

General Terms and Conditions of Sales und Delivery

We within the meaning of these terms and conditions are company referring to the present conditions from time to time. Our contractual partner is referred to as "Buyer"

Recitals

We supply goods and services to entrepreneurs within the meaning of section 14 of the BGB (German Civil Code), legal entities under public law and public-law special funds subject to the General Terms and Conditions of Sale and Delivery (the "Terms and Conditions") herein below. Such Terms and Conditions shall also govern any and all future transactions of the above-mentioned kind, even if not expressly referred to in an individual case.

We hereby explicitly reject any other terms and conditions, including without limitation Buyer's terms and conditions of purchase; such terms and conditions shall not be binding upon us even in the event that we may fail to expressly object to them when entering into a contract. Any application of deviating terms and conditions requires our express written confirmation (in accordance with the last sentence of section 1(a) herein above).

Section 1 – Dispatch and acceptance; written form

(a) Our offers are without obligation. A purchase orders is not binding on us unless we have acknowledged such purchase order in writing or have started executing the purchase order.

(b) Clauses supplementing the description of goods such as "circa", "as supplied", "as before" or similar supplements in our offers refer exclusively the quality or quantity of the goods but not to the price thereof. We shall interpret corresponding details included in Buyer's purchase orders accordingly.

(c) Any indication of quantities on our part is an estimate only. In case of deliveries in dismountable tanks, fixed tanks, or silo vehicles differences of +/- 10% of the agreed quantity shall be deemed to be in compliance with the contract. Such deviations from the agreed quantity reduce or increase the agreed purchase price accordingly.

(d) Unless specified otherwise in the quotation, our prices are ex works (our site). In the event that we, by way of exception, arrange the transport for Buyer and advance the freight costs, Buyer shall immediately reimburse us for the total amount of such freight costs.

(e) Text form (including without limitation fax and e-mail) or transmission by telecommunication shall have the same effect as written form.

Section 2 – Purchase price and payment

(a) Our prices are subject to any are subject to any taxes (including without limitation VAT) and customs duties that may be due.

The price calculation is made on the basis of the volumes or weights determined by us or our suppliers; it can, however, be made on the basis of the volumes or weights determined by the recipient, if such determination is carried out using standardised instruments and the goods have been transported at our risk.

(b) Except as otherwise agreed in writing (in accordance with the last sentence of section 1(a) herein above), the purchase price is due in full upon delivery of the goods. Any cash discounts and payment dates agreed apply only

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to the purchase order actually confirmed and do not justify an extension of the due date for payment. Any discount agreed is forfeited in the event of acceptance of a bill of exchange even if the discount charges are borne by Buyer.

(c) If the payment date expires without payment, we are entitled to charge interest in the amount of 5 percentage points above the base lending rate.

(d) In the event of default we will charge interest on arrears in the amount of the rate provided for in section 288 II of the German Civil Code, currently 9 percentage points above the base interest rate, and reserve the right to assert further claims.

(e) Cheques and bills of exchange are accepted as conditional payment only and subject to prior agreement. Any bank fees due for payment procedures are for the account of Buyer.

(f) Buyer is not entitled to offset any counterclaims or to assert a right of retention unless such offsetting or retention is based on the same legal relationship or on section 320 of the German Civil Code or unless said claims are undisputed or have been finally decided by a competent court of law.

(g) If Buyer defaults on its payment obligation in whole or in part, on whatever legal grounds, we are entitled to accelerate the due date for payment for the entire unpaid balance even where we have accepted bills of exchange and/or cheques without any agreement in this regard.

In such a case we are also entitled to make any future deliveries conditional upon payment of a deposit or security. If such payment or security is not made or given within a reasonable period of time despite a reminder having been sent, we are entitled to rescind the contract and claim damages.

(h) If Buyer suffers a major deterioration in its financial circumstances, thus putting at risk our claims, the provisions laid down in paragraph (g) hereof shall apply including where such circumstances, which were in existence before the conclusion of the contract, come to our knowledge only at a later point in time.

Section 3 – Delivery

(a) The agreed delivery periods and dates are always approximate unless a fixed date has been expressly agreed in writing (in accordance with the last sentence of section 1(a) herein above). Firm deals, including without limitation firm deals under section 376 of the German Commercial Code (HGB), must be expressly agreed in writing.

(b) For deliveries that do not affect our operations (drop shipment delivery) delivery dates and deadlines are deemed to have been met, if the goods are dispatched from the delivery location of our upstream supplier in time to reach their destination on time, allowing for the usual shipping period.

(c) In the event of any delays in delivery caused by force majeure, riot, strike, lockout, raw material shortage, or equipment failures for which we are not responsible and which affect us or our providers, the period of delivery is extended by not less than the period of time required to remedy the disruption to the extent that the disruption affects the production or delivery of the delivery item. We shall notify the Buyer as soon as reasonably possible of the beginning and end of such events.

In case of a permanent business disruption caused by force majeure, riots, strike, lockout, shortage of raw materials or a business breakdown for which we are not responsible, or in the event that we have, through no fault of ours, failed to receive the supplies ordered from our supplier, Buyer and ourselves shall be entitled to rescind the contract; such rescission may be made for the entire contract or parts thereof, and does not give rise to any claims for

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compensation. In the event of rescission, any payments made in advance shall be reimbursed as soon as reasonably possible. The party to the contract intending to rescind the contract in accordance with the provisions herein above shall do so giving two (2) weeks' notice of termination. A permanent operational disruption as defined herein above shall be deemed to exist where such disruption continues for more than five (5) weeks.

d) We reserve our own punctual and faultless receipt of supplies. We shall notify Buyer of such obstacles as soon as reasonably possible. We shall not be liable for delayed, omitted or non-conforming deliveries insofar as such delayed, omitted or non-conforming deliveries are attributable to our own suppliers without any fault on our part. Without prejudice to other provisions, this applies on condition fact that we have entered into a concrete covering transaction.

e) Buyer shall meet its public legal obligations under Regulation (EC) No. 1907/2006 (REACH Regulation) as amended from time to time.

Section 4 – Dispatch and Acceptance

a) Buyer shall at all times bear the risk of transport from the delivery place. Buyer shall bear the transport risk in all cases even if, by way of exception, we deliver goods postage prepaid based on a special agreement.

b) If Buyer collects the goods from the delivery facility, Buyer or its agent shall load the vehicle and satisfy all legal requirements, including without limitation legal requirements for the transport of hazardous goods.

c) Buyer shall have sole responsibility for unloading and storing of the goods.

d) Where deliveries are made in tankers and dismountable tanks, Buyer shall ensure that its tanks and any other storage containers are in faultless technical condition and shall procure connection of the filling pipes to its own receiving system at its own responsibility or shall, if necessary, cause the recipient to meet this requirement. Our own obligation is limited to operating the facilities connected with the vehicle.

e) Where our employees provide assistance in the cases described in paragraphs (b) and (d) herein above in unloading or discharging, as the case may be, such employees act at the sole risk of Buyer and not as our vicarious agents. Buyer shall bear any costs resulting from down times and waiting times.

Section 5 – Packaging; deposit containers

a) Where we deliver goods in returnable packaging, such returnable packaging shall be returned to us empty and in good condition no later than 30 days from the date of delivery to Buyer's facility at the Buyer's own risk and expense, or shall, where applicable, be returned to our delivery vehicle free of charge against receipt.

b) If Buyer fails to meet its obligations laid down in paragraph (a) hereof in due time, we are entitled to charge a reasonable fee for any period of time exceeding the above period of thirty (30) days and to demand payment of the replacement price of the returnable packaging – setting-off against such payment the afore-mentioned fee – if a deadline set for return has passed without result.

(c) Identification symbols attached to packaging must not be removed. Returnable packaging must not be substituted nor refilled. Buyer is liable for any deterioration of value due to substitution or loss. Any judgement hereon shall be based on our findings upon the arrival of such returnable packaging at our premises. Unless

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otherwise agreed in writing (in acc. with the last sentence of section 1(a) herein above), returnable packaging shall not be used for storage or passed on to third parties.

(d) Buyer shall empty or procure the emptying of tank wagons, if applicable, and shall return such tank wagons to us or to any address specified for this purpose in proper condition as soon as reasonably possible. If Buyer defaults on returning such tank wagons, Buyer is responsible for any costs caused by the default.

(e) If we supply products in deposit containers (e.g. bottles), the provisions in Annex P apply additionally.

Section 6 – Retention of title

(a) If, upon delivery of any item, we have already received **full** payment for such item, title to that item shall pass to Buyer upon delivery thereof to Buyer, unless otherwise agreed in any individual case.

(b) If we provide up front services – i.e. if delivery of the goods takes place at a time at which we have not yet received the consideration or parts of the consideration due for the relevant goods (Retained Goods) – the following provisions shall additionally apply:

- (1) We reserve legal ownership of all Retained Goods delivered by us until full payment of their purchase price and until all our claims resulting from the business relationship – including any contingent liabilities (including without limitation claims for payment by cheque or bill of exchange) – and claims from contracts signed subsequently and existing for any legal reasons whatsoever, have been paid.
- (2) In the event that, for such retention of title to be valid, registration in a specific register and/or fulfilment of other special legal preconditions is required, Buyer shall make sure that such requirements are duly met. Buyer shall bear all costs resulting from the above.
- (3) Buyer shall be entitled to process and resell the goods in the ordinary course of business; provided, however, that Buyer is not in default regarding its duties towards us and provided further Buyer does not suspend its payments. More specifically, the following provisions apply:

(a) Any processing or transformation of the Retained Goods shall be carried out for us as manufacturer within the meaning of section 950 of the German Civil Code, but without obligation for us. The act of processing or transformation of the Retained Goods does not grant the Buyer the right of ownership to the new goods.

If the Retained Goods are processed or mixed, blended or combined with other objects, we shall acquire co-ownership of the resulting new item in proportion of the invoice value of our Retained Goods to the total value of the item.

Regarding the co-ownership shares created in accordance with the foregoing stipulations, the provisions on Retained Goods shall apply accordingly.

(b) Buyer herewith assigns to us all claims from the resale or other disposal transactions, including without limitation from contracts for works, labour and material, together with all ancillary rights and covering also our co-owner's shares to the extent that the Retained Goods have been processed, commingled or combined resulting in our co-ownership of such goods to the amount of our invoice value or to the extent that the goods have been permanently installed.

To the extent that the Retained Goods have been processed, commingled, combined, or permanently installed, the assignment shall entitle us to collect a primary fraction of the claim resulting from the resale

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corresponding to the relation between the invoice value of the Retained Goods and the invoice value of the product.

If Buyer sells the Retained Goods together with other goods supplied by a party other than ourselves, Buyer hereby assigns to us a primary share in the claim resulting from the resale equal to the invoice value of the Retained Goods.

In the event that Buyer has sold such receivables within the scope of a non-recourse factoring transaction, Buyer hereby assigns to us the substitute receivables Buyer may claim from the factor.

If Buyer places the claim from the resale under an open account relationship with the Buyer's customer, the Buyer hereby assigns to us Buyer's claims from the open account relationship in the amount of the invoice value of the Retained Goods.

The assignment encompasses not only payment claims but also claims for surrender, including without limitation in the event that Buyer also resells subject to reservation of ownership.

(c) We hereby accept the above assignments.

(d) Buyer has the right to collect any claims assigned to us until we revoke such right. The authorization to collect shall cease upon revocation, which revocation can be made as soon as Buyer defaults in payment or stops making payments. The same applies if Buyer suffers a major deterioration in its financial circumstances, thus putting at risk our claims. In such cases we have the Buyer's permission to notify customers of the assignment and to collect the receivables ourselves.

(e) Upon our request, Buyer shall submit to us a detailed list of the receivables due to Buyer including the names and addresses of customers, the amount of each of such receivables, the invoice date etc. and shall provide us with all information and documents required for the assertion of the receivables assigned to us and shall permit us to verify the information provided.

(f) Any sums of money received by Buyer on the basis of claims assigned to us shall be separately deposited to our credit until remitted.

(4) Pledging of the Retained Goods or of the claims assigned or transfer thereof by way of security is not permitted. Buyer shall notify us immediately of any order of attachment, specifying the name of the attaching creditor.

(5) If the value of the security due to us exceeds the total of our claims against Buyer by more than 10%, we shall release the exceeding amount at Buyer's request.

(6) In the event of Buyer's default in payment or suspension of payments we are entitled to take back the Retained Goods subject to any legal requirements that may apply. We shall be entitled to use the Retained Goods taken back for our satisfaction.

(7) Buyer shall hold the Retained Goods in safe custody for us. Buyer shall take out reasonable insurance against the usual risks such as fire, theft, and flooding with regard to the Retained Goods. Buyer herewith assigns to us any claims for compensation due to Buyer from any insurance agency or other obligors for any damage or loss mentioned above, in the amount of our claims against Buyer. We hereby accept the above assignment.

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Section 7 – Claims based on defects / damages

(a) We shall carry out any subsequent performance for which we are responsible either by rectifying the defect or by replacing the goods, as we deem fit. The place of subsequent performance is our registered office.

The foregoing is without prejudice to the provisions of section 377 of the German Commercial Code (HGB); we recommend to Buyer to draft a complaint, if any, in writing for evidentiary purposes. If the goods are delivered in packages, Buyer shall additionally check the labelling of each individual package to ensure that it is in compliance with the purchase order. Moreover, prior to discharging the goods, Buyer shall make sure that the goods are in compliance with the contract by taking a sample in accordance with standard practice.

Any parts replaced become our property. In case of a rectification of defects, we shall bear all expenses required for the purpose of such rectification – including, without limitation, the costs of transportation, travelling, labour and materials – to the extent that such costs are not increased due to the purchased item being sent to a place other than the destination contractually agreed; Buyer's rights under section 439 (3) of the German Civil Code shall remain unaffected thereby.

Minor deviations in quality, colour, width, weight or design that are technically unavoidable do not constitute a defect.

References to standards or similar regulations, details provided in safety data sheets, details on the usability of the goods, and statements made in advertisements shall not be deemed to constitute representations or warranties, or declarations of conformity. Identified uses under the REACH Regulation (EC) No. 1907/2006 that are relevant to the goods shall constitute neither an agreement on the corresponding contractual quality of the goods nor any designated use under the terms of this contract.

In addition, Buyer shall have the right to cancel the contract and to reduce the purchase price provided that the relevant legal requirements have been met. Claims for compensation are subject exclusively to the following provisions.

(a) Unless provided otherwise herein below, and provided that the relevant legal requirements have been met, STOCKMEIER shall be liable for damages if a material contractual obligation (so-called "cardinal obligation") has been culpably breached; however, in such case, STOCKMEIER's liability shall be limited, in terms of amount, to the foreseeable, typically occurring damage. Cardinal obligations are those obligations the fulfilment of which is of the essence for the contract and the performance of which the buyer may rely on in the due course of business; and cardinal obligations also include those obligations the breach of which would endanger the purpose of the contract.

Buyer shall have an unrestricted right to claim damages from us, as provided for by law and in the amount specified by law, provided that such claims for damages have been caused by us or our legal representatives or vicarious agents, and are based on

- culpable injury to life, limb or health, **or**
- intentional or grossly negligent breach of duty, **or**
- the German Product Liability Act (*Produkthaftungsgesetz*) **or**
- breach of an obligation arising from a procurement risk assumed or a guarantee given.

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The assertion of any further damage claims against us or our legal representatives, performing agents (contractual liability) or vicarious agents (tortious liability) – on whatever legal grounds – shall be excluded.

The legal provisions regarding the burden of proof apply.

Section 8 – Limitation of claims based on defects

(a) Any claims asserted by the Buyer for quality defects expire by limitation within one year unless:

- (1) the product delivered by us is an item integrated within a building in accordance with the common manner of use of that product, causing the defectiveness of that building, or
- (2) the defect was fraudulently concealed, or was caused by a breach of obligation intentionally committed by us or by our legal representatives or vicarious agents, **or**
- (3) such claims are based on a guarantee given, or a procurement risk assumed, by us, **or**
- (4) such claims are claims for damages, **or**
- (5) such claims are claims in accordance with section 445(a) of the German Civil Code.

In cases (1) to (4), the statutory limitation periods shall apply.

(b) The statutory limitation periods shall also apply in case (5), provided that the last contract in the supply chain relates to a purchase of consumer goods in terms of section 474 of the German Civil Code (and, notably, to such transaction where the final purchaser, as a consumer, buys an object from an entrepreneur); in all other cases (i.e., without a consumer being involved as the final purchaser), the limitation period shall be fourteen (14) months.

(c) The legal provisions on suspension, interruption, and beginning and recommencement of the statute of limitations apply.

(d) The provisions in section 8 (a) to (c) herein above apply mutatis mutandis.

Section 9 – REACH

If Buyer notifies us of a use in accordance with Article 37.2 of the Regulation (EC) No. 1907/2006 of the European Parliament and the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH Regulation) which requires updating the registration or substance safety data report, or another obligation under the REACH Regulation, Buyer shall bear all substantiated expenses. In case of the first sentence, any delivery obligations we may have are extended by a reasonable period of time. The provisions in Section 7 hereof are not affected.

If, for reasons of health and safety or environmental protection, it is not possible to include the use changed in accordance with the first sentence of this Section 9 above as an identified use and if Buyer intends, contrary to our advice, to use the goods in a manner we have discouraged, we are entitled to withdraw from the contract.

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Section 10 – Jurisdiction; applicable law, data privacy; severability

(a) Our registered office is the exclusive place of jurisdiction. At our option, we can also take legal action at our principal place of business in Bielefeld (Germany) or, if Buyer's registered office is outside the Federal Republic of Germany, at Buyer's general place of jurisdiction.

(b) The law of the Federal Republic of Germany shall apply exclusively and in the same manner as it would apply between two contractual partners having their registered office in Germany, but without giving effect to any legal norms referring to other legal systems and without giving effect to the UN Convention on Contracts for the International Sale of Goods (CISG).

(c) We are entitled to store the personal data of Buyer and Buyer's employees as well as the personal data of any sub-contractors or third party hired by Buyer – provided that such personal data are related to the business relationship maintained with Buyer – and shall be entitled to use such data within the STOCKMEIER Group. If and to the extent required, the Supplier shall enter into similar agreements with Supplier's employees, sub-contractors or sub-suppliers.

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