

## **General conditions of sale and delivery**

### **Valid from 1.10.2001 onward**

#### **§ 1 Conclusion of the contract, general content of the contract**

1. The written sale confirmation of the seller together with these general conditions of sale and delivery authoritative for all contracts. The orderer accepts these conditions when he places the order, however at the latest when he accepts the delivery. These general conditions of sale and delivery also apply to all future contracts, even if they are not agreed again. The purchase conditions of the orderer shall not obligate the seller even if the latter does not explicitly raise an objection against them.
2. Modifications of the contract and additions to it shall be valid only with the written confirmation of the seller.
3. The rights of the orderer which result from the contract may be transferred only with the approval of the seller. The legal invalidity of individual parts of the contract shall not affect the legal validity of the remainder of the contract.
4. The seller is obliged to make a delivery only in so far as a precautionary buying of the necessary raw, accessory or operating materials and foreign exchange is possible.

#### **§ 2 Prices**

1. Unless agreed otherwise, the prices of the seller which are valid on the day of delivery shall apply to the calculation of prices.
2. If the payment in a currency other than the EURO (foreign currency) has been agreed, the seller reserves the right to reduce or increase his purchase price claim in the foreign currency in the invoice in such a manner that the amount of invoice corresponds to the Euro equivalent as calculated on the day of conclusion of the contract on the basis of the debt expressed in the foreign currency.
3. If the costs related to the order change significantly after the conclusion of the contract, the contracting parties are obliged to reach an agreement about the adjustment of prices. If the contracting parties cannot reach an agreement, then they are entitled to repudiate the contract. Any further claims are excluded.

#### **§ 3 Acceptance of delivery**

If the goods have to be inspected according to special conditions, the acceptance of delivery shall take place in the supplying factory at the expense of the orderer.

#### **§ 4 Passing of the risk**

All risks shall be passed to the orderer when the goods leave the supplying factory or are placed at the disposal of the orderer. If the goods are taken back for reasons for which the seller is not responsible, the orderer shall bear all risks until the goods are received by the seller.

#### **§ 5 Warranty**

1. Unless agreed otherwise, the valid version of the data sheets ("Technical Data") of the seller shall be authoritative for the description of the quality of the foil products. The guarantee of characteristics shall be valid only in written form.
2. Technical suggestions and recommendations of the seller shall be based on appropriate inspections; however they will be made outside the scope of contractual obligations. In particular, the inspection whether the goods which are provided or suggested by the seller are suitable for the purpose planned by the orderer shall be incumbent only upon the orderer.
3. In case specific foil types and thicknesses have to be manufactured to order, minimum quantities must be fixed in each individual case whereby an upper quantity deviation of 20 % and a lower quantity deviation of 10 % are permissible. The weights, piece number and number of square metres calculated by the seller shall be valid. DIN tolerance values shall be applicable if complaints are made for goods that conform to DIN standards.
4. Notwithstanding an earlier legally stipulated time limit to give notice of defects, complaints must be lodged in writing at the latest 2 weeks after the receipt of goods. Hidden defects must be notified immediately after they are determined, however at the latest within 3 months after the receipt of goods. The burden of proof that there is a hidden defect lies with the orderer. If the orderer does not provide samples of the goods for which complaints have been lodged without any delay if he is requested to do so, all his claims shall become invalid. If the complaints are justified, the claims of the orderer are limited to substitute delivery free of charge with prepaid freight. However, the pre-requisite is that the material for which the complaint has been lodged constitutes more than 5 % of the delivery volume and is returned to the seller upon request. In so far as it is reasonable for the orderer, the seller can choose to make subsequent improvement instead of substitute delivery. If the seller unjustly refuses to remove the defects or make a substitute delivery or if he defaults on the same, the orderer must set an appropriate additional period of time and, if this additional time period expires without any success, demand repudiation of contract or reduction of the purchase price at his option. Further claims of the orderer, in particular the right to reimbursement of processing costs, mounting and dismounting costs as well as damage which is not related to the delivery item, are – in so far as legally permissible – excluded.
5. Defective partial deliveries cannot be taken as the basis for deriving any rights related to the remaining partial deliveries. The seller can refuse to satisfy warranty claims as long as the orderer does not fulfil his obligations.

#### **§ 6 Deadlines for delivery, acceptance and call-forward notices**

1. The delivery deadlines are authoritative for the time of delivery ex works. The delivery deadlines shall be extended to an appropriate extent if the orderer does not fulfil his obligations or if unforeseeable or extraordinary events or events arising

through no fault of the seller occur in the concerned production enterprise of the seller or if the delivery to a supplier of the seller is delayed. The same shall be applicable in case of a strike or lockout. If these obstructions last longer than a month or if there is a closing-down of operation in the concerned production enterprise of the seller or of a supplier of the seller, then the seller is entitled to repudiate the contract.

2. If a delay is caused due to the fault of the seller, the orderer is entitled to repudiate the contract after expiration of an appropriate deadline set in writing by the orderer with the declaration that he will reject the delivery after expiration of the deadline in case the goods have not been produced by the time the seller receives the written notice of repudiation of contract.
3. The seller is entitled to make partial deliveries. The orderer cannot take the delay of partial deliveries as the basis for deriving any rights related to the remaining partial deliveries.
4. If an acceptance deadline has been fixed, then the seller is not obliged to make a delivery after it has expired. Call-forward notices and specifications of individual partial deliveries must be made at uniform intervals and in uniform quantities as far as possible and punctually enough to enable a due and proper production and delivery before the expiration of the contractually stipulated deadline. If the deadline for the division of delivery has not been fixed, 2 months shall be considered agreed. If the call-forward notice or specifications are not given or not given punctually, then, after fixing a deadline which expires without any success, the seller is entitled – without the same affecting his rights according to § 7 – to demand cash before delivery or to repudiate the contract.

### **§ 7 Delay in acceptance**

If the orderer delays in accepting the goods or services that are duly offered to him, then, after the expiration of an appropriate additional period of time, the seller is entitled to repudiate the contract and demand reimbursement of expenses in the amount of 25% of the invoiced amount without furnishing proof of original reason or amount. This shall not apply if the orderer furnishes proof that the expenses were lower or that there were no expenses.

### **§ 8 Rights of protection**

For deliveries in accordance with the instructions of the orderer, the orderer shall release the seller from all claims of third parties concerning rights of protection. If the orderer violates the contract, his rights of protection shall not stand in the way of a utilisation of the goods by the seller.

### **§ 9 General limitation of liability**

Compensation claims of all kinds for all direct and indirect damage – also due to violation of secondary obligations and irrespective of the legal basis – are excluded unless they are based on wrongful intention or gross negligence of the seller or the persons employed by him to fulfil his obligations.

### **§ 10 Liability according to the product liability law**

Exclusions of liability according to these conditions of sale do not apply to those claims of private consumers or users in accordance with the product liability law which are independent of whose fault it was. The seller is liable vis-à-vis the orderer for compensation claims or recourse claims only in so far as it can be proved that the seller was responsible for a defect in the goods delivered by him.

### **§ 11 Credit reservation**

1. Delivery assurances of all kinds, in particular within the scope of orders for goods to be delivered on demand, are subject to the proviso that the delivery can be performed without exceeding the agreed maximum credit amount or the maximum credit amount fixed by the seller.
2. If the claims of the seller are jeopardised by a deterioration of the financial situation of the orderer which occurs after the conclusion of the contract or if the orderer jeopardises the rights of the seller agreed under § 12 through transfers of ownership by way of security, assignment of claims or in any other way, then the seller – without this affecting his other legal claims – is entitled to demand advance payments or provision of security or to repudiate the contract.
3. Under the same conditions, the seller is entitled at any time to visit the warehouse of the orderer, forbid the resale of the goods which are subject to reservation of ownership or to claim recovery of possession of these goods, safeguard them at the expense of the orderer and utilise them with a set off against the utilisation proceeds. Furthermore, the seller can demand that the orderer disclose his credit transactions and can disclose the existing fiduciary assignments, in particular according to § 12, with revocation of the direct debit authorisation.

### **§ 12 Reservation of ownership**

1. The seller reserves the ownership of the goods which are delivered by him as well as of the things which are possibly produced by machining or processing them until all the claims of the seller vis-à-vis the orderer from the present or future business relations have been satisfied (including the claims from all contingent liabilities, for instance bills of exchange). The orderer is obliged to store the goods which are subject to reservation of ownership separately and to mark them.
2. The orderer shall carry out a possible machining or processing for the seller without the same resulting in any obligations for the seller. If the orderer attains a co-ownership or sole ownership due to machining or processing, combination, blending together or mixing of the delivered goods with other things, then the orderer transfers it now itself to the seller. The orderer

shall have possession of these things on behalf of the seller as a custodian who exercises due care and diligence of a prudent businessman.

3. If the orderer machines or processes the goods which are subject to reservation of ownership with goods which do not belong to him, then the seller shall be entitled, in so far as he does not have sole ownership by virtue of law, to co-ownership of the new things in the ratio of the invoiced amount of the processed goods which are subject to reservation of ownership to the invoiced amount of the other processed goods; in case the orderer combines or mixes the goods, the seller shall be entitled to co-ownership or sole ownership of the new things in accordance with the statutory regulations. The seller may resell the delivered goods and the things resulting from their machining, processing, combination or mixing only in the due course of business. Transfers by way of security, mortgages or dispositions which jeopardise the other rights of the seller are not allowed.
4. The orderer now itself assigns the full amount of the receivable to which he is entitled due to the resale of the (possibly machined or processed etc.) goods which are subject to reservation of ownership or due to a different legal ground concerning the goods which are subject to reservation of ownership to the seller by way of security.
5. In case of a previous machining or processing etc. with goods which do not belong to the orderer, the orderer now itself assigns the receivable in the following amount: in case of machining or processing, the receivable will be divided in the ratio of the invoiced amount of the unprocessed goods which are subject to reservation of ownership to the invoiced amount of the other unprocessed goods which form a part of the sold goods; in case of combination or mixing, the receivable will be divided in the ratio of the value which the goods had at the time of combination or mixing. In other words, in case of machining or processing, the proportionate part of the receivable corresponding to the invoiced amount of the goods which are subject to reservation of ownership, in case of combination or mixing, the proportionate part of the receivable corresponding to the value of the goods which are subject to reservation of ownership at the time of combination etc. shall be assigned.
6. In so far as the assignment of the receivable has not taken place by virtue of the previous provision or has not taken place in the amount specified in the previous provision for any reason whatsoever, the receivable of the orderer vis-à-vis his customer shall, in any case, be considered assigned to the seller in the amount of invoice of the goods subject to reservation of ownership which is included in the corresponding account receivable of the orderer. If the value of the securities exceeds the account receivable of the seller by more than 20 %, then the orderer is entitled to demand the release of the security to the corresponding extent.
7. The orderer must without any delay notify the seller if third parties have access to the goods which are subject to reservation of ownership or to the assigned receivables and, at the same time, hand over the documents to the seller which are necessary for interventions. The orderer shall bear the expenses of the interventions.
8. The assertion of the reservation of ownership shall not be regarded as repudiation of contract. The rights resulting from the reservation of ownership shall continue to be valid until the seller has been finally released from all contingent liabilities (for instance payment of cheques and bills of exchange) which he assumed in the interest of the orderer.

### **§ 13 Payment conditions**

1. Unless agreed otherwise, payment of invoices must be made immediately without any deductions. The orderer is not entitled to retain or set off against payments unless his counterclaims have been acknowledged or declared final and absolute by the court.
2. Bills of exchange shall be accepted only with prior agreement and only on account of payment and with the reservation of the possibility of discounting. If the payment is made with bills of exchange or cheques, then the orderer shall bear the costs of discounting and collection.
3. The seller is entitled, also contrary to the stipulation of the orderer, to use the payment of the orderer for a different claim. If the orderer defaults on payment of an amount which is not insignificant, then the following provision shall be considered agreed: all claims of the seller shall become due immediately without consideration of the collected bills of exchange. The seller shall be entitled to make the further processing of all orders of the orderer conditional upon an advance payment or the provision of security or to refuse the further implementation of orders after having set an appropriate additional deadline.
4. The orderer is obliged to provide suitable securities, in particular also property encumbrances, assignment of claims and transfer or mortgage of objects, for the claims of the seller if the seller requests the orderer to do so in an individual case. The seller is entitled to forbid the resale of the goods which are subject to reservation of ownership and claim recovery of possession. Real rights of third parties shall not be affected by the surrender of possession. The seller can demand interest on defaulted payment in the amount of 8 % above the applicable base interest rate without the same affecting his further claims.

### **§ 14 Place of performance and jurisdictional venue**

1. The place of performance for all obligations resulting from the contract shall be the legal domicile of the seller.
2. The exclusive jurisdictional venue for all obligations resulting from the contract, if the orderer is a fully qualified merchant, shall be the local first-instance court Lörrach or the regional court Freiburg depending on the legal regulation concerning jurisdiction. For legal actions based on dishonoured bills of exchange or cheques, the jurisdictional venue shall also be the place of payment at the seller's option.
3. The law of the Federal Republic of Germany shall exclusively govern the performance of all contracts which are signed by the seller.
4. If an above mentioned provision is or becomes legally invalid, the legal validity of the remaining provisions and the contract shall not be affected thereby.

### **§ 15 Special conditions**

The production of specific types and thicknesses of foils which are made to order requires that minimum quantities are fixed in each individual case and can necessitate an upper deviation of 20 % and a lower deviation of 10% in the ordered quantity. "Prices ex works" shall always be charged for foil orders under 400 kg. The minimum order amount per delivery shall be approximately € 500/-.

#### **§ 16 International contracts of purchase**

If the legal domicile of the orderer is outside Germany, the law of the Federal Republic of Germany shall be applicable with the inclusion of CISG (UN Sales Law). In this case – contrary to the above mentioned conditions of sale – the following special provisions shall apply with regard to the written form as well as the liability of the seller for breach of contract:

1. Modifications or cancellation of the contract shall be valid only in written form. This also applies to agreements concerning the abandonment of the agreement on written form.
2. The seller is liable vis-à-vis the orderer for compensation claims in accordance with statutory regulations in so far as a breach of contract is based on a wrongful intention or gross negligence of the seller; a fault of his representatives or persons employed by him to perform his obligations shall be considered his fault. He shall also be liable according to the statutory regulations in so far as he violates a fundamental contractual obligation.
3. If goods which do not conform to the contract are delivered, the orderer has the right to cancel the contract or demand substitute delivery only if compensation claims vis-à-vis the seller are excluded or the orderer cannot be reasonably expected to utilise the goods which do not conform to the contract and assert the remaining claim for damage. In these cases, the seller is firstly entitled to remove the defects. If the removal of defects is not successful and/or if it causes an unreasonable delay, then the orderer is entitled to declare the cancellation of the contract or demand substitute delivery at his option. The orderer is also entitled to do this if the removal of defects causes unreasonable trouble or if it is not certain that the possible expenses of the orderer will be reimbursed.

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