

Payment and Delivery Terms

§ 1 General- Scope of Application: The following payment and delivery terms will apply exclusively to the delivery of our products; any terms to the contrary or payment and delivery terms by the purchaser deviating from ours will not be recognized by us unless we expressly consented to their validity in writing. Our sales terms will apply even where we unconditionally carry out the delivery to the purchaser despite being aware of contrary terms or terms by the purchaser deviating from our payment and delivery terms.

The payment and delivery terms will be regarded as having been accepted by the purchaser unless the purchaser immediately rejects them in writing. Individual agreements with the purchaser concluded in the individual case (including ancillary agreements, addenda and amendments) will prevail over the present payment and delivery terms in every case. A written contract or our written confirmation is authoritative for the subject matter of such agreements.

The payment and delivery terms are part of all contracts concluded by us with the purchaser for the goods offered. They will only apply where the purchaser is an entrepreneur (§ 14 BGB).

§ 2 Prices: The price at the date of the delivery will be authoritative for the invoicing. This will also apply to individual deliveries within the framework of the annual contracts (framework contracts) concluded with us.

We reserve the right to adequately adjust our prices after conclusion of the contract in the case of cost reductions or cost increases, in particular in the case of changes of subsidies or changes in the price of raw materials. We will provide proof of these to the purchaser upon request.

§ 3 Payment: Unless otherwise agreed on in writing with the Emsland Group, all invoices are due to the full amount within ten (10) days after receipt of the invoice to a bank account to be specified by Emsland Group (essentially the account of the respective production plant). Bills of exchange will only be accepted where their term does not exceed ninety (90) days and the fees are reimbursed in the case of discounting (discounting fee). They are to be cashed at a bank. Notwithstanding, we reserve the right to refuse acceptance of a bill of exchange. Bills of exchange are for the purpose of performance only.

After lapse of the payment deadline, the purchaser will be deemed as being in arrears with payment. The statutory provisions regarding the consequences of deferred payment will apply. We reserve the right to prove and assert that greater damage was caused due to the delay.

A set-off with counterclaims by the purchaser is only admissible where the counterclaims are uncontested or res judicata.

A right of retention by the purchaser is excluded unless the purchaser's counterclaims derive from the same contractual relationship and are uncontested or res judicata.

We have the right to only carry out or render outstanding deliveries and services on the basis of advance payment or furnishing of security where after conclusion of the present contract we become aware of circumstances which are significantly detrimental to the purchaser's creditworthiness and by which the payment of our outstanding claims by the purchaser from the respective contract (including the individual contracts to which the same framework agreement) applies is jeopardized.

§ 4 Delivery: Delivery is ex works or ex warehouse. Where in exceptional cases freight paid delivery to Deutscher Bahnhof or the shipping port (Incoterms 2000) has been agreed on in writing additional freight costs will be charged to the recipient for urgent or express deliveries. Transport to the destination will be charged to the purchaser in accordance with the official rail charges, i.e. also in the case of local deliveries.

All incidents of force majeure, the infeasibility of the delivery or all other events not foreseeable at the time of the conclusion of the contract (such as operational trouble of any type, difficulties with the procurement of the materials and energy, transport delays, strikes, legal lock-outs, shortage of labor, energy or raw materials, difficulties with the procurement of the necessary official permits, official measures or the omission of or, improper or non-timely delivery by suppliers), for which we are not liable pursuant to § 276 BGB will release us from the fulfillment of the contractual duties assumed by us for the duration of such events. We will be obligated to inform the purchaser immediately of the onset of such an event, simultaneously informing the purchaser of the anticipated duration of such an event. Where such an event lasts longer than three months we may rescind the contract. Any contractual consideration already given will be reimbursed.

Our statutory rights of rescission and termination as well as the legal provisions on the winding up of the contract in the case where a performance duty is not met (e.g. in the case of infeasibility of the

service or where performance of the service or follow-up service is unreasonable) will remain unaffected.

Where performance of delivery or a service by us is delayed or performance is impossible, irregardless of the ground, our liability will be limited to damage compensation pursuant to § 9 of the present payment and delivery terms. Where delivery is delayed, the purchaser must have given warning for compensation.

§ 5 Delivery Deadline: Deadlines and dates for deliveries and services stated by us are only approximate unless a fixed deadline or date has been expressly agreed on.

§ 6 Rescission: We reserve the right to rescind the contract where there is an objective legitimate ground not detectible already upon conclusion of the contract. An objective legitimate ground may in particular be a breach of contract by the purchaser, false information regarding the purchaser's creditworthiness, a change of the purchaser's ownership or where insolvency proceedings have been filed for against the purchaser or the onset of other facts which jeopardize our claim to the purchase price due to the lack of solvency of the purchaser. The right to rescission in § 4 of the present payment and delivery terms as well as the statutory right of rescission will remain unaffected.

§ 7 Place of Jurisdiction and Passing of Risks: The place of jurisdiction for all duties arising from the present contract is our place of business or our warehouse unless otherwise specified. All deliveries will be at the risk of the purchaser ex works (Incoterms 2000). The purchaser will also bear the transport risk for all goods returned to us.

§ 8 Guarantee: The guarantee period will be one (1) year as from the passing of the risk. However, our statutory liability pursuant to § 9 of the present payment and delivery terms will remain unaffected.

There are no claims based on defects in the case of only minor deviation from the agreed features, where feature were agreed on in writing, or in the case of only minor impairment of usability.

The prerequisite for the purchaser's claims based on defects is his compliance with the statutory inspection and complaint duties (§ 377 HGB). Any complaints based on defects must be declared in writing. The full burden of proof for all prerequisites for the claims and in particular for the defect itself, time of the defect and timeliness of the complaint, will be incumbent on the purchaser. Where the purchaser fails to carry out the due inspection and/or report of defects, our liability will be excluded for the defect which was not reported.

Where the item delivered is defective the purchaser may initially demand either rectification of the defect (repair) or delivery of an item free of defects (replacement) as make-up performance. Where the purchaser does not declare which of the rights he opts for we can stipulate an adequate deadline for this. Where the purchaser does not make his decision within this period, the right of option will pass to us after lapse of the deadline.

We have the right to make the make-up performance due dependent on payment of the purchase price by the purchaser. However, the purchaser has the right to retain part of the purchase price in relation to the defect.

The purchaser must give us the necessary time and opportunity for make-up performance, especially for handing over the contested goods for inspection. In the case of replacement the purchaser must return the defective item to us in accordance with the statutory provisions.

The expenditure necessary for inspection and make-up performance, in particular, transport, travel, labor and material costs will be borne by us where there is an actual defect. However, where the purchaser's claims to defect rectification are not justified we may demand reimbursement by the purchaser of the costs thereby incurred.

In urgent cases such as risk to operational safety or for preventing disproportionate damage the purchaser has the right to remove the defect himself and demand reimbursement of the expenditure objectively necessary for this purpose. We must be informed immediately, if possible, in advance in the case of independent rectification by the purchaser. The right to independent rectification will not

apply if we would be entitled to refuse make-up performance in accordance with the statutory provisions.

Where the make-up performance was unsuccessful or an adequate deadline for make-up performance to be stipulated by the purchaser has lapsed fruitlessly or is not necessary according to legal provisions the purchaser may rescind the purchase contract or have the purchase price reduced. However, in the case of minor defects there is no right of rescission.

Claims by the purchaser to damage compensation or compensation of superfluous expenditure will only apply pursuant to § 9 and are excluded in other respects.

§ 9 Liability: We will be liable in accordance with the statutory provisions where the purchaser asserted damage compensation claims based on willfulness or gross negligence including willfulness or gross negligence by our representatives or vicarious agents. Where we are not culpable of willful breach of contract damage, compensation will be limited to foreseeable, typical damage.

We will be liable in accordance with the statutory provisions to the extent that we culpably breach a cardinal contractual duty; in such a case, damage compensation liability will be limited to foreseeable, typical damage.

Liability due to culpable damage to life, limb or health will remain unaffected; this will also apply to compulsory liability in accordance with the Product Liability Act.

Unless regulated otherwise, further-reaching liability for damage compensation other than in § 9 is excluded, irregardless of the legal nature of the claim being asserted. This applies in particular to damage compensation claims on the basis of other breaches of duty or on the basis of claims in tort law to the compensation of material damage pursuant to § 823 BGB.

Restrictions as set out in subparagraph 1-4 will also apply where the purchaser demands reimbursement of superfluous expenditure in lieu of damage compensation.

Where damage compensation liability toward us is excluded or restricted this will also apply to the personal damage compensation liability of our employees, workers, associates, representatives and vicarious agents.

§ 10 Retention of Title: We reserve the title to the purchase item until receipt of all payments from the business relationship with the purchaser. Where there is a current account relationship between the purchaser and us the retention of title will also apply to the respective recognized balance; the same will apply where a balance is not recognized, but a "causal" balance is drawn, due to insolvency or liquidation of the purchaser.

In the case of breach of contract by the purchaser, in particular delayed payment, we will have the right to rescind the contract in accordance with the statutory provisions and to demand release of the goods on the basis of the retention of title and rescission. Where the purchaser fails to pay the purchase price we may only assert these claims where we have unsuccessfully stipulated an adequate deadline for payment for the purchaser or stipulation of such a deadline is not required by law.

After rescission of the contract we will be authorized to realization of the goods; the proceeds are to be set off against the purchaser's liabilities minus adequate realization costs.

The purchaser has the right to resell the purchase item in a regular business transaction; however he is already assigning to us all liabilities against customers or third parties to the amount of the invoice total (including VAT) of our liability which arise from the resale, irregardless of whether the purchase item was resold without or after processing. We hereby accept the assignment. The purchaser will remain authorized to collect this liability even after assignment. Our authorization to collect the liability ourselves will remain unaffected. However, we undertake not to collect the liability as long as the purchaser complies with his payment duties from the proceeds earned, is not in arrears with payment and in particular where insolvency proceedings have not been filed for. Where this is the case we can demand that purchaser disclose to us the assigned liabilities and their debtors, provide all information necessary for collection as well as all corresponding documents and notify the debtors (third parties) of the assignment.

Processing or transformation of the purchase item by the purchaser will be carried out for us in every case. Where the purchase item is processed with other items not belonging to us we will acquire co-ownership in the new item on the basis of the ratio of the value of the purchase item (invoice total including VAT) to the other processed items at the time of processing. The same will apply to the item originating from processing as to the purchase item delivered subject to retention of title.

Where the purchase item is blended inseparably with other items not belonging to us we acquire co-ownership in the new item on the basis of the ratio of the value of the purchase item (invoice total,

including VAT) to the other blended items at the time of blending. Where the blending is carried out in such a way that the purchaser's item is to be regarded as the main item it is agreed that the purchaser will assign a share in the ownership to us. The purchaser will safeguard the sole or co-ownership arising in this way on our behalf free of charge.

We undertake to release the securities we are entitled to at the request of the purchaser where the realizable value of all our securities exceed the liabilities to be secured by more than 10%; the choice of the securities to be released will be incumbent on us.

§ 11 Final Provisions: For all disputes arising in connection with the present order terms or their validity the contracting parties agree to our business domicile as the exclusive place of jurisdiction.

The present payment and delivery terms are subject to the laws of the Federal Republic of Germany excluding the UN Sales Convention.

Should individual terms of the present payment and delivery terms be or become legally invalid or void this will not affect the validity of the remaining terms. The parties will be obligated to replace the invalid terms with a substitute term which comes as close as possible to the purpose of the invalid term, taking both parties' interests into account.

Address: Emsland Group, Postfach 1140, 49820 Emlichheim.

As per: January 2010

