

# General Terms and Conditions of Sale of CABB AG

## 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 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 the applicable law of the location of the goods.

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, are combined or mixed with other goods not owned by us, we shall become co-owners in accordance with the provisions of the applicable law of the location of the goods. 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 our 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 of the location of the goods. If the applicable law of the location of the goods provides for registration requirements, the Buyer under-

takes to support us at our request in order to either fulfil any of these requirements or to establish a comparable security interest for the goods subject in retention of title.

- 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 does not indemnify us with regard to judicial and extra-judicial expenses incurred in this context, the Buyer will be held liable.

## 7. Duty to Examine and Complain as well as Claims for Reasons of Defects

- a) The Buyer must check whether the goods supplied comply with the contract. Art. 201 of the Swiss Code of Obligations applies to such duty to examine and complain.
- 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 recognize 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 of rescission or reduction of the purchase price in accordance with Art. 205 of the Swiss Code of Obligations.
- 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 dispatch.
- e) The warranty and limitation period is to be twelve (12) months, calculated from the transfer of risk, unless the defect is 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*), with the following exceptions excluded. This exclusion of liability applies irrespective of the fact that such damage was caused by our management bodies and executive staff directly or by our auxiliary persons (*Hilfspersonen*) like subcontractors, representatives or employees as the case may be.
  - b) The exclusion of liability pursuant to section 8.a) shall not apply in the following cases for which the Buyer bears the burden of proof:
    - aa) unlawful intent of our management bodies and/or executive staff,
    - bb) gross negligence of our management bodies and/or executive staff,
    - cc) in cases of mandatory legal liability, such as in particular under the Product Liability Law, acceptance of a guarantee for quality characteristics as well as generally for culpably caused personal damage (life, body and health).
  - c) Where we are liable in accordance with section 8.b)/bb) and b)/cc) such liability shall be limited by exclusion of our liability towards the Buyer and third parties for loss of profit, loss of income, loss of production and wasted expenditure, cost of substitute goods, property damage external to the goods and any damage, expenditure or loss arising from such damage, or for indirect or consequential damage, including loss of use, loss of revenue, loss of interest or capital, loss of data or information or similar losses. Our overall liability, by the way of damages or any other form of compensation for breach of duties, connected to the Sales Contracts or the individual purchase order (including obligations to indemnify and/or hold harmless), in tort or other legal basis, is furthermore in the aggregate limited to the value of the respective delivery.
  - 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, subcontractors, representatives, employees or other auxiliary persons (*Hilfspersonen*).
  - g) 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 shall be eighteen (18) months

## 10. Trade Names and Trademarks

Our trade names and trademarks may be used in connection with products manufactured by the Buyer only with our 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 categorized 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 Swiss substantive law, 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 Sissach (Basel-Landschaft) 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.