

General Terms and Conditions of Sale and Delivery

1. Scope of Application

- 1.1 These General Terms and Conditions of Sale and Delivery shall apply for all sales and delivery transactions undertaken by Berthold Sichert GmbH (hereinafter the "Seller").
- 1.2 These General Terms and Conditions of Sale and Delivery shall have exclusive application. Terms and conditions of the Purchaser or amendments to these General Terms and Conditions of Sale and Delivery shall not become component parts of the contract even if the Seller fails to object thereto.
- 1.3 These General Terms and Conditions of Sale and Delivery shall apply also for all future sales and delivery transactions between the contract parties.
- 1.4 These General Terms and Conditions of Sale and Delivery shall apply only vis-à-vis persons who, when entering into the contractual relationship, are acting within the scope of their commercial activities or as self-employed business persons or legal persons under public law or public special assets.

2. Conclusion of Contract and Rescission

- 2.1 A contract shall come into effect if the parties agree with regard to all essential contractual component parts (delivery object and price) and the Seller has confirmed the contract in writing (declaration of acceptance). This shall apply also for ancillary agreements and contractual amendments. Transfer of the written declaration by telex/fax shall meet the writing requirement within the meaning of this provision. Consultancy services of any kind, in particular, the suitability of the purchase object for the concretely intended use of the Purchaser are not included in the contract object. Possibly notified intended concrete use of the goods by the Purchaser shall also not be the basis of the transaction underlying the contract. Examination of the suitability of the goods for the Purchaser's concretely intended use with the possible calling upon professionals is the responsibility of the Purchaser, insofar as the Seller has not warranted a certain fitness for a particular purpose expressly in writing.
- 2.2 Verbal offers and agreements shall not bind the Seller. Written offers of the Seller shall only bind the Seller (in particular, with regard to prices, delivery dates, drawings, illustrations, measurements or other performance data) if such are expressly stated in the offer.
- 2.3 The Purchaser shall be bound to its offer given to the Seller or its representatives two weeks after its receipt, insofar as no longer-lasting obligation is set forth in the offer.
- 2.4 The Seller can rescind the contract if the Purchaser, despite the setting of an additional deadline, fails to fulfill its cooperation obligations or if the rendering of performances by the Seller is not possible due to hindrances of performance for which the Seller is not responsible, which it could not foresee or which pose permanent obstacles that cannot be overcome at reasonable cost. This shall apply also for particular specifications of the Purchaser (e.g. custom-made products), in particular, the demanded quality and dates.
- 2.5 The Seller can rescind the contract if payment of the agreed price by the agreed delivery date is not secured (e.g. by commercial credit insurance, bank guarantee, advance payment).
- 2.6 Should the Seller rescind the contract according to Clauses 2.4 or 2.5 hereof, the Purchaser shall not be able to derive any additional rights against the Seller, with the exception of the repayment of the payments made for this contract.

3. Price and Payment

- 3.1 The agreed price is exclusive of the respectively applicable statutory VAT as well as ex works, unless otherwise agreed in writing. Shipment of the goods is the responsibility of the Purchaser. It shall bear the costs for packaging, insurance, freight, customs, import and ancillary charges. Packaging shall be non-returnable.
- 3.2 Should prices for raw materials or auxiliary materials, wages or other price-relevant commercial relationships increase between the date of conclusion of the contract and delivery for reasons for which the Seller is not responsible, the Seller can adjust the price respectively according to its equitable discretion (§ 315, para. 1 German Civil Code (*Bürgerliches Gesetzbuch, BGB*)) whereby the reduction of individual factors making up the price shall be taken into consideration.
- 3.3 If advance payment has not been agreed, then payments shall be due immediately after delivery of the goods and invoicing without deduction. Partial deliveries are permissible and can be invoiced separately. Payments are to be made exclusively in Euros.
- 3.4 In cases of failure to comply with payment conditions (also with other business transactions of the parties) or circumstances which establish serious doubts regarding the creditworthiness of the Purchaser, the Seller shall be entitled to demand advance payments for still-outstanding deliveries - regardless of other regulations related to payment due dates - and to rescind the contract after setting a reasonable subsequent payment deadline and, in deviation of Clause 2.6 hereof, to demand damages due to failure to perform the contract.
- 3.5 In cases of the Purchaser's default of payment, it shall forfeit all discounts, sales and freight rebates and other special terms in connection with the sale and delivery transaction. In addition, the Purchaser shall owe default interest in the amount of eight percentage points above the base interest rate but, however, at least 12 % of the outstanding purchase price claim p.a. as well as the costs for the written payment reminder notice in the amount of EUR 5.00. The Purchaser is entitled to prove that no damage or reduction in value existed at all or such is substantially less than the flat rate amount. Further default claims of the Seller remain unaffected. In cases of the Purchaser's default in payment, the Seller can suspend further deliveries to the Purchaser even if such are not part of the same sale and delivery transaction.
- 3.6 In deviation of the Purchaser's payment terms, the Seller is entitled to undertake offsetting according to §§ 367, para. 1 and 366, para. 2 BGB. Offsetting can cause an increase in the interest rate. Offsetting shall be notified to the Purchaser within one month from receipt of payment. Otherwise, the Purchaser's payment terms shall apply.
- 3.7 Should the Purchaser have claims against the Seller (counterclaims), the Purchaser shall only be entitled to set-off, retention or reduction if the counterclaims have been determined with final *res judicata* effect or are undisputed.
- 3.8 Assignment of the Purchaser's claims against the Seller shall only have legal effect with the Seller's written consent.

4. Delivery and Acceptance Obligation

- 4.1 The Seller shall have no obligation to deliver the ordered goods before and unless the payment of the agreed price as defined in Clause 2.5 hereof is ensured.
- 4.2 Delivery deadlines shall begin after receipt of all documents necessary for the execution of the contract, the agreed part payments or pre-payments as well as the agreed provision of materials, if applicable. Delivery has occurred when the Seller has made the goods available to be collected in its plant.
- 4.3 The Seller may manufacture the goods in modified form insofar as such is necessary due to statutory regulations and shall not entail any deterioration of quality or fitness for the intended purpose.
- 4.4 Insofar as the agreed delivery dates cannot be met due to unforeseeable events (e.g. operation disruptions, strikes, governmental measures, traffic disruptions, fire, natural catastrophes or other cases of force majeure), these delivery dates shall be extended accordingly without any claims of the Purchaser resulting therefrom.
- 4.5 With call orders without an agreement on duration, lot production sizes and date of taking delivery, delivery terms shall be agreed in a purchase schedule. Otherwise, delivery times shall be determined without concrete stipulation upon placement of the order according to call quantity, production utilisation and the production capacity at the date of the call order, taking into consideration the lead times as well as delivery times for required raw materials.
- 4.6 Should a binding delivery date be exceeded by more than two weeks by the Seller in spite of assurance of the purchase price payment, without the Purchaser being responsible herefor, the Purchaser can affix a reasonable subsequent deadline for the Seller which must be at least two weeks. The Purchaser can first rescind the contract after expiry of this deadline without performance.
- 4.7 Should the Seller be in default of delivery, compensation for delayed performance for each complete week of the delay shall be limited to an amount of 0.5 % of the value of the goods affected by the delay per week of the delay but a total of a maximum of 5 %. The Seller is

entitled to prove that no damage or reduction in value existed at all or such is substantially less than the flat rate amount. Additional claims of the Purchaser shall only be possible in cases of wrongful intent, gross negligence or breach of an essential contractual obligation by the Seller.

- 4.8 Clauses 4.6 and 4.7 hereof shall not apply in the case of a commercial fixed date transaction; in this case, § 376 German Commercial Code (*Handelsgesetzbuch, HGB*) shall apply.

5. Materials Provided

- 5.1 Should materials be provided by the Purchaser for processing, these are to be made available to the Seller in a timely manner and in perfect condition at its cost and risk with a reasonable excess quantity of at least 5 %.

6. Passing of Risk

- 6.1 The risk of accidental destruction and deterioration of the goods shall pass to the Purchaser upon notification of the readiness for shipment/collecton but, however, at the latest upon commencement of the loading of the goods.

- 6.2 Should shipment to the Purchaser be agreed (regardless of at whose expense), the risk shall pass to the Purchaser as soon as the Seller has made the goods available for shipment.

7. Warranty

- 7.1 After passing of risk according to Clause 6 hereof, the Purchaser shall inspect the goods without undue delay for defects including wrong deliveries and quantity errors and object hereto without undue delay in writing. Should defects first be revealed later, these are also to be objected to without undue delay. In cases of violations of the inspection and objection obligation, no claims shall exist against the Seller of whatever kind.

- 7.2 With defects, the Purchaser's claim shall first be limited to subsequent performance by remedy of the defects; the Seller shall have the option to undertake subsequent performance by replacement delivery instead. The Purchaser shall first be entitled to a right of reduction or, at its option, rescission when subsequent performance fails.

- 7.3 The Seller shall be liable for property damage and financial loss only in the case of wrongful intent or gross negligence. Liability is limited to damage typical for the contract or damage foreseeable at the date of conclusion of the contract. This limitation shall not apply to damage to health, bodily injury or death for which the Seller is responsible as well as in cases of violations of essential contractual obligations and claims under the German Product Liability Act (*Produkthaftungsgesetz*). The limitation of liability shall apply analogously for damages arising from claims of third parties against the Purchaser.

- 7.4 For legal errors in connection with patent rights, the Seller shall only be liable in cases of wrongful intent or gross negligence.

- 7.5 Defect claims of the Purchaser against the Seller shall be time-barred one year after the passing of risk according to Clause 6 hereof. This shall not apply for goods according to § 438, para. 1, No. 2 BGB.

- 7.6 The Purchaser shall only have recourse claims against the Seller on the basis of regulations related to the purchase of consumer goods insofar as the Purchaser has not established any claims extending beyond the statutory defect claims with its contractual partner in the supply chain. Recourse claims of the Purchaser shall be time-barred in one year; § 479, para. 2 BGB shall not be applicable. Clauses 7.2 and 7.5 hereof shall apply analogously. Payment deadlines, rebates, discounts, assumption of shipping services and comparable services shall be deemed to be equivalent compensation within the meaning of § 478, para. 4, sentence 1 BGB. The Purchaser is obligated to notify the Seller without undue delay of any recourse case occurring in the supply chain.

- 7.7 The warranty obligation for defects shall be cancelled if the goods are modified, processed or improperly handled. No warranty obligation shall exist also for defects which are based on the fact that the goods are not used as intended such as, e.g. through non-use.

- 7.8 Should it be revealed after a claim made by the Purchaser against the Seller due to warranty that no warranty obligation on the part of the Seller exists, the Purchaser shall reimburse the Seller the expenditures incurred.

8. Reservation of Ownership Title

- 8.1 The delivered goods remain the Seller's property until complete fulfilment of the Seller's claims against the Purchaser from the sale and delivery transaction. The inclusion of individual claims in a current account or their balancing out and acknowledgement by the Seller shall not rescind the reservation of ownership title.

- 8.2 The Purchaser shall be entitled to combine, commingle and process the goods subject to reservation of ownership title in its regular commercial business and for the Seller as the manufacturer but, however, without any obligation for it. Should the Seller's ownership title to the goods delivered be cancelled due to combination, commingling or processing, the Purchaser herewith transfers already now to the Seller co-ownership in the new object in the proportionate share of the value of the delivered goods to the Purchaser's object at the time of combination, commingling or processing.

- 8.3 The Purchaser is entitled to sell the Seller's goods and the new object in its routine business operations. Pledging or collateralisation are precluded. Claims incurred from the sale shall be assigned by the Purchaser already now to the Seller which accepts said assignment. The Purchaser is obligated to keep the proceeds for the Seller separate from its own or third party assets and to document the same in its accounts or on its invoices. Should the Purchaser's claims from the sale be included on the current account of a third party, then the Purchaser must object to this by referring to the Seller's rights and to immediately inform the Seller in writing. The Seller authorises the Purchaser to collect the assigned claims in its own name; the authorisation is revocable for the case that the Purchaser is in default with performance of its obligations vis-à-vis the Seller.

- 8.4 Should the value of the afore-mentioned collateral permanently exceed 20 % of the Seller's claims, then the Seller may release such to this extent at its choice.

9. Industrial Property Rights

- 9.1 In the case that the Purchaser gives the Seller specifications for the manufacture of the goods which, when implemented, cause an infringement of patent, copyright, trademark, copyright or other industrial property rights of third parties, the Purchaser shall indemnify the Seller against claims of third parties.

- 9.2 The Seller's construction documents and/or respective drafts thereto may only be used or transferred with the Seller's written approval.

- 9.3 Insofar as not otherwise agreed, the Seller is and remains the owner of the moulds manufactured for the Purchaser by the Seller itself or a third party engaged by the Seller. Should the Purchaser become the owner of the moulds, the ownership title shall pass to it after payment of the purchase price for the moulds. The Seller shall only be obligated to store the moulds owned by the Purchaser upon conclusion of a separate storage contract. In this case, the Seller may only use the moulds for the Purchaser's contracts. Up until acceptance of an agreed minimum number of items or until the ending of contracts which prerequisite possession of the moulds for performance, the Seller is entitled to exclusive possession of the moulds. The liability with regard to the storage and care is limited to the duty of care exercised in its own business. The Purchaser shall bear the costs for maintenance and insurance.

10. Miscellaneous

- 10.1 All disputes shall be decided pursuant to substantive German law. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) is precluded.

- 10.2 Should the Purchaser not be subject to general jurisdiction in Germany or if it is a merchant, legal entity under public law or public special assets, Berlin shall have exclusive jurisdiction for all disputes arising from the business relationship of the parties. The Seller is also entitled to file a lawsuit at a court competent at the Purchaser's place of business.

- 10.3 Place of performance for all obligations related to the contract relationship is Berlin.

Berlin, September 2013