

**General Terms and Conditions  
Dradura Holding GmbH & Co. KG, Altleiningen  
-for use in business transactions with other companies-**

**§ 1 Scope of application**

These General Terms and Conditions shall apply to any and all deliveries including those under future contracts. Any deviating agreements shall always be made in writing. Any general terms of purchase of the Buyer shall not be accepted. If any part of these General Terms and Conditions is legally ineffective, this shall not affect the validity of the remaining contents.

**§ 2 Pricing**

The offers made by the Seller shall be subject to change without notice. Unless otherwise agreed upon, all prices shall apply ex place of performance. The place of performance shall be Altleiningen. The contents of the contract for delivery shall be based on the Seller's order confirmation. In the event of an oral agreement, the burden of proof to show that any invoiced quantities, prices and qualities deviate from its order shall lie with the Buyer.

**§ 3 Obligation to buy**

A binding order shall oblige the Buyer to buy the ordered article at the agreed price. A rescission of the contract shall not be admissible unless an objective reason exists.

#### **§ 4 Delivery**

(1)

The articles shall be shipped at the expense and, even with carriage paid, at the risk of the Buyer. The delivery date shall be deemed agreed upon as approximate. A slightly delayed delivery – with nonmerchants a delivery that does not exceed the agreed delivery date by more than two business days – shall not entitle the Buyer either to rescind the sales contract or to claim for damages, particularly for delay.

(2)

In the event of acts of God, interruptions in traffic and operations, lack in goods and fuel, strikes, lockouts and interruptions with suppliers that prevent a timely delivery, the Seller shall be released from its obligation to deliver for the duration of the occurred interruptions and their effects.

The obligation to deliver shall be subject to the Seller receiving correct and timely deliveries from its suppliers. The burden of proof to show that a failure to fulfil an obligation in relation with the procurement of supplies can be attributed to the Seller shall lie with the Buyer.

(3)

If delivery becomes impossible or is substantially delayed, the Seller may only be held liable if the Seller or any of its representatives or vicarious agents acts intentionally or by gross negligence in accordance with the legal provisions.

However, in the event of gross negligence, the liability of the Seller shall be limited to the typical, foreseeable damage if none of the exceptions specified in sentence 5 of this section 3 is given.

Otherwise, the liability of the Seller for impossibility and substantial delay in delivery shall be limited to damages and to the reimbursement of futile expenses up to a total of 10% of the value of the goods. Any further claims of the Buyer shall be excluded.

This restriction shall not apply to liability for fatal injury, personal injury of injury to health in the event of intentional acts or gross negligence.

The Buyer's right to withdraw from the contract shall remain unaffected.

## **§ 5 Complaints for quality and quantity**

Any complaints of the Buyer in relation with quantity differences, quality or transport damage shall immediately be raised upon receipt of the delivered goods. With non-obvious defects, the Buyer may notify the defect within one year.

If a defect has been notified in time and properly as defined by § 377 of the German Commercial Code (HGB), the Buyer shall give the Seller the opportunity to check the complaint. If a complaint is justified, the Seller shall not at any case be obliged to subsequent delivery or manufacture under its duty of subsequent performance.

The option to choose between rectification of defects and subsequent delivery shall at any case be at the discretion of the Seller.

The Seller shall not warrant that the delivered goods are suitable for the purposes intended by the Buyer.

Claims based on defects shall not be admissible if the deviation from the agreed condition is only insignificant or the fitness for use is only insignificantly affected.

## **§ 6 Payment**

(1)

The purchase price shall be payable within 14 days from the date of invoice unless a written agreement on any other terms of payment has been made. If the term of payment is exceeded, the Buyer shall be liable to pay interests to the amount of 8 percentage points above the base rate from the due date. The Seller shall be entitled to prove that the incurred damage has been higher. Any other claims for default shall be reserved.

Any payments shall be made in EUROS. Cheques and bills of exchange shall only be accepted for payment purposes. Payments by bill of exchange shall only be admissible based on a prior written agreement.

(2)

The Buyer shall only be entitled to offset any claims if its counter-claims are undisputed or have been finally established both on the merits and in terms of amount. A right of retention shall only exist if it is based on the same contractual relationship and it can be proved that the contract has fundamentally been breached.

(3)

The Buyer shall not be entitled to assert any claims and rights for defects if it has failed to settle any due payments and the due amount is in reasonable proportion to the value of the defective goods.

### **§ 7 Reservation of title**

(1)

The goods shall remain the property of the Seller until any and all claims to which it is entitled under the business relationship have been settled. If the Buyer is in breach of any of its obligations, particularly in the event of delays in payment, the Seller shall be entitled to request the goods to be returned and/or to rescind the contract without setting a grace period; the Buyer shall be obliged to return the goods.

A request for the goods to be returned shall not constitute any declaration of rescission by the Seller unless this is expressly stated.

(2)

The Buyer shall be obliged to handle the purchased object carefully; it shall particularly be obliged to sufficiently insure it against fire, water and theft for its replacement value at its own expense.

(3)

The Buyer shall immediately notify the Seller in writing of any attachments and other interventions.

If the third party is not able to reimburse the judicial and extra-judicial costs of an action in accordance with § 771 of the German Code of Civil Procedure (ZPO), the Buyer shall be liable towards the Seller for any incurred losses.

(4)

The Buyer shall be entitled to resell the purchased object within its ordinary course of business; however, it shall hereby assign to the Seller any and all claims that arise from such resale towards its purchasers or third parties, indifferent of whether the purchased object has been resold without or after any processing, to the amount of the final sum of the invoice. The Buyer shall continue to be entitled to collect such claims even after such assignment. This shall not affect the Seller's right to collect the claim itself. However, the Seller shall undertake not to make use of this right unless the Buyer is in delay with its payment obligations and has particularly filed a petition for the commencement of composition of bankruptcy proceedings. If this is the case, the Buyer shall provide any and all information required for the collection of the claims by the Seller.

(5)

Any processing or transformation of a purchased object shall always be made for the Seller. If the purchased object is processed together with other objects, the Seller shall acquire co-ownership in the new object in proportion of the value of the purchased object to the other processed objects at the point of time of their processing.

(6)

If the purchased object is inseparably compounded with other objects, the Seller shall acquire co-ownership in the new object in proportion of the value of the purchased object to the other compounded objects at the point of time of their compounding.

(7)

The Buyer shall also assign to the Seller the claims for securing the claim of the Seller that arise from the combination of the purchased with a property towards any third party.

The Seller shall undertake to release the securities to which it is entitled upon the Buyer's request if the realisable value of the securities exceeds the claim to be secured by more than 10%. The selection of the securities to be released shall be at the discretion of the Seller.

## **§ 8 Damages**

(1)

In the event of intentional acts or gross negligence by the Seller or any of its vicarious agents, the Seller shall be liable in accordance with the legal provisions.

Any liability for a damage caused by the delivered item on legal interests of the Buyer, e.g. damage to other objects, shall be excluded.

The provision of sentence 2 shall not apply in the event of intentional acts or gross negligence or if the Seller is held liable for fatal injury, personal injury or injury to health.

(2)

Section 1 shall apply accordingly to damages to be paid in addition to performance on any legal grounds whatsoever, particularly for defects, the breach of obligations or tortious acts.

It shall also apply to claims for the reimbursement of futile expenses. The liability for delay and impossibility, however, shall be based on § 4.

(3)

Unless it is accused of intentional breach of contract, the Seller shall only be liable for the typically foreseeable damage.

(4)

The liability for culpable fatal injury, personal injury or injury of health shall remain unaffected; this shall also apply to imperative liability in accordance with the German Product Liability Act.

(5)

Unless otherwise provided for above, any liability shall be excluded.

## **§ 9 Limitation**

The limitation period for any claims and rights for defects on the delivered items – on any legal grounds whatsoever – shall be 1 year.

The above limitation period shall not apply in the event of intentional acts, if the Seller has fraudulently concealed the defect and in case of fatal injury, personal injury or injury of health or violation of freedom and in the event of claims under the Product Liability Act, a grossly negligent breach of duty or breaches of substantial contractual obligations.

## **§ 10 Applicable law & place of jurisdiction**

(1)

These General Terms and Conditions and any and all legal relationships between the Seller and the Buyer shall mandatorily be governed by the law of the Federal Republic of Germany.

(2)

Any other national law and the UN Sales Convention (CISG) shall be excluded. If the Buyer is a merchant entered in the commercial register as defined by the German Commercial Code (HGB), a legal entity incorporated under public law or a public special fund, Frankenthal (Palatinate) shall be the exclusive place of jurisdiction for any and all disputes that directly or indirectly arise from the business relationships.

## **§ 11 Data protection**

The Seller shall be entitled to process the Buyer's data received under the business relationship or in relation with such either from the Buyer or any third party in accordance with the Federal Act on Data Protection. This note shall replace the notification required under the Federal Act on Data Protection that personal data of the customers are stored and processed via EDP.