

## **1. Scope of Application**

(1) Where the Buyer is acting in the course of his business within the meaning of § 14 of the German Civil Code (BGB), the following general terms and conditions shall apply exclusively to all transactions between us and the Buyer or alternatively the version in force at the time the order is placed. We do not accept any contradicting terms provided by the Buyer except where we have expressly consented to the same in writing.

(2) The Buyer shall be deemed to be acting in the course of his business where he is acting as a private individual, legal entity or legal partnership for a commercial or professional purpose. A legal partnership is a partnership which is capable of acquiring rights and entering into obligations.

(3) Insofar as is necessary for the handling of our business we are entitled to store and process the Buyer's data in electronic form to the extent permitted by data protection laws (in particular §28 of the German Data Protection Act).

(4) These terms and conditions shall apply to all future supplies to the Buyer.

## **2. Quotation, Changes, Trade Terms**

(1) Our quotations are subject to confirmation; a contract is concluded by our written order confirmation (§ 126b BGB) or where upon our execution of orders placed. In particular any order confirmation automatically sent by our online shop upon the placing of any order shall not constitute a declaration of acceptance of order.

(2) Changes, supplements to and/or any annulment of a contract or these terms and conditions must be in writing.

(3) Where trade terms in accordance with the International Commercial Terms (INCOTERMS) are agreed, INCOTERMS 2000, 6<sup>th</sup> review shall apply.

## **3. Prices, Payments**

(1) Our prices are EXW (Incoterms 2000, 6<sup>th</sup> revision) from our storage facility. Except where otherwise agreed our prices do not include the cost of packing, insurance, freight and VAT.

(2) Except where otherwise agreed we are entitled to collect invoice amounts due for payment without deduction from the Buyer's account by means of direct debit, however no earlier than 8 days after receipt of invoice. Otherwise the Buyer shall remit payment without deduction after delivery or performance by the date due as set out on the invoice. Upon expiration of the deadline the Buyer shall be deemed in default of payment in accordance with § 286 Abs. 2 Nr. 2 of the German Civil Code (BGB).

(3) We are entitled to demand down payments or payment in advance where the Buyer places an initial order, or has its principle place of business abroad or the goods are to be supplied abroad or where we have reason to doubt that the Buyer will remit payment on time or of the full amount. Where one of the circumstances aforesaid occurs after the contract has been made, we shall be entitled to revoke the terms of payment agreed and to demand immediate payment of outstanding amounts.

(4) The Buyer may only set off undisputed counterclaims or counterclaims against which we have no further recourse to appeal. The Buyer shall only be entitled to rights of retention in so far as these are based on the same legal transaction.

## **4. Transfer of Risk, Delivery**

(1) Except where otherwise agreed we shall supply goods and perform services EXW (Incoterms 2000, 6th Revision) from our storage facility. We shall determine the method of shipment, route of shipment and freight forwarder.

(2) We reserve the right to deliver by instalment and to invoice the same except where this is unreasonable for the Buyer.

(3) Delivery dates quoted are approximate dates only except where expressly agreed otherwise in writing.

(4) Where we fail to deliver upon an agreed delivery date and such failure is caused by an act or omission on our part the Buyer shall grant us an extension in writing of not less than 2 weeks. Where upon the expiry of the grace period, delivery is still not forthcoming and the Buyer desires to rescind the contract or demand damages in lieu of performance, the Buyer shall prior thereto set a final and reasonable deadline in writing expressly indicating his intention. The Buyer is obliged at our request to declare within a reasonable period whether he shall rescind the contract due to the delay in delivery and/or demand damages in lieu of performance or insist upon performance.

## **5. Act of God**

In the event of force majeure we are entitled to suspend performance of our obligation to deliver. Where there is a considerable change in the circumstances prevalent at the formation of the contract, we reserve the right to rescind the contract. An act of god shall be defined to be any circumstance beyond our responsibility which hinders delivery or performance or renders the same impossible, irrespective of whether such circumstance occurs at our supplier or our vicarious agent.

## **6. Buyer's Obligations**

(1) Acceptance of deliveries and installment deliveries shall be deemed a primary obligation of the Buyer. Where the Buyer declines to accept the delivery or omits to accept the same, the Buyer shall be deemed in default of delivery without further reminder.

(2) Where the Buyer fails to take delivery we reserve the right to set a deadline of 4 weeks upon the expiration of which we shall revoke the contract and claim damages.

## **7. Buyer's Rights in the case of Defects**

- (1) The goods supplied by us correspond to the German regulations and standards currently in force. We give no guarantee that the goods comply with other national regulations. Where the goods are to be put into operation overseas it is the responsibility of the Buyer to ensure that the goods are in conformity with the relevant legal requirements and standards and where required to make appropriate adaptations.
- (2) The Buyer shall not be entitled to make a claim based on defective delivery or performance where the reduced value or merchantability of the goods delivered or services supplied is nominal.
- (3) Where the goods delivered by us are defective and the Buyer has immediately notified us of the same in writing as required under § 377 of the German Commercial Code (HGB) we shall at our option deliver a replacement or remedy the defect. The Buyer shall grant us a reasonable period of not less than 10 working days to carry out the same.
- (4) We advise that delivery of living animals shall not preclude that single bloodsuckers do not survive the transportation. As a precautionary measure for every delivery of 10 or more bloodsuckers at least one additional bloodsucker shall be included, which in the event of a warranty claim shall be construed as subsequent performance/part performance. Where no warranty claim is made we waive all rights in relation to the extra bloodsucker supplied.
- (5) The Buyer is entitled to demand reimbursement of the costs incurred by reason of the replacement delivery or remedying of the defect insofar as such costs are not increased due to the subsequent transportation of the goods delivered to a location other than the original shipment location unless the purpose for which the goods are intended requires the same.
- (6) In the event that we are not in a position to remedy the defect or deliver a replacement the Buyer is entitled to rescind the contract or to demand a reasonable reduction in the purchase price. Rescission of the contract is only permissible where the Buyer prior thereto sets a final and reasonable deadline in writing expressly indicating his intention.
- (7) The Buyer shall retain a right of recourse against us within the meaning of §478 of the German Civil Code (BGB) insofar as the Buyer has not agreed terms with its customer which exceed the statutory liability for defects.

## **8. Damages**

- (1) Except where otherwise provided below any claim of the Buyer for damages other than those claims set out in § 7 aforesaid are hereby excluded irrespective of the legal grounds upon which it is based. Accordingly we do not accept liability for any damage not incurred by the goods themselves nor do we accept any liability for loss of profit or any other pecuniary loss suffered by the Buyer. To the extent that our contractual liability is excluded or limited, such exclusion or limitation shall apply in relation to the personal liability of employees, representatives and vicarious agents.
- (2) The aforesaid limitation of liability shall not apply where the damage incurred has been caused by willful default or by gross negligence, where personal injury has been suffered or where the damages claim is based on product liability law.
- (3) Where we are in negligent breach of a material term of the contract our liability to compensate damage to property shall be limited to such loss as was typically foreseeable at the time the contract was made. A material term of the contract shall be any term which places the Buyer in the legal position provided for under the contract in terms of its content and purpose and any term which must be complied with in order to ensure proper performance of the contract and upon the performance of which the Buyer relied or could be reasonably expected to rely.
- (4) Any other liability in damages is hereby excluded.
- (5) Any assignment of the Buyer's claims provided for in §§ 7 and 8 above is not permitted. Section 354 a of the German Commercial Code (HGB) shall remain unaffected.

## **9. Limitation**

The limitation period for claims based on paragraphs 7 and 8 aforesaid is 1 year. The limitation period aforesaid shall not apply in relation to claims brought under § 8 sub-paragraph 2 (Liability for willful default, gross recklessness, for personal injury claims and claims under product liability laws) and where longer limitation periods are prescribed by law (e.g. for structures §§ 438 s.1. No. 2 (BGB), rights of recourse § 479 (BGB) and building defects § 634a s.1 No.2 (BGB)).

## **10. Final Provisions**

- (1) Where the Buyer is acting in the course of his business or is a public law entity all disputes shall be resolved before the courts situated at our principle place of business; we reserve the right to sue the Buyer at its principle place of business.
- (2) The laws of the Federal Republic of Germany shall govern all the legal relationships between the Buyer and ourselves.