

# General Terms and Conditions of Sale of CABB GmbH

## 1. Offer and Conclusion of Contract

- a) The present terms and conditions ("Terms") shall exclusively apply to all our present and future deliveries and the contracts relating thereto ("Sales Contracts"). Terms and conditions of our clients ("Buyers") shall not be applicable, even if we fail to expressly reject them. The Terms as laid down hereunder shall also be applicable if we execute Buyer's orders without any proviso, knowing that contradictory or diverging terms and conditions exist.
- b) Our quotations are submitted without obligation and are non-binding, unless expressly submitted as binding.
- c) We are free to accept an order from a Buyer which qualifies as an offer to conclude a purchase contract within two weeks of receipt. Our execution of an order without confirmation is to be considered as our acceptance.
- d) All Sales Contracts should be laid down in writing. "Writing" or "written" within the meaning of these Terms shall also include e-mails.

## 2. Scope of Contractual Obligations

- a) The scope of obligations shall be governed by the respective Sales Contracts, our written confirmation of order or our invoice, as the case may be.
- b) Delivery dates shall not be binding unless they have been expressly stated to be binding. The quality of the goods due shall be determined exclusively in accordance with the standard specification or the specification agreed.
- c) We shall be entitled to effect partial shipments if the Buyer can reasonably be expected to accept such partial shipments under the circumstances of the particular case. Invoices for any partial shipment shall be payable irrespective of the completion of delivery.
- d) Product details and criteria for use in catalogues, instruction leaflets, safety data sheets and other information material that we make available to the Buyer, as well as descriptive product details are not to be understood as guarantees for a particular quality of the goods nor as just an agreement of the quality. Such quality guarantees and quality agreements must be expressly agreed in writing.

## 3. Prices and Payment

- a) The prices are net prices plus value added tax. They are calculated on the weight/quantity of the delivery at the time of dispatch.
- b) Bills of exchange shall be accepted only after prior written agreement, on account of performance and on condition of being eligible for refinancing with central banks. All charges incurred for the payment of bills and transfers shall be met by the Buyer.
- c) If the Buyer is in default of payment, interest at the legal rate shall be charged on the overdue amount. We reserve the right to pursue further claims for damages due to delayed performance.
- d) If the Buyer is in default of payment and in the case of other justified doubts as to the Buyer's solvency or creditworthiness, we shall be entitled – notwithstanding our other rights – to demand advance payment for all deliveries not yet made or services not yet rendered and to require immediate payment of all claims arising from the business relation. Our obligation to supply shall be suspended while the Buyer is in arrears with a due payment.
- e) The Buyer has the right to offset only as and when respective counter-claims have become final, are not contested or have been accepted by us. The Buyer is only allowed to invoke rights of retention if the counter-claim is based on the same contractual relationship.
- f) We reserve the right to adjust our prices if decreases or increases of cost occur after conclusion of a contract, in particular due to collective agreements or changes in prices of raw materials. Such changes will be documented to the purchaser upon request.

## 4. Force Majeure

Unforeseen breakdowns, delayed deliveries or non-delivery by our suppliers (including intra-group suppliers), shortage of labour, power or raw materials, strikes, lockouts, difficulties in providing means of transport, traffic disruptions, government orders, embargoes, boycotts and any other events of force majeure shall relieve the party affected thereby of its obligation to supply or accept the goods, as the case may be, for the duration of and to the extent of such hindrance. If, in consequence of such hindrance, delivery or acceptance is delayed by more than one month, either party, to the exclusion of all further claims, may withdraw from the contract in respect of the quantities affected by such delay.

## 5. Transfer of Risk

In the absence of any agreement to the contrary, the risk shall transfer to the Buyer when the consignment is transferred to the first transport operator or if the goods are made available for collection by the Buyer. This principle shall apply even if the Buyer refuses to take delivery of the consignment.

## 6. Reservation of Property Rights

- a) We shall retain title to the goods until payment of all claims existing or still arising from the business relations with the Buyer. Any machining or processing of the goods subject to reservation of title shall be carried out on our instructions. The processing shall be undertaken without charge or any obligation so that we shall be regarded as the manufacturer pursuant to § 950 of the German Civil Code (BGB).

If the Buyer processes the said goods together with other goods not owned by us, we shall acquire co-ownership of the new product, our proportionate share being equivalent to the invoice value of the goods subject to reservation of title relative to that of the other processed goods at the time of processing. If goods subject to reservation of title are processed, combined or mixed with other goods not owned by us in accordance with §§ 947 and 948 of the German Civil Code (BGB), we shall become co-owners in accordance with the provisions of the law. If the Buyer acquires sole ownership through processing, combining or mixing, he shall here and now transfer to us co-ownership proportionate to the value of the goods subject to reservation of title relative to that of the other goods at the time that they are processed, combined or mixed.

In these instances the Buyer shall hold in safe custody and free of charge the item that is likewise owned or co-owned by us and deemed to be subject to reservation of title within the meaning of this section 6.

- b) To safeguard our total receivables resulting from the business relations, the Buyer hereby cedes to us such claims outstanding from resale as are equivalent to the value of the goods subject to reservation of title. We hereby accept such assignment.
- c) The Buyer may not resell goods subject to reservation of title on the basis of a purchase or site contract unless the sum receivable from the resale is transferred to us. The Buyer may not dispose of goods subject to reservation of title in any other way. At our request the Buyer shall notify the third-party purchaser that the amount receivable is to be ceded to us as payment.
- d) If the value of our total collateral exceeds the amount receivable from the Buyer by 20%, we shall, at the request of the Buyer or any third party adversely affected by the excessive holding of Buyer's collaterals, release collateral of our choice to the extent of the excess.
- e) The Buyer shall assume the risk for the goods supplied by us subject to reservation of title. He shall keep such goods carefully in safe custody and insure them adequately against loss (theft, fire etc.). The Buyer hereby cedes to us the right to claim against the insurance in the event of loss, namely for a priority share equivalent to the purchase price of the goods owned and supplied by us.
- f) If reservation of property rights to any consignment sent abroad is not permitted on the relevant foreign territory in the above-mentioned form, our rights set forth in the foregoing shall be limited to the scope permitted by law in the Buyer's country.

- g) In the event of a third party laying claim to the goods subject to reservation of title, in particular in cases of seizure, the Buyer will point out our ownership and inform us immediately, thus enabling us to pursue our rights of ownership. To the extent that a third party is not able to indemnify us with regard to judicial and extra-judicial expenses incurred in this context, the Buyer will be held liable.

## 7. Claims for Reasons of Defects

- a) The Buyer must check whether the goods supplied comply with the contract and are suited to their intended purpose. The duty to examine and complain in accordance with § 377 of the German Commercial Code (HGB) also applies to a Buyer, who is not a fully qualified merchant in the meaning of the law.
- b) We must be notified of any obvious defects within two weeks, of concealed defects immediately upon their discovery. Damage to packaging must be noted in the freight papers or notification made in writing to the delivering forwarder and to us at the latest six days after delivery.
- c) We will recognise properly notified defects of the goods supplied according to our choice, taking the Buyer's interests into consideration, by eliminating such defects or supplying defect-free replacement goods. If these measures do not lead to success the Buyer is entitled to have recourse to the statutory regulations.
- d) Defective goods may only be sent back with our express agreement. In the case of justified claims we shall refund the cost for the most reasonable despatch.
- e) The period of limitation is to be twelve (12) months, calculated from the transfer of risk, unless a breach of warranty is intentionally caused or fraudulently concealed by us.

## 8. Liability

- a) Our liability for damages regardless of the legal basis, in particular due to impossibility, delay, defective or incorrect delivery, breach of contract, breach of obligations in contractual negotiations and unlawful acts (*unerlaubte Handlungen*) is, to the extent that this involves culpability (*Verschulden*), limited in accordance with this section 8.
- b) We are not liable in the case of simple negligence of our management bodies, legal representatives, employees or other vicarious agents (*Erfüllungsgehilfen*), to the extent that this does not relate to a breach of material contractual obligations (*vertragswesentliche Pflichten*). Material contractual obligations include the obligation to deliver in a timely manner, the conformity of the supplied goods with the agreed quality, as well as advisory, protective and due care obligations, which should facilitate the Buyer's contractual use of the supplied goods or for the purpose of the protection of life or health of the Buyer's personnel or the protection of its property from material damage.
- c) Where we are liable in accordance with and on the grounds of section 8.b) such liability shall be limited to damages which we have foreseen upon conclusion of the contract as a possible consequence of a breach of contract or which we should have foreseen when exercising due care and attention (*verkehrsübliche Sorgfalt*). Indirect damages and consequential damages, which are the consequence of defects in the supplied goods, shall only be compensated to the extent they are typically to be expected in the course of a proper use of the supplied goods.
- d) In the event of a delivery delay on our part due to our simple negligence, the amount of default damages which the Buyer may claim shall be limited to a maximum of 5 % (in words: five per cent) of the agreed net purchase price for each complete week of delivery delay and in total to a maximum total of 20 % (in words: twenty per cent) of the agreed net purchase price.
- e) To the extent that we provide technical information or act in a consulting capacity and such information or consulting is not included in the contractually agreed scope of supply owed by us, this shall take place free of charge and under exclusion of any liability.
- f) The aforementioned exclusions and limitations on liability shall apply to the same extent for the benefit of our management bodies, legal representatives, employees or other vicarious agents (*Erfüllungsgehilfen*).
- g) The limitations set out in this section 8 shall not apply to our liability for willful misconduct, for guaranteed features, for damage to life, body or health or in accordance with the German Product Liability Act (ProdHaftG).
- h) If the Buyer sells the supplied goods unchanged or after processing, transforming, combining or mixing with other goods, the Buyer shall release us internally from all product liability claims by third parties, to the extent that the Buyer is responsible for the circumstances giving rise to the liability.

## 9. Limitation of Liability in Time

The period of limitation for all claims, excepting those subject to the period of limitation based on a material defect, shall be eighteen (18) months, counted from knowledge of the damage and the person having perpetrated the damage.

## 10. Trademarks

Trademarks may be used in connection with products manufactured by the Buyer only with the trademark owner's express written consent.

## 11. Safety

To the extent that our goods are subject to regulations on dangerous substances, the Buyer shall, when storing and processing such goods, observe our product-specific safety data sheet and/or, when reselling the goods, pass on the relevant data to the purchaser. We will supply current safety data sheets upon request. To the extent that goods supplied by us are categorised as dangerous goods, they may be stored and (further) transported only in the packaging and by the means of transport approved for the purpose and with the prescribed labelling.

## 12. Miscellaneous

- a) The Buyer may not assign in whole or in part claims arising out of a contract concluded with us without our express written consent.
- b) If any clause in these Terms and / or a Sales Contract should be or become wholly or partially void, ineffective or unenforceable, the validity, effectiveness and enforceability of the other provisions of these conditions shall not be affected thereby. Any such invalid, ineffective or unenforceable provision shall be deemed replaced by such valid, effective and enforceable provision as comes closest to the economic intent and purpose of the invalid, ineffective or unenforceable provision as regards subject-matter, extent, time, place and scope. The aforesaid shall apply mutatis mutandis to any gap in these Terms and / or the respective Sales Contracts.
- c) Unless any agreement has been made to the contrary, the contract is subject to the laws of the Federal Republic of Germany, without giving effect to its rules on conflicts of laws. The application of the United Nations Convention on Contracts for the International Sale of Goods of 11-04-1980 is excluded.
- d) The place of performance for our delivery obligations shall be the place from which the delivery is made. The place of jurisdiction shall be Frankfurt am Main or, if we so choose, the court in whose jurisdiction the Buyer's headquarters is located. This shall also apply to legal proceedings relating to documents, bills of exchange and checks.
- e) The contractual language shall be German. Where interpretation is required, the German text shall solely be authoritative. Any translations into foreign languages shall be for information purposes only.