, of circumstances which are likely to reduce the purchaser's creditworthiness significantly and endanger the payment of the seller's open invoices to the purchaser under the respective contractual relationship.
- 7.5. Bills of exchange and cheques will only be accepted as payments to account. The purchaser must pay bank and currency exchange costs etc.
- 7.6. The purchase price shall only be considered to have been paid when the amount is finally available to the seller in one of his accounts.

## **8. Retention of title**

- 8.1. The seller shall be provided with the securities specified in the following paragraphs until all claims (including all current account balances) against the purchaser to which the seller is entitled on any legal basis now or in the future have been settled.
- 8.2. Upon request, the seller must release securities of his choice insofar as their estimated current market value exceeds the secured debts by more than 20 %, unless the seller provides evidence that this release threshold is inappropriately low in individual cases.
- 8.3. The seller shall retain title to the goods.
- 8.4. Processing or transformation shall always be effected for the seller as manufacturer but without any obligation upon him. Should the seller's co-ownership cease as a result of combining the goods, it is agreed here and now that the purchaser's pro rata (co-) ownership of the combined goods in terms of their value (invoiced value) shall be transferred to the seller. The purchaser shall keep the seller's (co-) ownership safe free of charge. Hereafter, goods to which the seller is entitled to (co-) ownership shall be described as reserved goods.
- 8.5. The aforementioned Paragraph 8.4 applies to substances and products delivered by the seller provided that the seller has no obligation in the sense of EC Regulation no. 1907/2006 ("REACH").
- 8.6. The purchaser is entitled to sell the reserved goods on during the course of his normal business activities. Pledging and assigning as security are prohibited.
- 8.7. Here and now the purchaser assigns claims resulting from selling the reserved goods on or from other legal grounds (insurance, tort etc.) to their full extent – in case of the seller's co-ownership of the reserved goods, pro rata according to the co-owned proportion - to the seller. The seller accepts the assignment.
- 8.8. The purchaser is authorised to collect the assigned debts on behalf of the seller.
- 8.9. The sale authorisation in accordance with Para. 8.6 and the authorisation to collect in accordance with Para. 8.8 can be revoked individually or jointly by the seller if the purchaser violates his obligations under the respective purchase agreements and especially if:
- 8.9.1. The purchaser falls into arrears with a payment obligation resulting from the business relationship;
- 8.9.2. The purchaser stops making his payments or he or a third party makes an application to open insolvency proceedings concerning his assets;
- 8.9.3. A compulsory enforcement measure with regard to the purchaser's movable assets remains fruitless or proceedings are initiated to compel he purchaser to make the statutory debtor's declaration;
- 8.9.4. The purchaser does not redeem a cheque or bill of exchange;
- 8.9.5. Such a significant deterioration takes place in the purchaser's financial circumstances that the fulfillment of the sellers claims under the business relationship are endangered;
- 8.9.6. The purchaser does not fulfill another essential contractual obligation despite a warning and the threat of rescission.

- 8.10. The purchaser can request a withdrawal of the revocation in accordance with Para. 8.9 if, and insofar as, he ensures and provides evidence that any danger to the seller's security interests is excluded.
- 8.11. Upon request, the purchaser is obliged to provide the seller with information concerning the debtors of the assigned claims and, under the conditions of Para. 8.9, notify the debtors of the assignment.
- 8.12. If the seller exercises his rights as described in Para. 8.9, all claims against the purchaser secured by the reservation of title fall due immediately. Where equity demands, the advancing of the due date must be reflected by a reduction in the interest rate.
- 8.13. The purchaser is obliged to insure the reserved goods adequately at his own cost against theft, breakage, fire and water damage.
- 8.14. The purchaser is obliged to take such measures as are required to justify or maintain the reservation of title - or a comparable security right in the country of his branch or deviating country of destination - and to provide corresponding evidence to the seller upon request. Failure to comply constitutes a fundamental violation of the contract.
- 8.15. The purchaser must inform the seller immediately of any attachments or other encumbrances on the seller's ownership rights to the goods. The costs arising from defending against the intervention of third parties must be reimbursed by the purchaser. If the purchaser becomes insolvent after receipt of the goods or after they have been sold on, the seller can, notwithstanding his ownership rights according to § 47 InsO (German Insolvency Code), demand substitute separation in accordance with § 48 InsO, insofar as the purchase price of the onward sale has not already been assigned to the seller in accordance with Para. 8.8.

**9. Court of jurisdiction and applicable law**

- 9.1. The exclusive court of jurisdiction is Hamburg, Germany. However, the seller is also entitled to initiate proceedings in the court responsible for the purchaser or in any other court which may be responsible according to national or international law.
- 9.2. The parties agree to the exclusive validity of German law and the exclusion of international private law and the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 9.3. The invalidity of individual provisions of these GCB shall not affect the validity of the remaining provisions.

Status: November 2012