

# General Terms & Conditions for Goods and Services

Last revised: September 2005

## 1. Scope of validity

The following provisions shall apply exclusively to all contracts for goods and services concluded between the GmbH & Co. KG, other contractors and customers (contractual partners), including contracts concluded at a future date. If one of the provisions of these General Terms and Conditions should fail to have become an integral part of the contract or be invalid, whether in whole or in part, the contract shall remain valid and effective in all further and other respects.

Written notification shall be provided to the contractual partners of any amendments to these General Terms and Conditions. They are deemed to have been accepted if no written objection is lodged by the contractual partner. The GmbH & Co. KG shall make specific reference to this acceptance condition when providing notification of amendments. The contractual partner must lodge any objection to the GmbH & Co. KG within six weeks of receiving notification of amendments.

## 2. Contract formation

When contracts are subject to written or telex conformation, the content of the confirmation notice provided by the GmbH & Co. KG is authoritative, unless the recipient lodges an objection without delay. The GmbH & Co. KG will make specific reference to this fact to customers in its confirmation notice.

## 3. Payment

Unless otherwise agreed, payments in respect of goods and services provided by the GmbH & Co. KG shall be remitted in full and without delay upon receipt of invoice. When goods and services are purchased on credit, the period for payment commences on the date of the delivery or performance.

Payment by bill of exchange is only admissible subject to a formal prior agreement and accepted for processing only.

Discount charges and costs of collection shall be paid by the purchaser and are due immediately.

When payments are made by check, the payment is deemed to have been effected not when the cheque is received by the GmbH & Co. KG but when it is finally honoured.

Contractual partners of the GmbH & Co. KG may only offset counterclaims if they are not disputed by the GmbH & Co. KG or if they are legally recognised. Contractual partners of the GmbH & Co. KG are not entitled to exercise a right of retention which is not founded on the same legal relationship.

## 4. Current account

All reciprocal claims arising from the business relationship may, subject to a separate agreement, be placed in a current account to which the provisions of articles 355 et seq of the German Commercial Code (HGB) apply.

The GmbH & Co. KG's receivables shall be subject to a rate of interest which is 8 % higher than the base rate.

The GmbH & Co. KG's statements of account at 31 December of any one year constitute balances of accounts. The account balance is deemed to be recognised if the account holder does not raise any objections within six weeks of receiving the balance of accounts. Specific reference shall be made to this when the balance of accounts is sent to the GmbH & Co. KG. This does not affect legal claims.

## 5. Pricing policy

Unless otherwise agreed, the GmbH & Co. KG is entitled to fix prices at its equitable discretion.

## 6. Liability

Claims for damages asserted by the contractual partner, on whatever legal grounds are excluded, in particular claims asserted on grounds of the breach of duty to comply with an obligation or tort.

This does not apply in cases of mandatory statutory liability, in particular

- in cases of intent and gross negligence;
  - in cases of injury to life and limb or health;
  - if a warranty is given for the existence of a characteristic;
  - if a fundamental contractual obligation is breached
- under product liability law.

The above provisions are not associated with a change of the onus of proof to the detriment of the contractual partner.

## 7. Claims for defects

The GmbH & Co. KG is liable for defects for a period of one year, with the exception defects pursuant to articles 438, section 1, no. 2 and 634 a, section 1, no. 2 of the German Civil Code (BGB). In the case of consumers, this period of liability only applies to the sale of used, movable goods. The GmbH & Co. KG has no liability vis-à-vis companies for defects in used items. The GmbH & Co. KG is only liable to contractors for public statements, in particular advertising for own purposes or advertising which is explicitly agreed in the contract.

## 8. Place of performance / place of jurisdiction

The business premises of the GmbH & Co. KG are the place of performance for both parties hereto if the customer is a merchant or a special authority under public law or a special fund under public law or if the customer's place of residence is outside the Federal Republic of Germany. The applicable law at the place of performance is authoritative for all legal relationships between the customer, if the customer is a contractor, and the GmbH & Co. KG, even if the lawsuit is filed in another country.

If the customer is a merchant or a special authority under public law or a special fund under public law, the GmbH & Co. KG is entitled to file a lawsuit at the courts which have jurisdiction at the place of performance, and legal action may only be brought against the GmbH & Co. KG at these courts. The competent courts at the claimant's (AG's) general place of jurisdiction have exclusive competence for collection proceedings.

**Deliveries effected by the GmbH & Co. KG are also subject to provisions 9 to 13.**

## 9. Delivery

The GmbH & Co. KG is entitled to make part deliveries if this is acceptable to the contractual partner. If delivery on request is agreed, the contractual partner shall request delivery within a reasonable period of time.

If delivery is impossible or unduly complicated as a result of force majeure, official measures, stoppages, strikes, extreme weather conditions or similar circumstances, the GmbH & Co. KG shall be released from its obligation to deliver for the duration of such events and to the extent of their effects. The GmbH & Co. KG shall notify the contractual

partner without delay when it becomes evident that such events are impending. Such events also entitle the GmbH & Co. KG to withdraw from the contract. In the event that the GmbH & Co. KG's suppliers fail to deliver or make inadequate deliveries, it shall be released in part or whole from its delivery obligations. This only applies if the GmbH & Co. KG has taken the necessary precautions to procure the goods which it has to deliver and selected its suppliers with due diligence. In this case, it undertakes to assign any claims against suppliers to the contractual partner upon request.

The GmbH & Co. KG may only apply transportation cost increases, tariff changes, ice, high and low water supplements to the purchase price if delivery is effected more than four months after the conclusion of the contract.

When consignments are sent to contractors, the contractors bear this risk; even in the case of CPT deliveries.

## 10. Packaging

The goods shall be furnished with packaging according to custom and usage at the expense of the contractor. The contractual partner shall empty loaned packaging units immediately and to return them in perfect condition, CPT contractor. They may not be filled with other goods or put to other use.

## 11. Notice of defects

Notice of goods which are obviously defective or in an obviously deviant condition and notice of the delivery of goods which are obviously not the goods ordered must be provided by the contractor without delay and, at latest, within one week of receipt of goods or discovery of the defect.

Justified notice of defects in consumables only entitle the contractor to a reduction in the purchase price. Notice of defects pertaining to non-consumables only entitle the contractor to demand subsequent performance. If subsequent performance cannot be rendered within a reasonable period of time or is not possible due to the nature of the product, the contractor may optionally withdraw from the contract or demand a price reduction. The reservations in article 478 of the German Civil Code (BGB) remain unaffected.

The contractor is required to inspect the goods for material defects, e.g. defects relating to quantity, quality and condition, immediately upon receipt and shall note of any obvious defects on the consignment receipt. Otherwise, the provisions of article 377 of the German Commercial Code apply to consignments delivered to contractors. Damage during transportation does not entitle the contractor to refuse acceptance from the GmbH & Co. KG.

## 12. Performance impairments

The purchase price is due and payable immediately in the event that the contractual partner absolutely refuses to pay the purchase price. The same legal consequence applies if the contractual partner has agreed to pay by instalment and is more than one instalment in default, and if the amount outstanding is at least 10% of the purchase price. In the event of absolute refusal to pay the purchase price, the GmbH & Co. KG may also refuse to execute the purchase agreement and demand compensation for all costs incurred, expenses and for depreciation in value without having to grant a time extension.

If the contractual partner refuses to take acceptance of the consignment, the GmbH & Co. KG may warehouse the goods at the cost and risk of the contractual partner on its own premise or on external premises, or dispose of them in a suitable way at the expense of the contractual partner. In such cases, the GmbH & Co. KG is not required to notify the contractual partner.

The GmbH & Co. KG may demand immediate payment of all accounts receivable or make deliveries subject to the requirement of an advance payment or the provision of collateral if the contractual partner's asset or income situation deteriorates substantially or if its assets are endangered.

## 13. Retention of title

The GmbH & Co. KG retains title to the delivered goods until such a time when payment of the purchase price and all accounts receivable due to the GmbH & Co. KG existing or arising from the business relationship with the contractual partner have been paid in full. The GmbH & Co. KG is entitled to withdraw from the contract if the customer defaults on payment.

If the item for which title is retained is inseparably combined, mixed or blended with other items, the GmbH & Co. KG shall acquire co-ownership of the new item in proportion to the value of the item for which title is retained to the combined, mixed or blended objects at the time of processing.

As a result of the processing of the item for which title is retained, the GmbH & Co. KG shall acquire ownership of the new item; and the contractual partner shall safe keep it for the GmbH & Co. KG.

The contractual partner shall obtain adequate insurance against the customary risks in respect of the goods belonging to the GmbH & Co. KG at its request and assign the insurance claims to the GmbH & Co. KG. The GmbH & Co. KG is also entitled to pay the insurance premiums at the expense of the contractual partner. The contractual partner is only entitled to resell the goods, including goods which are produced through combination, mixing or blending with other items, within the course of ordinary business. It is not entitled to dispose of these goods in any other manner and, in particular, to pledge them or transfer their ownership by way of security lien.

The contractual partner assigns all receivables from the resale of the goods to which title is retained or the items produced as a result of the processing of such items to the GmbH & Co. KG. A senior portion of receivables from the sale of goods to which the GmbH & Co. KG has acquired co-ownership as a result of combination, mixing or blending which corresponds to the GmbH & Co. KG's share of co-ownership is hereby assigned by the contractual partner to the GmbH & Co. KG. If the contractual partner sells goods which are owned or co-owned by the GmbH & Co. KG together with goods which are not owned by the GmbH & Co. KG for a lump sum price, the contractual partner hereby assigns the relevant senior portion of this lump sum amount which corresponds to the proportion of goods to which the GmbH & Co. KG has retained title to the GmbH & Co. KG.

The contractual partner is entitled to collect the assigned receivables from the resale of the goods. This is subject to revocation at any time. At the request of the GmbH & Co. KG, the contractual partner shall provide details of the assigned receivables, provide notification of the assignment of receivables to debtors and hand over the assignment notifications to the GmbH & Co. KG. Unless the contractual partner defaults on payment obligations, GmbH & Co. KG shall not disclose the assignment. At the request of the contractual partner, the GmbH & Co. KG agrees to release the collateral which is held in respect of receivables if the recoverable value of such exceeds the claims to be secured by more than 10%.