

General Terms and Conditions of Sale and Delivery GHC Gerling, Holz & Co. Handels GmbH – Version: January 2009

§ 1 Scope

- 1) Our supplies and services are made solely in accordance with the general terms and conditions of business given below. These terms and conditions shall also apply to future contracts for the sale and/or the delivery of movable objects with the same Buyer, even if they are not expressly agreed upon again separately.
- 2) We do not recognise terms and conditions of the Buyer that conflict with or deviate from our General Terms and Conditions of Sale and Delivery, unless we have expressly agreed in writing to the validity of conflicting or differing general terms and conditions of business.
- 3) This shall apply even if we have not objected in the individual case to deviating conditions of the Buyer or if we unconditionally carry out the delivery to this Buyer in knowledge of terms and conditions of the Buyer that conflict with or deviate from our terms and conditions.
The statutory regulations, in particular the Civil Code and the Commercial Code shall apply, unless it is laid down differently below.
- 4) The special terms and conditions for rental containers, which shall also become part of the contract if a Buyer makes use of rental containers, shall apply to our containers and means of transport. The terms and conditions can be requested separately from us and are also published on our website.

§ 2 Offer and conclusion of contract

- 1) Our offers are subject to confirmation.
- 2) The order for the desired goods can be made by the potential Buyer either by telephone, verbally, in writing, by e-mail or by fax and constitutes a binding offer to conclude a contract. We are entitled to accept this offer within a period of 10 working days.
- 3) Verbal or telephone statements of representatives or employees only become valid with our confirmation in written, text or electronic form.
- 4) Illustrations, drawings, weight details, descriptions in offers, price lists and other general printed matter have been prepared and calculated in the best way possible, but are only approximately relevant, unless they are expressly designated as binding.

§ 3 Prices and terms of payment

- 1) Unless otherwise agreed in the individual case, our respective prices valid at the date of the conclusion of the contract shall apply, namely ex distribution centre, plus statutory value-added tax.
- 2) The purchase price is due and payable immediately, unless it has been otherwise agreed.
- 3) If the Buyer fails to pay on the due date, all outstanding invoices will become due immediately.
- 4) The Buyer shall be entitled to offsetting rights or rights of retention only insofar as his claim has been recognised by declaratory judgment or is undisputed.

§ 4 Delivery and delivery time

- 1) If we are prevented from fulfilling our obligation to deliver due to circumstances which we are not responsible for, this also includes strikes or lock-outs, the delivery period shall be extended by a reasonable period.
- 2) Insofar as the order confirmation does not state otherwise, the delivery is agreed "ex works" or distribution centre.
- 3) The costs of the return transport of packaging to GHC shall be borne by the customer.

§ 5 Customer packaging

The customer's own containers are to be sent to us free of charge, ready to fill and with residual excess pressure of the product to be filled. We will not check the container contents prior to the refilling for the product, quality and contamination without specific instructions – the customer shall be responsible for this. Defective steel cylinders and steel cylinders subject to inspection will be checked and repaired in accordance with the pertinent statutory regulations without instructions at the expense of the customer.

§ 6 Reservation of title

- 1) All goods delivered on our part shall remain our property, as long as we have accounts receivable due from the Buyer.
- 2) The Buyer must immediately notify us in writing in the event of levies of execution or other interventions by third parties, in order that we can institute legal proceedings in accordance with § 771 ZPO (German Code of Civil Procedure). Insofar as the third party is not in a position to reimburse to us the judicial and extrajudicial costs of an action in accordance with § 771 ZPO, the Buyer shall be liable for the loss incurred by us.
- 3) The Buyer is entitled to resell the delivery item in the regular course of business; he shall, however, already assign to us all accounts receivable to the value of the total invoiced amount (including VAT) of our receivable, which accrue to him from the resale to his customers or third parties and in fact irrespective of whether the delivery item has been resold without or after processing. The Buyer will continue to be entitled to collect on this receivable even after the assignment. Our entitlement to collect the receivable ourselves shall remain unaffected thereby. We undertake, however, not to collect the receivable, as long as the Buyer fulfils his obligations to pay from the collected proceeds, does not default in payment and in particular no application is made for insolvency proceedings to be commenced or suspension of payment exists. If this is, however, the case we may demand that the Buyer identify the assigned accounts receivable and their liable parties, provides all the details required for the collection, hands over the appropriate documents and informs the liable parties (third parties) about the assignment.
- 4) Processing or refashioning of the delivery item by the Buyer is always performed for us. If the delivery item is processed with other items which do not belong to us, we shall acquire joint ownership in the new object in proportion of the value of the delivery item (total invoiced amount, including VAT) to the other processed items

at the time of the processing. In other respects, the same applies to the object which was created by processing as to the object of sale which was delivered conditionally.

- 5) If the delivery item is mixed inseparably with other items which do not belong to us, we shall acquire joint ownership in the new object in proportion of the value of the delivery item (total invoiced amount, including VAT) to the other mixed items at the time of the mixing. If the mixing is carried out such a way that the object of the Buyer is to be considered as the main object, it is hereby agreed that the Buyer transfers joint ownership proportionately to us. The Buyer holds the exclusive ownership or joint ownership, which has thereby arisen, in safe keeping for us. The Buyer also assigns to us those accounts receivable as security for our receivables due from him, which accrue and are due from a third party because of the connecting of the delivery item with a plot of land.
- 6) If the realisable value of the securities exceeds our receivables by more than 20%, we will at the request of the Buyer release securities at our discretion.

§ 7 Warranty claims

- 1) After the passing of the risk, GHC shall be liable for defects, to the exclusion of all other claims of the Buyer notwithstanding no. 1) and § 8 such that GHC can at its discretion first of all remedy the defect (reworking) or deliver a faultless object (replacement delivery) within the scope of the subsequent performance owed. The Buyer must immediately inform us in writing of a defect found.
- 2) GHC is not liable if the defect is insignificant for the interests of the Buyer or is based on a circumstance which is to be attributed to the Buyer.
- 3) In case of any changes performed improperly by the Buyer or third parties without the prior permission of GHC, GHC shall bear no liability for the resultant consequences. Only in urgent cases involving a risk to the safety of operations or in order to avert unacceptable high loss or damage, whereby GHC must be informed immediately, or if GHC - taking into account the legal exceptions - has permitted a reasonable deadline, set for him to remedy the defect, to expire fruitlessly, shall the Buyer be entitled, within the framework of the statutory provisions applying, to remedy the defect himself or have it remedied by third parties, and to demand that GHC reimburse him for the necessary costs.
- 4) If it emerges in the case of goods returned further to a complaint that the complaint has been wrongly made, GHC is entitled to charge not only the costs of the shipment, but also a reasonable fee for checking the goods. Parts replaced within the scope of the warranty shall become the property of GHC.
- 5) If GHC – taking into account the legal exceptions – has permitted a reasonable deadline, set for him to perform the remedying of defects, to expire fruitlessly, the Buyer shall have a right of reduction of the purchase price within the framework of the statutory provisions applying. Only if it can be proven that the repair is of no interest to the Buyer despite the reduction of the purchase price, may the Buyer withdraw from the contract.
Further claims shall be governed solely by clause § 8 of these conditions.

§ 8 Liability of GHC/ disclaimer of liability

- 1) If the delivery item cannot be used by the Buyer for the contractually agreed purpose due to the fault of GHC as a result of ignoring or incorrectly implementing proposals and advice put forward before or after conclusion of the contract as well as other breaches of secondary contractual obligations, the arrangements specified in § 7 and § 8 no. 2) shall apply, to the exclusion of all other claims of the Buyer.
- 2) a) GHC shall be liable for loss or damage not occurring on the delivery item itself – whatever the legal grounds involved – only in the event of wilful intent, gross negligence on the part of the owner / the boards or senior executives, in the event of culpable injury to life, body and health, in the event of defects which have been fraudulently concealed, within the scope of a warranty promise, insofar as liability exists under the German Product Liability Act for injury to persons or damage to privately used property.
b) In the event of a culpable breach of material contractual obligations, GHC shall also be liable in the case of gross negligence of non-executive personnel and in the case of ordinary negligence, in the latter case limited to the direct loss or damage typical for this type of contract and foreseeable within reason, and according to the benefits of the third-party liability insurance of GHC.
Any further claims are excluded.
- 3) The liability of GHC resulting from a delay in delivery or warranty claims is always limited to a maximum of 200% of the value of the goods, insofar as this is legally possible.
- 4) Insofar as the liability for damages is excluded or limited, this shall also apply in respect of the personal liability for damages of our employees, staff, personnel, representatives and vicarious agents.

§ 9 Statute of limitations

All claims of the Buyer - whatever the legal grounds involved – shall become statute-barred in 12 months, commencing from the passing of the risk. Claims for damages under clause § 8 no. 2 shall be governed by the statutory time limit. The limitation period in the event of a claim under a right of recourse in accordance with §§ 478, 479 BGB (German Civil Code) remains unaffected; it is 5 years, calculated from delivery of the defective object.

§ 10 Applicable law, place of fulfilment, place of jurisdiction

- 1) The law of the Federal Republic of Germany shall apply. The validity of the UN law on the sale of goods is excluded.
- 2) Insofar as the order confirmation does not state otherwise, the place of fulfilment shall be the headquarters of our place of business nearest to the Buyer.
- 3) The place of jurisdiction for all disputes in connection with this contract is Hamburg. This also applies to claims arising from bills of exchange and cheques, which are payable at different places. We are nevertheless entitled to also institute legal proceedings against the Buyer at any other legal place of jurisdiction