



Terms and Conditions of Sale

(English Version, 2006-08-23)

I Conclusion of contract

1. The following terms and conditions of sale shall apply to all our quotations, supplies and services including information and advice. They shall apply also to all future business relationships with customers even when we ourselves do not make express reference to them on the conclusion of a contract, unless otherwise expressly agreed.

2. Conditions other than these shall not apply including where we do not again express objection to you. Additions, amendments or collateral agreements to these conditions shall require our written confirmation in order to be effective. This shall also apply to release of the requirement as to writing.

3. Our quotations are subject to change without notice unless a period of validity is expressly agreed. A contract shall only become binding if we confirm the order of the customer in writing or make delivery or perform a service on order without separate confirmation.

4. The use of an electronic signature in accordance with the current level of technology and the statutory provisions relating thereto shall be permissible for a valid conclusion of a contract or amendment to a contract and shall replace the requirement as to writing.

II. Fixed dates and time limits

1. Fixed dates and time limits quoted for our deliveries and services shall not be binding unless otherwise expressly agreed in writing. Time limits shall only commence to run when agreement is reached on all particulars of performance, the customer has furnished information, documentation and materials to be provided by him and has paid the agreed price or made payment on account, provided that cash in advance or payment of a deposit has been agreed. The absence of co-operation as well as requests for amendment on the part of the customer shall lead to a reasonable postponement of fixed dates or increase in time limits.

2. Unforeseeable and unavoidable events (for example, war, circumstances of a warlike nature, want of energy or raw materials, sabotage, industrial action) as well as all other breakdowns or official actions for which we are not responsible shall release us from the duty to make delivery or perform service for the duration of their continuance, including if they arise during a previously existing delay. Fixed dates and time limits shall be thereby extended to a reasonable extent. This shall also apply to deliveries and services of our own suppliers not made in good time or incomplete, for which we are not responsible.

3. The customer may on failure to observe the set period for other reasons, require compensation for delayed performance for each complete week of the delay in the amount of 0.5 per centum up to a total amount of 5 per centum of the value of that part of the delivery for which we are in delay (provided that it can be proved that damage has arisen for him from the delay). Further claims by the customer are excluded for all cases of delayed delivery including following the expiry of an additional period which may have been granted to us. This shall not apply to such an extent as liability is imposed by law for example in cases of wilfulness, gross negligence or death, personal injury or injury to health. The right of the customer to rescind following expiry of an unavailing

additional period granted to us shall remain unaffected. The same shall apply correspondingly to a cancellation by us.

III. Prices and terms of payment

1. Our prices are net prices ex-stock (INCOTERM 2000).

2. The prices are binding within a period of one month from confirmation of contract (engrossment of document) if not otherwise expressly agreed. The date of the order shall apply if no confirmation of contract is issued. Thereafter we may additionally charge the customer with increases in costs taking into account his reasonable interests.

3. All payments are due for payment thirty days following despatch of the consignment and delivery of invoice and to be made without deduction free of charges to the address for payment stipulated, unless otherwise expressly agreed. Receipt of payment is decisive for payment. Bills of exchange and cheques shall only be accepted on the basis of a corresponding agreement and only on account of performance. Payment shall only be deemed to be made in those cases when we are finally able to dispose of the particular amount. All costs of bills of exchange, cheques and discount as well as all other costs thereby shall solely be borne by the customer.

4. Arrears of payment arise thirty days following the due date for payment and receipt of the invoice. The debtor shall be in arrears thirty days following receipt of the consignment and the due date for payment as determined by the terms of payment at the latest, if the point in time of receipt of the invoice is uncertain.

5. We may at our discretion charge interest on arrears in the amount of eight percentage points above the base lending rate (ECB), or compensation for the exactly calculated loss arising to us from the delay, if the customer shall be in arrears with a payment. Section 353 HGB [*German Commercial Code*] shall not be thereby affected.

6. The customer shall only be entitled to a right of set-off or retention provided that his counter claims have been judicially determined, or are uncontested or acknowledged by us.

7. Assignment of all claims of the customer against us to a third party shall require our express written consent to be effective. Section 354a HGB shall not be affected thereby.

8. We may perform outstanding deliveries or services only on a cash payment in advance or on reasonable provision of security, whereby any delivery or service time limits shall be extended correspondingly or fixed dates postponed, if a fundamental deterioration in the financial situation of the customer becomes known to us subsequent to the conclusion of a contract (for example, application to institute insolvency proceedings, disadvantageous credit rating or on delay in making interim payment). We may demand immediate payment of our invoice, notwithstanding clause 3 hereto, if we have already made delivery.

IV. Delivery and passing of risk

1. The place of performance is the place of delivery pursuant to INCOTERM depending on the particular factory in which the subject matter of the delivery is manufactured. The risk of



accidental loss or accidental depreciation of the goods shall pass to the customer on delivery from the place of performance. This shall also apply to partial deliveries or if we undertake other services (for example, dispatch of goods or shipping costs).

2. We may make partial deliveries and perform partial services if we notify the customer in good time that the remainder is to be delivered or provided subsequently within a reasonable period and this is acceptable to the customer following enquiry.

3. The customer shall bear the costs of the ineffective delivery as well as for further storage at the supply factory or at a place of storage selected by us, if the delivery is delayed for reasons for which the customer is responsible. In these cases the risk of an accidental loss or accidental depreciation shall pass to the customer with notification of readiness to make delivery.

V. Warranty and inspection of in-coming goods

1. We ensure within the scope of the following conditions that the products delivered and services performed at the time of the passing of risk for the delivery or service are free of defects which annul or more than only slightly reduce the value or suitability for the normal or presumed use according to the warranty. All those products or services, which within the statutory period of limitation (regardless of service life) display a defect, shall at the discretion of the supplier be subsequently improved without charge, re-supplied or performed afresh, provided that the cause for this was already present at the time of passing of risk. We make no warranty for wear as a result of normal use and defects which have been caused through improper use, improper treatment or storage as well as failure to observe directions of the manufacturer, assembly or operating instructions. The right to warranty lapses not only on improper treatment by the customer but also by third persons instructed by him.

2. All particulars concerning our products, in particular illustrations, drawings, technical specifications and references to standards and specifications contained in our quotations and brochures do not represent guaranties of quality and/or durability within the terms of section 443 BGB [*German Civil Code*], but are only descriptions or markings, unless otherwise expressly agreed in writing. The corresponding shall apply to the delivery of samples and specimens.

3. The customer shall examine the goods immediately after delivery including if samples or specimens have previously been supplied, and notify us without delay in writing of defects or variations in quantity noticed. Otherwise the goods shall be deemed to be approved unless there is a question of defects which are not recognisable upon examination.

4. The period of guarantee amounts to twelve months and commences at the point in time of delivery of the products to the customer at the place of performance, but on delivery to the customer's premises at the latest. The period of warranty commences with acceptance pursuant to the terms of section 640 BGB unless plant output including work and materials for non-reproducible goods are the subject matter of the contract.

5. We accept the costs arising for the purposes of subsequent improvement (in particular carriage charges, transport costs, labour and materials). The customer shall bear the additional costs in as far as the working expenses thereby increase where the objects following delivery have been conveyed to a location other than the place of delivery of the customer unless the conveyance corresponds to use in accordance with conditions. In the case of

subsequent improvement, the customer shall make this possible for us without delay and make the goods the subject of complaint available to us for examination and processing.

6. The customer shall bear the costs arising through any unjustified complaints. Lump sum compensation for complaints by customers shall not be recognised.

7. The customer may demand a price reduction or cancellation of the contract after failure of the subsequent improvement or replacement regardless of any claims for damages.

8. Claims arising for a defect shall not exist on discrepancies in agreed characteristics and impairment to usefulness which are only negligible.

9. We shall not be subject to liability pursuant to section 478 BGB in as far as we act for our customers as supplier of materials and parts.

10. Further claims are excluded unless specified in these General Conditions of Sale and Service.

VI. Reservation of ownership

1. We reserve ownership in the goods delivered as well as the objects originating from your treatment or processing ("reserved goods") until full payment of all claims now or in the future against the customer to which we are entitled including in as far as these are only justified after conclusion of the contract. The reserved ownership secures our balance claims with current account receivables.

2. A treatment or processing is only permitted in normal business activities and is then undertaken for us by the customer without liabilities arising for us. If processing is made in connection with other goods supplied either with a simple or likewise with extended reservation of ownership, we acquire joint ownership in the new goods in the ratio that the gross purchase price agreed between ourselves and the customer bears to the corresponding value of the other goods.

The customer now immediately transfers to us his shares in joint ownership arising from any joining, intermingling or blending the reserved goods with other goods.

3. The customer shall possess the goods in our sole or joint ownership as bailee according to the principles of sound stewardship. If he enters into contracts of insurance for the reserved goods, he now immediately assigns to us his claims under the particular contract of insurance, and on joint ownership in the ratio which our share in joint ownership bears to all other shares in the joint ownership.

4. The customer may only dispose of the reserved goods on sale in normal business transactions and if it is ensured that the claims thereby arising pass to us. He is not permitted to make other disposals of any kind (in particular, charges and transfers by way of security).

5. The customer hereby assigns to us as security claims arising to him from the disposal of, or another legal right in connection with, the reserved goods. The customer hereby assigns to us in the amount of his resale claim, a part of his balance of claim including the closing balance if the claim assigned is currently charged for.



The assignment of claim shall be deemed to be agreed in the amount of the part which corresponds with the gross price agreed between the customer and ourselves plus a security margin of 20% of this price, if he disposes of the reserved goods following treatment or processing or following joining, intermingling or blending with other products or together with other products. The customer may recover the claims assigned to us.

6. We may revoke the authorisation to dispose of the reserved goods and the authorisation for collection of the claims assigned to us at any time if the customer fails properly to fulfil his obligations towards us.

7. The customer is under an obligation to us at all times to present all information desired concerning the reserved goods and the assigned claims and to deliver the corresponding documentation. The customer shall at our request notify debtors of the assignment.

8. The customer shall notify us with production of the corresponding documentation without delay of seizures or claims of third parties (including all measures of distraint) in respect of the reserved goods or assigned claims. He shall immediately notify third parties of our reservation of ownership and the assignment by way of security. The costs for the defence of such seizures shall be borne by the customer.

9. We may take back the reserved goods, disclose the assignment by way of security and realise the reserved goods and the assigned claims for the purpose of the satisfaction of claims due against the customer without prejudice to our other rights, if the customer is in arrears with payment or in breach of his duties arising under these Conditions. The customer shall in this case grant us or a person instructed by us immediate access to the reserved goods and return these. Our demand for return or a levy of distress instituted by us shall not be deemed to be rescission of the contract.

VII. Other claims for compensation

1. Claims for compensation by the customer whatever the legal basis in particular on account of breach of duties arising from a contractual relationship and acts which are not permitted shall be excluded.

2. This shall not apply in cases in which we or our servants or independent contractors are responsible for wilfulness or gross negligence. Exclusion of liability shall also apply in cases in which liability is imposed by law on us or our servants or independent contractors for death, personal injury or injury to health or on account of acceptance of a warranty for the presence of a characteristic. We shall also be liable in cases of ordinary negligence on the breach of fundamental contractual obligations, the performance of which the customer may have confidence in to a particular extent.

3. We shall be liable only to the extent of foreseeable typical damage, taking into account all determining and recognisable circumstances, on breach of fundamental contractual obligations caused by ordinary negligence as well as by wilfulness and gross negligence of such employees and other persons for whom we are vicariously liable who are not company officials.

4. Liability according the law relating to product liability shall remain unaffected. An alteration in the onus of proof to the disadvantage of the customer shall not be incidental to the above provisions.

VIII. Miscellaneous

1. German law shall be applied to our contracts and these General Conditions of Sale for deliveries of HERBST & MISSING KG to the exclusion of the Treaty of the United Nations on contracts concerning international sale of goods (CISG).

2. The possible ineffectiveness of individual provisions of these Conditions of Sale shall not affect the effectiveness of the remaining provisions. Any ineffective provisions shall be replaced by the parties to the contract with such which most closely approach the purpose of the ineffective provision.

3. The sole place of jurisdiction for all disputes arising from and in connection with this contract is Düsseldorf. We may however select another place of jurisdiction.