

# General Terms of Sale, Delivery and Payment of the Goerg & Schneider GmbH u. Co. KG

## I. General Provisions

- (1) For all agreements, quotes, sales contracts and supplies/deliveries, the following provisions shall exclusively prevail/apply. They are part of all agreed contracts between our customers and us, and shall also be valid for all future business relationships, even if they have not been explicitly stated. Upon acceptance of the goods or service at the latest, these terms shall be regarded as having been accepted.
- (2) Any counter-confirmations which are submitted by the customer referring to his/her own business and purchase conditions, are herewith opposed. Such conditions are only binding if they have been agreed with us in writing in every individual case; these agreement, however, shall only apply for a concrete individual case and shall not be binding for future transactions.

## II. Quotation and Conclusion of an Agreement

- (1) Our quotes shall be subject to confirmation and without obligation. As a principle, orders shall be executed in writing (also via fax or e-mail). If an order has only be given orally, message errors as well as possible misunderstandings shall be charged at the customer's expense. Formation of a contract is executed either by our order acknowledgement or delivery of the goods. If we issue a written order acknowledgement, supplements, amendments, subcontracts or commitments shall be subject to our written confirmation.
- (2) Descriptions, illustrations, measures, weights and other performance data shall only be binding if this has explicitly agreed upon in writing.

## III. Delivery, partial delivery and delayed delivery

- (1) Delivery times and deadlines shall not be binding, unless something else has explicitly agreed upon in writing. Delivery times shall commence upon conclusion of the contract. If subsequent amendments are agreed upon, such delivery times or deadlines have to be adjusted, if required. An agreed delivery time shall be regarded as observed if dispatch of the contract item has been arranged for and/or the customer has been informed that the contract item is ready for shipment by the date of expiration.
- (2) Partial deliveries are allowed.
- (3) Delays in delivery due to force majeure and events which impede delivery or make it impossible – especially breakdown, strike, lock-out, power supply problems, official orders, traffic delays, etc., even if they occur with our suppliers or their subcontractors – we shall not have to present even in the case of firm delivery terms and deadlines. In this case, we shall be entitled to postpone delivery by the impediment period plus an adequate starting-up time and/or to, partially or in whole, withdraw from the contract in terms of the partial non-fulfilment of the contract.
- (4) If the impediment should last longer than three months, the customer, after an adequate grace period has been set, shall be entitled to withdraw from the contract in terms of the partial non-fulfilment of the contract.
- (5) In the case of an extension of the deadline and an annulment of our obligations, the customer shall not be entitled to derive any claims.
- (6) Adherence of our delivery obligations requires timely and due fulfilment of the customer's obligations, especially of the agreed terms of payment and non-exceeding of the supplier credit limit granted to him/her. As long as the customer is in arrears with his/her liabilities, our delivery obligation shall be suspended.
- (7) In the case of a non-accidental overstep of an agreed term of delivery on our part, default in delivery shall not be given before an adequate grace period has been granted.
- (8) If the customer fails to accept the delivery of goods or infringes other contribution obligations, we shall be entitled to demand compensation inclusive possible additional expenditures. In this case, the risk of fortuitous loss or accidental deterioration of the item shall be passed to the customer on the point of time on which the same gets into default of acceptance.

## IV. Dispatch/shipment

- (1) If nothing to the contrary has been agreed upon, despatch shall be executed ex works and/or free means of transport at the customer's risk and cost. Selection of the way and means of transport shall be left to the customer, unless something to the contrary has been agreed upon.
- (2) With handing-over of the goods to be delivered to the customer, to the forwarder who has been commissioned by the customer, to the carrier or any other enterprise which has been commissioned with the execution of the dispatch, however, from the leaving time of our plant at the latest, the risk is passed to the customer. This shall also be valid if we have absorbed further costs, e.g. dispatch expenditures, unless something to the contrary has been agreed upon in writing. Damage in transit are to be noted on the delivery note and, in the case of rail shipment, ascertained by the relevant authorities of the Bahn AG for enforcement of damages.
- (3) If dispatch is delayed due to circumstances beyond our control, the risk is passed to the customer from the date of dispatch readiness. By the customer's request and at his/her cost, however, we are to take out the insurance desired.
- (4) For Europallets delivered, the customer has to return impeccable Europallets in exchange, otherwise they will be additionally invoiced for. If other pallet systems are used, the regulations applicable for these systems and the prescribed procedures shall be observed. If the customer does not adhere to them, costs incurred through this non-compliance will be payable by the customer.

## V. Prices

- (1) All prices are net prices. VAT will be additionally charged at the respective legal degree.
- (2) If nothing to the contrary has been agreed upon, the prices are invoiced in Euro ex works. Packaging accrue additionally and will be separately invoiced.
- (3) Conclusions of contracts and orders tied to a deadline will be executed at the respectively valid prices. If our prices have increased due to cost increase from the date of acknowledgement to the delivery date, we shall be entitled to charge the increase on the customer even if a fixed price had been agreed upon within the acknowledgement.

## VI. Terms of payment, delay

- (1) All invoices, even such on partial deliveries, are payable without any deduction within 14 days from invoice, unless something else has been agreed upon in writing. We are entitled to firstly offset the customer's payments to his/her former liabilities, in case of which we will inform him/her of this type of settlement. If expenditures and interests have already incurred, we shall have the right to firstly offset the payments against the costs, then against such interests and in the end to the main debts.
- (2) Payment shall only be regarded as settled when the amount is at our disposal; for check payment, payment shall only be regarded as executed when the check has been presented and has not been reversed.
- (3) We shall not have any obligation to accept any bill of exchange or checks for payment. If they are accepted nevertheless, acceptance shall only be effective on execution. Collection and discount expenditures shall be charged on the customer; they shall be immediately payable. No responsibility is accepted for timely presentation and protest.
- (4) Should we get to know any circumstances which call in question the customer's credit standing, especially if a check is dishonoured or reversed or the customer ceases to pay, we shall be entitled to immediately invoice the entire unpaid balance. Furthermore, we shall be entitled in such a case to demand a good-faith deposit or advance payments in the future.
- (5) For bilateral trading operations, the customer's lien shall be excluded. The customer is not allowed to counterbalance his own claims or any claims transferred to a third party which are disputed by us and have not been legally ascertained.
- (6) Should the customer fall into arrears concerning his/her obligation to pay, we shall be entitled – notwithstanding the possible enforcement of more far-reaching damages – to demand default interest of 8% above the base lending rate of the European Central Bank.
- (7) We shall not be regarded as being in arrears as long as the customer's performance of his/her obligations against us, even such from other contracts, is delayed.

## VII. Liability for Material Defects

- (1) We grant a warranty period of two years for our products. It starts when the goods are being delivered to our customer or to a third party designated by the customer or in case the goods are being shipped as soon as the carrier has received the goods. The warranty period expires within less than two years if our products are being worked on or processed.
- (2) The goods delivered have not been examined in terms of suitability for certain purposes. This is incumbent to the customer. As far as we are able to comply with warranties regarding

a natural product, the composition of which is beyond our control, the composition of our goods shall only be regarded as agreed upon after having been acknowledged in writing on our part. The buyer is obliged to only use the merchandise explicitly according to the specific functions from the individual contract. A use and/or resale of the delivered merchandise for the animal feed industry and the food and cosmetic industry is particularly neither agreed upon nor allowed. In accordance with § 1, section 1 of the 2<sup>ND</sup> GPSGV [German regulation regarding the safety of toys], our goods are not to be classified as toys. Therefore, it is also not agreed or allowed to declare our goods as toys and to resell them as toys or to use them for the production of toys without our explicit consent.

- (3) All warranties on the composition or appropriateness of the goods delivered have to be explicitly declared and stated in the contract as a warranty; neither does the handover of samples, patterns, raw material data sheets, etc. contain a quality warranty, but are only intended to determine the type of goods. In particular, no trial sales contract (§ 454 BGB [German Civil Code]) is formed by the handing over of samples.
- (4) The warranty for the natural product clay and its processing products fireclay, grinding clay and bulks includes faultless delivery within the usual tolerances for raw materials. The prevailing tolerances shall be regarded as agreed upon for all supplies. For weight calculation of the goods, the weight which has been determined by the rail or pit staff at the outgoing station or in the case of consignment sent by vessel the results of the Office of Weights and Measures shall prevail. Any loss of weight during the transport, e. g., by drying up of the goods or other influencing factors, do not cause any liability for breach of warranty or damages claims.
- (5) As soon as the goods have been handed over to him or to a third party assigned by him within the scope of bilateral trading operations, the customer has to thoroughly and immediately inspect the goods and to complain about any deficiencies in writing within a time limit of one week from delivery, and in every case before the merchandise is being processed or blended. Latent defects which cannot be discovered during the initial inspection within this period of time have to be notified in writing immediately (within a time limit of one week) after discovery, however, not later than 6 months from delivery. The same shall be valid for missing attributes. Late notice of defect as well as late processing etc. result in an exclusion of these rights, unless the deficiency has not been apparent before processing. Within such trade operations, inspection, complaint and behavioural duties resulting from them are the customer's main obligations. All complaints have to be addressed directly to the management and not to the representative. In all other cases, § 377 HGB [Commercial Code] shall be valid.
- (6) After a complaint has been submitted, we shall have the right to view the merchandise and to take samples for inspection purposes. The customer has to omit any damage-increasing utilisation of the merchandise, until the deficiencies have been determined by us or by an expert authorized by us.
- (7) Should a dispute on the entitlement of a complaint arise, a sample will be jointly taken which shall be forwarded to a proven material testing institution for examination purposes. The result of the expert's opinion and/or analysis shall be binding as an arbitration agreement for both parties. The expenses of this expert's opinion are to be borne by the defeated party.
- (8) Upon timely receipt of a reasonable complaint, the customer shall have the right to claim repairs or replacement. The reworking right shall be limited to the contract value. If the anticipated reworking expenses exceed the contract value, only replacement can be demanded. If the subsequent fulfilment has not been successful, the customer may choose between abatement or withdrawal.
- (9) More far-reaching demands on the part of the customer – out of which reasons whatsoever – shall be excluded, as far as this is statutory permissible. Therefore, we do not answer for any damages which have not been done to the goods themselves, especially we do not answer for a possibly lost profit or other financial losses of the customer. This exclusion of liability shall not be valid for any personal injuries, or if deliberation or gross negligence on our part can be proven, or if, pursuant to the Product Liability Act, liability for personal injuries or property damage caused by deficiencies of the merchandise is statutory. Furthermore, liability shall be excluded if a customer, due to deficiencies, sets up damages instead of performance. In cases of minor negligence, our liability shall be limited to damages predictable upon conclusion of the contract and to the contract value.

## VIII. Reservation of title

- (1) We shall be granted the following guaranties, which we will release on demand at our own discretion as far as they sustainable exceed the accounts receivable by more than 20 %, until all invoices (including outstanding account balances from open accounts) which, due to an legal argument, we are entitled to or will be entitled to receive from the customer have been settled.
- (2) We reserve the right of ownership for the goods. Processing or transformation are always executed on our behalf as producers, however, without any obligation on our part. As soon as our co-ownership through compounding or blending lapses, it is agreed that our (co-)ownership of the combined item shall be proportionally transferred to us (invoice value). The customer keeps our (co-) ownership free of charge. Goods in respect of which we are entitled to (co-) ownership will be subsequently referred to as reserved goods.
- (3) The customer shall have the right to duly process and sell the reserved goods within the scope of business transactions as long as he is not in arrears. Pledging or chattel mortgage are inadmissible. To be on the safe side, the customer shall already now fully transfer to us all accounts receivable from resale or for another legal argument regarding the reserved goods (including all outstanding account balances from open accounts). We revocably authorize the customer to collect the payments transferred to us on our account and on their own behalf. This direct debit authorisation can only be revoked if the customer does not duly fulfil their payment obligations.
- (4) In the event of an access to the reserved goods by a third party, the customer will identify our ownership and notify us immediately.
- (5) Should the customer behave contrary to the terms of the contract – especially in a case of delayed payment – we shall be entitled to demand the reserved goods back and, if necessary, to demand transfer and surrender claims of the customer towards third parties. Revocation as well as pledging of the reserved goods on our part does not represent withdrawal from the contract.

## IX. Limitation of Liability

- (1) Damages claims, for what reason whatsoever, inter alia from delay, deficient delivery, breach of duty upon contractual negotiations, unlawful act, product liability (except pursuant to Product Liability Act), shall be exempt insofar as they have been caused by a violation of supplementary agreements, unless they have been caused by deliberation or gross negligence on our part. This exclusion of liability shall not be valid for any personal injuries, or if deliberation or gross negligence on our part can be proven, or if, pursuant to the Product Liability Act, liability for personal injuries or property damage caused by deficiencies of the merchandise is statutory.
- (2) All liabilities shall be limited to the damages which have been foreseeable at conclusion of the contract.
- (3) As far as our liability is excluded or limited, this shall also apply for any personal liability of our employees, co-workers, representatives and persons employed by the debtor in the performance of his or her obligations.

## X. Prevailing Law, Jurisdiction and Place of Performance

- (1) For these conditions and all legal relationships between the customer and us, the laws of the Federal Republic of Germany shall apply. The uniform commercial law on the basis of international commercial law treaties, especially the uniform laws on the international purchase of moveable goods and on the conclusion of such sales contracts (Haag Trade Agreement), as well as the UN Trade Agreement and the Vienna Agreement on international sales shall not apply.
- (2) Place of Performance shall be the registered site of the company.
- (3) For all disputes, exclusive jurisdiction shall be the registered site of our company. Moreover, we shall be entitled to sue the customer at his own venue.

## Note:

Pursant to § 26 [Federal Data Protection Law] we would like to draw your attention to the fact that our accounting is kept by means of an EDP machine, and therefore even the data received in conjunction with the business relationship to the customer are stored.