

# GENERAL TERMS AND CONDITIONS FOR SALE AND DELIVERY of Ferdinand Lusch GmbH & Co.KG

## § 1 General

- (1) Our deliveries, services and offers are subject to these terms and conditions for sale and delivery exclusively. This shall also apply to any future business transactions of similar nature, even if not expressly agreed upon. Any conflicting conditions, or any conditions of the customer that might differ from our terms and conditions, shall apply only if their validity has been expressly confirmed by us in writing. Our terms and conditions shall also be valid if we execute the delivery without reservations despite being aware of the conflicting conditions or any conditions of the customer which differ from our terms and conditions.
- (2) Our terms and conditions shall apply only to companies in the sense of § 14 BGB [German Civil Code].

## § 2 Offer, Confirmation of order

If there is a binding order (offer), this order may be accepted by us within two weeks (Order confirmation). In that case, the prices and other provisions specified in the order confirmation shall be valid unless they differ from the customer's order, and said customer promptly objects to same in writing. All designs are subject to change. We shall be bound by our orders for a period of ten days unless otherwise agreed. Any information in our catalogues and offers regarding quantities, weight and dimensions shall be binding only upon an express agreement in writing.

## § 3 Delivery Deadline

- (1) Agreed-upon delivery deadlines shall be deemed approximate deadlines unless the service was expressly specified for a certain date, and compliance with said date is an essential part of the transaction for both parties (fixed transaction). In case of a delay in delivery, we shall be entitled to a reasonable extension of no less than fourteen days. Once this extension period has expired without tangible results, the customer may withdraw from the contract. In case it is impossible for us to render the services, the customer shall be entitled to these rights even without granting any extension at all.
- (2) On-demand orders shall be recalled by the customer within one year following the order confirmation. If the ordered merchandise is not (partially) recalled within this time period, we shall be entitled to impose a reasonable deadline extension, and upon non-compliance with same, we shall be entitled to refuse delivery of the unclaimed merchandise and to reserve the right to file restitution claims for non-fulfilment or to withdraw from the contract.

## § 4 Place of fulfilment, transfer of risk, packaging and transport

Delivery of the ordered goods shall be ex-works. Responsibility for the consignment shall be transferred to the customer as soon as the consignment is handed over to the transport provider or as soon as it leaves the factory for dispatch. If the goods are ready for dispatch and shipment or acceptance of the consignment are delayed for reasons that the customer is responsible for, the risk shall transfer to the customer as soon as the dispatch note of the consignment is issued. We shall be authorized to package the goods in an industry-standard way and to provide the appropriate transport and auxiliary tools. Packaging, transport, means of transport and other auxiliary tools shall be charged at cost. We shall not take back any transport and other types of packaging materials in accordance with the Packaging Ordinance. If specifically requested by the customer, a separate insurance policy for transportation damages may be purchased.

## § 5 Prices, Terms of payment

- (1) Our prices are quoted ex-works in Euro, exclusive of the statutory sales tax, postage, packaging and other shipping expenses. Invoice amounts are payable without any deductions within thirty days. We shall grant a cash discount of 2% if payment is made within ten days from the date of delivery. We expressly reserve the right to refuse checks or bills of exchange in individual cases. Acceptance shall always be based on performance only. The customer shall be entitled to any off-setting or counter demands only if such demands have been found legally valid, are undisputed, or have been acknowledged by us. This shall also be valid in cases where the customer asserts a right of retention that may not be based on the same contractual relationship.
- (2) If the customer is in payment default, we shall be entitled to demand interest on delayed payment in the statutory amount. We reserve the right to document higher damage amounts.

## § 6 Liability for defects

- (1) The purchased goods are deemed free of defects when the goods are in compliance with the contractually agreed attributes. Any public statements, recommendations or advertisements do not represent the contractual attributes of the goods. The customer does not receive any legal guarantees. Guarantees of the manufacturer remain in effect.
- (2) Warranty claims by our customers require due compliance with the examination and complaint obligations pursuant to §§ 377, 378 HGB [German Commercial Code]. In case of justified complaints, we shall be entitled – at our discretion - to remedy those defects or to deliver a defect-free product (supplementary performance). To provide such supplementary performance, the customer shall be entitled to impose a reasonable deadline, with a minimum of 21 days.
- (3) If the above supplementary performance is not possible or has failed, the customer shall be entitled to either reduce the price accordingly or to withdraw from the contract in accordance with the statutory provisions. This shall apply in particular in case of culpable delays or refusal to provide such supplementary performance, and also if the supplementary performance fails for a second time. If the defect is due to culpability, the customer may also demand restitution of damages pursuant to the requirements specified in § 7.
- (4) The above stipulations shall also be applicable to delivery of other items or a lower quantity of items.
- (5) Any warranty claims for supplementary performance and compensation for damages shall have a statute of limitation of one year from the date of delivery of the purchased item. This shall not apply to any claims resulting from facilities or delivery of items which were used pursuant to their intended purpose as part of a facility and which have caused such defect. Furthermore, this one year statute of limitation shall not apply in case of any injuries to persons or damages caused by gross negligence or wilful negligence. No claims for price reduction or the right to rescind a contract shall be permitted once the claim for

- supplementary performance has expired. In this case, however, the customer may refuse to pay the purchase price as he is entitled to do so based on contract rescission or price reduction. However, in such a case of contract rescission or price reduction with subsequent refusal of payment, we shall be entitled to rescind the contract.
- (6) These provisions on defect liability shall not apply to any claims resulting from any manufacturer recourse

## § 7 Restitution of damages

- (1) Unless otherwise specified below, any claims for restitution of damages by the customer shall be excluded. This shall apply in particular to claims from ancillary contractual obligations, culpability upon contract signing and tort liability. It shall also apply to any claims for damages outside of the purchased goods and claims for lost profits, as well as claims not resulting from the defective nature of the purchased goods.
- (2) The exclusion of liability of Sect. 1 shall not apply if we are culpably in violation of any contract obligation. In these cases the liability shall be limited to contract-typical and foreseeable damages. The essential contract obligations include on the one hand the individual contract-stipulated principal performance obligations and their timely performance, and on the other hand the information and diligent care obligations which are of essential significance for the protection of the customer or which are a necessary ingredient of contract implementation.
- (3) Furthermore, the exclusion of liability of Sect. 1 shall not apply to any liability as the result of injuries to life, body or health, and it shall not apply in case of any damages as the result of intentional or grossly negligent violation of obligations by us, our legal representatives or agents. Furthermore, it shall not apply in cases where the product liability law provides liability coverage for personal or property damages from defects in privately used delivered goods. I also shall not apply to the assumption of an individually agreed guaranty or the respective assurance of an attribute if any thus incorporated defect triggers our liability.
- (4) We shall not be responsible for any delays in delivery and service due to force majeure or events for which we are not culpable and which significantly impair or render impossible our deliveries, including problems with material procurement, business interruptions, strikes, lockouts, lack of transportation, government orders, energy supply problems, etc., even if they happen to our suppliers or sub-suppliers, and even in case of binding deadlines and time schedules. These events shall allow us to postpone the delivery and service by the duration of the delay, plus a reasonable start-up time, or to rescind the contract, in full or parts thereof, due to the unfulfilled portion of it. We shall inform the customer of such delivery difficulties immediately. We shall be entitled to render partial deliveries which are reasonable to the customer.
- (5) The above exclusions and limitations of liability shall apply equally to our organizational organs, legal representatives, employees and other agents.

## § 8 Reservation of title of ownership

- (1) We shall reserve title of ownership to the purchased item until all payments due from this business relationship have been received. Inasmuch as we may agree with the customer on payment of the amount owed based on the exchange of checks, the reservation of ownership shall also extend to payment on the accepted checks and shall not be cleared by simply crediting the accepted check to our account. In case of an open account, the reserved ownership shall be considered collateral on the balance amount due to us. In case of a contract violation by the customer, particularly with regard to payment default, we reserve the right to retake the delivered items.
- (2) Any retaking of purchased items shall not be deemed a rescission from the contract unless expressly stated as such by us in writing. Upon retaking the item, we shall be authorized to use or sell it, and to apply the proceeds to the outstanding obligations of the customer, minus reasonable utilization costs.
- (3) In case of seizure or other interference by third parties, the customer must inform us immediately in writing so that we may file a complaint pursuant to § 771 ZPO [German Code of Civil Procedure]. In case the third party is unable to reimburse the costs for legal and out-of-court expenses in a complaint pursuant to § 771 ZPO [German Code of Civil Procedure], the customer shall be responsible for any losses associated with same.
- (4) The customer shall have the right to resell the item in the usual course of business. However, the customer agrees to pay us all demands to the extent of the final amount of the invoice (including sales tax) from the amount obtained as a result of sale to his buyer or third parties, regardless of whether the item is resold with or without any reprocessing. The customer shall remain authorized to collect such debts even after the above assignment has been made. Our authority to collect the outstanding debts ourselves remains in effect. However, we shall be obliged not to collect the outstanding debts as long as the customer fulfills the payment obligations from the collected amounts, does not delay payment and especially does not file for insolvency or inability to pay. If this were the case, however, we may demand that the customer inform us of all outstanding amounts and the respective debtors, along with other information necessary for collection of our debts. We may also demand that the customer hand over the relevant documents and inform the debtors of the amount owed to us.
- (5) The reprocessing or modification of the item by the customer is always handled on our behalf. If the purchased item is processed along with other objects not belonging to us, we shall hold joint ownership of the new item in the ratio of the value of the purchased item to the other processed objects used at the time of processing. If the blending is done in such a manner that the item of the customer becomes the primary item, it shall be deemed that the customer has transferred a portion of the item's ownership to us. The customer agrees to hold our sole or joint ownership of the item. Upon the customer's request, we shall be obliged to release our collateral to the extent that the realisable value of our collateral exceeds the secured outstanding amounts by more than ten per cent. The choice of collateral to be released is at our discretion.

## § 9 Place of Jurisdiction, Applicable law

- (1) For both Parties to the contract, the place of fulfilment shall be the domicile of the delivering factory, in case of prepaid freight as well. The place of jurisdiction, including check and document proceedings, shall be Bielefeld (Germany). However, we reserve the right to initiate court proceeding at the customer's general jurisdiction.
- (2) German law shall apply exclusively, with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods.