

## § 1 Applicability

- (1) Offers and supplies of the seller are governed exclusively by these standard terms. They apply to all future dealings as well even if later they are not referred to again expressly. The buyer is bound by them at the latest when he accepts the tendered performance. Any acceptance by the buyer that attempts to incorporate his standard terms is objected to.
- (2) All conditions of supply and delivery which affect the performance of this contract must be in writing.

## § 2 Offer and Acceptance

- (1) The offers of the seller are revocable and not binding. Acceptance by the seller does not result in a binding obligation of the seller unless the seller confirms in writing.
- (2) Diagrams, illustrations, graphs, weights and measures or other specifications are binding only if expressly so agreed in writing.

## § 3 Price

- (1) Unless otherwise indicated the seller is bound by the prices mentioned in the offer for the period of 30 days starting with the date the price has been issued. Otherwise the price that is contained in the final confirmation of acceptance of the seller is valid; the price does not include VAT. Any additional services of the seller are charged separately.
- (2) The prices are FCA stock Möhrendorf unless otherwise agreed. They include normal packaging.

## § 4 Time of Delivery

- (1) Times or periods of delivery, binding or not, need to be in writing.
- (2) The seller is not responsible for delays in delivery caused by an act of god which makes the performance of the seller's obligations impossible or considerably difficult even in a case of a strict time of performance. Such events include in particular strike and orders issued by public bodies and have the effect of exonerating the seller also when they occur in the sphere of a sub-contractor of the seller or their suppliers. Such events entitle the seller to delay performance for the period in which the obstacle persists and for an additional reasonable period of preparation or to terminate the contract. The seller may also terminate the contract only with respect to that part of the

contract which could not be performed due to the exonerating event.

- (3) If the obstacle exists for longer than three month the buyer is entitled to terminate the contract if the seller does not tender performance within a reasonable period of time after he has been put on notice by the buyer. The buyer cannot claim damages for the delay of performance caused by the event or in the event of the termination of the contract. The seller can resort to these rights only if he informs the buyer of the obstacle in due course.
- (4) In so far as the seller is answerable for not respecting binding times of delivery damages of the buyer are calculated on the following basis: ½ % for every full week of delay but not more than 5% of the value of the delayed performance. Any other liability is excluded unless the delay is caused by at least gross negligence on part of the seller.
- (5) The seller is entitled to part performance unless a part performance is not in the objective interest of the buyer.
- (6) The seller is only obliged to deliver on time if the buyer's performance is punctual and conforms with his contractual undertakings.
- (7) In the case of delayed acceptance on part of the buyer the seller is entitled to claim damages. The risk of an accidental destruction or deterioration passes to the buyer if he delays acceptance of the goods or services tendered by the seller.

## § 5 Passing of Risk

The buyer is at risk once the goods are passed on to the person employed for their transport or once the goods have left the stock of the seller for the purpose of transportation to the buyer. The risk of an accidental destruction or deterioration passes to the buyer if delivery of the goods is postponed at his request.

## § 6 Rights of the Buyer

- (1) The seller delivers products that are unaffected by a defect in material or manufacturing or lacking a warranted characteristic. The limitation period for rights under this warranty is one year from delivery.
- (2) If any conditions of use issued by the seller are ignored, alterations to the product made, parts changed which do not correspond to the specifications of the original any liability of the seller is excluded unless the buyer proves that

substantiated claims of the seller that one of these circumstances has caused the defect are wrong.

- (3) The buyer must report to the seller in writing any defects of the product in due course, at the latest one week after actual delivery of the product. Defects which even after careful inspection cannot be detected are to be communicated in due course after the defect has been discovered.
- (4) In the case where the defect has been communicated to the seller the seller may demand alternatively but at his expense that:
  - a.) the defective part or product is sent to the seller for the purpose of repairing it
  - b.) or that the buyer enables an employee of the seller to repair it at the location of the buyer.
 If the buyer demands that repairs are effectuated at a location of his choice the seller may conform to the wish of the buyer. However, the buyer is in that case charged for the time necessary to repair the product and for travel expenses; the cost of parts covered by the warranty are not charged.
- (5) In case the seller is not able to repair the product within a reasonable period of time the buyer is entitled to demand price reduction or termination of the contract.
- (6) Any liability for the normal wear and tear is excluded.
- (7) Any contractual rights of action based on the defective product are confined to the buyer and their assignment is prohibited.

## § 7 Replacement Parts

The seller voluntarily undertakes to supply replacement parts for the product at the replacement part price valid at the respective time for a period of three years starting from delivery.

## § 8 Retention of Title

- (1) Until the buyer fulfils all present and future obligations (including all saldo-obligations arising out of a *Kontokorrent*) regardless of their origin the buyer makes the following securities available to the seller. The seller can if requested release securities of his choice if the value of the securities considerably exceeds 120% the value of the buyer's obligations.
- (2) Property in the supplied goods remains with the seller. Processing or alteration are always done on behalf of the seller as *Hersteller* (manufacturer), however, he incurs no obligations out of this. If the property right of the buyer is extinguished due to processing or connection with other goods the property rights of the buyer in the end-product

(*einheitliche Sache*) are transferred to the seller already now. The buyer keeps the property of the seller gratuitously. Goods which are in the property of the seller are called retention of title goods (*Vorbehaltsware*) in the following.

- (3) The buyer is entitled to process and sell the goods in respect of which title is retained (*Vorbehaltsware*) according to ordinary trade practices unless the buyer is in delay with meeting his obligations to the seller. The buyer must not subject the goods to a lien or any other security. Rights which arise out of a sale by the buyer or rights regarding the goods stemming from any other grounds (insurance, tort, and including *Kontokorrent*) are to their full value assigned to the seller as security already now. The seller revocably empowers the buyer to enforce the assigned rights on behalf and in the name of the buyer. This right of the buyer to enforce assigned obligations may be revoked only if the buyer does not meet his obligations towards the seller.
- (4) Any third party contesting of title shall be informed about the property rights of the seller and shall be notified to us without delay in order to enable the seller to protect his rights. If the third party is not able to compensate the seller for any judicial and extra-judicial costs arising out of this context the buyer is liable to the seller for these costs.
- (5) The seller is entitled to get back the goods (*Vorbehaltsware*) or to assignment of any rights against third parties regarding the goods if the buyer does not meet his obligations, in particular in the case of late payment. Taking back the goods or making use of a security (*Verpfändung*) does not amount to termination of the contract.

## § 9 Payment

- (1) Unless otherwise agreed, payment is due 30 days after communication of the bill. The seller is entitled to regard the payment as fulfilment of older bills although the conditions used by the buyer state otherwise. The seller will inform the buyer in this case about the way he accounted the payment. If the buyer is liable for other costs or interest the seller is entitled to account the payment first for the cost then for the interest and finally for the main debt.
- (2) Payment is effectuated only at that moment when the seller is able to dispose of it. In the case of a cheque this is the moment when the cheque is cleared.
- (3) In the case of delayed payment the seller is entitled to interest amounting to 8% above the

*Basiszinssatz* as liquidated damages (*pauschalen Schadensersatz*). Interest may be lower if the buyer proves that less damages has been suffered. It is open to the seller to prove that he suffered a greater loss.

- (4) When the seller has knowledge of circumstances which are likely to diminish the creditworthiness of the buyer, in particular if a cheque could not be cleared or payment is suspended, the seller is entitled to make all payments due even if the seller has accepted cheques. Moreover the seller is in this case entitled to demand pre-payment, deposits or other security.
- (5) The buyer is entitled to abatement, suspending his obligations (*Zurückbehaltungsrecht*) or reduction of price even if warranty rights or other counter-rights are in question, only when the counter-rights are confirmed judicially (legally binding and not in any way contestable, *rechtskräftig*) or not contested. The buyer may suspend his obligations (*Zurückbehaltung*) only with regard to counter-claims arising out of the very same contract.

## § 10 Changes in Manufacturing

The seller reserves the right to change the manufacturing of the product at any time. He is not obliged to apply these changes also to products which have been already delivered.

## § 11 Industrial Property Rights

- (1) The seller undertakes an indemnity as regards liability of the buyer and sub-buyers arising out of industrial property rights (*Urheberrechte, Warenzeichen* or *Patente*) unless the plan, blueprint of the supplied product in question stems from the buyer. The indemnity is limited to the foreseeable loss. An additional condition of the indemnity is that the handling of the legal issues is entrusted exclusively in the seller and that the contended interference with industrial property rights is exclusively connected with the construction of the supplied product itself (*Bauweise*) and does not result out of its connection or the joint use with other products.
- (2) The seller can fulfil the indemnity-obligation undertaken in section
  - a.) by alternatively electing to procure the necessary license (*Lizenz*) with respect to the purportedly violated patents or
  - b.) by supplying a modified product or parts of it, which in the case of a replacement for the violating product would extinguish the claim of violation.

## § 12 Confidentiality

Unless otherwise expressly agreed in writing any information given by the seller in the context of this contract is regarded as confidential.

## § 13 Exclusion of Liability

- (1) Liability in damages including delictual liability is excluded regardless of the nature of the breach unless it is founded on intentional conduct (*vorsätzlich*) or gross negligence (*grobe Fahrlässigkeit*).
- (2) If fundamental obligations are breached the seller is liable in respect of any negligence. Liability is limited in this case to the foreseeable loss. Liability for loss of profit, expenditure made in reliance on the contract, losses caused by the buyer's liability to third parties as also liability for other indirect or consequential loss is excluded unless a seller's guarantee was intended to cover specifically the occurrence of such loss.
- (3) The exclusion and limitation of liability contained in subsections one and two does not apply to claims arising from fraudulent conduct (*arglistiges Verhalten*) of the seller, to liability derived from a guarantee, to claims based on the *Produkthaftungsgesetz* (German Product Liability Act), and liability for violations of bodily integrity, loss of life, or health impairments.
- (4) The exclusion or limitation of liability of the seller operates also for the benefit of employees, agents or other persons employed by the seller in fulfilling the contract (*Erfüllungsgehilfen*).

## § 14 Choice of Law

All disputes between the seller and the buyer shall be settled in accordance with German law.

## § 15 Choice of Forum

- (1) The *Amtsgericht Erlangen* and the *Landgericht Nürnberg/Fürth* are to have exclusive (local and international) jurisdiction to settle any disputes arising directly or indirectly out of the contract and which are subject to the Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.
- (2) If the buyer is *Kaufmann* (businessman, trader, merchant, dealer) in the sense of the *Handelsgesetzbuch* (German Commercial Code) or *juristische Person des öffentlichen Rechts oder öffentlich-rechtliches Sondervermögen* (public

authority), Erlangen is the exclusive forum (*ausschliesslicher Gerichtsstand*) for all disputes arising directly or indirectly out of the contract.

#### **§ 16 Partial Invalidity of the Contract**

If any provision of these standard terms or any other provision of the agreements between the seller and the buyer is void or becomes void the remaining part of the contract or the agreement shall remain unaffected.

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